

CONFIDENTIAL

MEMORANDUM OF UNDERSTANDING

Between

Skipjack Offshore Energy, LLC

And

Division of Parks and Recreation,

Delaware Department of Natural Resources and Environmental Control

This Memorandum of Understanding (“MOU”), dated as of July 18, 2019 summarizes the proposed terms and conditions of a potential transaction by and between Skipjack Offshore Energy, LLC (“Skipjack”) and the Division of Parks and Recreation of the Delaware Department of Natural Resources and Environmental Control (the “Division”). Skipjack and the Division may each be referred to herein as a “Party,” and together as the “Parties.”

This summary sets forth the current intentions of the Parties and is meant to serve as a basis for continued discussions, but except as explicitly set forth hereinafter, does not constitute a binding commitment by either Party to proceed with the proposed transaction. The terms and conditions of the proposed transaction will be as set forth in certain negotiated Definitive Agreements (hereinafter defined) executed by the Parties, who currently contemplate that such terms and conditions will include the following provisions.

1. Project Definition.

Skipjack is developing plans to construct and operate a wind energy generating facility in the Delaware Wind Energy Area designated by the U.S. Bureau of Ocean Energy Management. Skipjack anticipates constructing the Wind Farm in two phases. The “Phase I Project” will be constructed in fulfillment of the rights granted to and obligations agreed upon per the Skipjack Wind Farm project approved by the Maryland Public Service Commission in its Docket No. 9431, and, potentially, other off-takers. The “Phase II Project” is expected to commence construction within five years after the Phase I Project is complete. The Phase I Project and the Phase II Project are collectively referred to hereinafter as the “Wind Farm”. Skipjack is currently evaluating the technical, environmental and economic viability of interconnecting the Wind Farm to the Delmarva Power bulk transmission system in the State of Delaware. Such interconnection will require, for both the Phase I Project and the Phase II Project: (1) the installation of certain electrical transmission facilities within the State of Delaware, which will include, but are not limited to, one or more cable landfalls, splicing vaults, buried electrical transmission lines, new onshore substation(s) and associated interconnection facilities (collectively, the “Onshore Transmission Facilities”); and (2) connecting the Wind Farm’s one or more submarine export cable(s) (collectively, the “Export Cable”) to the Onshore Transmission Facilities. The Wind Farm, Export Cable and Onshore Transmission Facilities are collectively referred to herein as the “Skipjack Project.”

2. Objective.

Skipjack proposes to cooperate with the Division to develop a plan, and to obtain the DNREC Approvals (hereinafter defined) for the Skipjack Project that will allow for the

construction of the Onshore Transmission Facilities (or portions thereof) for each of the Phase I Project and, separately, the Phase II Project, within a certain area of Fenwick Island State Park set forth in the figure attached hereto as Appendix A and referred to herein after as the "the Premises". In connection with the Phase I Project, and subject to the applicable terms and conditions of the Definitive Agreements (hereinafter defined), one of whose applicable conditions will be the issuance of the DNREC Approvals for the Phase I Project and the Other Approvals for the Phase I Project (hereinafter defined), Skipjack will design, engineer, procure and construct, on behalf of the Division, a new multi-level parking structure in the Premises' existing parking lot (the "Parking Structure") and certain other improvements, hereinafter enumerated, within the Premises for the benefit of the Division (the "Park Improvements," and, together with the Parking Structure, the "Phase I Improvements") at Skipjack's sole cost and expense. In connection with the Phase II Project, and subject to the terms and conditions of the Definitive Agreements (hereinafter defined), one of whose applicable conditions shall be issuance of the DNREC Approvals for the Phase II Project and the Other Approvals for the Phase II Project (hereinafter defined), Skipjack will have five years from the receipt of the all permits and approvals necessary to construct, install, operate and maintain the Phase I Project to file the application(s) for the federal and state permits and approvals necessary to construct, install, operate and maintain the Phase II Project and meet certain commitments hereinafter enumerated, for the benefit of the Division (the "Phase II Improvements/Commitments," and, together with the Phase I Improvements, the "Park Improvements/Commitments") at Skipjack's sole cost and expense. Other than as specifically set forth in the Definitive Agreements, Skipjack shall have no rights to, and no interest in, the Park Improvements/Commitments and shall have no obligations regarding the same whatsoever.

3. Definitive Agreements.

If the Parties reach agreement on the terms contemplated in this MOU, then subject to any approvals necessary pursuant to any Delaware law, rule or regulation, such agreed terms will be memorialized in documentation that will include the following (collectively, the "Definitive Agreements"):

- A Joint Development Agreement (the "JDA") governing access, operations and maintenance of the Fenwick Island State Park during the construction periods for each of the Phase I Project and the Phase II Project, as well as for the Phase I Project, which Skipjack will commit to undertake and fund, and under which the Division will commit to cooperate as further described herein.
- For each of the Phase I Project and the Phase II Project, easement/lease agreements pursuant to the Public Lands Act to install and maintain the Export Cable under the beach and to connect the same to the Onshore Transmission Facilities (the "Under-Beach Easement").
- For each of the Phase I Project and the Phase II Project, lease/easement agreements under the Delaware State Parks Act to construct, use and maintain the Onshore Transmission Facilities within the Premises (the "Facilities Lease"), with each phase requiring approximately one (1) acre, and including a fee based on an appraisal of the land area involved.

4. Required Approvals.

In order to construct the Onshore Transmission Facilities and Export Cable for each of the Phase I Project and the Phase II Project, Skipjack will require certain real estate rights, permits

and other approvals from DNREC, which will include but may not be limited to the following (collectively, the "DNREC Approvals"):

- Issuances of leases pursuant to the Subaqueous Lands Act to install and maintain the Export Cables on submerged lands within the coastal waters of the State of Delaware;
- Approvals of the issuances of the Under-Beach Easements;
- Approvals of the issuances of the Facilities Leases, including a fee based on an appraisal of the land area of the Premises involved;
- Approvals by DNREC Division of Air Quality of an Air Permit for each of the Phase I Project and the Phase II Project;
- Approvals by DNREC Division of Watershed Stewardship of a permit under the Beach Preservation Act for each the Phase I Project and the Phase II Project;
- Letters of Authorization from the Division of Water for all geotechnical work within 3 nautical miles of the shore;
- Any other permit(s) or approval(s) required pursuant to DNREC rules and regulations to construct, install, operate and maintain Export Cables and the Onshore Transmission Facilities;
- Federal Consistency Review and approval for each of the Phase I Project and Phase II Project.

In addition to the DNREC Approvals, the Division and/or Skipjack may require several other permits, approvals and consistency reviews from the State of Delaware, Sussex County and the Federal Government in order construct and operate the Skipjack Project (collectively, the "Other Approvals").

5. Park Improvements/Commitments.

Subject to the terms and conditions of the Definitive Agreements, the Phase I Improvements shall consist of the following:

- The Parking Structure, the design of which will be prepared by Skipjack and subject to approval by the Division, which approval will not be unreasonably conditioned, withheld or delayed. The design of the Parking Structure will incorporate the following features:
 - A number of parking spaces that is not less than 30% greater than those currently present in the portion of the Premises' existing parking lot that will be displaced by the Parking Structure;
 - Incorporation of landscape architecture principles intended to positively affect storm water management and the aesthetics of the existing parking lot; and
- An area of approximately 1 acre for construction of the portion of the Onshore Transmission Facilities associated with the Phase I Project within the Premises.
- A new or renovated office within Fenwick Island State Park and surrounding space to include a new comfort station, a nature center, a meeting space / venue with water views and a public pavilion;

- Addition of walking paths or sidewalks along the road;
- A park snack bar;
- An outdoor amphitheater;
- A playground with proper access for disabled visitors;
- A rentable pavilion on the Ocean side;
- Purchase and installation of up to six self-serve fee machines at the Park entrances, with an estimated cost of \$7,000 per machine and estimated \$2,000 per machine cost of site work, including fiber cable and concrete pad;
- Provision of renewable energy certificates corresponding to up to 7,200 kwh of renewable energy generation per year for Fenwick Island State Park operations for a period 10 years;
- New lifeguard housing;
- A second small bathhouse on the Bay side near the kayak rental facility;
- Athletic courts on both the Ocean and Bay side of the complex;
- New "Camp host" camping sites, including an additional small bathroom and campfire;
- Signage to help visitors and automobiles navigate the site internally; and
- A new pedestrian bridge connecting the parking lot on the east side of the highway with parking lot on the west side of the highway.

