

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE
AND 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 SUPPLY SERVICE BY DELMARVA POWER &) PSC DOCKET NO. 06-241
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))

ORDER NO. 7277

This 4th day of September, 2007, the Delaware Public Service Commission ("the Commission"), Delaware Energy Office, the Office of Management and Budget, and the Controller General determine and Order the following:

1. By Order No. 7199 (May 22, 2007) ("the Order"), the Commission, the Delaware Energy Office, the Office of Management and Budget and the Controller General (collectively "the State Agencies") accepted Staff's proposed energy supply portfolio and directed Delmarva Power & Light Company ("Delmarva") to negotiate in good faith with Bluewater Wind LLC ("Bluewater") for a long-term power purchase agreement ("PPA") for the provision of wind power. (See PSC Order No. 7199 (May 22, 2007) at ¶¶ 51, 55). The Order instructed Delmarva to negotiate independently with both Conectiv Energy Supply, Inc. ("CESI") and NRG Energy, Inc. ("NRG") to provide any necessary backup firm power when wind power is not available and directed that the negotiations for the backup power be conducted at the same time as the

Delmarva-Bluewater negotiations. (Id. at ¶ 56). The Order provided that the negotiations conclude within a 60-day time frame, but the State Agencies indicated their flexibility in extending this deadline, if necessary, to the extent that there was continuing progress in the PPA negotiations. (Id.)

2. In directing Delmarva, Bluewater, NRG, and CESI to engage in PPA negotiations, the State Agencies recognized the difficulty in finalizing a PPA. (Id. at ¶ 58). The State Agencies considered such factors as the long-term nature of the contract, the potential multi-billion dollar cost, the complexity of Staff's hybrid approach to procuring long-term generation in Delaware, and the challenges posed by PJM's dispatch rules, particularly where the source of the long-term generation is wind power. (Id.) Moreover, the State Agencies observed that the negotiations would be difficult in light of the fact that one of the critical parties to the negotiations had publicly stated that "it will not be directed to negotiate." (Id.) Accordingly, the State Agencies directed the Commission Staff ("Staff") to retain a third party to oversee the progress of the negotiations and report back periodically to the State Agencies regarding the status of the negotiations, the efforts of all parties to negotiate the PPAs in good faith as well as conform with the Electric Utility Retail Customer Supply Act of 2006 ("the EURCSA"). Staff hired Lawrence A. Hamermesh, Esquire, to perform this oversight function as directed by the State Agencies.

3. On August 7, 2007, the State Agencies convened to receive a status report from Mr. Hamermesh and to hear comment from the bidders

regarding their perspective on the PPA negotiations to date. At the outset of his status report, Mr. Hamermesh commented that he was satisfied that the parties were proceeding toward negotiating in good faith an appropriate PPA while taking into consideration the 60-day timeline suggested by the Order. Mr. Hamermesh reported that the parties had not developed a PPA at this juncture, but that, on August 2, 2007, Bluewater provided Delmarva with the proposed pricing for the wind generation project based on the status of the term sheet negotiations to date.

4. Mr. Hamermesh identified the following points of negotiation in the wind generation project that were resolved by Delmarva and Bluewater:

- (a) The range of renewable energy credits, and certain other services to be purchased by Delmarva from the project;
- (b) General terms regarding the achievement of project milestones;
- (c) Various events of default, default tier periods and remedies for events of default;
- (d) Certain delay damage amounts and collateral security amounts; and
- (e) The methodology for Bluewater to terminate the contract due to its inability to obtain required permits and authorization.

In light of resolution of these points, Mr. Hamermesh reported that the parties have turned to negotiating significant structural changes with respect to project size and capacity.

5. Mr. Hamermesh further identified the following key issues affecting the wind generation PPA that remain unresolved:

- (a) Project size;

- (b) Expected annual energy delivery;
- (c) Whether capacity will be provided under the contract and, if so, under what terms;
- (d) Treatment of costs and charges related to intermittent wind power in PJM;
- (e) An in-service date that Bluewater can commit to taking into account the pending issuance of federal rules and regulations governing the siting and permission of offshore wind facilities; and
- (f) Final pricing for energy and related products taking into account resolution of these key issues.

Mr. Hamermesh indicated that the remaining unresolved issues are complex, particularly to the extent that they affect aspects of the backup generation PPAs.

6. Mr. Hamermesh concluded that a PPA would not be reached by the end of August 2007, but that detailed Term Sheets containing all material terms of the PPA would be available for review by the State Agencies, the parties, and other interested persons by August 31, 2007. Mr. Hamermesh explained that specific contract language needs to be formulated and negotiated after the Term Sheets are submitted.

7. Delmarva agreed with Mr. Hamermesh's characterization of the status of the PPA negotiations. Delmarva further commented on the considerable amount of time, effort, and dedication spent on the PPA negotiations particularly because Delmarva is conducting three separate simultaneous negotiations. Finally, Delmarva submitted that September 14, 2007 was a more realistic date for submission of the detailed Term Sheets for each of the three bidders.

8. Bluewater echoed Mr. Hamermesh's and Delmarva's comments regarding the significant progress made and effort expended in the negotiation process. Bluewater also commented that the negotiations proved to be more difficult than originally expected due to the interplay with the hybrid proposal, PJM, and the Federal Minerals Management Service ("MMS"). Bluewater assured the State Agencies that it was comfortable with the change of law provision and its ability to meet MMS offshore outer continental shelf rules and regulations for offshore wind parks. Finally, Bluewater stressed the importance in establishing deadlines to move the process forward and commented that it preferred the August 31, 2007 deadline for filing of Term Sheets, but agreed that the September 14, 2007 deadline was more appropriate.¹

9. At the conclusion of the comments from Mr. Hamermesh and the negotiating parties, Staff recommended the following three alternative proposed procedural schedules for the negotiations:

First Proposed Schedule

August 7, 2007	State Agencies receive status report from Mediator regarding negotiations pursuant to Order No. 7199, as well as comments from Delmarva and other bidders.
August 31, 2007	Term Sheets will be circulated by Delmarva, and made public, outlining arrangements with Bluewater Wind and backup firm provider. ²

¹NRG agreed with Mr. Hamermesh's comments and briefly commented that it had engaged in reasonable good faith discussions to date with Delmarva. NRG also commented that it remained flexible regarding the deadline for filing Term Sheets. CESI also concurred with Mr. Hamermesh's report and stressed its reactive position in the negotiations.

²In all three proposed schedules, Staff submitted that once term sheets have been submitted, Delmarva and successful bidders should continue on finalizing Purchase Power Agreements to ensure that if the State Agencies approve the Term Sheets at the November 20, 2007 meeting, final agreements

October 15, 2007 Staff report to State Agencies regarding its review of the Term Sheets.

October 30, 2007 Comments by all interested participants on Term Sheets and Staff's report to the State Agencies.

November 20, 2007 State Agencies to consider Staff's report and comments by bidders and other participants on Term Sheets.

Second Proposed Schedule

August 7, 2007 State Agencies receive status report from Mediator regarding negotiations pursuant to Order No. 7199, as well as comments from Delmarva and other bidders.

September 7, 2007 Term Sheets will be circulated by Delmarva, and made public, outlining arrangements with Bluewater Wind and backup firm provider.

October 22, 2007 Staff report to State Agencies regarding its review of the Term Sheets.

November 5, 2007 Comments by all interested participants on Term Sheets and Staff's report to the State Agencies.

November 20, 2007 State Agencies to consider Staff's report and comments by bidders and other participants on Term Sheets.

Third Proposed Schedule

September 14, 2007 Term Sheets will be circulated by Delmarva, and made public, outlining arrangements with Bluewater Wind and backup firm provider.

October 29, 2007 Staff report to State Agencies regarding its review of the Term Sheets.

November 12, 2007 Comments by all interested participants on Term Sheets and Staff's report to the State Agencies.

November 20, 2007 State Agencies to consider Staff's report and comments by bidders and other participants on Term Sheets.

can be submitted for approval by the State Agencies within 30 days of that meeting.

Staff asserted that each of the three schedules contemplates a six-week period following filing of the detailed Term Sheets for Staff to conduct a thorough analysis and report back to the State Agencies. Staff further asserted that each alternative contained a firm November 20, 2007 deadline for deliberation on the Term Sheets to ensure that a PPA is finalized by the end of 2007.

10. The State Agencies' determined that Staff's Third Proposed Schedule containing a September 14, 2007 deadline for filing of Term Sheets was the most appropriate alternative for two reasons. First, the Commission determined that this later date would allow for the highest quality and most informative Term Sheets to be developed for each of the three bidders. Second, this date occurred close to a Commission public meeting date that would allow the State Agencies to respond if appropriate.

11. The State Agencies further determined that Staff's Third Procedural Schedule provided a reasonable time for the parties to complete a PPA by the end of 2007.

12. The State Agencies recognized the importance of considering the issue of the transition from market-based SOS procurement to SOS procurement through long-term generation PPAs. However, the State Agencies did not make a specific determination on this issue.

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

1. That, for the reasons stated above, Staff's Third Procedural Schedule is hereby adopted and approved.

2. That the Commission and other State Agencies reserve the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE DELAWARE PUBLIC SERVICE COMMISSION,
THE DELAWARE ENERGY OFFICE,
THE COMPTROLLER GENERAL
DIRECTOR OF THE OFFICE OF MANAGEMENT & BUDGET**

DELAWARE ENERGY OFFICE

/s/ Philip J. Cherry
Philip J. Cherry,
Director of Policy & Planning
Department of Natural Resources &
Environmental Control

THE CONTROLLER GENERAL

/s/ J. Cohan

**DIRECTOR OF THE OFFICE OF
BUDGET & MANAGEMENT**

/s/ R. Scoglietti

ATTEST:

/s/ Karen J. Nickerson
Secretary

PUBLIC SERVICE COMMISSION

/s/ Arnetta McRae
Chair

/s/ Jaymes B. Lester
Commissioner

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner