BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE,
THE DELAWARE ENERGY OFFICE.
THE OFFICE OF MANAGEMENT AND BUDGET
AND THE CONTROLLER GENERAL

IN THE MATTER OF INTEGRATED RESOURCE PLANNING FOR THE PROVISION OF STANDARD OFFER SERVICE BY DP&L POWER & LIGHT COMPANY UNDER 26 *DEL. C.* §1007(c) & (d): REVIEW AND APPROVAL OF THE REQUEST FOR PROPOSALS FOR THE CONSTRUCTION OF NEW GENERATION RESOURCES UNDER 26 *DEL. C.* §1007(d) (Opened July 25, 2006)	**)**	**PSC DOCKET NO. 06-241**

JEREMY FIRESTONE'S RESPONSE IN OPPOSSITION TO CONECTIV'S PETITION FOR REHEARING AND RECONSIDERATION

1. As set forth below, Conectiv's Petition for Rehearing and Reconsideration should be denied because Conectiv does not have standing and because its petition is procedurally and substantively flawed.

2. Conectiv's arguments can be boiled down to:

   a. As the bid receiving the most points from the Independent Consultant on the points portion of the RFP, the State Agencies should have mechanically selected its Hay Road natural gas proposal.

   b. If the State Agencies nonetheless maintain the hybrid approach, Conectiv should be able to bid its Hay Road Facility.

   c. At this late date, it should be able to compete with Bluewater on providing offshore wind power to Delmarva.

3. As an initial matter, Conectiv does not have standing to bring this claim because its bid is nonconforming as a matter of fact and law. Among other flaws, Conectiv's bid did not include non-negotiable security as required by the RFP. February 21, 2007 IC Report at 10.[1] Since Conectiv does not have a legitimate bid before the State Agencies, none of its rights have been implicated by the State Agencies' decision.[2]

4. Even assuming *arguendo* that Conectiv has standing, its claims should be rejected.

5. To begin with, Conectiv's claim that its bid should be selected because it scored the most points was previously rejected by the Commission. Indeed, at the May 8 hearing, Conectiv's sister corporation, Delmarva Power, made exactly the same argument. It contended that "staff's last-minute recommendation of a combination of ideas built around components of various bids … should be rejected since it ignores the bid evaluation results, it ignores the RFP criteria and proposes unevaluated results." Delmarva's argument however did not carry the day. As Conectiv well-knows, grounds for rehearing and reconsideration must be "different from the arguments previously made to the Commission." PSC Rule 34.

6. Second, given that Conectiv submitted a bid that did not conform with the RFP as a matter of fact and law, Conectiv should not be heard to complain that the State Agencies should have selected its bid as the highest scoring under the RFP.

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[1] In contrast, for example, the IC merely made allegations that Bluewater's bids "raise issues" of nonconformity given differences between the manner in which the IC and Bluewater interpreted the Order 7066, the RFP and the Commission's December 19, 2006 hearing (ordering that what has come to be known as the Bluewater "Full" Bid be accepted; the so-called "Partial" bid was not at issue).

[2] In addition, on its face, Rule 34, that basis for the Petition, only applies to the Commission and not to the other three State Agencies.

7. Third, Conectiv's reliance on the points system as the sole touchstone of the RFP is misplaced given that the PSC and DNREC ultimately adopted a separate super-category metric as well and did not tie the State Agencies hands are require them to select the highest scoring bidder or the bid offering the lowest expected price.

8. Fourth, Conectiv's reliance on the Consultant's points evaluation suggests a mechanical process where the public and even the State Agencies are cut out from having any substantive role and where instead, an out-of-state business—the independent consultant—who is neither elected nor appointed by the Governor or the Legislature, is given sole authority to determine Delaware's energy future.

9. Fifth, the legislation creating the bidding process did not require the State Agencies to select the lowest-priced bid or the highest-ranked bid. Rather, Section 1007(d)(3) of EURCSA provides that the State Agencies may approve one or more bids "that result in the greatest long-term system benefits, including those identified in paragraph (1) of this subsection, in the most cost-effective manner." The benefits identified in paragraph (1) are in turn:

> "a. Proposals that utilize new or innovative baseload technologies;
> b. Proposals that provide long-term environmental benefits to the state;
> c. Proposals that have existing fuel and transmission infrastructure;
> d. Proposals that promote fuel diversity;
> e. Proposals that support or improve reliability; and
> f. Proposals that utilize existing brownfield or industrial sites."

Other long-term system benefits contemplated include energy price stability—the primary focus of the legislation—as well as the benefits achieved from new or

innovative technology. See Section 1007(d) of EURCSA. The Legislature did not limit the State Agencies' discretion in such a manner that they were constrained to pick the lowest-priced bid; instead, it directed the State Agencies to select proposals that would generate substantial long-term system benefits provided that they would do so in a manner that is cost-effective.

10. The term "cost-effective" does not require the State Agencies to select the lowest-priced bid or even only amongst bids that would be expected to be lower than the elusive long-term market rate. Rather, the term "cost-effective" connotes that the long-term benefits of a bid must be compared to its costs.

11. Bluewater's wind bid is the only bid that will provide price stability, is the only bid that will significantly reduce environmental impacts, and that is innovative. In contrast, one cannot seriously consider Conectiv's bid, which it now trumpets loudly for perhaps the first time in this process, to provide long-term system benefits. Indeed, Conectiv's bid merely does-the-same-thing-all-over-again that led the State to adopt EURCSA in the first instance. Because Conectiv's bid is not effective, it does not matter how little its price is. Given the record in this matter, it thus begs credulity to suggest that the State Agencies' decision to select the Bluewater bid as the primary winning bid rather than Conectiv's is not supported by substantial evidence.

12. Sixth, as noted in the Staff response, Order 7199 does not preclude Conectiv from advancing its Hay Road site in the negotiations with Delmarva.

13. Seventh, if Conectiv truly desired to compete for a wind power proposal, it should have submitted an offshore wind bid back in December. At the very least, it should have spoken up on May 8; certainly by May 22 at the very latest. As it did not, it is

hard to be anything but cynical regarding Conectiv's motivations for its newly found faith in offshore wind power. Given that opening up the wind bid would be highly prejudicial and result in delay with likely nothing to be gained, Conectiv's last request nth minute request should be summarily rejected.

WHEREFORE, I RESPECTFULLY REQUEST THAT THE STATE AGENCIES DENY CONECTIV'S PETITION FOR REHEARING AND RECONSIDERATION.

Respectfully submitted this 22nd day of June 2007,

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