

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF )  
DELMARVA POWER & LIGHT COMPANY TO )  
APPROVE AN AGREEMENT WITH ) PSC DOCKET NO. 13-99  
WASHINGTON GAS ENERGY SERVICES, INC. )  
FOR THE PURCHASE OF SOLAR RENEWABLE )  
ENERGY CREDITS )  
(FILED MARCH 11, 2013) )

ORDER NO. 8396

**AND NOW**, this 18<sup>th</sup> day of June, 2013:

**WHEREAS**, on March 11, 2013, pursuant to 26 *Del. C.* §351 *et seq.*, Delmarva Power & Light Company ("Delmarva") filed an application (the "Application") with the Delaware Public Service Commission (the "Commission") seeking approval to enter into a contract to purchase solar renewable energy credits ("SRECs") from Washington Gas Energy Services, Inc. ("WGES"); and

**WHEREAS**, prior to 2011, all retail electric suppliers, such as WGES, were responsible for compliance with the Renewable Energy Portfolio Standards Act ("REPSA") for their retail load; and

**WHEREAS**, in 2011, certain amendments to REPSA made Delmarva responsible for procuring RECs and SRECs necessary for compliance with respect to all energy delivered to Delmarva's distribution customers beginning in compliance year 2012 (i.e., June 2012 to May 2013). See 26 *Del. C.* §§351-364; and

**WHEREAS**, following the 2011 amendments to REPSA, the Commission revised its regulations to, among other things, authorize retail

electric suppliers like WGES to offer to sell SRECs to Delmarva. See 26 Del. Admin. C. §3008-3.2.3.4;<sup>1</sup> and

**WHEREAS**, public notice in this proceeding was provided pursuant to 29 Del. C. §10122 and 26 Del. C. §102A in accordance with the Commission's Opening Order No. 8325 dated March 19, 2013 in this matter; and

**WHEREAS**, the Attorney General filed a petition to intervene in this matter on March 18, 2013 to protect the public interest pursuant to his common law powers during the vacancy in the Public Advocate position; and

**WHEREAS**, the Delaware Department of Natural Resources and Environmental Control ("DNREC") filed a petition to intervene in this matter on April 1, 2013; and

**WHEREAS**, WGES filed a petition to intervene in this matter on March 27, 2013; and

**WHEREAS**, Delmarva and WGES entered into an agreement, attached as Exhibit A, in which Delmarva would purchase SRECs from WGES, subject to the approval of the Commission; and

**WHEREAS**, the term of the proposed agreement was 20 years, which is the standard term for the 2012 Pilot Program (or 2012 SREC auction); and

---

<sup>1</sup> 26 Del. Admin. C. §3008-3.2.3.4 provides as follows: "Retail Electricity Suppliers that prior to March 1, 2012, have entered into contracts to purchase or produce RECs and/or SRECs specifically for Delaware RPS compliance may offer to the CREC those RECs and/or SRECs. The price would be determined by separate agreement between the Retail Electricity Supplier and the CREC. In no case shall the CREC be obligated to purchase any RECs/SRECs from the Retail Electricity Supplier." 26 Del. Admin. C. §3008-2.2.3 defines a "CREC" as Commission-regulated electric companies.

**WHEREAS**, the proposed agreement provided that Delmarva would pay WGES the weighted average prices awarded to winners of the 2012 SREC auction, in Tier 2B and Tier 3 categories, as follows:

- (a) For the Wilmington Friends School Project, the Purchase Price for Project SRECs created during Contract Years 1 through 10 would be \$131.13 per SREC.
- (b) For the Bridgeville Project, the Purchase Price for Project SRECs created during Contract Years 1 through 10 would be \$154.35 per SREC.
- (c) For both the Wilmington Friends School and Bridgeville Projects, the Purchase Price for Project SRECs created during Contract Years 11 through 20 would be \$50 per SREC; and

**WHEREAS**, the proposed agreement further provided that the quantity of SRECs Delmarva agrees to purchase would not exceed the Renewable Energy Portfolio Standards for solar photovoltaics associated with WGES's retail electric sales in the Delmarva service territory, less any load associated with transitional supply contracts, thus permitting Delmarva to purchase a maximum of 2,440 SRECs per year; and

**WHEREAS**, the proposed agreement was otherwise substantially similar to the standard transfer agreement that successful bidders used in the 2012 SREC auction entered into with the Sustainable Energy Utility; and

**WHEREAS**, Harry J. Warren, Jr., the President of WGES, William J. Swink of Delmarva and Pamela Knotts of Commission Staff each submitted

pre-filed testimony in support of the proposed agreement stating that the 2012 auction results should be the benchmark for the prices in the proposed agreement; and

**WHEREAS**, on April 1, 2013 the Attorney General, acting as Public Advocate, filed written comments opposing the proposed agreement; and

**WHEREAS**, on April 1, 2013 DNREC filed written comments supporting an agreement between WGES and Delmarva at a fair market price pending consideration of the supply and demand in the SREC market and price determination; and

**WHEREAS**, the Commission held an evidentiary hearing on April 9, 2013 to consider the proposed agreement, at which the Attorney General, acting as Public Advocate, offered the testimony of David Stevenson, Director of the Caesar Rodney Institute; and

**WHEREAS**, Mr. Stevenson testified that the SREC purchase prices in the proposed agreement were high relative to the market; that the market, and not the 2012 auction results, was the proper basis to set the SREC prices; and that the current and future spot market prices are substantially lower than the prices listed in the proposed agreement; and

**WHEREAS**, Thomas G. Noyes, Principal Planner for Energy Policy in DNREC's Department of Energy and Climate, suggested that the Commission should consider in its proceedings the 2013 auction results, which would be available within the next few weeks; and

**WHEREAS**, the Commission determined that the 2013 auction results were relevant and continued the proceeding to a date in May 2013 after announcement of the 2013 SREC auction results; and

**WHEREAS**, the Commission re-convened the hearing at its meeting on May 21, 2013, at which Mr. Warren of WGES offered testimony in support of the proposed agreement; and

**WHEREAS**, during the course of the hearing Mr. Noyes offered a settlement proposal on behalf of the Secretary of DNREC, which proposed decreasing the pricing terms of the agreement to \$105/SREC for the first 7 years of the contract, and \$50/SREC for the remaining 13 years; and

**WHEREAS**, DNREC's proposal generated discussion by the parties and the Commission concerning whether the Commission could consider a settlement proposal in the course of a hearing on the proposed agreement; and

**WHEREAS**, the Commission determined to table the proceedings to enable the parties to consider and discuss DNREC's proposal; and

**WHEREAS**, subsequent to the May 21, 2013 meeting, the parties met and also conferred via teleconference to examine possible avenues for resolution; and

**WHEREAS**, on June 18, 2013 the parties presented a proposed settlement agreement, including a revised SREC Transfer Agreement, attached as Exhibit "B," which provides that Delmarva will pay WGES \$74/SREC for the first 7 years of the contract and \$50/SREC for the remaining 13 years and in which the other terms of the agreement are substantially similar to the initial proposed agreement; and

**WHEREAS**, at the Commission's regularly-scheduled meeting on June 18, 2013, each party testified that the proposed settlement is in the public interest and is fair and reasonable to the ratepayers;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, the proposed agreement is consistent with the legislative intent of the REPSA "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." 26 Del. C. §351(b).

2. That, the 2011 amendments to REPSA made Delmarva responsible for procuring RECs and SRECs necessary for compliance relating to all energy delivered to Delmarva's distribution customers beginning in compliance year 2012.

3. That, following the 2011 amendments to REPSA, the Commission revised its regulations and thereby authorized retail electric suppliers like WGES to offer to sell SRECs to Delmarva pursuant to agreements subject to approval by the Commission. See 26 Del. Admin. C. §3008-3.2.3.4.

4. That, the Commission finds that the proposed settlement agreement and revised SREC Transfer Agreement attached as Exhibit "B" is in the public interest and results in just and reasonable rates for ratepayers, and therefore hereby approves the settlement agreement.

5. That, Delmarva is hereby charged with the costs of this docket under the provisions of 26 Del. C. §114(b)(1).

6. That, the Commission retains the authority to enter such further orders in this matter within its jurisdiction as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary

Exhibit A

# SREC Transfer Agreement

## SOLAR RENEWABLE ENERGY CREDIT

### TRANSFER AGREEMENT

#### TABLE OF CONTENTS

PART I PROJECT AND OWNER INFORMATION.....	1
Section 1.1 <u>Owner</u> .....	1
Section 1.2 <u>Project</u> .....	1
PART II TERMS AND CONDITIONS.....	4
Section 2.1 <u>Purchase and Sale of SRECs</u> .....	4
Section 2.2 <u>Operational Matters</u> .....	5
Section 2.3 <u>Conditions</u> .....	6
Section 2.4 <u>Purchase Price and Payment Terms</u> .....	7
Section 2.5 <u>Completion Guarantee</u> .....	8
Section 2.6 <u>Representations, Warranties and Acknowledgements</u> .....	9
Section 2.7 <u>Change in Estimated SREC Quantity</u> .....	11
Section 2.8 <u>Default and Remedies</u> .....	11
Section 2.9 <u>Force Majeure</u> .....	13
PART III OWNER REPRESENTATIVE.....	14
Section 3.1 <u>Agency Appointment</u> .....	14
Section 3.2 <u>Agency Responsibility</u> .....	14

Section 3.3 <u>Termination or Replacement of Owner Representative</u> .....	14
Section 3.4 <u>Representations and Warranties of Owner Representative</u> .....	15
Section 3.5 <u>Continuing Eligibility</u> .....	16
PART IV MINIMUM ANNUAL QUANTITY.....	16
Section 4.1 <u>Guaranteed Quantity</u> .....	16
Section 4.2 <u>Supplemental Credit Support</u> .....	16
PART V CREDIT SUPPORT.....	17
Section 5.1 <u>Bid Deposit</u> .....	17
Section 5.2 <u>Security Interest</u> .....	17
PART VI DEFINITIONS; RULES OF CONSTRUCTION.....	18
Section 6.1 <u>Definitions</u> .....	18
Section 6.2 <u>Rules of Construction</u> .....	22
PART VII GENERAL PROVISIONS.....	23
Section 7.1 <u>Notices</u> .....	23
Section 7.2 <u>Governing Law</u> .....	23
Section 7.3 <u>Dispute Resolution</u> .....	23
Section 7.4 <u>Jurisdiction and Venue</u> .....	24
Section 7.5 <u>Service of Process</u> .....	24
Section 7.6 <u>Waiver of Right to Jury Trial</u> .....	24
Section 7.7 <u>Records</u> .....	24
Section 7.8 <u>Assignment</u> .....	24
Section 7.9 <u>Delay and Waiver</u> .....	25
Section 7.10 <u>Relationship of the Parties</u> .....	25

Section 7.11 <u>Survival of Obligations</u> .....	25
Section 7.12 <u>Severability</u> .....	25
Section 7.13 <u>Entire Agreement</u> .....	25
Section 7.14 <u>Amendments</u> .....	25
Section 7.15 <u>Headings</u> .....	25
Section 7.16 <u>Counterparts</u> .....	25

## SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT

### DELAWARE RENEWABLE ENERGY PROGRAM

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date") between Washington Gas Energy Services, Inc. ("Owner") and Delmarva Power & Light Company ("Buyer") for the sale and transfer of solar renewable energy credits ("SRECs") from Owner's solar facilities located within Buyer's service territory..

Whereas, Owner owns operational solar facilities located on the property of Perdue Corporation in Bridgeville, Delaware, and on the property of the Wilmington Friends School in Wilmington, Delaware, (individually a "Project and collectively the "Projects"), and is willing to sell the SRECs produced by such facilities to Buyer in accordance with the terms and conditions of this Agreement;

Whereas, pursuant to the provisions of the *Delaware Renewable Portfolio Standard* ("RPS"), Buyer is responsible for the procurement of all SRECs applicable to electricity delivered to end users in Delaware, beginning June 1, 2012, and is willing to purchase SRECs from Buyer in accordance with the terms and conditions of this Agreement;

Whereas, subject to the approval of the Delaware Public Service Commission ("DPSC"), the parties have agreed to enter into this Agreement for the purchase and sale of SRECs from the facilities referenced above.

Now, Therefore, subject to the terms and conditions set forth herein, and for valuable consideration that each acknowledges, and intending to be legally bound, the parties hereto agree as follows:

#### PART I PROJECT AND OWNER INFORMATION

##### 1.1 Owner:

- Name of entity: Washington Gas Energy Services, Inc.
- Street address: 13865 Sunrise Valley Drive, Suite 200 City, state and zip code: Herndon, Virginia 20171
- Attention: Harry A. Warren, Jr., President
- Email address: HWarren@wges.com
- Tax ID number: 52-1542887
- Owner's other Eligible Energy Resources: various
- Owner GATS Account: Washington Gas Energy Services, Inc.

##### 1.2 Project:

Wilmington Friends School Project (two campus locations)

Main Campus at 101 School Road, Wilmington, Delaware

Auxiliary Campus at 20 Granite Road, Wilmington, Delaware

Nameplate Capacity: 240 KW

Tier Designation: Tier 2-B

Operation Date: December 15, 2011

Utility Interconnection: Delmarva Power and Light Company ("Interconnecting Utility")

Estimated annual energy output: 291,000 kWh

Delaware SREC credits (Equipment and Workforce bonuses): None

Estimated annual SREC output 298 SRECs

Estimated SREC Quantity (first-year): 298 SRECs

Perdue Corporation (Bridgeville) Project

, \_\_\_\_\_ Adams Road, Bridgeville, Delaware

Nameplate Capacity: 1,579 KW

Tier Designation: Tier 3

Operation Date: September 16, 2011

Utility Interconnection: Delmarva Power and Light Company ("Interconnecting Utility")

Estimated annual energy output: 2,142,000 kWh

Delaware SREC credits (Equipment and Workforce bonuses): None

Estimated annual SREC output 2,142 SRECs

Estimated SREC Quantity (first-year): 2142 SRECs

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 Buyer all SRECs created by the Projects and generated after June 1, 2013 (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 Buyer intends to apply the Project SRECs to meet its RPS obligations in Delaware.

#### 2.1.2 Excess SRECs.

(a) If the Wilmington Friends Project creates any Excess Amount during any Contract Year, the Buyer 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 Buyer to notify the Owner of such election within such time period shall be deemed an election by the Buyer to not purchase the Excess Amount or any portion thereof for such Contract Year. In the event that the Buyer does not purchase any portion of the Excess Amount created by the Project for any Contract Year and such SRECs were transferred to the GATS account of the Buyer, the Buyer shall promptly re-transfer such SRECs to the GATS account of the Owner.

(b) If the Bridgeville Project creates any Excess Amount during any Contract Year: (a) the Buyer 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 Buyer, the Buyer shall promptly re-transfer such SRECs to the GATS account of the Owner.

2.1.3 GATS Registration. The Owner shall be responsible for transferring the Project SRECs to the Buyer by registering such SRECs in the GATS account of the Buyer. 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 Buyer, the Owner shall execute such an order, in a form acceptable to the Buyer. 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 Buyer, the Owner shall execute such an order, in a form acceptable to the Buyer.

#### 2.1.4 Term of Purchase.

(a) The Buyer's obligation to purchase and Owner's obligation to sell SRECs shall commence on June 1, 2013 (the "Commencement Date").

(b) Owner's obligation to sell and the Buyer's obligation to purchase SRECs shall continue for a period of twenty (20) years after the Commencement Date.

#### 2.1.5 Project SRECs.

(a) In no event shall Project SRECs exceed 2,440 per year during the term of this Agreement.

(b) 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 hereof.

### Section 2.2 Operational Matters.

#### 2.2.1 Interconnection.

(a) The Owner and Buyer shall jointly be responsible for maintaining the interconnection of the Projects to the electric transmission or distribution system of the Interconnecting Utility. The parties understand and agree that as of the Effective Date the solar facilities that comprise the Projects have been approved for interconnection with the Interconnecting Utility. (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 maintain the interconnect to the Projects, the Owner may, within ten (10) days of such notice, elect to reduce the capacity of the Projects to avoid or minimize such fee or charge; or (ii) terminate this Agreement.

(b) If the Owner elects to reduce the capacity of the Projects pursuant to Section 2.2.1(b) hereof, it shall provide the Buyer with written notice specifying the reduced nameplate capacity of the Projects and, upon such election, the Annual Contract Quantity shall be deemed to be reduced by the same percentage as the reduction in the nameplate capacity.

(c) If the Owner elects to terminate this Agreement pursuant to Section 2.2.1(b) hereof, it shall provide the Buyer with written notice of termination pursuant to the provisions of Section 7.1 hereof.

2.2.2 Project Operation. As of the Execution Date, the Owner represents that it has completed construction of the Projects, has obtained all approvals of Governmental Authorities required in connection therewith, and the Projects are fully operational.

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

2.2.4 Changes to Operational Characteristics. The Owner shall promptly notify the Buyer of any substantive changes to the operational characteristics of the Projects, 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 Meters for the Projects; (b) provide the Buyer with a detailed description of the Required Meters (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 Meters; and (d) deliver to the Buyer copies of all test results of Required Meters promptly upon the completion of any such test. The Buyer 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 Buyer and its designees to inspect the Projects 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.

2.2.7 Retail Load.

(a) In no event shall Buyer have the obligation to purchase Project SRECs above the Maximum Annual Quantity, even if Owner increases its retail load beyond such amount.

(b) Owner shall maintain complete records of its retail electric sales within Buyer's Delaware electric sales service territory and shall, for each Contract Year provide a detailed report of such sales to Buyer

within thirty (30) days following the conclusion of each Contract Year. Buyer shall have the right to inspect and audit Owner's records at its discretion to confirm and validate the information provided by Owner to Buyer concerning its sales.

### Section 2.3 Conditions.

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

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

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

2.3.4 Certifications. The Owner shall deliver to the Buyer: (a) a copy of the DPSC certification for each Project as an Eligible Energy Resource; (b) a copy of the approval to operate each 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 Projects are designated as being eligible for the Delaware Equipment Bonus and/or the Delaware Workforce Bonus in Part I, the Owner shall provide the Buyer 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.

2.3.5 Approval of DPSC. Buyer's obligation to purchase Project SRECs pursuant to the terms and conditions of this Agreement is subject to the issuance of final non-appealable approval of the Agreement by the DPSC.

### Section 2.4 Purchase Price and Payment Terms.

#### 2.4.1 Purchase Price.

(a) For the Wilmington Friends School Project, the Purchase Price for Project SRECs created during Contract Years 1 through 10 will be \$131.13 per SREC.

(b) For the Bridgeville Project, the Purchase Price for Project SRECs created during Contract Years 1 through 10 will be \$154.35 per SREC.

(c) For both the Wilmington Friends School and Bridgeville Projects, the Purchase Price for Project SRECs created during Contract Years 11 through 20 shall be \$50 per SREC.

#### 2.4.2 SREC Bonus. None.

2.4.3 Payment. Subject to the limitations set forth in this Agreement: the Buyer shall pay the Owner 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 Buyer. Buyer shall have the right to make payments hereunder by wire transfer. In the event the Buyer elects to make payment by wire transfer, Owner shall

be responsible for providing the Buyer with account information and wiring instructions to facilitate such transfers.

#### 2.4.4 Limitations.

(a) The Buyer 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) hereof.

(b) The Buyer 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 Party 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 On-line Guarantee.

2.5.1 Guaranteed On-Line Date. The Owner represents that the Operation Dates of the Projects are as set forth in Part I of this Agreement.

2.5.2 Damages for Delayed Operation Date. The parties understand and agree that there shall be no damages for delayed operation dates of the Projects. Any damages shall be as set forth in Section 2.8 of this Agreement.

#### Section 2.6 Representations, Warranties and Acknowledgements.

2.6.1 Representations and Warranties of Owner. The Owner hereby represents and warrants to the Buyer 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 Buyer, 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 Buyer 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 Buyer pursuant to Section 5.2.1 constitutes a valid, legal and, upon the filing of the financing statements referred to in Section 5.2.2, a first-priority perfected security interest in all the Collateral granted by the Owner as security for the Secured Obligations;

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

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

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

(l) the System Interconnection Application has been accepted by the Interconnecting Utility.

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

(a) the Buyer 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 Buyer 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 Buyer may appoint a third-party (the "**Contracting Agent**") to perform any or all of the obligations and responsibilities of the Buyer 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 Buyer. The Buyer acknowledges and agrees that it is not entitled to any portion of the energy output, capacity or ancillary services from the Projects pursuant to this Agreement.

Section 2.7 Change in Estimated SREC Quantity. The 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) Business 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 for a period of thirty (30) days after notice thereof;

(c) with respect to the Owner the lien required pursuant to Section 5.2 ceases to be a perfected, first priority security interest;

(d) with respect to the Owner, the nameplate rating of the Projects vary from that set forth in Part I by more than: (i) 5% for the Wilmington Friends School Project or (ii) 2.5% for the Bridgeville Project;

(e) with respect to the Owner, any Project SRECs (up to the Maximum Annual Quantity and, if applicable, any portion of any Excess Amount that the Buyer elects to purchase pursuant to Section 2.1.2(a) hereof) are not transferred to the Buyer;

(f) 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

(g) 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 Buyer 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 Projects 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 Buyer); and/or (iii) suspend its performance hereunder.

(b) Upon the occurrence of an Event of Default by the Buyer, 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, 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 Limitations of Liability.

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.

2.8.4 Statutory or Regulatory Changes. If there is a change in legislation, rule, regulation, order or other action by a Governmental Authority occurring after approval of this Agreement by DPSC, such that Buyer no longer has the responsibility to comply with REPSA, Buyer is no longer able to recover all of the costs of this Agreement through rates, or such Change renders it economically impractical or otherwise impossible for Buyer or Owner to perform hereunder (collectively a "Change"), then the affected Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party and, thereafter, neither Party shall have any further liability or obligation hereunder except with respect to amounts due prior to the date of such termination. Notwithstanding any provision to the contrary contained herein, the ability of Owner to obtain a higher price for Project SRECs or sell a larger volume, or obtain a longer term contract or any other reason that would provide a more favorable economic arrangement for Owner pertaining to the sale of Project SRECs, shall not give Owner the right to terminate this Agreement

### Section 2.9 Force Majeure.

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

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

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

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

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

### PART III

[Part III is purposely left blank.]

### PART IV

#### MINIMUM ANNUAL QUANTITY

The provisions of this Part IV shall apply to the Projects as designated in 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 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 Buyer, the Owner shall pay the Buyer 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 Buyer, 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 acknowledges and agrees 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 Buyer 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 ten (10) Contract Years, 5% of the value of the Annual Contract Quantity for the first Contract Year; and

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

4.2.2 Form of Supplemental Credit Support. The Supplemental Credit Support shall be in the form of cash, a letter of credit or other collateral acceptable to the Buyer.

4.2.3 Obligation to Replenish. If the Buyer 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.

No bid deposit is associated with 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 Buyer 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 Buyer's security interest in and to the Collateral and the Buyer'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 Buyer 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 Buyer's security interest in the Collateral, with or without the signature of the Owner, naming the Owner as "debtor" and the Buyer 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 Buyer may, at any time and from time to time, reasonably request in order to perfect, preserve and protect the Buyer'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 Buyer 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 Buyer 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 and Buyer.

**"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. In no event, however, will the Annual Contract Quantity exceed the RPS requirements for solar power associated with Owner's retail electric sales in Buyer's Delaware electric sales service territory less any load associated with transitional supply contracts.

**"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.

**"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 Buyer is obligated to purchase SRECs hereunder, as specified in Section 2.1.4(a) or 2.1.4(b).

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

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

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

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

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

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

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

"**Environmental Attribute**" means any attribute of an environmental or similar nature (including all Generation Attributes) that is created or otherwise arises from the Project's generation of electricity from solar energy in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, excluding: (a) any such attribute not legally capable of being transferred to the SEU; and (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 Buyer, as designated on the signature page of the counterpart executed by the Buyer.

"**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, no more than 2,440 SRECs.

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

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

"**Operation Date**" means the date on which the Projects commenced generating electricity.

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

"**Party**" means each of the Owner and the Buyer.

"**Payee**" means the Owner 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(s)**" has the meaning set forth in the introductory paragraph of this Agreement, as such Project(s) are described further in Paragraph D of Part I.

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

"**Purchase Price**" means, with respect to any Contract Year, the amount per Project SREC to be paid by the Buyer 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 the Wilmington Friends School Project, a standard, utility-grade meter or a revenue-grade meter, in either case capable of on-line monitoring; and (b) for the Bridgeville Project, a revenue-grade meter capable of on-line monitoring.

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

"**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.

"Wilmington Friends School **Project**" has the meaning set forth in Paragraph D of Part I.

"Bridgeville **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 shall be addressed as set forth in Part I. Communications directed to the Buyer 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 Buyer 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 Buyer.

Buyer:

With a copy to:

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 thirty (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 fifteen (15) days of a written request for such information. All such records and data shall be retained by each Party for at least three (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, the Owner may not assign this Agreement or any portion thereof, without the prior written consent of the Buyer. Without limiting the

foregoing, the Owner may not sell, assign, convey, dispose of or otherwise transfer the Projects 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 Buyer: (a) in connection with any financing of the Projects; or (b) to a purchaser or transferee of the Projects. With respect to any permitted assignment of this Agreement: (i) the assigning Party shall provide at least thirty (30) days prior notice of any such assignment, which notice shall include the name of, and contact information for, the assignee; (ii) the assignee shall expressly assume the assignor's obligations hereunder pursuant to an agreement in form and substance reasonably acceptable to the non-assigning Party; and (iii) no such assignment shall relieve the assignor of its obligations hereunder.

7.8.3 Consent to Assignment. Upon or prior to a permitted assignment in connection with a financing of the Projects, the Buyer agrees to execute a written consent in a form reasonably acceptable to the Buyer. If such written consent is not requested, the Owner shall notify the Buyer 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 in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

*{Signature page follows}*

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

**Owner:**

Washington Gas Energy Services, Inc.

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

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

**Buyer:**

Delmarva Power & Light Company

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

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

E X H I B I T B

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
DELMARVA POWER & LIGHT COMPANY )  
FOR APPROVAL OF AN AGREEMENT TO ) PSC DOCKET NO. 13-99  
PURCHASE SOLAR RENEWABLE ENERGY )  
CREDITS (FILED MARCH 11, 2013) )

---

**PROPOSED SETTLEMENT**

Delmarva Power & Light Company (“Delmarva” or the “Company”), Washington Gas Energy Services, Inc. (“WGES”), the Delaware Public Service Commission Staff (“Staff”), the Attorney General of the State of Delaware, by and through his designee James Adams, Deputy State Solicitor (“Attorney General”)<sup>1</sup> and the Delaware Department of Natural Resources and Environmental Control (“DNREC”), individually each a “Party,” and collectively, the “Parties,” hereby propose a complete settlement of all issues in this proceeding as follows.

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

1. On March 11, 2013, Delmarva filed an application (the “Application”) with the Delaware Public Service Commission (the “Commission”) seeking approval of an agreement to purchase Solar Renewable Energy Credits (“SRECs”) from WGES. Delmarva submitted the Application pursuant to 26 *Del. C.* §351 et. seq. and 26 *Del. Admin. C.* §3008-3.2.3.4.

2. By way of background, 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,

---

<sup>1</sup> Per Order No. 8332 (March 18, 2013), the Attorney General was permitted to intervene in this Docket due to the resignation of the Public Advocate (“DPA”).

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).

3. In furtherance of these goals, REPSA required all retail electric suppliers, like Delmarva and WGES, to purchase energy from Eligible Energy Resources (as that term is defined in REPSA) to meet a portion of their annual retail load. 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 0.60% for the 2013 compliance year, which increases incrementally to 3.50% for the 2025 compliance year. 26 *Del. C.* § 354.

4. REPSA was amended again in 2011 to transfer all responsibility for compliance with the renewable energy portfolio standard to Commission-regulated electric companies starting with compliance year 2012. Accordingly, Delmarva is now responsible for REPSA compliance for its entire delivery load. 26 *Del. C.* § 354(e).

5. Following the enactment of the 2011 amendments to REPSA, by Order No. 8026, the Commission reopened Regulation Docket No. 56 to amend its RPS Rules. After receiving comments on proposed amendments to the RPS Rules and conducting a public hearing, on April 17, 2012, the Commission approved amended RPS Rules (Order No. 8193, PSC Regulation Docket No. 56), and the amended rules were adopted after publication in the Delaware Register.

6. In amending the RPS Rules, the Commission authorized retail electric suppliers like WGES to offer SRECs to Delmarva. In that regard, the Commission adopted 26 Del. Admin. C. § 3008-3.2.3.4, which provides:

Retail Electricity Suppliers that, prior to March 1, 2012, have entered into contracts to purchase or produce RECs and/or SRECs specifically for Delaware RPS compliance may offer to the CREC [Commission Regulated Electric Companies] those RECs and/or SRECs. The price would be determined by separate agreement between the Retail Electricity Supplier and the CREC. In no case shall the CREC be obligated to purchase any RECs/SRECs from the Retail Electricity Supplier.

7. Following the Commission's adoption of the amended RPS Rules in April 2012, Delmarva and WGES began to discuss the possibility of entering into an agreement whereby Delmarva would purchase the SRECs generated by solar photovoltaic systems owned by WGES in Delaware. After meeting on May 25, 2012 to discuss the parameters of a potential agreement, and several follow up conversations, Delmarva and WGES exchanged several proposals and counter-proposals. Delmarva and WGES agreed to the terms of an SREC Transfer Agreement (the "Agreement"), based upon the terms and conditions of the form of agreement approved for Delmarva's SREC Pilot Program. The Agreement proposed a twenty (20) year term during which Delmarva would acquire the combined SRECs from two projects, not to exceed 2,440 SRECs annually. The Agreement provided for the payment of \$131.13 per SREC for years 1 through 10 for the SRECs generated by the Tier 2B project, and \$154.35 per SREC for years 1 through 10 for the SRECs generated by the Tier 3 project. For the remaining ten (10) years of the Agreement Delmarva would pay \$50 per SREC. A copy of the Agreement was submitted with the Application.

8. The Application was presented to the Commission at its meeting on April 9, 2013 at which time an evidentiary hearing took place. The Parties presented their witnesses who provided testimony as to the terms of the Agreement. While Staff generally supported the Application, the Attorney General had concerns about the price that Delmarva had agreed to pay WGES for the SRECs, especially in light of the fact that the 2013 SREC Auction would soon be held. The Commission determined that it was not in a position to take action on the Application without the benefit of the results of the 2013 SREC Auction and tabled the Application to their May 21, 2013 meeting.

9. At the May 21, 2013 Commission meeting, the results of the 2013 SREC Auction were presented and debated. Thereafter, DNREC offered a proposed compromise for the Parties to consider, taking into account the results from the recent SREC auction. DNREC proposed that WGES be paid \$105 per SREC for the first seven (7) years of the Agreement and \$50 per SREC for the remaining thirteen (13) years of the Agreement. After a brief recess wherein the Parties discussed the DNREC proposal, a request was made to again table the Application to permit further discussions between the Parties.

10. The Parties have conferred and have agreed to enter into this Proposed Settlement on the terms and conditions contained herein because they believe that resolving the matter by stipulation will serve the interests of the public, while meeting the statutory requirement that rates be both just and reasonable. The Parties agree that the terms and conditions of this Proposed Settlement will be presented to the Commission for the Commission's approval.

## **II. SETTLEMENT PROVISIONS**

11. The Parties have agreed to a modification to the terms of the Agreement as follows:

- a.) Delmarva will pay WGES \$74.00 for each SREC purchased in years 1 through 7, and \$50 for each SREC purchased in years 8 through 20.
- b.) The definition of “Annual Contract Quantity” shall be revised to eliminate the reduction for any load associated with transitional supply contracts.

A revised version of the Agreement incorporating these changes (“Revised Agreement”) is attached hereto as Exhibit “A”.

### **III. ADDITIONAL PROVISIONS**

- 12. The provisions of this Proposed Settlement are not severable.
- 13. This Proposed Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future case. No Party to this Proposed Settlement necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Proposed Settlement other than as specified herein, except that the Parties agree that the resolution of the issues herein taken as a whole results in just and reasonable rates.
- 14. To the extent opinions or views were expressed or issues were raised in the pre-filed testimony that are not specifically addressed in this Proposed Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.
- 15. The Parties agree that this Proposed Settlement may be submitted to the Commission for a determination that it is in the public interest and that no Party will oppose such a determination. Except as expressly set forth herein, none of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

16. This Proposed Settlement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Proposed Settlement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

17. The obligations under this Proposed Settlement if any, that apply for a specific term set forth herein shall expire automatically in accordance with the term specified and shall require no further action for their expiration.

18. The Parties may enforce this Proposed Settlement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Proposed Settlement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

19. If a Court grants a legal challenge to the Commission's approval of this Proposed Settlement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Proposed Settlement, or if some other legal bar has the same effect, then this Proposed Settlement is voidable upon written notice by any Party to the other Parties.

