

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF INTEGRATED RESOURCE)
PLANNING FOR THE PROVISION OF)
STANDARD OFFER SUPPLY SERVICE BY)
DELMARVA POWER & LIGHT COMPANY UNDER)
26 DEL. C. §1007(c)&(d); REVIEW AND) PSC DOCKET NO. 06-241
APPROVAL OF THE REQUEST FOR PROPOSALS)
FOR THE CONSTRUCTION OF NEW GENERA-)
TION RESOURCES UNDER 26 DEL. C.)
§ 1007(d) (OPENED JULY 25, 2006))

ORDER NO. 7178

This 24th day of April, 2007, the Commission determines and Orders the following:

1. In response to a Freedom of Information request (29 Del. C. ch. 100) filed by The News Journal newspaper, the Commission entered Order No. 7148 (Mar. 20, 2007). In the Order, the Commission determined which portions of the bid documents submitted by each of the three bidders in this matter should be withheld from public disclosure as "non-public" records under the provisions of 29 Del. C. § 10002(g)(2). In Order No. 7148, the Commission adopted Staff's recommendations regarding which portions of the bid documents (as previously redacted by the bidders) should, or should not, be available for public review but with several revisions related to documents in the bid of NRG Energy, Inc. In Order No. 7148, the Commission stayed the effective date for disclosures of information mandated by the Commission for five business days. Within that period, any person or entity could pursue judicial review of the Commission's decision to compel disclosure.

2. On March 23, 2007, Bluewater Wind LLC ("Bluewater") filed a letter asking for reconsideration of Order No. 7148 as it called for public disclosure of a large number of pages in a portion of Bluewater's bid identified as "Share Document 8." Shared Document 8 relates to Bluewater's possible business relationship with Vestas Wind Systems A/S ("Vestas"), an off-shore wind turbine manufacturer. Staff had recommended, and Order No. 7148 had accepted, the non-disclosure of various pages in such Shared Document 8. However, Bluewater - supported by Vestas - argued that much additional information in the document was confidential and proprietary and that public disclosure of this additional information would competitively harm Vestas if it would become available to Vestas' competitors in the highly competitive off-shore wind turbine industry. Bluewater and Vestas also pointed out that the entire Shared Document 8 had been provided to Bluewater subject to a confidentiality agreement with Vestas. Bluewater, and Vestas (via affidavits), asked that the Commission withhold from public disclosure - in addition to the materials already identified by Staff - additional information in Shared Document 8. The Vestas' affidavits indicated that this additional information was confidential and that its disclosure would likely lead to competitive harm if disclosed to Vestas' competitors. Bluewater had not offered these specific arguments during the Commission's deliberations on March 20, 2007 prior to the entry of Order No. 7148.

3. On March 27, 2007, Vestas obtained a bench ruling from the Court of Chancery temporarily restraining the Commission from publicly disclosing information in Shared Document 8 contained in Bluewater's

bid submission until the Commission had heard Bluewater's letter request for reconsideration on whether additional information in such document should not be publicly disclosed under 29 Del. C. § 10002(g)(2). Vestas Offshore A/S v. Public Service Commission of the State of Delaware, et al., Civil Action No. 2841-CC (filed March 26, 2007). Under the Chancellor's directive, if the Commission would still find the additional information in such document subject to public disclosure, the restraining Order would remain in place for an additional time to allow Vestas to have the Court of Chancery review whether to further extend its prohibition on public disclosure.

4. The Commission heard Bluewater's letter request for reconsideration on April 3, 2007, hearing from both Bluewater and Vestas. After such further consideration, the Commission grants the reconsideration request and finds that additional information in Shared Document 8, reflecting a business relationship between Vestas and Bluewater, should be exempt from public disclosure under the provisions of 29 Del. C. § 10002(g). The Commission finds that the additional information in that document now designated by Vestas represents commercial and financial information (obtained from Bluewater and Vestas) which is of a privileged or confidential nature. The Commission further finds that public disclosure of such additional information would likely cause competitive harm to Vestas.¹ The Commission notes that in other instances of its review of the bid

¹Staff supported granting Bluewater's reconsideration request and did not object to amending its earlier recommendation about the portions of Shared Document 8 to be publicly disclosed in light of the new materials provided by Bluewater and Vestas.

documents, the Commission found public disclosure not warranted when the particular bid materials were covered by confidentiality agreements with third parties and would work competitive harm to other parties.

Now, therefore, **IT IS HEREBY ORDERED:**

1. That the letter request for reconsideration of PSC Order No. 7148 (Mar. 20, 2007) filed by Bluewater Wind LLC, dated March 23, 2007, is granted.

2. That, upon reconsideration, the directions for public disclosure and non-disclosure of documents set forth in PSC Order No. 7148 (Mar. 20, 2007) are now modified in the following ways:

- (a) Staff's recommendations in Exhibit A to the Staff Memorandum dated March 13, 2007, which recommend disclosure of various pages in Shared Document 8 (which is part of the bid document submitted by Bluewater Wind LLC related to a possible business relationship with Vestas Wind Systems A/S) are now *not* accepted as proposed by Staff in that Exhibit;
- (b) Staff's recommendations in Exhibit B to the Staff Memorandum dated March 13, 2007, related to non-disclosure of particular pages in Shared Document 8, are hereby confirmed; and
- (c) The portions of Bluewater Wind LLC's bid document entitled Shared Document 8 in Exhibits A and B of Staff's Memorandum dated March 13, 2007, shall be

further redacted in the manner marked in the attachment to the affidavit of Bo Morup dated March 23, 2007 and filed (under seal) on March 27, 2007. The information so marked for redaction in that attachment to the Morup affidavit shall not be subject to public disclosure. These redactions shall be in addition to the redactions earlier directed in Exhibit B to Staff's Memorandum dated March 13, 2007. The remainder of such Shared Document 8 (that is not subject to such redactions and not subject to non-disclosure under Staff's earlier Exhibit B recommendations) shall be available for public inspection. The Commission determines to exempt the additional information as proposed for redaction in the attachment to the Morup affidavit on the basis that such information is commercial and financial information of a confidential and proprietary nature to Vestas Offshore A/S. See 29 Del. C. § 10002(g)(2).

3. In all other respects, PSC Order No. 7148 (Mar. 20, 2007) is confirmed. In particular, this modification shall not alter the non-disclosure directives set forth in Exhibit B to Staff's Memorandum dated March 13, 2007, and accepted in PSC Order No. 7148 (Mar. 20, 2007), that apply to other information and documents relative to

Vestas Wind Systems A/S that are contained in portions of the bid submission of Bluewater Wind LLC beyond Shared Document 8.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary