



TOWN OF DEWEY BEACH

www.townofdeweybeach.com

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Dewey Beach, DE 19971
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To: Town Commissioners

From: Mr. Scott Koenig, P.E.
Town Manager

A handwritten signature in blue ink, appearing to be "SK", is written over the name "Mr. Scott Koenig, P.E." and extends slightly below the "Town Manager" line.

Date: January 8, 2019

Mr. Ed Jackson of Affinity Energy Management has approached the Town of Dewey Beach for consideration of entering into the State of Delaware Electricity Supply Contract. This contract is a tool to help municipalities and other government subdivisions save money on energy costs. Attached is a 2-page summary issued by Affinity Energy Management and a copy of the state's Memorandum of Agreement for Aggregation of Energy Requirements into Retail Supply Contracts for Electricity.

Municipalities currently in the program include Bethany Beach, Greenwood, Harrington, Laurel, Magnolia, Milton and Rehoboth Beach. Staff recommends consideration of the agreement for the Town of Dewey Beach.

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State of Delaware Electricity Supply Contract

Delmarva Power Accounts Only

State Government Executive Level Agencies Automatically Included

Non-Executive Level Government Agencies, Municipalities, Volunteer Fire Co's, Libraries and K-12 Schools Can Participate Upon Request – Required to Sign a Standard Memorandum of Agreement (MOA)

Current Contract:

Electric Supply Rate - **\$0.06154/kwhr**

Compares to Delmarva's current tariff supply rates of \$0.0679 - \$0.0748/kwhr

Flat Fixed Rate, No Separate Demand Charges

Supplier – Talen Energy (formerly known as PP&L Energy Plus)

Talen's Supply Charges Included on Monthly Delmarva Power Bills

3-Year Contract Term Ends – July '19

No monthly usage bandwidth penalties or financial penalties if an account is closed during the term of the contract

Accounts Subject to Early Termination Penalty if Switched to another Supplier during the Contract Term

Includes 40% Renewable/Green Energy RECs - may qualify for LEED points.

Approximately 1,600 ACs Included in the Contract

Municipalities Currently Included – **Bethany Beach, Greenwood, Harrington, Laurel, Magnolia, Milton, Rehoboth**

All Three County Governments Currently Included

All K-12 school districts included statewide

DEMEC Municipalities are not Eligible - Clayton, Dover, Lewes, Middletown, Milford, New Castle, Newark, Seaford, Smyrna

We can add-on any new accounts to the existing contract at any time.

Logistics to Be Part of the State Contract

Need to express interest and provide a current list or bill copies of all Delmarva Power accounts and contract terms of any competitive electric supplier contract if applicable (*contact Ed Jackson*).

Will Need to Sign an MOA – Note MOA includes the ability to opt-out of the RFP/contracting process for subsequent contracts if requested (*contact Megan Garrett*).

Current contract will start the month after the signed MOA and account info. is returned.

New Contract Will Start on all account's June or July '19 Meter Read Date But We Can Accommodate a Later Start Date if a Town is Already in an Existing Contract.

Other Considerations

We expect to execute a new flat fixed rate contract next Spring for a 2 – 3 year term below the current rate.

The large volume of electricity being purchased in bulk will assure a very low rate and provide budget certainty to all aggregation partners.

All participating aggregation partners are financially responsible for payment of their own electric supply charges. The State of DE is not financially responsible for covering any aggregation partner's electric supply charges, past due amounts, late fees, default penalties, etc.

Final approval for inclusion of a Town will be at the discretion of the OMB office.

Large Natural Gas accounts are also eligible for inclusion in the State's Natural Gas aggregation contract. Delmarva min. usage = \$40,000/year-meter, Chesapeake min. usage = \$30,000/year-meter

For Additional Information and to Sign Up Please Contact

Ed Jackson (Energy Consultant to the State of DE)

EdJacksonenergy@aol.com, 302-218-8920, Fax 866-480-7811

Or

Megan Garrett, Energy Resource Manager

State of Delaware – OMB Div. of Facilities Management

O: 302.739.5644 F: 302.739.6148 Megan.Garrett@state.de.us

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF DELAWARE, OFFICE OF MANAGEMENT AND BUDGET
AND**

**FOR
THE AGGREGATION OF ENERGY REQUIREMENTS INTO RETAIL SUPPLY
CONTRACTS FOR ELECTRICITY**

THIS AGREEMENT made this _____ day of _____
between the State of Delaware, Office of Management and Budget and the _____
_____.

WITNESSETH:

Whereas the parties to this memorandum agree it is advantageous to aggregate energy requirements for the purpose of securing electricity supply contracts in the deregulated retail electricity market;

Whereas the parties to this memorandum agree that aggregating energy requirements will leverage public-sector procurement clout for the purchase of electricity and may result in lower prices and a higher degree of budget certainty for all Aggregation Partners;

Whereas the parties to this memorandum agree it is in the best interest of the citizens of Delaware to manage, control and reduce the cost of energy to state and local governments, school districts, charter schools and institutions of higher education;

Therefore, be it resolved that in keeping with the agreements described above, the State of Delaware's Office of Management and Budget (hereafter "OMB"), acting on behalf of the State of Delaware and its energy aggregation partners will develop, bid, award and administer energy supply contracts that are consistent with the laws of the State of Delaware and in the best interest of the State and its Aggregation Partners. The following terms and conditions shall define the responsibilities and obligations of both parties to this Memorandum of Agreement:

1. The OMB shall enter into a Memorandum of Agreement (hereafter "MOA") with each State agency, County, Municipality, School District, Charter School and Institution of Higher Education that elects to become an Aggregation Partner with the State for the purpose of combining its energy requirements with the State and other Aggregation Partners to bid and award electricity supply contracts in the deregulated retail electricity market.
2. Each MOA between the OMB and an Aggregation Partner shall consist of identical terms and conditions to ensure equality among the partners. However, an Aggregation Partner may request the modification, deletion or addition of specific terms and conditions as long as the change does not affect the equal standing of all Aggregation Partners, including the State. Final decision will be at the discretion of OMB.
3. An executed MOA shall remain in effect until either party to the agreement cancels it according to the following conditions:
 - i. The OMB shall provide an Aggregation Partner with at least 90 days written notice of its intent to cancel this MOA.
 - ii. The Aggregation Partner may cancel this MOA at any time. However, notwithstanding the Aggregation Partner's ability to cancel as set forth in this subparagraph, the Aggregation Partner shall continue to fulfill its obligations to purchase electricity according to the terms and conditions of an energy supply contract, which has been bid upon and awarded by the State, if the Aggregation

Partner's purchasing requirements are included in the "committed load" of the cancelled bid and contract.

- iii. The Aggregation Partner may opt-out of a particular RFP for a contract extension or new supply contract for energy as set forth in Paragraph 7 of this MOA without cancelling this MOA.
4. The OMB and its Aggregation Partners shall work together to develop an energy procurement process, methodology, and strategy that is in the best interest of the State and its Aggregation Partners, which shall be consistent with the laws of the State of Delaware. To enable a collaborative approach to energy procurement, the parties agree to the following:
- i. Each Aggregation Partner shall appoint a representative who shall have the legal authority to obligate the partner to the requirements and obligations of the MOA, procurement process, methodology and strategy.
 - ii. The OMB shall form an "Energy Aggregation Management Committee" (EAMC) consisting of OMB and Aggregation Partner representatives appointed according to paragraph 4i. The EAMC shall meet or conduct conference calls as needed to discuss the energy procurement process and contracts, review energy supplier performance and conduct planning and strategy development to ensure that the State and its Aggregation Partners take full and best advantage of the deregulated retail electricity market.
5. The OMB shall endeavor to work with its Aggregations Partners to develop an energy procurement process, methodology and strategy, and bid and negotiate contracts that are acceptable to and meet the needs of the State and its Aggregation Partners. However, if disputes among Aggregation Partners cannot be resolved through a cooperative process in which the Partners reach consensus, the OMB shall assume the role of arbiter and resolve the dispute in the best interest of the State. The decisions of the OMB shall be final and not subject to appeal.

6. The OMB and its Aggregation Partners acknowledge that the energy procurement process, contract, methodology and strategy will be subject to improvement and change as the OMB and its partners gain experience procuring electricity in the deregulated retail energy market. The energy procurement process, as of the date of this MOA, is defined according to the procedures and steps set forth in Appendix I. If the procurement process is subject to significant change during the term of the MOA, the OMB shall distribute a revised Appendix I to all Aggregation Partners.

7. The OMB, on behalf of the State, shall bid and award energy supply contracts according to a strategy that balances price, risk and results in reasonable budget certainty. The strategy shall also include the procurement of a certain portion of the State's electricity from "green" or renewable energy sources. The OMB shall consult its Aggregation Partners via the Energy Aggregation Management Committee as it develops the strategies and methodology to accommodate changes in the deregulated energy market. However, each Aggregation Partner may develop its own set of requirements and energy procurement policies that may or may not be compatible with energy supply contracts bid and awarded by the OMB. Therefore, at a specific point in time specified by the OMB prior to the release of a Request For Pricing ("RFP") for electricity, each Aggregation Partner shall have the opportunity to either opt-in or opt-out of the procurement process. The following conditions shall apply:
 - i. The OMB shall provide Aggregation Partners with reasonable notice of its intent to issue an RFP for a contract extension or new supply contract for energy. The OMB shall provide each Aggregation Partner with the date and time they are required to notify OMB of their decision to either opt-in or opt-out of the procurement process. Since the OMB may initiate bids for energy supply contracts on the basis of changing market conditions that are advantageous to the State and its Aggregation Partners, the OMB shall provide Aggregation Partners with commercially reasonable time intervals during which Aggregation Partners

are required to either opt-in or opt-out of the process for any additional or future RFPs as may be permitted herein.

- ii. If an Aggregation Partner elects to opt-out of a procurement process, the partner shall notify the OMB via email as soon as possible, but before the date and time specified by the OMB. If the Aggregation Partner opts-out of the process, the partner's account and energy consumption data shall be removed from the "committed load" specified in the bid and contract documents. An Aggregation Partner that initially elects to opt-out of the procurement process may opt-in if the partner can notify the OMB of its decision by the date and time specified by the OMB. Opting-out of a procurement process shall not terminate this MOA with the OMB. Opting-out of the procurement process shall exclude the Aggregation Partner from purchasing electricity from an energy supply contract bid and awarded by the OMB; the Aggregation Partner shall instead have to purchase electricity at Delmarva Power's Standard Offer Service rate or enter into its own contract for electricity.
- iii. If an Aggregation Partner elects to opt-in to the procurement process, its account and energy consumption data shall be included in the "committed load" communicated to bidders via bid and contract documents prepared by the OMB. The OMB shall not remove an Aggregation Partner's account and energy consumption data from the "committed load" unless the partner notifies the OMB of its decision to opt-out of the procurement process prior to the date and time specified by the OMB.
- iv. If an Aggregation Partner elects to opt-in to the procurement process, the partner may include all or a portion of its energy requirements in the "committed load." If the partner elects to include only a portion of its energy requirements in the "committed load," the portion included shall be designated on the basis of whole accounts only. If an Aggregation Partner elects to exclude one or more accounts from the "committed load," the partner shall not be able to purchase electricity for the excluded account(s) under the energy supply contract awarded by the OMB. However, accounts excluded by an Aggregation Partner may be included in the partner's "committed load" the next time the OMB bids and awards an energy

supply contract. If an Aggregation Partner elects to opt-in to a procurement process, its account and energy consumption data will be aggregated into the “committed load” awarded to one or more energy suppliers. By way of executing an aggregate energy supply contract, the OMB shall rely upon the Aggregation Partner’s opt-in to enroll each Aggregation Partner in a standard agreement with the energy supplier for its portion of the “committed load.”

- v. The Aggregation Partner’s opt-in to the procurement of a new RFP or extension of a energy supply contract shall be determined by its written confirmation unless the Aggregation Partner notifies the OMB in writing of its election to opt-out prior to the date and time specified by the OMB, as described in paragraph 7i.
8. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
9. This agreement and its Appendices shall constitute the entire agreement between OMB and the undersigned Aggregation Partner with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
10. This Agreement was drafted with the joint participation of the undersigned parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

IN WITNESS WHEREOF, the parties to these presents have duly executed this agreement by their signatures:

Aggregation Partner: _____

Attest: _____ By: _____

Dated: _____

FOR THE STATE OF DELAWARE, Office of Management and Budget

Attest: _____ By: _____

Dated: _____

MOA Appendix I

Bidding and Award Procedures for Retail Electricity Supply Contracts

Effective Date: February 1st, 2016

Based on the workings of the deregulated retail energy market, and existing State procurement laws, the OMB has adopted a three-phase procurement methodology that includes the prequalification of energy suppliers, negotiation of contractual terms and conditions, and the bidding and awarding of energy supply agreements based on a committed load.

The following information describes the procedures associated with each procurement phase:

- **Phase I: Prequalification:** Phase I prequalifies PSC-certified electricity suppliers according to specific selection criteria and results in a subset of electricity suppliers who continue to Phase II of the procurement process.
- **Phase II: Negotiation:** Electricity suppliers prequalified under Phase I continue to the Phase II negotiation process. Negotiation may lead to amended terms and conditions, but all prequalified suppliers will be required to accept a uniform contract to participate in Phase III, should a reverse auction be determined to be the best procurement approach. Phase II concludes with the execution of master supply agreements with at least two, and preferably with all, of the Phase II participants.
- **Phase III Bidding and Award of a Supply Contract:** Phase III will be initiated during the Phase II negotiation process with the release of “indicative” bids to Phase II participants. Indicative bids will enable the State to probe the energy market in a way that will identify the best likely term for and executable supply contract and will ensure that potential suppliers have a good understanding of the State and its Aggregation Partners’ account structure and committed load (committed load is based on account data provided by the State and its Aggregation Partners and by historic consumption data provided by Delmarva Power). Indicative bids will also enable the State to determine the most appropriate procurement approach, whether traditional blind RFP or reverse auction, based on market factors at time of indicative bid receipt. Final bid analysis and award will be determined by price, aggregate costs and final contract terms and conditions.