

**The City of Lewes
Board of Public Works**

RESOLUTION 11-009

AUTHORIZING THE BOARD OF PUBLIC WORKS TO MAKE AND ENTER INTO
AGREEMENT WITH THE DELAWARE MUNICIPAL ELECTRIC CORPORATION
FOR THE PURCHASE OF ELECTRIC CAPACITY AND ENERGY.

WHEREAS, The Delaware Municipal Electric Corporation, Inc. (DEMEC) is incorporated in Delaware pursuant to Chapter 13, Title 22 of the Delaware Code for the purpose of purchasing, selling, exchanging, transmitting and distributing wholesale electric power; and,

WHEREAS, The Board of Public Works of the City of Lewes (BPW) is a municipal utility chartered under Chapter 10, Volume 77, Laws of Delaware to provide utility services for the health, safety and welfare of the residents of Lewes, Delaware; and,

WHEREAS, the BPW recently contracted with J.W. Wilson & Associates, Inc. and Whitfield Russell Associates, to undertake a systematic investigation of long-term options for utility service which are contained in a public report entitled *Report To the Board of Public Works of the City of Lewes, DE, Analysis of Available Options for Providing Cost-Effective Utility Services*; and,

WHEREAS, DEMEC made a public presentation of their continued interest in selling wholesale electric capacity and energy to the BPW at the regularly scheduled BPW Board Meeting of 26 October 2011 making reference to a *pro forma* agreement originally presented to the BPW in May 2010, and said agreement having been redistributed to the Board and the City Solicitor by the General Manager on 27 October 2011; and,

WHEREAS, the BPW desires to enter into full membership in DEMEC in order to ensure an adequate supply of electric capacity and energy at a stable, steadily declining price in the face of uncertainties and risk; and,

WHEREAS, the agreement appears to be identical in intent to agreements signed by other full members of DEMEC; and,

WHEREAS, the City Solicitor has reviewed the agreement, acting as Counsel to the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS and IT IS HEREBY RESOLVED, as follows:

Section 1. Statement of Intent. BPW commits to full membership in DEMEC.

Section 2. Final Agreement. BPW authorizes Counsel, assisted by the General Manager and such officials as DEMEC may designate, to prepare the final agreement for signature. In particular, under Section 4 (Term), Part 4.1 the effective date, as reads "June 1, 2010", shall read June 1, 2012.

Section 3. Representative to DEMEC. The General Manager shall be the single point-of-contact for DEMEC in relation to membership and the administration of the actions pursuant to this Resolution.

Section 4 Officers Authorized to Act. Upon final recommendation by Counsel as to the accuracy of the agreement, the President or Vice President or the Secretary shall execute the documents for the purpose of taking action pursuant to this Resolution.

Section 5. Further Action. The proper officers of the Board and the General Manager are hereby authorized and directed to take all action, execute, deliver, file and/or record all such documents, publish all notices, if required, in order to consummate the intent of this resolution.

Section 6. Repealer. All resolutions and parts of resolutions heretofore adopted to the extent that they are inconsistent herewith are hereby repealed.

Section 7. Effective Date. This resolution shall take effect on the earliest date permitted by law.

Wendell Atwood 1/3/12
President date

Attest

[Signature] 1/4/12
Secretary date

ADDENDUM, ASSIGNMENT AND ASSUMPTION AGREEMENT

This ADDENDUM, ASSIGNMENT AND ASSUMPTION AGREEMENT (the "*Agreement*") is made as of November 30, 2011 (the "*Effective Date*"), by and among The University of Delaware, a non-profit educational institution chartered under the laws of the State of Delaware ("*Assignor*"), the Board of Public Works of the City of Lewes, a Delaware a Municipal Corporation chartered under the laws of the State of Delaware ("*Assignee*"), and First State Marine Wind LLC, a Delaware limited liability company ("*Consenting Party*"). Assignor, Assignee and Consenting Party are sometimes referred to in this Agreement as a "*Party*" and collectively as the "*Parties*." Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings assigned to them in Schedule 1 attached hereto.

RECITALS

WHEREAS, in accordance with a memorandum of understanding between the Assignor and Assignee dated December 17, 2009, Assignor and Assignee seek an agreement that is fair to each—in particular, other Assignee electricity customers should not pay any additional charges due to the assignment of rights under this Agreement, Assignee should not provide services without compensation, and Assignor should be able to engage in "virtual" or actual net metering to the maximum extent possible and Assignee should pay for wind power at its cost avoidance.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

1. **Assignment.** Effective as of the Effective Date, Assignor hereby assigns to Assignee the following rights and obligations:

- a. Assignee shall have the right and obligation to take and purchase an amount of Metered Output (the "*Assigned Output*"), if any, each month equal to (i) the amount of Metered Output produced during such month minus (ii) the amount of Metered Output consumed by Assignor with respect to the following facilities and their accounts (collectively, the "*Assignor Building Accounts*"): 03284 Cannon Bldg, 03285 Smith Lab, 03286 Virden Center, 03287 Marine Operations Building, 13877 Research Vessel, and 03304 Henlopen Lab ST PK – LS-13.
- b. Assignee shall not have the right or obligation to take or purchase any Environmental Attributes, Capacity Attributes or Ancillary Services associated with such Assigned Output; all right, title and interest to which shall remain with Assignor. Assignor is free to sell any Environmental Attributes, Capacity Attributes or Ancillary Services to any interested entity, and Assignee is not required to pay Assignor any additional fee for the injection of renewable energy onto its system.
- c. The total amount of compensation that Assignee shall pay Consenting Party each month for any Assigned Output shall be equal to the (i) sum of the avoided

electric energy costs to Assignee calculated from the invoice of the Assignee wholesale electric supplier for the corresponding month of wind turbine generation, multiplied by (ii) the Assigned Output for such month.

