

CITY OF NEWARK  
Delaware

January 23, 2013

TO: Mayor and City Council

FROM: Carol S. Houck, City Manager  
Rick Vitelli, Director of Electric



SUBJECT: Recommendation - Electric Service Agreement (ESA) - City of Newark/University of Delaware

Background

After approximately two years of discussion with the University regarding an extension of our Electric Service Agreement (ESA) we now present this recommendation for approval. As you know, extensive negotiation and evaluation of the impact of this successor agreement on the City and the University of Delaware has taken place. During the process (at least since my involvement last March) staff and I have enlisted the support of Black and Veatch, our wholesale power supplier and Attorney Dave Swayze in the negotiations.

Key Aspects of the Agreement

For Newark:

- Certainty of a 15-year agreement – stable and growing revenue stream
- Retain the ability to raise rates if required in the future
- Additional \$300,000 a year subvention payment (total \$511,000) with annual CPI increase
- Control over the size and location of University meters that are served by this ESA
- Minimum delivery charge (revenue guarantee of \$2.6 million annually)
- High likelihood of increased demand and electric consumption by UD

For the University of Delaware:

- Rate stability with reductions in line with rate study completed by Black and Veatch
- Flexibility as to how energy is procured and priced to UD by our wholesale power supplier
- Approval for up to 5MW self-generation for University facilities over the course of the 15-year term
- Subvention increase credited to delivery charge

- Margin increase constraints
- Future rate increases are capped at the Newark system average increase

**Recommendation**

It is, therefore, recommended that Mayor and Council authorize the City Manager to enter into a successor Electric Service Agreement (ESA) with the University of Delaware commencing February 1, 2013 in accordance with the provisions of the ESA, Appendix A, B and C and providing the above noted benefits to both parties of the agreement.

## ELECTRIC SERVICE AGREEMENT

This ELECTRIC SERVICE AGREEMENT ("ESA" or "Agreement") is entered into as of \_\_\_\_\_, 2013 by and between the City of Newark, Delaware, a municipal corporation organized under the laws of the State of Delaware (hereinafter "Utility"), and the University of Delaware, a Delaware corporation (hereinafter "University").

**WHEREAS**, Utility owns, maintains, and operates an electric system for transmission and distribution of electricity within its electric service territory; and

**WHEREAS**, University is a large electric customer of Utility and will account for a significant portion of Utility's electric revenues; and

**WHEREAS**, Utility intends to sell and University intends to purchase electric service in accordance with the terms and conditions of this Electric Service Agreement, including the appendices and related tariffs;

**Now, Therefore**, in consideration of these promises and the mutual promises set forth herein, Utility and University ("the Parties", or individually "Party"), each intending to be legally bound, hereby agree to the following:

1. The initial term of this ESA is for 15 years, commencing on June 1, 2013, which is the Effective Date of this ESA. At the conclusion of the initial term, this ESA and all of its terms and conditions shall continue in effect for successive terms of 3 years unless terminated by either Party giving notice of termination in writing to the other, such notice to be given at least 12 months prior to the date of termination of the initial term or any extension thereof. If either Party terminates this ESA after the initial term, any continuing electric service required by University shall be provided by Utility in accordance with the tariffs then in effect for the applicable class of service required by the University; provided, however, that electric service shall be provided at the rates and for the term of any Energy Pricing Option elected by the University under Paragraph 9 of this Agreement and then in effect notwithstanding the termination of this ESA.
2. During the term of this ESA and any extensions thereof, Utility agrees to sell and provide to University and University agrees to purchase from Utility in accordance with the provisions of this ESA all of University's requirements for electric service to the Load Electrical Meters shown in Appendix B (as may be amended from time to time in accordance with the provisions of this ESA), except as permitted in Paragraphs 13 and 14 of this ESA, at its facilities located within the service territory of Utility as it now exists or may hereafter be altered. The University may request Utility to add additional Load Electrical Meters to Appendix B, and Utility shall provide electric service under this ESA for Qualifying Facilities owned by University and/or any not-for-profit subsidiary or affiliate, including 1743 Holdings, LLC ("1743 Holdings")., Qualifying Facilities shall be those facilities used for the University's activities consistent with its non-profit status under 26 U.S.C. § 501(c)(3) (including academic, administrative, athletics, dining, dormitory, library,

recreation, and research facilities, and other facilities that are necessary to the non-profit educational mission of the University). The term "University" as used in this ESA shall be interpreted as including such Qualifying Facilities as necessary to effectuate the purposes of this ESA, including Paragraph 13 of this ESA. Utility reserves the right to determine which facilities will be Qualifying Facilities, provided that any dispute relating to determination of whether a facility is a Qualifying Facility shall be resolved in accordance with Paragraph 23 of this ESA.

3. The electric service furnished University shall be delivered by Utility at the delivery points and voltage levels at which such electric service is now being delivered or as otherwise agreed to in writing by the Parties, and at such additional delivery points and voltage levels as the Parties may mutually agree upon hereafter. The initial Load Electrical Meters to be served under the Energy Pricing Options of Paragraph 9 of this ESA are set forth in Appendix B, and may only be amended from time to time in accordance with the provisions of this ESA. Unless otherwise agreed to in writing, service to the University for metering points other than those included in Appendix B will be served at the prevailing tariff rates in effect and duly adopted by Utility.

4. If, for the purposes of reliability and firm electric service, Utility determines that it is necessary to change, add, or remove any of University's delivery points to provide and maintain an adequate and firm power supply to University, Utility shall provide reasonable notice to University of the proposed changes. University will have the right to review the proposed changes prior to implementation, except in emergency situations requiring immediate action to preserve or restore electric service. In the case of any proposed changes that adversely affects service or imposes obligations on University, Utility shall make reasonable efforts to minimize or avoid such adverse effects or burdens.

5. During the term of this ESA and any extensions thereof, Utility shall bill University for electric service monthly on or about the fifteenth day of each month at the rates determined in accordance with this ESA and as set forth on Appendix A. University shall pay Utility bill within 30 days of receipt. If University disputes a billing, and pending resolution of the dispute, University shall pay the average amount of the monthly billings for the corresponding calendar month over the preceding 3 year period prior to the disputed billing, and upon resolution of the dispute, any adjustments shall be made on the next monthly bill. The Parties agree to mutually negotiate and resolve any billing disputes in a prompt and timely manner.

6. Upon a request from University, Utility will make available to University the data, records, and calculations relating to Utility's billings for electric services provided to University. Utility will be required to retain such data, records, and calculations for at least three years. Service and billings under this ESA will initially be based on utility grade meters installed and maintained by University. Commencing on the Effective Date, University will provide Utility with 15 minute interval meter readings on a monthly basis until such time as the Utility installs a utility grade smart meter system and such system is fully operational. After Utility installs a utility grade smart meter system, Utility will maintain

the new meters and Utility shall provide University with access to data on all meters and shall provide access to 15 minute interval data for all points used for billing purposes.

7. Utility agrees that it will not, during the term of this ESA or any extension thereof, increase or change the electric service charges applicable to University Load Electrical Meters covered under Appendix B of this ESA except as provided for in Appendix A.

8. If, from time to time in the future, Utility should adopt any rate classification for which University would be eligible, and the new rate classification would result in lower electric charges to University than those imposed by this ESA, University may elect to be served and billed under such rate classification; subject to the expiration of any Energy Pricing Option as provided for in Paragraph 9 of this ESA. Utility will notify University of newly-adopted rate classifications promptly, and University will have thirty days after receipt of such notification to indicate to Utility its acceptance or rejection of said newly-adopted rate classification. The decision to change the rate classification pursuant to this Paragraph is University's responsibility and University shall communicate its decision to change the rate classification to Utility. University's acceptance of a new rate classification will not change any other provisions of this ESA, unless mutually agreed upon in writing by both Parties.

9. The Total Electric Service Charge applied to the University for electric service to all the approved Load Electrical Meters specified in Appendix B of the ESA shall be the sum of an Energy Charge, as determined by the energy charge pricing option selected by University as provided in Appendix A ("Energy Pricing Option"); an Electric Supply Charge, based on an allocation to University of the actual slice of system costs imposed on and paid by Utility as provided in Appendix A; and a Delivery Charge as provided in Appendix C. University may elect for Utility to provide electric service under one of the Energy Pricing Options set forth in the Block Load Pricing Procedure attached as Appendix A, and selection of an Energy Pricing Option must be for a term of at least one year and not more than five years (a "Procurement Term"). University may choose to take electric service from Utility under any available Energy Pricing Option as of the Effective Date of this ESA, and shall make future Energy Pricing Option selections in accordance with the Block Load Pricing Procedure set forth in Appendix A. Utility may appoint an agent for purposes of implementing the procedures set forth in Appendix A, and Utility shall provide University with reasonable advance notice of any change in the identity of its agent or the manner of implementing the procedures set forth in Appendix A.

10. During the initial term of this ESA and any extension thereof, the electric rates charged University for electric service to all the approved Load Electrical Meters specified in Appendix B of the ESA shall be determined solely in accordance with the terms of this ESA and its Appendices and attachments, and any electric rates adopted by Utility (whether in the form of ordinances, tariffs, rules, regulations or otherwise) which are not consistent with this ESA shall not be binding upon University. University shall abide by the ordinances, rules and regulations for electric service to University as currently adopted by Utility, and as they may be amended from time to time. In the case of a conflict between

the terms of this ESA (including the attached appendices) and the ordinances, tariffs, rules, regulations and requirements of Utility, this ESA shall prevail.

11. If Utility is required to make substantial addition(s) to its electric system during the term of this ESA because of the construction of new facilities by University, the Parties agree to consider and negotiate in good faith with respect to any necessary modifications to the Delivery Charge to University under this ESA to equitably reflect such additions. Utility shall provide University with all available data and information relating to any necessary additions to Utility's electric system, and any charges to University shall be based on actual costs of design, construction and operation of the electric system.

12. University shall have the right to implement any and all peak shaving, load shifting, load control, and load management mechanisms during the term of this ESA, with reasonable advance notice to Utility. The Parties agree to collaborate on evaluation, installation and operation of said mechanisms as necessary to ensure the safe, firm and reliable delivery of power to University and Utility's other system customers. The University agrees to pay the cost incurred by Utility for required system upgrades or changes agreed by the Parties as necessary to enable University mechanisms to operate safely, reliably, and without harm to other Utility customers or Utility personnel. At such time as it determines in its sole discretion, University agrees to participate in the Utility's Demand Response Program as long as such participation does not adversely impact University operations.

13. University shall have the right to install or participate in self-generation in the amounts set forth in this ESA at locations on or adjacent to University facilities ("UD Generation"). The electrical output of UD Generation shall be delivered only to University or Utility in accordance with this ESA. To the extent used by University, UD Generation shall reduce University's requirements under this ESA to be served by Utility. Except as set forth in this ESA, University shall not participate in the operation and/or ownership of any generating facility which serves the requirements of University without an explicit written approval from Utility.

(a) During the initial term of this ESA, UD Generation shall not exceed 5 MW in nominal capacity (excluding self-generation allowed by Paragraph 14 of this ESA and excluding self-generation installed prior to the Effective Date).

(b) University shall cooperate with Utility in the design and operation of UD Generation to minimize the cost of electric service to University. University shall notify Utility of University's request for interconnection to Utility's system no less than 12 months prior to commencement of construction of UD Generation. UD Generation shall comply with the Utility's regulations and requirements, including those set forth in "Technical Considerations Covering Parallel Operations of Customer Owned Generation Of 500 – 5,000 Kilowatts and Interconnected with the City of Newark Power Delivery System"; provided, however, that: (i) such regulations and requirements comport with and do not exceed reasonably prudent utility practices, (ii) do not impose obligations or limitations on University that are inconsistent with this ESA; and (iii) such regulations and requirements

are duly promulgated in accordance with law. University and Utility shall agree during the design of any UD Generation on frequency, time delay set points, protective relaying and other technical parameters as are necessary to ensure safe and reliable operation without harm to Utility's or University's existing systems and equipment or other Utility customers.

(c) Utility agrees (i) to install interconnection facilities necessary to accept UD Generation; (ii) to provide back-up, supplementary, interruptible, or maintenance power as needed for UD Generation; (iii) to purchase power offered to Utility at Utility's incremental cost of power which, but for the purchase of the generated power, Utility would purchase from another source; and (iv) to take all steps reasonably necessary to facilitate and support the design, permitting and operation of UD Generation. University agrees to pay the cost incurred by Utility for required interconnection study, engineering and system upgrades or changes necessary to interconnect and enable UD Generation.

(d) Utility and University shall install such metering and other equipment as is reasonably necessary to measure and record the "net" energy delivered to and from University. University shall pay the cost of such metering and equipment. UD Generation not utilized by University and delivered to Utility's distribution system will be credited on a monthly basis to University in the amount determined in accordance with this Paragraph of the ESA.

(e) The Parties rights under this Paragraph of the ESA shall continue and survive the termination of this ESA, including the rights to generate and interconnect with Utility.

14. University may install standby emergency power supply generators and operate said generators during emergencies or other periods when Utility is unable to deliver power to University, and as necessary for reasonable maintenance of said generators.

15. Utility will offer to University designated renewable energy resources as part of their supply under this ESA, and, if University accepts such offer, University will pay any additional cost associated with the provision of these designated renewable resources.

16. Utility will continue to work with University to assure reliable electric service to University. In furtherance of that end, University shall promptly convey to Utility any anticipated increase or decrease in its power supply requirements as soon as they become known to University in order to facilitate Utility's planning to meet such power requirements. Utility agrees to maintain its electric system in good repair and operating condition and to operate its electric system in a safe and efficient manner.

17. As a consideration for Utility entering into this ESA, the University will increase its annual Subvention to City of Newark General Fund by \$300,000 (for a total annual Subvention contribution of \$511,000) for 2013. For each subsequent year this ESA is in effect, the University will increase the Subvention by an annual escalation factor of 1 plus the 12-month percentage change of the Consumer Price Index for All Urban Consumers (CPI-U) in the Philadelphia-Wilmington-Atlantic City Region. Utility agrees to credit the annual amount of the Subvention increase to the Delivery Charge to the University. The

credit shall be calculated by dividing the increase in subvention (\$) by the sum of the previous 12 months billed demand units (kW). The value of this credit (\$/kW) shall be subtracted from the current Delivery Charge, and shall be reflected as an adjustment on monthly billings to University for billing periods following said payment.

18. Force Majeure:

(a) Definition of Force Majeure: "Force Majeure" shall mean a cause or event that actually and proximately prevents a Party, in whole or in part, from performing any of its obligations under this ESA including, acts of God; unusually severe actions of the elements or severe weather such as floods, earthquake, hurricanes or tornadoes; war; sabotage, acts or threats of terrorism; riots or public disorders; and actions or failures to act of any governmental authority to the extent preventing or delaying the performance of the Party claiming Force Majeure; or any other event beyond the reasonable control of the Party claiming Force Majeure, whether or not foreseeable, but only to the extent the Party claiming Force Majeure is unable to prevent, avoid or overcome such event through the exercise of commercially reasonable efforts, and such event is not the result of the fault or negligence of the Party claiming Force Majeure.

(b) Effect of Force Majeure:

i. Each Party shall be excused from performance when non-performance is caused, directly or indirectly, by a Force Majeure event but only and to the extent thereof, and only if: (1) the non-performing Party gives the other Parties written notice within 5 days of the occurrence of the Force Majeure event, describing the event and its anticipated duration, and indicating any obligations hereunder that may be affected by the event; (2) the non-performance is of no greater scope and of no longer term than is required by the Force Majeure event; and (3) the non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

ii. The existence of a condition of Force Majeure event shall not relieve the Parties of obligations under this ESA to the extent such performance of such obligations is not precluded by the condition of the Force Majeure event.

(c) The Party claiming that a Force Majeure event has occurred shall notify the other Parties of the cessation of the Force Majeure event or of the conclusion of the affected Party's cure for the Force Majeure event within 2 business days thereof.

19. Duty to Mitigate: Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages that may occur as a result of another Party's performance or non-performance under this ESA, including, but not limited to, the disposal of any electricity not taken by the University under this ESA.



20. Assignment: Except as provided below, no Party shall assign, pledge or otherwise transfer this ESA or any right or obligation under this ESA without first obtaining the other Parties' written consent, which consent shall not be unreasonably withheld. A Party may, without the other Parties' prior written consent, transfer, sell, pledge, encumber or assign this ESA or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, provided that such Party shall not be relieved of any obligation hereunder; provided, however, that any such assignee shall agree in writing to be bound by the terms and conditions hereof.

21. Non-Waiver: The failure of any Party to insist in any one or more instance upon strict performance of any of the provisions of this ESA or to take advantage of any of its rights under this ESA shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.

22. Termination: Either party may elect to terminate this Agreement upon the material breach by the other party of a material provision of this Agreement. In order to exercise this remedy, the party who is not in breach (the "Non-Breaching Party") must deliver to the party in breach (the "Breaching Party") written notice of the breach, specifying the nature of the breach and the Non-Breaching Party's intention to terminate this Agreement (a "Breach Notice"). The Breaching Party shall then have thirty (30) days from the delivery of the Breach Notice to cure such breach and its adverse consequences and effects to the Non-Breaching Party if the Breaching Party immediately begins to actively and diligently do so upon receiving the Breach Notice. If the breach is curable but cannot reasonably be cured within a thirty (30) day period using diligence and good faith efforts, the Breaching Party shall have such additional period as is reasonably necessary to cure such breach, not to exceed thirty (30) days, so long as the Breaching Party pursues such cure to completion with diligence and good faith efforts. If a Breaching Party does so cure its Breach, then the Non-Breaching Party may not terminate this Agreement with respect to that Breach. Notwithstanding the foregoing, a Non-Breaching Party need not deliver a Breach Notice to the Breaching Party to exercise the Non-Breaching Party's remedies hereunder if the Breaching Party persistently and materially breaches its material obligations under this Agreement. Any such election to terminate this Agreement, or not to terminate notwithstanding a material breach of a material term thereof, shall be without prejudice to and shall not be deemed as a waiver of, the Non-Breaching Party's rights and remedies under this Agreement, at law, in equity or otherwise; provided, however, that any right of the Non-Breaching Party to money damages for such breach shall, in the absence of a formal judicial determination of bad faith or willful misconduct on the part of the Breaching Party, be limited to the direct, actual and necessary costs incurred by the Non-Breaching Party to mitigate or remedy the breach.

23. Dispute Resolution and Waiver of Jury Trial:

(a) In the event of any disputes arising out of or relating to this ESA, any related documents, the transactions contemplated by this ESA, or any dealings between them relating to this transaction or any related transactions, each of the Parties hereto irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of (i) the Delaware Court of Chancery, if the Court of Chancery has subject matter jurisdiction over the matter; or (ii) the Complex Commercial Litigation Division of the Delaware Superior Court (only if the Court of Chancery does not have subject matter jurisdiction). In the event that the dispute is not eligible for or cannot be resolved in the Complex Commercial Litigation Division of the Delaware Superior Court for any reason, the Parties irrevocably and unconditionally consent to the exclusive jurisdiction of the Superior Court of the State of Delaware in and for New Castle County.

(b) The Parties irrevocably waive their rights to a jury trial for any claim or cause of action arising out of this ESA, any related documents, or the transactions contemplated by this ESA, or any dealings between them relating to this transaction or any related transactions. This waiver shall apply to any subsequent amendments or supplements to this ESA or any related documents.

24. This ESA will be deemed to have been executed in the State of Delaware, and all rights, remedies, liabilities, powers and duties of the parties to this Agreement will be governed by the law of the State of Delaware without regard to conflicts of law principles.

25. The terms of this ESA shall apply to all electrical services provided to the University Load Electrical Meters shown in Appendix B on and after June 1, 2013.

26. This ESA constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes, terminates and replaces in its entirety the Electric Service Agreement entered into on December 11, 1995.

27. This ESA is of no force and effect until it receives the approval of the Newark City Council.

28. All notices under this ESA shall be made by registered mail or overnight delivery service providing proof of delivery delivered to:

(A) The City of Newark  
Attn: City Manager  
220 South Main Street  
Newark, DE 19711

With a copy to:

David S. Swayze, Esq.

P.O. Box 310  
Smyrna, DE 19977

(B) [INSERT UNIVERSITY ADDRESS]

***IN WITNESS WHEREOF***, the Parties have hereunto set their hands and seals as of the day and year first above written.

\_\_\_\_\_

Witness

\_\_\_\_\_

Witness

City of Newark, Delaware

By: \_\_\_\_\_  
City Manager

Dated: \_\_\_\_\_

University of Delaware

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_

## APPENDIX A

### BLOCK LOAD PRICING PROCEDURE

This procedure sets forth the understanding and agreement of the Parties to that Electric Service Agreement dated ---- by and between City of Newark, Delaware ("Utility") and University of Delaware ("University"), as may be amended from time to time, the ("ESA"). This procedure may be modified or amended only by mutual written agreement of the Utility and University. Capitalized terms not defined herein shall have the meaning afforded to such terms in the ESA.

Utility and University shall use the energy charge pricing options and the procedures set forth in this Appendix (the "Energy Pricing Options") to determine the Energy Charge component of the University's Total Electric Service Charge, as defined in Paragraph 9 of the ESA, and may, through Utility, solicit offers for energy supply and enter into binding commitments with Utility for electric service under the ESA for terms of not less than one year nor more than five years (hereinafter defined as a "Procurement Term") thereon in accordance with this Appendix.

For each Procurement Term, the University may elect to procure all or part of its annual energy commodity requirement for the Load Electrical Meters specified in Appendix B of the ESA in accordance with this Block Load Pricing Procedure. Utility shall take all actions necessary to purchase and deliver electric power to the University in accordance with this Block Load Pricing Agreement.

#### **A. Determination of Annual University Load Requirement**

1. The Annual University Load Requirement is the anticipated annual electrical consumption by the University in a Period at the Load Electrical Meters specified in Appendix B of the ESA. "Period" shall be defined as the period from July 1 to June 30.
2. On or before June 1<sup>st</sup> of each year, the University will provide the Utility with a forecast of the Annual University Load Requirement for one or more following Period(s). In preparing this forecast, the University shall consider: (i) the average electrical consumption across the Load Electrical Meters, (ii) the projected load of any new equipment or buildings that will increase consumption, and (iii) any generation under Paragraph 13 of the ESA projected to be in use during the relevant time period.
3. No later than 30 days after receipt of the forecasted Annual University Load Requirement, Utility will accept or object to such load requirement. Any objection to the forecasted Annual University Load Requirement shall be in writing and in sufficient detail as to provide a basis for evaluation and response to the objection.
4. If the Parties cannot reach agreement on the Annual University Load Requirement within 60 days from June 1, the amount will be equal to: (i) the average electrical consumption across the Load Electrical Meters of the last five years, plus (ii) the projected load by the University of any new equipment or buildings that will increase consumption, minus (iii) any generation

under Paragraph 13 of the ESA projected by the University to be in use during the relevant time period.

**B. Determination of Energy Charge**

1. The Energy Charge for energy procured through this Block Load Pricing Procedure will be a fixed price for the energy commodity for the Procurement Term on a take or pay basis, except as otherwise provided herein. The Energy Charge shall be based on one or more of the following Energy Pricing Options, as elected by University and as determined in accordance with the ESA and this procedure: (a) a Block Load Commitment; (b) a Newark Wholesale Price (as defined herein); or (c) the then current Newark electrical service tariff rate for energy charges for customers of the same or similar characteristics as the University (the "Newark Tariff Rate.") The University may exercise the option of procuring some or all of its load for the Load Electrical Meters specified in Appendix B of the ESA under any one of the Energy Charge Pricing Options during a Procurement Term.
2. The Parties shall agree to the definition of Block Load Structures that the Parties may use to solicit offers for energy commodity as set forth in this Block Load Pricing Procedure.
  - a. The following Block Load Structures are agreed to by the Parties:
    - i. Annual Base Load Block: Equal to the University's average annual hourly usage around the clock with a tolerance band of 5% priced for day ahead physical delivery at the PJM West Hub.
    - ii. Monthly Average Load Block: Equal to the University's monthly average hourly usage around the clock with a tolerance band of 5% priced for day ahead physical delivery at the PJM West Hub.
  - b. The University may from time to time propose alternative block electric commodity structures, and consent to the use of such alternatives as Block Load Structures shall be at the sole discretion of Utility, which consent shall not be unreasonably withheld.
3. The Parties shall cooperate in obtaining price quotes for Block Load Structures through a market-based procedure whereby the University will request the solicitation of offers to supply the energy commodity for one or more Block Loads and Utility will solicit offers for such Block Load Structures (an "Indicative Offer"). The University will have unlimited requests for solicitation of Indicative Offers. Requests for Indicative Offers can be for a Procurement Term of not less than one year nor more than five years.
4. From time to time, University may submit to Utility requests for Indicative Offers for Block Loads for a Procurement Term. The request for Indicative Offers shall include information set forth in the form of Attachment 1. The University shall include in its request the Procurement Term that the Block Load pricing is to be effective, such period being not less than one year nor more than five years. Utility will have 48 hours, excluding weekends and legal holidays, to respond with Indicative Offers and will provide pricing from a minimum of

three qualified counterparties. An Indicative Offer shall be in the form attached as Attachment 2, and shall include:

- a. Energy Charge of the electric commodity structure (\$/MWh) from a minimum of three different supply counterparties.
- b. Electric Supply Charge for the Block Load Pricing Term (\$/MWh)
- c. A service fee of 1% of the notional value of the Energy Charge of the electric commodity structure set forth in Paragraph B.4.a.

Utility shall, upon request from the University, re-price and/or refresh an Indicative Offer.

5. University may, at its option, obtain and execute an Indicative Offer with Utility for energy supply from a power producer located on premises owned or controlled by University if Utility has a contract with said power producer for energy supply. University and Utility shall cooperate and take all steps reasonably necessary to facilitate the availability and procurement of energy from any such power producer. If requested by University, Utility shall procure and deliver energy from such power producer in such amounts as are available to meet University's demand, and any power from such power producer shall be delivered and sold to University at Utility's actual cost plus 1% of the notional value of the electric commodity charge plus the Delivery Charge. If said power producer contract results in a material benefit to Utility, then Utility shall waive the 1% notional value fee on said contract. In the case of energy procured from such a power producer, energy charges need not be on a fixed price, take or pay basis. University shall remain obligated for the take or pay for any energy being delivered by Utility under any unexpired Procurement Term of a Block Load Commitment.
6. Should the University elect to execute on an Indicative Offer, Utility will refresh the Energy Charge component of the selected offer, if necessary, and will provide any updated pricing to the University within 24 hours (excluding weekends and legal holidays.) The University will immediately either reject the offer or instruct Utility to execute a commitment on the selected offer (a "Block Load Commitment").
7. Once a Block Load Commitment is executed by University, Utility will also provide to the University the Total Electric Service Charge for the Procurement Term. The Utility will also provide the University with a copy of the transaction confirmation and the identity of the counterparty.
8. Utility shall develop and maintain a risk policy addressing energy supply and credit risk factors applicable to all counterparties, and Utility will notify University of any change in its risk policy, and shall notify University in the event that a counterparty to a Block Load Commitment demonstrates any adverse changes in supply or credit risk.
9. If during the term of any Block Load Commitment made by Utility on behalf of University, the supplier of the energy defaults or fails to deliver said energy, University agrees to hold

Utility harmless and pay the actual cost of replacement energy at the then-current market cost of replacement energy. In such event, Utility will take all reasonable and prudent actions to procure replacement energy at the lowest available cost and to otherwise mitigate any harm to University.

