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September 16, 2011

PSC DOCKET
NO. 11-399

BY HAND DELIVERY

Alisa Bentley, Secretary
Delaware Public Service Commission
Suite 100, Cannon Building
861 Silver Lake Boulevard
Dover, DE 19904

Re: Application for Approval of a Pilot Program for the Procurement of Solar Renewable Energy Credits

Dear Secretary Bentley:

Enclosed please find the original and ten copies of Delmarva Power & Light Company's ("Delmarva") Application for Approval of a Pilot Program for the Procurement of Solar Renewable Energy Credits. Delmarva's Application seeks to implement certain requirements of the Renewable Energy Portfolio Standards Act. I have also included a check in the amount of $150.00 to cover the filing fee. As noted in the Petition, Delmarva respectfully requests that the Application be heard by the Commission on an expedited basis.

If you have any questions or concerns regarding the enclosed, please do not hesitate to contact me.

Respectfully,

Kelly E. Farnan

Kelly E. Farnan

Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

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PSC DOCKET
NO. 11-399

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER AND LIGHT COMPANY FOR APPROVAL OF A PILOT PROGRAM FOR THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS	)))))	PSC DOCKET NO.

DELMARVA POWER AND LIGHT COMPANY'S APPLICATION FOR APPROVAL OF A PILOT PROGRAM FOR THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS

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Attorneys for Delmarva Power & Light Company

Dated: September 16, 2011

Delmarva Power & Light Company ("Delmarva Power" or "Delmarva"), through its undersigned counsel, hereby submits this application pursuant to 26 *Del. C.* § 351 *et seq.* for approval by the Delaware Public Service Commission (the "Commission") of the attached Pilot Program for the Procurement of Solar Renewable Energy Credits developed by the Renewable Energy Taskforce, of which Delmarva Power was a member. In support of this application, Delmarva Power states as follows:

I. Legislative Background

1. In 2007, the Governor approved and signed into law the Renewable Energy Portfolio Standards Act, 26 *Del. C.* §§ 351-364, ("REPSA"), the purpose of which was to "establish a market for electricity from [renewable energy resources] in Delaware, and to lower the cost to consumers of electricity from these resources." 26 *Del. C.* § 351(c). REPSA also recognized that having a market for renewable energy resources in Delaware would benefit the State through "improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities." 26 *Del. C.* § 351(b).

2. In furtherance of these goals, REPSA requires retail electricity suppliers, such as Delmarva Power, to purchase energy from Eligible Energy Resources (as that term is defined in RESPA) to meet a portion of their annual retail load. Beginning with compliance year 2010, REPSA sets forth the minimum percentage of retail energy sales to end-users that must come from Eligible Energy Resources, including solar photovoltaics. 26 *Del. C.* § 354(a). For compliance year 2011, the Minimum Cumulative Percentage from Eligible Energy Resources is 7.0% and the Minimum Cumulative Percentage from Solar Photovoltaics is 0.20%. *Id.* The

percentage of retail energy to be supplied from Eligible Energy Resources increases over time, reaching a requirement of 25% in 2025. *Id.*

3. REPSA was amended in 2010 to require the formation of the Renewable Energy Taskforce (the "Taskforce") for the purpose of "making recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware." 26 *Del. C.* § 360(d). The Taskforce was required to include the following members: (i) four appointments by the Secretary of DNREC; (ii) one appointment by the Public Service Commission; (iii) one appointment by Delmarva Power & Light; (iv) one appointment by the Delaware Electric Cooperative; (v) one appointment by municipal electric companies; (vi) one appointment by the Sustainable Energy utility ("SEU"); (vii) one appointment by the Delaware Public Advocate; and (viii) one appointment by the Delaware Solar Energy Coalition. 26 *Del. C.* § 360(d)(1).

4. The Taskforce was charged with making recommendations about and reporting on, *inter alia*, the following:

a. Establishing a balanced market mechanism for Renewable Energy Credit ("REC") and Solar Renewable Energy Credit ("SREC") trading;

b. Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;

c. Minimizing the cost for complying with REPSA;

d. Establishing revenue certainty for appropriate investment in solar renewable energy technologies, including consideration of long-term contracts and auction mechanisms;

e. Establishing mechanisms to maximize in-state solar renewable energy generation and local manufacturing; and

f. Ensuring that residential, commercial and utility scale photovoltaic and solar thermal systems of various sizes are financially viable and cost-effective instruments in Delaware.

5. The Taskforce first met on September 2, 2010 and, at that time, voted to create a subcommittee to provide recommendations to the Taskforce. The voting members of the subcommittee are: Delmarva Power & Light, DNREC, Delaware Electric Cooperative, Delaware Solar Energy Coalition, the SEU and DEMEC. In addition to the voting members, other persons regularly attended the subcommittee meetings, including Delaware Public Service Commission Staff, the Public Advocate's Office, Dr. Lado Kurdgelashbilli from the University of Delaware and additional representatives from the solar industry. Since its formation, the subcommittee has met almost weekly for a year to consider the issues as required by REPSA.

II. The Pilot Program

6. Over the course of almost a year, the subcommittee developed the Pilot Program for the Procurement of Solar Renewable Energy Credits (the "Pilot Program"). The proposed Pilot Program, including attachments, is attached hereto as Exhibit 1. The Pilot Program was completed by the subcommittee and the subcommittee voted to send the Pilot Program to the full Taskforce on August 3, 2011. The Taskforce met on August 22, 2011 and voted to approve the Pilot Program. While certain members abstained from the vote (including the Delaware Electric

Cooperative and the Public Service Commission), all non-abstaining members voted in favor of the Pilot Program.

7. The purpose of the Pilot Program is to assist in the creation of a market for SRECs in Delaware and to provide a mechanism for the procurement of SRECs to ensure that retail electricity suppliers meet the requirements set forth in REPSA. The key aspects of the Pilot Program are highlighted below.

A. Term of the Pilot Program

8. The Pilot Program is initially designed to meet only the SREC requirements for compliance year 2011 (Exhibit 1 at p. 4) and is subject to ongoing evaluation and revision (Exhibit 1 at p. 7) to ensure the Pilot Program is operating and meeting the goals set for the Taskforce in REPSA.

B. Public Bidding Administered by the SEU

9. The Pilot Program will utilize a public solicitation for SRECs for different categories of solar generators based on their capacity. (Exhibit 1 at p. 4). The Taskforce has already developed the bid form, which is included in Pilot Program (Exhibit 1, Appendix A). The SEU will administer all aspects of the bid process for each utility that decides to participate in the Pilot Program. The use of the SEU to fulfill this role allows one central entity to manage the program but also allows the SEU to take advantage of its banking rights under REPSA as the SEU will procure the SRECs from various solar generators and resell them to participating utilities.

10. Delmarva Power intends to participate in the Pilot Program and is currently involved in contract negotiations with the SEU. Furthermore, because Delmarva Power is the

only participating utility at this time, the estimates for procurement set forth below are based Delmarva Power's projected need for SRECs in compliance year 2011.

C. Procurement of SRECs from 4 Tiers of Solar Generators

11. The Pilot Program identifies 4 tiers (one of which has 2 levels) of solar generators from which the SEU will solicit bids and procure SRECs. (Exhibit 1 at p. 7). Those tiers are as follows: (i) Tier 1 is for generation units ≤ 50 kW; (ii) Tier 2A is for generation units > 50 kW to ≤ 250 kW; (iii) Tier 2B is for generation units > 250 kW to ≤ 500 kW; (iv) Tier 3 is for generation units > 500 kW to ≤ 2 MW; and (v) Tier 4 is for generation units ≥ 2MW.

12. As the Commission is aware, Delmarva Power currently has a contract to procure a large number of SRECs from the Dover Sun Park, which is classified as a Tier 4 solar generator. Delmarva Power does not have a need for further SRECs from a Tier 4 solar generator and, therefore, Tier 4 will not be utilized during the first year of the Pilot Program.

13. Based on Delmarva Power's projected load for compliance year 2011, SRECs will be procured from the various tiers in the Pilot Program as follows:

Tier	**System Size**	**#of SRECs (MWh)**	**Percentage of total SRECs**
Tier 4	≥ 2MW	10,600	48%
Tier 3	>500kW to ≤2MW	4,500	20.4%
Tier 2	>50kW to ≤250kW	2,000	18.2%
Tier 2B	>250 kW to ≤500kW	2,000	
Tier 1	≤50kW	2,972	13.4%
TOTAL		22,072 MWh	100%

D. Standard Transfer Agreements and Other Requirements

14. The Taskforce has developed a standard Transfer Agreement (Exhibit 1 at Appendix B) that will be executed by the SEU and each solar generator selected through the public bidding process. Each SREC Transfer Agreement will have a term of 20 years. (Exhibit 1 at p. 11). The use of a standard agreement ensures consistency across all projects and also reduces transaction costs for all involved.

15. In addition to standard Transfer Agreements, bids will only be accepted from projects with an "Accepted Completed Solar System Interconnection Application" letter dated after December 1, 2010. (Exhibit 1 at p. 6). This requirement ensures that the Taskforce is meeting its goal of supporting the growth of renewable energy markets in Delaware.

16. Furthermore, each bidder, regardless of tier, will be required to provide a binding estimate of the SREC quantity to be generated by the proposed facility. Each selected bidder will be required to sell a minimum amount of SRECs to the SEU. (*See* Exhibit 1 at pp. 11-12). If a Tier 1 or Tier 2 solar generator produces more than 110% of its estimated SRECs, the SEU will have the option to determine whether or not to purchase the surplus SRECs. However, if a Tier 3 solar generator produces more than 110% of its estimated SRECs, those SRECs will remain with the solar generator, who shall have the right to sell the SRECs in any manner it deems appropriate. (*Id.*). This provides a level of certainty concerning the number of SRECs to be procured pursuant to the Pilot Program.

E. Procurement from Tier 1 and Tier 2A Solar Generators

17. The SEU will issue a solicitation for bids from Tier 1 and Tier 2A solar generators. The solicitation will remain open for 5 business days. (Exhibit 1. at p. 17). The SEU will be responsible for reviewing all applications and ensuring compliance with the

requirements set forth in the Pilot Program. If, during the 5 business day period, the SEU receives bids that exceed the number of SRECs required for the Pilot Program, the SEU will utilize a lottery system as described in the Pilot Program, giving preference to those solar generators that have claimed both the Delaware Equipment Bonus and the Delaware Workforce Bonus. (Exhibit 1 at p. 18).

18. In addition to the use of the standard Transfer Agreement, For Tier 1 and Tier 2A projects, the Pilot Program sets the pricing for SRECs procured from those Tiers. (Exhibit 1 at p. 22). The subcommittee spent considerable time reviewing various scenarios and developing the pricing for the Pilot Program. To develop the pricing, the subcommittee utilized the PV Planner software (*See* Exhibit 1 at p. 21) as well as the assistance of Dr. Kurdgelashvilli and Barry Sheingold.

F. Procurement from Tier 2B and 3 Solar Generators

19. Tiers 2B and 3 will be subject to a competitive bidding process. (Exhibit 1 at p. 19). The SEU will administer and be responsible for the selections of Tier 2B and 3 solar generators, awarding Transfer Agreements to the projects with the lowest bids. (*Id.*). In order for a Tier 2B or Tier 3 bid to qualify, it must contain a fixed price for the first 10 years of the Transfer Agreement and thereafter will be subject to the fixed pricing set in the Pilot Program. (Exhibit 1 at pp. 19, 22).

20. In the event multiple bids are received at the same price, the SEU will allow the bidders five business days to reduce their price. (Exhibit 1 at p. 19). If a tie remains, the SEU will award contracts on the basis of specific requirements set forth in the Pilot Program. (Exhibit 1 at p. 20).

21. In any event, the SEU is not obligated to accept any Tier 2B or 3 bid with a price in excess of $280 per SREC. (*Id.* at p. 19). If the SEU is inclined to accept a bid that exceeds $280 per SREC, the participating electricity provider will have the option to present the bid to the Commission for the purposes of passing the cost of such a procurement on to consumers. (*Id.*).

III. Request for Expedition and Approval

22. In order to immediately begin the public bidding contemplated by the Pilot Program for compliance year 2011, Delmarva Power respectfully requests that this Application be handled on an expedited basis such that it can be presented to the Commission on October 31, 2011 or as soon thereafter as possible.

23. Accordingly, because Delmarva Power and the Taskforce believe the Pilot Program satisfies the goals set forth by REPSA and, as demonstrated above, is in the public interest, Delmarva Power respectfully requests that the Commission approve the Pilot Program attached as Exhibit 1.

WHEREFORE, for the foregoing reasons, Delmarva Power respectfully requests that the Pilot Program be approved.

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Dated: September 16, 2011

Exhibit 1

STATE OF DELAWARE

PILOT PROGRAM

FOR THE PROCUREMENT OF

SOLAR RENEWABLE ENERGY CREDITS

RECOMMENDATIONS OF THE RENEWABLE ENERGY TASKFORCE

September 1, 2011 (REVISED)

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STATE OF DELAWARE
PILOT PROGRAM
FOR THE PROCUREMENT OF
SOLAR RENEWABLE ENERGY CREDITS

1. Statutory Background

The Delaware Renewable Energy Portfolio Standards Act (as amended, "***REPSA***") requires retail electricity suppliers operating in the State of Delaware to purchase energy from "***Eligible Energy Resources***" to meet a portion of their retail load.[1] For the 2011 compliance year (beginning June 1, 2011), retail electricity suppliers must purchase at least 7% of their retail load in Delaware from renewable resources. That requirement increases to 25% for the 2025 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to retail customers.

REPSA was amended in 2007 to require that a certain portion of each retail electricity supplier's renewable energy requirement be satisfied with energy from solar technologies. The 2010 amendments to REPSA established a solar set aside of 0.20% for the 2011 compliance year, which increases to 3.50% for the 2025 compliance year. For 2026 and future compliance years, the Delaware Public Service Commission ("***DPSC***") will establish solar set-asides at levels at least equal to the 2025 set-aside.

To encourage the development of new renewable energy generation, REPSA mandates that no more than 1% of the renewable energy purchase requirement can be satisfied by purchases from renewable energy generation resources (each, a "***Generation Unit***") that were in commercial operation prior to January 1, 1998. For the 2026 and subsequent compliance years, no such pre-existing Generation Units will be eligible to satisfy any portion of the REPSA requirement.

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[1] Eligible Energy Resources are defined to include those that produce solar photovoltaic or solar thermal energy, wind energy, ocean energy, geothermal energy or energy from fuel cells powered by renewable fuels. Also included are biogas, small-scale hydroelectric, biomass and certain qualifying landfill gas recovery projects. Eligible Energy Resources do not include waste-to-energy facilities, incinerators or generating resources fueled by fossil-fuel waste products.

When it enacted REPSA, the Delaware General Assembly acknowledged that "the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state."[2] It therefore directed the DPSC to "establish, maintain or participate in a market-based renewable energy tracking system to facilitate the creation and transfer of renewable energy credits among retail electricity suppliers."[3]

2. Solar Renewable Energy Credits

2.1 General

To implement the mandate of REPSA, the DPSC adopted regulations that recognize the creation, and facilitate the tracking through PJM Interconnection's Generation Attributes Tracking System ("***GATS***"), of renewable energy credits (each, a "***REC***"). A REC is a tradable instrument that represents the non-price characteristics (*e.g.*, fuel type, geographic location, emissions and vintage) of electric energy derived from an Eligible Energy Resource.[4] One REC is equivalent to such characteristics associated with 1 megawatt-hour ("***MWh***") of energy derived from such a resource. A solar renewable energy credit (an "***SREC***") represents the same non-price characteristics of 1 MWh of energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology.

RECs and SRECs are created upon the generation of electricity by an Eligible Energy Resource and the registration of such REC or SREC within GATS. Each owner of an Eligible Energy Resource is entitled to one REC or SREC, as applicable, for each MWh of energy generated

---

[2] 26 Del. Code Regs. § 351(b). The benefits recognized by the General Assembly include "improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities." *Id.*

[3] *Id.* § 359(a).

[4] A REC does not include any emission reduction credits or allowances required to comply with any necessary permits for Generation Units.

by the resource. Such owners must therefore have an account within the GATS or have arranged with another entity that has such an account to act on its behalf.

2.2 Banking of SRECs

Once a REC or SREC is created, it continues to exist for three years or until it is retired to satisfy the requirements of REPSA. Such three-year period is tolled during any period that a REC or SREC is held by the Delaware Sustainable Energy Utility (the "***SEU***").

2.3 Bonus for Use of In-State Equipment or Workforce

Generation Units sited in Delaware are entitled to a 10% bonus on REC and SREC production if: (a) 50% or more of the cost of the renewable energy equipment comprising the Generation Unit (including mounting components) is manufactured in Delaware (the "***Delaware Equipment Bonus***"); or (b) the Generation Unit is constructed and/or installed either with a workforce at least 75% of whom are Delaware residents or by a company that employs at least 75% Delaware residents (the "***Delaware Workforce Bonus***"). Generation Units that meet both criteria are entitled to an aggregate 20% bonus. Satisfaction of these criteria must be certified by the DPSC.[5]

3. The Delaware Renewable Energy Taskforce

The 2010 amendments to REPSA established the Renewable Energy Taskforce (the "***Taskforce***") to make "recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware."[6] The Taskforce was directed to find ways to increase deployment of solar generation and enhance the market for SRECs. Its responsibilities include making recommendations about the following:

---

[5] Eligibility for the Delaware Equipment Bonus and the Delaware Workforce Bonus shall be determined solely by the DPSC.

[6] *Id.* § 360(d). The Taskforce is comprised of 11 members representing a broad cross-section of entities interested in and concerned with the implementation of renewable energy policy in Delaware. The 2010 amendment to REPSA stipulates that the Taskforce be made up of: (a) four appointments by the Secretary of the Delaware Department of Natural Resources and Environmental Control, including one from the renewable energy research and development industry, one from the local renewable energy manufacturing industry and one from an environmental advocacy organization; (b) one appointment by the DPSC; (c) one appointment by Delmarva Power & Light Company ("***Delmarva***"); (d) one appointment by the Delaware Electric Cooperative; (e) one appointment by municipal electric companies; (f) one appointment by the SEU; (g) one appointment by the Delaware Public Advocate; and (h) one appointment by the Delaware Solar Energy Coalition. *Id.* § 360(d)(1).

- establishing a balanced market mechanism for REC and SREC trading;
- establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;
- minimizing the cost for complying with REPSA;
- establishing revenue certainty for appropriate investment in solar renewable energy technologies, including consideration of long-term contracts and auction mechanisms;
- establishing mechanisms to maximize in-state solar renewable energy generation and local manufacturing; and
- ensuring that residential, commercial and utility scale photovoltaic and solar thermal systems of various sizes are financially viable and cost-effective instruments in Delaware.

The Taskforce appointed a special subcommittee to consider and make recommendations regarding the SREC procurement process. That subcommittee met on numerous occasions over several months and evaluated a variety of alternative approaches to SREC procurement in an effort to reach a consensus on a comprehensive program designed to meet the objectives set forth in REPSA with respect to the development of solar generation resources. Based on the subcommittee's work, the Taskforce is recommending a statewide pilot program for the 2011 compliance year (the "***SREC Procurement Pilot Program***") that it believes will encourage solar development in the State of Delaware while minimizing costs for owners, developers, aggregators, consumers and other participants in the SREC market in Delaware.

4. **Program Administration; Eligibility**

4.1 Public Solicitations

The Taskforce believes that the procurement of SRECs by retail electricity suppliers operating in the State of Delaware should be implemented through public solicitations conducted for different categories of solar generators based on their capacity. The SREC Procurement Pilot

Program will be implemented and managed by the SEU, which will evaluate and award bids and execute agreements to purchase SRECs and other environmental attributes from qualifying projects.[7]

The solicitations will be for SRECs and other environmental attributes[8] created by the Eligible Energy Resources; project owners will be free to utilize or sell the energy produced at such resources in any manner they choose. Each solicitation will be based on the SREC requirements of the participating retail electricity suppliers as communicated to the SEU.

4.2 Owner Qualifications

To apply as an owner (an "***Owner***") of an Eligible Energy Resource pursuant to the SREC Procurement Pilot Program: (a) if the resource has an aggregate nameplate rating of at least 100 kilowatts ("***kW***") (DC) at standard test conditions ("***STC***"), the applicant must own, lease, control or be the direct assignee of all of the SRECs created by such resource; or (b) if the resource has an aggregate nameplate rating of less than 100 kW at STC, the applicant must own, lease, control or be the direct assignee of all of the SRECs created by such resource and at least one other Eligible Energy Resource.[9] Any other party intending to participate in the SREC Procurement Pilot Program will be required to submit an application jointly with an entity that has executed agreements[10] to control the SRECs produced by two or more Eligible Energy Resources (such entity, an "***Owner Representative***").

---

[7] It is anticipated that the SEU will select a third party (the "***SREC Procurement Agent***") to perform some or all of its duties with respect to the SREC Procurement Pilot Program, including conducting solicitations, evaluating bids and executing agreements on behalf of the SEU. If it does so, the process for selecting the SREC Procurement Agent, and the choice of the SREC Procurement Agent itself, would be subject to the consent of the participating retail electricity suppliers.

[8] In addition to SRECs, environmental attributes include those attributes created from the Generation Unit's generation of electricity from solar energy in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, such as emission credits, carbon credits, air quality credits, green credits, carbon tax credits, emissions reduction credits, greenhouse gas credits, certificates, tags, offsets, allowances and similar products, rights, claims or benefits, whether now existing or arising in the future. However, environmental attributes do not include tax credits other than carbon tax credits.

[9] An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

[10] An Owner Representative need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources. It need only have executed agreements with Owners of two or more such resources.

An Owner that is qualified to submit an application on its own behalf may, at its option, elect to designate an Owner Representative. Affiliates of retail electricity suppliers are permitted to participate in the SREC Procurement Pilot Program as Owners or Owner Representatives (so long as they satisfy the applicable requirements for being an Owner or Owner Representative).

4.3 Eligible Projects

To qualify for participation in the SREC Procurement Pilot Program, a Generation Unit must: (a) qualify as a "Solar Photovoltaic Energy Resource" in accordance with the DPSC rules; (b) be eligible for certification as an Eligible Energy Resource under REPSA; and (c) be comprised of new (*i.e.*, unused) equipment. Only Generation Units that have received approvals of their "Accepted Completed Solar System Interconnection Applications" dated December 1, 2010 or later will be eligible to participate in the SREC Procurement Pilot Program. In addition, only projects that have not received supplemental funding from a public source (other than grants associated with the Delaware Green Energy Program ("***GEP***") or grants in lieu of investment tax credit) are eligible to participate in the SREC Procurement Pilot Program.

To assure that Generation Units of different sizes have a reasonable opportunity to participate in the SREC Procurement Pilot Program, the Taskforce has designed the program to provide for separate solicitations (with different terms, conditions and pricing) for different sized Generation Units. The project categories are as follows:

GENERATION UNIT TIER DESIGNATIONS

Tier	Nameplate Rating (DC at STC)
1	Less than or equal to 50 kW
2	Greater than 50 kW but less than or equal to 500 kW[11]
3	Greater than 500 kW but less than or equal to 2 MW
4	Greater than 2 MW[12]

For purposes of determining the capacity of a Generation Unit and its applicable tier will be based on the aggregate nameplate rating of all solar arrays: (a) that are located on the same parcel of land (as established by the local taxing authority) or share a single utility interconnection point; and (b) for which applications are submitted for the same compliance year.[13]

4.4 Ongoing Program Evaluation

The Taskforce will evaluate the SREC Procurement Pilot Program on a periodic basis to consider whether any changes or modifications are necessary or advisable. Any changes or modifications to the program (*e.g.*, the allocation of SRECs among the three tiers) would be prospective only and executed SREC Transfer Agreements (as defined below) would not be affected. Any material changes to the SREC Procurement Pilot Program would be subject to approval by the appropriate regulatory bodies.

---

[11] For purposes of determining eligibility to receive payments based on administratively set prices, Tier 2 is further subdivided into 2 sub-tiers: Tier 2-A consists of projects with nameplate ratings greater than 50 kW but less than or equal to 250 kW, and Tier 2-B consists of projects with nameplate ratings greater than 250 kW but less than or equal to 500 kW.

[12] The procurement of SRECs for Tier 4 for the 2011 compliance year was satisfied in full with the purchase of SRECs from the Dover Sun Park Project. Accordingly, the process for procuring SRECs from Tier 4 projects is not included in the initial pilot SREC Procurement Pilot Program.

[13] An Owner may, at its discretion, include additional solar arrays at other locations, in which case the capacity of such arrays will be aggregated for purposes of determining the capacity and tier of such project.

5. Bid Applications

5.1 General Requirements

Each Owner must submit, or designate its Owner Representative to submit, a completed bid application (and only one such bid application)[14] for each Generation Unit for which it intends to participate in the SREC Procurement Pilot Program. The application (the form of which is appended hereto as Appendix A) must include:

- a description of the Generation Unit, including its location, the types of solar panels being used and its nameplate rating (at STC);[15]
- a certification by the Owner of any grants associated with the GEP or other supplemental funding from public sources it has received or is entitled to receive;
- if the Owner is not qualified to submit an application on its own behalf or if the Owner otherwise elects to designate an Owner Representative, the identity of the Owner Representative; and
- designation of the GATS account (of the Owner or Owner Representative) into which the SRECs will be deposited.

In addition, each bid application must be accompanied by:

- a standard form agreement (an "***SREC Transfer Agreement***") to sell SRECs to the SEU executed by the Owner and, if necessary or elected, an Owner Representative;
- the appropriate deposit; and
- an analysis of the estimated annual energy output using PVWatts Solar PV Energy Calculator or such other modeling technique as may be acceptable to the SEU.

5.2 Estimated Output

Each application to sell SRECs pursuant to the SREC Procurement Pilot Program must include a binding estimate of: (a) the annual energy output of the Eligible Energy Resource, as

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[14] A Generation Unit may not be included in more than one bid application in any single solicitation. If such unit is not awarded an SREC Transfer Agreement as a result of such solicitation, the Owner would be free to submit an application for such unit pursuant to any future solicitation.

[15] The equipment description contained in the application is not binding on an Owner or an Owner Representative, provided that: (a) except as expressly permitted in accordance herewith, the nameplate rating (at STC) of any substitute equipment may not vary from that described in the original application by more than 5% for Tier 1 or Tier 2 projects, or 2.5% for Tier 3 projects; and (b) in no event will the substitution of different equipment affect the Estimated SREC Quantity contained in the original application.

determined using PVWatts Solar PV Energy Calculator or such other modeling technique as may be acceptable to the SEU; and (b) the annual SREC production levels (such estimate of the SREC production levels, the "***Estimated SREC Quantity***"). The estimates for energy output and SREC production levels shall be subject to an annual degradation factor of 0.5%.

For Eligible Energy Resources claiming a bonus based on the use of Delaware-sourced equipment and/or an in-state workforce (as described in Section 2.3 above), the application must include a description of the equipment and/or identification of the contractor or workforce upon which such claim is based and the binding SREC output estimate for such resources should include any such SREC bonus.[16] Failure to claim a bonus at the time an application is submitted will disqualify a project from being entitled to the bonus, regardless of whether Delaware-sourced equipment or an in-state workforce is later employed. Claiming a bonus for which a Project does not qualify constitutes a default under the SREC Transfer Agreement.

5.3 Bid Deposit

Each application to participate in the SREC Procurement Pilot Program must be accompanied by a bid deposit in an amount equal to $100 per kW (DC) of the nameplate rating (at STC) of the Eligible Energy Resource; provided, however, that the bid deposit will be waived for qualifying projects that provide a copy of their DPSC certification as an Eligible Energy Resource along with their bid application. All bid deposits must be in the form of an acceptable letter of credit, cash or a bid bond[17] and will be held by the SEU on behalf of the participating retail electricity suppliers.

The bid deposits will be returned or released promptly upon: (a) rejection of an application; or (b) termination of an SREC Transfer Agreement based on the imposition by the interconnecting

[16] The "bonus" SRECs are not actually credited to retail electricity suppliers until they retire the SRECs to which the bonus applies. However, under the terms of the SREC Transfer Agreements, as long as the Owner provides evidence that the DPSC has certified that the Eligible Energy Resource qualifies for the bonus, payment for the SRECs will include the bonus amount.

[17] A bid bond must be in the form of American Institute of Architects (AIA) Form 310. In addition, any applicant that provides a bid bond as bid security will be required to replace such bond with a deposit in the form of a letter of credit or cash no later than 10 days after the SEU provides notice that its bid application has been granted.

utility of a charge other than a standard interconnection fee (as described in Section 6.4 below). In addition, if an Owner claims in its application that a project will be entitled to the Delaware Equipment Bonus or the Delaware Workforce Bonus and such project is not certified by the DPSC as being eligible for either such "claimed" bonus, the bid deposit will be forfeited and the SREC Transfer Agreement will be terminated. Otherwise, the bid deposit will be returned upon completion and commencement of operation of the Generation Unit on or prior to the Guaranteed On-Line Date (as defined in Section 6.5 below) and the posting of performance credit support (as described in Section 6.9 below). For Generation Units that commence operation after such date, the bid deposit will be used to pay delay liquidated damages (as described in Section 6.5 below) and the balance, if any, will be returned to the Owner promptly after the commencement of operation and the posting of performance credit support (as described in Section 6.9 below). Cash deposits will not earn interest.

6. **SREC Transfer Agreements**

In order to minimize transaction costs, the SEU will enter into standard form SREC Transfer Agreements with Owners and, if required or elected by such Owners, the Owner Representatives. SREC Transfer Agreements for Tier 1 and Tier 2-A projects will have standard pricing. Tier 2-B and Tier 3 projects will be allowed to submit their own bid prices, and SREC Transfer Agreements will be awarded based on the lowest bid price. Such price terms will be included in the SREC Transfer Agreements for Tier 2-B and Tier 3 projects.

The SEU will countersign each SREC Transfer Agreement promptly upon determining that the associated application and bid qualify for selection pursuant to the pending solicitation (the date of signing by the SEU, the "***Execution Date***"). Each SREC Transfer Agreement will include:

- the Owner's agreement to maintain the Generation Unit as an Eligible Energy Resource;
- an acknowledgment by the Owner and, if applicable, the Owner Representative that: (a) the SEU and retail electricity suppliers have the right to inspect the Generation Unit (which right may be assigned to qualified third parties); and (b) the SEU has the

right to resell the SRECs in any market where they are eligible to be traded, including states other than Delaware; and

- if the Owner is designating an Owner Representative, the appointment of the Owner Representative as the Owner's exclusive agent to manage SRECs within GATS on the Owner's behalf.

The form of the SREC Transfer Agreement is appended hereto as Appendix B. Some of the principal terms and conditions of the SREC Transfer Agreement are described in this Section 6.

6.1 Term of Agreement

All SREC Transfer Agreements will have a term of 20 years. The term will commence as of the first day of the month following the date as of which the Generation Unit is certified as an Eligible Energy Resource by the DPSC or, for operating resources, either June 1, 2011 or the first day of the month following the Execution Date of such agreement, as determined by the Owner.

6.2 SREC Quantity

Pursuant to each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative will be obligated to transfer (by registering within GATS) and sell to the SEU, and the SEU will be obligated to purchase and pay for, all of the SRECs produced at the Generation Unit up to the Contract Maximum (as defined below). To facilitate more efficient management and accounting for SREC procurement, and to maximize opportunities for the largest possible group of Owners to participate in the SREC Procurement Pilot Program, the quantity of SRECs that may be delivered pursuant to any SREC Transfer Agreement during any annual period will be limited to 110% of the Estimated SREC Quantity for such period (such amount, the "***Contract Maximum***"). All SRECs delivered pursuant to an SREC Transfer Agreement must be created based on the output of the Generation Unit that is the subject of that agreement. In the event a Tier 1 or Tier 2 project produces SRECs in excess of the Contract Maximum, the SEU will have the option to elect whether or not to purchase any or all of the surplus SRECs. If it exercises that option, the sale of any such excess SRECs will be subject to the same terms, conditions and pricing applicable to other SREC

purchases under the SREC Transfer Agreement. In the event a Tier 3 project produces SRECs in excess of the Contract Maximum, or if the SEU declines to purchase, or purchases only a portion of, the excess SRECs produced by a Tier 1 or Tier 2 project, the SEU will transfer any such excess SRECs back to the Owner, who will have the right to sell such excess SRECs in any manner it deems appropriate.

For Tier 3 projects, the Owner and, if applicable, the Owner Representative will be obligated to sell to the SEU, for each annual period, a quantity of SRECs equal to no less than 80% of the Estimated SREC Quantity for such period (the "***Minimum Annual Quantity***").

The Estimated SREC Quantity may not be amended unless the Owner reduces the capacity of a Generation Unit either to avoid or minimize any interconnection fees or charges sought to be imposed by the interconnecting utility (as described in Section 6.4) or to allow the Generation Unit to fit within a pending solicitation (as described in Sections 7.1, 7.2 and 7.3).

6.3 Pricing

The Taskforce has established standard pricing for Tier 1 and Tier 2-A projects. The base prices were established assuming that each Owner will be entitled to receive a GEP grant under the current program. For projects entitled to receive GEP grants under the program in effect prior to December 10, 2011, the base pricing is reduced accordingly.

For Tier 2-B and Tier 3 projects, pricing for the first 10 years of the term of each SREC Transfer Agreement will be equal to the SREC price bid by the Owner in its applications (which price shall be flat during such 10-year period). For the final 10 years, pricing for Tier 2-B and Tier 3 projects is standardized.

6.4 Utility Interconnections

Each Owner must submit a complete interconnection application (Step 1) to the interconnecting utility no later than 60 days after the Execution Date. If, based on that application, the interconnecting utility proposes to assess any fee or charge (other than a standard interconnection

application fee), the Owner may, within 10 days of notice of such fee or charge by the interconnecting utility, either reduce the capacity of the Generation Unit to avoid or minimize such fee or charge or terminate the SREC Transfer Agreement.

If an Owner reduces the capacity of a Generation Unit to avoid or minimize an interconnection charge, the Estimated SREC Quantity will be reduced by the same percentage and any excess deposit will be returned to the Owner.[18] If an Owner elects to terminate the SREC Transfer Agreement based on the imposition of an interconnection fee or charge, the entire deposit will be returned.

6.5 Guaranteed On-Line Date; Delay Liquidated Damages

All Tier 1, Tier 2 and Tier 3 projects must commence operation no later than 12 months after the Execution Date (the "***Guaranteed On-Line Date***"), provided, however, that the Guaranteed On-Line Date will be subject to extension to the extent reasonably necessary based on: (a) events beyond the reasonable control of the Owner (*i.e.*, force majeure as defined in the SREC Transfer Agreement); or (b) the failure by the interconnecting utility to complete the interconnection (provided that the Owner or, if applicable, the Owner Representative shall have submitted a timely and complete interconnection application to the interconnecting utility). In no event will the Guaranteed On-Line Date be extended for more than one additional year.

For any Generation Unit that fails to meet its Guaranteed On-Line Date, the Owner and, if applicable, the Owner Representative will be liable to pay liquidated damages for each full or partial day of delay. The amount of such damages will be equal to 1/30th of the deposit amount. In the event a Generation Unit is not operational within 30 days of its Guaranteed On-Line Date, the SEU will have the right to terminate the SREC Transfer Agreement.

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[18] A reduction in capacity to avoid or minimize an interconnection charge will not affect pricing under the SREC Transfer Agreement, regardless of whether the reduced capacity would have qualified the project to submit an application for a lower tier.

6.6 Payment

The SEU will pay for SRECs on a quarterly basis for Tier 1 projects and on a monthly basis for Tier 2 and Tier 3 projects. Each Owner will stipulate in the SREC Transfer Agreement whether payment is to be made to the Owner or, if applicable, the Owner Representative. Payment will be based on the number of SRECs transferred to and registered in the SEU's GATS account during the relevant billing period.

6.7 Metering

All Tier 2 and Tier 3 projects must have a revenue-grade meter with on-line monitoring. Tier 1 projects must install at least a standard, utility-grade meter and on-line monitoring.

6.8 Conditions Precedent

The SEU's purchase obligations under each SREC Transfer Agreement will be conditioned on: (a) the Owner providing evidence that it has received a certification number from the DPSC confirming that the referenced Generation Unit qualifies as an Eligible Energy Resource; and (b) for Generation Units that are eligible in accordance with GATS rules and procedures, the Owner executing a standing order directing that all SRECs generated by such unit (up to the Contract Maximum) be transferred to the SEU's GATS account. For projects claiming a bonus based on the use of Delaware-sourced equipment or an in-state workforce (as described in Section 2.3 above), the SEU's obligations will also be subject to delivery of confirmation from the DPSC that the resource qualifies for the claimed bonus (which confirmation may be delivered within 30 days of the commencement of operation of the resource).

6.9 Performance Credit Support

Pursuant to the terms of each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative, will grant the SEU a security interest in all of the SRECs (up to the Contract Maximum) generated by the project to secure their respective obligations under the agreements, including the obligation to deliver and sell the SREC output of the project.

To secure their obligations to deliver the Minimum Annual Quantity, Owners or Owner Representatives of Tier 3 projects will also be required to provide supplemental credit support in the form of cash, a letter of credit or other collateral acceptable to the SEU. For each of the first 10 years of the SREC Transfer Agreement, such supplemental credit support shall be in an amount equal to 5% of the value (at the applicable price set forth in the SREC Transfer Agreement) of the first-year Estimated SREC Quantity; for each year thereafter, it shall be in an amount equal to 10% of the value of the Estimated SREC Quantity for the 11th year of the agreement. The supplemental credit support must be replenished to the required level in the event any portion of the credit support is drawn or used.

6.10 Project Maintenance; Inspections

Owners and, if applicable, Owner Representatives will be responsible for maintaining Generation Units so that they remain Eligible Energy Resources and are able to produce their respective Estimated SREC Quantities. Owners and Owner Representatives must notify the SEU of any substantive changes to the operational characteristics of the Generation Unit.[19]

The SEU will have the right to physically inspect Generation Units to verify compliance with the terms of their applicable SREC Transfer Agreements. The SEU may delegate that right to the SREC Procurement Agent, any retail electricity suppliers or any other qualified third parties.

6.11 Excused Performance

Owners will be excused from any delay in performance or failure to perform under an SREC Transfer Agreement caused by conditions beyond their reasonable control (*i.e.*, force majeure as defined in the SREC Transfer Agreement); provided, however, that such relief shall be limited to a period of one year for any single force majeure event.

[19] Owners and Owner Representatives are also required to provide the SEU with copies of any notice(s) submitted to the DPSC pursuant to 26 Del. Admin. C. § 3008(3.1.8) and any additional correspondence related to such notice(s).

6.12 Default Provisions

Pursuant to the SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative will be in default if:

- the full SREC output of a Generation Unit (up to the Contact Maximum) is not made available to the SEU;
- for a Tier 3 project, the project fails to generate the Minimum Annual Quantity during any annual period and the Owner fails to pay applicable damages (as described in Section 6.13 below) within 30 days after the end of such annual period; or
- required credit support is not maintained.

In addition, an Owner Representative will be in default under an SREC Transfer Agreement if it fails to qualify as an Owner Representative under the terms of the SREC Procurement Pilot Program and such failure is not cured within 30 days of notice of such failure.

6.13 Remedies

Upon a breach or default by an Owner or an Owner Representative under an SREC Transfer Agreement, the SEU will be entitled to all of its remedies at law and in equity, including specific performance of and/or termination of the agreement. Upon a breach or default by the SEU under an SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative, will be entitled to their respective remedies at law and in equity. Equitable remedies will include specific performance of such agreement.

In the event the SEU terminates an SREC Transfer Agreement based on a failure or refusal to sell the SREC output of the Eligible Energy Resource to the SEU, the SEU may recover damages calculated based on the difference, if positive, between the price for SRECs under the SREC Transfer Agreement and the cost to replace such SRECs in the market.

If a Tier 3 project fails to produce the Minimum Annual Quantity of SRECs during any annual period, the Owner will owe damages equal to the amount of the shortfall, multiplied by the difference, if positive, between: (a) the lower of the prevailing market price of SRECs (as reasonably

determined by the SEU) or the amount of the "Alternative Compliance Payment" (as defined in REPSA) for the year in which such shortfall occurs; and (b) the price for SRECs under the SREC Transfer Agreement. Such damages shall be due and payable no later than 30 days after the end of the annual period to which they apply. Payment of such damages will be the Owner's sole liability for the failure to deliver the Minimum Annual Quantity.

6.14 Replacement of Owner Representative

An Owner may remove its Owner Representative at any time and for any reason (or no reason); provided, however, that if the Owner is not qualified to participate in the SREC Procurement Pilot Program on its own behalf, it will be obligated to designate a replacement Owner Representative (which replacement will accept a novation of the SREC Transfer Agreement) within 5 business days of the removal of the original Owner Representative. In the event an Owner who is not qualified to participate in the SREC Procurement Pilot Program on its own behalf fails to designate a replacement Owner Representative within such period, the SEU will have the right to designate the replacement Owner Representative, in its reasonable discretion.

7. Bid Awards

7.1 Tier 1 and Tier 2-A Solicitations

Promptly upon receipt of an application to sell SRECs from an Owner Representative or Owner in response to a solicitation issued pursuant to the SREC Procurement Pilot Program, the SEU will review the application to verify whether it is complete and complies with applicable procedures. Partial or incomplete applications will be rejected.

A solicitation for Tier 1 or Tier 2-A projects will remain open until it is fully subscribed. All qualifying applications submitted pursuant to any such solicitation will be accepted for a period of 5 business days following the opening of such solicitation. If the total capacity of the Generation Units for which complete applications are received during such 5-day period is less than the allocation for

such solicitation, all such applications will be accepted and SREC Transfer Agreements will continue to be awarded, on a "first come-first serve" basis, until the pending solicitation is fully subscribed.

If the total capacity of the Generation Units for which complete applications are received within 5 business days of the opening of a Tier 1 or Tier 2-A solicitation exceeds the allocation for such solicitation, a lottery will be conducted among projects in the oversubscribed tier that have claimed the Delaware Equipment Bonus and the Delaware Workforce Bonus. Such lottery will continue until: (a) all such projects have been awarded SREC Transfer Agreements; (b) the solicitation for that tier is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) for that tier remains unsubscribed; or (c) a project is selected that would cause the pending solicitation to be oversubscribed.

If all of the Tier 1 and Tier 2-A projects that have claimed both the Delaware Equipment Bonus and the Delaware Workforce Bonus have been awarded SREC Transfer Agreements and more than a *de minimis* amount of the applicable tier remains unsubscribed, a second lottery will be conducted among the remaining projects that have claimed either such bonus. Such lottery will continue until: (a) all such projects have been awarded SREC Transfer Agreements; (b) the solicitation for that tier is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) for that tier remains unsubscribed; or (c) a project is selected that would cause the pending solicitation to be oversubscribed.

Finally, if all of the Tier 1 and Tier 2-A projects that have claimed either the Delaware Equipment Bonus or the Delaware Workforce Bonus have been awarded SREC Transfer Agreements and more than a *de minimis* amount of the applicable tier remains unsubscribed, a third lottery will be conducted among the remaining projects. Such lottery will continue until: (a) the solicitation for that tier is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) for that tier remains unsubscribed; or (b) a project is selected that would cause the pending solicitation to be oversubscribed.

If, at any time, a Tier 1 or Tier 2-A project is selected that would cause a solicitation to be oversubscribed, the Owner submitting such application will have the option to reduce the capacity of the Generation Unit to equal the remaining balance of the pending solicitation. If the applicant elects not to reduce the capacity of the Generation Unit, that application will be rejected and the lottery will continue until the solicitation is fully subscribed or until only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed.

7.2 Tier 2-B and Tier 3 Solicitations

Tier 2-B and Tier 3 solicitations will be subject to competitive pricing. Each Tier 2-B and Tier 3 price bid must be for a fixed dollar amount, which amount cannot escalate or otherwise vary during the initial 10-year period of the term. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids. If the allocation for the applicable tier is not fully subscribed in the initial solicitation, a second solicitation will be held within the following six months for the balance of the allocation for such tier. The SEU will announce all Tier 2-B and Tier 3 bid deadlines at least 30 days in advance of the bid date.

The SEU will not be obligated to award any Tier 2-B or Tier 3 bid in excess of $280 per SREC. In the event a Tier 2-B or Tier 3 application with a price bid in excess of $280 per SREC would be eligible to be selected for a contract award by the SEU, the participating retail electricity suppliers will have the right, in their sole discretion, to determine whether or not to seek approval from the appropriate regulatory bodies to pass through the cost of purchasing such SRECs and, if such approval is granted, whether or not to authorize the SEU to execute an SREC Transfer Agreement based on such price bid.

If there are multiple bids at the same price that would cause a pending Tier 2-B or Tier 3 solicitation to be oversubscribed (a "***Bidding Tie***"), the SEU will give each applicant involved in the Bidding Tie for such tier a 5-day period to submit a reduced price bid and will then evaluate any revised bids submitted by the applicants involved in such Bidding Tie. The SEU will then award one

or more SREC Transfer Agreements to some or all of the applicants involved in such Bidding Tie as follows:

- first, if any applicant submits a reduced price bid, to such applicant(s) on the basis of the lowest price bid until: (a) the pending solicitation for the applicable tier is fully subscribed or only a *de minimis* portion of such solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; (b) the next highest price bid would cause the pending solicitation to be oversubscribed; or (c) there is a Bidding Tie with respect to the remaining bids;

- second, if after completion of the first step, the pending solicitation for the applicable tier is not fully subscribed and there is a Bidding Tie with respect to the remaining bids for such tier, the SEU will award SREC Transfer Agreements based on a lottery among the remaining applicants involved in such Bidding Tie that have claimed the Delaware Equipment Bonus <u>and</u> the Delaware Workforce Bonus;

- third, if after completion of the second step, the pending solicitation for the applicable tier is not fully subscribed and there is a Bidding Tie with respect to the remaining bids for such tier, the SEU will award SREC Transfer Agreements based on a lottery among the remaining applicants involved in such Bidding Tie that have claimed <u>either</u> the Delaware Equipment Bonus or the Delaware Workforce Bonus; and

- fourth, if after completion of the third step, the pending solicitation for the applicable tier is not fully subscribed and there is a Bidding Tie with respect to the remaining bids for such tier, the SEU will award SREC Transfer Agreements based on a lottery among the remaining applicants.

If a Tier 2-B or Tier 3 project selected based on bid price or by lottery would cause the pending solicitation to be oversubscribed, the SEU will give the applicant the option to reduce the capacity of the Generation Unit to the remaining balance of the pending solicitation. If the applicant elects not to reduce the capacity of the Generation Unit, its bid application will be rejected and the solicitation will continue until: (a) the pending solicitation is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; or (b) there are no remaining applications with a bid price below $280 per SREC.

7.3 <u>Reduction in Capacity</u>

If the Owner of a Tier 2-B or Tier 3 project opts to reduce the capacity of a Generation Unit so that it fits within a pending solicitation, the Estimated SREC Quantity will be reduced by an equal percentage. In addition, if such reduction qualifies the project for a lower tier, the original form of

SREC Transfer Agreement will be terminated and replaced with the form of agreement applicable to the lower tier. In such case, the reduced capacity of the Generation Unit will be reallocated from the tier originally bid to such lower tier and any excess deposit will be returned to the Owner.

8. Solicitation for 2011 Compliance Year

8.1 Resource Allocation

Based on forecasted load, the SREC solicitations for the 2011 compliance year will be for 11,472 SRECs,[20] which will be allocated as follows:

- Tier 1 – 2,972 SRECs
- Tier 2-A – 2,000 SRECs
- Tier 2-B – 2,000 SRECs
- Tier 3 – 4,500 SRECs[21]

8.2 Pricing

The Taskforce has established standard Tier 1 and Tier 2-A pricing for the 2011 solicitation that it believes will encourage development of new solar generating resources while taking into account reasonable project development costs (as such costs may be off-set by available grants, subsidies and tax benefits). The pricing set forth herein was established based on assumptions developed by the Taskforce and by utilizing PV Planner software.[22]

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[20] The solicitation may increase if additional retail electrical suppliers elect to participate in the SREC Procurement Pilot Program. In that event, each tier allocation would be increased proportionally.

[21] Delmarva has already contracted to purchase 9,846 Tier 4 SRECs from the Dover Sun Park Project, of which 7,000 are being banked by the SEU and 2,846 are being utilized for the 2011 compliance year.

[22] PV Planner software has been developed over a 16-year period by the Center for Energy and Environmental Policy in consultation with the U.S. National Renewable Energy Laboratory and others. It utilizes meteorological data to forecast PV cell output and incorporates a vast quantity of data to model financial performance of solar generation units.

Subject to the conditions stated herein, all SRECs bid pursuant to the 2011 solicitation will be eligible for the following pricing:

PRICING

Project	*Pricing*		
	Years 1-10		*Years 11-20*
	Base Price	*Alternate Price*[23]	
Tier 1	$260/SREC	$235/SREC	$50/SREC
Tier 2-A	$240/SREC	$175/SREC	$50/SREC
Tier 2-B	Bid Price	Bid Price	$50/SREC
Tier 3	Bid Price	Bid Price	$50/SREC

[23] The alternate pricing is payable for projects that received a GEP grant under the program in effect prior to December 10, 2010. A grant recipient under the earlier program that has not received payment may elect to forego its grant money under such program, in which case it would be eligible for a grant under the latter program as well as the base price for the applicable tier.

SEU Use Only	
Application Number:	_____
Bid Date:	_____
Intake Personnel:	_____
Application Complete:	Yes/No

APPENDIX A

Form of Bid Application

APPLICATION
to sell
SOLAR RENEWABLE ENERGY CREDITS
2011 SREC PROCUREMENT PILOT PROGRAM

This is an application to sell solar renewable energy credits ("SRECs") to the Delaware Sustainable Energy Utility, Inc. (the "SEU") pursuant to a pilot procurement program for the 2011 compliance year established in accordance with the Delaware Renewable Energy Portfolio Standards Act (as amended, "REPSA").

Owner Information[1]

Name (company or individual): _____

Street address: _____

City, state and zip code: _____

Email address: _____

GATS Account No.:[2] _____

Other Eligible Energy Resources
owned by Owner:[3] _____

Owner Representative Information (to be filled in if applicable)[4]

Name (company or individual): _____

Street address: _____

City, state and zip code: _____

Email address: _____

GATS Account No.: _____

Other Eligible Energy Resources
owned by Owner Representative: _____

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1 The designated Owner must be the legal entity that owns, leases, controls or is the direct assignee of all of the SRECs created by the Project described in this Application.

2 Not required if an Owner Representative is designated or if construction of Project is not complete.

3 Not required if an Owner Representative is designated.

4 An Owner Representative must be designated unless: (a) the Project has an aggregate nameplate rating (as designated by the solar module manufacturer) of at least 100 kW (DC) at STC; or (b) the Owner has executed agreements to control the SRECs produced by at least one other Eligible Energy Resource.

Description of Project

Location: _____
(street address or parcel number)

City, state and zip code: _____

Nameplate capacity (kW-DC)[5] _____

Tier designation (check one):

- ☐ Tier 1 Project (less than or equal to 50 kW-DC)
- ☐ Tier 2-A Project (greater than 50 kW and less than or equal to 250 kW-DC)
- ☐ Tier 2-B Project (greater than 250 kW and less than or equal to 500 kW-DC)
- ☐ Tier 3 Project (greater than 500 kW and less than or equal to 2,000 kW-DC)

Module type (make and model): _____

Inverter type (make and model): _____

System tilt (degrees): _____

System azimuth (degrees): _____

Mounting location (specify one):

- ☐ Ground
- ☐ Rooftop

Operational status (check one):

- ☐ Project currently under development
- ☐ Project currently in operation
  Specify initial operation date: _____

[5] At standard test conditions (internal cell temperature of 25°C and irradiance of 1,000 watts per square meter with air mass 1.5 spectrum).

Estimated energy and SREC output:

First-year energy output: _____ kWh

First-year SREC output: _____ SRECs

Utility interconnection:

_____ Interconnecting Utility

_____ Date of acceptance of completed System Interconnection Application

Required Information

Supplemental funding from public sources (check if applicable):

☐ Delaware Green Energy Program Grant
Amount: _____

☐ Other public supplemental funding (excluding grants in lieu of taxes)
Amount and type: _____

Eligibility for Delaware Equipment Bonus (check if applicable):

☐ The Project is sited in the State of Delaware and a minimum of 50% of the total cost of renewable energy equipment, inclusive of mounting components, is manufactured in Delaware[6]

Eligibility for Delaware Workforce Bonus (check if applicable):

☐ The Project is sited in the State of Delaware and is or will be constructed and/or installed either with a workforce at least 75% of whom are Delaware residents or by a company that employs at least 75% Delaware residents[7]

Bid Price:[8] $_____ per SREC (applicable during first 10 years)

Attachments

Completed SREC Transfer Agreement executed by Owner and, if applicable, Owner Representative

Deposit in the amount of $100/kW of the nameplate rating of the Project

Calculation of the estimated first-year energy output using PVWatts Solar PV Energy Calculator or other modeling technique acceptable to the SEU (using actual tilt and orientation)

The undersigned hereby certifies, on behalf of the Owner identified herein, that this is the only Application being submitted that includes the referenced Project and that the information set forth in this Application is true and correct.

_____

Print: _____

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6 Eligibility for the Delaware Equipment Bonus shall be determined solely by the DPSC.
7 Eligibility for the Delaware Workforce Bonus shall be determined solely by the DPSC.
8 For Tier 2-B Projects and Tier 3 Projects only.

APPENDIX B

Form of SREC Transfer Agreement

SOLAR RENEWABLE ENERGY CREDIT

TRANSFER AGREEMENT

DELAWARE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT

2011 PILOT PROGRAM

SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT
DELAWARE RENEWABLE ENERGY PROGRAM

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SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT
DELAWARE RENEWABLE ENERGY PROGRAM

This Agreement pertains to the sale and transfer by the Owner (as identified below) of solar renewable energy credits created by a solar power project (as described in more detail below, the "***Project***").[1]

PART I
PROJECT AND OWNER INFORMATION

A. Owner:[2]

- Name of entity: _____
- Street address: _____
- City, state and zip code: _____
- Attention: _____
- Email address: _____
- Tax ID number: _____
- Owner's other Eligible Energy Resources:[3] _____
- Owner GATS Account No.:[4] _____

B. Owner Representative (if one is designated):[5]

- Name of entity: _____
- Street address: _____
- City, state and zip code: _____
- Attention: _____
- Email address: _____

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[1] A Project may be located at multiple locations, provided that the same legal entity owns, leases, controls or be the direct assignee of all of the SRECs created by the entire Project.

[2] The Owner is the legal entity that owns, leases, controls or is the direct assignee of all of the SRECs created by the Project.

[3] Required only if: (a) the Project has a nameplate capacity of less than 100 kW; and (b) no Owner Representative is designated.

[4] If the Owner has not established a GATS account as of the Bid Date, it must provide the SEU with such account number promptly after the account is established.

[5] The Owner must designate an Owner Representative unless: (a) the Project has an aggregate nameplate rating (as designated by the solar module manufacturer) of at least 100 kW (DC) at STC; or (b) such Owner has executed agreements to control the SRECs produced by at least one other Eligible Energy Resource.

- Tax ID number: _____
- Other Eligible Energy Resources: _____

C. Payee (check one):

☐ Owner

☐ Owner Representative

D. Project:

- Street address:[6] _____
  (or parcel number if property does not have street address)
- City, state and zip code: _____
- Nameplate capacity: _____ kW[7]
- Tier designation (check one):

  ☐ Tier 1 Project (less than or equal to 50 kW)

  ☐ Tier 2 Project (greater than 50 kW and less than or equal to 500 kW)[8]

    ☐ Tier 2-A (greater than 50 kW and less than or equal to 250 kW)

    ☐ Tier 2-B (greater than 250 kW and less than or equal to 500 kW)

  ☐ Tier 3 Project (greater than 500 kW and less than or equal to 2,000 kW)
- Operational status (check one):

  ☐ Project under development as of Bid Date

  ☐ Operation Date has occurred as of Bid Date
  Operation Date: _____
  Commencement Date (check one):

    ☐ June 1, 2011

    ☐ First day of the month following Execution Date
- Utility interconnection:

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[6] If the Project is located at multiple locations, the street address or parcel number for each location must be provided. A separate page may be attached if necessary.

[7] All capacity (kW) references are to the nameplate rating of the Generation Unit (DC at STC), as designated by the solar module manufacturer.

[8] Each Tier 2 Project must designate whether it is a Tier 2-A or Tier 2-B Project.

_____ Interconnecting Utility

- Supplemental funding from public sources (check if applicable):[9]

  ☐ Delaware Green Energy Program Grant
  Amount: _____

  ☐ Other grants from public sources (excluding grants in lieu of taxes)
  Amount and type: _____

- SREC credits (check if applicable):

  ☐ The Project qualifies for a 10% credit on SREC output (if applicable, the "***Delaware Equipment Bonus***") because the Project is sited in the State of Delaware and a minimum of 50% of the cost of renewable energy equipment, inclusive of mounting components, is manufactured in Delaware.

  ☐ The Project qualifies for a 10% credit on SREC output (if applicable, the "***Delaware Workforce Bonus***") because the Project is sited in the State of Delaware and is or will be constructed and/or installed either with a workforce at least 75% of whom are Delaware residents or by a company that employs at least 75% Delaware residents.

- Energy and SREC output

  Estimated first-year total energy output: _____ kWh[10]

  Estimated first-year total SREC output _____ SRECs

  Delaware Equipment Bonus: _____ SRECs
  (10% of total SREC output, if applicable)

  Delaware Workforce Bonus: _____ SRECs
  (10% of total SREC output, if applicable)

  Estimated SREC Quantity (first-year): _____ SRECs

E. Bid information:

- Date of receipt of Owner's application: _____
  [To be filled in by the SEU]

- Bid Price: $_____ / SREC (for first 10 Contract Years)
  [To be filled in for Tier 2-B and Tier 3 Projects only]

---

[9] If the Project has received a Delaware Green Energy Program Grant, the Owner shall deliver a copy of the grant award simultaneously with this Agreement.

[10] An analysis of the estimated first-year energy output using PVWatts Solar PV Energy Calculator or other modeling technique acceptable to the SEU is attached as Exhibit A hereto.

PART II
TERMS AND CONDITIONS

Section 2.1 Purchase and Sale of SRECs.

2.1.1 Sale. The Owner agrees to sell and deliver to the SEU all SRECs created by the Project (the "***Project SRECs***"), up to the Maximum Annual Quantity. The sale and delivery of SRECs pursuant to this Agreement shall be deemed to occur in the State of Delaware. The Owner acknowledges and agrees that the SEU intends to resell the Project SRECs to retail electric suppliers in Delaware.

2.1.2 Excess SRECs.

(a) If, during any Contract Year, a Tier 1 or Tier 2 Project generates any Excess Amount , the SEU shall, no later than 30 days after the end of such Contract Year, notify the Owner whether or not it will purchase all or any portion of such Excess Amount. Failure by the SEU to notify the Owner of such election within such time period shall be deemed an election by the SEU not to purchase the entire Excess Amount for such Contract Year. In the event the SEU elects not to purchase any SRECs comprising any portion of the Excess Amount created by a Tier 1 or Tier 2 Project for any Contract Year, and such SRECs were transferred to the GATS account of the SEU, the SEU shall promptly re-transfer such SRECs to the GATS account of the Owner or, if one is designated, the Owner Representative.

(b) If, during any Contract Year, a Tier 3 Project generates any Excess Amount and such SRECs were transferred to the GATS account of the SEU, the SEU shall promptly re-transfer such SRECs to the GATS account of the Owner or, if one is designated, the Owner Representative.

2.1.3 GATS Registration. The Owner or, if one is designated, the Owner Representative shall be responsible for transferring the Project SRECs to the SEU by registering such SRECs in the GATS account of the SEU. If PJM will accept an irrevocable standing order from the Owner directing that all Project SRECs be transferred automatically to the GATS account of the SEU, the Owner shall execute such an order, in a form acceptable to the SEU. If PJM will not accept an irrevocable standing order from the Owner, but will accept a revocable standing order directing that all Project SRECs be transferred automatically to the GATS account of the SEU, the Owner shall execute such an order, in a form acceptable to the SEU.

2.1.4 Term of Purchase.

(a) If the Operation Date of the Project did not occur prior to the Bid Date, the SEU's obligation to purchase SRECs shall commence as of the first day of the month after the Project is certified as an Eligible Energy Resource by the DPSC.

(b) If the Operation Date of the Project occurred prior to the Bid Date, the SEU's obligation to purchase SRECs shall commence as of June 1, 2011

or the first day of the month following the Execution Date, as specified in Paragraph D of Part I.

(c) The SEU's obligation to purchase SRECs shall continue for a period of 20 years after the Commencement Date.

2.1.5 Project SRECs. The Owner shall not be entitled to transfer or sell any SRECs other than Project SRECs pursuant to this Agreement. All Project SRECs shall be free and clear of any liens, taxes, claims, security interests or other encumbrances other than as provided for in Section 5.2.

Section 2.2 Operational Matters.

2.2.1 Interconnection.

(a) The Owner shall be solely responsible for interconnecting the Project to the electric transmission or distribution system of the Interconnecting Utility. The Owner shall submit a complete interconnection application (Step 1) to the Interconnecting Utility no later than 60 days after the Execution Date.

(b) If the Interconnecting Utility notifies the Owner that there will be a fee or charge (other than a standard interconnection application fee) required to interconnect the Project, the Owner may, within 10 days of such notice, elect to: (i) reduce the capacity of the Project to avoid or minimize such fee or charge; or (ii) terminate this Agreement.

(c) If the Owner elects to reduce the capacity of the Project pursuant to Section 2.2.1(b), it shall provide the SEU with written notice specifying the reduced nameplate capacity of the Project and upon such election, the Estimated SREC Quantity (first year) shall be deemed to be reduced by the same percentage as the reduction in the nameplate capacity. Promptly upon receipt of such election, the SEU shall return or release any excess Bid Deposit to the Owner.

(d) If the Owner elects to terminate this Agreement pursuant to Section 2.2.1(b), it shall provide the SEU with written notice of termination and promptly upon receipt of such election, the SEU shall return or release the entire Bid Deposit to the Owner.

2.2.2 Project Development. Unless the Project is operational as of the Execution Date, the Owner shall exercise all commercially reasonable efforts to complete construction of the Project, including obtaining all approvals of Governmental Authorities required in connection therewith.

2.2.3 Operation and Maintenance. The Owner shall operate and maintain the Project to ensure that it remains qualified as an Eligible Energy Resource at all times during the term of this Agreement.

2.2.4 Changes to Operational Characteristics. The Owner and, if one is designated, the Owner Representative shall promptly notify the SEU of any substantive changes to the operational characteristics of the Project, including providing the SREC Procurements Administrator with copies of any notices submitted to the DPSC pursuant to 26 Del. Admin C. § 3008(3.1.8) and any correspondence relating to any such notices.

2.2.5 Metering. The Owner shall: (a) install, operate, maintain and calibrate (as necessary) the Required Meter for the Project; (b) provide the SEU with a detailed description of the Required Meter (including meter ID, pulse radio, channels, etc., if any); (c) provide not less than 10 days advance notice of any testing or calibration of the Required Meter; and (d) deliver to the SEU copies of all test results of Required Meters promptly upon the completion of any such test. The SEU shall have the right to test any Required Meter and, if such meter is determined to be operating outside industry standards, to require the Owner to re-calibrate such meter, at the Owner's cost.

2.2.6 Inspection. The Owner shall permit the SEU and its designees to inspect the Project at any time during normal business hours to verify the Owner's compliance with the terms of this Agreement; *provided, however*, that the Owner shall not be responsible for the cost of any such inspection.

Section 2.3 Conditions.

2.3.1 Certification as an Eligible Energy Resource. The SEU's obligation to purchase Project SRECs is subject to the Project being certified as an Eligible Energy Resource by the DPSC.

2.3.2 Approval to Operate. The SEU's obligation to purchase Project SRECs is subject to the Owner's receipt of an approval to operate the Project from the Interconnecting Utility.

2.3.3 GATS Registration. The SEU's obligation to purchase Project SRECs is subject to the Owner's establishment of a GATS account.

2.3.4 Certifications. the Owner shall deliver to the SEU, promptly upon receipt thereof: (a) a copy of the DPSC certification of the Project as an Eligible Energy Resource; (b) a copy of the approval to operate the Project issued by the Interconnecting Utility; and (c) the Owner's GATS account number and a copy of the Owner's GATS registration. If the Project is designated as being eligible for the Delaware Equipment Bonus and/or the Delaware Workforce Bonus in Part I, the Owner shall provide the SEU with a copy of the DPSC certification that the Project qualifies for such credit(s) no later than 30 days after the Operation Date.

Section 2.4 Purchase Price and Payment Terms.

2.4.1 Purchase Price. The Purchase Price for Project SRECs transferred to the GATS account of the SEU pursuant to this Agreement shall be as set forth in the following table for the applicable tier. For Tier 1 and Tier 2-A Projects the SEU shall pay: (a) the Alternate Price for Project SRECs produced during Contract Years 1 through 10 from a Project that received a Delaware Green Energy Program grant under the program in

effect prior to December 10, 2010; and (b) the Base Price for Project SRECs produced during Contract Years 1 through 10 from any other Project.

Project	*Pricing*		
	Years 1-10		*Years 11-20*
	Base Price	*Alternate Price*	
Tier 1	$260/SREC	$235/SREC	$50/SREC
Tier 2-A	$240/SREC	$175/SREC	$50/SREC
Tier 2-B	Bid Price	Bid Price	$50/SREC
Tier 3	Bid Price	Bid Price	$50/SREC

2.4.2 SREC Bonus. If the Delaware Equipment Bonus or the Delaware Workforce Bonus is specified in Part I and the DPSC certifies that the Project qualifies for either such bonus, payment of the Purchase Price will be based on the number of Project SRECs plus an additional 10%. If the Delaware Equipment Bonus and the Delaware Workforce Bonus is specified in Part I and the DPSC certifies that the Project qualifies for both such bonuses, payment of the Purchase Price will be based on the number of Project SRECs plus an additional 20%.

2.4.3 Payment. Subject to the limitations set forth in this Agreement: (a) for a Tier 1 Project the SEU shall pay the Payee for Project SRECs no later than 10 days after the end of the calendar quarter in which such SRECs were originally registered in the GATS account of the SEU; and (b) for Tier 2 Projects and Tier 3 Projects the SEU shall pay the Payee for Project SRECs no later than thirty (30) days after the end of the calendar month in which such SRECs were originally registered in the GATS account of the SEU. The Program Administrator shall have the right to make payments hereunder by wire transfer. In the event the Program Administrator elects to make payment by wire transfer, Owner shall be responsible for providing the Program Administrator with account information and wiring instructions to facilitate such transfers.

2.4.4 Limitations.

(a) The SEU shall not be obligated to pay for any SRECs in excess of the Maximum Annual Quantity unless, with respect to SRECs from a Tier 1 or Tier 2 Project, it has agreed to purchase such Excess Amount pursuant to Section 2.1.2(a).

(b) The SEU may withhold payment of any amounts disputed in good faith.

Section 2.5 Completion Guarantee.

2.5.1 Guaranteed On-Line Date. The Owner shall cause the Operation Date to occur no later than the date which is 365 days after the Execution Date (such date, the "***Guaranteed On-Line Date***"), *provided, however*, that the Guaranteed On-Line Date shall be extended for up to 365 days due to: (a) a Force Majeure event; or (b) the failure by the Interconnecting Utility to complete the interconnection after the Owner submits a timely and complete interconnection application in accordance with Section 2.2.1.

2.5.2 Liquidated Damages for Delayed Operation Date.

(a) If the Operation Date does not occur by the Guaranteed On-Line Date, the Owner shall pay to the SEU, and if such amount is not paid, the SEU shall be entitled to draw against the Bid Deposit, an amount equal to 1/30 of the original Bid Deposit amount for each day (or portion thereof) of such delay.

(b) If the Operation Date does not occur by the date which is 31 days after the Guaranteed On-Line Date, the SEU shall have the right to terminate this Agreement.

(c) The remedies set forth in Sections 2.5.2(a) and 2.5.2(b) shall be the Owner's exclusive liability based on a delay in achieving or a failure to achieve the Operation Date by the Guaranteed On-Line Date.

(d) The Owner acknowledges and agrees that: (i) the SRECs being purchased by the SEU are for the benefit of certain retail electric suppliers operating in the State of Delaware; (ii) in the event the Operation Date does not occur by the Guaranteed On-Line Date, the damages to be suffered by the SEU and such electric suppliers would be difficult or impossible to determine with certainty; (iii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the liquidated damages set forth in Section 2.5.2(a) represent reasonable and genuine estimates of such damages; and (iv) such liquidated damages are not intended to and do not constitute a penalty.

Section 2.6 Representations, Warranties and Acknowledgements.

2.6.1 Representations and Warranties of Owner. The Owner hereby represents and warrants to the SEU as follows:

(a) unless it is an individual, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is duly authorized and qualified to do business therein, in Delaware and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary;

(b) it is not in violation of any Applicable Law in any manner that would reasonably be expected to affect its performance under this Agreement;

(c) there are no legal, administrative or arbitral proceedings or actions, controversies or investigations, now pending or to its knowledge threatened against it which, if adversely determined, could reasonably be expected to affect its performance under this Agreement;

(d) none of the execution, delivery or performance of this Agreement conflict with or result in a violation of the terms of its charter or by-laws or any agreement by which it is bound;

(e) the execution, delivery and performance of this Agreement have been duly authorized by all requisite action;

(f) this Agreement has been duly and validly executed and delivered by it and, when executed and delivered by the SEU, will constitute its legal, valid and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles;

(g) it has rights in, and good title to the Collateral, and has full power and authority to grant to the SEU the security interest in the Collateral and to execute, deliver and perform its obligations in accordance with the terms of this Agreement without the consent or approval of any other Person other than any consent or approval that has been obtained;

(h) the security interest granted by the Owner to the SEU pursuant to Section 5.2.1 constitutes a valid, legal and, upon the filing of the financing statements referred to in Section 5.2.2, a first-priority perfected security interest in all the Collateral granted by the Owner as security for the Secured Obligations;

(i) the information set forth in Part I is true and accurate in all respects;

(j) the Owner has received no supplemental funding from public sources other than the funding, if any, identified in Part I;

(k) all major components of the Project are or will be new and unused and are being or will be used for the first time in the Project; and

(l) its completed System Interconnection Application was accepted by the Interconnecting Utility after November 30, 2011.

2.6.2 Acknowledgements by Owner. The Owner hereby acknowledges and agrees that:

(a) the SEU has executed this Agreement and is purchasing Project SRECs for the benefit of certain retail electricity suppliers operating in the State of Delaware;

(b) in executing and performing this Agreement, the SEU is acting on behalf of such suppliers;

(c) such suppliers are third party beneficiaries of this Agreement who are entitled to directly enforce the terms hereof; and

(d) the SEU may appoint a third-party (the "***Contracting Agent***") to perform any or all of the obligations and responsibilities of the SEU pursuant to this Agreement and, in such event, the Owner shall recognize the authority of the Contracting Agent to perform such obligations and responsibilities.

2.6.3 Acknowledgement by SEU. The SEU acknowledges and agrees that it is not entitled to any portion of the energy output, capacity or ancillary services from the Project pursuant to this Agreement.

Section 2.7 Change in Estimated SREC Quantity. If, pursuant to Part I, the Owner claims to be entitled to the Delaware Equipment Bonus or the Delaware Workforce Bonus and the Owner fails to qualify for any such claimed credit, the Estimated SREC Quantity shall be reduced accordingly. An Owner may not modify the Estimated SREC Quantity except as permitted pursuant to this Section 2.7.

Section 2.8 Default And Remedies.

2.8.1 Events of Default. Each of the following shall constitute an "***Event of Default***" with respect to a Party:

(a) such Party fails to pay when due any amount owed pursuant to this Agreement (other than an amount disputed in good faith) for a period of 5 days following receipt of notice of such failure;

(b) any representation or warranty of such Party made pursuant to this Agreement shall have been incorrect when made and shall remain incorrect 30 days after notice thereof;

(c) with respect to the Owner and, if one is designated, the Owner Representative: (i) the Bid Deposit or, if applicable, the Supplemental Credit Support is not maintained or the issuer thereof repudiates its obligations thereunder; or (ii) the lien required pursuant to Section 5.2 ceases to be a perfected, first priority security interest;

(d) with respect to the Owner and, if one is designated, the Owner Representative, the nameplate rating of the Project varies from that set forth in Part I by more than: (i) 5% for a Tier 1 Project or a Tier 2 Project; or (ii) 2.5% for a Tier 3 Project;

(e) with respect to the Owner and, if one is designated, the Owner Representative, any Project SRECs (other than any Excess Amount generated by a Tier 3 Project or any Excess Amount generated by a Tier 1

or Tier 2 Project that the SEU elects not to purchase pursuant to Section 2.1.2(a)) are not transferred to the SEU;

(f) with respect to the Owner and, if one is designated, the Owner Representative, the Project shall have been designated in Part I as eligible for the Delaware Equipment Bonus or the Delaware Workforce Bonus and the DPSC shall have failed to certify the Project as eligible for any such designated credit within 30 days after the Operation Date;

(g) with respect to the Owner Representative, if one is designated, it fails to satisfy the qualifications to be an Owner Representative;

(h) such Party fails to perform any other obligation pursuant to this Agreement for a period of 30 days following receipt of notice of such failure; or

(i) a proceeding is instituted against such Party seeking to adjudicate it as bankrupt or insolvent and such proceeding is not dismissed within 60 days of filing; such Party makes a general assignment for the benefit of its creditors; a receiver is appointed on account of the insolvency of such Party; such Party files a petition seeking to take advantage of any Applicable Law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts; or such Party is unable to pay its debts when due or as they mature.

2.8.2 General Remedies.

(a) Upon the occurrence of an Event of Default by the Owner, the SEU shall be entitled to: (i) exercise any remedies described in this Agreement which, unless specified to be exclusive, shall be deemed non-exclusive; and (ii) exercise any other remedies available at law or in equity, including specific performance or termination of this Agreement and/or (iii) suspend its performance hereunder.

(b) Upon the occurrence of an Event of Default by the Owner Representative (which occurrence does not constitute an Event of Default by the Owner), the Owner and/or the SEU shall be entitled to: (i) exercise any remedies described in this Agreement (including the remedy set forth in Section 5.2.3) which, unless specified to be exclusive, shall be deemed non-exclusive; (ii) exercise any other remedies available at law or in equity, including specific performance; and (iii) remove the Owner Representative as a Party to this Agreement; *provided, however*, that the Owner may not terminate this Agreement based on an Event of Default by the Owner Representative.

(c) Upon the occurrence of an Event of Default by the SEU, the Owner shall be entitled to: (i) exercise any remedies described in this Agreement which, unless specified to be exclusive, shall be deemed non-exclusive; (ii) exercise any other remedies available at law or in equity, including

specific performance or termination of this Agreement; and/or (iii) suspend its performance hereunder. During any such suspension, the Owner and, if one is designated, the Owner Representative, shall have the right to transfer and sell Project SRECs to one or more third parties in order to mitigate its damages hereunder.

2.8.3 Specific Remedies.

(a) Upon the occurrence of an Event of Default described in Section 2.8.1(e), the SEU may terminate this Agreement and recover damages equal to the difference, if positive, between the Purchase Price under this Agreement and the market price for SRECs (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the SEU). Recovery of such damages shall be in addition to any other remedies provided for in this Agreement.

(b) Upon the occurrence of an Event of Default described in Section 2.8.1(f), the SEU may terminate this Agreement and recover damages equal to the remaining balance of the Bid Deposit. Payment or forfeiture of such amount shall be the exclusive liability of the Owner in such event.

(c) The Owner and, if one is designated, the Owner Representative, acknowledges and agrees that: (i) in the event not all Project SRECs are transferred to the SEU or the Project fails to qualify for the Delaware Workforce Bonus after the SEU allots a portion of its procurement for SREC credits, the damages to be suffered by the SEU and certain retail electricity suppliers would be difficult or impossible to determine with certainty; (ii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the liquidated damages set forth in Sections 2.8.3(a) and 2.8.3(b) represent reasonable and genuine estimates of such damages; and (iii) such liquidated damages are not intended to and do not constitute a penalty.

2.8.4 Limitations of Liability.

(a) Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract, or otherwise.

(b) Except to the extent provided otherwise in this Agreement, the Owner Representative shall not be liable for a breach or default by the Owner.

Section 2.9 Force Majeure.

2.9.1 Excused Performance. Notwithstanding any other provision of this Agreement, a Party shall be excused from performance hereunder (other than payment of amount due) to the extent it is unable to perform due to a Force Majeure event.

2.9.2 Conditions. A Party claiming Force Majeure shall: (a) have the burden of proving the existence and consequences of a Force Majeure event; and (b) exercise all commercially reasonable efforts to resume performance as soon as reasonably practicable. The suspension of performance due to a Force Majeure shall be of no greater scope and of no longer duration than is required by such Force Majeure.

2.9.3 Notification. A Party affected by a Force Majeure event shall: (a) provide prompt written notice of such Force Majeure event to the other Party (in no event later than 5 days after the occurrence of such Force Majeure event), which notice shall include a description of the Force Majeure event and its effect on performance under this Agreement, and an estimate of the expected duration of such Party's inability to perform due to the Force Majeure; (b) keep the other Party reasonably apprised of efforts to address, and mitigate the impact of, the Force Majeure event; and (c) provide prompt notice to the other Party as soon as it is able to resume performance.

2.9.4 No Term Extension. In no event will any delay or failure of performance caused by a Force Majeure extend the term of this Agreement.

2.9.5 Extended Force Majeure. In the event that the Owner suffers a Force Majeure event that prevents it from performing hereunder for a period of 1 year or more, the SEU may, by written notice, terminate this Agreement without liability to the Owner.

PART III
OWNER REPRESENTATIVE

The provisions of this Part III shall apply only if an Owner Representative is designated in Paragraph B of Part 1.

Section 3.1 Agency Appointment. Subject to the Owner's rights to terminate or replace the Owner Representative pursuant to Section 3.3, the Owner hereby appoints the Owner Representative as the Owner's exclusive agent to manage, control, transfer, deposit and register the Project SRECs pursuant to the terms of this Agreement.

Section 3.2 Agency Responsibility. The Owner Representative shall be responsible for managing, controlling, transferring, depositing and registering the Project SRECs on behalf of the Owner within GATS pursuant to the terms of this Agreement. If the Owner has designated the Owner Representative as the Payee, the Owner Representative shall accept all payments hereunder as agent for, and on behalf of, the Owner.

Section 3.3 Termination or Replacement of Owner Representative.

3.3.1 Right to Terminate or Replace. the Owner may, at its discretion, terminate and/or replace the Owner Representative at any time and for any reason (or no reason), *provided, however,* that: (a) the Owner shall immediately notify the SEU of such termination or replacement; (b) if the Owner is required to have an Owner Representative, the Owner shall, no later than 3 Business Days after the termination or replacement of the Owner Representative, designate a replacement the Owner Representative and provide the SEU with the name, address and contact information for such replacement Owner Representative.

3.3.2 Effect of Termination or Replacement. Immediately upon receipt by the SEU of written notice in accordance herewith from the Owner that an Owner Representative is being terminated or replaced, such Owner Representative shall be deemed to no longer be a Party to this Agreement. Termination or replacement of the Owner Representative shall not affect any other contractual arrangements between the Owner and the Owner Representative.

3.3.3 Replacement Owner Representative.

(a) Immediately upon receipt by the SEU of: (i) written notice in accordance herewith from the Owner that it has designated a replacement Owner Representative; and (ii) an executed counterpart of this Agreement, signed by such replacement Owner Representative, such replacement Owner Representative shall be deemed to be a Party to this Agreement.

(b) If the Owner: (i) terminates the Owner Representative; (ii) is required to have an Owner Representative; and (iii) fails to designate a replacement Owner Representative within 10 Business Days after the termination or replacement of the Owner Representative, the SEU may, in its discretion, designate a replacement Owner Representative.

Section 3.4 Representations and Warranties of Owner Representative. The Owner Representative hereby represents and warrants to the SEU as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is duly authorized and qualified to do business therein, in Delaware and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary;

(b) it is not in violation of any Applicable Law in any manner that would reasonably be expected to affect its performance under this Agreement;

(c) there are no legal, administrative or arbitral proceedings or actions, controversies or investigations, now pending or to its knowledge threatened against it which, if adversely determined, could reasonably be expected to affect its performance under this Agreement;

(d) none of the execution, delivery or performance of this Agreement conflict with or result in a violation of the terms of its charter or by-laws or any agreement by which it is bound;

(e) the execution, delivery and performance of this Agreement have been duly authorized by all requisite action;

(f) this Agreement has been duly and validly executed and delivered by it and, when executed and delivered by the Owner and the SEU, will constitute its legal, valid and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by

bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles;

(g) the description of the Project set forth in Part I is true and accurate in all respects; and

(h) it satisfies the qualifications to be an Owner Representative.

PART IV
MINIMUM ANNUAL QUANTITY

The provisions of this Part IV shall apply only if the Project is designated as a Tier 3 Project in Paragraph D of Part 1.

Section 4.1 Guaranteed Quantity.

4.1.1 Minimum Annual Quantity. During each Contact Year, the Owner shall transfer Project SRECs in an amount equal to no less than 80% of the Annual Contract Quantity (such amount, the "***Minimum Annual Quantity***").

4.1.2 Liquidated Damages.

(a) If, during any Contact Year, the Owner fails to transfer the Minimum Annual Quantity of Project SRECs to the SEU, the Owner shall pay the SEU liquidated damages equal to the product of: (i) the difference between the Minimum Annual Quantity and the quantity of Project SRECs delivered during such Contact Year; and (ii) the difference, if positive, between (A) the lesser of the prevailing market price of SRECs, as reasonably determined by the SEU, and the applicable Alternative Compliance Payment and (B) the applicable price for Project SRECs under this Agreement.

(b) The Owner and, if one is designated, the Owner Representative acknowledge and agree that: (i) the Project SRECs are for the benefit of certain retail electric suppliers operating in the State of Delaware; (ii) if the Project produces less than the Minimum Annual Quantity during any Contact Year, the damages to be suffered by the SEU and such electric suppliers would be difficult or impossible to determine with certainty; (iii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the liquidated damages set forth in Section 4.1.2(a) represent reasonable and genuine estimates of such damages; and (iv) such liquidated damages are not intended to and do not constitute a penalty.

Section 4.2 Supplemental Credit Support.

4.2.1 Obligation to Maintain. The Owner shall at all times maintain credit support (the "***Supplemental Credit Support***") in the following amounts:

(a) during the first 10 Contract Years, 5% of the value of the Annual Contract Quantity for the first Contract Year; and

(b) during the second 10 Contract Years, 10% of the value of the Annual Contract Quantity for the eleventh Contract Year.

4.2.2 Form of Supplemental Credit Support. The Supplemental Credit Support shall be in the form of cash, a letter of credit or other collateral acceptable to the SEU. No interest shall be owed with respect to Supplemental Credit Support in the form of cash.

4.2.3 Obligation to Replenish. If the SEU draws on the Supplemental Credit Support, the Owner must replenish such Supplemental Credit Support to the required level within 3 Business Days.

PART V
CREDIT SUPPORT

Section 5.1 Bid Deposit.

5.1.1 Posting of Deposit. Unless the Project is designated as an "Operating Project" in Paragraph D of Part I (in which case no Bid Deposit was provided), the Owner shall cause the Bid Deposit to remain in effect for the benefit of the SEU. No interest shall be owed with respect to a Bid Deposit in the form of cash.

5.1.2 Return or Release of Deposit. Unless the Bid Deposit has been returned or released pursuant to Section 2.2.1(d), the SEU shall return or release any remaining balance of the Bid Deposit promptly after: (a) it receives written verification that the DPSC has certified the Project as an Eligible Energy Resource; and (b) if the Project is a Tier 3 Project, the Owner provides the Supplemental Credit Support; and (c) the Owner grants the lien described in Section 5.2.

5.1.3 Application of Deposit. The SEU shall be entitled to call on and/or apply the Bid Deposit as provided pursuant to this Agreement.

Section 5.2 Security Interest.

5.2.1 Grant.

(a) As security for the performance by the Owner of its obligations under this Agreement (the "***Secured Obligations***"), the Owner hereby grants to the SEU a first-priority security interest, lien and pledge in and to all of the Owner's right, title and interest in and to all Project SRECs, the GATS account of the Owner, all legal and economic attributes of the foregoing, whether now existing or hereafter arising, and all proceeds of the sale of any the foregoing (collectively, the "***Collateral***").

(b) The SEU's security interest in and to the Collateral and the SEU's rights and the Owner's obligations hereunder, shall be absolute and unconditional irrespective of: (i) any change in the time, manner or place

of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the terms governing the Secured Obligations; (ii) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to or departure from any guaranty, for any and all of the Secured Obligations; or (iii) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Owner in respect of the Secured Obligations or this Agreement.

5.2.2 Filing and Perfection.

(a) The SEU is hereby authorized to file one or more financing statements, continuation statements and/or any other documents required for the purpose of perfecting, confirming, continuing, enforcing or protecting the SEU's security interest in the Collateral, with or without the signature of the Owner, naming the Owner as "debtor" and the SEU as "secured party."

(b) The Owner, at its sole cost and expense, shall execute, acknowledge, deliver and cause to be duly filed any and all consents, instruments, certificates and documents and take any and all actions as the SEU may, at any time and from time to time, reasonably request in order to perfect, preserve and protect the SEU's security interest in and to the Collateral and the rights and remedies created hereby.

5.2.3 Remedy. Upon the occurrence of an Event of Default by the Owner, the SEU may take any lawful action that it deems necessary or appropriate to protect or realize upon its security interest in the Collateral or any part thereof, or exercise any other or additional rights or remedies exercisable by a secured party under the UCC or under any other Applicable Law, including selling the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or elsewhere, at such price or prices and on such other terms as the SEU may deem commercially reasonable in accordance with the UCC and as permitted by Applicable Law.

PART VI
DEFINITIONS; RULES OF CONSTRUCTION

Section 6.1 Definitions

. The following capitalized terms have the following meanings when used in this Agreement:"***Affiliate***" means, with respect to any Person, another Person that controls, is under the control of, or is under common control with, such Person. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

"***Agreement***" means this Solar Renewable Energy Credit Transfer Agreement between the Owner, the SEU and, if one is designated, the Owner Representative.

"***Alternative Compliance Payment***" has the meaning set forth in the REPSA.

"***Annual Contract Quantity***" means: (a) for the first Contract Year, the Estimated SREC Quantity; and (b) for each subsequent Contract Year, 99.5% of the Annual Contract Quantity in effect for the immediately preceding Contract Year.

"***Applicable Law***" means any law, statute, treaty, code, ordinance, regulation, certificate, order, license, permit or other binding requirement of any Governmental Authority now in effect or hereafter enacted, amendment to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction and any judicial, administrative, arbitral or regulatory decree, judgment, injunction, writ, order, award or like action applicable to any Party.

"***Bid Date***" shall mean the date specified as such in Paragraph E of Part I.

"***Bid Deposit***" means a deposit in the amount of $100 per kW of the nameplate rating (DC at STC as designated by the solar module manufacturer) of the Project, in the form of a bid bond, letter of credit or cash.

"***Business Day***" means any calendar day that is not a Saturday, a Sunday or a state or federal holiday on which banks in Delaware are permitted or authorized to close.

"***Code***" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

"***Collateral***" has the meaning set forth in Section 5.2.1(a).

"***Commencement Date***" means the date as of which the SEU is obligated to purchase SRECs hereunder, as specified in Section 2.1.4(a) or 2.1.4(b).

"***Contract Year***" means each 12-month period commencing on the Commencement Date and each anniversary thereof.

"***Contracting Agent***" has the meaning set forth in Section 2.6.2.

"***DC***" means direct current electric energy.

"***Delaware Equipment Bonus***" has the meaning set forth in Paragraph D of Part I.

"***Delaware Workforce Bonus***" has the meaning set forth in Paragraph D of Part I.

"***DPSC***" means the Delaware Public Service Commission or any successor agency.

"***Eligible Energy Resource***" has the same meaning set forth in REPSA.

