

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT)
COMPANY FOR APPROVAL OF)
AMENDMENTS TO LONG-TERM POWER) PSC DOCKET NO. 08-205
PURCHASE AGREEMENT WITH)
SYNERGICS EASTERN WIND ENERGY,)
LLC (FILED MAY 24, 2011))

ORDER NO. 7998

BACKGROUND

1. On October 23, 2008, in Order No. 7462, the Delaware Public Service Commission (the "Commission") approved as being in the public interest a 20-year power purchase agreement ("PPA") whereby Delmarva Power & Light Company ("Delmarva") would purchase energy and renewable energy credits ("RECs") from a planned wind farm (the "Facility") to be constructed by Synergics Eastern Wind Energy, LLC ("Synergics") in Garrett County, Maryland. The nameplate rating of the wind farm had not been established, but would be between 30-60 MW, at Synergics' option. (PPA, §3.3). The "Guaranteed Delivery Date" of the Facility was December 31, 2010, but that date could be extended in the event of a "Force Majeure" event for up to 12 months. (PPA, §1.1).¹ The PPA

¹The PPA defined a "Force Majeure Event" as:

An event of circumstance that: (a) prevents a Party from performing its obligations under this Agreement; (b) was not foreseeable by such Party; (c) was not within the reasonable control of, or the result of the negligence of such Party; and (d) such Party is unable to mitigate or avoid or cause to be avoided with the exercise of due diligence. Notwithstanding the foregoing, under

price was \$81/MWh (2009 dollars), with an annual escalation rate at the lower of 50% of the consumer price index or 2.5%. (Order No. 7462 at ¶4, citing Finfrock Direct Testimony at 13).

2. The PPA defined the "Facility" as "located approximately 19 miles northeast of Oakland, consisting of about 7 miles of ridge length of Four Mile Ridge and Elbow Mountain in Garrett County, Maryland." (PPA, §1.1 and Exhibit A).

3. Section 4.5 of the PPA provided that:

Products provided by Seller to Buyer hereunder shall not be required to originate from Energy produced by the Facility so long as all Products delivered to Buyer under this Agreement: (a) are sourced from an Eligible Energy Resource; (b) qualify, as applicable, as Energy or other Environmental Attributes (including but not limited to RECs) pursuant to the [Renewable Portfolio Standards] Act, the RPS Rules and GATS; and (c) may be counted toward Buyer's then-current compliance requirement under the RPS.

(PPA, §4.5).

4. The Commission retained an Independent Consultant, Barry J. Sheingold of New Energy Opportunities, Inc., to review the PPA. Mr. Sheingold expressed concern that some sections of the PPA were potentially inconsistent with other sections. (Order No. 7452 at ¶24). Mr. Sheingold sought to eliminate the potential inconsistencies

no circumstance shall a Force Majeure Event be based on: (i) Seller's ability to sell a Product at a price greater than that received under the terms of this Agreement; or (ii) Buyer's ability to purchase a Product at a price lower than paid under the terms of this Agreement.

(PPA, §1.1). However, Delmarva would not have the right to terminate the PPA until Synergics was one year late in achieving commercial operation. PPA § 12.5.

by amending the PPA to provide that Synergics would be required to sell to Delmarva only RECs associated with the PPA and not from any other source, unless Synergics could demonstrate that such RECs would have the same value and regulatory compliance features under the RPS as those produced by the Facility. Synergics and Delmarva agreed to this amendment. (*Id.* at ¶28). Mr. Sheingold also sought confirmation that Delmarva would only be required to purchase energy produced by the Facility and delivered to the Delivery Point. (*Id.* at ¶24 and n.11). Both Synergics and Delmarva argued that such confirmation was unnecessary (*id.* at ¶29), and we agreed, based on the testimony presented at the hearing. (*Id.* at ¶34).

APPLICATION

5. On May 23, 2011, Delmarva filed a Letter Application (the "Application") for approval of amendments (the "Proposed Amendments") to the Synergics PPA. In the Application, Delmarva states that the main purpose of the Proposed Amendment is to allow Synergics to relocate the wind farm from Garrett County, Maryland to Blair County, Pennsylvania.² Delmarva also seeks approval of 38 MW as the final nameplate capacity of the wind farm and of an extension of the Guaranteed Delivery Date from December 31, 2010 to June 30, 2011. In support of the Application, Delmarva submitted letters from Wayne Rogers, Chairman and Chief Executive Officer of Synergics, and Jiddu

² According to the Site Map attached as Exhibit A-1 to the Second Amendment to Renewable Wind Energy Power Purchase Agreement dated April 6, 2011 (Exh. 1 to the Application), the relocated wind farm is located in both Blair and Cambria Counties, Pennsylvania.

Tapia, the Chief Development Officer of Gamesa Energy USA, LLC (Gamesa").

6. According to Mr. Rogers, Synergics had diligently pursued completion of the original wind farm ("Four Mile Ridge") in Garrett County. However, subsequent to the Commission's approval of the 2008 PPA, several unexpected events caused delays in the construction and eventually led to this request to relocate the wind farm to Pennsylvania. (Application, Exh. 2).

7. The first of these events was what Mr. Rogers calls the "Beech Ridge" lawsuit. He explains that in that lawsuit, private groups successfully sued a wind generation project in West Virginia located near Indiana Bat hibernacula. The lawsuit caused the project, which was already under construction, to curtail operations pending its receipt of an Incidental Take Permit from the U.S. Fish & Wildlife Service. Subsequently, similar groups sent "intent to sue" letters to various wind projects in West Virginia, Virginia and Maryland (although Synergics itself did not receive such a letter). Mr. Rogers states that although there was no evidence that Four Mile Ridge would have been at or near a hibernacula, and that there was no record of an Indiana Bat having been present in the area since 1995, it was possible that a lawsuit could delay or shut down the Four Mile Ridge project. Thus, out of an abundance of caution, Synergics entered into a multi-year acoustic and mist netting study on the site to establish the absence of Indiana Bats (as of the May 19, 2011 date of his letter, no Indiana Bats had been found on the site). This study (which is still ongoing) caused a significant delay in permitting,

thus jeopardizing the "guaranteed completion date" in the 2008 PPA. (*Id.*).

8. Furthermore, Mr. Rogers states that anti-wind activists were pursuing legislation in the Maryland General Assembly that would have effectively prohibited wind development on western Maryland ridgelines. Although this legislation was eventually defeated, the potential that some legislation might be passed caused additional delay. (*Id.*).

9. According to Mr. Rogers, when it became apparent that significant delays were unavoidable, Synergics sought a replacement facility that would be similar in size and location, would provide Delmarva's customers with a wind facility that was at least of equal quality as the Four Mile Ridge project, could be brought on line within the time frame set forth in the 2008 PPA, and could be accomplished at the same price contained in the 2008 PPA. Synergics learned of a project ("Chestnut Flats") being built in Pennsylvania by Gamesa Energy USA, LLC ("Gamesa") that would satisfy its needs. (*Id.*).³

10. The Chestnut Flats project is comprised of 19 Gamesa 2.0 MW wind turbines (18 G90 models and 1 G87 model) for a total rated output of 38 MW. The point of interconnection is a new Pennsylvania Electric

³ Gamesa is the North American development arm of Gamesa Technology Corporation, Inc. ("Gamesa Tech"), which itself is wholly owned by Gamesa Corporación Tecnológica, S.A. ("GCT"). GCT is known internationally for its expertise in manufacturing wind turbines and developing wind farms. It is one of the world's largest wind turbine manufacturers, with a cumulative installed capacity of more than 19,000 MW through 2009, over 2,100 MW of which has been installed in the United States. (Application, Exh. 3).

Company ("Penelec") 115 kV three-breaker ring bus interconnection switchyard looping in the existing Summit-Westfall 115 kV transmission line. A 34.5 kV substation is being constructed directly adjacent to the Penelec switching station. The supply of the turbines is covered by an August 2010 agreement between Gamesa and Chestnut Flats Wind, LLC that includes standard terms and conditions, including appropriate warranties. The turbines are three-bladed, upwind, variable-pitch variable-speed turbines. The two models are the same except for the blades. Their design is "relatively conventional," but there are distinguishing characteristics such as the use of two main shaft bearings and carbon fiber in the blades. Gamesa installed its first G90 in 2005, and as of the second quarter of 2010, 1,227 G90 units had been installed in Europe. The first G90 in North American was installed in Delaware in May 2010. It is considered a "qualified turbine" for the North American market. (*Id.*).

11. Mr. Rogers states that Synergics carefully investigated the Chestnut Flats facility, the equipment being used for the facility, and Gamesa, and having satisfied itself that the Chestnut Flats project was suitable, entered into a contract with Gamesa to purchase the entire membership interest of Chestnut Flats, LLC. The sale will close upon receipt of certain approvals, including that of this Commission. (Exh. 2). If this Commission approves the Proposed Amendments, Synergics will purchase the Chestnut Flats facility from Gamesa when construction has been completed. Synergics will then operate the Chestnut Flats facility, but Gamesa will continue to perform operations and maintenance services at the facility. (Exh. 3)

12. Delmarva represents that before agreeing to the Proposed Amendments, it conducted due diligence on both Gamesa and the Chestnut Flats project. Delmarva states that it met several times with numerous Synergics and Gamesa representatives to review issues concerning the Chestnut Flats project, and Delmarva representatives visited Gamesa's turbine assembly facility.

13. After meeting with Gamesa and Synergics representatives and visiting the turbine manufacturing facility, and considering the reasons for the delay in Synergics' construction of the originally-planned wind farm, Delmarva was satisfied that the Chestnut Flats project was "a first rate facility utilizing quality turbines" and concluded that the Proposed Amendments would be in the public interest. (Application at 3-4).

14. As mentioned previously, the main changes to the 2008 PPA are the relocation of the facility from Garrett County, Maryland to Blair County, Pennsylvania; the final determination of the nameplate capacity; and the extension of the guaranteed delivery date from December 31, 2010 to June 30, 2011. Delmarva states that the determination of the final nameplate capacity is not truly a "change" to the 2008 PPA; rather, that would have occurred regardless of the Proposed Amendments because the facility's exact nameplate size had not yet been determined when the Commission approved the 2008 PPA. (*Id.* at 1-2).

15. Delmarva contends that the Proposed Amendments should be "seamless" to customers because the provisions of the 2008 PPA that would affect customers are not being changed. First, the price for

energy, RECs and other products does not change. Second, the project remains in the same PJM zone, and so should not cause a material change in Locational Marginal Pricing ("LMP"). Third, the 38 MW size fits well with Delmarva's portfolio needs. Fourth, the extension of the completion deadline will not result in Delmarva being unable to satisfy its renewable portfolio requirements because Delmarva's load has dropped over the last several years, and Delmarva has been purchasing RECs at favorable prices. (*Id.* at 2).

16. Delmarva further maintains that the Proposed Amendments will provide several benefits to its customers. First, at the time the Commission approved the 2008 PPA, the identity of the turbine manufacturer was unknown. The Proposed Amendments provides that Gamesa, a leading manufacturer of wind turbines, will manufacture the turbines. Second, the turbines and blades are manufactured in Pennsylvania, which supports hundreds of regional jobs and contributes to the United States economy. Along this same line, replacement parts, technicians, engineering support and operational expertise specific to the turbines will all be available locally. Third, Gamesa designed and developed the project. (Application at 2-3). Gamesa Chief Development Officer Tapia echoes this recitation of benefits to Delaware ratepayers, stating that:

... [Gamesa's] staff has the "full slate of competencies necessary to develop and operate a utility scale wind generating facility, including Project Development (siting, permitting), Wind resource Assessment, Engineering, Construction, Land Management and Asset Management. Gamesa Energy also relies upon a strong support services group, including finance, legal, administrative services, information technology, and procurement. Operations and Maintenance Services

("O&M") are performed under contract with Gamesa [], which is also supplying the turbines. As a result, Gamesa remains invested in the project as both the turbine supplier and the O&M contractor subject to their respective warranties.

(Application, Exh. 3).

17. Delmarva notes that the General Assembly has decreed that the Commission must approve all contracts for standard offer service ("SOS") supply. 26 Del. C. §1007(b). Delmarva believes that material amendments to a Commission-approved long-term SOS contract also require Commission approval. Delmarva does not necessarily regard the Proposed Amendments as material, and says that it is arguable whether the Commission's approval is required; however, it takes the position that the Commission should resolve any question regarding the materiality of a proposed amendment to a Commission-approved PPA. (Application at 4).

18. We authorized Staff to retain Barry Sheingold of New Energy Opportunities, Inc. to review the Application. On May 31 and June 1, 2011, Staff forwarded to Delmarva 19 requests for information regarding the Proposed Amendment. Delmarva responded to those questions on June 14, 2011. On June 21, 2011, Staff circulated a second set of requests for information, to which Delmarva responded on July 13, 2011. Both sets of requests for information were designed to elicit information to enable Staff and the Public Advocate to ascertain whether the Proposed Amendments are in the public interest. Finally, on July 19, 2011, representatives of Staff and the Public Advocate met with representatives of Delmarva, Gamesa and Synergics to discuss the responses to the requests for information.

STAFF'S CONCLUSIONS

19. Based on the responses to the information requests, the July 19, 2011 discussion, and on Synergics' and Delmarva's agreement to Staff's proposed changes to the PPA, Staff and the Public Advocate are satisfied that the Proposed Amendments are in the public interest. First, Delmarva and Synergics have agreed to further amend the Proposed Amendments to include the following changes that Staff has requested:

- Section 4.5: Replace the word "Products" in the first sentence with "RECs."
- Section 5.1: Delete the words "If applicable" from the first sentence.

The purpose of these changes is to make it clear that Synergics may not sell energy to Delmarva under the PPA that is not produced by the Facility (as that term is being re-defined in the Proposed Amendments) and that delivery is at the Delivery Point.

20. Staff begins by noting that the Commission found that the original PPA was in the public interest back in October 2008 when it first considered the PPA. From Staff's perspective, the focus should be on whether the Proposed Amendments are in the public interest.

21. Moreover, information reviewed by the staff suggests that the Synergics PPA price is reasonable in the context of the current market for long-term contracts for energy and RECs. In its investigation, Staff learned that the Maryland Department of General Services and the University System of Maryland's Board of Regents

recently approved several 20-year PPAs for renewable energy projects that are expected to provide approximately 23% of the universities' and state agencies' annual electricity needs. Synergics was the successful bidder for two of those PPAs.⁴ Staff representatives reviewed those PPAs. Although the price that the Maryland entities are paying for energy pursuant to those PPAs is confidential, Staff notes that it exceeds the price that Delmarva is paying under this PPA. That provides a level of comfort that the Synergics PPA price is reasonable compared to what Delmarva might have been able to secure for a comparable contract if it had not agreed to the PPA amendment and Synergics could not perform under the PPA.

22. Fourth, it does not appear that the Proposed Amendments will cause significant changes to the cost to Delmarva ratepayers relative to the original PPA, either directly through an increase in the contract price, or indirectly through lower LMPs at the new delivery point. There is no increase in the contract price as a result of Synergics' purchasing the Chestnut Flats project. In addition, information provided by Delmarva, and reviewed by Staff, supports a conclusion that that the change in location of the project will not likely have a significant adverse effect on LMP in that the LMPs experienced at the Delivery Point (as re-defined in the Proposed Amendments) historically have been within approximately 1% of the LMPs from the Delivery Point in the initial PPA.

⁴The State of Maryland issued the Requests for Proposals in June 2009 and selected the winning bidders in June 2010.

23. Further, circumstances have changed since the Commission approved the PPA in 2008. Delmarva's load has decreased because of the economy, and its REC requirements have likewise decreased. Spot REC prices have also declined substantially. A reduction in the size, or at least potential size, of the contract from 60 MW to 38 MW is a better fit, in Staff's view, with Delmarva's RPS needs in today's environment. At the same time, there is a mid-term and long-term need for RECs. Staff is mindful that since Delmarva is statutorily required to obtain renewable energy resources with which to provide electric supply to its Standard Offer Service customers, it is better to have a diverse portfolio of renewable resources, and retaining this PPA helps to accomplish that diversity.

24. Finally, Delmarva and Synergics have agreed to further amend the Proposed Amendments to include the language that Staff has recommended, which makes clear that Synergics may not sell energy to Delmarva under the PPA that is not produced by the Facility (as that term is being re-defined in the Proposed Amendments) and that delivery is at the Delivery Point (as re-defined in the Proposed Amendments). While this clarification may not be necessary, Staff believes it is helpful.

DISCUSSION

25. Before addressing the merits of Delmarva's Application, we note that we are not being asked to reconsider the merits of the original Application to approve this land-based wind PPA. We have already found that that PPA is in the public interest. Thus, we

proceed from that position, rather than conduct a new examination of whether the original PPA is in the public interest.

26. After reviewing Delmarva's Application, the supporting exhibits and Staff's memorandum, we conclude that the Proposed Amendments (as further revised to incorporate Staff's changes) are in the public interest, and we approve them. First, we find that they will not disadvantage Delmarva's SOS customers. The evidence shows that Gamesa is an internationally-known and respected wind turbine manufacturer, and it will be providing any necessary operations and maintenance services to the Chestnut Flats project. We also note that the Proposed Amendments should not cause increased costs to Delmarva ratepayers, either directly through an increase in the contract price, or indirectly through the LMP. Third, the fact that the State of Maryland recently entered into 20-year PPAs to purchase energy and RECs from a Synergics land-based wind farm at a higher price than Delmarva is paying gives us comfort that the terms of the amended PPA remain consistent with today's market prices for long-term PPAs for energy and RECs. Fourth, the reduction in the size or at least potential size of the wind energy project is a better fit in today's environment given the reduction in Delmarva's load and RPS obligations while at the same time contributing to meeting Delmarva's long-term RPS obligations.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF
NOT FEWER THAN THREE COMMISSIONERS:**

1. That, based on our review of the applicable legal authority and the Proposed Amendments (as revised to include Staff's proposed

changes), and for the reasons set forth above, the Proposed Amendment is in the public interest and is APPROVED.

2. That Delmarva Power and Light Company is hereby notified that it will be charged the costs of this proceeding under 26 *Del. C.* §114(b).

3. That all other provisions of Order No. 7462 dated October 23, 2008 remains in full force and effect.

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:

Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary