

The State of Delaware
c/o Honorable Alan Levin
Director
Delaware Economic Development Office
820 N. French Street, 10th Floor
Wilmington, DE 19801

Bloom Energy Corporation
1299 Orleans Drive
Sunnyvale, CA 94089

October 10, 2011

This letter sets forth the understanding and agreement by and among Bloom Energy Corporation (“Bloom”) and the State of Delaware (“State”), the parties to this letter agreement, regarding certain obligations of Bloom and the State related to electricity being generated by Qualified Fuel Cell Provider Projects as that term is defined in Section 352(17) of Title 26 of the Delaware Code.

WHEREAS, on July 7, 2011, legislation revising the Renewable Energy Portfolio Standards Act (“RPS Law Revision”) to accommodate electricity generated by a Qualified Fuel Cell Provider Project was enacted; and

WHEREAS, on August 19, 2011, Delmarva filed a Qualified Fuel Cell Provider Project Service Classification Tariff (“Tariff”) with the Delaware Public Service Commission (“PSC”) for up to 30 Megawatts of electricity powered by Bloom’s Energy Servers® (“First Tranche”); and

WHEREAS, as Bloom’s manufacturing operations in Delaware will necessarily need to ramp up, and, because of the deadlines for federal tax incentives, the initial installations of some of the Energy Servers for the Project will need to take place before the Delaware manufacturing facility is fully operational, the RPS Law Revision and the Tariff require that either (i) no more than 10 MW of Energy Servers shall be manufactured outside of Delaware, or (ii) at least 80% of the installed nameplate capacity up to a maximum of 30 MW shall have been sourced from fuel cell units manufactured in a permanent manufacturing facility located in the State (“DE Manufacturing Facility”), in either case by no later than the earlier of December 31, 2016 or the second anniversary of commercial operation of the Qualified Fuel Cell Project; and

WHEREAS, Bloom is planning on financing the construction of the Delaware Manufacturing Facility with a combination of third-party debt as well as equity provided by Bloom and potentially third parties, and the related capital equipment will be financed by third parties (“Capital Equipment”); and

WHEREAS, Section K(5) of the Tariff sets forth Force Majeure language from a Forced Outage Event that prevents a Qualified Fuel Cell Provider Project from supplying output from the Facility; and

WHEREAS, pursuant to the Tariff a “Forced Outage Event” means the inability of a Qualified Fuel Cell Provider Project to obtain a replacement component part or a service necessary for operation of one or more Energy Servers at its nameplate capacity; and

WHEREAS, pursuant to Section K(5) of the Tariff, in the event of a Forced Outage Event, at its own expense Bloom must use commercially reasonable efforts to acquire and retire any combination of RECs and SRECs such that one-sixth (1/6) of an SREC equates to one REC, providing that at least 90% of the RECs shall be SRECs for each megawatt-hour of output which would have been generated but for a Forced Outage Event (hereinafter “Replacement RECs); and

WHEREAS, Section K(5) is only in effect until Bloom receives a rating of “BBB” or better from Standard and Poor’s, a division of McGraw-Hill Companies, Inc., or a rating of “Baa3” or better from Moody’s Investor Services.

Now, therefore, Bloom and the State hereby agree to the following:

1. Bloom guarantees the obligation of the Qualified Fuel Cell Provider Project under the Tariff to use commercially reasonable efforts , as explained in the Tariff, to acquire and retire Forced Outage Replacement RECs, as defined in the Tariff, in the event of a Forced Outage Event.
2. Bloom hereby agrees to make a termination payment to the State in the event that Bloom permanently ceases the manufacturing of fuel cells in the State. The termination payment is based on the following schedule, depending on the year that manufacturing has ceased.

Year	Aggregate Termination Payment
2012	\$ 20,288,793
2013	\$ 16,373,500
2014	\$ 12,953,001
2015	\$ 10,004,336
2016	\$ 7,504,279
2017	\$ 5,340,813
2018	\$ 3,524,391
2019	\$ 2,090,651
2020	\$ 1,035,956
2021	\$ 344,854

3. The termination payment will be made to the State, who will remit such payment to Delmarva Power & Light to refund its customers up to the amount that offsets the total non-bypassable surcharge collected by Delmarva as part of the Qualified Fuel Cell Provider Project. Any amount exceeding this offset shall be remitted to the State General Fund.
4. To secure the obligation of Bloom to make the termination payment to the State against the remote possibility of a Bloom bankruptcy, Bloom agrees, from and after the time that all third-party debt and equity investors in the Delaware Manufacturing Facility, and financiers of Capital Equipment, if any, have been paid in full, to grant the State a security interest in the assets of such Delaware Manufacturing Facility.
5. In the event that Bloom sells Bloom's Energy Servers to a Qualified Fuel Cell Provider Project but does not commence operation of the Delaware Manufacturing Facility by December 31, 2013 (as evidenced by receipt of a certificate of occupancy), Bloom shall make a payment to the State in the amount of \$41 million (the "Failure to Commence Fee"). In order to secure the obligation of Bloom with respect to the Failure to Commence Fee, by no later than the date that the first 4MW of Units have satisfied the Facility Commercial Operation Date (as defined in the Tariff) in Delaware, Bloom shall cause to be issued an unconditional, evergreen letter of credit, surety bond or other instrument in favor of the State and acceptable to the State in its sole and absolute discretion ("Security") in an amount equal to 40% of the Failure to Commence Fee. In addition, by no later than the date that the first 10MW of Units have satisfied the Facility Commercial Operation Date (as defined in the Tariff) in Delaware, Bloom shall provide Security in an amount equal to 100% of the Failure to Commence Fee.
6. The effectiveness of this letter agreement is conditioned upon the PSC approval of the Tariff for up to 30 MW of electricity powered by Bloom fuel cells, the project financing of the Qualified Fuel Cell Provider Project being on commercial terms reasonably acceptable to Bloom.

Please indicate your acceptance of the terms and conditions of this letter agreement by countersigning one copy of the letter and delivering it to the undersigned.

Sincerely,

Bloom Energy Corporation

By: _____

Agreed and Accepted:

State of Delaware

By: 

Alan B. Levin
Director
Delaware Economic Development Office