"***Environmental Attribute***" means any attribute of an environmental or similar nature (including all Generation Attributes) that is created or otherwise arises from the Project's generation of electricity from solar energy in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, excluding: (a) any such attribute not legally capable of being transferred to the SEU; and (ii) Tax Credits. Forms of Environmental Attributes include any and all environmental air quality credits, green credits, carbon credits,

carbon tax credits, emissions reduction credits, greenhouse gas credits, certificates, tags, offsets, allowances, or similar products, rights, claims or benefits, howsoever entitled, including those: (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide or other greenhouse gas, carbon monoxide, particulate matter, or similar pollutants or contaminants of air, water, or soil; or (ii) attributable to the generation, purchase, sale, or use of energy from solar or renewable resources. Environmental Attributes include those currently existing (such as SRECs) or arising during the term of this Agreement under local, state, regional, federal or international legislation or regulation relevant to the avoidance of any emission or to the promotion of renewable energy under any governmental, regulatory or voluntary programs, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws, or regulations involving or administered by the Clean Air Markets Division or other division or branch of the U.S. Environmental Protection Agency or any successor administrator or other federal agency or department, or any local, state, regional, or federal entity given jurisdiction over a program, or any voluntary program, involving transferability of, or credit or reporting rights or other rights or benefits for, attributes of an environmental or similar nature.

"***Estimated SREC Quantity***" means the quantity of SRECs designated in Paragraph D of Part I, as such quantity may be reduced pursuant to Section 2.7.

"***Event of Default***" has the meaning set forth in Section 2.8.1.

"***Excess Amount***" means the quantity of SRECs, if any, in excess of the Maximum Annual Quantity created by a Project during any Contract Year.

"***Execution Date***" means the date this Agreement is signed by the SEU, as designated on the signature page of the counterpart executed by the SEU.

"***Force Majeure***" means an event or circumstance that prevents a Party from performing its obligations in accordance with the terms of this Agreement, which event or circumstance is not within the reasonable control, or the result of negligence, of such Party, including acts of God; unusually severe actions of the elements such as floods, inundation, landslides, earthquake, lightning, hurricanes, or tornadoes; unusually severe weather; terrorism; war (whether or not declared); sabotage, acts or threats of terrorism, riots or public disorders; national or regional strikes or labor disputes; delay in delivery of equipment comprising the Project so long as such equipment was ordered within 90 days of the Execution Date; and actions or failures to act of any Governmental Authority (including the failure to issue permits); *provided, however*, that Force Majeure shall not include: (a) any strike or labor dispute by any employees or the Owner or any other employees of contractors employed at the Project and aimed at the Owner or such contractor(s); (ii) changes in, or that otherwise affect, the price of SRECs; or (iii) equipment failure, unless caused by a circumstance that would otherwise constitute a Force Majeure.

"***GATS***" means the generation attribute tracking system used by PJM Interconnection, LLC to facilitate the transfer of SRECs.

"***Generation Attribute***" means any characteristic of the solar energy output of the Project other than energy, capacity or Tax Credits, including the Project's generation source, geographic location, emission credits, carbon credits, vintage and eligibility for a renewable energy portfolio

standard or comparable standard or program, including "generation attributes" as defined in REPSA.

"***Governmental Authority***" means any federal, state, local or municipal government, or quasi-governmental, regulatory or administrative agency, commission, court, tribunal or other body or authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory, taxing or other binding jurisdiction, authority or power, including PJM, GATS and NERC.

"***Guaranteed On-Line Date***" has the meaning set forth in Section 2.5.1.

"***Interconnecting Utility***" means the Person that owns the electric transmission or distribution system with which the Project is directly interconnected.

"***kW***" means 1 kilowatt of electric power.

"***Maximum Annual Quantity***" means, for each Contract Year, 110% of the Annual Contract Quantity.

"***Minimum Annual Quantity***" has the meaning set forth in Section 4.1.1.

"***MWh***" means 1 megawatt hour of electric energy.

"***Operation Date***" means the date on which the Project commences generating electricity.

"***Owner***" means the Person identified as such in Paragraph A of Part I.

"***Owner Representative***" means the Person, if any identified as such in Paragraph B of Part I.

"***Party***" means each of the Owner, the SEU and, if one is designated, the Owner Representative.

"***Payee***" means the Owner or the Owner Representative, as designated in Paragraph C of Part I.

"***Person***" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"***PJM***" means PJM Interconnection, LLC or any successor organization thereto.

"***Project***" has the meaning set forth in the introductory paragraph of this Agreement, as such Project is described further in Paragraph D of Part I.

"***Project SRECs***" has the meaning set forth in Section 2.1.1.

"***Purchase Price***" means, with respect to any Contract Year, the amount per Project SREC to be paid by the SEU in accordance with Section 2.4.1.

"***REPSA***" means the Delaware Renewable Energy Portfolio Standards Act (26 Del. C. §§ 351 *et seq.*), as amended, and the implementing rules and regulations thereunder.

"***Required Meter***" means: (a) for a Tier 1 Project, a standard, utility-grade meter capable of on-line monitoring; or (b) for a Tier 2 Project or Tier 3 Project, a revenue-grade meter capable of on-line monitoring.

"***Secured Obligations***" has the meaning set forth in Section 5.2.1(a).

"***SEU Agreement***" means the agreement between the SEU and certain participating retail electricity suppliers operating in the State of Delaware pertaining to the purchase by such suppliers of SRECs from the SEU.

"***SEU***" means the Delaware Sustainable Energy Utility, Inc. or any successor organization thereto.

"***SREC***" means a tradable instrument that represents the Environmental Attributes associated with 1 MWh of electric energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology.

"***STC***" means standards test conditions, which are: (a) internal cell temperature of 25° C; and (b) irradiance of 1,000 watts per square meter with an air mass 1.5 spectrum.

"***Supplemental Credit Support***" has the meaning set forth in Section 4.2.1.

"***Tax Credits***" means: (a) investment tax credits under Section 48 of the Code; (b) cash grants in lieu of investment tax credits as described in Section 1603 of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5); and (c) any federal, state, or local tax credits, cash grants in lieu of tax credits, tax exemptions, depreciation, tax attributes or benefits, or similar programs determined by reference to the construction, operation or ownership of, investment in, or production of electricity from, renewable energy production facilities, in each case whether in existence as of the Bid Date or arising thereafter; *provided, however*, that Tax Credits shall not include any carbon tax credits.

"***Tier 1 Project***" has the meaning set forth in Paragraph D of Part I.

"***Tier 2 Project***" has the meaning set forth in Paragraph D of Part I.

"***Tier 2-A Project***" has the meaning set forth in Paragraph D of Part I.

"***Tier 2-B Project***" has the meaning set forth in Paragraph D of Part I.

"***Tier 3 Project***" has the meaning set forth in Paragraph D of Part I.

"***UCC***" means the Uniform Commercial Code as in effect in the State of Delaware.

Section 6.2 Rules of Construction. The following rules of construction shall apply when interpreting the terms of this Agreement:

(a) references to "Parts," "Sections," or "Exhibits" shall be to Parts, Sections or Exhibits of this Agreement unless expressly provided otherwise;

(b) each Exhibit to this Agreement shall be deemed to be incorporated herein by reference as if such Exhibit were set forth in its entirety herein;

(c) the terms "herein," "hereby," "hereunder," "hereof" and terms of similar import in this Agreement refer to the Agreement as a whole and not to any particular subdivision unless expressly so limited and the term "this Section" refers only to the Section hereof in which such words occur;

(d) use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation";

(e) any reference to any Applicable Law shall be deemed to refer to that law as it may be amended from time to time;

(f) the headings appearing in this Agreement are for convenience only, do not constitute any part of this Agreement and shall be disregarded in construing the language contained herein; and

(g) no term of this Agreement shall be construed in favor of, or against, a Party as a consequence of one Party having had a greater role in the preparation or drafting of this Agreement, but shall be construed as if the language were mutually drafted by both Parties with full assistance of counsel.

PART VII
GENERAL PROVISIONS

Section 7.1 Notices. Any notices, requests, consents or other communications required or authorized to be given by one Party to another Party pursuant to this Agreement shall be in writing. Such communications directed to the Owner or, if one is designated, the Owner Representative, shall be addressed as set forth in Part I. Communications directed to the SEU shall be addressed as set forth below. Any Party may update its address for notice by providing written notice in accordance herewith. Written notices, requests, consents and other communications shall be deemed to have been received on the Business Day following the day on which it was delivered. Notwithstanding the foregoing, in the event the SEU establishes an on-line web site for certain routine communications pursuant to this Agreement, notice of such routine matters shall be permitted in accordance with procedures established by the SEU.

SEU:

[Contract Administrator]

Section 7.2 Governing Law. This Agreement and the rights and obligations of the Parties shall be governed by and construed, enforced and performed in accordance with the laws of the State of Delaware, without regard to principles of conflicts of law.

Section 7.3 Dispute Resolution. All disputes arising between or among the Parties pursuant to this Agreement shall be submitted to neutral, non-binding mediation. If the Parties to such dispute are unable to agree upon a mutually acceptable mediator, each such Party shall designate a mediator and those mediators shall agree on a single, neutral mediator to conduct the mediation. All costs of the neutral mediator shall be shared equally by the Parties. If the Parties are unable to resolve a dispute within 30 days of the dispute being submitted to mediation, any Party to the dispute shall be entitled to initiate litigation in a court of competent jurisdiction.

Section 7.4 Jurisdiction and Venue. THE PARTIES AGREE THAT JURISDICTION AND VENUE IN ANY ACTION BROUGHT BY ANY PARTY PURSUANT TO THIS AGREEMENT SHALL PROPERLY (AND EXCLUSIVELY) LIE IN ANY FEDERAL OR STATE COURT LOCATED IN NEW CASTLE COUNTY, DELAWARE. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT FOR ITSELF AND IN RESPECT OF ITS PROPERTY WITH RESPECT TO SUCH ACTION. EACH PARTY IRREVOCABLY AGREES THAT VENUE WOULD BE PROPER IN ANY SUCH COURT, AND HEREBY WAIVES ANY OBJECTION THAT ANY SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH ACTION.

Section 7.5 Service of Process. Each Party: (a) irrevocably waives personal service of process in any litigation relating to this Agreement; and (b) irrevocably consents to service of process in any action or proceeding arising out of, or relating to, this Agreement by the mailing of copies thereof by registered mail, postage prepaid, such service to become effective 10 days after such mailing; *provided, however*, that nothing in this Section 7.5 shall affect the right of a Party to serve process in any other manner permitted by Applicable Law.

Section 7.6 Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND AS SEPARATELY BARGAINED-FOR CONSIDERATION, EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY CLAIM ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

Section 7.7 Records. Each Party shall keep and maintain complete and accurate records and all other data reasonably necessary for the proper administration of this Agreement. Any Party shall provide such records and data to another Party within 15 days of a written request for such information. All such records and data shall be retained by each Party for at least 3 years following the year in which such records were created.

Section 7.8 Assignment.

7.8.1 Restrictions. Except as permitted pursuant to Section 7.8.2, neither the Owner nor the Owner Representative may assign this Agreement or any portion thereof, without the prior written consent of the SEU. Without limiting the foregoing, the Owner may not sell, assign, convey, dispose of or otherwise transfer the Project without assigning this Agreement to the purchaser, assignee or transferee.

7.8.2 Permitted Assignments. The Owner may assign this Agreement without the consent of the SEU: (a) in connection with any financing of the Project; or (b) to a purchaser or transferee of the Project. With respect to any permitted assignment of this Agreement: (i) the assigning Party shall provide at least thirty (30) days prior notice of

any such assignment, which notice shall include the name of, and contact information for, the assignee; (ii) the assignee shall expressly assume the assignor's obligations hereunder pursuant to an agreement in form and substance reasonably acceptable to the non-assigning Party; and (iii) no such assignment shall relieve the assignor of its obligations hereunder.

7.8.3 Consent to Assignment. Upon or prior to a permitted assignment in connection with a financing of the Project, the SEU agrees to execute a written consent in a form reasonably acceptable to the SEU. If such written consent is not requested, the Owner shall notify the SEU of any such assignment to its secured lender(s) no later than thirty (30) days after such assignment.

7.8.4 Binding Effect. This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

Section 7.9 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to a Party upon any breach or default by the other Party shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

Section 7.10 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture, or partnership between or among any of the Parties or to impose any partnership obligation or liability upon any Party.

Section 7.11 Survival of Obligations. Applicable provisions of this Agreement shall continue in effect after expiration or termination of this Agreement, including early termination, to the extent necessary to enforce or complete the duties, obligations and responsibilities of the Parties arising prior to such expiration or termination, including to provide for final billings and adjustments related to the period prior to termination and payment of any money owed pursuant to this Agreement.

Section 7.12 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants and conditions of the Agreement shall remain in full force and effect.

Section 7.13 Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties and supersedes all previous and collateral agreements or understandings with respect to the subject matter hereof.

Section 7.14 Amendments. Amendments to the terms of this Agreement (including any Exhibit hereto) shall only be effective if made in writing and signed by the Parties.

Section 7.15 Headings. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 7.16 Counterparts. This Agreement and any amendment hereto may be executed in two or more counterparts, all of which taken together shall constitute a single agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Owner:

_____

[Name of Owner]

By: _____

Owner Representative:

_____

[Name of Owner Representative]

By: _____

Delaware Sustainable Energy Utility, Inc.

By: _____

Date: _____

Exhibit A
Estimated First Year Energy Output

_____ kWh