Subject to the terms and conditions of the Definitive Agreements, Phase II Improvement/Commitments shall include:

- An area of approximately 1 acre for the construction of the portion of the Onshore Transmission Facilities associated with the Phase II Project within the Premises.
- Establishment by Skipjack of an endowment with initial funding of \$740,000 with the Delaware Community Foundation to support the maintenance, operations, and programming of Fenwick Island State Park. The endowment would be funded with a payment of \$370,000 on or before the date when all federal permits for Phase I are approved, and a second payment of \$370,000 on or before the date when all federal permits for Phase II are approved.

6. Skipjack Responsibilities.

Subject to the terms and conditions of the Definitive Agreements, Skipjack will do the following:

- Reasonably cooperate with the Division in preparing the design of the Park Improvements, including providing a draft for review and comment by the Division;
- File all the required application materials for the DNREC Approvals and the Other Approvals;
- Subject to the receipt of the DNREC Approvals and the Other Approvals, effectuate the Park Improvements/Commitments (at the Fenwick Island State Park) for the benefit of the Division, in connection with its construction of the

Onshore Transmission Facilities for each of the Phase I Project and the Phase II Project;

- For each of the Phase I Project and the Phase II Project, use commercially reasonable efforts to refrain from construction within Fenwick Island State Park during the period from May 15 through September 15, in order to permit a fully functioning park during the heavy use season, provided that ongoing construction materials may remain on site if safely secured; and
- Reasonably cooperate with the Division in communications with government agencies, elected officials and the general public regarding the Park Improvements/Commitments and each of the Phase I Project and Phase II Project.

7. Division Responsibilities.

Subject to the terms of the Definitive Agreements, and any restrictions imposed by any Delaware law, rule or regulation, the Division will undertake reasonable efforts to assist Skipjack to complete each phase of the Skipjack Project. The Division will, to the extent it is lawful and within its authority, be a party to any proceeding pertaining to, and/or support any outcome relevant thereto assisting in the development of each phase of the Skipjack Project, including but not limited to:

- Providing prompt feedback on the draft design of the Park Improvements provided by Skipjack;
- Ensuring adequate resources are available to facilitate prompt review of applications for permits and approvals;
- Reasonably cooperating with Skipjack in Skipjack's efforts to secure any necessary approvals from any governmental authority of the State of Delaware to develop each phase of the Skipjack Project, and to construct the Park Improvements, the Onshore Transmission Facilities and the Export Cable.
- Supporting Skipjack's efforts to secure Other Approvals for both the Phase I Project and the Phase II Project, as may be applicable, including from the National Park Service for the Park Improvements to the extent required.
- Reasonably cooperating with Skipjack in preparing a joint communications plan and in communications with government agencies, elected officials and the public regarding the Park Improvements and the Onshore Transmission Facilities.

8. Milestone Events/Dates.

Skipjack and the Division are committed to the Skipjack Project being fully operational and the Park Improvements being completed on a timely basis and, to that end, will establish in the Definitive Agreements certain milestone events. As used herein, a "Milestone Event" is an event, the occurrence of which, is necessary for the parties to realize the purposes and objectives of the transaction. As used herein, a "Milestone Date" is the date by which a Milestone Event is scheduled to occur. The following will be Milestone Events with corresponding Milestone Dates.

- Filing of application(s) by Skipjack for the federal and state permits and approvals necessary to construct, install, operate and maintain the Phase I Project.
- Commencement of construction of the Phase I Improvements.
- Filing of application(s) by Skipjack for the federal and state permits and approvals necessary to construct, install, operate and maintain the Phase II Project.
- Completion of the Phase II Improvements/Commitments.

If Skipjack has not filed the application(s) for the federal and state permits and approvals necessary to construct, install, operate and maintain the Phase II Project by the date that is five years after the receipt of the all permits and approvals necessary to construct, install, operate and maintain the Phase I Project, then thereafter the Division shall have no obligation to cooperate with Skipjack as set forth in Section 7 of the MOU and Skipjack shall have no rights to construct, install, operate or maintain the Phase II Onshore Transmission Facilities in Fenwick Island State Park and will have no obligation to provide the Phase II Improvements.

