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September 14, 2007

SENT VIA EMAIL and HAND DELIVERY

Ms. Karen J. Nickerson
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

Re: PSC Docket No. 06-241

Dear Ms. Nickerson:

Pursuant to the directive of the Public Service Commission of the State of Delaware, the Delaware Energy Office, the Office of Management and Budget, and the Controller General, as set forth in Finding, Opinion and Order No. 7199 (“Order 7199”) and pursuant to the schedule set forth in Order No. 7277, Delmarva Power & Light Company encloses its Term Sheet Filing herewith. In addition to the enclosed original filing, 10 copies are also provided. Copies of the filing have also been provided electronically to the three bidders, Commission Staff, the State Agencies, and the distribution list for this docket.

Should you have any questions please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink that reads "Todd L. Goodman" with a stylized flourish at the end.

Todd L. Goodman
Assistant General Counsel

Encl.

Cc: Distribution List

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE,
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 & Light Company Under |) | |
| 26 <i>Del. C.</i> § 1007(C) & (D): Review |) | PSC Docket No. 06-241 |
| And Approval Of The Request For |) | |
| Proposals For The Construction Of New |) | |
| Generation Resources Under 26 <i>Del. C.</i> |) | |
| § 1007(D) (Opened July 25, 2006) |) | |

**DELMARVA POWER & LIGHT COMPANY'S
FILING OF BIDDERS' PROPOSED TERM SHEETS**

Delmarva Power & Light Company ("Delmarva"), pursuant to the directive of the Public Service Commission of the State of Delaware, the Delaware Energy Office, the Office of Management and Budget, and the Controller General (the "State Agencies"), as set forth in Finding, Opinion and Order No. 7199 ("Order 7199") and pursuant to the schedule set forth in Order No. 7277, hereby provides its Filing of the Bidders' Proposed Term Sheets.

The individual proposed "Term Sheets" between (1) Delmarva and Bluewater Wind Delaware LLC; (2) Delmarva and New Indian River Genco, LLC; and (3) Delmarva and Conectiv Energy Supply, Inc. (individually referred to as "Bluewater Wind," "NRG," and "Conectiv"; collectively referred to as "the bidders") are attached hereto as Exhibits 1, 2 and 3. As discussed further below, Delmarva cannot agree on certain key terms because the best offers proposed by the bidders pose unacceptable costs and risks on Delmarva's electric customers.

As directed by the Commission, Delmarva has negotiated diligently and in good faith since the end of May 2007 in an effort to reach mutually acceptable terms to be incorporated into both a primary power purchase contract with Bluewater Wind and a back-up power purchase contract with either NRG or Conectiv, which contracts must satisfy the unique requirements of the primary wind facility/back-up natural gas facility hybrid structure outlined in Order 7199. Throughout the negotiations, Delmarva has been, and remains, mindful of the Delaware General Assembly's directive, embodied in Section 1007(c)(1)(b) of the Energy Utility Retail Customer Supply Act of 2006 ("EURCSA), to "investigate all potential opportunities for a more diverse supply at the lowest reasonable cost."

The Term Sheets, as they currently stand, reflect the best terms that Delmarva has been able to obtain from each of the bidders after months of continuous and extensive negotiations. There remain, however, certain key items where the parties have been unable to reach agreement. These items fall into two basic categories. The first category is denoted in the text of the Term Sheets with brackets ([]). The brackets contain the disputed recommended language of the parties. The terms that fall within the second category are denoted with an asterisk (*). The disagreement between the parties on this second category of items is not a matter of opposing language; rather, it is either because Delmarva has not yet had an opportunity to fully evaluate the economic impact of the proposed term or because the proposed term imposes, in Delmarva's view, unacceptable costs and/or risks to Delmarva's Standard Offer Service electric customers.¹ Therefore,

¹ Because of the complexity of the Term Sheets, and the interrelationships between the various provisions embedded therein, the list of items identified by an asterisk, while representative of the main areas of disagreement, should not be considered an exhaustive list. In addition, Delmarva reserves the right to

Delmarva wishes to emphasize that the attached documents contain disputed provisions. They do not and are not intended to create binding contracts.

