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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

By: 

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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

achieved by the Guaranteed Initial Delivery Date due to delays with respect to permitting (including a delay in publication of the MMS guidelines beyond November 30, 2010) or litigation that Seller has taken commercially reasonable steps to resolve (as reasonably demonstrated to Buyer's satisfaction), such Delay Damages shall accrue but not be immediately payable; provided, however, if Seller fails to achieve the Initial Delivery Date by the Date Certain, such accrued Delay Damages that would have otherwise been immediately payable by Seller but for such exception shall nevertheless be due and payable to Buyer on the Date Certain in addition to the Termination Payment described below. Any Delay Damages accrued pursuant to the previous sentence shall be secured in favor of Buyer at the time of accrual by the posting by Seller of either (a) a satisfactory letter of credit at all times in an amount equal to such accruals or (b) cash collateral equal to such accruals pursuant to an account control agreement creating a security interest therein in favor of Buyer and incorporating agreed conditions for withdrawal as set forth in the Definitive Agreement.

In addition to receiving Delay Damages, if the Initial Delivery Date is delayed beyond November 30, 2015* (the "Date Certain"), Buyer may elect to terminate the Definitive Agreement (provided however, to the extent that at least 60% of the MW nameplate capacity of the Project has achieved Commercial Operation by the effective date of such termination, Buyer's termination right shall only be applicable to that portion of nameplate capacity that has not yet achieved Commercial Operation) without liability or further obligation of any kind on the part of Buyer, and the Seller shall pay a termination fee equal to \$30,000,000 (or to the extent that at least 60% of the MW nameplate capacity of the Project has achieved Commercial Operation by the effective date of termination, only the pro rata portion of the Termination Fee applicable to the nameplate capacity that has not achieved Commercial Operation (as of the effective date of such termination)) as liquidated damages to Buyer (the "Termination Fee"). If a portion of the Project is terminated as described in the previous sentence, the Project performance standards and requirements set forth herein for the remaining portion of the Project shall be adjusted accordingly.

By way of example only, if the final nameplate capacity of the Project is 337 MW and a Termination Fee is paid with respect to 113 MW of nameplate capacity, the following adjustments to the Project performance standards and requirements shall be made:

- maximum Capacity value: 79 MW
- Maximum Energy in any given hour: 274 MW
- Maximum annual Energy delivery: 1,200,000 MW
- RECs: 100% of stated quantity
- Estimated Annual Energy Output: 1,200,000 MW
- Commercial Operation standard: 94% of turbines not terminated

- such other adjustments as shall be set forth in the Definitive Contract.

If the final nameplate capacity of the Project is 270 MW and a Termination Fee is paid with respect to 180 MW of nameplate capacity, the following adjustments to the Project performance standards and requirements shall be made:

- maximum Capacity value: 63 MW
- Maximum Energy in any given hour: 258 MW
- Maximum annual Energy delivery: 960,000 MW
- RECs: 100% of stated amount
- Estimated Annual Energy Output: 960,000 MW
- Commercial Operation standard: 94% of turbines not terminated
- such other adjustments as shall be set forth in the Definitive Agreement.

On or after the Guaranteed Initial Delivery Date, to the extent Seller reasonably determines that the Project will not achieve the Initial Delivery Date prior to the Date Certain despite Seller's reasonable good faith efforts, Seller may terminate the Definitive Agreement prior to the end of the twelve month period ending on the Date Certain by paying to Buyer the Termination Fee and any Delay Damages accrued and unpaid prior to the date of termination.