9. Extension of Dates.

The Parties acknowledge that the Milestone Dates will be reasonable estimates of the time periods during which the Milestone Events may be achieved. The Parties acknowledge that the achievement of Milestone Events and their attendant Milestone Date may be delayed due to actions by State, Federal or local agencies, regulatory bodies or legislative or judicial authorities over which neither Party has control. In the event of any such delays, Milestone Dates will be automatically extended by the period of any such delay. The Parties will regularly meet and discuss progress towards meeting Milestone Dates.

10. Term.

The JDA will remain in full force and effect until (i) Skipjack has received all the DNREC Approvals and the Other Approvals for both the Phase I Project and the Phase II Project, (ii) the JDA is terminated by mutual agreement of the Parties, or (iii) the JDA is terminated as provided for below.

11. Termination.

Either the Division or Skipjack may terminate the JDA if it is not in material breach of any of the provisions of the JDA and if by no later than a date certain, Skipjack has not met all of the Milestone Dates (or as such Milestone Dates may have been extended pursuant to Section 9), including but not limited to failure to file the application(s) for the federal and state permits and approvals necessary to construct, install, operate and maintain the Phase II Project by the date that is five years after the receipt of the all permits and approvals necessary to construct, install, operate and maintain the Phase I Project.

12. Assignment.

Skipjack may, upon the consent of the Division, which consent will not be unreasonably withheld, conditioned or delayed, assign the JDA to another entity. Notwithstanding the foregoing, no consent of the Division will be required for Skipjack to assign the JDA to an affiliate that is (like Skipjack) wholly owned – directly or indirectly – by Orsted North America, Inc.). Upon any

such assignment, the assignee will assume all obligations, liabilities and responsibilities of Skipjack under the JDA.

13. Negotiation.

Upon execution of this MOU, the Parties will proceed with negotiating the Definitive Agreements.

14. Costs and Expenses.

Each of Parties will bear its respective costs and expenses in connection with negotiation and documentation of the JDA.

15. Financing.

Skipjack may, from time to time, grant mortgages, assign leases and grant security interests in the personal property owned by Skipjack at the Fenwick Island State Park. The JDA will include certain customary provisions regarding assistance with financing pursuant to which (i) the Division will agree to execute such consents, agreements or similar documents with respect to assignment of the JDA to lenders as lenders may reasonably request in connection with the documentation of the financing of the Skipjack Project (including consents to collateral assignment), and (ii) lenders will have step-in and cure rights customary for a transaction of this nature in order to perform certain obligations on Skipjack's behalf.

16. Confidentiality.

The Parties will maintain the confidentiality of all information designated as "confidential" by the other Party provided to such party in connection with the contemplated transaction, unless otherwise required by law or regulatory authority, or other legal process, including, but not limited to, the State of Delaware Freedom of Information Act, 29 *Del.C.* Ch. 100; but may disclose the terms hereof to its respective attorneys, accountants, and other professional advisors with a need to know and in connection with the enforcement of its rights and obligations hereunder for a period of two (2) years following the execution of this MOU. This provision will survive the expiration or earlier termination of this MOU.

17. Governing Law.

The Definitive Agreements will be governed by and construed in accordance with the laws of the State of Delaware, notwithstanding any conflicts of law provisions that would require the application of the laws of any other jurisdiction.

18. Effectiveness.

Other than the Confidentiality provisions set forth above, this MOU is not binding upon any person and has no legal effect whatsoever.

19. Indemnification.

The Definitive Agreements will include appropriate indemnification and insurance provisions consistent with applicable State law, including specifically the State Tort Claims Act, 10 *Del.C.* §4001 *et seq.*

20. Miscellaneous.

This MOU may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one agreement. The headings of the various

sections of this indication have been inserted for reference only and will not be deemed to be a part of this MOU.

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In witness whereof, each of the undersigned agrees and accepts this MOU as of the date last written.