As Delmarva represented to the State Agencies during the regularly scheduled Commission meetings on both August 21, 2007 and September 4, 2007, Delmarva will begin working with each of the bidders to convert the Term Sheets into draft Power Purchase Agreements ("PPA"). In this regard, Delmarva does not believe that the absence of agreement on all terms will prevent the parties from working together to draft proposed PPA language. However, the proposed PPAs will, of course, be based upon the terms contained in the "Term Sheets," some of which are currently contested. As such, unless these items are resolved, the proposed PPAs, which are currently targeted for delivery in late November, will also contain contested provisions.

Order No. 7277 provides that Delmarva shall circulate proposed Term Sheets on September 14, 2007; Commission Staff will provide its report evaluating the bidders' proposed Term Sheets on October 29th; interested parties may comment on the Staff report and the Term Sheets on November 12th; and the Commission will hold a hearing on November 20th. Consistent with that Order, Delmarva will not comment in detail on the Term Sheets at this time. It would be inappropriate to do this in light of the schedule set forth in Order No. 7277, which instructs the parties to comment on November 12th. It would also be premature because neither Commission Staff, the State Agencies nor Delmarva have as of yet had an opportunity to evaluate the pricing and certain other provisions in the Term Sheets, which were only recently provided by the bidders. Rather, Delmarva will provide a complete and reasoned analysis of the bidders' proposed Term

identify additional areas of disagreement following a complete analysis and evaluation of each Term Sheet, including but not limited to the economics of the Term Sheets.

Sheets, which will permit the State Agencies and Delaware's SOS customers to judiciously evaluate the Term Sheets, at the appropriate time.²

Delmarva Power & Light Company

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Dated: September 14, 2007

² Delmarva notes that on September 13, 2007, before the proposed Term Sheets had even been filed, Bluewater disregarded the schedule set forth by the State Agencies in Order No. 7277 and filed comments on its proposed Term Sheet. In light of the clear schedule set forth in Order No. 7277, which calls for the filing of comments by parties on November 12th, Bluewater's comments have been filed contrary to the procedures established by the Commission and the state agencies. Bluewater's comments are also inaccurate and misleading in many respects. For instance, it is not true that key commercial terms have been agreed to between Delmarva and Bluewater. To the contrary, among other things, there is no agreement on the size of the wind project, the price being offered to Delmarva's customers, or the proposed in service date. Delmarva, however, will file its detailed comments to both the proposed Bluewater Term Sheet and Bluewater's September 13th letter-filing at the appropriate time.

**KEY COMMERCIAL TERMS OF
POWER PURCHASE AGREEMENT**

SUMMARY OF PRINCIPAL COMMERCIAL TERMS

This Key Commercial Terms of Power Purchase Agreement (“**Term Sheet**”) is preliminary and is intended to set forth certain basic terms of, and to serve as a basis for further discussions and negotiations between the Parties with respect to, the potential Transaction described herein (“**Transaction**”) to be set forth in a definitive Power Purchase Agreement entered into by the Parties (the “**Definitive Agreement**”).

*** As explained in the PSC Docket No. 06-241 transmittal filing of this proposed Term Sheet by Delmarva Power & Light Company on September 14, 2007, terms marked with an asterisk [*] indicate terms where the parties are either not in agreement or where Delmarva Power has not had sufficient opportunity to adequately assess the effect of the proposed terms and, therefore, must reserve its right to oppose the term once a full assessment has been completed.**

Parties Bluewater Wind Delaware LLC, a Delaware limited liability company (“**Seller**”), and Delmarva Power & Light Company, a Delaware corporation (“**Delmarva**” or “**Buyer**”), referred to individually as “**Party**” or collectively as “**Parties**”.

Transaction Seller will provide and make available to Buyer and Buyer will purchase and pay for all Products (as defined below) provided pursuant to the terms of the Definitive Agreement.

Project Project shall mean a wind-powered electric generating facility capable of producing the Products, to be located on the outer continental shelf in the Atlantic Ocean off the coast of the State of Delaware (“**Project**”) in the area generally shown on Attachment 1 hereto. The Project is currently anticipated to consist of 150 wind turbines manufactured by Vestas Offshore A/S, each with a nameplate capacity of 3 MW and related interconnection facilities and facility assets. The final nameplate capacity and expected generation of the Project set out in the Definitive Agreement will be materially consistent with the projected generation schedule provided to Delmarva on September 12, 2007.

None of the wind turbines comprising the Project will be placed into Commercial Operation before the Execution Date (as defined below).

