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Docket NO  
14-41

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January 27, 2014

**VIA ELECTRONIC MAIL AND  
HAND DELIVERY**

Alisa Bentley, Secretary  
Delaware Public Service Commission  
Cannon Building, Suite 100  
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Dover, DE 19904

DR  
Alisa  
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2014 JAN 27 PM 3 38  
DELAWARE P.S.G.

Re: Application for Approval of the 2014 Program for the Procurement of Solar Renewable Energy Credits

Dear Secretary Bentley:

Enclosed please an original and ten (10) copies of: (1) Delmarva Power & Light Company's ("Delmarva") Application for Approval of the 2014 Program for the Procurement of Solar Renewable Energy Credits; and (2) Delmarva's Report in Support of its Application for Approval of the 2014 Program for the Procurement of Solar Renewable Energy Credits. Also enclosed is a check in the amount of \$150.00 for the filing fee for this Application. As noted in the Petition, Delmarva respectfully requests that this Application be heard by the Commission on an expedited basis.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

Pamela J. Scott

Enclosures

Docket NO. 14-41

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER AND LIGHT ) PSC DOCKET NO  
COMPANY FOR APPROVAL OF THE 2014 )  
PROGRAM FOR THE PROCUREMENT OF )  
SOLAR RENEWABLE ENERGY CREDITS )

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**DELMARVA POWER AND LIGHT COMPANY'S APPLICATION  
FOR APPROVAL OF THE 2014 PROGRAM FOR THE  
PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS**

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Dated: January 27, 2014

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2014 JAN 27 PM 3 42  
DELAWARE P.S.C.

Delmarva Power & Light Company (“Delmarva Power” or “Delmarva”), through its undersigned counsel, hereby submits this application (the “Application”) pursuant to 26 *Del. C.* § 351 *et seq.* for approval by the Delaware Public Service Commission (the “Commission”) of the attached 2014 Program for the Procurement of Solar Renewable Energy Credits (the “2014 Program”) developed by the Renewable Energy Taskforce, of which Delmarva Power is a member.<sup>1</sup> 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 REPSA) to meet a portion of their annual retail load<sup>2</sup>. Beginning with compliance year 2010,

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<sup>1</sup> As the only current electric supplier participating in the SREC auction process, Delmarva is submitting the 2014 Program to the Commission for approval. However, the 2014 Program is presented by and supported by the Renewable Energy Taskforce.

<sup>2</sup> REPSA was further amended in July of 2011 to provide: “[b]eginning with compliance year 2012, commission-regulated electric companies shall be responsible for procuring RECs, SRECs and any other attribute needed to comply with subsection (a) of this Section with respect to all energy delivered to such companies’ end use customers”. 26 *Del. C.* §354(c). As such, Delmarva

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). 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;

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Power is the only Commission regulated electric supplier responsible for REPSA compliance for its entire distribution load.

- 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.

## **II. The Pilot Program and Evaluation of the Pilot Program**

5. Following its formation and after meeting for almost a year, the Taskforce developed a Pilot Program for the Procurement of Solar Renewable Energy Credits (the “Pilot Program”). The Pilot Program was designed as a 1-year program to be re-evaluated each year to determine whether it was meeting the goals of REPSA effectively.

6. The application for the Pilot Program was filed with the Commission on September 11, 2011 and approved with modifications by Order No. 8075, dated November 8, 2011. On December 20, 2011, the Commission issued Final Findings, Opinion and Order No. 8093 (the “2011 Commission Order”), setting forth the reasons for its approval of the Pilot Program with modifications.

7. In accordance with the 2011 Commission Order, the Commission retained Meister Consultants Group (“Meister”) to evaluate the Pilot Program. Meister produced a report on August 3, 2012 (the “Meister Report”) whereby Meister concluded that the solicitation under the Pilot Program was well subscribed, with each of the program tiers being oversubscribed by at

least 2 to 1. Based upon feedback from subscribers as well as its own analysis, Meister identified potential modifications to the Pilot Program to reduce ratepayer impact and create a more competitive solicitation. The Taskforce considered the findings in the Meister Report in developing the 2013 SREC Procurement Program (the “2013 Program”).

### **III. The 2013 SREC Procurement Program**

8. On November 20, 2012, Delmarva filed an application with the Commission seeking approval of the 2013 Program. The Commission held an evidentiary hearing on January 22, 2013 and approved the 2013 Program with certain modifications (Order No. 8281). On September 10, 2013, the Commission issued its Final Findings, Opinion and Order No. 8450 (the “2013 Commission Order”) setting forth the reasons for its approval of the 2013 Program with modifications.

9. The 2013 Commission Order provided for the Commission to retain a consultant to review the 2013 Program. (Order No. 8450, ¶33). The Commission retained New Energy Opportunities, Inc. and LaCapra Associates, Inc. (the “Consultants”) to evaluate the 2013 Program.

10. Consultants produced a report on August 7, 2013, revised November 20, 2013 (“Consultants’ Report”), attached hereto as **Exhibit “A”**, finding that: (a) Delmarva should continue to make long term purchases of SRECs from existing projects but should consider removing tiers for the next solicitation; (b) Delmarva should continue to purchase some amount of SRECs on the spot market; (c) Delmarva should maintain the competitive bidding process for all tiers but improve outreach to and education of prospective participants, especially homeowners and non-industry participants; and (d) consideration should be given to making changes to the SREC Transfer Agreement to avoid a large amount of bidding ties and to reduce

or eliminate any incentive for bidders to bid \$0 for the first seven (7) years of the contract. Overall, the Consultants concluded that the 2013 Program was conducted fairly and in a professional manner and that the redesign of the Program to include competitive bidding and provide that owners of existing projects could be eligible bidders resulted in lower costs which ultimately benefitted ratepayers.

11. Since the approval of the Pilot Program and the 2013 Program (collectively, "SREC Programs"), the Taskforce has continued to meet to evaluate the results of the SREC Programs and to develop a plan for procurement of SRECs in subsequent years. In developing the 2014 Program being presented to the Commission in this Application, the Taskforce considered a wide range of information and feedback, including the Consultants' Report and the guidance set forth in the 2013 Commission Order.

#### **IV. The 2014 Program**

12. The purpose of the 2014 Program is to continue the goals of the SREC Programs of creating a market for SRECs in Delaware, and providing 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 2014 Program and the ways in which it differs from the 2013 Program are highlighted below. The 2014 Program, including attachments, is attached hereto as **Exhibit "B"**. A blackline showing changes made to the 2014 Program from the 2013 Program is attached hereto as **Exhibit "C"**. Delmarva's Report in support of the 2014 Program which addresses the findings of the Consultants' Report and the manner in which the 2014 Program was structured in response thereto is attached hereto as **Exhibit "D"**.

**A. Term of the 2014 Program**

13. Like the 2013 Program, the 2014 Program will cover only one (1) year, the 2014 compliance year. (Ex. B at p. 5).

**B. Public Competitive Bidding Administered by the SEU**

14. Consistent with the 2013 Program, the 2014 Program will utilize a public solicitation for SRECs for different categories of solar generators based on their capacity. (Ex. B at p. 5). As with the 2013 Program, the SEU will administer all aspects of the bid process for each utility that decides to participate in the 2014 Program. It is also anticipated that the SEU will use InClima, Inc.<sup>3</sup> for any auctions held for the 2014 Program. (Ex. B at p. 5).<sup>4</sup> 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. Delmarva found the SEU to be effective in the SREC Programs and anticipates the same for the 2014 Program.

**C. Procurement of SRECs from 5 Tiers of Solar Generators**

15. The 2014 Program will procure SRECs from five (5) different tiers of solar generators. (Ex. B at p. 7). Three (3) tiers fall under the category of New Systems while two (2) tiers fall under the category of Existing Systems. The five (5) tiers are as follows:

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<sup>3</sup> InClima, Inc. is a Delaware corporation, an affiliate of SRECTrade that has been established solely to operate utility and public agency renewable procurement programs. InClima, Inc. will be run by Kevin Quilliam who oversaw the SREC auctions for the Pilot Program and the 2013 Program.

<sup>4</sup> Recovery of the SEU's costs is not addressed in this Application and will be dealt with in separate proceedings.

**GENERATION UNIT TIER DESIGNATIONS**

<u>New Systems<sup>5</sup></u>	
<u>Tier</u>	<u>Nameplate Rating</u> (DC at STC)
N-1	Less than or equal to 30 kW
N-2	Greater than 30 kW but less than or equal to 200 kW
N-3	Greater than 200 kW but less than or equal to 2 MW
<u>Existing Systems<sup>6</sup></u>	
<u>Tier</u>	<u>Nameplate Rating</u> (DC at STC)
E-1	Less than or equal to 30 kW
E-2	Greater than 30 kW but less than or equal to 2 MW

(Ex. B. at p. 7). Unlike the 2013 Program, Tiers N-1, E-1 and E-2 will be combined for solicitation purposes only. All five tiers will continue to be competitively bid. (Ex. B at p. 16).

16. Each Owner<sup>7</sup> is only required to submit an application in one tier. (Ex. B at p. 16). However, the SEU may, subject to certain limitations, accept bids from a lower tier to fill the requirements of a higher tier. (Ex. B at p.16). If Tier N-1 and/or Tier N-2 have losing bids that are lower priced than winning bids for Tier N-3, such bids will be applied to Tier N-3 in order to minimize the weighted average bid price of Tier N-3. Bids from Tier N-3 will not be applied to Tier N-1 or Tier N-2 and bids from Tier N-2 will not be applied to Tier N-1. If Tier E-1 has losing bids that are lower priced than winning bids in Tier E-2, such bids shall be applied to Tier E-2 in order to

<sup>5</sup> Eligible New Systems are systems with final interconnection approval after the first date of the preceding auction process (i.e., April 12, 2013, for compliance year 2014).

<sup>6</sup> Eligible Existing Systems are systems with final interconnection approval before the first date of the preceding auction process.

<sup>7</sup> Capitalized terms used herein but not defined shall have the meaning given to them in the 2014 Program.

minimize the weighted average bid price of Tier E-2. Bids from Tier E-2 will not be applied to Tier E-1. Provided these stated minimums are met, the SEU will accept for each Tier the lowest bid prices. (Ex. B at p. 17).

17. Based on Delmarva Power's forecasted load, it intends to procure 8,000 SRECs in the following quantities:

- Tiers N-1, E-1, E-2 – 3,800 SRECs
- Tier N-2 – 1,600 SRECs
- Tier N-3 – 1,600 SRECs

Spot Market Purchases - 1,000 SRECs (Ex. B. at p. 19).

**D. Standard Transfer Agreements and Other Requirements**

18. Each Owner who is successful in having their bid selected will enter into a standard form Transfer Agreement with the SEU. (Ex. B at Appendix B). The form of the Transfer Agreement is largely the same as the one used for the 2013 Program and has been modified only to take into account changes in the 2014 Program.

19. Each Transfer Agreement will have a term of twenty (20) years. (Ex. B at p. 10). For the first seven (7) years of the Agreement, the SREC price will be the accepted bid price. (Ex. B at p. 12). For the remaining thirteen (13) years of the Agreement, the SREC price will be fixed at \$35 per SREC. (Ex. B at p. 12).

20. As with the 2013 Program, the Transfer Agreement will impose certain contract minimums and maximums, depending on tier. In each bid, regardless of tier, the Owner will provide an Estimated SREC Quantity. (See Ex. B at Appendix A). The quantity of SRECs delivered to the SEU in any year is limited to 110% of the Estimated SREC Quantity, which amount shall be the Contract Maximum. (Ex. B at p. 11). In addition, for any Tier N-3 or Tier E-2 project with a nameplate rating of 500kw or greater, the Owner shall be subject to a

Minimum Annual Quantity. (Ex. B at p. 12). Each Owner subject to a Minimum Annual Quantity must deliver to the SEU SRECs equal to no less than 80% of its Estimated SREC Quantity. (Ex. B at p. 12).

**E. Public Interest**

21. The primary difference between the 2013 Program and the 2014 Program is the fact that Tiers N-1, E-1 and E-2 are combined for solicitation purposes, and that the fixed price for the remaining thirteen (13) years of the twenty (20) year contract will be reduced to \$35 per SREC. Accordingly, the Taskforce believes that the 2014 Program improves upon the results achieved through the 2013 Program in that it ensures the lowest SREC price (and, therefore, customer impact) while continuing to create a market for SRECs at all levels of generation. Delmarva agrees that approval of the 2013 Program was in the public interest and submits that the 2014 Program, with its minor improvements, is also in the public interest.

**V. Request for Expedition and Approval**

22. In order to begin the public bidding contemplated by the 2014 Program on time, Delmarva Power respectfully requests that this Application be handled on an expedited basis such that it can be presented to the Commission no later than February 20, 2014.

23. Accordingly, because Delmarva Power and the Taskforce believe the 2014 Program satisfies the goals set forth by REPSA, improves upon the 2013 Program, addresses the recommendations contained in the Consultants' Report and, as demonstrated above, is in the public interest, Delmarva Power respectfully requests that the Commission approve the 2014 Program attached as Exhibit B.

**WHEREFORE**, for the foregoing reasons, Delmarva Power respectfully requests that the 2014 Program be approved.



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**EXHIBIT "A"**

**CONSULTANTS' REPORT – 2013 PROGRAM**

CONSULTANT REPORT

# EVALUATION OF THE 2013 DELAWARE SREC PROCUREMENT PROGRAM

Prepared for: Delaware Public Service Commission

Prepared by: New Energy Opportunities, Inc.  
La Capra Associates, Inc.



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## 1. INTRODUCTION AND EXECUTIVE SUMMARY

From March 25 to April 12, 2013, the Delaware Sustainable Energy Utility (“SEU”), through its contractor SRECTrade, Inc. (“SRECTrade”), conducted a solicitation for solar renewable energy credits (“SRECs”) under long-term contracts. The SRECs purchased by the SEU will be acquired by Delmarva Power and Light Company (“Delmarva Power”) for the purpose of meeting Delmarva Power’s obligations under the Delaware Renewable Energy Portfolio Standards Act (“REPSA”). The solicitation design was developed and recommended by the Delaware Renewable Energy Taskforce (“RETF”), and Delmarva Power’s participation in the program was approved by the Delaware Public Service Commission (“Commission”) in Order No. 8281 issued on January 22, 2013.<sup>1</sup> In its order, the Commission approved the Commission staff’s recommendation that an independent consultant be retained to review the solicitation and to provide a report to the Commission. The Commission staff recommended that the consultant address a variety of matters, including:

- The robustness of the response to the solicitation;
- The structure of the solicitation with regard to tiers;
- The extent to which SREC prices should be determined by competitive bidding;
- The effect of the SEU’s involvement in terms of cost of administration;
- The quality of the conduct of the solicitation.<sup>2</sup>

The Commission retained New Energy Opportunities, Inc. (“New Energy Opportunities”), in conjunction with La Capra Associates, Inc. (“La Capra Associates”), to provide this report.

This solicitation, the 2013 Delaware SREC Procurement Program, followed the 2012 SREC Procurement Pilot Program conducted last year.<sup>3</sup> There were several major differences in the design of the program for 2012:

- The 2013 program involved an auction process for existing projects as well as new projects (the pilot program was only for new projects);
- The tier structure was modified so that for new projects there were three tiers instead of four tiers; in addition, there were two additional tiers for existing projects;

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<sup>1</sup> P.S.C. Docket No. 12-526.

<sup>2</sup> Report From the Delaware Public Service Commission Staff on Delmarva Power and Light Company’s Application for Approval of the 2013 Program for the Procurement of Solar Renewable Energy Credits, PSC Docket No. 12-526 (January 11, 2013), pp. 14-16.

<sup>3</sup> New Energy Opportunities and La Capra Associates (a) advised the Commission staff in its participation with the RETF regarding the development of the pilot program and (b) provided a report on the pilot program in connection with the regulatory approval process before the Commission in Docket No. 11-399.

- In all tiers, bid selection was based on a price-only “pay as bid” competitive bidding process, rather than using a combination of competitive bidding for larger projects and administratively-set pricing for smaller projects, as in the pilot program;
- Use of Delaware equipment and/or Delaware labor was not used as the primary selection criterion (as it was in the pilot program for those tiers using administratively-set pricing where the auction was oversubscribed);
- Participants bid prices for years 1-7 of the contract term; for years 8-20 of the contract term, SRECs are paid at \$50.00 per SREC. The 2012 Pilot Program contract term was also 20 years, but the bid/administratively set price was paid for years 1-10, with \$50.00 per SREC paid for years 11-20.
- There was also a separate auction for short-term contracts (spot market) for existing projects in the 2013 program.

The level of participation in the 2013 SREC procurement auction process was robust. Of the target procurement of 7,000 SRECs/year, there were bids for 22,659 SRECs/year, more than triple the target procurement. The systems bid totaled over 17 MW in capacity, with the successful bids totaling approximately 5.5 MW in capacity.

There were almost 800 bids for individual systems, with 387 successful bids, almost a 50% success rate. Levelized prices of winning bids over the 20-year contract term averaged \$56/SREC for new projects and less than \$45/SREC for existing projects, much less than the pricing for new projects in the 2012 pilot program. In part II of this report, we summarize and assess the structure of the 2013 SREC Procurement Program. In part III, we analyze the results of the solicitation and a survey conducted of participants (i.e., bidders) in the solicitation. In part IV, we assess the conduct of the solicitation, including the roles of the SEU and SRECTrade, and the cost of administration of the SREC procurement process. In part V, we discuss a number of policy issues and address how the program could be better designed to minimize ratepayer costs given the other objectives set forth in the REPSA.

## 2 2013 SREC PROCUREMENT PROGRAM SOLICITATION DESIGN AND MARKET RESPONSE

### 2.1 OVERALL SOLICITATION DESIGN

The 2013 Delaware SREC Procurement Program had a target procurement of 8,000 SRECs/year, with 4,000 SRECs to be procured from new facilities and 4,000 SRECs to be procured from existing facilities:

- Procurement of SRECs from new solar PV facilities (defined as facilities with final interconnection approvals after April 2, 2012)<sup>4</sup>: 4,000 SRECs
- Procurement of SRECs from existing facilities (final interconnection approvals obtained before April 2, 2012): 3,000 SRECs
- Spot market purchases: 1,000 SRECs

This breakdown differed from the 2012 pilot program, which provided for procurement of 11,472 SRECs from new facilities (defined in the pilot program as facilities with final interconnection approvals on or after December 1, 2010).

With respect to new facilities, the 2013 program had three tiers, for which competitive bids were used to select winners, while the 2012 pilot program had four tiers, for which two tiers for smaller projects used administratively-set prices and a lottery system to select winning bidders. Table 4 compares the 2013 solicitation amounts for new facilities (SRECs/year) by tier to those for the 2012 pilot program.

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<sup>4</sup> April 2, 2012 was the first date of the pilot program auction.

TABLE 1 – NEW PROJECTS: 2013 SOLICITATION COMPARED TO 2012 PILOT PROGRAM

<b>2013 Solicitation</b>			
Tier	Size (kW)	Volume	Procurement Method
N-1	0-30	1,200	Competitive auction
N-2	>30-200	1,400	Competitive auction
N-3	>200-2,000	1,400	Competitive auction
<b>Total</b>		<b>4,000</b>	
<b>2012 Pilot Program</b>			
Tier	Size (kW)	Volume	Procurement Method
1	0-50	2,972	Administratively-set prices/lottery
2A	>50-250	2,000	Administratively-set prices/lottery
2B	>250-500	2,000	Competitive auction
3	>500-2,000	4,500	Competitive auction
<b>Total</b>		<b>11,472</b>	

Tier N-1 is comparable to Tier 1 under the pilot program, except the size limit was reduced from 50 kW to 30 kW, which is more reflective of upper size limits for residential systems. Tier N-2 is comparable to the former Tier 2A under the pilot program, but also with a lower upper size limit (200 kW compared to 250 kW). These two tiers were competitively bid under the 2013 solicitation, while they were subject to administratively-set pricing and a lottery under the pilot program. Tier N-3 is comparable to a combination of Tiers 2B and Tier 3 under the pilot program.

For the 2013 program, bids were for 20-year contracts, with the last 13 years having a set price of \$50/SREC. Bidders submitted one price bid per project for the first seven contract years. This compares with the 2012 pilot program, which also offered 20-year contracts, but with the last 10 years having a set price of \$50/SREC with the price for the first 10 years a bid price or an administratively-set price, depending on the tier.

Of the 4,000 SRECs to be procured from existing projects in the 2013 program, 3,000 SRECs were to be procured as part of the same procurement process and the with same contract terms as for new projects (see Table 2). SRECs from existing projects were not part of the 2012 pilot program.

TABLE 2 – EXISTING PROJECTS: 2013 SREC SOLICITATION

Tier	Size (kW)	Volume	Procurement Method
E-1	0-30	1,500	Competitive auction
E-2	>30-2,000	1,500	Competitive auction
<b>Total</b>		<b>3,000</b>	

Delmarva also planned to purchase 1,000 SRECs separately from existing projects under short-term contracts.

With respect to the SRECs to be procured under long-term contracts, Delmarva retained the SEU to procure the SRECs, including conducting the auction as well as contracting for the SRECs. The SEU, in turn, retained SRETrade both to conduct the auction and to administer the contracts. Separately, Delmarva retained SRETrade to conduct a spot auction for the purchase of SRECs from existing projects under short-term contracts.

## 2.2 NEW PROJECTS

With regard to the new projects, the solicitation results are summarized in Table 3 for both the 2013 solicitation and the 2012 pilot program based on annual SRECs bid.

TABLE 3 – NEW PROJECTS: WINNING BIDS, PRICES, AND TOTAL NUMBER OF SRECS BID

2013 Solicitation--Effective SRECs							
Tier	Size (kW)	Winning Bids	Wtd. Avg. Price	Levelized Price	Total Bids	Success Ratio	% of Total Winning Bids
N-1	0-30	1,215	\$46.48	\$48.29	2,238	54%	30%
N-2	>30-200	1,400	\$86.60	\$67.81	2,194	64%	35%
N-3	>200-2,000	1,385	\$51.13	\$50.55	10,188	14%	35%
Total		4,000	\$62.13	\$55.90	14,620	27%	
2012 Pilot Program--Effective SRECs							
Tier	Size (kW)	Winning Bids	Wtd. Avg. Price	Levelized Price	Total Bids	Success Ratio	% of Total Winning Bids
1*	0-50	2,972	\$260	\$185	6,600	45%	26%
2A*	>50-250	2,000	\$240	\$172	9,881	20%	17%
2B	>250-500	2,000	\$130.92	\$102	7,275	27%	17%
3	>500-2,000	4,500	\$154.45	\$118	10,220	44%	39%
Total		11,472	\$ 192.61	\$ 142.07	33,976	34%	
*Administratively-set prices for these tiers							

Similar information is provided in Table 4 with respect to project sizes and number of systems bid.

TABLE 4 – NEW PROJECTS: WINNING BIDS AND TOTAL BIDS BY PROJECT SIZE AND APPLICANTS

2013 Solicitation		Project Size (kW)			Number of Systems		
Tier	Size (kW)	Winning Bids	Total Bids	Success Ratio	Winning Bids	Total Bids	Success Ratio
N-1	0-30	920	1,674	55%	134	240	56%
N-2	>30-200	1,048	1,676	63%	15	27	56%
N-3	>200-2,000	902	6,949	13%	2	13	15%
Total		2,871	10,299	28%	151	280	54%

2012 Pilot Program		Project Size (kW)			Number of Systems		
Tier	Size (kW)	Winning Bids	Total Bids	Success Ratio	Winning Bids	Total Bids	Success Ratio
1*	0-50	2,007	4,722	42%	148	483	31%
2A*	>50-250	1,332	6,811	20%	9	42	20%
2B	>250-500	1,518	5,182	29%	5	14	32%
3	>500-2,000	2,828	6,698	42%	4	7	50%
Total		7,685	23,412	33%	165	546	30%

\*Administratively-set prices for these tiers

Comparing the two solicitations with respect to new projects, we note that the 2013 solicitation was significantly smaller than the pilot program, both with respect to the targeted procurement amount (and winning bids) and the total bids. While there were only 14 fewer systems bid in 2013 than in the pilot program (8% of the 2012 total), the number of effective SRECs bid was almost 20,000 SRECs less than in the pilot program, 57% of the total.<sup>5</sup> Even though the SRECs sought from new projects in the 2013 program was 4,000 SRECs, almost 8,500 SRECs less than in the pilot program, the total success rate of systems bid went up from 30% to 54%, while the success rate based on effective SRECs went down from 34% to 27%. This has to do with the differences in the targeted procurement amount by tier and success rates in the different tiers in the two solicitations. In the 2013 program, proportionately, the demand was weighted more to the lower tiers, Tier 1 and Tier 2, and less to larger projects (Tier 3 for 2013 and Tiers 2B and Tier 3 in the pilot program) compared to the pilot program.<sup>6</sup>

<sup>5</sup> "Effective SRECs" is a reference to the number of SRECs expected to be generated by a system, which is the sum of SRECs to be generated by metered electrical output in MWh plus additional SRECs resulting from the Delaware equipment and workforce bonus adders (10% each).

<sup>6</sup> In 2013, the residential-scale tier was allotted 30% of the total new system demand and approximately 55% of the bids were successful. This compares to the 2012 pilot program, where 31% of the total demand was allotted to Tier 1 with a success ratio ranging from 31% based on number of bids to 45% based on the number of effective SRECs. In 2013, the small commercial tier, Tier 2, comprised 35% of the total demand with a success ratio ranging from 56% by number of systems to 64% by effective SRECs. By contrast in 2012, the comparable tier, Tier 2A, comprised 26% of the demand with a success ratio of approximately 20%. In 2013, the large tier, Tier 3, represented 35% of demand with a success ratio of approximately

Most strikingly, the 2013 solicitation resulted in far lower prices than the 2012 pilot program. Taking the differences in the structure of the contract prices of the two solicitations into account—\$50 for the last 13 of 20 years in the 2013 solicitation and \$50 for the last 10 of 20 years in the pilot program—the levelized prices for Tier 1 fell from \$185/SREC to \$48/SREC, a reduction of \$136/SREC or 74%; the levelized prices for the small commercial tier fell (Tier 2 and Tier 2A) fell from \$172/SREC to \$68/SREC or 61%. For the larger projects (Tier 3 and Tier 2B/Tier 3), the levelized prices fell from \$114/SREC to \$51/SREC, a reduction of \$63/SREC or 55%.<sup>7</sup> The largest reductions were in the lower tiers, whose prices had been set administratively in the pilot program and were set through competitive bidding in the 2013 solicitation. Overall, the weighted average prices for the 2013 solicitation declined 61% when compared to the 2012 pilot program.

The 2013 results by tier, including the tiers for existing projects, are summarized in Table 5.

TABLE 5 – 2013 SREC PROCUREMENT RESULTS: NEW AND EXISTING PROJECTS

Tier	Price: Winning Bids				Number of Bids		
	High	Low	Wtd. Avg.	Avg. Levelized	Total	Accepted	Success %
N-1	\$62.87	\$0.00	\$46.48	\$48.29	240	134	56%
N-2	\$140.00	\$0.00	\$86.60	\$67.81	27	15	56%
N-3	\$63.90	\$49.00	\$51.13	\$50.55	13	2	15%
E-1	\$50.00	\$0.00	\$34.59	\$42.50	491	226	46%
E-2	\$50.00	\$0.00	\$39.29	\$44.79	25	10	40%
TOTAL					496	387	49%

Using bid data, we created supply curves in order to understand the relationship among the bids and the impact on prices<sup>8</sup> of selecting lower and higher procurement targets. The supply curves for the new project tiers are shown in the three figures below. Interestingly, the supply curve for the smallest (N-1) tier shows a relatively flat structure up to \$50/SREC level indicating a large amount of similar bids below that level.

15%. By contrast in 2012, the comparable two largest tiers represented approximately 56% of demand, with a success ratio of approximately 37%.

<sup>7</sup> The levelized price is the constant amount over the term of the contract that is based on the net present value of the prices in individual years based on a discount factor. In this case, the discount factor was 6%. For purposes of the calculation, degradation of the output of the solar PV facilities was not taken into consideration.

<sup>8</sup> The supply curves show the marginal cost of procuring additional SRECs above the demand levels set forth in the solicitation by tier, as well as the bid price/quantity relationship below those demand levels.

FIGURE 1 - N-1 SREC SUPPLY CURVE

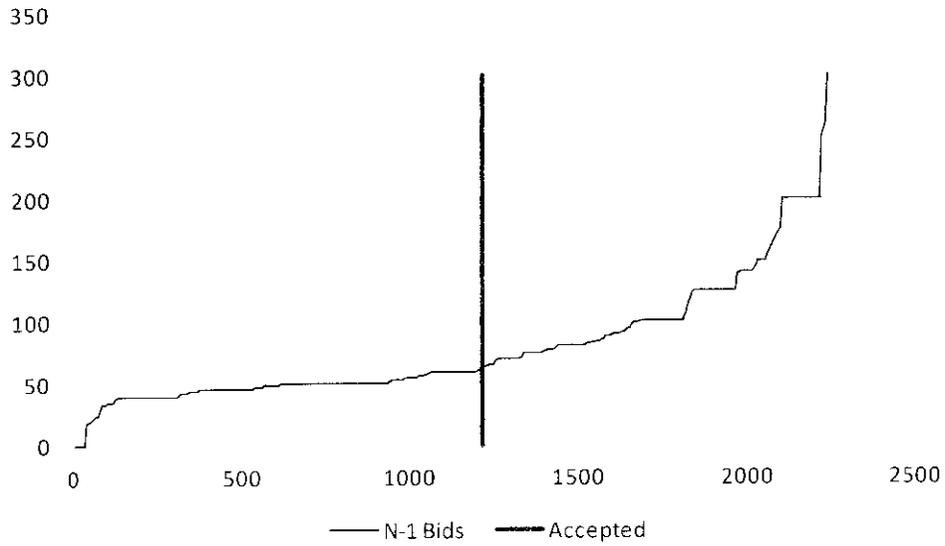


FIGURE 2 - N-2 SREC SUPPLY CURVE

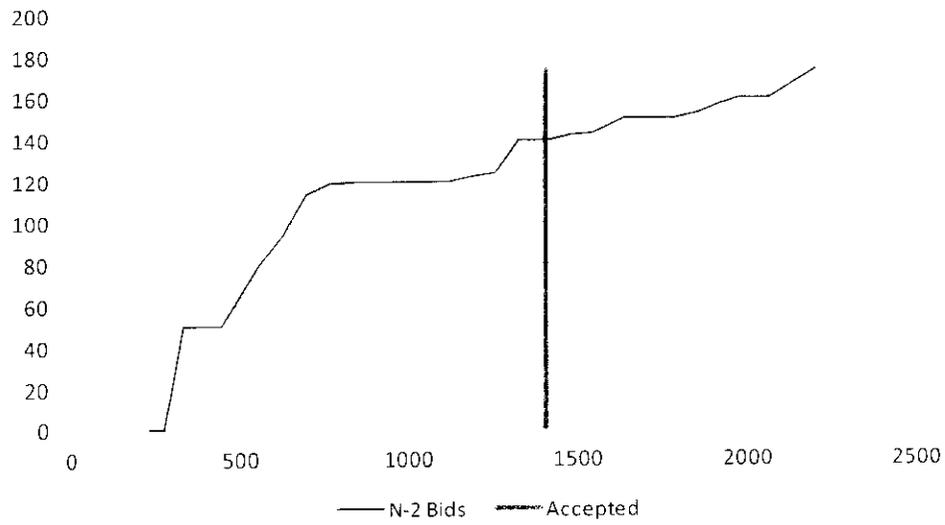
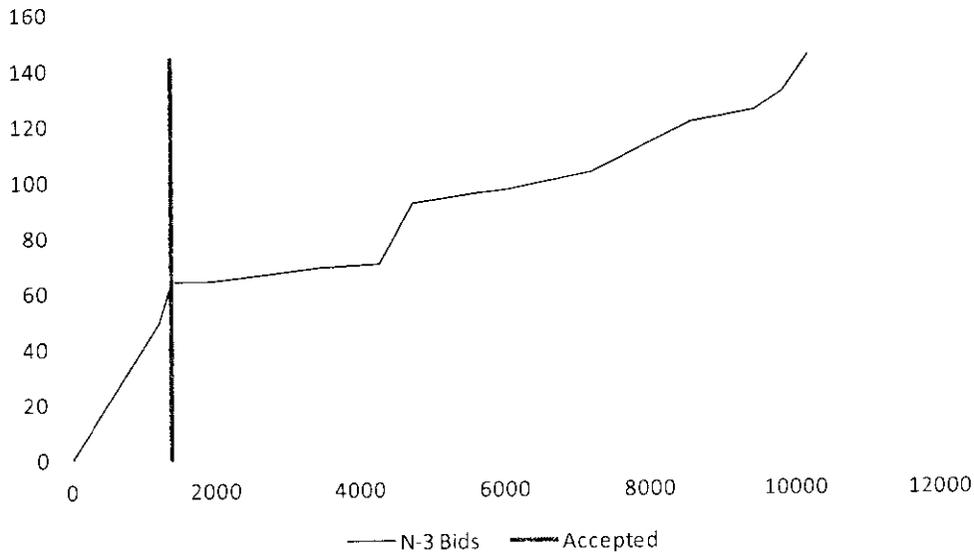


FIGURE 3 – N-3 SUPPLY CURVE



### 2.3 EXISTING PROJECTS

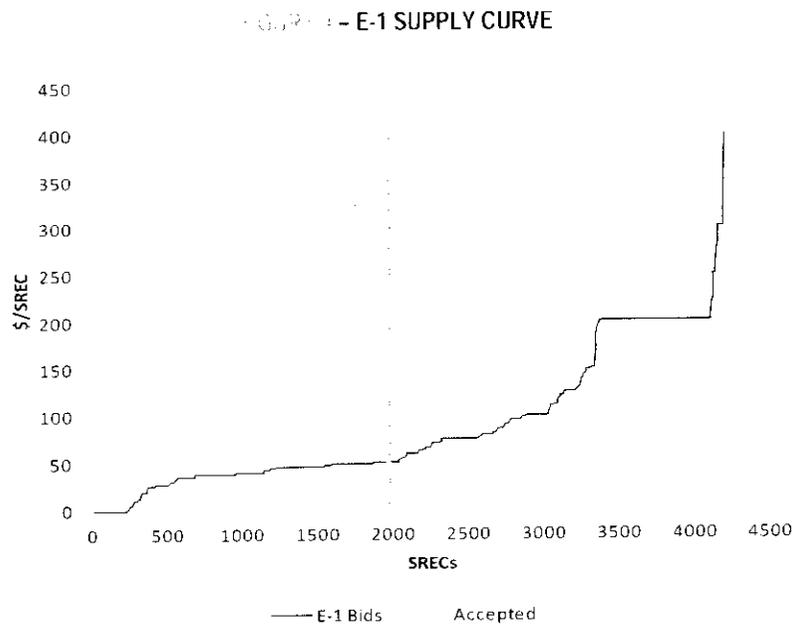
With regard to the existing projects, the accepted bid prices were somewhat higher, although not that much higher, than the winning bids in the spot auction conducted by SRETrade for Delmarva Power (see Table 3.1). Soon after the solicitation for long-term contracts was conducted, SRETrade, on behalf of Delmarva Power, conducted a spot auction for existing SRECs (i.e., SRECs for energy that had already been produced by a qualifying solar PV facility). Out of 5,394 SRECs offered, 2,978 SRECs were purchased, 55% of the total amount bid representing 40% of total bids. The weighted average price was \$33.94 (with a low of \$1.50 and a high of \$45.00)<sup>9</sup>. This compares to bid prices for the first seven years for long-term contracts from existing projects averaging in the \$34-\$40/SREC range, with levelized pricing over 20 years in the \$42-\$45 range.

Table 3.1 – 2013 SOLICITATION RESULTS: EXISTING PROJECTS

Tier	Price: Winning Bids				Number of Bids		
	High	Low	Wtd. Avg.	Avg. Levelized	Total	Accepted	Success %
E-1	\$50.00	\$0.00	\$34.59	\$42.50	491	226	46%
E-2	\$50.00	\$0.00	\$39.29	\$44.79	25	10	40%
Spot	\$45.00	\$1.50	\$33.94	n/a	25	10	40%

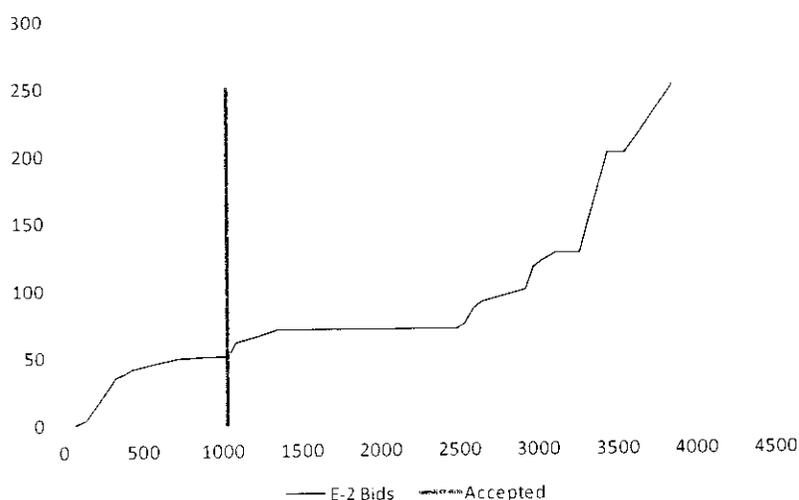
<sup>9</sup> <http://www.srecdelaware.com/2013-spot-auction-results/>

For existing projects, the alternative for bidders in the auction for long-term contracts was the spot market. Hence, it is not surprising that there should be a fairly close relationship between long-term contract prices and spot prices. And in light of the excess of supply relative to demand, as indicated in the bidding processes for long-term and short-term contracts, it is not surprising that the prices are relatively low compared to where SREC prices have been in Delaware historically.<sup>10</sup> Supply curves for the existing tiers are shown below. Similar to the N-1 curve above, the E-1 supply curve is relatively flat initially but then accelerates after a certain price point—\$50/SREC in this case. The E-2 curve has a similar acceleration but then plateaus at around the \$70/SREC price.



<sup>10</sup> From 2009 through 2011, prices for Delaware SRECs were in the \$100 to \$300 range, according to SRECTrade's website, [http://www.srectrade.com/srec\\_prices.php](http://www.srectrade.com/srec_prices.php).

FIGURE 5 – E-2 SUPPLY CURVE



## 2.4 PROPOSED PROJECTS VS. “NEW” PROJECTS THAT HAVE ALREADY BEEN BUILT

“New” projects represent a mix of projects that are proposed projects—they have not yet been built—and projects that have already been built but are considered “new” under the definition of the solicitation. “New” systems are defined as those that have final interconnection approval after the first date of the preceding auction (the 2012 SREC pilot solicitation), which was April 2, 2012.<sup>11</sup>

Based on a report by a consulting firm retained by the Commission to evaluate the 2012 pilot procurement, eligible projects that had already been built were disproportionately successful in the two tiers that used competitive bidding, Tier 2B and Tier 3 (comparable to Tier 3 in the 2013 solicitation).<sup>12</sup> This suggests that there was more competitive pressure on owners of “new” systems that had already been commissioned to bid low prices to obtain greater assurance that their bids would be selected than proposed projects that had not been built.

<sup>11</sup> State of Delaware 2013 Program for the Procurement of Solar Renewable Energy Credits (November 20, 2012), Section 4.3 n. 13.

<sup>12</sup> Meister Consultants Group, Evaluation of the Delaware SREC Pilot (August 3, 2012). According to the report, 4.5 out of 14 systems bid were successful in Tier 2B, including 3.5 out of 4.0 systems that were already operational (one system was a partial fill). Table 7, p. 14. In Tier 3, 3.5 out of 7.0 systems bid were successful, including 0.5 out of 2.0 systems that were already operational (one system was a partial fill). Table 9, p. 17. In both tiers where competitive bidding was used, already commissioned systems had a 67% success ratio (4 out of 6 bids), while overall the success ratio was only 38% (8 out of 21 bids).

The data are more nuanced in the 2013 solicitation. In the tiers for commercial-scale projects, Tiers 2 and 3, there were only two bids for “new” projects that had already been built out of 40 total bids—only 5 percent of the total. Of these two bids, one was fully successful and the other won on a “partial fill” basis.<sup>13</sup> This high success rate compares to an overall 43% success rate for all bids in these tiers.

Of the 240 Tier N-1 bids, 124 had already been built—more than 50% of the total. However, their success rate was approximately the same as those projects that had not yet been built—56%.

## 2.5 DELAWARE EQUIPMENT AND WORKFORCE BONUSES

In 2010, Governor Markell signed into law amendments to REPSA, which provided, among other things, incentives for renewable energy projects sited in Delaware that employ Delaware labor and manufactured products. Specifically, an electricity supplier with a compliance obligation would be entitled to (a) a 10% extra credit toward meeting the REPSA goals if a solar facility sited in Delaware had at least 50% of the cost of its equipment manufactured in Delaware and (b) another 10% additional credit if a solar facility sited in Delaware was built with a minimum of 75% in-state workforce.<sup>14</sup> For example, under these provisions Delmarva, the ultimate SREC buyer, would receive credit for 11 SRECS for each 10 MWh produced by a solar PV project that qualified for one 10% credit and 12 SRECs if the project qualified for both 10% credits.

In the 2013 SREC auction, bids for systems that used or planned to use both Delaware labor and Delaware equipment for new projects were more successful than those that did not. As Table 7 below indicates, 52% of the first-year effective SRECs from new projects that were awarded a contract were from bids that proposed to use both Delaware labor and equipment; only 10% of the first-year effective SRECs from new projects featured no use of Delaware bonuses.

TABLE 7— USE OF DELAWARE EQUIPMENT AND WORKFORCE BONUSES: % OF FIRST-YEAR EFFECTIVE SRECS

	Both		Either		Neither	
	Won	Lost	Won	Lost	Won	Lost
N-1, N-2, N-3	52%	15%	38%	71%	10%	14%
E-1, E-2	11%	39%	37%	22%	52%	39%

Table 8 compares the use of bonuses in terms of percentage of applications. Findings are comparable, but the use of both bonuses is lower among winning bids, indicating that smaller projects (with a smaller number of first-year SRECs) tended to utilize both bonuses less than larger projects—32% success ratio

<sup>13</sup> Under the solicitation rules, if a project selected based on its bid price would cause the solicitation (or tier) to be oversubscribed, the bidder will be given the option of reducing the capacity of its generating unit, and associated SREC quantity, so that the solicitation (or tier) will not be oversubscribed. State of Delaware 2013 Program for the Procurement of Solar Renewable Energy Credits, Section 7.2.

<sup>14</sup> Senate Substitute Bill No. 1 for Senate Bill No. 199 adding 26 Del. C. §356(d)-(e).

based on percentage of applications compared to 52% based on percentage of SRECs). By contrast, there was greater use among winning applications of one of the two bonuses based on percentage of applications (60%) than was the case for percentage of SRECs (38%).

TABLE 8 – USE OF DELAWARE EQUIPMENT AND WORKFORCE BONUSES: % OF APPLICATIONS

	Both		Either		Neither	
	Won	Lost	Won	Lost	Won	Lost
N-1, N-2, N-3	32%	25%	60%	59%	8%	16%
E-1, E-2	6%	11%	38%	39%	56%	50%

As shown in the tables, the data are quite different for existing projects. The majority of successful bids in Tiers E-1 and E-2 used neither Delaware equipment nor labor and the ratio was somewhat higher when compared to total bids in these tiers. A number of these projects may have been built before the adders went into effect as a result of amendments to REPSA enacted in 2010.<sup>15</sup>

With regard to new projects, the use of Delaware labor and equipment adders is somewhat less than in the 2012 pilot program, where 13 of the 22 systems in the competitively bid tiers, 59% of the bids, bid with both the Delaware equipment and labor adders.<sup>16</sup> However, it appears to have played a significant role in solar installer and customer decisions, when one compares the higher percentages of (a) both Delaware equipment and labor adders and (b) Delaware equipment or labor adder for new projects compared to existing projects. In addition, a review of the winning bids to total bids for the 2013 solicitation indicates a competitive advantage to bidders in selecting Delaware equipment and labor or either Delaware equipment or labor. This suggests that the value of the 10% adders, in terms of revenues to project owners or other beneficiaries, may outweigh any additional costs associated with use of Delaware equipment or labor and that Delaware equipment or labor is generally available.

## 2.6 PROJECT SIZE WITHIN TIERS

Within tiers, system size did not appear to provide a competitive advantage for larger systems.

The great majority of the bids in the residential scale tiers were below 10 kW in size. In both Tiers E-1 and N-1, 88% of the bids were for systems below 10 kW in size. With respect to winning bids, 88% of

<sup>15</sup> Senate Substitute 1 for Senate Bill 119, Section 12 amending §356 of Title 26 of the Delaware Code by adding new paragraphs (d) and (e); [http://www.legis.delaware.gov/LIS/lis145.nsf/vwLegislation/SS+1+for+SB+119/\\$file/legis.html?open](http://www.legis.delaware.gov/LIS/lis145.nsf/vwLegislation/SS+1+for+SB+119/$file/legis.html?open). Other projects may have been built after the legislation was enacted but before it was known that in the pilot program Tier 1 and Tier 2A projects that used Delaware labor and equipment would be treated preferentially in any lottery in the event these tiers were oversubscribed.

<sup>16</sup> In the pilot program, the percentage of bids in the non-competitively bid tiers combined selecting both Delaware equipment and labor adders was 42%, although it was much higher in Tier 2A—83%. The role Delaware equipment and labor played in the tiers with administrative pricing was significantly different in that it placed bidders in a preferred class from which winners in the lottery were selected.

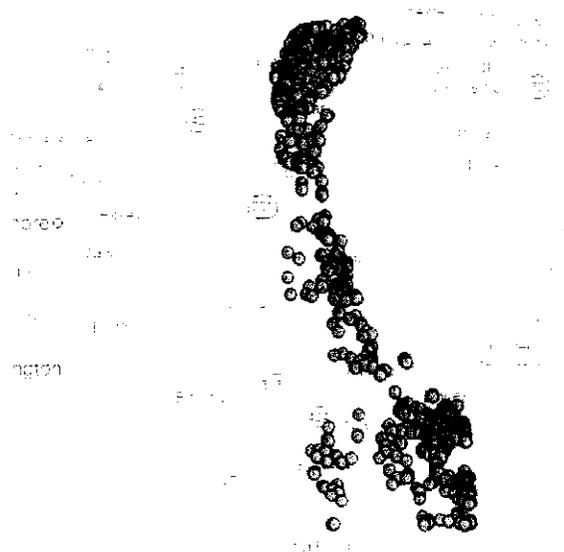
the Tier E-1 bids and 90% of the Tier N-1 bids were for systems below 10 kW in size. Within these tiers, there appeared to be no competitive advantage for larger projects.

The same is true in Tier E-2 where 80% of the total bids and 80% of the winning bids were between 30 kW and 150 kW in size and for Tier N-2 where 56% of the total bids and 56% of the winning bids were for systems between 30 kW and 50 kW in size.<sup>17</sup> The sample size in Tier N-3 was too small to draw any strong conclusions but the average size of the winning bids was in middle of the size range for total bids with respect to this tier.

## 2.7 PROJECT LOCATION

In terms of location of potential projects, figure 8 shows that there were applications from a wide geographic region with some geographic concentration of applications in Southeast Delaware (Lewes/Rehoboth Beach area), and in the northern part (Wilmington metropolitan area) of the state.

FIGURE 8 – LOCATION OF APPLICATIONS



Source: SEU/SRECTrade Based on Solicitation Data

<sup>17</sup> A possible reason for the prevalence and success rates of Tier N-2 bids below 50 kW in size could be the availability of grants for these projects. Under the Delmarva Power Green Energy Program, grants for solar PV systems are limited to projects that are less than 50 kW in size.  
<http://www.dnrec.delaware.gov/energy/services/Documents/December%2010%20Updates/Green%20Energy%20Program%20Incentive%20Revision%20-%20Delmarva%20Power%20Customers%20Only.pdf>.

There was little correlation between the location of applications (or winning bids) and the population density of the zip code<sup>18</sup>, which further confirms the geographic diversity of the applications. We also examined spatial diversity in terms of the income characteristics of the zip code. Using publicly available tax data from 2008, we analyzed the relationship between the number of applications (and number of effective SRECs) and the adjusted gross income (“AGI”) of the zip code of the solar facility. This analysis does not permit analysis of the income characteristics of the bidders themselves, but does allow us to examine whether solar applications were provided from wealthier areas of the state. Table 9 shows that there was essentially zero correlation between the location of the applications and income levels of the zip codes.

TABLE 9 – CORRELATION BETWEEN INCOME AND NUMBER OF APPLICATIONS

	Win	Not Win
# of Applications	0.03	0.06
Effective SRECs	(0.03)	0.01

### 3 ANALYSIS OF SOLICITATION RESULTS AND SURVEY OF PARTICIPANTS

In this section of the report, we analyze some of the key results of the 2013 solicitation in the context of industry trends and practices and in relation to the 2012 pilot program. We also summarize the results of an on-line survey we conducted of solicitation participants.

#### 3.1 SREC AUCTION PRICES, TRENDS IN SYSTEM COSTS, PROJECT SIZES AND OTHER FACTORS

As shown in the prior section of this report, SREC prices declined sharply in the 2013 auction compared to the 2012 pilot program. Key reasons for the reduction in SREC prices are:

- Use of competitive bidding, instead of administratively-set pricing, for residential and small commercial scale projects;
- Eligibility for existing projects, as well as “new” projects;

<sup>18</sup> Correlation between the number of applications and population density was approximately -0.1, which indicates a very weak relationship between less dense areas and location of solar projects.

- Continuing decline in installed costs for solar PV modules and systems;
- Competitive pressures associated with limited demand for SRECs in the auction (the procurement target for the 2013 program was 30% lower than that of the 2012 pilot program) and for Delaware SRECs in general;
- Competitive pressures associated with projects that have been installed since the 2012 pilot auction but which qualify as “new” projects; and
- Availability of Green Energy Program grants to residential and small commercial scale project (less than 50 kW in size) at levels that have, at least for the Delmarva Power program, not changed for several years, even though the cost of installed systems has substantially declined.

In addition, the structure of the 2013 program, with the last 13 years of the 20-year contract term pre-set at \$50/SREC, may have been perceived as creating a signal of \$50/SREC as a pricing point. It also may have created an incentive for some bidders to bid a very low price for the first seven years, even a price of \$0 in some cases, in order to assure \$50/SREC payments for the last 13 years of the contract term.

Competitive market prices for SRECs are affected by two major factors. With respect to new, to-be-built projects, a key factor is the requirement for revenue necessary to allow the project owner or other party in interest to recover the cost of the investment plus a reasonable return on the investment. If the financial benefits (including revenues and/or cost reductions with respect to the production of electric energy and/or capacity and tax benefits) are insufficient to cover the costs plus an acceptable return, it would not make economic sense for an owner of a new project to build it. Hence, according to economic theory, a bidder for a new project should bid prices based on its costs. The other fundamental factor is the interaction of supply and demand. Competitive market prices will be set based on supply and demand—if there is an excess of supply relative to demand, prices will be lower. Conversely, if there is more demand than supply, prices will be higher.

The economics of solar PV projects are highly weighted to initial capital costs. Operating costs, by comparison, are low. Once a project has already been built, regardless of whether it is classified as a “new” project or an “existing” project, the initial capital costs have already been committed and the key competitive driver is the relationship between supply and demand for SRECs.

The underlying rationale, as we understand it, for placing “new” projects and “existing” projects in separate auctions was (a) to facilitate the development and construction of new projects since the last solicitation and (b) to provide owners of projects built before the last solicitation with an opportunity to obtain a competitively-priced long term contract in light of the overhang of un-contracted supply on the market, without forcing out new projects and the attendant economic benefits associated with new construction.

Within the categories of “new” and “existing” projects, different tiers were established based on project size with separate auctions conducted for the different tiers. The underlying rationale, as we understand it, is that larger projects have greater economies of scale than smaller projects. In addition, commercial projects have another advantage over residential projects in that commercial projects

qualify for depreciation, indeed, accelerated depreciation, for tax purposes, while residential projects do not. One would ordinarily expect that the tiers for larger projects would have lower winning prices than for the tiers for smaller projects. There are, however, countervailing factors that offset the economy of scale and tax advantages of larger, commercial projects: (1) the availability of Green Energy Program grants for smaller projects;<sup>19</sup> and (2) the economic value of net metering for smaller projects that have an energy-only tariff structure with their local electric utility company/retail electric supplier compared to larger projects that have both a demand component and an energy component.

While, as expected, the winning prices for existing projects were lower than for new projects, the expected relationship between projects based on size did not materialize. In fact, the prices for the smallest projects, residential-scale in size, were lower on average for new projects (\$46 for Tier N-1) than for larger new projects (\$87 for Tier N-2 and \$51 for Tier N-3). Tier N-3 pricing, however, was lower than Tier N-2 pricing, although Tier N-3 projects are larger than Tier N-2 projects. In the pilot program, the weighted average winning price for Tier 2B (projects between 250 kW and 500 kW--\$131) was lower than the weighted average winning price for Tier 3 (projects between 500 kW and 2 MW--\$154).

Similarly, for existing projects, the tier for residential-scale projects (\$35 for Tier E-1) had lower prices than in the tier for larger existing projects (\$39 for Tier E-2).

As indicated in the data summarized in Section 2.4 of this report, only 5 percent of the “new” commercial scale projects—Tiers N-2 and N-3—had received final interconnection approval and were built before the auction. As in the pilot program, commercial scale projects that were already built had a higher success rate than projects yet to be built.

In contrast, more than 50% of Tier N-1 projects had already been installed. Based on the data, there was no difference in success rate in residential scale projects that were already built when compared to those in the planning stage.

This data suggests that there was a very small pool of owners for commercial scale projects willing to go forward to build new solar PV projects without having a long-term contract with a known SREC price in hand, and for those that did go forward there was considerable pressure to bid low prices in order to obtain a contract. For residential scale projects, Tier N-1, more than 50% of the project owners had already had the projects installed, with the attendant financial commitments, without having a long-

<sup>19</sup> The Delmarva Green Energy Program grant program had, as of the date of 2013 auction, retained its structure and incentive rates that had become effective in December 2010.

<http://www.dnrec.delaware.gov/energy/services/Documents/December%2010%20Updates/Green%20Energy%20Program%20Incentive%20Revision%20-%20Delmarva%20Power%20Customers%20Only.pdf>. The Delaware Electric Cooperative, on the other hand, had reduced its incentive rates for 2013 and limited participation to those that had submitted applications by January 15, 2013 based on an excess of demand for the grants relative to a funding cap. [http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/CoopGEP\\_F.aspx](http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/CoopGEP_F.aspx).

term contract with known SREC prices.<sup>20</sup> This suggests that either (a) it was not important for many homeowners to have a long-term SREC contract in hand before they made a financial commitment on a solar PV facility and/or (b) there was willingness to take the financial risk of not having a known long-term SREC price although without, perhaps, having a full understanding of the risk. Consistent with the foregoing, whether a project had or had not been built appeared to have no influence on bid prices.

The data also raises questions regarding the basis for the segmentation of the market based on project size, a question that we address in Part 5.2 of this report.

In terms of comparing the auction results to SREC auctions conducted in other states, there are issues regarding availability of information and comparability of project sizes and vintages as well as the timing of the conduct of the auction. (Other relevant factors include the availability and amount of grants and state tax benefits for owners of solar PV systems.) Timing is important due to the continuing decline in solar PV module and system costs. For example, according to the Solar Energy Industries Association, national average solar PV installed costs in the United States declined 15.8% from Q1 2012 to Q1 2013, from \$5.86/watt to \$4.93/watt, and non-residential system installed costs declined 15.6% from \$4.64/watt to \$3.92/watt.<sup>21</sup>

With respect to an auction conducted by Connecticut utilities for 15-year zero emission renewable energy credits (ZRECs) in August 2012, the weighted average price of accepted bids were in the range of \$135-\$149, based on the utility for medium projects in the 100-250 MW range size, and \$101 to \$117 for large projects in the 250 kW to 1,000 kW range.<sup>22</sup> In the 2012 pilot program, the levelized weighted average prices for Tier 2B (250-500 kW) was \$102 and for Tier 3 B, the levelized weighted average price was \$118. These prices are in the same range as last year's Connecticut ZREC auctions, which are roughly comparable. The results of Connecticut's 2013 ZREC auction are not currently available. In light of declines in system costs, one would expect the results of this year's ZREC auction to result in lower prices.

In Connecticut, small solar PV projects can obtain a price based on 110% of the weighted average price for medium sized projects from the last auction. For the 2012 auction, this resulted in ZREC prices in the range of \$148 to \$164/SREC, depending on the individual utility.

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<sup>20</sup> This potentially includes transaction structures where the homeowner is leasing the solar PV system or purchasing the electrical output under a power purchase agreement as well as where the homeowner has purchased the solar PV system itself.

<sup>21</sup> Solar Energy Industries Association, U.S. Solar Market Insight Q1 2013. <http://www.seia.org/research-resources/us-solar-market-insight-q1-2013>.

<sup>22</sup> <http://www.distributedsun.com/docs/CT%20ZREC%20Program%20D-Sun%20Newsletter.pdf>.

### 3.2 SURVEY OVERVIEW

We conducted an on-line survey of solicitation participants to provide additional insight into the auction results described in the previous chapter. The survey instrument consisted of 42 questions that covered a number of areas: (a) the type of applicant, (b) information about the project (tiers, whether Delaware bonuses were utilized, use of net metering and/or green energy program (“GEP”) grants, (c) how the solicitation was publicized, (d) and the participant’s views concerning the solicitation (and the SREC transfer agreement). See Appendix A for the full survey instrument.

A link to the survey instrument was sent (via email) to 668 participants, representing 98% of the total number of solicitation participants (including both owners and owner representatives). In total, we received 192 responses, which corresponds to a 29% response rate.<sup>23</sup> Most respondents (71%) did not participate in the 2012 Pilot Solicitation. Though the majority of respondents were owners, a much greater portion of the owner representatives that participated in the solicitation<sup>24</sup> also answered the survey compared to owners (see Table 9).

TABLE 9 – SURVEY AND SOLICITATION PARTICIPATION TYPE

	Survey	Solicitation
Owner	171	656
Owner's Representative	20	25
Total	191	681

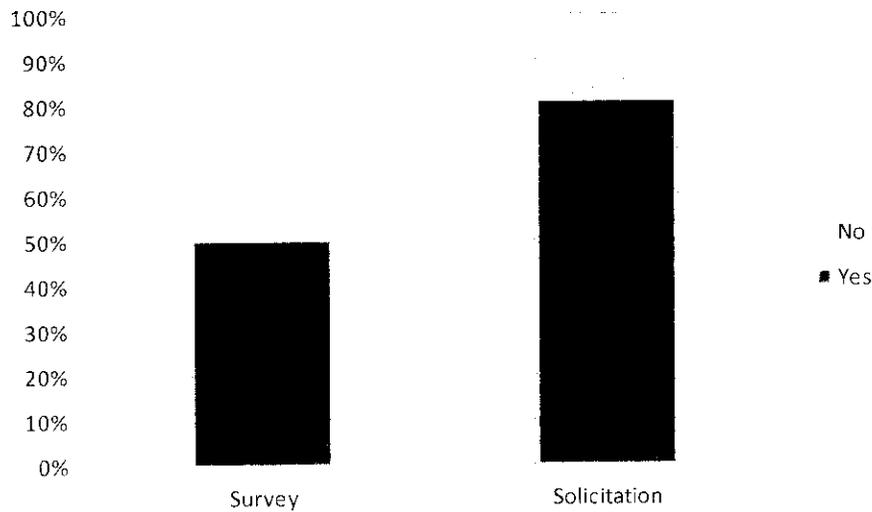
Figure 7 compares the results of the survey to data from the solicitation regarding the use of owner representatives. Though it is possible that survey respondents made less use of owner representatives, it is more likely that there was uncertainty regarding the exact meaning of the term “owner representative.” Indeed, a number of comments indicated uncertainty over the definition and whether the installer was the same as the owner representative.

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<sup>23</sup> This response rate is consistent with the response rate of 28% obtained in the 2012 SREC pilot procurement report.

<sup>24</sup> The owner representative data in the table only includes representatives that were not project owners. There were a number of owners that indicated (in the solicitation) that they were representing themselves.

FIGURE 7 – USE OF OWNER REPRESENTATIVES: SURVEY VS. SOLICITATION



In order to gauge the reasons to use or not use an owner representative, a common theme for those that used a representative was the complexity of the process and/or lack of knowledge or expertise to participate in the solicitation. We provide examples of some of the comments (edited for ease of reading) in support of using an owner representative:

- “I would handle my own transaction, however, I feel as a single home owner the system is stacked against me.”
- “They were recommended by the installer, the whole process is too new and complicated and I did not have time to do all the research...”
- “Not familiar with the process and don’t have time...”
- “Convenience”
- “Easier for me to have a rep”
- “I was not sure of the details of the solicitation and thought it made sense to have an owner’s representative.”
- “Was not sure how to submit a bid ourselves.”
- “I didn’t have enough information to do my own bidding.”

There were fewer comments describing reasons why an owner representative was not used, but most comments related to desire to avoid paying a commission or fee—though there were comments stating that the low fee charged by the owner representative was a reason in support of using a representative—or maintaining control over the process. A more limited number of comments indicated lack of value in utilizing an owner representative, citing the owner’s ability to complete the process.

In terms of project type, the survey featured a greater participation than the actual solicitation (in terms of percentage of applications) from projects in the new tiers than the existing tiers (see Table 10). As such, the survey features a similar distribution of applications and can thus be considered somewhat representative of the participants in the solicitation.

TABLE 10 – PERCENTAGE OF PROJECTS BY TIER: SURVEY VS. SOLICITATION

Tier	Applied		Accepted	
	Survey	Solicitation	Survey	Solicitation
N-1	36%	30%	46%	35%
N-2	7%	3%	11%	4%
N-3	1%	2%	2%	1%
E-1	52%	62%	40%	58%
E-2	4%	3%	1%	3%
% of Applications Accepted			30%	49%

The table also compares the breakdown of accepted projects in the survey to the solicitation with the survey being even more representative of new projects relative to the solicitation for projects that were accepted. Overall, the survey respondents feature a much lower percentage of accepted applications than the solicitation, possibly indicating that there was more interest in responding to the survey from unsuccessful participants.

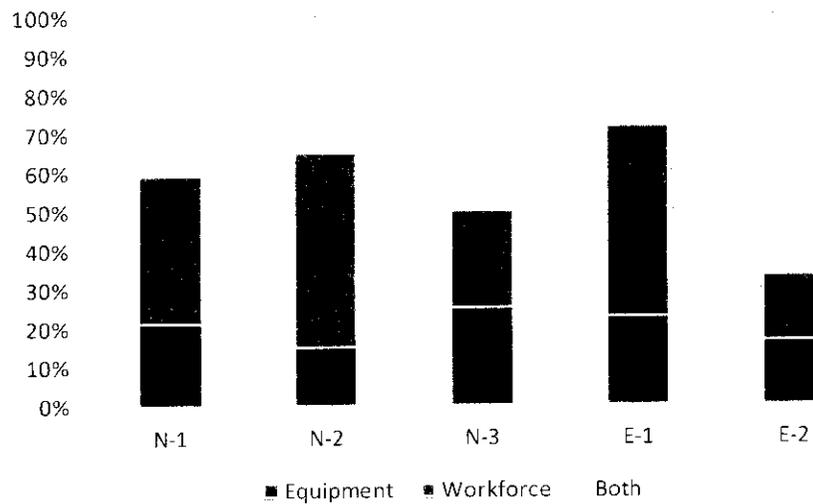
As a final point in way of overview, respondents were asked whether they participated in the 2012 pilot SREC solicitation. Most respondents (71%) indicated that they did not participate in the prior solicitation.

### 3.3 ROLE OF BONUSES AND INCENTIVES

We asked potential respondents a number of questions regarding the availability of Delaware-component (workforce and equipment) bonuses and use of other incentives. In particular, we wished to determine the extent to which the Delaware labor and workforce incentives were available relative to one another. As described in the prior chapter, new projects were much more likely to take advantage of the workforce and equipment than existing projects with only 8% of winning applications from the new tiers not taking advantage of one or both of the equipment bonuses.

Figure 8 shows the relative availability of the Delaware Bonuses, indicating that workforce bonuses were more available than equipment for almost all tiers (except for N-3 respondents).

FIGURE 2 – RELATIVE AVAILABILITY OF DELAWARE BONUSES



As a follow-up, we inquired concerning possible reasons for not taking either bonus. Table 12 shows number of responses according to each reason choice and confirms that Delaware equipment was less available than workforce. Lack of financial incentive was also cited, but most respondents provided “other” as a reason. Some of the comments received explaining the “other” response are shown below:

“Equipment was installed prior to eligibility”

“The equipment bonus determination is complicated because my system was installed in 2 parts several years ago.”

“Questions like this are why we use a representative.”

“I have no idea what Delaware Workforce & Equipment Bonus are, but the system was installed by a Delaware company.”

“I don’t know the origin of the panels or the inverter”

“Don’t know if the workforce was from Delaware”

“We got federal and state credits when the system was installed. Is this different?”

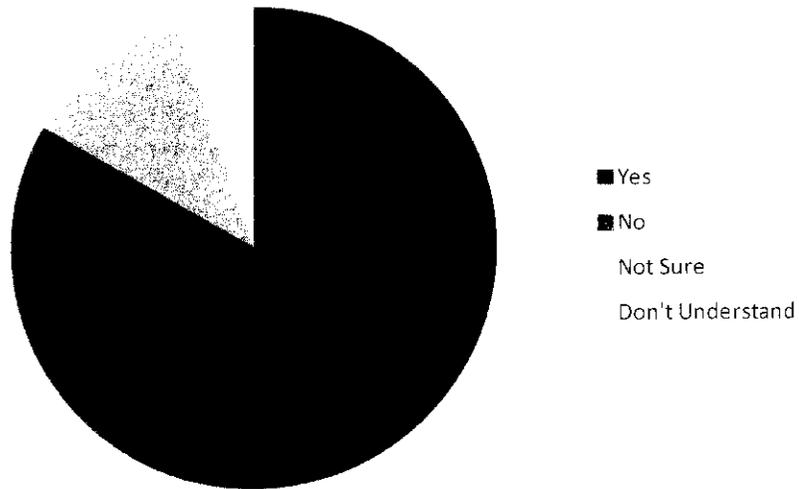
TABLE 12 – REASONS FOR NOT TAKING DELAWARE BONUSES

	Workforce	Equipment	Total
Bonus was not financially sufficient to offset cost increase	7	12	19
DE Component did not meet technical requirements for project	2	8	10
DE Component was not available	11	20	31

Other	31	38	69
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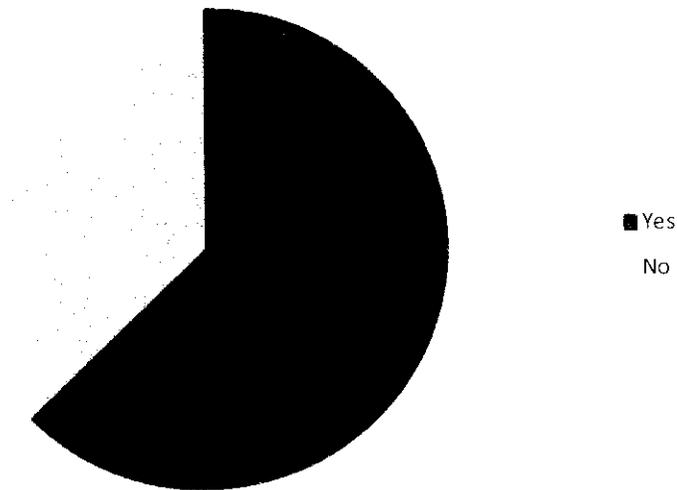
Turning to incentives, we asked respondents to comment on their use of (a) net metering and (b) the Green Energy Program Grant.<sup>25</sup> Use of either or both of these incentives serves to reduce the amount of additional revenue needed through other sources and thus has the potential to reduce bid prices. Figure 9 and Figure 10 show that use of these two incentives was common.

FIGURE 9 – USE OF NET METERING



<sup>25</sup> Delmarva Power, the Delaware Electric Cooperative and a number of Delaware municipal electric utilities have Green Energy Program grants with various project size, dollar, and availability limits. The responses may reflect the constraints of the GEP grant programs.

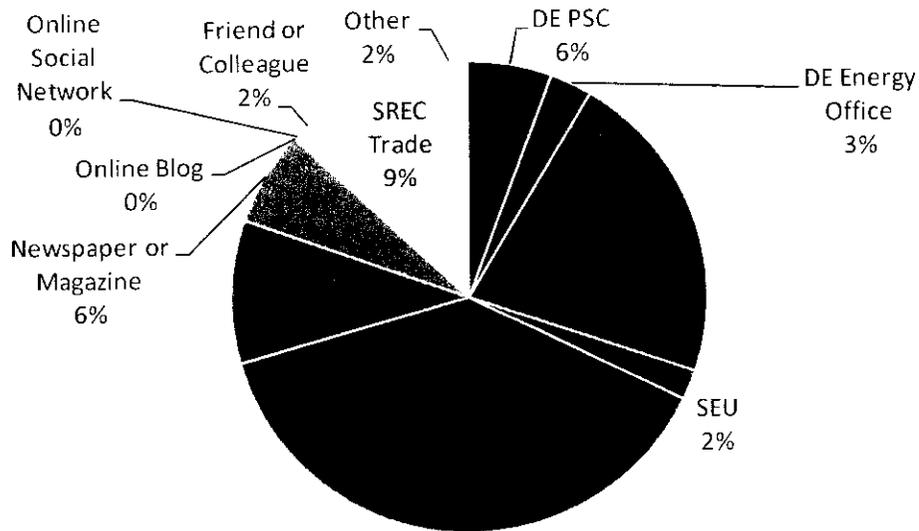
FIGURE 10 – USE OF GREEN ENERGY PROGRAM GRANT



### 3.4 PUBLICIZING THE SOLICITATION

In terms of publicizing the solicitation, we asked respondents to indicate how they first learned about the solicitation. The largest percentage of respondents, 38%, indicated their solar installer and 22% of the respondents stated that the website “srecdelaware.com” was the source, followed by an owner representative (10%) and SRETrade (9%). These four sources totaled 80% of respondents. Figure 11 shows the full response set.

FIGURE 11 – SOURCE OF SOLICITATION INFORMATION



Overall, a majority felt that the SEU and SRECTrade did an adequate job of notifying the solar community about the solicitation with only 31% indicating that they felt notification was inadequate. We also asked specifically for respondents to provide suggestions on how notifications (rather than the solicitation process and interface) could be improved. Some examples are shown below:

“I would like to have been notified through our power company since they have all pertinent information.”

“You have contact info for all of the system owners in Delaware. Why not just send them an e-mail and/or a piece of mail?”

“Have the utilities announce it in their customer mailings.”

“Email out everyone who had applications in for state grants.”

“Being visually impaired I was not made aware of any public media communications regarding the auctions.”

There were many more respondents that took the opportunity to provide suggestions on the complexity of the process and how more education could be provided (also discussed in a later section):

“More explanation of how the program functions from the owners’ perspective vs. what the owner representative roles actually are.”

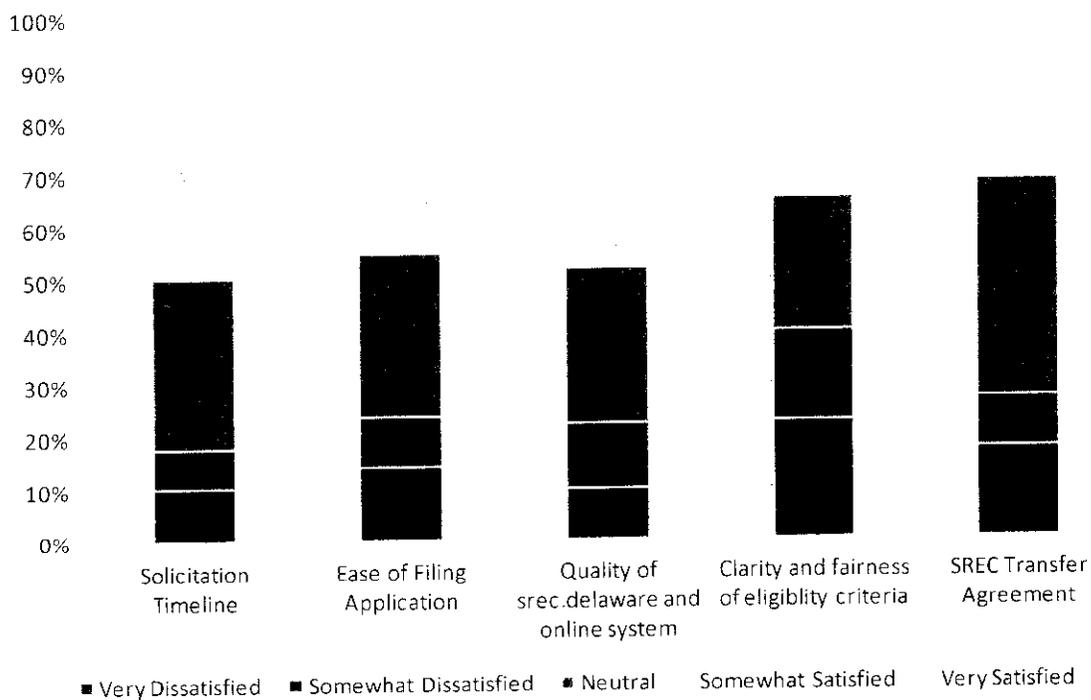
“A simple glossary of all the terms and acronyms used in some of the program documents would be a huge help and a big step in helping a layman such as myself to understand how the entire thing works, i.e., what is a “Solicitation.”

“An on-line, in-depth video explaining how the whole process works.”

### 3.5 SOLICITATION PROCESS AND INTERFACE

We asked a number of questions designed to capture respondents’ level of satisfaction with the solicitation process, interface, and documentation. Figure 17 summarizes the responses to five different components of customer satisfaction. We discuss each of these in turn below, but overall, no component was deemed as unsatisfactory. Clarity and fairness of eligibility criteria featured the highest level of dissatisfaction (40%), but 60% were satisfied or neutral.

FIGURE 17 – SOLICITATION PROCESS AND INTERFACE SATISFACTION



In terms of solicitation timeline, 18% indicated that either they were very or somewhat dissatisfied, which was the lowest of any component. In their comments, some respondents indicated that they were surprised by the amount of involvement that was necessary on the owner’s part (versus the installer) and how the complexity of the process made the process feel rushed. Overall, however, the large majority of respondents were either neutral or satisfied by the timeline.

The ease of filing the application received more dissatisfied responses (24%) and more strident comments, especially from those that attempted to do the applications themselves (without use of an owner representative of the installer):

“If we hadn’t had representative...we would be sunk...”

“Solar installer filed the application. I guess it was easy enough for them.”

“Picking the price to bid was terribly nerve wracking. It was like gambling in Las Vegas. It forced us to guess the future for many years to come.”

“Could not understand all the questions.”

“Somewhat difficult, but primarily due to the fact that it was the first time.”

There were also some suggestions and indications that the webinar and/or Q&A proved helpful:

“You already have the information in interconnection and grant applications. Pre-fill in the information that you already have so I don’t have to go hunt it down.”

“The form itself was very simple—fill in your name and sign. It was the 3 pages of ‘Terms of Service’ that were a little over the top.”

“The application is very detailed and if I had not found a previous application online to start to prepare for the questions I think it would have delayed my application submission within the allotted timeline.”

“SREC Delaware staff quickly resolved the problem.”

“Needed to call for help which was handled very well.”

With respect to the quality of the solicitation’s website ([www.srec.delaware.com](http://www.srec.delaware.com)) and the online system, 78% of the respondents provided neutral or satisfied responses. Interestingly, there were several respondents that commented that they had no knowledge of the website (implying that bidding and other tasks were performed by an installer or owner representative). Besides a few comments complaining about the complexity of the material, there were a number of comments that provided suggestions for improvements:

“Little too wordy...don’t like to wade through a lot of verbiage when using a website.”

“The ‘Home’ page needs to be free of clutter and very, very clear as to how to navigate the site and how to receive an account.”

“Probably need more discussion groups...”

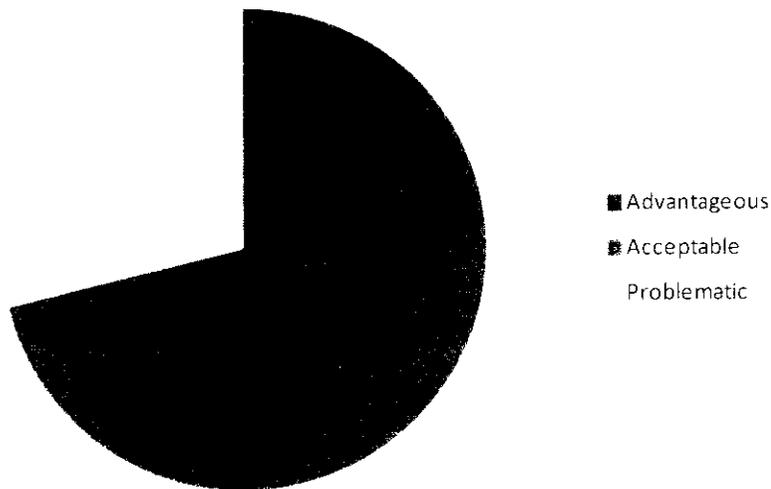
“The website used to be very slow, but it has dramatically improved in this regard in the last 6 months...”

“Have someone there organize it all into a comprehensive FAQ. Don’t just have the latest round of answers as the headlines.”

“Online system was adequately updated regarding the bid winners. The losers waited over 2 months to get deposit back. Also we did not get a detailed explanation of why we lost the bid. Or how close or far we were at getting the bid price offer.”

Figure 13 shows that the most respondents (72%) believed that the online-based auction was acceptable or advantageous. Most of the negative comments in the responses to this set of questions were not regarding the online nature of the auction but the difficulty in setting prices and/or the fact that bids had to be provided at all.

FIGURE 13 – VIEWS ON USE OF ON-LINE BASED AUCTION PROCESS



The clarity and fairness of the eligibility criteria received the most negative reaction of the customer satisfaction questions with 40% indicating dissatisfaction. Most of the written comments criticized the use of Delaware bonuses for favoring certain applications over others. A number of respondents complained that low bids priced them out of the market. Finally, there were some comments regarding how commercial projects were able to obtain larger SREC payments than residential projects.

The final customer service metric was satisfaction with the SREC transfer agreement. Twenty-eight percent indicated dissatisfaction, but most of the written comments discussed the complexity and length of the agreement. Examples are provided below:

“Somewhat complicated as all 30 pages needed to be returned by Fax or Scan.”

“What’s that?”

“I don’t understand any of it!!!”

“Just have price concerns...don’t really understand the overall revenue model.”

“I should have been able to print the page to sign the agreement and returned that page only.”

“Too complicated and legalistic.”

“I have no idea what you’re talking about.”

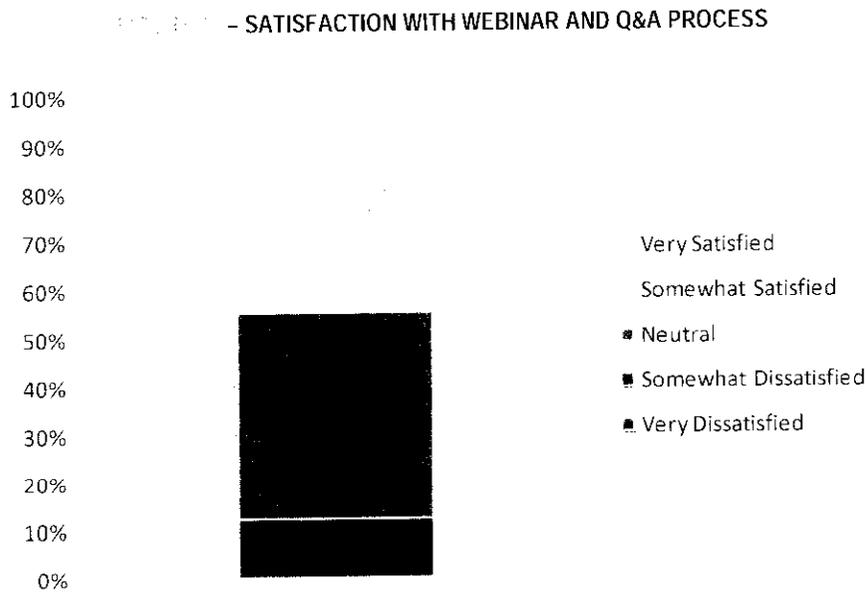
A majority of the respondents (65%) indicated that they did not watch the webinar provided by SRECTrade, despite the suggestions that the program was complex and additional education would be helpful. However, respondents did provide some reasons why they did not watch the webinar:

“I could not watch the webinar because I could not get it, despite all the directions given. Then you changed the time. Then I still could not get it.”

“I had no idea there was a ‘webinar’; I rest my case.”

“I would like to watch the webinar...where is that?”

Figure 3.10 indicates that respondents were generally satisfied with the webinar and question and answer process with nobody responding as very dissatisfied and only 14% indicating some dissatisfaction.



### 3.6 PROGRAM DESIGN AND OVERALL ASSESSMENT

A final set of questions inquired about the overall program design and asked respondents to provide their overall views of the solicitation. Given that this solicitation involved contracting with the SEU rather than with the utility, we asked respondents whether they perceived any additional risk with contracting with SEU. Eighty-seven percent (87%) indicated that they did not perceive any additional risk.

However, there were many comments that indicated unfamiliarity with SEU. Thus, this response may indicate a lack of knowledge.

We also asked whether there was any aspect of the SREC transfer agreement that caused bidding of a higher price or created problems in terms of future performance. A large majority (78%) answered that the agreement did not cause a higher price or create problems. Some of the comments reflected anger at the eventual winning bid prices being so low:

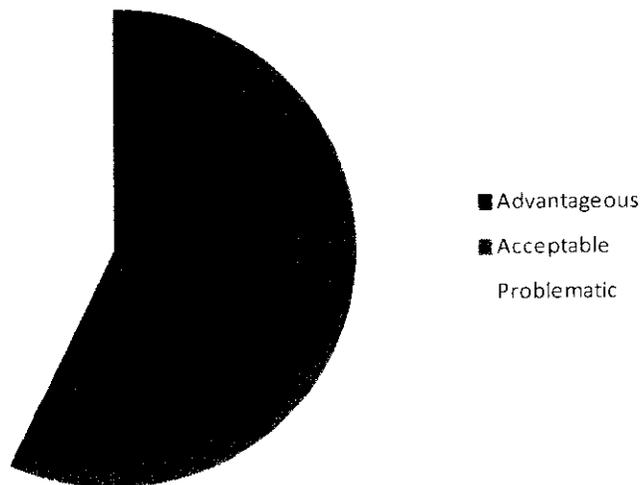
“Again not sure about this but we were told to set price at \$50 as at some point we would be receiving \$50...we’ve now dropped price and still getting no bids.”

“Disappointed that successful bids had to be so low—expected at least \$150 when installed.”

“It caused me to bid lower than I wanted.”

In terms of the bid price in the latter part of the contract, we asked respondents to describe their view regarding the structure of the SREC transfer agreement (bid price for first seven years and \$50 for remaining 13 years). Results are shown in Figure 15.

FIGURE 15 – VIEW REGARDING STRUCTURE OF SREC TRANSFER AGREEMENT (PRICES AND TERM)



A slight majority thought the SREC contract structure was accepted or advantageous, but over 40% thought the structure was problematic. There were some interesting comments, but most complained about the low prices in the final 13 years and the length of the contract:

“I think you had a BIG nerve to decree that the last 13 years would only have a \$50 price tag.”

“We thought SRECs would be more valuable.”

“Just set the price.”

“I would rather you set a price. I am not in the industry!”

“No provision for inflation.”

“20 year commitment is too long for homeowners with rooftop systems.”

We also asked whether a lower (\$25/SREC) price over the final 13 years would be preferable to the current price of \$50. Results are shown in Figure 16. Somewhat surprisingly, a little less than 50% indicated that a lower price would be less preferable, and 20% of the respondents indicated that a lower price would be more preferable. This response may indicate lack of knowledge of the contract terms and/or misunderstanding of the question. There were many comments that questioned why anyone would want less money over more money.

Figure 16 – VIEWS ON PREFERABILITY OF \$25 FOR 13-YEAR PERIOD AT END OF CONTRACT TERM

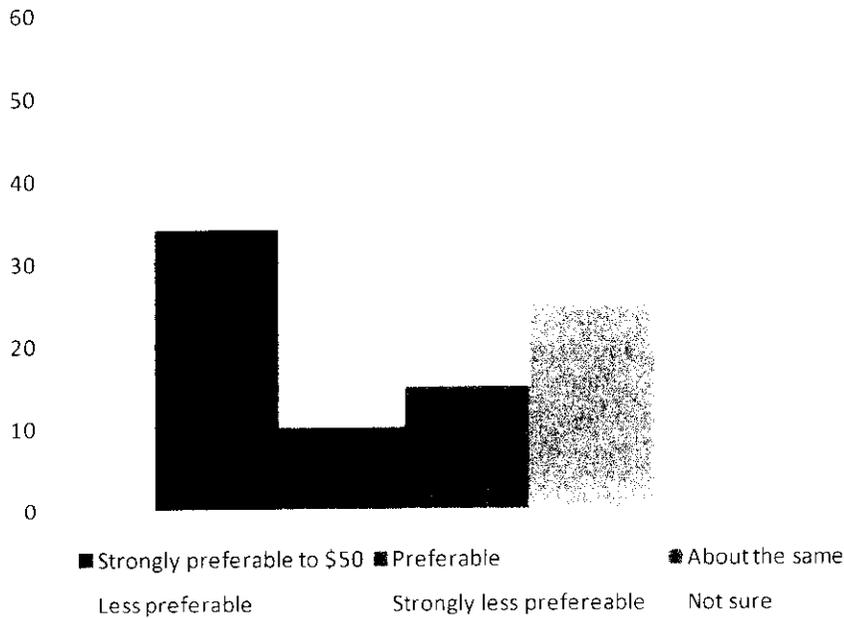


Figure 17 shows the respondents’ views on the competitive bidding process with 50% commenting that a competitive bidding process was problematic. There were many comments received elaborating on these views and describing any issues that came up and how respondents’ managed these issues. Overall, there was clear concern about the low prices and uncertainty on how to arrive at a reasonable bid. A sample of these comments is found below:

"No one has any idea of what they [SRECs] are worth."

"I have previously received over \$200 for some SRECs and I don't fully understand what the change in law and the process was to reduce the value of SRECs so dramatically."

"There are probably more advantages to the competitive bidding process but when you are getting nothing for your RECs anything is problematic to the owner."

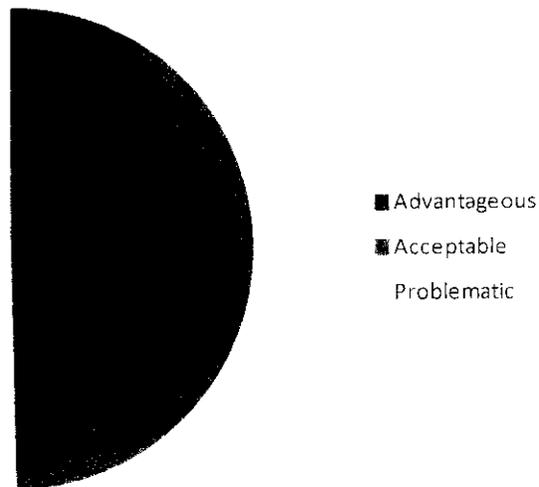
"I had no basis upon which to base my bid. It was a shot in the dark."

"This process seems to put residential owners at a distinct disadvantage to thoroughly investigate and weigh all options."

"If bidding is allowed to be \$0 there is no competition."

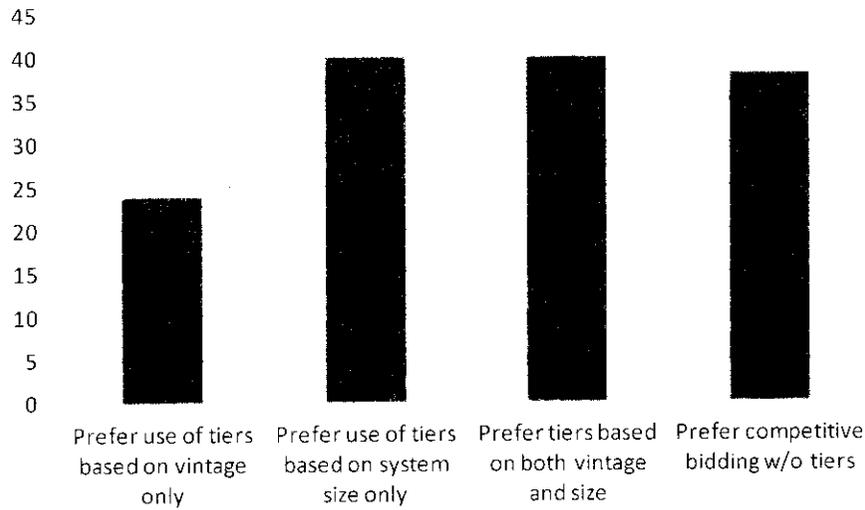
"Looking at the SRETrade site for different states, prices range from \$450 to \$35...too wide a "bid/ask" spread."

Figure 17 - VIEWS ON COMPETITIVE BIDDING PROCESS



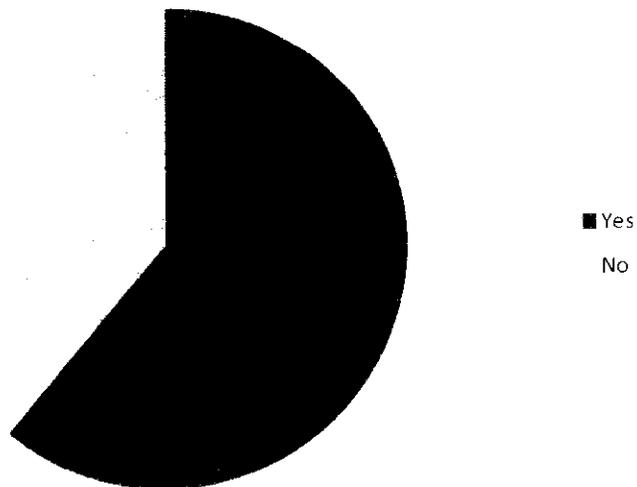
In terms of views on options for different or no tiers, respondents generally preferred some use of tiers, with a slight preference for tiers that included at least size (or both size and vintage). Responses are shown in Figure 18.

FIGURE 18 – PREFERENCES CONCERNING TIER STRUCTURE



We included a final set of questions regarding the fairness and effectiveness of the 2013 solicitation, how the 2013 solicitation compared to the pilot, and suggestions for improving the solicitation going forward. Not surprisingly, this group of questions generated the most comments. Figure 19 shows the results of a summary yes/no question regarding the fairness and effectiveness of the 2013 solicitation, indicating that 61% of respondents thought that the solicitation was administered in a fair and effective way. It is important to note that such a response does not necessarily imply that respondents felt that the outcomes were fair. We provide examples of comments following the figure.

FIGURE 19 – FAIRNESS AND EFFECTIVENESS OF ADMINISTRATION OF 2013 SOLICITATION



"Separation of new vs. existing was beneficial."

"The 2013 solicitation was more fair with the DE bonus of equipment and DE labor."

"The 2013 price was obviously a problem, as an auction the \$0 bid won and blew other projects totally out of the solicitation."

"It may have been fairly administered, but with no frame of reference, again I hesitate to make a judgment call, but it does by its nature seem unfairly slanted toward commercial owners who have additional resources to navigate the technical, legal, & financial waters."

"Administered well but poorly conceived."

"Effective yes, but totally slanted to the SREC buyer."

Respondents provided a number of suggested improvements. We provide examples of the more common types of comments below:

"1. Quit showing preferences 2. Allow bids to be reasonable in order to provide for an appropriate payback time frame. 3. Set permanent prices by tiers. 4. Allow the SREC price for the first seven years to be higher to provide a quicker payback and reduce the remainder of the years substantially."

"Stop using auctions as a vehicle."

"Increase the need of SRECs and \$s."

"Provide more education for residential owners so that there is a better understanding of the process and the terms associated with the process."

"Bidding should start at some minimum price set at \$20 or so."

"Establish price and let owner accept or decline."

"Put the program back the way it was."

"Give us more data re: supply/demand, ranges previously accepted/offered."

"Less technical terminology."

"Make the existing (vintage) tier larger for those that have been online before the creation of the program. Those systems used to make decent money and now there are a lot that are making little or none."

"Never accept a system that is not ready to be monitored at the start of the bidding process."

## 4 THE SEU'S ADMINISTRATION OF THE SOLICITATION

### 4.1 OVERVIEW

There are a variety of different parties that participated in the development and implementation of the 2013 SREC procurement program. The Renewable Energy Task Force, led by the Department of Natural Resources, developed the program design, for which Delmarva Power sought and obtained, with minor modifications, approval from the Delaware Public Service Commission. Under contract with Delmarva Power, the SEU was responsible for implementing the solicitation. The SEU, in turn, contracted with SRECTrade to both conduct the auction and to assist in administering the contracts. In this section of the report, we review both the conduct of the SEU's administration of the 2013 SREC procurement program as well as the associated costs.

### 4.2 CONDUCT OF THE SOLICITATION

SRECTrade conducted the 2013 auction for the SEU, as it did for the 2012 pilot program. The auction itself went relatively smoothly. There were bidding ties at \$50 for Tiers E-1 and N-1. These were resolved according to the bidding rules, through a rebidding process for those bids that were tied.

The Delaware SREC procurement program is somewhat unique in several ways: (a) a substantial part of the SRECs sought are from residential-scale solar PV systems, (b) the solicitation is conducted by or through a government agency on behalf of a utility company, rather than by the utility company itself, and (c) the government agency itself contracts for the SRECs and is responsible for administering the contracts. In addition, the 2013 solicitation sought competitive bids from all owners of all systems, including owners of existing systems. The 2013 program also differed from the 2012 program in that homeowners were not required to have an owner representative, although most in the 2013 program elected to use one.

In preparing this report, we conducted interviews with representatives of the SEU, SRECTrade and Delmarva Power, conducted a survey of participants in the auction, and obtained information from the Public Service Commission staff based on feedback they received. Overall, the feedback on the SEU's and SRECTrade's conduct of the auction was positive. However, there were a number of criticisms, primarily from homeowners and other non-industry participants, that the solicitation and explanatory information was too complex, not sufficiently understandable, and there was not sufficient notice regarding the timing of the auction given the complexity of having to decide what price to bid, even with input from solar installers and/or owner representatives.

On one level, it appeared to us that the explanations provided by SRECTrade on the website for the program, [srecdelaware.com](http://srecdelaware.com), were sufficiently clear, the webinar was professionally conducted, and the SEU did provide notification, both on the website and in advertisements in four statewide newspapers

shortly before and after the opening of the auction. However, for a future solicitation, several enhancements should be considered, some of which may go beyond the SEU's specific role in implementing solicitations:

- Consider a simplified process and standard transfer agreement for Tier 1 projects;
- An effort should be made to provide notifications substantially in advance of the conduct of auctions—a month or two in advance;
- A workshop should be considered to be held in an evening or evenings for interested parties, especially aimed at non-industry participants.

However, given the way the procurement program was designed, it appears that the SEU and SRETrade performed well in implementing the 2013 SREC procurement auction. While administration of the contracts will take place over a 20-year period commencing, and there is no information to evaluate the SEU's and SRETrade's efforts in this regard, we have received no negative feedback regarding their administration of the 2012 pilot program contracts. Overall, the SEU and Delmarva Power representatives have expressed satisfaction with SRETrade's handling of its responsibilities.

## 4.3 THE COST OF SEU ADMINISTRATION OF THE SREC PROCUREMENT PROGRAM

There are two elements of cost in terms of the SEU's administration of the SREC procurement program: (1) costs relating to conducting auctions and (2) costs in administering the contracts. Since the contracts are for 20 years in duration, the administrative costs extend for 20 years. With respect to both the auction and ongoing costs, there are two components: (a) costs the SEU pays SRETrade, which are then passed on to Delmarva Power; and (b) separate charges from the SEU.

Prior to the implementation of the pilot program, the SEU conducted a competitive process for a firm to serve as procurement agent, both for the conduct of auctions and for administration of the contracts. Out of several bidders, SRETrade was selected by the SEU. Delmarva Power negotiated a contract with the SEU to purchase SRECs procured by the SEU and for certain oversight rights, and the SEU negotiated a contract with SRETrade.

The costs to run the 2013 auction were significantly reduced from the costs to run the 2012 auction, as shown in Table 12 below. This is not surprising since much of the software and set-up from the first auction was usable in the second auction.

TABLE 12 – DELAWARE ADMINISTRATIVE COSTS TO CONDUCT SREC SOLICITATIONS

Type of Charge	Pilot Program	2013 Program	Difference
<b>SEU Set Up Fee</b>	\$61,495	\$0	(\$61,495)
<b>SRETrade Platform Fee</b>	\$45,000	\$0	(\$45,000)
<b>SRETrade Auction Fee</b>	\$43,682	\$45,866	\$2,184
<b>SRETrade Programming Fee</b>	\$0	\$7,500	\$7,500
<b>Total of All Charges</b>	\$150,177	\$53,366	(\$96,811)
<b>MW Contracted</b>	7.685	5.462	(2.223)
<b>\$ Cost/MW Contracted</b>	\$19,542	\$9,770	(\$9,771)

The costs to run the two auctions were significantly less than the costs to administer the New Jersey SREC long-term contract solicitations conducted by NERA Economic Consulting on behalf of Atlantic City Electric Company, Delmarva Power’s affiliate, as well as Jersey Central Power & Light Company, and Rockland Electric Company. This table is based on data from the “EDC Solar Long-term Contracting Program Analysis” authored by the Center for Energy, Economic and Environmental Policy for the New Jersey Board of Public Utilities.<sup>26</sup>

TABLE 13 – NEW JERSEY ADMINISTRATIVE COSTS TO CONDUCT SREC SOLICITATIONS (2010-12)

Type of Charge	Atlantic City Electric	Jersey Central	Rockland Electric
<b>NERA Solicitation Mgr. Fee</b>	\$624,126	\$1,517,222	\$128,854
<b>Internal Utility Costs</b>	\$111,357	\$207,012	\$22,910
<b>Total of All Charges</b>	\$735,483	\$1,724,234	\$151,764
<b>MW Contracted</b>	19.5	40.0	3.9
<b>Solicitation Mgr. Fee \$/MW</b>	\$32,006	\$37,931	\$33,039
<b>Total Cost \$/MW Contracted</b>	\$37,717	\$43,106	\$38,914

Meister Consultants also concluded that the SEU’s and SRETrade’s auction-related costs were lower than the auction-related costs of the New Jersey utilities in its report to the Commission last year.<sup>27</sup>

<sup>26</sup> The report was dated May 2, 2012 and can be found at [http://www.njcleanenergy.com/files/file/Renewable\\_Programs/SRECs/Solar%20Page%20updates/CEEEP%20Solar%20Long-term%20Financing%20Analysis%20\(5-3-12\)%5B1%5D.pdf](http://www.njcleanenergy.com/files/file/Renewable_Programs/SRECs/Solar%20Page%20updates/CEEEP%20Solar%20Long-term%20Financing%20Analysis%20(5-3-12)%5B1%5D.pdf).

<sup>27</sup> Meister Consultants, Evaluation of the Delaware SREC Pilot (August 3, 2012), p. 56. We included the internal costs of the utilities in our analysis in addition to that of the solicitation manager retained by the utilities because those costs, in our view, were comparable to the SEU’s auction-related charges. To compare the different solicitations, we used \$/MW of systems contracted because, we believed, these costs related to the initial amounts procured and factored out bonuses and contract

The bulk of the SEU and SRECTrade administrative costs are ongoing costs associated with the administration of the SREC contracts. For the 2013 procurement program, the SEU is paid a fee by Delmarva Power of \$5.789 per SREC delivered into Delmarva Power's GATS account in 2013. That fee adjusts on an annual basis and applies to each SREC traded under both the 2013 program and the pilot program. The fee had initially been higher for the 2012 pilot program but was negotiated downward beginning in 2015 due to economies of scale and learning curve benefits. In addition, Delmarva Power reimburses the SEU for a monthly fee of \$5,525 (\$66,300 per year) paid to SRECTrade for its role in entering the project owner's meter readings into the GATS accounts and performing the logistics associated with the SEU's invoicing Delmarva Power and directing payments to the accounts for the SREC sellers. The monthly fee for SRECTrade in the pilot program was \$11,000 (\$132,000 per year), which will continue. The fee was reduced for the 2013 program, due to the smaller size of the program (7,000 RECs/year compared to 11,472 RECs/year) and in light of some learning curve benefits. The following table summarizes the administrative costs for the 2013 program.

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term lengths in light of the role of the Delaware equipment and workforce adders and the different lengths of the contracts in New Jersey and Delaware.

TABLE 14 – 2013 PROGRAM ADMINISTRATION COSTS

Year	<u>SEU FEES</u>			<u>SRECTrade FEES</u>		<u>Total Costs</u>	
	SRECS	SEU fee/SREC	SEU FEES	Auction fees	Monthly fees	Total \$	\$/SREC
2013	3,500	\$5.79	\$20,262	\$53,366	\$33,150	\$106,778	\$30.51
2014	7,000	\$6.13	\$42,896		\$66,300	\$109,196	\$15.60
2015	6,965	\$5.16	\$35,949		\$66,300	\$102,249	\$14.68
2016	6,930	\$5.37	\$37,195		\$66,300	\$103,495	\$14.93
2017	6,896	\$5.58	\$38,483		\$66,300	\$104,783	\$15.20
2018	6,861	\$5.80	\$39,819		\$66,300	\$106,119	\$15.47
2019	6,827	\$6.03	\$41,196		\$66,300	\$107,496	\$15.75
2020	6,793	\$6.28	\$42,624		\$66,300	\$108,924	\$16.04
2021	6,759	\$6.52	\$44,091		\$66,300	\$110,391	\$16.33
2022	6,725	\$6.78	\$45,619		\$66,300	\$111,919	\$16.64
2023	6,691	\$7.06	\$47,213		\$66,300	\$113,513	\$16.96
2024	6,658	\$7.34	\$48,848		\$66,300	\$115,148	\$17.30
2025	6,624	\$7.63	\$50,541		\$66,300	\$116,841	\$17.64
2026	6,591	\$7.93	\$52,290		\$66,300	\$118,590	\$17.99
2027	6,558	\$8.25	\$54,106		\$66,300	\$120,406	\$18.36
2028	6,526	\$8.58	\$55,981		\$66,300	\$122,281	\$18.74
2029	6,493	\$8.92	\$57,921		\$66,300	\$124,221	\$19.13
2030	6,461	\$9.28	\$59,929		\$66,300	\$126,229	\$19.54
2031	6,428	\$9.65	\$62,008		\$66,300	\$128,308	\$19.96
2032	6,396	\$10.03	\$64,159		\$66,300	\$130,459	\$20.40
2033	3,182	\$10.43	\$33,196		\$66,300	\$99,496	\$31.27
<b>TOTAL</b>	<b>133,863</b>		<b>\$ 974,325</b>	<b>\$53,366</b>	<b>\$1,359,150</b>	<b>\$2,386,841</b>	
Years	20				Average cost/SREC		\$17.83
SRECs							
/year	6,693				Ongoing cost only/SREC		\$17.43

The average price for SRECs over the 20-year contracts is projected to be \$50.02 based on the contracts executed by the SEU. The administrative costs represent approximately 35% of the total amounts paid for SRECs. This is a higher percentage than for the pilot program—16%—due largely to the 61%

reduction in SREC purchase prices compared to the 2012 pilot program.<sup>28</sup> The current administrative costs associated with the 2012 pilot program contracts are shown below.

TABLE 15 – 2012 PROGRAM ADMINISTRATION COSTS

Year	<u>SEU FEES</u>			<u>SRECTrade FEES</u>			<u>Total Costs</u>	
	SRECS	Set-Up Fee	SEU fee/SREC	\$/SREC Fee	Auction fees	Monthly fees	Total \$	\$/SREC
2012	4,509	\$61,495	\$6.22	\$ 89,559	\$88,682	\$66,000	\$305,736	\$ 67.81
2013	8,000		\$5.79	\$ 46,312		\$132,000	\$178,312	\$ 22.29
2014	11,398		\$6.13	\$ 69,850		\$132,000	\$201,850	\$ 17.71
2015	11,341		\$5.16	\$ 58,537		\$132,000	\$190,537	\$ 16.80
2016	11,285		\$5.37	\$ 60,566		\$132,000	\$192,566	\$ 17.06
2017	11,228		\$5.58	\$ 62,664		\$132,000	\$194,664	\$ 17.34
2018	11,172		\$5.80	\$ 64,839		\$132,000	\$196,839	\$ 17.62
2019	11,116		\$6.03	\$ 67,081		\$132,000	\$199,081	\$ 17.91
2020	11,061		\$6.28	\$ 69,407		\$132,000	\$201,407	\$ 18.21
2021	11,005		\$6.52	\$ 71,795		\$132,000	\$203,795	\$ 18.52
2022	10,950		\$6.78	\$ 74,284		\$132,000	\$206,284	\$ 18.84
2023	10,896		\$7.06	\$ 76,879		\$132,000	\$208,879	\$ 19.17
2024	10,841		\$7.34	\$ 79,541		\$132,000	\$211,541	\$ 19.51
2025	10,787		\$7.63	\$ 82,298		\$132,000	\$214,298	\$ 19.87
2026	10,733		\$7.93	\$ 85,147		\$132,000	\$217,147	\$ 20.23
2027	10,679		\$8.25	\$ 88,103		\$132,000	\$220,103	\$ 20.61
2028	10,626		\$8.58	\$ 91,157		\$132,000	\$223,157	\$ 21.00
2029	10,573		\$8.92	\$ 94,315		\$132,000	\$226,315	\$ 21.41
2030	10,520		\$9.28	\$ 97,584		\$132,000	\$229,584	\$ 21.82
2031	10,467		\$9.65	\$ 100,971		\$132,000	\$232,971	\$ 22.26
2032	9,452		\$10.03	\$ 94,818		\$132,000	\$226,818	\$ 24.00
<b>TOTAL</b>	<b>218,642</b>	<b>\$61,495</b>		<b>\$1,625,708</b>	<b>\$88,682</b>	<b>\$2,706,000</b>	<b>\$4,481,885</b>	
Years	20					Average cost/SREC		\$ 20.50
SRECs/year	10,932					Ongoing cost only/SREC		\$ 19.81

<sup>28</sup> These percentages are calculated as follows: (1) 2013 program: total SREC purchase costs=\$6,695,514 divided by \$2,386,841 in administrative costs, and (2) 2012 pilot program: total SREC purchase costs=\$26,896,283 divided by \$4,411,389 in administrative costs.

A comparison of the two tables shows a decrease in administrative costs from \$20.50/SREC to \$17.83/SREC.

The total ongoing administrative costs exceed \$100,000/year for the 2013 program and more than \$300,000/year for both the 2013 program and the pilot program. Under the Commission's Order No. 8281, Delmarva Power has the burden of proof of showing that these costs are not higher than what Delmarva would have paid if it had administered the contracts itself and not used the SEU as a contractual intermediary. Clearly, there would have been considerable contract administration work that would have been, and would be, performed by Delmarva employees that is obviated as a result of using the SEU as a contract intermediary and SRETrade to perform contract administration functions. This might involve hiring additional utility personnel, setting up systems, and training utility personnel. We are unaware of any utility that has outsourced these functions. Nor have we been able to find data on the cost of performing those functions. We have been able to identify the costs, however, of utilizing the SEU and SRETrade. It will be Delmarva's burden to show that it could not have performed the same functions more cost effectively. Also, Delmarva should explore ways to reduce ongoing administrative costs by either seeking further reduction in SEU and SRETrade charges in future solicitations or taking the functions in house if it is more cost-effective to do so.<sup>29</sup>

As a practical matter, reducing the cost of administering the program may be related to making adjustments in program design that would address the underlying issues driving the cost of administration—primarily, the need to administer literally hundreds of contracts with different small customers over a 20-year period of time.

<sup>29</sup> We note that Delmarva purchased 3,331 effective SRECs (2,978 SRECs without consideration of workforce and equipment bonuses) in the spot auction for which it paid SRETrade \$2.57 per effective SREC to run the auction.

## 5 POLICY ISSUES

### 5.1 INTRODUCTION

In this section of the report, we address a variety of program design and planning-related matters pertaining to the SREC procurement program. This assessment includes addressing a number of policy issues applicable to future rounds of the program. As a general matter, this section addresses how the SREC procurement program could be designed to minimize ratepayer costs given the other objectives set forth in REPSA, including encouraging deployment of solar energy technologies, establishing revenue certainty for appropriate investments in solar technologies, establishing mechanisms for maximizing in-state renewable energy generation and local manufacturing, and ensuring that different size solar PV projects are financially viable investments in Delaware.<sup>30</sup> Specifically, in this section we address:

- To what extent should the program differentiate between new and existing projects?
- To what extent should Delmarva procure SRECs on the spot market instead of under long-term contracts?
- To what extent should Delmarva continue to procure SRECs from existing projects under long-term contracts?
- Should “new” projects include projects that have received final interconnection approval since the conduct of the last solicitation?
- To what extent should the program be modified with respect to project tier design and bidding rules?
- To what extent should competitive bidding be used for all tiers?
- Should the structure of the long-term contracts be modified? If so, how?
- What should be the future amounts of SRECs procured by Delmarva under long-term contracts and how should the procurement amounts be managed given the potential reduction of Delmarva’s REPSA obligations as a result of the Bloom energy project?
- How should the Green Energy Program and the SREC procurement program be coordinated to better achieve policy objectives and to do so in a cost-effective manner?

As a number of these questions are related, we address them together in this section.

<sup>30</sup> These are the key relevant considerations, along with minimizing ratepayer cost that the Renewable Energy Task Force was charged with taking into consideration in developing recommendations for a SREC procurement program. See 26 *Del. C.* § 360(d)(2).

## 5.2 NEW AND EXISTING PROJECTS; TIER STRUCTURE; COMPETITIVE BIDDING

As indicated previously in this report, a key difference in the 2013 SREC procurement program from the 2012 pilot program was the eligibility of existing projects to bid for long-term contracts. Existing projects could bid separately from new projects and were divided into two tiers with the dividing line set at 30 kW, what is considered the upper end size for residential and small commercial projects. However, the median size E-1 project, both with respect to total bids and winning bids, was 5.6 kW, substantially lower than the 30 kW upper limit.

The rationale for structuring a solicitation where new projects do not have to compete with existing projects is to encourage the continued development and installation of new projects. In light of the excess of supply over demand, a solicitation design that did not encourage the deployment of new systems would run afoul of one of the legislative objectives of designing a SREC procurement program.

The rationale for including existing projects in the long-term contracting program was to give those who had made decisions to go forward with projects in the past with the opportunity to obtain a long-term contract, just as owners of new projects were given that opportunity. Apart from using a long-term contracting program to stimulate development of new projects, it is not usual for utilities to want to procure energy products, regardless of whether the facilities that generate the products are new or existing, using a combination of long-term contract purchases and spot market purchases (although 20 years would be on the long end of the contract term spectrum). It seems to make sense for Delmarva Power to continue to make long-term purchases of SRECs from existing projects, as there continues to be a surplus and market prices are low. (Ultimately, long-term contracting of SRECs from existing projects might be reduced and then eliminated.) However, it does not, in our opinion, make sense to split out existing projects into separate tiers.

First, the results of the 2013 solicitation did not show any major differences between the bidding results of Tier E-1 and Tier E-2. In fact, the weighted average prices for Tier E-1 were \$4.70/SREC lower for the first seven contract years and on a levelized basis were \$2.29 lower per SREC than for Tier E-2. The rationale for dividing existing projects into tiers, apparently, is to protect the interests of owners of smaller projects, who have higher \$/watt costs than owners of larger projects. However, owners of existing projects, or at least economically rational ones, tend to submit bids based on what they believe will result in winning the auction, not based on investment costs that have already been incurred. The 2013 auction results support this premise. If there was a desire to protect the interests of owners of smaller projects against being outbid by a few owners of much larger projects, there could be a requirement that at least a designated percentage of the total auction pool be reserved for owners of small projects—the percentage should be lower than what might be the “target” allotment.

Consistent with the foregoing, it is sensible for Delmarva to continue to make some degree of SREC purchases on the spot market or using short-term contracts. Retaining SRETrade to conduct auctions for these purchases appears to be an effective means of making these purchases. Purchasing on the

spot market also provides project owners, at least those of existing projects (depending on what SREC vintages are being sought), with another opportunity of obtaining value for their SRECs, particularly for those project owners who believe that SREC market prices are likely to increase over the next few years.

Another question is whether “new” projects should continue to be defined as projects that have received their final interconnection approval since the conduct of the last auction as well as those projects that are still in the planning stage. As indicated in Section 2.4 of this report, there were only a few larger projects (Tier N-2 and Tier N-3) that received final interconnection approvals and were built since the last solicitation (April 2012). Apparently, few owners of larger projects with their larger capital requirements were willing to go forward without the assurance of a long-term SREC contract with known prices. However, there were many residential-scale projects that had received interconnection approvals and were built since the last solicitation.

There is a strong argument that allowing projects that go forward from the conduct of the last solicitation will create incentives on the part of owners to go forward during the year or so between solicitations, creating a more steady flow of deployments of systems and employment. In addition, it brings more competitive pressure on pricing, which is favorable to ratepayers. There does not appear to be a strong reason to change this feature of the procurement program.

The tier design for new projects was modified from the pilot program to reduce the number of tiers from four to three and the dividing lines between tiers. Similar to the tiers for existing projects, the pricing between different tiers did not materialize as expected. In fact, the lowest weighted average pricing was for Tier N-1, for residential-scale projects. Pricing for Tier N-3 was next highest, while pricing for Tier N-2 was higher than for Tier N-3 as well as Tier N-1. Costs for the 2013 solicitation could have been reduced, while more residential-scale systems would have been accepted, if there were no distinctions for new projects based on size. Removing the tiers for new projects in the next solicitation should be considered. An alternative should be to have a single solicitation for new projects, but with minimum amounts for Tier N-1 and possibly Tier N-2, but with the minimums less than where the target allocations would otherwise be set.

A major change to the procurement program from the 2012 pilot was the use of competitive bidding for all tiers, rather than a mix of competitive bidding for larger projects and administratively-set bidding for smaller projects. Competitive bidding for all tiers brought about substantially lower prices and without the hard work, controversy and difficulties associated with setting prices administratively in a declining cost industry. However, as indicated in the previous section of this report, there were reports of confusion and uncertainty among homeowners and other non-industry participants in participating in the process. Use of owner representatives, which were an option in this solicitation, was certainly helpful, but consideration should be given to doing more in the future to educate potential bidders and perhaps in simplifying the transfer agreement and the application process for residential scale projects.

For the next solicitation, one option is to maintain the competitive bidding process for all tiers, as in the 2013 program, but to improve outreach to, and education of, prospective participants. This could include a webinar or webinars targeted more to non-industry participants, preferably conducted in the

evening to allow interested homeowners to participate, with relevant information posted on one or more websites.

Another alternative is to give owners of residential scale projects the option of seeking a contract at the price set by winning bidders in the auction. If the demand for these contracts exceeded, the pool of SRECs available, winners could be determined by lottery. This would simplify the process for homeowners, on the one hand, while producing pricing that is market-based. On the other hand, it would leave pricing to be determined by a relatively small pool of bidders, which would likely put upward pressure on pricing and could provide an opportunity for gaming.<sup>31</sup>

A third alternative is to modify the Green Energy Program, or at least Delmarva Power's version of it, to give owners of new, truly residential scale projects (less than 10 kW) the *option* of obtaining grants at a certain level that would be a sufficient incentive to finance a solar PV system without SREC revenues (subject to potential funding limits). As a condition of the grant, the project owner/homeowner would be required to waive its right to sell SRECs. This could achieve several objectives: (a) make the process easier and less confusing for homeowners (bidding would not be required) and (b) potentially reduce the cost of administration of the SREC procurement program.

In addition, it would create the potential for facilitating development of more solar PV facilities in-state without modifying Delmarva Power's SREC procurement obligations. It could also provide for more cost-effective use of GEP funding. There are, however, a number of questions that should be considered:

- \* Should Delmarva Power receive any credit against its REPSA obligations for the MWh produced by the solar PV systems supported by modified GEP grants? If so, what should be the arrangements for metering energy produced by the systems?
- \* Should there be GEP funds made available at lower levels for project owners that do not wish to waive their rights to sell SRECs?
- \* What impact, if any, should this option for residential scale projects have on the design of the SREC procurement program?

There have been programs in other states that have taken the approach of providing for grants for solar PV facilities, but not allowing the sale of SRECs for Renewable Portfolio Standards compliance purposes.<sup>32</sup>

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<sup>31</sup> While there was no evidence of anti-competitive behavior in the 2013 SREC procurement program, it is advisable that the SREC procurement program in future years contain a provision that specifically authorizes the SEU to not accept bids where there is evidence of anti-competitive behavior. From a structural standpoint, there appears to have been significant concentration among owner representatives in the 2013 SREC procurement program, which warrants some degree of review in future solicitations.

<sup>32</sup> For example, solar PV facilities that received grants from the Massachusetts Renewable Energy Trust prior to a certain date or which received certain funding for more than 67% of installed costs are not eligible to sell SRECs in Massachusetts. See

## 5.3 DURATION AND STRUCTURE OF THE SREC TRANSFER AGREEMENTS

A complaint from some bidders was that it was unfair that some auction participants bid \$0 for the first seven contract years. Apparently, these participants bid \$0 in order to have a contract price of \$50 for the last 13 years of the contract. This also raises some concerns regarding enforcement of the SREC contracts as the owner will have less incentive for the first seven years of the contract to submit its meter readings since it would not be obtaining any payments. The SEU would have the right to terminate the SREC contract if the seller did not cooperate, but it is not desirable to use contract termination as an ordinary contract administration vehicle to ensure enforcement.

Another development relating to the design of the SREC contract was the large amount of \$50 bids, which led to some bidding ties. The prevalence of \$50 bids may have been associated with the \$50 price for the last 13 years of the contract term—perhaps, as an inadvertent “price signal.”

The rationale for the duration and pricing structure of the SREC Transfer Agreement was (a) Delmarva wanted a 20-year contract to provide it with assurance that it would have available to it SRECs at a stable, known price to meet its REPSA obligations over the period those obligations increased annually, (b) the front-end of the contract would have a higher price during a seven-year period when project owners were seeking payback of their investment (and sometimes outside financing), and (c) a price of \$50 for the last 13 years, which was viewed as being sufficiently high to provide an incentive for continued operations and compliance, including the expected need to replace the inverter after 10-15 years of operation.

However, the weighted average price of all winning bids in the 2013 SREC program was almost exactly \$50--\$50.05 to be precise.<sup>33</sup> Also, 20 year contracts are not needed to support financing of new projects and are certainly not needed for existing projects. Structuring the SREC Transfer Agreement the way it was done for the 2013 program apparently provided an incentive of sorts for bidders to bid \$0 to get the benefit of a long-term contract at \$50 for 13 years (although the payments would not commence until after year 7). This created a non-optimal competitive bidding process that was viewed by some participants as being unfair.

There are several alternative ways that the structure of the contracts could be modified to alleviate these concerns:

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14 CMR 14.05(4)(b). In using Massachusetts as an example, we are not suggesting in any way that the GEP fund anything close to 67% of installed costs.

<sup>33</sup> This amount was calculated based on the weighted average winning bids for each tier, which were then weight averaged based on the amount of SRECs purchased in each tier.

1. Allow bidders to submit a single price for the term of the contract (which could remain at 20 years or be reduced to 15 years);
2. Reduce the pre-set price for the back end of the contract to \$25 (or some specified price significantly under \$50);
3. Set the price for the back end of the contract to 50% (or perhaps, 75%) of the price bid for the first 7 years.

Any of these approaches would substantially reduce or eliminate any incentive to bid \$0. The approach which appears to best meet the design objectives for new projects is a pricing structure where the price for the back end of the contract is a specified percentage of the pricing bid for the years on the front end. This pricing structure or flat pricing for the entire term would appear to be appropriate for existing projects.

## 5.4 PLANNING FOR FUTURE PROCUREMENTS IN LIGHT OF BLOOM-RELATED EPSA PURCHASE OBLIGATION REDUCTIONS

In planning for future SREC program solicitations, a key issue is the amount of SRECs to be procured, including the amounts to be procured under long-term contracts. This planning is somewhat more complicated in Delaware as the result of provisions in REPSA which provide the Commission, in conjunction with the Secretary of the Department of Natural Resources and Delmarva Power, to determine whether Delmarva's obligation to purchase RECs or SRECs will be reduced in conjunction with MWh production of 30 MW of qualified fuel cell projects using Bloom Energy Corporation fuel cells.

In order to maintain a level of stimulation of the solar PV market in Delaware, it is important that there be some level of assurance that there be a continuation of the solar PV procurement program for the next year, and, preferably, several years at some reasonable level. Based on discussions with Delmarva's representatives, Delmarva plans on doing so for the foreseeable future, assuming that there is an unmet need for SRECs.

Due to changes in REPSA as a result of the 2011 amendments, Delmarva, as the state's only investor-owned electric distribution utility is responsible for procuring RECs and SRECs based on its in-state distribution load. At the same time, Delmarva's obligations to purchase RECs and SRECs under REPSA are subject to reduction based on the MWh production of the Bloom fuel cell projects approved by the Commission pursuant to the 2011 amendments.

Under Senate Bill No. 124 (the 2011 amendments to REPSA), Delmarva's obligations to purchase RECs would be reduced by 1 MWh for each 1 MWh of fuel cell production or, alternatively, 1 SREC (MWh) for each 6 RECs, which is equivalent to 6 MWh of fuel cell production. However, the Commissioner of DNREC exercised his authority, pursuant to the same legislation to change these ratios to:

- 2 RECs for each 1 MWh of fuel cell production for the first 15 years after operation; thereafter, to 1 REC for each 1 MWh of fuel cell production; or
- 1 SREC for each 6 MWh of fuel cell production for the first 15 years after operation; thereafter, to 1 SREC for each 3 MWh of fuel cell production, subject to a SREC contribution cap of 25% in years 1-5, 30% in years 6-15, and 35% thereafter.

To our knowledge, Delmarva Power's most recent projections regarding its needs for incremental SREC needs are contained in its 2012 Integrated Resource Plan filed with the Commission on December 6, 2012.

The projections and requirements are contained in Attachment D of the Appendix to the plan, and, as applicable, are summarized in the following table.

TABLE 16 – DPL DE PLANNING (COMPLIANCE) YEAR

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Standard Offer Service (GWH)	3,974	3,740	3,553	3,480	3,467	3,455	3,420	3,349	3,288	3,269	3,241
Third-Party Suppliers	4,054	4,085	3,985	3,931	3,986	4,027	4,007	3,917	3,848	3,814	3,784
Total Distribution Load	8,029	7,825	7,538	7,411	7,453	7,483	7,427	7,266	7,146	7,083	7,026
Transitional Third Party Supplier Load Obligation	1,673	576	147	57	0	0	0	0	0	0	0
RPS Exempt Load	700	800	1,100	1,300	1,500	1,500	1,500	1,500	1,500	1,500	1,500
DPL RPS Load Obligation (GWH)	5,655	6,349	6,291	6,054	5,953	5,983	5,927	5,766	5,646	5,583	5,526
Solar RPS Requirement %	0.60%	0.60%	0.80%	1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%	2.75%
Preliminary Solar RPS Requirement	22,821	38,093	50,327	60,536	74,408	89,743	103,725	115,323	127,037	139,581	151,960
Bloom ESRECs	5,655	9,523	12,582	0	0	0	0	0	0	0	0
Adjusted Solar RPS Requirement	16,966	28,670	37,746	60,536	74,408	89,743	103,725	115,323	127,037	139,581	151,960
Adjusted Solar RPS Requirement (%)	0.30%	0.45%	0.60%	1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%	2.75%
Total RPS Requirement %	8.50%	10.00%	11.50%	13.00%	14.50%	16.00%	17.50%	19.00%	20.00%	21.00%	22.00%
Total Requirement less Solar	458,084	596,802	673,138	726,443	788,711	867,523	933,630	980,246	1,002,187	1,032,902	1,063,723
Existing REC Allowance (1%)	56,553	63,489	62,909	60,536	59,525	59,829	59,271	57,661	0	0	0
Preliminary New REC Requirement	401,531	533,313	610,229	665,907	729,186	807,694	874,259	922,586	1,002,187	1,032,902	1,063,723
Bloom ERECs	10,907	218,181	353,595	504,576	504,576	504,576	504,576	504,576	504,576	504,576	504,576
Adjusted New REC Requirement	380,624	316,132	256,634	161,331	224,610	303,118	369,683	418,008	487,611	526,326	569,147
Total RECs	484,143	407,191	367,288	282,403	368,641	462,690	532,679	609,993	624,648	667,907	711,107
SREC Purchases											
Preliminary Solar Req't	22,621	38,093	50,327	60,536	74,406	89,743	103,725	115,323	127,037	139,581	151,960
Bloom Obligation Reduction (ES RECs)	5,555	9,523	12,582	0	0	0	0	0	0	0	0
Adjusted Solar Requirement	16,966	28,670	37,746	60,536	74,406	89,743	103,726	116,323	127,037	139,581	151,960
SREC Purchases											
Total Dover/S EU Contracts	10,127	14,126	17,026	17,836	18,866	13,846	13,776	13,707	13,639	13,671	13,603
Total Solar Pilot Program	6,431	11,472	11,415	11,358	11,301	11,245	11,189	11,132	11,077	11,021	10,966
Total Contracted Purchases as	16,658	25,598	28,440	29,193	30,166	25,090	24,964	24,840	24,715	24,692	24,569
Additional SRECs Required	268	2,872	8,305	31,343	44,240	64,653	78,761	90,483	102,322	114,989	127,491
Incremental SRECs Required	140	0	0	0	0	0	0	0	0	0	0
Beginning of Year SREC Bank	0	0	0	0	0	0	0	0	0	0	0
End of Year SREC Bank	0	0	0	0	0	0	0	0	0	0	0
Expiring SRECs	0	0	0	0	0	0	0	0	0	0	0
RECs from Existing Wind Contracts											
AES Armenia Wind	129,210	129,210	129,210	129,210	129,210	129,210	129,210	129,210	129,210	129,210	129,210
Gas Lamp - Roth Rock	105,120	105,120	105,120	105,120	105,120	105,120	105,120	105,120	105,120	105,120	105,120
Games a - Chesnut Flats	99,864	99,864	99,864	99,864	99,864	99,864	99,864	99,864	99,864	99,864	99,864
Total RECs from Wind Contracts	334,194	334,194	334,194	334,194	334,194	334,194	334,194	334,194	334,194	334,194	334,194
Additional RECs Required	3,882	0	0	0	0	0	0	0	0	66,708	224,953
BOY REC Bank	52,548	0	19,062	96,622	269,485	379,069	410,145	374,656	290,841	127,424	0
EOY REC Bank	0	19,062	96,622	269,485	379,069	410,145	374,656	290,841	127,424	0	0
Expiring RECs	0	0	0	0	0	0	0	0	0	0	0

Based on this forecast, there are significant forecasted incremental SRECs required to support ongoing rounds of the SREC procurement program. In fact, in light of the substantial reduction in SREC market prices and current REC market prices, Delmarva might apply the portion of the Bloom REPSA obligation reduction initially allocated to SRECs to RECs instead, based on a discussion with a Delmarva representative. It would be useful if the SREC procurement quantity for the next solicitation were developed and made public early in the planning process, even if it were to be subject to some adjustments later on.

## 8. CONCLUSIONS

On the whole, it is our conclusion that the 2013 SREC procurement program was conducted fairly and in a professional manner. The re-design of the program from the 2012 pilot program, including (a) the reliance on competitive bidding rather than a combination of competitive bidding for large projects and administratively-set pricing for small projects and (b) the inclusion of owners of existing projects as eligible bidders contributed to much lower costs, which is beneficial from the ratepayers' standpoint, and an increase in perceived fairness in the program from a project owner's perspective. At the same time, the statutory-based incentives for Delaware workforce and manufacturing provided the projects that planned to use them a competitive advantage, as they were designed to do, without driving the results of the process in a manner that undercut the benefits of competitive bidding from a ratepayer perspective.

There are, as might be expected, areas for continued improvement. Based on the survey conducted, there were expressions of concern from owners of residential-scale projects and other non-industry participants that the process was too complicated and that it was difficult to determine what prices to bid. The members of the Renewable Energy Task Force, in terms of program design, and the SEU, Delmarva Power and SRETrade, in terms of program implementation, should consider how to address these concerns. Some of the possible approaches raised in this report include (a) holding one or more webinars for non-industry participants as the target audience and (b) modifying the Green Energy Program (at least, Delmarva's version of it) to provide an alternative for owners of new residential-scale projects to participating in the SREC procurement program (which could also reduce the cost of administering the SREC procurement program). In addition, consideration should be given to modifications to the tiering structure to promote more open competition within the "new project" and "existing project" categories, while perhaps reserving certain minimum SREC amounts for smaller new projects.

## APPENDIX A – SURVEY INSTRUMENT

### **2013 Delaware SREC Procurement Program**

#### **Section A: Type of Applicant/Role in Bid**

1. Did you participate in the 2013 SREC solicitation as an Owner or an Owner's Representative?



2. What was your role with respect to the project(s) that were subject of your bids?

Site owner and project owner

Project owner and lessee of site

Own or control SRECs but not site or solar project

Other

3. If you are an Owner, did you have an owner representative?

Yes

No (Skip to Question 5)

4. Who was your owner representative?

5. Why did you decide to have an owner representative or not have an owner representative?

## Section B: Project Information

6. Which utility serves the location at which your project(s) is/are located?

Not Applicable (Tier E-1, E-2)

Delmarva Power

Delaware Electric Cooperative

Municipal utility

Other

7. How many projects did you complete applications for by type of site?

	0	1	2	3	4	5	Greater than 5
Not Applicable (Tier E-1, E-2)							
Delmarva Power							
Delaware Electric Cooperative							
Municipal utility							
Other							

8. At the time the applications were submitted, how many of the projects in Tiers N-1, N-2, and N-3 were proposed (not built) and how many were already commissioned?

	0	1	2	3	4	5	More than 5
Not Applicable (Tier E-1, E-2)							
NA							



**11. Please identify how many of your applications were eligible for BOTH the Delaware Equipment and Delaware Workforce Bonus:**

	0	1	2	3	4	5	More than 5
2017							
2018							
2019							
2020							
2021							
2022							
2023							
2024							
2025							
2026							
2027							
2028							
2029							
2030							

**12. Please identify how many of your applications were eligible for the Delaware Equipment Bonus only:**

	0	1	2	3	4	5	More than 5
2017							
2018							
2019							
2020							
2021							
2022							
2023							
2024							
2025							
2026							
2027							
2028							
2029							
2030							

**13. Please identify how many of your applications were eligible for the Delaware Workforce Bonus only:**

	0	1	2	3	4	5	More than 5
Delaware Workforce Bonus only							
Delaware Workforce Bonus and Delaware Equipment Bonus							
Delaware Equipment Bonus only							
Delaware Workforce Bonus and Delaware Workforce Bonus and Delaware Equipment Bonus							
Delaware Equipment Bonus and Delaware Workforce Bonus and Delaware Equipment Bonus							
Delaware Workforce Bonus and Delaware Equipment Bonus and Delaware Workforce Bonus and Delaware Equipment Bonus							

**14. Please describe how many of your applications were...**

	0	1	2	3	4	5	More than 5
Not eligible for either bonus							
Eligible for neither bonus							

**15. If your project(s) was/were not eligible for the Delaware EQUIPMENT Bonus, why not?**

- Bonus was not financially sufficient to offset cost increase
- DE equipment did not meet technical requirements for project
- DE equipment was not available
- Not applicable
- Other

**16. If your project(s) was/were not eligible for the Delaware WORKFORCE Bonus, why not?**

- Bonus was not financially sufficient to offset cost increase
- DE workforce did not meet technical requirements for project
- DE workforce was not available
- Not applicable
- Other

**17. Are you currently using, or do you plan to use net metering (which allows customers to use energy generated by the solar project to offset energy purchased from the utility)?**

- Yes
- No
- Not sure
- Don't understand the question

**18. Have you received, or do you plan to receive a Green Energy Program grant for the project(s) that are the subject of your application(s)?**

- Yes
- No

**Comments:**

## Section C: Publicizing the Solicitation

19. How did you learn about the 2013 Delaware SREC Solicitation?

Delaware Public Service Commission

Delaware Energy Office

SRECdelaware.com

Delaware Sustainable Energy Utility (SEU)

Solar installer

Owner representative

Newspaper or magazine

Online blog

Online social network

Friend or colleague

SRECTrade

Other

20. Do you think the SEU and SRECTrade did an adequate job of notifying the solar community about the solicitation?

Yes

No

21. Do you have suggestions regarding what the SEU and SRECTrade could do to improve those notifications?

## Section D: Solicitation/Ratings for Customer Satisfaction

Please rate your experience regarding

22. Solicitation timeline (sufficient notice and promptness in conduct of solicitation)

1 2 3 4 5

Rating: \_\_\_\_\_

Comments:

23. Ease of filing application

1 2 3 4 5

Rating: \_\_\_\_\_

Comments:

24. Quality of [srec.delaware.com](http://srec.delaware.com) website and online system

1 2 3 4 5

Rating: \_\_\_\_\_

Comments:

**25. Clarity and fairness of eligibility criteria**

1 2 3 4 5

Very Dissatisfied      Very Satisfied

**Comments:**

**26. Please indicate whether or not you watched the webinar:**

Yes

No

**27. If so, please rate the webinar and the question & answer process:**

1 2 3 4 5

Very Dissatisfied      Very Satisfied

Not Applicable

**Comments:**

## Section E: SREC Transfer Agreement

28. What is your view of the SREC Transfer Agreement?

1 2 3 4 5

1 Strongly Dislike

5 Strongly Like

Comments:

29. Did you perceive any additional risk associated with contracting through the SEU instead of directly with Delmarva Power?

Yes

No

Comments:

30. Was there any aspect of the SREC Transfer Agreement that caused you to bid a higher price than you might have otherwise have bid, or create a problem in terms of your future performance?

Yes

No

31. If so, describe the provision and why it caused you to bid a higher price, or why it creates a problem in terms of future performance.

## Section F: Program Design/Overall Assessment

32. Please describe your view regarding the structure of the SREC Transfer Agreement in the current 2013 solicitation where the Seller will receive its bid price for the first seven years and \$50/SREC for the remaining 13 years of a 20-year contract.

Advantageous

Acceptable

Problematic

Comments:

33. As an alternative to the current structure of the SREC Transfer Agreement, what is your view if the Seller would receive its bid price for the first seven years (as in the current solicitation) and \$25/SREC (rather than \$50/SREC) for the remaining 13 years of the 20-year contract?

Strongly preferable to \$50/SREC for the last 13 years of 20-year term

Preferable

About the same

Less preferable

Strongly less preferable

Not sure

Comments:

34. Please describe your view regarding the use of a competitive bidding process (in contrast to an administratively determined price) for this solicitation.

Advantageous

Acceptable

Problematic

Comments:

35. Please describe any issues associated with use of a competitive bidding process and how you have managed, or plan to manage, those issues.

36. What is your view regarding the use of tiers for this solicitation based on (a) project size and (b) whether the projects are "new" or existing (i.e., vintage)?

Prefer use of tiers based on whether projects are new or existing (vintage)

Prefer use of tiers based on system size

Prefer tiers based on both vintage and size

Prefer competitive bidding without tiers

Comments

37. What is your view regarding use of a similar online-based auction process for Delmarva's purchase of SRECs on the spot market?

Advantageous

Acceptable

Problematic

Comments:

38. Did you participate in the Pilot SREC solicitation conducted in 2012?

Yes

No - Please skip to Question 41

39. What aspects of the 2013 solicitation did you find MORE preferable to the 2012 solicitation? Why?

40. What aspects of the 2013 solicitation did you find LESS preferable to the 2012 solicitation? Why?

**41. In general, do you think the 2013 solicitation was fairly and effectively administered?**

Yes

No

**Comments:**

**42. Please tell us how the program can be improved for future solicitations.**

**EXHIBIT "B"**

**2014 PROGRAM OUTLINE AND FORM OF TRANSFER AGREEMENT**

**STATE OF DELAWARE**

**2014 PROGRAM**

**FOR THE PROCUREMENT OF**

**SOLAR RENEWABLE ENERGY CREDITS**

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- Appendix A Form of Bid Application
- Appendix B Form of SREC Transfer Agreement

**STATE OF DELAWARE  
2014 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*” meet a portion of their retail load.<sup>1</sup> For the 2014 compliance year (beginning June 1, 2014), retail electricity suppliers must purchase at least 11.5% of their retail load in Delaware from renewable resources.<sup>2</sup> That requirement increases incrementally each subsequent compliance year, up to 25% for the 2025 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to 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 0.80% for the 2014 compliance year, which increases incrementally 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.

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

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<sup>1</sup> 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.

<sup>2</sup> REPSA was amended in July of 2011 to provide: “[b]eginning with compliance year 2012, commission-regulated electric companies shall be responsible for procuring RECs, SRECs and any other attributes needed to comply with subsection (a) of this section with respect to all energy delivered to such companies’ end use customers.” 26 Del. C. §354(e) Accordingly, Delmarva Power & Light Company (“*Delmarva*”) is now responsible for REPSA compliance for its entire delivery load.

consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state.”<sup>3</sup> 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.”<sup>4</sup>

## 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.<sup>5</sup> 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 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 (3) 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*”).

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<sup>3</sup> 26 *Del. C.* § 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.*

<sup>4</sup> *Id.* § 359(a).

<sup>5</sup> A REC does not include any emission reduction credits or allowances required to comply with any necessary permits for Generation Units.

### 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.<sup>6</sup>

### 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.”<sup>7</sup> 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:

- 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

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<sup>6</sup> Eligibility for the Delaware Equipment Bonus and the Delaware Workforce Bonus shall be determined solely by the DPSC.

<sup>7</sup> *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; (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).

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

In 2010, 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 recommended for approval to the DPSC a statewide pilot program for the 2011 compliance year (the "***SREC Procurement Pilot Program***") to 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. The DPSC approved the SREC Procurement Pilot Program with minor modifications pursuant to Order No. 8093, dated December 20, 2011.

Following successful implementation of the SREC Procurement Pilot Program ("Pilot Program"), the Taskforce recommended for approval to the DPSC of a statewide program for 2013 (the "***2013 SREC Procurement Program***"). The 2013 SREC Procurement Program continued the goals of the Pilot Program of creating a market for SRECs in Delaware and providing a mechanism for the procurement of SRECs to ensure that the requirements of REPSA are met. The 2013 SREC Procurement Program ("2013 Program") was based on five (5) tiers of SRECs, all competitively bid, with the intent of procuring a total of 7,000 SRECs plus an additional 1,000 SRECs through purchases on the spot market. The DPSC approved the 2013 SREC Procurement Program on January 22, 2013, pursuant to Order No. 8281. Thereafter, by Order No. 8450, dated September 10, 2013, the DPSC issued its Findings of Fact, Conclusions of Law and Final Opinion in Support of Order No. 8281. In doing so, the DPSC found that the 2013 SREC Procurement Program was in the public interest and met the criteria of REPSA. The DPSC also accepted DPSC Staff's recommendation that an independent consultant be hired to evaluate the 2013 SREC Procurement Program. An evaluation was performed by New Energy Opportunities, Inc. and LaCapra Associates, Inc. (the "Consultants") which issued its report dated August 7, 2013, revised September 20, 2013 ("Consultants' Report"). The Consultants' Report concluded that the 2013 Program was conducted fairly and in a professional manner and that the changes

which were implemented to provide for competitive bidding and the inclusion of owners of existing projects as eligible bidders, resulted in lower overall costs to ratepayers.

Based upon its review of the results of the 2013 Program and a review of the Consultants' Report, the Taskforce recommends the following SREC procurement program for the 2014 compliance year (the "**2014 SREC Procurement Program**").

#### 4. **Program Administration; Eligibility**

##### 4.1 Public Solicitations

The Taskforce believes that the procurement of SRECs by retail electricity suppliers<sup>8</sup> operating in the State of Delaware should be implemented through public solicitations, managed by the SEU.<sup>9</sup> Solicitations under the Pilot Program and the 2013 Program were managed by the SEU and the Taskforce has approved the use of the SEU for the 2014 SREC Procurement Program.<sup>10</sup> The solicitations will be for SRECs and other environmental attributes<sup>11</sup> created by the Eligible Energy Resources, but will not cover the energy output of the resources. Upon receipt and evaluation of the applications received in response to each solicitation, the SEU will award bids and execute agreements based on the criteria set forth in this 2014 SREC Procurement Program.

##### 4.2 Owner Qualifications

To apply as an owner (an "**Owner**") of an Eligible Energy Resource pursuant to the 2014 SREC Procurement Program, the applicant must own, lease, control or be the direct assignee of all of the SRECs

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<sup>8</sup> In 2011, the statute was amended so that RPS obligations were assigned to only commission-regulated electric companies. 26 Del. C. §354.

<sup>9</sup> The SEU will use a third party (the "**SREC Procurement Agent**") to perform some or all of its duties with respect to the 2014 SREC Procurement Program, including conducting solicitations, evaluating bids and executing agreements on behalf of the SEU. The SREC Procurement Agent for the 2014 SREC Procurement Program will be InClimate, Inc. InClimate, Inc. is an affiliate of SRECTrade and was established solely to operate utility and public agency renewable procurement programs. InClimate, Inc. will be operated by Kevin Quilliam who oversaw the SREC auctions for the Pilot Program and the 2013 Program.

<sup>10</sup> As with the Pilot Program and the 2013 Program, the recovery of costs incurred by the SEU will be dealt with in separate proceedings.

<sup>11</sup> 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.

created by such resource.<sup>12</sup> Any party participating in the 2014 SREC Procurement Program may submit an application jointly with an entity that has executed agreements<sup>13</sup> to control the SRECs produced by two or more Eligible Energy Resources (such entity, an “*Owner Representative*”).

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 2014 SREC Procurement Program as Owners or Owner Representatives (as long as they satisfy the applicable requirements for being an Owner or Owner Representative).

#### 4.3 Eligible Projects

To qualify for participation in the 2014 SREC Procurement Program, a Generation Unit must: (a) qualify as a “Solar Photovoltaic Energy Resource” in accordance with the DPSC rules; and (b) be eligible for certification as an Eligible Energy Resource under REPSA.

In order to increase the likelihood that a wide variety of residential and commercial projects have an opportunity to participate in the 2014 SREC Procurement Program, the Taskforce has determined to continue with the distinct tiers of Generation Units (based on their date of interconnection approval and nameplate capacity) that had been established for the 2013 Program for which different pricing, bid rules and other contract terms and conditions will apply. The tiers are as follows:

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<sup>12</sup> An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

<sup>13</sup> 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.

## GENERATION UNIT TIER DESIGNATIONS

<u>New Systems<sup>14</sup></u>	
<u>Tier</u>	<u>Nameplate Rating (DC at STC)</u>
N-1	Less than or equal to 30 kW
N-2	Greater than 30 kW but less than or equal to 200 kW <sup>15</sup>
N-3	Greater than 200 kW but less than or equal to 2 MW
<u>Existing Systems<sup>16</sup></u>	
<u>Tier</u>	<u>Nameplate Rating (DC at STC)</u>
E-1	Less than or equal to 30 kW <sup>17</sup>
E-2	Greater than 30 kW but less than or equal to 2 MW

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.<sup>18</sup>

#### 4.4 Ongoing Program Evaluation

The Taskforce will evaluate the 2014 SREC Procurement 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 different tiers) would be prospective only and executed SREC Transfer Agreements (as defined below) would not be affected. Any material changes to the 2014 SREC Procurement Program would be subject to approval of the appropriate regulatory bodies.

<sup>14</sup> Eligible “*New Systems*” are systems with final interconnection approval after the first date of the preceding auction process (*i.e.*, April 12, 2013 for compliance year 2014).

<sup>15</sup> 35% of the new systems procurement is reserved for Tier N-2. New systems procurement from Tier N-3 shall not exceed 35%.

<sup>16</sup> Eligible “*Existing Systems*” are systems with final interconnection approval before the first date of the preceding auction process. New Systems and Existing Systems may be referred to individually as a “system” or collectively as “systems” throughout.

<sup>17</sup> 50% of the existing systems procurement is reserved for Tier E-1. Existing systems procurement from Tier E-2 shall not exceed 50%.

<sup>18</sup> 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)<sup>19</sup> for each Generation Unit for which it intends to participate in the 2014 SREC Procurement Program. However, for New Systems that are an addition to or expansion of Existing Systems, a separate application may be submitted for both the New System and the Existing System provided that the New System has a separate meter from the Existing System installed in accordance with the requirements of Section 6.7. 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);<sup>20</sup>
- if the Owner 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:

- 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.

Once an Owner's bid is accepted, it must submit:

- a standard form agreement to sell SRECs to the SEU (an "*SREC Transfer Agreement*") executed by the Owner and, if necessary or elected, an Owner Representative.

### 5.2 Estimated Output

Each application to sell SRECs pursuant to the 2014 SREC Procurement Program must include a binding estimate of: (a) the annual energy output of the Eligible Energy Resource, as determined using

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<sup>19</sup> 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 is free to submit an application for such unit pursuant to any future solicitation.

<sup>20</sup> 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.

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 statement that it intends to qualify for the Delaware-sourced equipment and/or in-state workforce bonus and the binding SREC output estimate for such resources should include any such SREC bonus.<sup>21</sup> 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.

### 5.3 Bid Deposit

Each application to participate in the 2014 SREC Procurement 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 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<sup>22</sup> 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 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

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<sup>21</sup> 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.

<sup>22</sup> 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.

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). Bid 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 elected by such Owners, the Owner Representatives. 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 twenty (20) years. The term will commence as follows:

- For New Systems or Existing Systems for which the Operation Date is prior to thirty (30) days following the close of the solicitation, the term of the Agreement shall commence thirty (30) days after the close of the solicitation regardless of when the Agreement is executed by the Owner or Owner Representative.

- For New Systems or Existing Systems for which the Operation Date is not thirty (30) days prior to the close of the solicitation, the term of the Agreement shall commence on the Operation Date regardless of when the Agreement is executed by the Owner or Owner Representative.
- Under either scenario, the date on which the term of the Agreement begins is the “**Commencement Date**”, regardless of when the Agreement is signed by the Owner or Owner Representative. If the Owner or Owner Representative does not sign the Agreement until after the Commencement Date, they forfeit the right to compensation for any SRECs created prior to the Commencement Date.

## 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 2014 SREC Procurement 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 N-1, Tier N-2 or Tier E-1 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 N-3 or Tier E-2 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 N-1, Tier N-2 or Tier E-1 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 N-3 and Tier E-2 projects that have a nameplate rating of 500 kW or greater, 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 below) or to allow the Generation Unit to fit within a pending solicitation (as described in Sections 7.1 and 7.2 below).

### 6.3 Pricing

All New Systems and Existing Systems will be required to submit bids which will be evaluated and selected based on the lowest bid prices. Owners are required to submit bids only in their applicable Tier. For the 2014 SREC Procurement Program, the SREC price during the first seven (7) years of the term of the SREC Transfer Agreements will be the bid price, and the SREC price for the last thirteen (13) years of the SREC Transfer Agreements will be fixed at \$35 per SREC.

### 6.4 Utility Interconnections

If, based on an Owner's interconnection application, the interconnecting utility proposes to assess any fee or charge (other than a standard interconnection application fee), the Owner may, within ten (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. In order to take advantage of this right, each Owner must submit a complete interconnection application (Step 1) to the interconnecting utility no later than one hundred twenty (120) days after the Execution Date.

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.<sup>23</sup> 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 projects must commence operation no later than twelve (12) months after the Commencement Date (the "***Guaranteed On-Line Date***"); provided 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 (1) 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 1/30<sup>th</sup> of the deposit amount. In the event a Generation Unit is not operational within thirty (30) days of its Guaranteed On-Line Date, the SEU will have the right to terminate the SREC Transfer Agreement.

#### 6.6 Payment

All Tier N-1, N-2 and E-1 projects will be paid on a quarterly basis, and all other projects will be paid on a monthly basis. 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 N-1, N-2, E-1 and E-2 Projects must install either a revenue-grade meter on site or revenue-grade online monitoring. All Tier N-3 Projects must install revenue-grade online monitoring.

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<sup>23</sup> 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.

## 6.8 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 thirty (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 N-3 or Tier E-2 projects with a nameplate rating of 500 kW or greater 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 seven (7) years of the SREC Transfer Agreement, such supplemental credit support shall be in an amount equal to five percent (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 ten percent (10%) of the value of the Estimated SREC Quantity for the 8<sup>th</sup> 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.<sup>24</sup>

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 that such relief shall be limited to the amount of time the condition exists that caused the delay but in no event greater than a period of one (1) year for any single force majeure event.

#### 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 within the timeframe required ; or
- for a Tier N-3 or Tier E-2 project with a nameplate rating of 500 kW or greater, 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 thirty (30) days after the end of such annual period; or
- the 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 2014 SREC Procurement Program and such failure is not cured within thirty (30) days of notice of such failure.

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<sup>24</sup> 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).

### 6.13 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 this 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 the 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 N-3 or Tier E-2 project with a nameplate rating of 500 kW or greater 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 thirty (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) in its sole and absolute discretion.

## 7. Bid Awards

Promptly upon receipt of an application to sell SRECs from an Owner Representative or Owner in response to a solicitation issued pursuant to the 2014 SREC Procurement Program, the SEU will review the application to verify whether it is complete and complies with all applicable procedures. Partial or incomplete applications will be rejected.

## 7.1 Competitive Solicitations

All projects will be required to submit price bids in competitive solicitations. A given system is only allowed to bid into one (1) auction and one (1) tier per year.

The price bid for each project must be for a fixed dollar amount, which amount cannot escalate or otherwise vary during the initial seven (7) year period of the term of the Agreement. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids in each solicitation. If Tier N-1 and/or Tier N-2 have losing bids that are lower priced than winning bids for Tier N-3, such bids will be applied to Tier N-3 in order to minimize the weighted average bid price of Tier N-3. Bids from Tier N-3 will not be applied to Tier N-1 or Tier N-2 and bids from Tier N-2 will not be applied to Tier N-1. If Tier E-1 has losing bids that are lower priced than winning bids in Tier E-2, such bids shall be applied to Tier E-2 in order to minimize the weighted average bid price of Tier E-2. Bids from Tier E-2 will not be applied to Tier E-1. Provided these stated minimums are met, the SEU will accept for each Tier the lowest bid prices.

If a tier allocation is not fully subscribed in the initial solicitation, a second solicitation may be held within the following six (6) months for the balance of the allocation for such tier. The SEU will announce all solicitations for competitively priced bids at least thirty (30) days in advance of the bid date.

## 7.2 Bidding Ties

If there are multiple bids at the same price that would cause a competitive solicitation to be oversubscribed (a "**Bidding Tie**"), the SEU will first select all applicants that claimed the Delaware Equipment Bonus and the Delaware Workforce Bonus. If this causes the solicitation to still be oversubscribed, a lottery will be held among only applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus. If there is still a Bidding Tie after awarding all applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus, the SEU will give each applicant involved in the Bidding Tie for such tier a 5-day period to reduce its 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 such applicant submits a reduced price bid, to such applicant(s) on the basis of the lowest price bid until: (a) the pending solicitation 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; and

- second, if after completion of the first step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SEU will award SREC Transfer Agreements based on a lottery among the remaining applicants involved in such Bidding Tie that claimed the Delaware Equipment Bonus or the Delaware Workforce Bonus; and
- third, if after completion of the second step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SEU will award SREC Transfer Agreements based on a lottery among remaining applicants involved in such Bidding Tie that claimed neither the Delaware Equipment Bonus nor the Delaware Workforce Bonus.

If a 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 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. If the applicant elects to reduce the capacity of the 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.

Partial fill systems will be allowed to bid the rest of the system in future procurements, but the second bid will have to be in a tier size that reflects the cumulative system size. Systems that obtain multiple bids will first transfer SRECs at the lowest price each year.

For system additions, the bid must be in a tier size that reflects the cumulative system size. Systems that obtain multiple bids will first transfer SRECs at the lowest price each year.

Notwithstanding the language contained in this Section 7.2, if there is a Bidding Tie in the combined Tier N-1, E-1 and E-2 solicitation, the tie breaker is as follows: (1) New Systems prevail over Existing Systems; (2) in-state content and labor prevails; and (3) if a tie still remains, there will be a rebid.

## 8. Solicitation for 2014 Compliance Year

### 8.1 Resource Allocation

Based on forecasted load, the SREC solicitations for the 2013 compliance year will be for 8,000 SRECs, which will be allocated as follows:

- Tiers N-1, E-1, E-2 – 3,800 SRECs
- Tier N-2 – 1,600 SRECs
- Tier N-3 – 1,600 SRECs

Spot Market Purchases - 1,000 SRECs

Delmarva Power may procure a portion of its requirement, approximately 1,000 SRECs, through the spot market. The size of the spot market purchases should be consistent with a portfolio approach of short term and long term purchases. The spot market procurement will be open to all systems, and Delmarva Power will procure short-term contracts in a similar manner to its current practices.

**APPENDIX A**  
**Form of Bid Application**

**APPLICATION**  
**to sell**  
**SOLAR RENEWABLE ENERGY CREDITS**  
**2014 SREC PROCUREMENT PROGRAM**

This is an application to sell solar renewable energy credits ("SRECs") to the Delaware Sustainable Energy Utility, Inc. (the "SEU") pursuant to a procurement program for the 2014 compliance year established in accordance with the Delaware Renewable Energy Portfolio Standards Act (as amended, "REPSA").

**Owner Information**<sup>1</sup>

Name (company or individual): \_\_\_\_\_

Street address: \_\_\_\_\_

City, state and zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

GATS Account No.:<sup>2</sup> \_\_\_\_\_

**Owner Representative Information (to be filled in if applicable)**

Name (company or individual): \_\_\_\_\_

Street address: \_\_\_\_\_

City, state and zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

GATS Account No.: \_\_\_\_\_

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<sup>1</sup> 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.

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

**Description of Project**

Location: \_\_\_\_\_  
(street address or parcel number)

City, state and zip code: \_\_\_\_\_

Nameplate capacity (kW-DC)<sup>3</sup> \_\_\_\_\_

Tier designation (check one):

- Tier N-1 Project (New system, less than or equal to 30 kW-DC)
- Tier N-2 Project (New system, greater than 30 kW and less than or equal to 200 kW-DC)
- Tier N-3 Project (New system, greater than 200 kW and less than or equal to 2,000 kW-DC)
- Tier E-1 Project (Existing system, less than or equal to 30 kW-DC)
- Tier E-2 Project (Existing system, greater than 30 kW and less than or equal to 2,000 kW-DC)

System tilt (degrees): \_\_\_\_\_

System azimuth (degrees): \_\_\_\_\_

Operational status (check one):

- Project currently under development
- Project currently in operation  
Specify initial operation date: \_\_\_\_\_

Estimated energy and SREC output:

First year energy output: \_\_\_\_\_ kWh (exclusive of any bonuses described below)

First year SREC output: \_\_\_\_\_ SRECs (exclusive of any bonuses described below)

Utility interconnection:

\_\_\_\_\_ Interconnecting Utility

\_\_\_\_\_ Date of acceptance of completed System Interconnection Application

**Required Information**

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<sup>4</sup>

Eligibility for Delaware Workforce Bonus (check if applicable):

<sup>3</sup> 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).

<sup>4</sup> Eligibility for the Delaware Equipment Bonus shall be determined solely by the DPSC.