AGREED and ACCEPTED:


SKIPJACK OFFSHORE ENERGY, LLC,

By: 
Name: Ian Renshaw
Title: Authorized Person

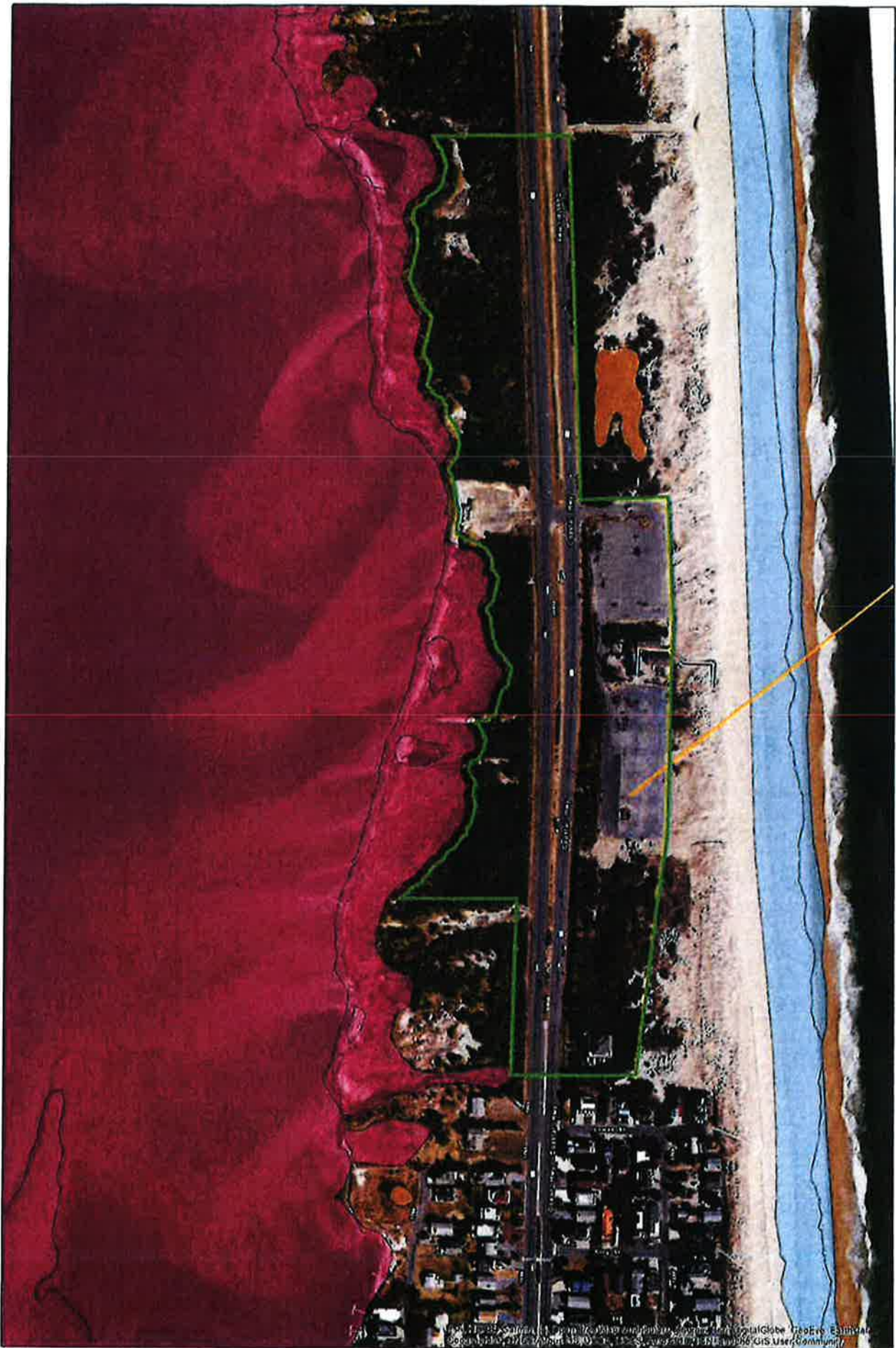
SKIPJACK OFFSHORE ENERGY, LLC,

By: 
Name: PREM PEREIRA
Title: DEPUTY EPC DIRECTOR

STATE OF DELAWARE, by and through the Department of Natural Resources and Environmental Control, Division of Parks and Recreation:

By:  7/18/19
Name: Hon. Shawn M. Garvin
Title: Secretary, State of Delaware Department of Natural Resources and Environmental Control

**APPENDIX A:
THE PREMISES**



Skipjack Wind Farm

- Potential Project Area for Discussion
- Fenwick South Route Option
- Sussex Wetlands
- Estuarine
- Marine

Palustrine

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Sources: Esri, DeLaware Firstmap
 Projection: UTM Zone 18N
 0 20 40 80 Meters
 0 50 100 200 Feet

FENWICK CABLE LANDFALL OPTION

July, 2019