“**Commercial Operation**” is defined to mean that all commissioning

activities have been completed, all performance testing has been satisfactorily completed, that the Project is capable of regular commercial operation (as demonstrated pursuant to the terms of the Definitive Agreement), and that the Project has been accepted as a Capacity Resource by PJM Interconnection, LLC (“PJM”).

**Contract Term
and Services
Term**

The “**Contract Term**” will commence upon execution and delivery by both Parties of the Definitive Agreement and continue until final settlement (after the end of the Services Term, as defined below). The date the Definitive Agreement is executed and delivered by both Parties and Seller posts the initial installment of the Development Period Security (as defined below) is the “**Execution Date.**” The Definitive Agreement will include conditions, including relating to Buyer’s receipt of Regulatory Approval (as defined below), which must be satisfied prior to the time the Parties’ remaining obligations become effective. Only upon satisfaction of such conditions will the “**Effective Date**” be deemed to have occurred.

The “**Services Term**” will be the period during which Seller is obligated to provide Products (as defined below) to Buyer (other than Pre-Initial Delivery Date Products, as described below). The Definitive Agreement will specify the length of the Services Term. The Services Term shall commence on the Initial Delivery Date (as defined below) and continue until the earlier to occur of (i) the date that is twenty-five (25) years after the Initial Delivery Date, and (ii) June 1, 2039 , as such date may be extended for up to eighteen (18) months for reasons of Force Majeure, Buyer’s failure to perform its obligations under the Definitive Agreement or permitting delays beyond Seller’s control (including a delay in publication of the MMS Regulations (as defined below) beyond November 30, 2010). The Initial Delivery Date and the commencement of the Pre-Services Term Period (defined below) may be no earlier than the Effective Date and the Guaranteed Initial Delivery Date shall be June 1, 2014. The commencement of the Pre-Services Term Period and the Services Term is subject to the satisfaction of certain conditions as set forth herein.

Seller acknowledges that it is Buyer’s intention to negotiate a power purchase agreement with an additional electric generation facility in Delaware (the “**Back-up Facility**”) to be developed either by NRG Energy, Inc. (or one of its affiliates) or Conectiv Energy Supply, Inc. (or one of its affiliates) (“**the Back-up Supplier**”) to provide electrical energy (“**Energy**”), capacity and other products to Buyer during any period of the Services Term when the Project is supplying less than 300 MWh of Energy in any given hour (as such amount may be adjusted pursuant to the terms hereof) to Buyer under the Definitive Agreement, as well as certain pre-determined quantities of Energy, capacity and other products prior to the Services Term.

Product

“**Product**” shall mean, collectively, Contract Capacity, Energy and Environmental Attributes, all as defined herein. Seller may not enter into any agreement or arrangement under which Product attributable to Buyer’s entitlement relating to the Project may be claimed by any person other than Buyer for purposes of satisfying such person’s obligations to PJM or any other independent system operator having jurisdiction over such person or the Project. Following the occurrence of the Initial Delivery Date, Seller’s obligation to deliver Product will be dependent upon the availability of the Project, subject to the possibility of default, as set forth herein, for specified levels of unavailability over time.

* “**Contract Capacity**”: means the Capacity Value of the Project (as determined from time to time pursuant to PJM’s Manual for Rules and Procedures for Determination of Generating Capability in effect from time to time, or any successor publication in effect from time to time), less one (1) MW for each MW of such Capacity Value over 100 MW up to and including 117 MW, up to a maximum Capacity Value of 122 MW, that Seller is offering to make available to Buyer in each month of the Services Term. By way of example, (i) if the Capacity Value of the Project is 108 MW, the Contract Capacity would be 100 MW, (ii) if the Capacity Value of the Project is 120 MW, the Contract Capacity would be 103 MW, and (iii) if the Capacity Value of the Project is 173 MW, the Contract Capacity would be 105 MW.

* “**Energy**”: All Energy produced by the Project up to a maximum of 300 MWh in any given hour (as may be adjusted pursuant to the terms hereof) and an aggregate maximum of 1,357,402 MWh per year, as measured at the Revenue Meter, as defined in the Definitive Agreement.

“**Environmental Attributes**” means the Renewable Energy Credits (as defined by the Delaware Public Service Commission’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard, or any successor publication in effect from time to time) attributable to the Energy delivered to Buyer pursuant to the Definitive Agreement. Seller shall deliver to Buyer and Buyer shall pay for up to a maximum of 175,000 Renewable Energy Credits per year, according to the following schedule of amounts of Renewable Energy Credits, in each year commencing with the year in which the Initial Delivery Date occurs:

| | |
|-----------------|---------|
| 2012 | 105,000 |
| 2013 | 135,000 |
| 2014 | 150,000 |
| 2015 and beyond | 175,000 |

During the Pre-Services Term Period, Seller shall deliver to Buyer the

Renewable Energy Credits attributable to the Energy delivered to Buyer pursuant to the Definitive Agreement during the Pre-Services Term Period up to the yearly limits set forth above.

The Definitive Agreement will include an option for Buyer to purchase additional Environmental Attributes up to a level consistent with Buyer's total compliance obligations under Delaware State law, at a price to be determined by the Parties in good faith.

The Parties contemplate that no Ancillary Services will be included in the Products to be provided to Buyer under the Definitive Agreement. Ancillary Services, regardless of whether currently existing or created after the execution of the Definitive Agreement, may be sold by Seller to Buyer at each Party's option at such price and on such terms and conditions as may be acceptable to Seller and Buyer at their respective sole discretion. "Ancillary Services" are defined to include all products deemed to be "Ancillary Services" by PJM and/or the Federal Energy Regulatory Commission ("FERC") as of the Execution Date or a future date during the Contract Term that are associated with the Project or the Capacity being supplied hereunder.

**Resource
Adequacy**

The Public Service Commission of the State of Delaware (the "PSC") or PJM or a successor control area operator may, during the Contract Term, put into place a Resource Adequacy ("RA") requirement whereby eligibility to credit Contract Capacity toward the RA requirement may be determined by identifying the Project. Seller agrees that the Project will meet all requirements necessary to qualify as a resource capable of contributing to Buyer's RA requirement (to the extent that a wind-powered electric generating facility is able to comply) and will consent in the Definitive Agreement to take such measures as necessary to qualify as a resource that counts toward Buyer's RA requirement (to the extent that a wind-powered electric generating facility is able to comply); provided, however, in the event the Seller is required to incur any increase in operating or capital costs, or lost revenues due to reduced production (including lost PTCs that would otherwise accrue to Seller due to its performance under the Definitive Agreement), resulting from compliance with the RA requirement, in excess of \$200,000 per year or \$500,000 for the life of the Definitive Agreement in order to meet such RA requirement, Buyer shall have the option to waive or to enforce compliance with the RA requirement, and shall, in the latter case, compensate the Seller for the incremental costs, or lost revenues (including lost PTCs that would otherwise accrue to Seller due to its performance under the Definitive Agreement), resulting from compliance with the RA requirement in excess of \$200,000 per year or \$500,000 for the life of the Definitive Agreement. In the event that the Parties disagree on the amount needed to keep the Seller in the same financial position, the matter would be

resolved in accordance with the contract dispute resolution mechanism. In addition, subject to Buyer's scheduling responsibilities hereunder, Seller agrees to comply (to the extent that a wind-powered electric generating facility is able to qualify) with all associated bidding/dispatch requirements imposed through either PJM market design and tariffs, the PSC, or FERC. Such bidding requirements may be imposed in the day ahead, hour ahead or real time timeframe. Buyer will also have exclusive rights to all RA-related products such as capacity tags, capacity credits, or installed capacity products pertaining to Buyer's entitlement in the Products from the Project. Subject to the foregoing, Seller shall comply with any PSC, PJM or FERC requirements for meeting RA requirements (to the extent that a wind-powered electric generating facility is able to comply).

**Commencement
of Services**

The "Initial Delivery Date" is the date on which the Seller's obligation to make Contract Capacity available to Buyer and to deliver Energy to Buyer commences (other than with respect to Pre-Initial Delivery Date Products, as described below). The Initial Delivery Date shall not occur until the Seller has satisfied all conditions precedent to the Initial Delivery Date, which shall include (at a minimum):

- completion of the electric transmission interconnections necessary for delivery of electricity at the Delivery Point (defined below);
- demonstration that Seller holds all required local, state or federal environmental and other permits to operate the Project and perform its obligations under the Definitive Agreement;
- demonstration that Seller has interconnection and transmission services agreements in place that are reasonably satisfactory to Buyer;
- wind turbines having an aggregate installed nameplate capacity of not less than 425 MW have achieved Commercial Operation;
- Seller has entered into a Security Agreement in favor of Buyer granting Buyer a lien and security interest in the Project as provided in "Lien on Project" below; and
- Seller has posted any applicable Collateral Requirement (as set forth in the "Credit Requirements (as of the Initial Delivery Date)" section below) required to be provided as of the Initial Delivery Date.