20. This Proposed Settlement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Settlement is made without admission against or prejudice to any factual or legal positions which any of the Parties may

assert (a) if the Commission does not issue a final order approving this Proposed Settlement without modifications; or (b) in other proceedings before the Commission or another governmental body so long as such positions do not attempt to abrogate this Proposed Settlement. This Proposed Settlement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

21. This Proposed Settlement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Settlement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will make their best efforts to support this Proposed Settlement and to secure its approval by the Commission.

22. It is expressly understood and agreed that this Proposed Settlement constitutes a negotiated resolution of the issues in this proceeding.

23. This Proposed Settlement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the entity executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned Parties have caused this Proposed Settlement to be signed by their duly-authorized representatives.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: /s/ R J Howatt

Date: 6/18/2013

DELMARVA POWER & LIGHT COMPANY

By: /s/ W R Swink

Date: 6/18/2013

WASHINGTON GAS ENERGY SERVICES, INC.

By: /s/ Telemac N Chryssikos

Date: June 18, 2013

THE ATTORNEY GENERAL FOR THE STATE OF DELAWARE

By: /s/ Allison E. Reardon  
State Solicitor

Date: 6.17.13

DELAWARE DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

By: /s/ Thomas G Noyes

Date: June 18 2013

EXHIBIT "A"

SREC TRANSFER AGREEMENT AS MODIFIED

# SREC Transfer Agreement

## SOLAR RENEWABLE ENERGY CREDIT

### TRANSFER AGREEMENT

#### TABLE OF CONTENTS

PART I PROJECT AND OWNER INFORMATION.....	1
Section 1.1 <u>Owner</u> . . . . .	1
Section 1.2 <u>Project</u> . . . . .	1
PART II TERMS AND CONDITIONS .....	4
Section 2.1 <u>Purchase and Sale of SRECs</u> .....	4
Section 2.2 <u>Operational Matters</u> .....	5
Section 2.3 <u>Conditions</u> .....	6
Section 2.4 <u>Purchase Price and Payment Terms</u> .....	7
Section 2.5 <u>Completion Guarantee</u> .....	8
Section 2.6 <u>Representations, Warranties and Acknowledgements</u> .....	9
Section 2.7 <u>Change in Estimated SREC Quantity</u> .....	11
Section 2.8 <u>Default and Remedies</u> .....	11
Section 2.9 <u>Force Majeure</u> .....	13
PART III OWNER REPRESENTATIVE.....	14
Section 3.1 <u>Agency Appointment</u> .....	14
Section 3.2 <u>Agency Responsibility</u> .....	14
Section 3.3 <u>Termination or Replacement of Owner Representative</u> .....	14

Section 3.4 <u>Representations and Warranties of Owner Representative</u> .....	15
Section 3.5 <u>Continuing Eligibility</u> .....	16
PART IV MINIMUM ANNUAL QUANTITY.....	16
Section 4.1 <u>Guaranteed Quantity</u> .....	16
Section 4.2 <u>Supplemental Credit Support</u> .....	16
PART V CREDIT SUPPORT.....	17
Section 5.1 <u>Bid Deposit</u> .....	17
Section 5.2 <u>Security Interest</u> .....	17
PART VI DEFINITIONS; RULES OF CONSTRUCTION.....	18
Section 6.1 <u>Definitions</u> .....	18
Section 6.2 <u>Rules of Construction</u> .....	22
PART VII GENERAL PROVISIONS.....	23
Section 7.1 <u>Notices</u> .....	23
Section 7.2 <u>Governing Law</u> .....	23
Section 7.3 <u>Dispute Resolution</u> .....	23
Section 7.4 <u>Jurisdiction and Venue</u> .....	24
Section 7.5 <u>Service of Process</u> .....	24
Section 7.6 <u>Waiver of Right to Jury Trial</u> .....	24
Section 7.7 <u>Records</u> .....	24
Section 7.8 <u>Assignment</u> .....	24
Section 7.9 <u>Delay and Waiver</u> .....	25
Section 7.10 <u>Relationship of the Parties</u> .....	25
Section 7.11 <u>Survival of Obligations</u> .....	25
Section 7.12 <u>Severability</u> .....	25

Section 7.13 <u>Entire Agreement</u> .....	25
Section 7.14 <u>Amendments</u> .....	25
Section 7.15 <u>Headings</u> .....	25
Section 7.16 <u>Counterparts</u> .....	.25

## SOLAR RENEWABLE ENERGY CREDIT TRANSFER AGREEMENT

### DELAWARE RENEWABLE ENERGY PROGRAM

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date") between Washington Gas Energy Services, Inc. ("Owner") and Delmarva Power & Light Company ("Buyer") for the sale and transfer of solar renewable energy credits ("SRECs") from Owner's solar facilities located within Buyer's service territory..

Whereas, Owner owns operational solar facilities located on the property of Perdue Corporation in Bridgeville, Delaware, and on the property of the Wilmington Friends School in Wilmington, Delaware, (individually a "Project and collectively the "Projects"), and is willing to sell the SRECs produced by such facilities to Buyer in accordance with the terms and conditions of this Agreement;

Whereas, pursuant to the provisions of the *Delaware Renewable Portfolio Standard* ("RPS"), Buyer is responsible for the procurement of all SRECs applicable to electricity delivered to end users in Delaware, beginning June 1, 2012, and is willing to purchase SRECs from Buyer in accordance with the terms and conditions of this Agreement;

Whereas, subject to the approval of the Delaware Public Service Commission ("DPSC"), the parties have agreed to enter into this Agreement for the purchase and sale of SRECs from the facilities referenced above.

Now, Therefore, subject to the terms and conditions set forth herein, and for valuable consideration that each acknowledges, and intending to be legally bound, the parties hereto agree as follows:

#### PART I PROJECT AND OWNER INFORMATION

##### 1.1 Owner:

- Name of entity: Washington Gas Energy Services, Inc.
- Street address: 13865 Sunrise Valley Drive, Suite 200City, state and zip code: Herndon, Virginia 20171
- Attention: Harry A. Warren, Jr., President
- Email address: HWarren@wges.com
- Tax ID number: 52-1542887
- Owner's other Eligible Energy Resources: various
- Owner GATS Account: Washington Gas Energy Services, Inc.