Notwithstanding the foregoing, if an event(s) of Force Majeure of the general type set forth in items (1) through (4) of the definition of Force Majeure hereunder has delayed the Commercial Operation of turbines with a collective nameplate capacity of less than 180 MW beyond the Date Certain (but a minimum of 270 MW of nameplate capacity has achieved Commercial Operation by the Date Certain), Seller may specify a deemed nameplate capacity in excess of the nameplate capacity that has actually achieved Commercial Operation by the Date Certain (but in no event shall such increased amount exceed the number of MWs of the total Project affected by such event(s) of Force Majeure) representing the additional turbines of the Project Seller intends to place in service by November 30, 2016. From and after the Date Certain, Seller shall exercise reasonable good faith efforts to place such turbines into service by November 30, 2016 and Seller's Project performance standards and Estimated Annual Energy Output shall be adjusted to correspond to such deemed nameplate capacity level. Buyer obligations shall also be adjusted on the Date Certain as set forth above in this Section of the Term Sheet to reflect the number of turbines in Commercial Operation on that date, and shall be further adjusted on November 30, 2016 to further reflect the final Project size achieved by Seller. On November 30, 2016, Seller shall pay to Buyer a pro rata percentage of the Termination Payment and Daily Delay Damages

corresponding to the percentage of the total Project not completed on such date. Seller shall further provide Buyer with a schedule of the projected Commercial Operation dates of any turbines being placed in service after the Date Certain pursuant to this provision and the projected quantities of Products to be delivered from such turbines. Such schedule shall be updated on a bi-weekly basis beginning ninety (90) days prior to the Date Certain and ending on November 30, 2016.

**Critical
Milestones**

Attachment 2 hereto specifies dates by which certain critical milestones for the development and construction of the Project must be achieved. Seller's failure to achieve a critical milestone set out on Attachment 2 or in the Definitive Agreement within eighteen (18) months of the specified date (or twelve (12) months with respect to specifically delineated milestones in the Definitive Agreement) for reasons not due to Force Majeure shall constitute an event of default under the Definitive Agreement allowing Buyer to terminate and to retain the full amount of Development Period Security as liquidated damages. If Seller fails to achieve the "Financial Closing" critical milestone (described in Attachment 2) within eighteen (18) months of the applicable specified milestone date despite Seller's commercially reasonable and diligent efforts to do so, Buyer will permit Seller to terminate the Definitive Agreement without liability to Buyer, subject to Buyer retaining the full amount of Development Period Security as liquidated damages.

**Scheduling and
Forecasted
Delivery**

Buyer shall be obligated to perform all scheduling of the Project for the Energy to be delivered under the Definitive Agreement in compliance with PJM protocols. On or prior to thirty (30) days before the commencement of the Pre-Services Term Period and the Services Term and throughout the Pre-Services Term Period and the Services Term, Seller shall provide to Buyer a forecast of its expected generation with respect to each hour during the Services Term ("**Expected Generation Schedule**"). The Expected Generation Schedule shall be updated on monthly basis and on a day-ahead basis based on historical performance and other relevant data and considerations for the purpose of scheduling with PJM the Energy to be purchased by Buyer, scheduling the Back-up Facility and in order for Buyer to anticipate the amount of Energy to be delivered pursuant to the Definitive Agreement during each day of the Services Term. The Parties agree that the Project is a unit contingent "as available" facility and the Expected Generation Schedule and any other forecasts regarding the Project's performance shall be solely considered estimates of expected performance of the Project, and shall be made by Seller consistent with Good Utility Practices and based on Seller's good faith output projections.

Deliveries

Seller shall make available and Buyer shall take all Energy generated by the Project up to 300 MW per hour (as may be adjusted as described herein) in any given hour and an aggregate maximum of 1,357,402 MWh per year at

the Delivery Point on an as-generated instantaneous basis. Buyer acknowledges and agrees that variations in output will occur from time to time in the ordinary course of operation of the Project.

Payments Due to Seller for Buyer's Unexcused Failure to Take Energy at the Delivery Point*

If Buyer fails to take Energy made available to Buyer at the Delivery Point consistent with the terms of the Definitive Agreement up to 300 MW per hour in any given hour and an aggregate maximum of 1,357,402 MWh per year (in each case as adjusted as described herein), or Seller is unable to generate Energy due to any act or failure to act by Buyer that is inconsistent with Buyer's rights and obligations under the Definitive Agreement, and such failure to take or inability to generate is not excused by or caused by (to the extent inconsistent with Seller's rights and obligations hereunder) Seller's action, inaction or default, then Buyer shall pay to Seller (a) the difference between the price under the Definitive Agreement and the sales price if Seller is able to sell such Energy to a third party, or (b) if Seller is unable to generate such Energy or sell such Energy to a third party, an amount equal to the corresponding deemed generated Energy (calculated pursuant to the Definitive Agreement) for such period multiplied by the contract price for such Energy (plus a PTC compensation amount, a REC compensation amount and a capacity compensation amount, in each case associated with such Energy, and calculated pursuant to the Definitive Agreement).

Operating Procedures

Prior to the commencement of the Pre-Services Term Period and the Initial Delivery Date, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein or in the Definitive Agreement, including, but not be limited to, (1) procedures for scheduling, (2) methods of day-to-day communications, (3) key personnel lists, (4) record keeping and (5) such other procedures and protocols as the Parties deem appropriate for implementation of the Definitive Agreement (the "**Operating Procedures**"). Failure to agree on the Operating Procedures shall be resolved in accordance with the dispute resolution procedures, but shall not relieve either of the Parties of its other obligations under the Definitive Agreement.

Interconnection Point and Delivery Point

The "**Interconnection Point**" of the Project will be the Buyer's Bethany substation or other interconnection point in the State of Delaware that is monitored for Locational Marginal Price, as determined by the Parties (as shall be described in the Definitive Agreement). The "**Delivery Point**" of all Energy delivered under the Definitive Agreement shall be the Interconnection Point.

Electric Interconnection and

Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Project to the Interconnection Point and enable Energy to be

**Transmission
Service**

delivered to the grid at the Delivery Point, consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency and the interconnecting transmission owner.

Seller will be responsible for funding any upgrade(s) to the transmission network as required by PJM. Regardless of whether Buyer is the interconnecting transmission owner, Delmarva in its capacity as Buyer shall not be responsible for Seller's interconnection arrangements or costs.

Seller shall be responsible for the costs of delivering its power to the Delivery Point consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency or tariff.

Except as set forth herein, Seller shall be responsible for all charges and penalties, including any transmission related charges, associated with the transmission and delivery of Energy to the Buyer at the Delivery Point.

* Except as set forth herein, Buyer shall be responsible for all costs, charges and penalties, including any transmission related charges, associated with the transmission and delivery of Energy after its receipt of such Energy at the Delivery Point. Buyer shall further be responsible for the charges and costs associated with negative locational marginal prices ("LMP"), as defined under the PJM rules, for the Energy delivered under the Definitive Agreement (e.g., LMPs below \$0). Notwithstanding anything herein to the contrary, under no circumstances shall Buyer be responsible for any congestion related charges other than with respect to negative LMP (or the equivalent, to the extent specified in the Definitive Agreement) as set forth in the previous sentence.

* Any Balancing Operating Reserve charges (as set out in the PJM Manual 28-Operating Agreement Accounting) related to deviations between the Project's day ahead schedule (as further described in the Definitive Agreement) and real time delivery of Energy delivered under the Definitive Agreement shall be divided evenly between the Parties.

* The Parties acknowledge that under current PJM rules, the Project will be assessed or receive, as the case may be, and Buyer will be responsible for, or entitled to, as the case may be, credits or charges from PJM based on (i) the difference between the quantity of Energy from the Project scheduled in the Project's day-ahead schedule pursuant to the terms of the Definitive Agreement and the actual quantity of Energy delivered by the Project in real-time pursuant to the terms of the Definitive Agreement, and (ii) the LMP associated with the real-time Energy delivered by the Project in excess of or less than the quantity of Energy set forth in the day-ahead schedule submitted to PJM (the "Balancing Amounts"). Balancing Amounts with respect to Energy delivered pursuant to the Definitive Agreement shall be

for the account of Buyer. The Parties agree to take commercially reasonable actions necessary to minimize Balancing Amounts charges to Buyer, to provide information to Buyer and to exercise commercially reasonable efforts to modify the arrangement set forth above in response to any changes in applicable PJM operating rules in such a manner as to minimize net charges to Buyer (provided such change does not otherwise have an adverse effect on such Party's interests).

Buyer may elect to discontinue the purchase of Capacity from Seller under the Definitive Agreement and purchase Energy and other Products (other than Contract Capacity) from Seller under the alternate pricing set forth in Attachment 3 and pursuant to the terms of a form of power purchase agreement attached to the Definitive Agreement and incorporating only those changes to the Definitive Agreement which are appropriate to reflect an energy-only transaction. In the event of such a termination (which shall be effective upon conversion of the Project from a capacity resource to an energy-only provider under the PJM rules), Buyer shall have no further responsibility or obligation with respect to the Project's capacity supply with PJM or otherwise.

**Maintenance
Obligations**

Seller will be responsible for all operation and maintenance of the Project and will bear all costs related thereto.

Compensation*

A. "Capacity Payment Rate"— \$65.23 per kw-year (in 2007 dollars)

B. "Energy Rate"— \$105.90 per MWh (in 2007 dollars)

C. "Renewable Energy Credits Rate" (or "RECs") — \$19.75 per REC in 2007 dollars.

The monthly "Capacity Payment" is (x) one-twelfth (1/12th) of the Capacity Payment Rate, multiplied by (y) the then-applicable Capacity Value of the Project as determined by PJM (as adjusted consistent with the definition of "Contract Capacity" above). The Capacity Payment will be paid monthly, in arrears, for each month of the Services Term and the Pre-Services Term Period.

"Energy Payment": For each month of the Services Term and the Pre-Services Term Period, the Energy Payment will equal the Energy Rate multiplied by the amount of Energy received by Buyer in the applicable month.

The Energy Rate shall be subject to pricing escalators at "Financial Closing" (as described on Attachment 4 hereto) to capture cost escalation prior thereto from the September 14, 2007 submission of the Term Sheet to the PSC, as set forth in Attachment 4 hereto. The Capacity Rate, Energy Rate and

Renewable Energy Credits Rate each shall also be subject to a fixed 2.5% annual inflation adjustment rate for each calendar year, commencing on the first day of the first calendar year after the September 14, 2007 submission of the Term Sheet to the PSC (i.e., 2008) and continuing in each calendar year thereafter until the end of the Services Term.

**Billing and
Payment**

Each month during the Pre-Services Term Period and the Services Term, Seller shall invoice Buyer, in arrears, for all Compensation amounts. Each month during the Pre-Services Term Period and the Services Term, Buyer shall invoice Seller, in arrears, for amounts owed, if any, under the Definitive Agreement. Payment of all undisputed amounts owed shall be due by the later of ten days after delivery of the owed Party's invoice or the twentieth day of the month (or, in each case, if the due date is not a business day, on the next following business day). The Parties shall resolve disputed amounts pursuant to the dispute resolution process included in the Definitive Agreement. Any disputed amount required to be returned to a Party shall be payable with interest accruing at the Federal Funds Rate plus 2%. In the event of termination, Buyer, as calculation agent, shall determine the amount of the Termination Payment, and either (a) if Seller is the owing Party, provide Seller an invoice within ten (10) business days of the termination date, which shall be due within ten (10) business days after receipt; or (b) if Buyer is the owing Party, pay Seller the Termination Payment within twenty (20) business days of the termination date.

Events of Default

An Event of Default with respect to a Party shall exist under the Definitive Agreement upon the occurrence of any of the following (provided, however, no such Event of Default shall be deemed to have occurred to the extent that such Event of Default was caused by the action or inaction of the **[non-defaulting Party in contravention of the Definitive Agreement (Buyer/Delmarva position)] [non-defaulting Party, or any affiliate of the non-defaulting Party (Seller/Bluewater position)]***:

Applicable only to Seller:

- Failure to deliver any Product produced by the Project to Buyer as required under the Definitive Agreement and/or intentional delivery of such Product without right to any third party.
- Any material asset of Seller is taken upon execution or by other process of law directed against Seller or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within sixty (60) days after its levy.
- Upon the occurrence of any material misrepresentation or omission in any metering or any report or notice of availability required to be made or delivered by Seller to Buyer by the provisions of the Definitive Agreement, which misrepresentation or omission is

- caused by Seller's willful misconduct, gross negligence or bad faith.
- Seller fails to post, supplement or renew when due the Development Period Security and such failure continues for five (5) days after notice thereof is received, except for the failure to post the remainder of the Development Security fifteen (15) days after the Effective Date, for which failure no notice is required.
 - Seller fails to comply with the RA requirements as and to the extent required by the Definitive Agreement, which failure continues for sixty (60) days after notice thereof is received.
 - During the Services Term, the equivalent availability factor of the Project is below 60% for a period of eighteen (18) consecutive months for a reason other than Force Majeure.
 - During the Services Term, the equivalent availability factor of the Project is below 60% for a period of thirty (30) consecutive months due to an event of Force Majeure.
 - Seller fails to comply with the Credit Requirement provisions of the Definitive Agreement and such failure continues for five (5) business days after notice thereof is received.
 - Seller fails to complete the conditions precedent to the Initial Delivery Date on or before the Date Certain or there is a delay in completing any Critical Milestone by more than eighteen (18) months for reasons other than Force Majeure (or twelve months in the case of certain Critical Milestones to be enumerated in the Definitive Agreement) (in each case, as extended by up to twelve (12) months due to a Force Majeure event).

Applicable to both Parties:

- A Party fails to pay an amount when due and such failure continues for ten (10) business days after notice thereof is received.
- A Party fails to perform any of its material obligations under the Definitive Agreement (except to the extent specifically delineated in the Definitive Agreement) and such default continues for thirty (30) Days after notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action is instituted by the defaulting Party within the thirty (30)-day period and so long as such action is diligently pursued until such default is corrected, but in any event within one hundred and twenty (120) days.
- A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or custodian of its assets (including, in the case of Seller for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.

- Absent the consent or acquiescence of a Party, appointment of a trustee, receiver, or custodian of its assets (including in the case of a Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within ninety (90) days.
- Any governmental approval necessary for a Party to be able to perform all of the transactions contemplated by the Definitive Agreement expires, or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation, or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.
- Upon the occurrence of any material breach of any representation, covenant, or warranty made by a Party made in the Definitive Agreement, thirty (30) days after the written notice from the other Party that any material representation, covenant or warranty made in the Definitive Agreement is false, misleading or erroneous in any material respect without the breach having been cured; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action is instituted by the defaulting Party within the thirty (30)-day period and for so long as such action is diligently pursued until such default is corrected, but in any event within ninety (90) days.

Remedies:

Upon the occurrence of an Event of Default , the non-Defaulting Party may elect to exercise any or all remedies available to it, including but not limited to, the following:

- Terminate the Definitive Agreement.
- Suspend performance under the Definitive Agreement.
- Prior to the commencement of construction by Seller, if Buyer is the Defaulting Party, Buyer will pay as liquidated damages a termination payment equal to the costs reasonably incurred by Seller in the development of the Project plus a breakage fee equal to \$3,000,000.
- Prior to the Initial Delivery Date, if Seller is the Defaulting Party, Seller will pay as liquidated damages a termination payment equal to the undrawn portion of the Development Period Security.
- Prior to the Initial Delivery Date, and after the commencement of construction by Seller, if Buyer is the Defaulting Party, Buyer will pay as liquidated damages a termination payment as if such had occurred after the Initial Delivery Date.
- On and after the Initial Delivery Date, the termination payment will

be the aggregate of all Settlement Amounts netted into a single amount, where the Settlement Amount is equal to the Losses or Gains, and Costs, expressed in U.S. dollars, which the Non-Defaulting Party incurs as a result of the liquidation of the transaction, as of the effective date of termination, where the Settlement Amount, Losses, Gain and Costs, have the meanings set forth in the Master Power Purchase & Sale Agreement published by EEI, or a similar master agreement. The termination payment shall be due to the Non-Defaulting Party in all cases and in no event will the Non-Defaulting Party be required to pay its Gain to the Defaulting Party.

- Except where an exclusive remedy is provided under the terms of the Definitive Agreement, exercise any other right or remedy available at law or in equity, other than specific performance.
- The non-Defaulting Party shall be entitled, at its option and in its discretion, to setoff against any amounts owed to the Defaulting Party by the non-Defaulting Party under the Definitive Agreement or otherwise any amounts payable by the Defaulting Party to the non-Defaulting Party under the Definitive Agreement or otherwise.
- This section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law or otherwise). Notwithstanding any provision to the contrary contained in the Definitive Agreement, the non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Definitive Agreement until the non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all obligations of any kind whatsoever of the Defaulting Party to make any payments to the non-Defaulting Party under the Definitive Agreement or otherwise which are due and payable as of the effective date of termination have been fully and finally performed.