Prior to the Initial Delivery Date and extending until the earlier of (a) the Initial Delivery Date and (b) the termination of the Definitive Agreement (the "Pre-Services Term Period"), Seller shall make available to Buyer and Buyer agrees to purchase the Energy and other Products produced by the Project ("Pre-Initial Delivery Date Products") at the applicable rates set out in the Term Sheet under the heading "Compensation."

In connection with the sale of Pre-Initial Delivery Date Products, Seller shall provide Buyer with a schedule of the projected Commercial Operation dates of the turbines comprising the Project and the projected quantities of Products to be delivered from such turbines upon their Commercial Operation dates no later than thirty days after definitive turbine supply and Project construction agreements with respect to the Project are executed. This schedule, to the extent available, will be attached to the Definitive Agreement and updated by Seller on a monthly basis after the commencement of construction of the Project, and shall be updated on a weekly basis during the 90-day notice period for the commercial operation of any turbines delivering Pre-Initial Delivery Date Products. Buyer's obligation to purchase Pre-Initial Delivery Date Products will initially commence when (i) turbines comprising no less than 45 MW of nameplate capacity (or a lesser nameplate amount with respect to the final 45 MW string of a construction season) achieve Commercial Operation (as determined pursuant to the methodology set forth in the Definitive Agreement), (ii) Buyer has received 90 days prior written notice of the Commercial Operation of such turbines and the delivery of the Pre-Initial Delivery Date Products, and (iii) each condition to the Initial Delivery Date shall have been met (other than those conditions relating to Commercial Operation of the entire Project). Buyer's obligation to purchase Pre-Initial Delivery Date Products for additional increments of no less than 45 MW of nameplate capacity (or a lesser amount with respect to the final 45 MW string of a construction season) will commence when such additional increments of nameplate capacity have satisfied the parameters set forth in the previous sentence. The Parties agree that if on October 30 of any year during the Pre-Services Term Period, a partial increment of the last 45 MW string of turbines under construction in that year has been completed, Buyer shall purchase Pre-Initial Delivery Date Products from such turbines from November 1 of such year as set forth above in this paragraph and in the following paragraph; provided that such obligation shall terminate on May 30 of the following year if the remainder of the 45 MW string has not been completed by such date.

The terms of the Definitive Agreement will govern the purchase and sale of Pre-Initial Delivery Date Products, except for those provisions which specifically relate to the Services Term (as shall be delineated in the Definitive Agreement). The supply of Pre-Initial Delivery Date Products from turbines which have achieved commercial operation prior to the Initial Delivery Date will be secured by the Development Period Security (defined below), Buyer's lien on the Project (described in "Lien on Project" below), and a percentage of the Collateral Requirement (defined below) corresponding to the percentage of total turbines that at any time have been placed into Commercial Operation during the Pre-Services Term Period.

The Capacity to be supplied as part of the Pre-Initial Delivery Date Products shall be the Capacity Value of the Units generating the Energy being sold to Buyer pursuant to the preceding paragraph (as determined from time to time pursuant to PJM's Manual for Rules and Procedures for Determination of Generating Capability in effect from time to time, or any successor publication). The quantities of Environmental Attributes to be supplied as part of the Pre-Initial Delivery Date Products in each construction year shall be the scheduled amount for such year set forth above.

**Development
Period Security**

On the Execution Date Seller shall be required to post collateral in the form of an irrevocable standby letter of credit acceptable in form and content to Buyer from an issuer satisfying the requirements set forth in the RFP issued by Buyer on November 1, 2006 (a "**Letter of Credit**") to secure Seller's obligations in the period ("**Development Period**") between the Execution Date and the Initial Delivery Date ("**Development Period Security**"). The Development Period Security to be provided on the Execution Date shall be in an amount equal to \$6,000,000. By not later than fifteen (15) days after the Effective Date, the amount of the Development Period Security shall be increased to equal \$12,000,000. Failure of Seller to provide the increased amount of Development Period Security shall allow Buyer to terminate the Definitive Agreement and retain the initial installment of Development Period Security as liquidated damages.