- 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<sup>5</sup>

Price Bid: \$\_\_\_\_\_ per SREC (applicable during first 7 years)

**DISCLAIMER FOR SREC PRICES**

*Disclaimer: The Solar Renewable Energy Credit (SREC) price used in any return on investment calculations is not guaranteed. Winning any solicitation or auction is not guaranteed. This SREC price may vary depending on if one wins any available solicitation/auction contract and the terms of the contract. If a bidder wins an available solicitation/auction, the price will be stated in the contract. If a bidder does not participate or win in any solicitation or auction, the SREC price is unknown and based on variables such as supply of SRECs and demand for SRECs in the market. The price a bidder may receive for an SREC may affect the financial payback period of your system. By signing the following, you agree that you have read and understood the above disclaimer.*

THE UNDERSIGNED HEREBY CERTIFIES THAT: (A) IT IS THE OWNER IDENTIFIED HEREIN; (B) THIS IS THE ONLY APPLICATION BEING SUBMITTED PURSUANT TO THE 2014 SREC PROCUREMENT PROGRAM THAT INCLUDES THE PROJECT DESCRIBED HEREIN; (C) THE INFORMATION SET FORTH IN THIS APPLICATION IS TRUE, ACCURATE AND COMPLETE; AND (D) IT HAS FULLY, COMPLETELY AND ACCURATELY IDENTIFIED ALL SUPPLEMENTAL FUNDING FROM PUBLIC SOURCES (OTHER THAN GRANTS IN LIEU OF INVESTMENT TAX CREDITS) FOR WHICH IT HAS APPLIED OR WHICH IT HAS BEEN AWARDED OR RECEIVED.

\_\_\_\_\_  
Owner

Print: \_\_\_\_\_

**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)

<sup>5</sup> Eligibility for the Delaware Workforce Bonus shall be determined solely by the DPSC.

**APPENDIX B**

**Form of SREC Transfer Agreement**

**SOLAR RENEWABLE ENERGY CREDIT**

**TRANSFER AGREEMENT**

**DELAWARE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT**

**2014 SREC PROCUREMENT PROGRAM**

**SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT  
DELAWARE RENEWABLE ENERGY PROGRAM**

**2014 SREC PROCUREMENT PROGRAM**

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**SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT  
DELAWARE RENEWABLE ENERGY PROGRAM**

**2014 SREC PROCUREMENT PROGRAM**

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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*")<sup>1</sup> to SEU One, LLC (or any successor organization thereto, the "*SEU*").

**PART I  
PROJECT AND OWNER INFORMATION**

A. Owner:<sup>2</sup>

- Name of entity: \_\_\_\_\_
- Street address: \_\_\_\_\_
- City, state and zip code: \_\_\_\_\_
- Attention: \_\_\_\_\_
- Email address: \_\_\_\_\_
- Tax ID Number/SS Number: \_\_\_\_\_
- Owner's other Eligible Energy Resources:<sup>3</sup> \_\_\_\_\_
- Owner GATS Account No.:<sup>4</sup> \_\_\_\_\_

B. Owner Representative (if one is designated):

- Name of entity: \_\_\_\_\_
- Street address: \_\_\_\_\_
- City, state and zip code: \_\_\_\_\_
- Attention: \_\_\_\_\_

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

<sup>2</sup> The Owner is the legal entity that owns, leases, controls or is the direct assignee of all of the SRECs created by the Project.

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

<sup>4</sup> 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.

- Email address: \_\_\_\_\_
- Tax ID Number/SS Number: \_\_\_\_\_
- Other Eligible Energy Resources: \_\_\_\_\_

C. Payee (check one):

- Owner
- Owner Representative

D. Project:

- Street address:<sup>5</sup> \_\_\_\_\_  
(or parcel number if property does not have street address)
- City, state and zip code: \_\_\_\_\_
- Nameplate capacity: \_\_\_\_\_ kW<sup>6</sup>
- Tier designation (check one):
  - Tier N-1 Project (New system, less than or equal to 30 kW-DC)
  - Tier N-2 Project (New system, greater than 30 kW and less than or equal to 200 kW-DC)
  - Tier N-3 Project (New system, greater than 200 kW and less than or equal to 2,000 kW-DC)
  - Tier E-1 Project (Existing system, less than or equal to 30 kW-DC)
  - Tier E-2 Project (Existing system, greater than 30 kW and less than or equal to 2,000 kW-DC)
- Operational status (check one):
  - Project under development as of Bid Date
  - Operation Date has occurred as of Bid Date  
Operation Date: \_\_\_\_\_
- Purchase Obligation Date (check one):

<sup>5</sup> 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.

<sup>6</sup> All capacity (kW) references are to the nameplate rating of the Generation Unit (DC at STC), as designated by the solar module manufacturer.

June 1, \_\_\_\_\_

First day of the month following project certification by DPSC as Eligible Energy Resource

- Utility interconnection:

\_\_\_\_\_ Interconnecting Utility

- 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 (exclusive of any bonuses described below)<sup>7</sup>

Estimated first year total SREC output \_\_\_\_\_ SRECs (exclusive of any bonuses described below)

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 7 Contract Years)

<sup>7</sup> 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 a Tier N-1 or N-2 Project or a Tier E-1 Project creates any Excess Amount during any Contract Year, the SEU shall, no later than thirty (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 to not purchase the Excess Amount or any portion thereof for such Contract Year. In the event that the SEU does not purchase any portion of the Excess Amount created by a Tier N-1 or N-2 Project or a Tier E-1 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 a Tier N-3 Project or Tier E-2 Project creates any Excess Amount during any Contract Year: (a) the SEU shall have no right to purchase any such Excess Amount; (b) the Owner shall be free to use or sell such SRECs as it deems appropriate; and (c) if any 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. 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 (the "**Purchase Obligation Date**") shall commence as of the later of June 1, 2014, or 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, 2014.

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

2.1.4 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. In order to invoke its rights under this Section 2.2.1 (b)-(d) the Owner shall submit a complete interconnection application (Step 1) to the Interconnecting Utility no later than one hundred twenty (120) 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 ten (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 ten (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 thirty (30) days after the Operation Date.

### Section 2.4 Purchase Price and Payment Terms.

#### 2.4.1 Purchase Price.

- (a) The Purchase Price for Project SRECs created during Contract Years 1 through 7 will be the bid price set forth in the application submitted for such Project.
- (b) For all Projects, the Purchase Price for Project SRECs created during Contract Years 8 through 20 shall be \$35 per SREC.

2.4.2 SREC Bonus. If the Delaware Equipment Bonus or the Delaware Workforce Bonus is specified in Part I and the DPSC certify 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 ten percent (10%). If the Delaware Equipment Bonus and the Delaware Workforce Bonus is specified in Part I and the DPSC certify 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 twenty percent (20%). Under either scenario, the bonus will be paid during the entire twenty (20) year term of the Agreement.

2.4.3 Payment. Subject to the limitations set forth in this Agreement: (a) for all Tier N-1, N-2 and E-1 Projects, the SEU shall pay the Payee for Project SRECs no later than twenty-five (25) 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 all other 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 sum of: (i) the Maximum Annual Quantity; plus (ii) if applicable, any portion of the Excess Amount which it has elected to purchase pursuant to Section 2.1.2(a).
- (b) The SEU may withhold payment of any amounts disputed in good faith.

2.4.5 Payment Errors. In the event that any Party becomes aware of any payment error (whether such error was in the form of an underpayment or overpayment), such Party shall notify the other Parties in writing of such error and the Party required to make payment shall do so within thirty (30) days of such notification; *provided, however*, that no payment adjustment shall be required unless the foregoing notice is delivered within eleven (11) months of the date of the original payment.

### 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 Commencement 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 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, for up to thirty (30) days of 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 damages set forth in Section 2.5.2(a) represent reasonable and genuine estimates of such damages; and (iv) such 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 Project is an Eligible Energy Resource as defined by REPSA and will obtain all necessary approvals, regulatory or otherwise, to perform the obligations set forth herein;
- (j) the information set forth in Part I is true and accurate in all respects;
- (k) the Owner has received no supplemental funding from public sources other than the funding, if any, identified in Part I;
- (l) to the extent bidding in Tiers N-1, N-2 or N-3 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
- (m) if a New System, its completed System Interconnection Application's acceptance date with the Interconnecting Utility will be after the first date of the preceding compliance year's auction process.

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. An Owner may not modify the Estimated SREC Quantity except as expressly permitted hereunder.

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 five (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 thirty (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 N-1 Project, a Tier N-2 Project, a Tier E-1 Project, a Tier N-3 Project with a nameplate rating less than 500 kW or a Tier E-2 Project with a nameplate rating less than 500 kW; or (ii) 2.5% for a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or

greater, except that bids that were granted partial fill may submit a new system size at the time they accept the partial fill;

- (e) with respect to the Owner and, if one is designated, the Owner Representative, any Project SRECs (up to the Maximum Annual Quantity and, if applicable, any portion of any Excess Amount that the SEU elects 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 thirty (30) days after the Operation Date;
- (g) with respect to the Owner Representative (but not the Owner), either: (i) any representation or warranty of the Owner Representative made pursuant to Part III shall have been incorrect when made and shall remain incorrect thirty (30) days after notice thereof; or (ii) the Owner Representative fails to perform any obligation pursuant to Part III for a period of 30 days following receipt of notice of such failure;
- (h) such Party fails to perform any other obligation pursuant to this Agreement for a period of thirty (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 sixty (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; (ii) exercise any remedies available at law or in equity, including specific performance, termination of this Agreement, and/or recovery of damages equal to the incremental cost of replacing the expected SREC output of the Project for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the SEU); and/or (iii) suspend its performance hereunder.

- (b) Upon the occurrence of an Event of Default by the Owner Representative pursuant to Section 2.8.1(g), the Owner and/or the SEU shall be entitled to: (i) remove such Owner Representative as a Party to this Agreement by delivery of written notice to such Owner Representative and the other Party and, if necessary, replace such Owner Representative; and (iii) exercise any remedies available at law or in equity, including specific performance; *provided, however*, that neither the Owner nor the SEU may terminate this Agreement based on such 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 remedies available at law or in equity, including specific performance or termination of this Agreement and recovery of damages equal to the difference, if positive, between the Purchase Price under this Agreement and the market price for SRECs in Delaware for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the Owner); 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(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.
- (b) 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 damages set forth in Section 2.8.3(a) represent reasonable and genuine estimates of such damages; and (iii) such 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 five (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 one (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 I.**

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 SREC's 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 SREC's 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; and (b) any replacement Owner Representative shall execute a counterpart of this Agreement and agree to be bound by the terms hereof.

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.

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 owns, leases, controls or is the direct assignee of all of the SRECs created by the Project and at least one other Eligible Energy Resource.

Section 3.5 Continuing Eligibility. The Owner Representative shall, at all times during the term of this Agreement, own, lease, control or be the direct assignee of all of the SRECs created by the Project and at least one other Eligible Energy Resource.

#### PART IV MINIMUM ANNUAL QUANTITY

**The provisions of this Part IV shall apply only if the Project is designated as a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater in Paragraph D of Part I.**

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 eighty percent (80%) of the Annual Contract Quantity (such amount, the "*Minimum Annual Quantity*").

4.1.2 Exclusive Remedy.

- (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 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. Payment of such amount shall be the exclusive liability of the Owner for any such failure with respect to any Contract Year.
- (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 damages set forth in Section 4.1.2(a) represent reasonable and genuine estimates of such damages; and (iv) such 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 seven (7) Contract Years, five percent (5%) of the value of the Annual Contract Quantity for the first Contract Year; and
- (b) during the second thirteen (13) Contract Years, ten percent (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.

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 three (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 during the term of this Agreement for the benefit of the SEU. No interest shall be owed with respect to a Bid Deposit.

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; (b) if the Project is a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater, the Owner provides the Supplemental Credit Support; and (c) the Owner has executed any documentation reasonably necessary to perfect the security interest 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, whether now existing or hereafter arising, the GATS account of the Owner, and all proceeds of any of 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 specified in Section 6.1.

“*Contract Year*” means each 12-month period commencing on the Purchase Obligation 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 (b) 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. 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 the terms of this Agreement.

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

“**Excess Amount**” means, with respect to the SRECs created by the Project during any Contract Year, any such SRECs in excess of the Maximum Annual Quantity.

“**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.

“**Existing System**” means a system with final interconnection approval before the first date of the preceding auction process (i.e. April 12, 2013 for compliance year 2014).

“**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.

“**New System**” means a system with final interconnection approval after the first date of the preceding auction process (i.e. April 12, 2013 for compliance year 2014).

“**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 Obligation 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).

“**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 all Tier N-1, N-2, E-1 and E-2 Projects, either a revenue-grade meter on site or revenue-grade online monitoring; and (b) for any Tier N-3 Project, revenue-grade online monitoring.

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

“**SEU**” has the meaning set forth in the introductory paragraph of this Agreement.

“**SREC**” means a tradable instrument which represents or is associated with 1 MWh of electric energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology and which qualifies as a “Renewable Energy Credit” under REPSA, together with any Environmental Attributes associated with such energy or the generation thereof.

“**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 N-1 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier N-2 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier N-3 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier E-1 Project*” has the meaning set forth in Paragraph D of Part I.

“*Tier E-2 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 or delegate any of its duties hereunder except where otherwise provided in this Agreement, 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, which financing shall be at the Owner's sole expense; or (b) to a purchaser or transferee of the Project provided all the requirements of the Section 7.8.2 are met. 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 in the event of a default by the assignee.

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.

Section 7.17 Further Assurances. Each of the parties hereto agree to cooperate with the other and to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other party, which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 7.18 Electronic Signatures. The parties hereto have agreed to conduct this transaction by electronic means, therefore, the affixing of an electronic signature to this Agreement evidences the intent of the parties to conduct this transaction electronically and no party may therefore deny the legal effect or enforceability of this Agreement solely because their signatures hereto are in electronic form. *[Signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above referenced.

Owner:

**[Name of Owner]**

By: \_\_\_\_\_

Owner Representative:

**[Name of Owner Representative]**

By: \_\_\_\_\_

**SEU One, LLC**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**Estimated First Year Energy Output**

**EXHIBIT "C"**

**BLACKLINE SHOWING CHANGES TO 2014 PROGRAM FROM 2013 PROGRAM**

STATE OF DELAWARE

20132014 PROGRAM

FOR THE PROCUREMENT OF

SOLAR RENEWABLE ENERGY CREDITS

Final 2/1/13

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- Appendix A Form of Bid Application
- Appendix B Form of SREC Transfer Agreement

**STATE OF DELAWARE**  
**20132014 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.<sup>1</sup> For the 20132014 compliance year (beginning June 1, 20132014), retail electricity suppliers must purchase at least 101.5% of their retail load in Delaware from renewable resources.<sup>2</sup> That requirement increases incrementally each subsequent compliance year, up to 25% for the 2025 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to 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 0.6080% for the 20132014 compliance year, which increases incrementally 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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<sup>1</sup> 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.

<sup>2</sup> REPSA was amended in July of 2011 to provide: “[b]eginning with compliance year 2012, commission-regulated electric companies shall be responsible for procuring RECs, SRECs and any other attributes needed to comply with subsection (a) of this section with respect to all energy delivered to such companies’ end use customers.” 26 Del. C. §354(c) Accordingly, Delmarva Power & Light Company (“*Delmarva*”) is now responsible for REPSA compliance for its entire delivery load.

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.”<sup>3</sup> 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.”<sup>4</sup>

## 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.<sup>5</sup> 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 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**

<sup>3</sup> 26 *Del. C.* § 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.*

<sup>4</sup> *Id.* § 359(a).

<sup>5</sup> A REC does not include any emission reduction credits or allowances required to comply with any necessary permits for Generation Units.

Once a REC or SREC is created, it continues to exist for three (3) 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.<sup>6</sup>

### 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.”<sup>7</sup> 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:

- 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;

<sup>6</sup> Eligibility for the Delaware Equipment Bonus and the Delaware Workforce Bonus shall be determined solely by the DPSC.

<sup>7</sup> *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).

- 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.

In 2010, 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 recommended for approval to the DPSC a statewide pilot program for the 2011 compliance year (the "***SREC Procurement Pilot Program***") to 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. The DPSC approved the SREC Procurement Pilot Program with minor modifications pursuant to Order No. 8093, dated December 20, 2011.

DPSC found that the proposed SREC Procurement Pilot Program, subject to certain changes relating to competitive bidding and GEP grants, adequately balanced the matters the Taskforce was instructed to address and was reasonable for a pilot program. (Final Findings, Opinion and Order in PSC Docket No. 11-399, DPSC Order No. 8093). In approving the proposal, DPSC stated that it would retain a consultant to conduct an independent review of the SREC Procurement Pilot Program to determine whether a long-term SREC contracting process should continue and, if so, to examine any associated issues, including but not limited to: (1) whether procurements should be by tiers, and if so, the number of tiers and cut-offs points between tiers; (2) whether there should be competitive bidding for all projects or all tiers; (3) whether administratively-set pricing should be used, if so, for which tier or tiers, and if so, the process by which pricing should be determined (including an assessment of the inputs and assumptions that go into the model by which administratively-set prices are developed); and (4) the effect of the SREC's involvement on the Pilot Program's

administration and costs. Following DPSC's decision, Delmarva filed a modified SREC Procurement Pilot Program document reflecting the changes ordered by DPSC.

In April 2012, the SEU conducted the first round of the SREC Procurement Pilot Program and awarded twenty-year SREC contracts to 166 Delaware-sited systems totaling 7.68 MW of capacity. The solicitation was subscribed to by more than 23 MW of PV capacity from 548 individual systems.

Pursuant to Order No. 8093, DPSC retained a consultant to conduct an independent review of the SREC Procurement Pilot Program. The consultant found that the solicitation was well subscribed, with each of the program tiers oversubscribed by at least 2 to 4, and that the legislatively mandated bonuses for use of in-state equipment or workforce were very effective. Based upon feedback from subscribers as well as its own analysis, the consultant identified potential alterations to the program to reduce ratepayer impacts and create a more competitive solicitation. The consultant additionally identified that several system owners commented upon the necessity of owner representatives and their inability to represent themselves in the program.

The Taskforce considered the implementation of the SREC Procurement Pilot Program and the consultant's report and recommendations. Based upon its review, the Taskforce recommends the following SREC procurement program for the 2013 compliance year (the "2013 SREC Procurement Program").

Following successful implementation of the SREC Procurement Pilot Program ("Pilot Program"), the Taskforce recommended for approval to the DPSC of a statewide program for 2013 (the "2013 SREC Procurement Program"). The 2013 SREC Procurement Program continued the goals of the Pilot Program of creating a market for SRECs in Delaware and providing a mechanism for the procurement of SRECs to ensure that the requirements of REPSA are met. The 2013 SREC Procurement Program ("2013 Program") was based on five (5) tiers of SRECs, all competitively bid, with the intent of procuring a total of 7,000 SRECs plus an additional 1,000 SRECs through purchases on the spot market. The DPSC approved the 2013 SREC Procurement Program on January 22, 2013, pursuant to Order No. 8281. Thereafter, by Order No. 8450, dated September 10, 2013, the DPSC issued its Findings of Fact, Conclusions of Law and Final Opinion in Support of Order No. 8281. In doing so, the DPSC found that the 2013 SREC Procurement Program was in the public interest and met the criteria of REPSA. The DPSC also accepted DPSC Staff's recommendation that an

independent consultant be hired to evaluate the 2013 SREC Procurement Program. An evaluation was performed by New Energy Opportunities, Inc. and LaCapra Associates, Inc. (the "Consultants") which issued its report dated August 7, 2013, revised September 20, 2013 ("Consultants' Report"). The Consultants' Report concluded that the 2013 Program was conducted fairly and in a professional manner and that the changes which were implemented to provide for competitive bidding and the inclusion of owners of existing projects as eligible bidders, resulted in lower overall costs to ratepayers.

Based upon its review of the results of the 2013 Program and a review of the Consultants' Report, the Taskforce recommends the following SREC procurement program for the 2014 compliance year (the "***2014 SREC Procurement Program***").

#### 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, managed by the SEU.<sup>9</sup> Solicitations under the Pilot Program and the 2013 Program were managed by the SEU and the Taskforce has approved the use of the SEU for the 2014 SREC Procurement Program.<sup>10</sup> The solicitations will be for SRECs and other environmental attributes<sup>11</sup> created by the Eligible Energy Resources, but will not cover the energy output of the resources. Upon receipt and evaluation of the applications received in response to each solicitation, the

<sup>8</sup> In 2011, the statute was amended so that RPS obligations were assigned to only commission-regulated electric companies. 26 Del. C. §354.

<sup>9</sup> The SEU will use a third party (the "***SREC Procurement Agent***") to perform some or all of its duties with respect to the 2013/2014 SREC Procurement Program, including conducting solicitations, evaluating bids and executing agreements on behalf of the SEU. As with the SREC Procurement Pilot Program, SRECTrade will be the SREC Procurement Agent for the 2013 compliance year. The SREC Procurement Agent for the 2014 SREC Procurement Program will be InClimate, Inc. InClimate, Inc. is an affiliate of SRECTrade and was established solely to operate utility and public agency renewable procurement programs. InClimate, Inc. will be operated by Kevin Quilliam who oversaw the SREC auctions for the Pilot Program and the 2013 Program.

<sup>10</sup> As with the Pilot Program and the 2013 Program, the recovery of costs incurred by the SEU will be dealt with in separate proceedings.

<sup>11</sup> 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.

SEU will award bids and execute agreements based on the criteria set forth in this ~~2013~~2014 SREC Procurement Program.

#### 4.2 Owner Qualifications

To apply as an owner (an "**Owner**") of an Eligible Energy Resource pursuant to the ~~2013~~2014 SREC Procurement Program, the applicant must own, lease, control or be the direct assignee of all of the SRECs created by such resource.<sup>12</sup> Any party participating in the ~~2013~~2014 SREC Procurement Program may submit an application jointly with an entity that has executed agreements<sup>13</sup> to control the SRECs produced by two or more Eligible Energy Resources (such entity, an "**Owner Representative**").

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 ~~2013~~2014 SREC Procurement 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 ~~2013~~2014 SREC Procurement Program, a Generation Unit must: (a) qualify as a "Solar Photovoltaic Energy Resource" in accordance with the DPSC rules; and (b) be eligible for certification as an Eligible Energy Resource under REPSA.

In order to increase the likelihood that a wide variety of residential and commercial projects have an opportunity to participate in the ~~2013~~2014 SREC Procurement Program, the Taskforce has ~~established~~determined to continue with the distinct tiers of Generation Units (based on their date of interconnection approval and nameplate capacity) that had ~~been established~~ for the ~~2013~~ Program for which different pricing, bid rules and other contract terms and conditions will apply. The tiers are as follows:

<sup>12</sup> An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

<sup>13</sup> 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.

### GENERATION UNIT TIER DESIGNATIONS

<u>New Systems<sup>14</sup></u>	
<u>Tier</u>	<u>Nameplate Rating (DC at STC)</u>
N-1	Less than or equal to 30 kW
N-2	Greater than 30 kW but less than or equal to 200 kW <sup>15</sup>
N-3	Greater than 200 kW but less than or equal to 2 MW
<u>Existing Systems<sup>16</sup></u>	
<u>Tier</u>	<u>Nameplate Rating (DC at STC)</u>
E-1	Less than or equal to 30 kW <sup>17</sup>
E-2	Greater than 30 kW but less than or equal to 2 MW

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.<sup>18</sup>

#### 4.4 Ongoing Program Evaluation

The Taskforce will evaluate the ~~2013~~2014 SREC Procurement 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 different tiers) would be prospective only and executed

<sup>14</sup> Eligible “*New Systems*” are systems with final interconnection approval after the first date of the preceding auction process (i.e., April 2, 2012, 2013 for compliance year 2013).  
<sup>15</sup> 35% of the new systems procurement is reserved for Tier N-2. New systems procurement from Tier N-3 shall not exceed 35%.

<sup>16</sup> Eligible “*Existing Systems*” are systems with final interconnection approval before the first date of the preceding auction process. New Systems and Existing Systems may be referred to individually as a “system” or collectively as “systems” throughout.

<sup>17</sup> 50% of the existing systems procurement is reserved for Tier E-1. Existing systems procurement from Tier E-2 shall not exceed 50%.

<sup>18</sup> 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.

SREC Transfer Agreements (as defined below) would not be affected. Any material changes to the ~~2013~~2014 SREC Procurement Program would be subject to approval by of the appropriate regulatory bodies.

## 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)<sup>19</sup> for each Generation Unit for which it intends to participate in the ~~2013~~2014 SREC Procurement Program. However, for New Systems that are an addition to or expansion of Existing Systems, a separate application may be submitted for both the New System and the Existing System provided that the New System has a separate meter from the Existing System installed in accordance with the requirements of Section 6.7. 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);<sup>20</sup>
- if the Owner 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:

- 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.

Once an Owner's bid is accepted, it must submit:

- a standard form agreement ~~to sell SRECs to the SEU~~ (an "*SREC Transfer Agreement*") ~~to sell SRECs to the SEU~~ executed by the Owner and, if necessary or elected, an Owner Representative.

<sup>19</sup> 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 is free to submit an application for such unit pursuant to any future solicitation.

<sup>20</sup> 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.

## 5.2 Estimated Output

Each application to sell SRECs pursuant to the 2013~~2014~~ SREC Procurement Program must include a binding estimate of: (a) the annual energy output of the Eligible Energy Resource, as 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 statement that it intends to qualify for the Delaware-sourced equipment and/or in-state workforce bonus and the binding SREC output estimate for such resources should include any such SREC bonus.<sup>21</sup> 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.

## 5.3 Bid Deposit

Each application to participate in the 2013~~2014~~ SREC Procurement 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 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<sup>22</sup> 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 utility of a charge

<sup>21</sup> 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.

<sup>22</sup> 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.

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). ~~CashBid~~ 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 elected by such Owners, the Owner Representatives. 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.

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#### 6.1 **Term of Agreement**

All SREC Transfer Agreements will have a term of twenty (20) years. The term will commence as of the later of June 1, 2013 or the date as follows:

- For New Systems or the first day of the month Existing Systems for which the Operation Date is prior to thirty (30) days following the date of the solicitation, the term of the Agreement shall commence thirty (30) days after the close of the solicitation regardless of which the Generation Unit is certified as an Eligible Energy Resource when the Agreement is executed by the DPSC Owner or Owner Representative.
- For New Systems or Existing Systems for which the Operation Date is not thirty (30) days prior to the close of the solicitation, the term of the Agreement shall commence on the Operation Date regardless of when the Agreement is executed by the Owner or Owner Representative.
- Under either scenario, the date on which the term of the Agreement begins is the "Commencement Date", regardless of when the Agreement is signed by the Owner or Owner Representative. If the Owner or Owner Representative does not sign the Agreement until after the Commencement Date, they forfeit the right to compensation for any SRECs created prior to the Commencement Date.