The rights and remedies of a Party pursuant to the Remedies section of the Definitive Agreement shall be cumulative and in addition to the rights of the Parties otherwise provided in the Definitive Agreement.

Prior to the exercise by Buyer of any right to terminate the Definitive Agreement, Buyer shall provide all required notices to Seller, and, at the same time, to any lender to Seller of which Buyer shall have notice. Buyer shall accord any such lender the same opportunity to cure, on behalf of Seller, any default of Seller giving rise to such right to terminate as provided to Seller under the Definitive Agreement.

Force Majeure

“Force Majeure” shall mean any event or circumstance to the extent beyond the reasonable control of, and not the result of the fault or

negligence of, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events; (2) fire or explosions; (3) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Initial Delivery Date; (4) sabotage, riot, acts of terrorism, war and acts of public enemy; or (5) restraint by court order or other governmental authority. Force Majeure shall not include (i) a failure of performance of any third party, including any party providing electric transmission service, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above; (ii) economic hardship; and (iii) lack of need for, or the availability of more favorable terms for the purchase or sale of, any Product during the Services Term; (iv) failure to timely apply for or obtain Permits or (v) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above).

A Party shall not be considered to be in default in the performance of its obligations under the Definitive Agreement to the extent that the failure or delay of its performance is due to an event of Force Majeure; and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the foregoing, a failure to make payments accrued prior to the event of Force Majeure when due shall not be excused.

**Minimum
Performance
Requirement**

Seller shall be required to deliver Energy annually in an amount equal to at least 52% of the Estimated Annual Energy Output of the Project ("**Minimum Performance Requirement**"). In each year of the Services Term if the amount of Energy provided to Buyer from the Project is less than the Minimum Performance Requirement, Seller shall pay to Buyer an amount equal to \$25 per MWh for the deficit amount of Energy (and associated Environmental Attributes) below the Minimum Performance Requirement. "**Estimated Annual Energy Output**" shall mean 1,357,402 MWh per year. Damages for failure to meet the Minimum Performance Requirement shall be capped at \$3,000,000 per year and \$20,000,000 total. Buyer shall have the right to terminate the Definitive Agreement in the event the cumulative limit of \$20,000,000 is reached prior to the end of the Services Term.

Metering

In accordance with applicable PJM procedures and requirements, Seller shall install, maintain, operate and replace (as needed) electric meters and back-up meters at the Delivery Point to determine Energy at its sole cost and

expense. The meters will be sealed by both Parties, which seals will only be broken by both Parties for inspection, testing or adjustment. The electric meters shall meet all specifications of PJM and shall be checked annually by Seller, who shall provide Buyer with not less than thirty (30) days prior written notice of such tests. Buyer will have the right to have a representative(s) present during such tests.

Either Party may from time to time request a retest of the meters if it reasonably believes that the meters are not accurate within the tolerance limits established by PJM or the applicable service provider. The requesting Party shall pay for any such retest and shall provide the other Party with not less than fourteen (14) days prior notice of such retest. Such other Party will have the right to have a representative present during such retest. If any tested or retested meter is found to be not accurate within the tolerance limits established by PJM or the applicable service provider, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters to determine the amount of the inaccuracy. If the back-up meters are found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (b) one hundred eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by such Party within fifteen (15) days of the discovery of such inaccuracy, with payment due within thirty (30) days.

To support invoice settlement purposes, Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters (i.e., all metering). Seller shall authorize Buyer to view the Project's on-line meter data.