**Early
Termination
Rights for
Permitting
Failures, MMS
Guidelines and
Production Tax
Credits**

Buyer will allow Seller to terminate the Definitive Agreement and Buyer will return the Development Period Security to Seller less \$6,000,000 as liquidated damages if Seller, after making all commercially reasonable efforts to do so, is unable to secure the necessary permits and other governmental approvals required for construction of the Project within the permit time period, which shall commence on the date Buyer notifies Seller that it has received Regulatory Approval (as defined below) for its entry into and performance under the Definitive Agreement and shall end on November 30, 2011 (such duration, the "**Permit Duration**") (such ending date, as may be extended, the "**Permitting Completion Deadline**"). If Seller notifies Buyer that Seller has been unable to timely secure the necessary permits and governmental approvals by the Permitting Completion Deadline, Buyer will permit Seller to extend the Permitting Completion Deadline by six (6) months if Seller agrees, going forward, to pay the full amount of the Development Period Security to Buyer as liquidated damages should it be unable to obtain the necessary permits and governmental approvals by the extended Permitting Completion Deadline.

Seller shall have the right to terminate the Definitive Agreement and Buyer will retain \$6,000,000 in Development Period Security if (a) definitive non-appealable procedures by the Minerals Management Service ("**MMS**") with respect to the permitting of offshore wind farms ("**MMS Regulations**") are not published by November 30, 2010, or (b) at any time within 90 days

of the publication of the MMS Regulations, but no later than February 28, 2011, Seller determines in its reasonable discretion that the MMS Regulations, in combination with the terms of the Definitive Agreement, prevent Seller from performing its obligations under the Definitive Agreement or make such performance economically unfeasible pursuant to a standard to be set forth in the Definitive Agreement (the meeting of such standard to be promptly confirmed for Buyer by an entity with a nationally recognized reputation in the analysis of the development and financing of wind energy projects to be nominated by Seller and approved by Buyer pursuant to the procedures set forth in the Definitive Agreement.) If the MMS Regulations, regardless of whether appealable, are published within 90 days of the Execution Date, Seller shall have the right to terminate the Definitive Agreement and Buyer will return the Development Period Security to Seller less \$3,000,000 based on the parameters for termination described above.

In the event the MMS Regulations are not published by November 30, 2010 and Seller does not elect to exercise its termination right described in subsection (a) above, the extension periods set forth in the Term Sheet related to the MMS Regulations (including, but not limited to, relevant provisions under the heading "Guaranteed Initial Delivery Date and Delay Damages") shall no longer be effective.

Seller shall have the right to terminate the Definitive Agreement beginning six (6) months after the publication of the MMS Regulations and ending on the earlier of June 1, 2014 or the date Seller issues its notice to proceed with construction (as defined in the Definitive Agreement, the "Notice to Proceed"), if during such period the tax credit for electricity produced from wind-powered electric generation facilities described in Section 45 of the Internal Revenue Code of 1986 (the "PTC") is materially adversely modified with respect to the Project or has not been extended to cover the full expected construction period of the Project. In the event of such a termination Buyer will retain the Development Period Security as liquidated damages upon such termination. In the event that the PTC has not been so extended or has been so modified, but Seller elects not to terminate the Definitive Agreement (as provided in the previous sentence), Seller, during the period following the earlier of June 1, 2014 or the issuance of the Notice to Proceed and ending on the Initial Delivery Date, shall have the right to either (a) terminate the Definitive Agreement if, following the earlier of June 1, 2014 or the date of issuance of the Notice to Proceed, the PTC is materially adversely modified with respect to the Project or has not been extended to cover the full expected construction period with respect to turbines with a total nameplate capacity of greater than 180 MW, or (b) reduce the nameplate capacity of the Project down to a minimum of 270 MW to exclude any turbines with respect to which the PTC, subsequent to the earlier of June 1, 2014 or the issuance of the Notice to Proceed, has been

materially adversely modified or has not been extended to cover the full expected construction period.

In consideration for any such termination or reduction in size after the earlier of June 1, 2014 or the issuance of the Notice to Proceed, Seller shall pay Buyer a pro rata portion of the Termination Fee (as defined below) commensurate with the percentage of the total nameplate size of the Project not being installed. The required performance requirements of the Project shall also be adjusted to appropriately reflect such downsizing of the Project in accordance with the methodology set forth under the heading "Guaranteed Initial Delivery Date and Delay Damages" below. In addition, the PTC termination/exclusion right described above shall cease to be effective with respect to any turbine that has not previously been placed in service for federal income tax purposes if, prior to the earlier of June 1, 2014 or the issuance of the Notice to Proceed, the PTC is extended to cover the full expected construction period of the Project, to the extent not later revoked or modified as described above.

**Termination
Right – Variable
Interest Entity**

Buyer shall also be permitted to terminate the Definitive Agreement with no further obligation or liability on the part of either Party if at any time during the term of the Definitive Agreement Buyer's independent outside auditing firm determines that Buyer must consolidate Seller under FASB Interpretation No. 46 ("FIN 46") due to Seller's actions or other change in [circumstance not attributable to Buyer (Buyer/Delmarva position)][Seller's Circumstance to be set forth in the Definitive Agreement (Seller/Bluewater position)]*, subject to notice to Seller (for the avoidance of doubt, a determination by Buyer's independent outside auditing firm that Buyer must consolidate Seller shall not in and of itself be a change in circumstance attributable to Buyer). If Buyer's independent outside auditing firm makes such a determination and Buyer elects to terminate the Definitive Agreement, Seller will have thirty (30) days in which to cure the action or circumstances identified by Buyer's independent outside auditing firm as triggering consolidation under FIN 46. In the event Seller is unable to cure the action or circumstance triggering consolidation, as determined by Buyer, Seller will have thirty (30) days to appeal Buyer's termination to the PSC for expedited review, which appeal will have the effect of staying Buyer's termination pending a PSC review of the measures available to Seller to avoid consolidation and termination of the Definitive Agreement.

As a condition to the effectiveness of the Definitive Agreement, and Seller's obligation to post Development Period Security, Buyer's independent outside auditing firm shall have determined, subject to the reasonable satisfaction of Seller, that Buyer would not be required to consolidate Seller on Buyer's financial statements pursuant to the current interpretation of FIN 46.

Buyer and Seller agree to use commercially reasonable efforts to minimize any consolidation effect that FIN 46 has during the term of the Definitive Agreement; provided, however, that neither Party shall be required to incur additional costs or other adverse effect (other than the termination described above) as a result of such efforts. Notwithstanding the foregoing, Buyer agrees that if [(i)] the Parties cannot otherwise agree on modifications to the Definitive Agreement needed to eliminate consolidation despite commercially reasonable efforts[, and (ii) such reduction will not have an adverse impact on Buyer's customers being provided with service based on Products supplied under the Definitive Agreement, (Buyer/Delmarva Position)]* then Buyer will permit Seller to reduce the amount of Buyer's entitlement of the Project's Products to the level (not less than 49%) that Buyer's independent outside auditing firm identifies as being necessary to eliminate such consolidation effect within the time period for PSC review set forth above.

**Construction
Schedule**

At least three (3) months prior to issuance of the notice to proceed by Seller to its construction contractor(s), Seller shall provide Buyer a construction schedule. Seller shall provide Buyer monthly progress reports, including projected time to completion, and Buyer shall have the right, during business hours and upon reasonable notice, to inspect the construction site and monitor construction of the Project.

**Guaranteed
Initial Delivery
Date and Delay
Damages**

Seller guarantees that the Initial Delivery Date will occur by not later than June 1, 2014* (the "Guaranteed Initial Delivery Date").

Subject to Force Majeure delays not to exceed eighteen (18) months in the aggregate, for each day (or part thereof) that the Initial Delivery Date is delayed beyond the Guaranteed Initial Delivery Date, the Seller shall pay to Buyer liquidated damages ("Delay Damages") equal to (a) \$69,990 to the extent that less than 50% of the MW nameplate capacity (in any event less than 225 MW of nameplate capacity) of the Project plus 17 MW has achieved Commercial Operation as of such date, or (b) the product of \$69,990 multiplied by the percentage of the MW nameplate capacity of the Project that has not reached Commercial Operation as of such date if more than 50% of the MW nameplate capacity of the Project (in any event more than 225 MW of nameplate capacity) plus 17 MW has reached Commercial Operation.

Delay Damages shall be payable monthly in arrears. The maximum amount of Delay Damages payable by Seller shall be \$38,354,520 ("Maximum Delay Damages"). The Maximum Delay Damages shall apply to limit aggregate Delay Damages, but is not a limit on damages payable to Buyer hereunder upon termination by Buyer. If the Initial Delivery Date is not