## 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 2013/2014 SREC Procurement 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

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Tier N-1, Tier N-2 or Tier E-1 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 N-3 or Tier E-2 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 N-1, Tier N-2 or Tier E-1 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 N-3 and Tier E-2 projects that have a nameplate rating of 500 kW or greater, 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 below) or to allow the Generation Unit to fit within a pending solicitation (as described in Sections 7.1 and 7.2 below).

### 6.3 Pricing

All New Systems and Existing Systems will be required to submit bids which will be evaluated and selected based on the lowest bid prices. Owners are required to submit bids only in their applicable Tier. For the ~~2013~~2014 SREC Procurement Program, the SREC price during the first ~~seven~~ (7) years of the term of the SREC Transfer Agreements will be the bid price, and the SREC price for the ~~final~~-last ~~thirteen~~ (13) years of the SREC Transfer Agreements will be fixed at \$50~~35~~ per SREC.

### 6.4 Utility Interconnections

If, based on an Owner's interconnection application, the interconnecting utility proposes to assess any fee or charge (other than a standard interconnection application fee), the Owner may, within ~~ten~~ (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. In order to take advantage of this right, each Owner must submit a complete interconnection application (Step 1) to the interconnecting utility no later than one hundred twenty (120) days after the Execution Date.

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.<sup>23</sup> 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 projects must commence operation no later than twelve (12) months after the Execution Commencement Date (the "***Guaranteed On-Line Date***"); provided 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 (1) 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 1/30<sup>th</sup> of the deposit amount. In the event a Generation Unit is not operational within thirty (30) days of its Guaranteed On-Line Date, the SEU will have the right to terminate the SREC Transfer Agreement.

#### 6.6 Payment

All Tier N-1, N-2 and E-1 projects will be paid on a quarterly basis, and all other projects will be paid on a monthly basis. Each Owner will stipulate in the SREC Transfer Agreement whether payment is to be

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<sup>23</sup> 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.

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 N-1, N-2, E-1 and E-2 Projects must install either a revenue-grade meter on site or revenue-grade online monitoring. All Tier N-3 Projects must install revenue-grade online 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 thirty (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 N-3 or Tier E-2 projects with a nameplate rating of 500 kW or greater 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 seven (7) years of the SREC Transfer Agreement, such supplemental credit support shall be in an amount equal to ~~5%~~five percent (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 ten percent (10%) of the value of the Estimated SREC Quantity for the 8<sup>th</sup> year of the ~~agreement~~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.<sup>24</sup>

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 that such relief shall be limited to the amount of time the condition exists that caused the delay but in no event greater than a period of one (1) year for any single force majeure event.

#### 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 within the timeframe required; or
- for a Tier N-3 or Tier E-2 project with a nameplate rating of 500 kW or greater, 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 thirty (30) days after the end of such annual period; or
- the required credit support is not maintained.

<sup>24</sup> 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).

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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 ~~2013~~2014 SREC Procurement Program and such failure is not cured within thirty (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.~~this 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.~~the 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 N-3 or Tier E-2 project with a nameplate rating of 500 kW or greater 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 thirty (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) in its sole and absolute discretion.

### 7. Bid Awards

Promptly upon receipt of an application to sell SRECs from an Owner Representative or Owner in response to a solicitation issued pursuant to the 2014-2014 SREC Procurement Program, the SEU will review the application to verify whether it is complete and complies with all applicable procedures. Partial or incomplete applications will be rejected.

#### 7.1 Competitive Solicitations

All projects will be required to submit price bids in competitive solicitations. A given system is only allowed to bid into one (1) auction and one (1) tier per year.

The price bid for each project must be for a fixed dollar amount, which amount cannot escalate or otherwise vary during the initial seven (7) year period of the term of the Agreement. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids in each solicitation. The SEU may select an Owner in any lower Tier (i.e. N-2 or E-1) to fill the requirements of any higher Tier (i.e. N-3 or E-2) subject to certain limitations. For Tier N-1, 30% of the total procurement must be awarded to Owners submitting bids in Tier N-1. For Tier N-2, at least 35% of the total procurement must be awarded to Owners submitting bids in Tier N-2. For Tier E-1, at least 50% of the total procurement must be awarded to Owners submitting bids in E-1. If Tier N-1 and/or Tier N-2 have losing bids that are lower priced than winning bids for Tier N-3, such bids will be applied to Tier N-3 in order to minimize the weighted average bid price of Tier N-3. Bids from Tier N-3 will not be applied to Tier N-1 or Tier N-2 and bids from Tier N-2 will not be applied to Tier N-1. If Tier E-1 has losing bids that are lower priced than winning bids in Tier E-2, such bids shall be applied to Tier E-2 in order to minimize the weighted average bid price of Tier E-2. Bids from Tier E-2 will not be applied to Tier E-1. Provided these stated minimums are met, the SEU will accept for each Tier the lowest bid prices.

If a tier allocation is not fully subscribed in the initial solicitation, a second solicitation may be held within the following six (6) months for the balance of the allocation for such tier. The SEU will announce all solicitations for competitively priced bids at least thirty (30) days in advance of the bid date.

## 7.2 Bidding Ties

If there are multiple bids at the same price that would cause a competitive solicitation to be oversubscribed (a "Bidding Tie"), the SEU will first select all applicants that claimed the Delaware Equipment Bonus and the Delaware Workforce Bonus. If this causes the solicitation to still be oversubscribed, a lottery will be held among only applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus. If there is still a Bidding Tie after awarding all applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus, the SEU will give each applicant involved in the Bidding Tie for such tier a 5-day period to reduce its 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 such applicant submits a reduced price bid, to such applicant(s) on the basis of the lowest price bid until: (a) the pending solicitation 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; and
- second, if after completion of the first step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SEU will award SREC Transfer Agreements based on a lottery among the remaining applicants involved in such Bidding Tie that claimed the Delaware Equipment Bonus and/or the Delaware Workforce Bonus; and
- third, if after completion of the second step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SEU will award SREC Transfer Agreements based on a lottery among remaining applicants involved in such Bidding Tie that claimed neither the Delaware Equipment Bonus nor the Delaware Workforce Bonus.

If a 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 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. If the applicant elects to reduce the capacity of the 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.

Partial fill systems will be allowed to bid the rest of the system in future procurements, but the second bid will have to be in a tier size that reflects the cumulative system size. Systems that obtain multiple bids will first transfer SRECs at the lowest price each year.

For system additions, the bid must be in a tier size that reflects the cumulative system size. Systems that obtain multiple bids will first transfer SRECs at the lowest price each year.

Notwithstanding the language contained in this Section 7.2, if there is a Bidding Tie in the combined Tier N-1, E-1 and E-2 solicitation, the tie breaker is as follows: (1) New Systems prevail over Existing Systems; (2) in-state content and labor prevails; and (3) if a tie still remains, there will be a rebid.

## 8. Solicitation for 2013/2014 Compliance Year

### 8.1 Resource Allocation

Based on forecasted load, the SREC solicitations for the 2013 compliance year will be for 8,000 SRECs, which will be allocated as follows:

- ~~\_\_\_\_\_~~ New Systems - 4,000 Tiers N-1, E-1, E-2 = 3,800 SRECs
- Tier N-1 - 1,200 SRECs
- Tier N-2 - 1,400 SRECs
- Tier N-3 - 1,400 SRECs
- Existing Systems - 3,000 SRECs
- Tier E-1 - 1,500 SRECs
- Tier E-2 - 1,500 SRECs

Spot Market Purchases - 1,000 SRECs

Delmarva Power may procure a portion of its requirement, approximately 1,000 SRECs, through the spot market. The size of the spot market purchases should be consistent with a portfolio approach of

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short term and long term purchases. The spot market procurement will be open to all systems, and Delmarva Power will procure short-term contracts in a similar manner to its current practices.

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  
2013/2014 SREC PROCUREMENT PROGRAM**

This is an application to sell solar renewable energy credits ("SRECs") to the Delaware Sustainable Energy Utility, Inc. (the "SEU") pursuant to a procurement program for the 2013/2014 compliance year established in accordance with the Delaware Renewable Energy Portfolio Standards Act (as amended, "REPSA").

**Owner Information<sup>1</sup>**

Name (company or individual): \_\_\_\_\_

Street address: \_\_\_\_\_

City, state and zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

GATS Account No.:<sup>2</sup> \_\_\_\_\_

Other Eligible Energy Resources  
owned by Owner:<sup>3</sup> \_\_\_\_\_

**Owner Representative Information (to be filled in if applicable)**

Name (company or individual): \_\_\_\_\_

Street address: \_\_\_\_\_

City, state and zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

GATS Account No.: \_\_\_\_\_

Other Eligible Energy Resources  
owned by Owner Representative: \_\_\_\_\_

<sup>1</sup> 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.

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

<sup>3</sup> Not required if an Owner Representative is designated.

**Description of Project**

Location: \_\_\_\_\_  
(street address or parcel number)

City, state and zip code: \_\_\_\_\_

Nameplate capacity (kW-DC)<sup>4</sup> \_\_\_\_\_

Tier designation (check one):

- Tier N-1 Project (New system, less than or equal to 30 kW-DC)
- Tier N-2 Project (New system, greater than 30 kW and less than or equal to 200 kW-DC)
- Tier N-3 Project (New system, greater than 200 kW and less than or equal to 2,000 kW-DC)
- Tier E-1 Project (Existing system, less than or equal to 30 kW-DC)
- Tier E-2 Project (Existing system, greater than 30 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: \_\_\_\_\_

Estimated energy and SREC output:

First-year energy output: \_\_\_\_\_ kWh (exclusive of any bonuses described below)

First-year SREC output: \_\_\_\_\_ SRECs (exclusive of any bonuses described below)

Utility interconnection:

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<sup>4</sup> 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).

\_\_\_\_\_ Interconnecting Utility

\_\_\_\_\_ Date of acceptance of completed System Interconnection Application

**Required Information**

Supplemental funding from public sources<sup>5</sup> (provide information for any funding applied for, awarded and/or received):

Delaware Green Energy Program Grant

Application Date: \_\_\_\_\_

Utility: \_\_\_\_\_

Award Date: \_\_\_\_\_

Amount: \_\_\_\_\_

Other public supplemental funding (provide additional sheet if necessary)

Source: \_\_\_\_\_

Application Date: \_\_\_\_\_

Award Date: \_\_\_\_\_

Amount: \_\_\_\_\_

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<sup>6</sup>

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<sup>7</sup>

Price Bid: \$ \_\_\_\_\_ per SREC (applicable during first 7 years)

**DISCLAIMER FOR SREC PRICES**

*Disclaimer: The Solar Renewable Energy Credit (SREC) price used in any return on investment calculations is not guaranteed. Winning any solicitation or auction is not guaranteed. This SREC price may vary depending on if one wins any available solicitation/auction contract and the terms of the contract. If a bidder wins an available solicitation/auction, the price will be stated in the contract. If a bidder does not participate or win in any solicitation or auction, the SREC price is unknown and based on variables such as supply of SRECs and demand for SRECs in the market. The price a bidder may receive for an SREC may affect the financial payback period of your system. By signing the following, you agree that you have read and understood the above disclaimer.*

THE UNDERSIGNED HEREBY CERTIFIES THAT: (A) IT IS THE OWNER IDENTIFIED HEREIN; (B) THIS IS THE ONLY APPLICATION BEING SUBMITTED PURSUANT TO THE 2013-2014 SREC PROCUREMENT PROGRAM THAT INCLUDES THE PROJECT DESCRIBED HEREIN; (C) THE INFORMATION SET FORTH IN THIS APPLICATION IS TRUE, ACCURATE AND COMPLETE; AND (D) IT HAS FULLY, COMPLETELY AND ACCURATELY IDENTIFIED ALL SUPPLEMENTAL FUNDING FROM PUBLIC SOURCES (OTHER THAN GRANTS IN LIEU OF INVESTMENT TAX CREDITS) FOR WHICH IT HAS APPLIED OR WHICH IT HAS BEEN AWARDED OR RECEIVED.

<sup>5</sup> Excluding any grants in lieu of investment tax credits.

<sup>6</sup> Eligibility for the Delaware Equipment Bonus shall be determined solely by the DPSC.

<sup>7</sup> Eligibility for the Delaware Workforce Bonus shall be determined solely by the DPSC.

\_\_\_\_\_  
Owner

Print: \_\_\_\_\_

**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)

**APPENDIX B**

**Form of SREC Transfer Agreement**

**SOLAR RENEWABLE ENERGY CREDIT  
TRANSFER AGREEMENT**

**DELAWARE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT**

**20132014 SREC PROCUREMENT PROGRAM**

**SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT  
DELAWARE RENEWABLE ENERGY PROGRAM**

**20132014 SREC PROCUREMENT PROGRAM**

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**SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT  
DELAWARE RENEWABLE ENERGY PROGRAM**

**20132014 SREC PROCUREMENT PROGRAM**

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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**")<sup>1</sup> to SEU One, LLC (or any successor organization thereto, the "**SEU**").

**PART I  
PROJECT AND OWNER INFORMATION**

**A. Owner:**<sup>2</sup>

- Name of entity: \_\_\_\_\_
- Street address: \_\_\_\_\_
- City, state and zip code: \_\_\_\_\_
- Attention: \_\_\_\_\_
- Email address: \_\_\_\_\_
- Tax ID number: \_\_\_\_\_ Number/SS Number: \_\_\_\_\_
- Owner's other Eligible Energy Resources:<sup>3</sup> \_\_\_\_\_
- Owner GATS Account No.:<sup>4</sup> \_\_\_\_\_

**B. Owner Representative (if one is designated):**

- Name of entity: \_\_\_\_\_
- Street address: \_\_\_\_\_
- City, state and zip code: \_\_\_\_\_

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

<sup>2</sup> The Owner is the legal entity that owns, leases, controls or is the direct assignee of all of the SRECs created by the Project.

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

<sup>4</sup> 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.

- Attention: \_\_\_\_\_
- Email address: \_\_\_\_\_
- Tax ID number: \_\_\_\_\_ Number SS \_\_\_\_\_ Number: \_\_\_\_\_
- Other Eligible Energy Resources: \_\_\_\_\_

C. Payee (check one):

- Owner
- Owner Representative

D. Project:

- Street address:<sup>5</sup> \_\_\_\_\_  
(or parcel number if property does not have street address)
- City, state and zip code: \_\_\_\_\_
- Nameplate capacity: \_\_\_\_\_ kW<sup>6</sup>
- Tier designation (check one):
  - Tier N-1 Project (New system, less than or equal to 30 kW-DC)
  - Tier N-2 Project (New system, greater than 30 kW and less than or equal to 200 kW-DC)
  - Tier N-3 Project (New system, greater than 200 kW and less than or equal to 2,000 kW-DC)
  - Tier E-1 Project (Existing system, less than or equal to 30 kW-DC)
  - Tier E-2 Project (Existing system, greater than 30 kW and less than or equal to 2,000 kW-DC)
- Operational status (check one):
  - Project under development as of Bid Date

<sup>5</sup> 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.

<sup>6</sup> All capacity (kW) references are to the nameplate rating of the Generation Unit (DC at STC), as designated by the solar module manufacturer.

Operation Date has occurred as of Bid Date  
Operation Date: \_\_\_\_\_

• Commencement Purchase Obligation Date (check one):

June 1, \_\_\_\_\_

First day of the month following Execution Date project certification by DPSC as Eligible Energy Resource

• Utility interconnection:

\_\_\_\_\_ Interconnecting Utility

• Supplemental funding from public sources (check if applicable):<sup>7</sup>

Delaware Green Energy Program Grant  
Utility: \_\_\_\_\_  
Amount: \_\_\_\_\_

Other grants from public sources (excluding grants in lieu of investment tax credits)  
Amount and type: \_\_\_\_\_  
Source: \_\_\_\_\_

• 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 (exclusive of any bonuses described below)<sup>8</sup>

<sup>7</sup> 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.

<sup>8</sup> 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.

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Estimated first-year total SREC output \_\_\_\_\_ SRECs (exclusive of any bonuses described below)

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 7 Contract Years)

**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 a Tier N-1 or N-2 Project or a Tier E-1 Project creates any Excess Amount during any Contract Year, the SEU shall, no later than thirty (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 to not purchase the Excess Amount or any portion thereof for such Contract Year. In the event that the SEU does not purchase any portion of the Excess Amount created by a Tier N-1 or N-2 Project or a Tier E-1 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 a Tier N-3 Project or Tier E-2 Project creates any Excess Amount during any Contract Year: (a) the SEU shall have no right to purchase any such Excess Amount; (b) the Owner shall be free to use or sell such

SRECs as it deems appropriate; and (c) if any 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.~~

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2.1.4

- (a) If the Operation Date of the Project did not occur prior to the Bid Date, the SEU's obligation to purchase SRECs (the "Purchase Obligation Date") shall commence as of the later of June 1, 2013~~2014~~, or 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, 2013~~2014~~.
- (c) The SEU's obligation to purchase SRECs shall continue for a period of twenty (20) years after the ~~Commencement~~Purchase Obligation 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. In order to invoke its rights under this Section 2.2.1 (b)-(d) the Owner shall submit a complete interconnection application (Step 1) to the Interconnecting Utility no later than one hundred twenty (120) 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 ten (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.

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**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 ten (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 thirty (30) days after the Operation Date.

Section 2.4 Purchase Price and Payment Terms.

2.4.1 Purchase Price.

- (a) The Purchase Price for Project SRECs created during Contract Years 1 through 7 will be the bid price set forth in the application submitted for such Project; ~~as such bid price may be amended pursuant to the rules established by the SEU.~~
- (b) For all Projects, the Purchase Price for Project SRECs created during Contract Years 8 through 20 shall be \$50.35 per SREC.

2.4.2 SREC Bonus. If the Delaware Equipment Bonus or the Delaware Workforce Bonus is specified in Part I and the DPSC certify 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 ~~ten percent (10%)~~. If the Delaware Equipment Bonus and the Delaware Workforce Bonus is specified in Part I and the DPSC certify 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%~~ twenty percent (20%). Under either scenario, the bonus will be paid during the entire twenty (20) year term of the Agreement.

2.4.3 Payment. Subject to the limitations set forth in this Agreement: (a) for all Tier N-1, N-2 and E-1 Projects, the SEU shall pay the Payee for Project SRECs no later than

twenty-five (25) 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 all other 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 sum of: (i) the Maximum Annual Quantity; plus (ii) if applicable, any portion of the Excess Amount which it has elected to purchase pursuant to Section 2.1.2(a).
- (b) The SEU may withhold payment of any amounts disputed in good faith.

2.4.5 Payment Errors. In the event that any Party becomes aware of any payment error (whether such error was in the form of an underpayment or overpayment), such Party shall notify the other Parties in writing of such error and the Party required to make payment shall do so within thirty (30) days of such notification; *provided, however*, that no payment adjustment shall be required unless the foregoing notice is delivered within eleven (11) months of the date of the original payment.

### 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~~Commencement 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 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, for up to thirty (30) days of 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 damages set forth in Section 2.5.2(a) represent reasonable and genuine estimates of such damages; and (iv) such 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 Project is an Eligible Energy Resource as defined by REPSA and will obtain all necessary approvals, regulatory or otherwise, to perform the obligations set forth herein;
- (j) the information set forth in Part I is true and accurate in all respects;
- (k) the Owner has received no supplemental funding from public sources other than the funding, if any, identified in Part I;
- (l) to the extent bidding in Tiers N-1, N-2 or N-3 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
- (m) if a New System, its completed System Interconnection Application's acceptance date with the Interconnecting Utility will be after the first date of the preceding compliance year's auction process.

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. An Owner may not modify the Estimated SREC Quantity except as expressly permitted hereunder.

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 five (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 thirty (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 N-1 Project, a Tier N-2 Project, a Tier E-1 Project, a Tier N-3 Project with a nameplate rating less than 500 kW or a Tier E-2 Project with a nameplate rating less than 500 kW; or (ii) 2.5% for a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater; except that bids that were granted partial fill may submit a new system size at the time they accept the partial fill;
- (e) with respect to the Owner and, if one is designated, the Owner Representative, any Project SRECs (up to the Maximum Annual Quantity and, if applicable, any portion of any Excess Amount that the SEU elects 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 thirty (30) days after the Operation Date;

- (g) with respect to the Owner Representative (but not the Owner), either: (i) any representation or warranty of the Owner Representative made pursuant to Part III shall have been incorrect when made and shall remain incorrect thirty (30) days after notice thereof; or (ii) the Owner Representative fails to perform any obligation pursuant to Part III for a period of 30 days following receipt of notice of such failure;
- (h) such Party fails to perform any other obligation pursuant to this Agreement for a period of thirty (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 sixty (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; (ii) exercise any remedies available at law or in equity, including specific performance, termination of this Agreement, and/or recovery of damages equal to the incremental cost of replacing the expected SREC output of the Project for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the SEU); and/or (iii) suspend its performance hereunder.
- (b) Upon the occurrence of an Event of Default by the Owner Representative pursuant to Section 2.8.1(g), the Owner and/or the SEU shall be entitled to: (i) remove such Owner Representative as a Party to this Agreement by delivery of written notice to such Owner Representative and the other Party and, if necessary, replace such Owner Representative; and (iii) exercise any remedies available at law or in equity, including specific performance; *provided, however*, that neither the Owner nor the SEU may terminate this Agreement based on such 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 remedies available at law or in equity, including specific performance or termination of this Agreement and recovery of damages

equal to the difference, if positive, between the Purchase Price under this Agreement and the market price for SRECs in Delaware for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the Owner); 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(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.
- (b) 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 damages set forth in Section 2.8.3(a) represent reasonable and genuine estimates of such damages; and (iii) such 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 five (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 one (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 I.**

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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~~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; and (b) any replacement Owner Representative shall execute a counterpart of this Agreement and agree to be bound by the terms hereof.

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.

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 owns, leases, controls or is the direct assignee of all of the SRECs created by the Project and at least one other Eligible Energy Resource.

Section 3.5 Continuing Eligibility. The Owner Representative shall, at all times during the term of this Agreement, own, lease, control or be the direct assignee of all of the SRECs created by the Project and at least one other Eligible Energy Resource.

**PART IV  
MINIMUM ANNUAL QUANTITY**

**The provisions of this Part IV shall apply only if the Project is designated as a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater in Paragraph D of Part I.**

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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%~~ eighty percent (80%) of the Annual Contract Quantity (such amount, the "*Minimum Annual Quantity*").

4.1.2 Exclusive Remedy.

- (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 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. Payment of such amount shall be the exclusive liability of the Owner for any such failure with respect to any Contract Year.
- (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 damages set forth in Section 4.1.2(a) represent reasonable and genuine estimates of such damages; and (iv) such 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 seven (7) Contract Years, five percent (5%) of the value of the Annual Contract Quantity for the first Contract Year; and

- (b) during the second ~~thirteen~~ (13) Contract Years, ten percent (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.

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 ~~three~~ (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 during the term of this Agreement 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; (b) if the Project is a Tier N-3 Project with a nameplate rating of 500 kW or greater or a Tier E-2 Project with a nameplate rating of 500 kW or greater, the Owner provides the Supplemental Credit Support; and (c) the Owner has executed any documentation reasonably necessary to perfect the security interest 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, whether now existing or hereafter arising, the GATS account of the Owner, and all proceeds of any of 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).

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“**Contract Year**” means each 12-month period commencing on the Commencement Purchase Obligation 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 (b) 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. 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 the terms of this Agreement.

**“Event of Default”** has the meaning set forth in Section 2.8.I.

**“Excess Amount”** means, with respect to the SRECs created by the Project during any Contract Year, any such SRECs in excess of the Maximum Annual Quantity.

**“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.

**“Existing System”** means a system with final interconnection approval before the first date of the preceding auction process (i.e. April ~~2, 2012, 2013~~ for compliance year ~~2012, 2013~~).

**“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.

“**New System**” means a system with final interconnection approval after the first date of the preceding auction process (i.e. April 2, ~~2012~~, 2013 for compliance year ~~2012~~2014).

“**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 Obligation 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).

“**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 all Tier N-1, N-2, E-1 and E-2 Projects, either a revenue-grade meter on site or revenue-grade online monitoring; and (b) for any Tier N-3 Project, revenue-grade online monitoring.

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

“**SEU**” has the meaning set forth in the introductory paragraph of this Agreement.

“**SREC**” means a tradable instrument which represents or is associated with 1 MWh of electric energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology and which qualifies as a “Renewable Energy Credit” under REPSA, together with any Environmental Attributes associated with such energy or the generation thereof.

“**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 N-1 Project**” has the meaning set forth in Paragraph D of Part I.

“**Tier N-2 Project**” has the meaning set forth in Paragraph D of Part I.

“**Tier N-3 Project**” has the meaning set forth in Paragraph D of Part I.

“**Tier E-1 Project**” has the meaning set forth in Paragraph D of Part I.

“*Tier E-2 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 or delegate any of its duties hereunder except where otherwise provided in this Agreement, 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, which financing shall be at the Owner's sole expense; or (b) to a purchaser or transferee of the Project provided all the requirements of the Section 7.8.2 are met. 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 in the event of a default by the assignee.

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.

Section 7.17 Further Assurances. Each of the parties hereto agree to cooperate with the other and to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other party, which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 7.18 Electronic Signatures. The parties hereto have agreed to conduct this transaction by electronic means, therefore, the affixing of an electronic signature to this Agreement evidences the intent of the parties to conduct this transaction electronically and no party may therefore deny the legal effect or enforceability of this Agreement solely because their signatures hereto are in electronic form. *[Signature page follows]*

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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above referenced.

Owner:

**[Name of Owner]**

By: \_\_\_\_\_

Owner Representative:

**[Name of Owner Representative]**

By: \_\_\_\_\_

**SEU One, LLC**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**Estimated First Year Energy Output**

**EXHIBIT "D"**

**DELMARVA'S REPORT IN SUPPORT OF 2014 PROGRAM**