**Compliance with
Law,
Environmental
Risk and
Indemnity**

Seller, as owner and operator of the Project, unless otherwise provided hereunder, will be responsible for complying with all applicable requirements of law, PJM and NERC, whether imposed pursuant to existing law or pursuant to changes enacted or implemented during the Contract Term, including all risks of environmental matters relating to the Project and its site. Seller will indemnify Buyer against any and all claims arising out of or related to such environmental matters and against, unless otherwise provided hereunder, any costs imposed on Buyer as a result of Seller's violation of any applicable law, or PJM or NERC requirements. For the avoidance of doubt, Seller will be responsible for procuring, at its expense, all permits, governmental approvals and emissions credits and allowances required for operation of the Project in compliance with law.

Credit Requirements (as of the Initial Delivery Date) From and after the Initial Delivery Date Seller must provide Buyer a Letter of Credit in an amount equal to \$24,000,000 (the “**Collateral Requirement**”).

Lien on Project In addition to any other Collateral required to be provided by Seller, Seller shall enter into a Security Agreement under which it grants to Buyer a perfected lien on and security interest in all of Seller’s right, title and interest in and to the Project, which lien shall be subordinate only to the lien, if any, granted to persons not related to Seller that provide construction or term debt financing for the Project (“**Senior Lien**”); provided, that the amounts secured, and given priority, by such Senior Lien shall not exceed seventy percent (70%) of the total cost of the Project. Buyer shall permit the Senior Lien to be for eighty percent (80%) of the total cost of the Project if the entire 80% Senior Lien is granted to banks or other unaffiliated (directly or indirectly) financing parties that are providing debt financing for the construction of the Project and 80% of the total cost of the Project is being financed by such banks or financing parties.

Buyer’s lien and security interest described above shall be created and evidenced by documentation satisfactory to Buyer. Buyer shall enter into a subordination agreement to reflect the subordination described above with customary subordination provisions as set forth in the Definitive Agreement.

Dispute Resolution: All disputes that cannot be resolved after referral to senior management of the Seller and Buyer shall be resolved by the Delaware Public Service Commission. Any decision by the Delaware Public Service Commission may be appealed as provided by applicable law.

[Buyer agrees that it will not pursue, and will cause its Affiliates to not pursue, any litigation seeking to terminate the Definitive Agreement after the Execution Date absent a breach of the Definitive Agreement by Seller or otherwise seek to legally challenge the process by which the Project was awarded to Seller and the Definitive Agreement was entered into by the Parties (Seller/Bluewater position).]*

Other Terms and Conditions The Parties will be expected to make customary representations and warranties.

The Definitive Agreement will be governed by Delaware law.

Seller will agree to maintain customary books and records, including without limitation, operating logs, meter readings and financial records and make such books and records available for audit.

Seller will agree to maintain adequate property and liability insurance.

Each Party will provide indemnities customary for transactions similar to the Transaction.

The right of Seller to assign the Definitive Agreement or to transfer control of the Project to **[another person, whether affiliated or not affiliated (Buyer/Delmarva position)]****[an unaffiliated person (Seller/Bluewater position)]**,* shall be subject to Buyer's consent, not to be unreasonably withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the terms of the Definitive Agreement. **[Assignment of the Definitive Agreement or transfer of control of the Project to an affiliated person shall not require Buyer consent if such affiliated person has technical and financial capabilities to fulfill the terms of the Definitive Agreement at least equal to those of Seller (Seller/Bluewater position)]**.* Transfer of any of the ownership interests in Seller to an institutional investor for purposes of tax credit monetization (and further transfers of such ownership interests by such institutional investors) shall not be treated as an assignment of the Definitive Agreement for purposes of any such consent requirement. Change in the ownership of or the ownership interests in Seller shall not be treated as an assignment of the Definitive Agreement for purposes of any such consent requirement; provided that a "change in control" of Seller shall require Buyer's consent, not to be unreasonably withheld, subject to the rights of senior secured lender(s) to the Project, upon a showing that such change in control does not materially adversely affect Seller's creditworthiness or qualification to perform its requirements. "Change of control" means any transfer, sale, assignment or other disposition of shares of or interests in Seller having the result (directly or indirectly and either immediately or subject to the happening of any contingency) of changing the entity or entities which possess the power (directly or indirectly and either immediately or subject to the happening of any contingency) to direct or cause the direction of the management or policies of Seller (from the entity or entities possessing such power as to Seller as of the date of execution of the Definitive Agreement), whether such change is voluntary or involuntary on the part of Seller; **[provided, however, that a "change in control" caused by a transfer of ownership interests (i) in an entity for which the Project represents less than fifty percent (50%) of its value or (ii) in connection with a public offering shall not require approval of Seller if such transfer does not reduce the technical or financial ability of Seller to fulfill the terms of the Definitive Agreement (Seller/Bluewater position)]**.* Assignment of the Definitive Agreement and the creation of liens upon the Project for purposes of project financing shall be permitted; and, at Seller's request, Buyer will execute a consent to assignment in the form to be attached to the Definitive Agreement. Seller shall be responsible for Buyer's reasonable costs associated with review, negotiation, execution and delivery of such