##### 1.2 Project:

Wilmington Friends School Project (two campus locations)

Main Campus at 101 School Road, Wilmington, Delaware

Auxiliary Campus at 20 Granite Road, Wilmington, Delaware

Nameplate Capacity: 240 KW

Tier Designation: Tier 2B

Operation Date: December 15, 2011

Utility Interconnection: Delmarva Power and Light Company (“Interconnecting Utility”)

Estimated annual energy output: 291,000 kWh

Delaware SREC credits (Equipment and Workforce bonuses): None

Estimated annual SREC output 298 SRECs

Estimated SREC Quantity (first-year): 298 SRECs

Perdue Corporation (Bridgeville) Project

, \_\_\_\_\_ Adams Road, Bridgeville, Delaware

Nameplate Capacity: 1,579 KW

Tier Designation: Tier 3

Operation Date: September 16, 2011

Utility Interconnection: Delmarva Power and Light Company (“Interconnecting Utility”)

Estimated annual energy output: 2,142,000 kWh

Delaware SREC credits (Equipment and Workforce bonuses): None

Estimated annual SREC output 2,142 SRECs

Estimated SREC Quantity (first-year): 2142 SRECs

## 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 Buyer all SRECs created by the Projects and generated after June 1, 2013 (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 Buyer intends to apply the Project SRECs to meet its RPS obligations in Delaware.

### 2.1.2 Excess SRECs.

(a) If the Wilmington Friends Project creates any Excess Amount during any Contract Year, the Buyer 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 Buyer to notify the Owner of such election within such time period shall be deemed an election by the Buyer to not purchase the Excess Amount or any portion thereof for such Contract Year. In the event that the Buyer does not purchase any portion of the Excess Amount created by the Project for any Contract Year and such SRECs were transferred to the GATS account of the Buyer, the Buyer shall promptly re-transfer such SRECs to the GATS account of the Owner.

(b) If the Bridgeville Project creates any Excess Amount during any Contract Year: (a) the Buyer 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 Buyer, the Buyer shall promptly re-transfer such SRECs to the GATS account of the Owner.

2.1.3 GATS Registration. The Owner shall be responsible for transferring the Project SRECs to the Buyer by registering such SRECs in the GATS account of the Buyer. 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 Buyer, the Owner shall execute such an order, in a form acceptable to the Buyer. 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 Buyer, the Owner shall execute such an order, in a form acceptable to the Buyer.

### 2.1.4 Term of Purchase.

(a) The Buyer's obligation to purchase and Owner's obligation to sell SRECs shall commence on June 1, 2013 (the "Commencement Date").

(b) Owner's obligation to sell and the Buyer's obligation to purchase SRECs shall continue for a period of twenty (20) years after the Commencement Date.

### 2.1.5 Project SRECs.

(a) In no event shall Project SRECs exceed 2,440 per year during the term of this Agreement.

(b) 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 hereof.

## Section 2.2 Operational Matters.

### 2.2.1 Interconnection.

(a) The Owner and Buyer shall jointly be responsible for maintaining the interconnection of the Projects to the electric transmission or distribution system of the Interconnecting Utility. The parties understand and agree that as of the Effective Date the solar facilities that comprise the Projects have been approved for interconnection with the Interconnecting Utility. (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 maintain the interconnect to the Projects, the Owner may, within ten (10) days of such notice, elect to reduce the capacity of the Projects to avoid or minimize such fee or charge; or (ii) terminate this Agreement.

(b) If the Owner elects to reduce the capacity of the Projects pursuant to Section 2.2.1(b) hereof, it shall provide the Buyer with written notice specifying the reduced nameplate capacity of the Projects and, upon such election, the Annual Contract Quantity shall be deemed to be reduced by the same percentage as the reduction in the nameplate capacity.

(c) If the Owner elects to terminate this Agreement pursuant to Section 2.2.1(b) hereof, it shall provide the Buyer with written notice of termination pursuant to the provisions of Section 7.1 hereof.

2.2.2 Project Operation. As of the Execution Date, the Owner represents that it has completed construction of the Projects, has obtained all approvals of Governmental Authorities required in connection therewith, and the Projects are fully operational.

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

2.2.4 Changes to Operational Characteristics. The Owner shall promptly notify the Buyer of any substantive changes to the operational characteristics of the Projects, 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 Meters for the Projects; (b) provide the Buyer with a detailed description of the Required Meters (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 Meters; and (d) deliver to the Buyer copies of all test results of Required Meters promptly upon the completion of any such test. The Buyer 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 Buyer and its designees to inspect the Projects 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.

2.2.7 Retail Load.

(a) In no event shall Buyer have the obligation to purchase Project SRECs above the Maximum Annual Quantity, even if Owner increases its retail load beyond such amount.

(b) Owner shall maintain complete records of its retail electric sales within Buyer's Delaware electric sales service territory and shall, for each Contract Year provide a detailed report of such sales to Buyer within thirty (30) days following the conclusion of each Contract Year. Buyer shall have the right to inspect and audit Owner's records at its discretion to confirm and validate the information provided by Owner to Buyer concerning its sales.

Section 2.3 Conditions.

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

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

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

2.3.4 Certifications. The Owner shall deliver to the Buyer: (a) a copy of the DPSC certification for each Project as an Eligible Energy Resource; (b) a copy of the approval to operate each 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 Projects are designated as being eligible for the Delaware Equipment Bonus and/or the Delaware Workforce Bonus in Part I, the Owner shall provide the Buyer 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.

2.3.5 Approval of DPSC. Buyer's obligation to purchase Project SRECs pursuant to the terms and conditions of this Agreement is subject to the issuance of final non-appealable approval of the Agreement by the DPSC.

Section 2.4 Purchase Price and Payment Terms.

2.4.1 Purchase Price.

(a) For the Wilmington Friends School Project, the Purchase Price for Project SRECs created during Contract Years 1 through 7 will be \$74.00 per SREC.

(b) For the Bridgeville Project, the Purchase Price for Project SRECs created during Contract Years 1 through 7 will be \$74.00 per SREC.

(c) For both the Wilmington Friends School and Bridgeville Projects, the Purchase Price for Project SRECs created during Contract Years 8 through 20 shall be \$50 per SREC.

2.4.2 SREC Bonus. None.

2.4.3 Payment. Subject to the limitations set forth in this Agreement: the Buyer shall pay the Owner 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 Buyer. Buyer shall have the right to make payments hereunder by wire transfer. In the event the Buyer elects to make payment by wire transfer, Owner shall be responsible for providing the Buyer with account information and wiring instructions to facilitate such transfers.

2.4.4 Limitations.

(a) The Buyer 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) hereof.

(b) The Buyer 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 Party 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 On-line Guarantee.

2.5.1 Guaranteed On-Line Date. The Owner represents that the Operation Dates of the Projects are as set forth in Part I of this Agreement.

2.5.2 Damages for Delayed Operation Date. The parties understand and agree that there shall be no damages for delayed operation dates of the Projects. Any damages shall be as set forth in Section 2.8 of this Agreement.

Section 2.6 Representations, Warranties and Acknowledgements.

2.6.1 Representations and Warranties of Owner. The Owner hereby represents and warrants to the Buyer 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 Buyer, 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 Buyer 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 Buyer pursuant to Section 5.2.1 constitutes a valid, legal and, upon the filing of the financing statements referred to in Section 5.2.2, a first-priority perfected security interest in all the Collateral granted by the Owner as security for the Secured Obligations;

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

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

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

(l) the System Interconnection Application has been accepted by the Interconnecting Utility.

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

(a) the Buyer 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 Buyer 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 Buyer may appoint a third-party (the "*Contracting Agent*") to perform any or all of the obligations and responsibilities of the Buyer 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 Buyer. The Buyer acknowledges and agrees that it is not entitled to any portion of the energy output, capacity or ancillary services from the Projects pursuant to this Agreement.

Section 2.7 Change in Estimated SREC Quantity. The 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) Business 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 for a period of thirty (30) days after notice thereof;

(c) with respect to the Owner the lien required pursuant to Section 5.2 ceases to be a perfected, first priority security interest;

(d) with respect to the Owner, the nameplate rating of the Projects vary from that set forth in Part I by more than: (i) 5% for the Wilmington Friends School Project or (ii) 2.5% for the Bridgeville Project;

(e) with respect to the Owner, any Project SRECs (up to the Maximum Annual Quantity and, if applicable, any portion of any Excess Amount that the Buyer elects to purchase pursuant to Section 2.1.2(a) hereof) are not transferred to the Buyer;

(f) 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

(g) 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 Buyer 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 Projects 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 Buyer); and/or (iii) suspend its performance hereunder.

(b) Upon the occurrence of an Event of Default by the Buyer, 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, 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 Limitations of Liability.

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.

2.8.4 Statutory or Regulatory Changes. If there is a change in legislation, rule, regulation, order or other action by a Governmental Authority occurring after approval of this Agreement by DPSC, such that Buyer no longer has the responsibility to comply with REPSA, Buyer is no longer able to recover all of the costs of this Agreement through rates, or such Change renders it economically impractical or otherwise impossible for Buyer or Owner to perform hereunder (collectively a “Change”), then the affected Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party and, thereafter, neither Party shall have any further liability or obligation hereunder except with respect to amounts due prior to the date of such termination. Notwithstanding any provision to the contrary contained herein, the ability of Owner to obtain a higher price for Project SRECs or sell a larger volume, or obtain a longer term contract or any other reason that would provide a more favorable economic arrangement for Owner pertaining to the sale of Project SRECs, shall not give Owner the right to terminate this Agreement

Section 2.9 Force Majeure.

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

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

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

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

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

PART III

**[Part III is purposely left blank.]**

PART IV

MINIMUM ANNUAL QUANTITY

The provisions of this Part IV shall apply to the Projects as designated in 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 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 Buyer, the Owner shall pay the Buyer 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 Buyer, 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 acknowledges and agrees 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 Buyer 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 ten (10) Contract Years, 5% of the value of the Annual Contract Quantity for the first Contract Year; and

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

4.2.2 Form of Supplemental Credit Support. The Supplemental Credit Support shall be in the form of cash, a letter of credit or other collateral acceptable to the Buyer.

4.2.3 Obligation to Replenish. If the Buyer 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.

No bid deposit is associated with 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 Buyer 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 Buyer’s security interest in and to the Collateral and the Buyer’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 Buyer 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 Buyer’s security interest in the Collateral, with or without the signature of the Owner, naming the Owner as “debtor” and the Buyer 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 Buyer may, at any time and from time to time, reasonably request in order to perfect, preserve and protect the Buyer’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 Buyer 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 Buyer 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 and Buyer.

“**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. In no event, however, will the Annual Contract Quantity exceed the RPS requirements for solar power associated with Owner’s retail electric sales in Buyer’s Delaware electric sales service territory.

“**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.

“**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 Buyer is obligated to purchase SRECs hereunder, as specified in Section 2.1.4(a) or 2.1.4(b).

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

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

“**DC**” means direct current electric energy.

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

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

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

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

“**Environmental Attribute**” means any attribute of an environmental or similar nature (including all Generation Attributes) that is created or otherwise arises from the Project’s generation of electricity from solar energy in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, excluding: (a) any such attribute not legally capable of being transferred to the SEU; and (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 Buyer, as designated on the signature page of the counterpart executed by the Buyer.

“**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, no more than 2,440 SRECs.

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

“**MWh**” means 1 megawatt hour of electric energy.

“**Operation Date**” means the date on which the Projects commenced generating electricity.

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

“**Party**” means each of the Owner and the Buyer.

“**Payee**” means the Owner 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(s)**” has the meaning set forth in the introductory paragraph of this Agreement, as such Project(s) are described further in Paragraph D of Part I.

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

“**Purchase Price**” means, with respect to any Contract Year, the amount per Project SREC to be paid by the Buyer 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 the Wilmington Friends School Project, a standard, utility-grade meter or a revenue-grade meter, in either case capable of on-line monitoring; and (b) for the Bridgeville Project, a revenue-grade meter capable of on-line monitoring.

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

“**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.

“Wilmington Friends School *Project*” has the meaning set forth in Paragraph D of Part I.

“Bridgeville *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 shall be addressed as set forth in Part I. Communications directed to the Buyer 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 Buyer 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 Buyer.

Buyer:            Delmarva Power  
                    c/o William R. Swink  
                    701 Ninth Street, NW  
                    E 6610  
                    Washington, DC 20068

With a copy to: Pamela J. Scott  
                    Assistant General Counsel  
                    92DC42  
                    P.O. Box 6066  
                    Newark, DE 19714-6066

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 thirty (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 fifteen (15) days of a written request for such information. All such records and data shall be retained by each Party for at least three (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, the Owner may not assign this Agreement or any portion thereof, without the prior written consent of the Buyer. Without limiting the foregoing, the Owner may not sell, assign, convey, dispose of or otherwise transfer the Projects 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 Buyer: (a) in connection with any financing of the Projects; or (b) to a purchaser or transferee of the Projects. With respect to any permitted assignment of this Agreement: (i) the assigning Party shall provide at least thirty (30) days prior notice of any such assignment, which notice shall include the name of, and contact information for, the assignee; (ii) the assignee shall expressly assume the assignor's obligations hereunder pursuant to an agreement in form and substance reasonably acceptable to the non-assigning Party; and (iii) no such assignment shall relieve the assignor of its obligations hereunder.

7.8.3 Consent to Assignment. Upon or prior to a permitted assignment in connection with a financing of the Projects, the Buyer agrees to execute a written consent in a form reasonably acceptable to the Buyer. If such written consent is not requested, the Owner shall notify the Buyer 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 in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

*{Signature page follows}*

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

**Owner:**

Washington Gas Energy Services, Inc.

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

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

**Buyer:**

Delmarva Power & Light Company

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

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