- d. In consideration of Assignee entering into this Agreement, Assignor shall pay Assignee a "Ready to Serve" and a "Demand" Charge for each of the Assignor Building Accounts in accordance with the Industrial (Large General) Electric Service tariff and any subsequent revisions and any electric charges for each of the Assignor Building Accounts shall be calculated in accordance with the then current Industrial (Large General) Electric Service tariff. Billing and payment for such charges shall be done in accordance with Assignee standard billing requirements.
- e. The Parties agree to review the pricing set forth in this Agreement on an annual basis to insure that the expectation of fairness for all Parties is being met.

2. Assumption. Assignee hereby assumes all of the rights and obligations of Assignor with respect to the Assigned Output, and agrees to abide by and perform all terms, covenants and conditions of Assignor with respect to such Assigned Output.

3. Term. This Agreement shall become effective as of the Effective Date. Assignee may terminate this Agreement effective as of the immediately following June 1 by providing written notice to Assignor and Consenting Party.

4. Acceptance by Consenting Party. As of and from the Effective Date, Consenting Party hereby consents to the assignment set forth herein and accepts Assignee as the party to perform the obligations of Assignor with respect to the Assigned Output.

5. Further Assurances. Subject to the terms of this Agreement, the Parties shall take all reasonable and lawful action as may be necessary or appropriate to cause the intent of this Agreement to be carried out.

6. Successors and Assigns. This Agreement shall be binding upon Assignor, Assignee, Consenting Party and their respective successors and assigns. The terms and conditions of this Agreement shall survive the consummation of the transfers provided for herein.

7. Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Delaware, excluding any choice of law provisions or conflict of law principles which would require reference to the laws of any other jurisdiction. The Parties hereby submit to the exclusive jurisdiction of the courts of the State of Delaware.

8. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all other agreements and undertakings, both written and oral, among the Parties, or any of them, with respect to the subject matter hereof.

9. **Amendment.** This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

10. **Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein, no other person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this ASSIGNMENT AND ASSUMPTION AGREEMENT is signed as of the date first written above.

ASSIGNOR:

THE UNIVERSITY OF DELAWARE

By: SGR DJ
Name: SCOTT R DOUGLASS
Title: EVP & TREASURER

ASSIGNEE:

[LEWES BOARD OF PUBLIC WORKS]

By: Darrin Gordon
Name: Darrin Gordon
Title: General Manager

CONSENTING PARTY:

FIRST STATE MARINE WIND LLC

By: Jennifer N. Dan
Name: Jennifer N. Dan
Title: VP General Administration

SCHEDULE 1

DEFINED TERMS

“Ancillary Services” means those services other than Metered Output, Environmental Attributes and Capacity Attributes that are defined as ancillary services in the Open Access Transmission Tariff of PJM as of the Effective Date.

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Facility is located. For purposes of PJM’s market design, Capacity Attributes include the amount of generating capacity, expressed in MW, which the Facility can reliably contribute during summer peak hours, and which can be traded as unforced capacity credits in the PJM capacity markets as determined by PJM or which can be traded or are subject to compensation in any successor PJM capacity market or resource adequacy mechanism.

“Environmental Attributes” means any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Facility, or otherwise attributable to the generation, purchase, sale or use of Metered Output from or by the Facility during the term of this Agreement, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any rights to such Environmental Attributes, including the Delaware Department of Natural Resources and Environmental Controls (or successor thereto).

“Facility” means that certain wind power electric generation facility to be constructed in Lewes, Delaware, as more specifically described in Exhibit A.

“Metered Output” means the instantaneous electrical energy output (in kWh), intermittent and variable within the hour, made available from the Facility on and after the Effective Date at the Metered Output Delivery Point, as measured by the Meters installed at the Metered Output Delivery Point.

“Metered Output Delivery Point” means the meter described as a revenue grade Mark-V Energy Meter with the location specified in “University of Delaware - Lewes Wind Turbine Proposed One-Line Diagram, Drawing E-1. New Primary Metering Cabinet, 15kV 200A with 3 CT’s & PT’s.”

"Meters" means all metering and data processing equipment needed for the registration, recording and transmission of information regarding Metered Output generated by the Facility.

EXHIBIT A

FACILITY DESCRIPTION

The facility at the University of Delaware includes a single Gamesa G90 2 MW wind turbine located in the dredge spoils area adjacent to the universities Lewes campus. The facility is serviced by an existing 12.47 kV overhead feed from Pilot Town Rd. Facility components include a new 2.35 MVA Isolation transformer, pad-mount enclosure with a 15 kV fused disconnect and primary metering cabinet, Transdata Mark-V Energy Meter, underground communications conduit and cable, underground electrical conduit and cable, five (5) electrical poles with over head cable, a pole mounted recloser, utility meter with pole mounted Ct's and Pt's, and 140A fused cut-outs. The turbine's 34.5 kV output is stepped down by the 2.35 MVA transformer to 12.47 kV and routed through the 15kV fused disconnect and metering cabinet. The new Mark-V Energy Meter located in the metering cabinet is used to track and log turbine production. Turbine output is then routed underground to a new utility riser pole; transferred above ground through the Lewes BPW's interconnection and metering and interconnected into the existing 12.47 kV feed on university property.