documents, including attorneys' fees.

The right of Buyer to assign the Definitive Agreement shall be subject to Seller's consent not to be unreasonably withheld; provided Seller's consent shall not be required for (1) transfers to **[assignees (Delmarva/Buyer position)] [affiliates (Bluewater/Seller position)]*** that at the time of transfer are at least as creditworthy as Buyer was on the Execution Date or (2) transfers to any entity succeeding to all or substantially all of Buyer's assets.

Seller will agree that the Project and the Products will be free of liens other than permitted liens as agreed to by the Parties.

Each Party shall be responsible for taxes assessed upon it, including any new taxes that may be imposed during the Contract Term.

Interest shall accrue on all obligations not paid when due at an interest rate equal to the published prime rate plus 2%. After the occurrence of an Event of Default, interest shall accrue on all obligations at an interest rate equal to the published prime rate plus 4%.

Each Party (the "**First Party**") agrees to pay to the other Party (the "**Second Party**"), upon written demand from the Second Party from time to time, the amount of all expenses, including reasonable attorneys' fees and expenses, paid or incurred by the Second Party (i) after any of the obligations of the First Party are not paid or performed when due (whether by demand, acceleration or otherwise), which arise as a result of such failure to pay or perform, and (ii) after a default or an Event of Default shall occur, which arise as a result of such Event of Default. The First Party also agrees to pay to the Second Party, upon written demand by the Second Party from time to time, interest on the outstanding amount of such expenses paid by the Second Party, from the date of the Second Party's demand for payment of such expenses until the same are paid in full, at the highest rate provided herein.

**Regulatory
Approval**

Regulatory Approval shall consist of approval of the terms of the Definitive Agreement without modification by the PSC (including authorization by the PSC for Buyer to recover its direct and indirect costs incurred under the Definitive Agreement through its rates) ("**PSC Order**"), the Delaware Energy Office, FERC or any other regulatory agency which has jurisdiction over the Definitive Agreement, and such other Buyer regulatory approvals set out in the Definitive Agreement. The occurrence of the Effective Date is subject to Regulatory Approval and receipt by Buyer of a final nonappealable PSC Order. If Regulatory Approval is not received within three hundred sixty five days (365) after execution of the Definitive Agreement, a mutual right to terminate the Definitive Agreement, without

liability to either party, shall exist provided that such right is exercised within thirty (30) days after the deadline. If the Effective Date is delayed by a timely appeal of the Regulatory Approval, the Effective Date shall occur on the date that the applicable Regulatory Approval order is upheld on appeal and is no longer subject to appeal. Buyer agrees to diligently seek Regulatory Approval on an expedited basis.

**Forward
Contract**

The Parties acknowledge and agree that the Definitive Agreement and the transactions consummated thereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that each of Buyer and Seller is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

**Non-Inclusive;
Non-Binding;
Definitive
Agreement**

This Term Sheet does not contain all matters upon which agreement must be reached in order for the Transaction to be completed. This Term Sheet does not create and is not intended to create a binding and enforceable contract between the Parties with respect to the Transaction. A binding commitment with respect to the Transaction can only result from the execution and delivery of a Definitive Agreement satisfactory to the Parties and the satisfaction of the conditions set forth therein, including the approval of such Definitive Agreement by all applicable governing and/or regulatory body(ies) and the management of the Parties, which approval shall be in the sole subjective discretion of the respective governing and/or regulatory body(ies) and management.