10. If the University does not instruct Utility to execute a Block Load Commitment for all of its annual energy commodity requirement for a Procurement Term, the University may elect to pay for electric service for a Procurement Term at the Newark Wholesale Price (which is defined as a rate equal to the sum of the cost per MWh delivered to the City of Newark with all energy commodity charges and the costs and credits listed in Para C (1) by Newark) multiplied by the line loss factor of 1.05 plus the Delivery Charge then in effect. No later than February 15th each year, Utility shall provide University with the projected Newark wholesale price for the following five (5) year period. All electricity delivered at the Newark Wholesale Price will be on a load following basis.
11. If the University instructs Utility to execute a Block Load Commitment, as provided herein, all electricity procured and delivered for the Load Electrical Meters shown in Appendix B of the ESA through the term of the commitment will be on a load following basis, whereby any electrical consumption up to 115% of the Annual University Load Requirement will be charged at the same fixed price. If University exceeds 115% of the Annual University Load Requirement, University shall pay for the overage energy at the Newark Wholesale Price then in effect.
12. After the initial Procurement Term, the University must provide at least four (4) months notice to Utility of its intent to (a) elect to procure a Block Load Commitment under this procedure for a following Procurement Term or (b) elect the Newark Wholesale Price then in effect.
13. Utility shall take all actions necessary to purchase and deliver electric supply to the University in accordance with this Block Load Pricing Procedure.

**C. Determination of Electric Supply Charge**

1. The Electric Supply Charge is an allocation of the Slice of System charge billed to Utility and equal to the sum of the following items<sup>1</sup>:
  - a. Congestion charges
  - b. Net Capacity Obligation charges (inclusive of generation credit)
  - c. Transmission Service charges (PJM/DPL NITS)
  - d. Ancillary Services charges
  - e. Administration Charge (excluding the 1% notional fee)
  - f. Debt Service cost allocation

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<sup>1</sup> If a Block Load Commitment is executed for a term of three years or more, the Slice of System charge will be recalculated and adjusted based on final PJM capacity pricing for years three, four and five of the Block Load Commitment.

- g. RPS Compliance Cost allocation
  - h. Regulatory Compliance Cost allocation
  - i. All other costs and credits the Utility may be billed either now or in the future as a result of tariffs instituted by PJM, and charges instituted by the Federal Energy Regulatory Commission or any jurisdictional federal, state or regional entity.
2. No later than December 31 each year, Utility shall provide its adopted budget figure for the Utility's delivered cost of power for the upcoming year. These figures will contain the energy commodity figure as well as Slice of System figures for the year.
  3. The Electric Supply Charge to be included in the University's Total Electric Service Charge under this Block Load Pricing Procedure shall be determined based on the pro rata University share of the Utility's total load and total costs billed to the Utility for the particular Procurement Term. The Slice of System Cost will be provided on a \$/MWh basis, and will be based upon the Annual University Load Requirement at the beginning of the Procurement Term.

**D. Determination of Delivery Charge**

1. The Delivery Charge consists of the sum of a Customer Charge plus a Demand Charge as set forth in Appendix C to the ESA. In lieu of a take or pay minimum, the Delivery Charge shall be subject to an annual minimum charge of \$2,600,000, billed to the University over the twelve month period. The Delivery Charge will be reconciled as necessary on the July billing encompassing the prior year delivery charge totals (sum of demand and customer charge billings) from July to June in the event the sum of the prior year charges do not exceed the annual minimum charge.
2. The Delivery Charge will be subject to adjustment through City of Newark Council action on electric rates for the Utility in accordance with the provisions of the ESA and this Appendix A. Once per each five year duration of the ESA, beginning after the fifth year of the ESA, the University's Delivery Charge may be adjusted by changing the Demand Charge (\$/KW) and/or the Customer Charge. In order to adjust the Delivery Charge to the University, Utility will conduct an industry standard cost of service and rate design study. The University will participate in a stakeholder group to review methodology and non-confidential data involved with the cost of service rate study. "Non-confidential data" shall include all information that is subject to disclosure under the Delaware Freedom of Information Act, 29 Del. C. Chapter 100.
3. After the completion of the rate study and adoption of new rates based on the rate study by City Council, the University's Delivery Charge may be adjusted to a higher or lower rate provided that the overall percentage change in the Delivery Charge charged to the University will not be more than the percentage change to the required gross system revenues, excluding purchased power costs, as determined by the rate study. In the case of a rate decrease, the overall percentage change to the University's Delivery Charge will not be less than the percentage change to the required gross system revenues, excluding purchased power costs, as determined by the rate study. In no event shall any increase in the Customer Charge component of the Delivery Charge exceed 50% of the Customer Charge on the Effective Date.



4. If the City adopts a budget transfer or transfers from the electric fund to the General Fund or to any operating account or reserve that exceeds a 20% margin on power sales, the University's contribution shall be capped at the level of 20% of power sales. The margin will be calculated by dividing the transfers out of the fund (e.g. in 2011 transfers out of the fund totaled 9.67M) by the Utility Charges for Services (e.g. in 2011 were 55.7M) which amounts to a margin of 17.3%.

**E. Audit**

The University shall have the right to examine the calculations and work papers, bills, contracts and other documents relating to this Block Load Pricing Procedure, which are in the possession or control of Utility. Utility agrees to keep (and retain for at least 3 years) accurate records and accounts relating to this Block Load Pricing Procedure, and to make such records available to the University upon reasonable request.

**F. Authorized Representatives and Forms of Authorization**

Both the University and Utility shall designate in writing individuals that have the authority to request pricing, execute and bind parties to a given transaction(s) under the ESA and this procedure, and may be changed, added or deleted from time to time by written notice. Execution of all documents will be via e-mail confirmation from the University and Utility.

a. University Authorized Individuals

#1 Authorized Individual

Name:  
Title  
Phone  
E-mail

#2 Authorized Individual

Name:  
Title  
Phone  
E-mail

b. Utility Authorized Individuals

#1 Authorized Individual

Name:  
Title  
Phone  
E-mail

#2 Authorized Individual

Name:

Title  
E-mail



## APPENDIX B

### UNIVERSITY LOAD ELECTRICAL METERS

Meter Location	Account Number
0 East Delaware Ave	069-00025500-00
0 Ritter Lane	069-00025501-00
103 Hillside Road	069-00025502-00
549 S College Ave	069-00025503-00
621 S College Ave	069-00025504-00
0 S Chapel St	069-00025505-00
202 Academy St	069-00025506-00
0 New London Rd	069-00025507-00
0 N College Ave	069-00025508-00
114 S College Ave	069-00025509-00
192 S Chapel St	069-00025510-00
531 S College Ave	069-00025511-00
501 Wyoming Rd	069-00025512-00
42 Ray St	069-00025513-00
70 E Park Place	069-00025514-00
27 S Chapel St	069-00025515-00
44 Ray St	069-00025516-00
0 Chestnut Hill Rd	069-00025517-00
205 Haines St	069-00027667-00
531 S College Ave	069-00025518-00
00 N College Ave	069-00025519-00
34 New London Rd	069-00025520-00
243 Haines Street	069-00025521-00
175 Haines Street	069-00031321-00

University may request Utility to add any future meter that exceeds an average monthly demand of 150 KW and otherwise meets the definition of a qualifying facility, in accordance with the ESA. The calculation used to determine whether a meter is eligible will take the meter's maximum 15-minute reading for each month, and divide it by 12. Appendix B may be amended to include additional meters in accordance with the ESA.

## APPENDIX C

### Delivery Charges Under ESA

*Character of service.* The service furnished is 60-cycle, single or three phase alternating current at the available standard primary or secondary voltage.

#### **Delivery Charges:**

*Customer charge:* \$25,000 per billing period divided evenly across billing accounts

*Demand charge:* \$8.96 per kw for all kw of billing demand for Load Electrical Meters as shown in Appendix B of the ESA, as may be amended in accordance with the ESA.

*Determination of maximum demand.* The maximum demand in any month shall be the highest measured rate of use of energy, expressed in kilowatts, during any 15-minute period during the month as registered on the demand indicator. This will be measured on a coincident basis i.e. the University's monthly billing demand shall be equal to the highest measured demand in any fifteen minute period during the month over the Load Electrical Meters as shown on Appendix B.

*Determination of billing demand.* The billing demand each month shall be the maximum demand as determined above, subject to power factor correction, but in no event less than 150 kw.

*Power factor correction.* The average lagging power factor of the customer's installation shall be determined by readings of energy and reactive kilovolt ampere hours metered in accordance with the following formula:

$\frac{RKVAH}{KWH}$	=	Tangent
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The average power factor shall be taken from the standard table of tangents and expressed as the nearest whole percent.

In any month in which the average lagging power factor is less than 98.5 percent, the measured demand shall be corrected by the ratio that 98.5 percent bears to the power factor of the customer's load as follows:

Billing Demand	=	$\frac{\text{Measured Demand} \times 98.5}{\text{Average Monthly Power Factor}}$
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No credit shall be given for leading power factor which exceeds 98.5 percent power factor.

*Primary service discount.* When a customer takes service at primary voltage (4160V or higher) and both demand and energy are metered on the high side of either city-owned or customer-owned transformer, a discount of two percent of the metered kw demand and energy shall be allowed before application of the rate.

*Transformer ownership discount.* When a customer takes service at primary voltage directly from the city's distribution at the available primary voltage and owns and maintains all equipment beyond the metering, an additional discount of 10¢ for each kw of billing demand shall be allowed the customer for such transformer ownership.

*Penalty for late payment.* Bills for electric service shall be due and payable on the day of mailing from the city office, and if not paid within 30 days, shall be subject to one and one-half per month service charge on the unpaid balance.

*Utility tax.* Not applicable to University

*Green energy fee.* A minimum charge of \$0.000356 per kwh shall be added to all billings in accordance with state law.