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February 26, 2007

BY HAND DELIVERY

Arnetta McRae, Chair
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Re: In the Matter of Integrated Resource Planning for the Provision of Standard Offer Supply Service by the Delmarva Power & Light Company Under 26 Del. C. Section 1007(c) & (d): Review and Approval of the Request for Proposals for the Construction of New Generation Resources Under 26 Del. C. Section 1007(d), PSC Docket No 06-241

Dear Chairperson McRae:

Pursuant to Mr. Sheehy's February 20, 2007 E-mail to me, as counsel for NRG Energy, Inc. ("NRG"), directing more detailed information as to the basis for NRG's redaction of its bid proposal in the above-referenced docket, enclosed please find a revised redacted version of NRG's bid proposal. This additional redaction makes public more than 300 pages of additional bid information. This additional information is being released either as the result of certain information becoming public since February 16, 2007, the date of NRG's last redaction, or because there is no longer a need for confidential treatment.

This most recent redaction, and this letter, constitute NRG's good faith attempt – after five days of additional detailed review – to provide more specific basis for its redactions. After consultation with Staff, and in order to facilitate Staff's review, NRG has attempted to follow the overall approach used by Conectiv Energy Supply ("Conectiv Energy") in both the February 16, 2007 letter of its counsel and the revised Conectiv Energy redaction. In this regard, we have adopted the categories and basis (including legal authorities) supporting the redactions made by Conectiv Energy and have attempted to format this revised redaction to provide similar detail and explanations for NRG's redactions.

As noted in NRG's February 16, 2007 letter, pursuant to Delaware's Freedom of Information Act, 29 Del. C. Ch. 100, all information filed with the Commission is considered a

public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." *See, e.g.*, PSC Order No. 6869 in regulation Docket No. 15 (March 14, 2006) at Section X; PSC Order No. 6793 in regulation Docket No. 65 (December 6, 2005) at §5.1; 29 Del. C. §10002(g)(2); Del. Op. Atty. Gen. 00-IB15 (October 4, 2000). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall preemptively deem all information so designated to be exempt from public record status. Id.; PSC Rules of Practice and Procedure, Rule 11(a).

Under Delaware law a trade secret is "confidential and proprietary information" which, if it "falls into a rival's hands", will cause "serious competitive disadvantage." ID Biomedical Corp. v. TM Technologies, Inc., 1994 WL 384605 (Del. Ch. 1994). Trade secrets include – but are not limited to – formulas, patterns, devices, compilations of information, even lists of customers that give a business the opportunity to obtain an advantage over competitors who do not know or use such information. Del. Op. Atty. Gen. 77-029 (September 27, 1977).

"Commercial or financial information obtained from a person which is of a privileged or confidential nature" has been broadly interpreted to mean information not known to the public which would give a competitor an edge. Del. Op. Atty. Gen. 77-037 (December 28, 1977). In the public bid process, such information specifically includes information that may have been required to be submitted in order for a state agency to evaluate the company but which, if released, would greatly harm the company and might be used by a competitor. Id. (emphasis added). Confidential or privileged commercial or financial information has been determined to include – but is not limited to – such information as assets, product pricing, profits and losses, stock holdings, loans, proposed or pledged collateral, and technical approaches to a public bid, including but not limited to details about processes, operations and style of work. Del. Op. Atty. Gen. 87-I031 (November 4, 1987); and Hecht v. Agency for International Development, C.A. No. 95-263-SLR (D. Del. 1996), available at 1996 WL 33502232.

These authorities, as well as those cited by Conectiv Energy in its February 16, 2007 letter, support the NRG redactions in this most recent redaction of bid documents.

1. **Price-Related/Commercial Information**

Much of the redacted information found in NRG's approximately 1100 page bid proposal constitutes commercial and financial information not required to be disclosed under 29 Del. C. §10002(g)(2). Relying on the authorities noted above, specific details regarding, for example, NRG's pricing proposals, with or without carbon capture sequestration, the commercial structures NRG proposes to use in the Power Purchase Agreement (PPA), and NRG's entire mark-up of the proposed PPA have all been redacted. The redacted information, identified in the revised redaction as falling into this category, generally relates to:

A. Corporate financial information (internal cost of capital, required rate of return, financing terms and costs, etc.);
B. Operating costs and characteristics of existing or proposed facilities (operating and maintenance costs, capacity factors, heat rates and other output data);
C. Fuel costs, fuel transportation, fuel management and fuel acquisition strategies and data; and
D. Certain information regarding amounts/percentages of facility emissions or facility performance data.

This information has been used, in whole or in part, by NRG to develop its bid price. Release of this information reveals the details of the transaction NRG has proposed and the types of structure and terms NRG might accept. Disclosure would cause serious competitive disadvantage to NRG in both this pending process as well as competitively disadvantage NRG in bid processes in other states – now and in the future.

As noted, information regarding types, amounts and percentages of facility emissions or performance data (e.g. cost per ton measures for carbon dioxide, the specific costs for interconnection, carbon capture sequestration data, etc.) have been redacted because, if disclosed, they could be used by potential vendors, as well as competitors, to derive pricing information which will disadvantage NRG in negotiations with potential vendors, and in competing with other bidders in this project and other projects.

2. **Other Trade Secret Information**

Redactions referenced in the revised redaction as falling into this category include commercial information protected from disclosure pursuant to 29 Del C. §10002(g)(2). This redacted material includes information which has not been previously disclosed concerning:

A. The identity of certain potential vendors, information concerning the products or work vendors could provide to the facility, as well as the terms under which they could be a part of the IGCC development process going forward;
B. References to, and details of, NRG's project consultants and the proprietary work product they have prepared in connection with the development of the Indian River IGCC plant;
C. Strategic construction schedules and planning, proprietary operating strategies, and unique design features of the proposed facility; and
D. Other non-public and proprietary aspects of NRG's overall business, as well as, nonpublic current, and expected operating characteristics of NRG or of the Indian River facility.

Withholding this information prevents competitors from accessing strategic information as to how NRG operates its facilities and develops and plans its projects. It also prevents vendors from determining that NRG is choosing certain equipment or products before negotiations have begun. Disclosure of such information will competitively disadvantage and greatly harm NRG's ability to negotiate the best and most commercially reasonable agreements with potential vendors.

Moreover, NRG has retained project consultants and paid them considerable sums to provide their expertise to develop the cutting-edge technology and know-how to advance the Indian River IGCC project. This data is directly relevant to NRG's competitive advantage in its business, and not just in the context of this RFP. If this information was disclosed to the public, our competitors would seek this information from the PSC to capitalize on NRG's work product.

* * * * *

The information which remains redacted constitutes crucial competitive data at the heart of NRG's core business operations and future development plans. Public disclosure of this information will cause serious and irreversible harm to NRG's competitive advantage in the marketplace. The redacted information contained in the attached bid proposal must not be disclosed by the PSC for at least three (3) years from the date of NRG's RFP submission to the PSC on December 17, 2006. Further, prior to <u>any</u> release of information NRG deems to be confidential, NRG respectfully requests that the Commission provide NRG with reasonable notice and an opportunity to additionally demonstrate why the information should not be released.

The enclosed disk contains an electronic copy of NRG's revised redacted bid proposal. If you have any questions or concerns, please do not hesitate to have Staff contact me in order that we can discuss any issues or concerns the Commission may have regarding this revised redaction or this letter.

Sincerely,

Michael Houghton

MH/fv

Enclosures

cc: Interested Parties in PSC Docket No. 06-241 (via E-mail w/o Enclosures)