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March 8, 2013

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Delaware Public Service Commission

Attn.: Ms. Alisa Bentley

861 Silver Lake Boulevard

Cannon Building, Suite 100

Dover, DE 19904

Re: Application of Delmarva Power & Light Company to Approve
Execution of an Agreement to Purchase SRECs

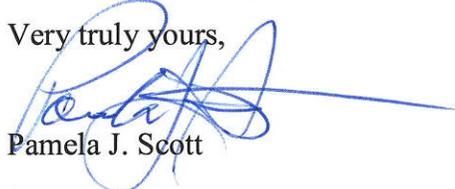
Dear Ms. Bentley:

Enclosed please find an original and ten (10) copies of Delmarva Power & Light Company's ("Delmarva") Application seeking approval to enter into an agreement with Washington Gas Energy Services, Inc. ("WGES") for the purchase of Solar Renewable Energy Credits ("SREC"). Also enclosed is a check for the Application Fee of \$100.

The form of SREC Transfer Agreement attached to the Application is the form used by Delmarva in connection with the SREC Pilot Program for 2011-2012, with a few minor modifications to address the unique circumstances associated with this transaction. Per discussions with Executive Director Robert Howatt, we would like this Application to be on the Public Service Commission's agenda for the March 19, 2013 meeting.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Very truly yours,


Pamela J. Scott

Enclosures

cc: Robert J. Howatt (w/enclosures)
Pamela Knotts (w/enclosures)
Julie Donoghue, Esquire (w/enclosures)
Lawrence Lewis, Esquire (w/enclosures)
Michael D. Sheehy (w/enclosures)
Regina Iorii, Esquire (w/enclosures)
Glenn Moore (w/enclosures)
William R. Swink (w/enclosures)
Melanie Santiago-Mosier (w/enclosures)
Telemac N. Chryssikos, Esquire (w/enclosures)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

**IN THE MATTER OF THE)
APPLICATION OF DELMARVA)
POWER AND LIGHT COMPANY FOR)
APPROVAL OF AN AGREEMENT TO)
PURCHASE SOLAR RENEWABLE)
ENERGY CREDITS)**

PSC DOCKET NO. 13 - _____

**DELMARVA POWER & LIGHT COMPANY'S APPLICATION
FOR APPROVAL TO ENTER INTO AN AGREEMENT TO PURCHASE
SOLAR RENEWABLE ENERGY CREDITS
FROM WASHINGTON GAS ENERGY SERVICES, INC.**

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Dated: March 8, 2013

Delmarva Power & Light Company (Delmarva or the Company), through its undersigned counsel, hereby submits this application pursuant to 26 *Del. C.* § 351 et seq. and 26 *Del. Admin. C.* § 3008-3.2.3.4 for approval by the Delaware Public Service Commission (the Commission) of the execution of the attached SREC Transfer Agreement (the Agreement) by Delmarva and Washington Gas Energy Services, Inc. (WGES).¹ In support of this application, Delmarva states as follows:

I. Legislative Background

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

2. In furtherance of these goals, REPSA 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 sets forth the minimum percentage of retail energy sales to end-users that must come from Eligible Energy Resources, including solar photovoltaics. 26 *Del. C.* § 354(a). The percentage of retail energy to be

¹ Delmarva submits the SREC Transfer Agreement for Commission approval. However, the SREC Transfer Agreement is also presented by and supported by Washington Gas Energy Services, Inc.

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

3. 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. For 2026 and future compliance years, the Commission is to establish solar set-aside levels equal to at least the 2025 level. *26 Del. C. § 354.*

4. REPSA was amended 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 Power is now responsible for REPSA compliance for its entire delivery load. *26 Del. C. § 354(e).*

5. As noted above, prior to 2011, all retail electricity suppliers, such as WGES, were responsible for compliance with REPSA for their retail delivery load. In the 2011 amendments to REPSA, the Delaware General Assembly sought to ensure that electric suppliers that entered into contracts to provide RECs and SRECs to customers prior to the transition of REPSA responsibility to Delmarva would be adequately protected from harm as a result of the transition. *26 Del. C. § 353(c).*

II. Regulatory Background

6. 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.

7. In amending the RPS Rules, the Commission authorized retail electric suppliers like WGES to offer SRECs to Delmarva. 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.

III. The SREC Transfer Agreement

8. Following the Commission’s adoption of 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. The companies have agreed to the terms of an SREC Transfer Agreement, based upon the terms and conditions of the agreement approved for Delmarva’s SREC Pilot Program, that are fair to Delmarva and its customers, fair to WGES, and are in the public interest. The SREC Transfer Agreement is attached as **Exhibit A**.

9. Under 26 Del. Admin. C. § 3008-3.2.3.4, WGES is authorized to offer its SRECs to Delmarva because WGES produces SRECs “specifically for Delaware RPS compliance.” WGES developed two (2) solar projects in Delaware, the output of which were calibrated to correspond to the approximate solar RPS requirements associated with WGES’s electric delivery

load at the time they were constructed. Accordingly, prior to the 2011 amendments to REPSA, WGES used the SRECs generated by the two (2) solar projects to satisfy its compliance requirements under the solar set-aside.

10. The attached Testimony of Harry A. Warren, Jr., President of WGES, includes more details about WGES's solar facilities in Delaware and how their output corresponds to WGES's solar RPS compliance requirements prior to the end of the RPS transition. Mr. Warren's testimony also provides further justification for the proposed transaction pursuant to the terms of the SREC Transfer Agreement. Mr. Warren's testimony is attached as **Exhibit B**.

11. The SREC Transfer Agreement includes provisions that ensure its fairness for ratepayers, and ensures that WGES bears an appropriate level of risk in connection with the transaction. The pricing agreements are in line with the competitive prices achieved in the 2012 SREC auction and do not include any prices that were set administratively. Additionally, Delmarva agrees to purchase only the SRECs that correspond to the solar RPS requirements associated with WGES's actual retail electricity load as it may exist over time, but not to exceed 2,440 SRECs per year; if WGES's electric sales volume were to decrease to a level lower than the volume for which the SRECs are needed, then the amount of SRECs Delmarva would purchase would decrease by a corresponding amount.

12. The attached Testimony of William R. Swink provides more information about the pricing and volume provisions of the proposed transaction as set forth in the SREC Transfer Agreement. Mr. Swink's testimony is attached as **Exhibit C**. Additionally, more information is provided below.

A. Term of the SREC Transfer Agreement

13. The term of the Agreement between Delmarva and WGES is 20 years. (Ex. A at Section 2.1.4). This is the standard term used for Transfer Agreements for the SREC Pilot Program in 2012.

B. Pricing under the SREC Transfer Agreement

14. Under the SREC Transfer Agreement, Delmarva agrees to pay WGES the weighted average prices that were awarded to winners of the 2012 SREC auction, in the Tier 2B and Tier 3 categories. (Exhibit A, Section 2.4.1), as follows:

(a) For the Wilmington Friends School Projects, 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.

C. Quantity of SRECs

15. The SREC Transfer Agreement provides that the quantity of SRECs Delmarva agrees to purchase will not exceed the RPS requirements for solar power associated with WGES's retail electric sales in the Delmarva service territory, less any load associated with transitional supply contracts. (Exhibit A, Section 6.1, "Annual Contract Quantity"). For the 2013-2014 compliance year, it is anticipated that Delmarva will purchase approximately 2,440 SRECs. Thereafter, the cap on SRECs purchased will be 2,440 per year.

D. Form of the SREC Transfer Agreement

16. The SREC Transfer Agreement is substantially similar to the standard Transfer Agreement that successful bidders in the 2012 SREC auction entered into with the Sustainable Energy Utility.

E. Public Interest

17. The SREC Transfer Agreement includes pricing parameters that are in line with the competitively bid prices achieved in the 2012 SREC auction.

18. Additionally, Delmarva is under no obligation to purchase SRECs beyond those needed to satisfy the solar RPS requirements associated with WGES's retail electric load in the Delmarva service territory, but in no event greater than 2,440 per year. If WGES's retail electric load were to fall below the level that corresponds to the solar output of the WGES solar facilities for purposes of RPS compliance, then the volume of SRECs Delmarva would purchase under the SREC Transfer Agreement would fall by a corresponding amount.

19. Delmarva agrees that it is fair to consumers and fair to WGES to enter into the SREC Transfer Agreement. WGES developed its solar projects in Delaware to meet its own RPS compliance requirements prior to the 2011 amendments to REPSA. WGES is in the unique position of having made a significant solar investment as a retail supplier.

IV. Request for Expedition and Approval

20. Delmarva respectfully requests that this Application be handled on an expedited basis such that it can be presented to the Commission on or before March 19, 2013.

21. Because Delmarva and WGES believe the SREC Transfer Agreement is fair to consumers and to WGES, and is in the public interest, Delmarva respectfully requests that the Commission authorize the execution of the SREC Transfer Agreement attached as Exhibit A.

WHEREFORE, for the foregoing reasons, Delmarva respectfully requests that the SREC Transfer Agreement be approved.



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Dated: March 8, 2013

SREC Transfer Agreement

SOLAR RENEWABLE ENERGY CREDIT

TRANSFER AGREEMENT

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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 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: _____

Buyer

Delmarva Power & Light Company

By: _____

Date: _____

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: _____

1
2 **DELMARVA POWER & LIGHT COMPANY**
3 **BEFORE THE DELAWARE PUBLIC SERVICE COMMISSION**
4 **DIRECT TESTIMONY OF HARRY A. WARREN, JR.**
5 **PSC DOCKET NO. 13-_____**

6 **1. Q: Please state your name, occupation, and business address.**

7 A1: My name is Harry A. Warren, Jr. I am the President of Washington Gas Energy
8 Services, Inc. (WGES). My business address is 13865 Sunrise Valley Drive, Suite 200,
9 Herndon, VA 20171.

10 **2. Q: Please briefly describe your educational and professional experience.**

11 A2: I earned a Masters Degree in Mechanical Engineering from Stanford University,
12 conferred in 1981, and a Bachelors Degree in Mechanical Engineering from Princeton
13 University, having graduated cum laude in 1979. Prior to joining Washington Gas Light
14 Company as a sales engineer in 1985, I worked in research, development, and design of
15 renewable energy systems with firms in the Washington, D.C. metropolitan area.
16 Between 1985 and 1993, I worked in various management roles at Washington Gas
17 within the marketing and sales area, served as the Company's liaison with Wall Street as
18 the Director of Investor Relations, then returned to the marketing area as Director of
19 Sales. In 1996, I was named Executive Assistant in the Office of the Chairman of
20 Washington Gas Light Co., with the responsibility of overseeing the completion of a
21 corporate reorganization effort, as well as participating in various strategic planning
22 efforts. In 1997, I was elected President of WGES, and have served in this position since.
23 I am a past president of the Washington, D.C. chapter of the Association of Professional

1 Energy Managers, and served as the Chairman of the Space Conditioning Subcommittee
2 of the American Gas Association. I was a member of the Board of Directors and Energy
3 Committee of the Northern Virginia Building Industries Association. I was also a
4 member of the Board of Directors of the Clean Energy Partnership, a non-profit that
5 promoted the use of renewable energy by Maryland businesses. I am the past chairman
6 of the Executive Committee and currently serve on the Board of Directors of the National
7 Energy Marketers Association, and I have served on the Advisory Board of the Maryland
8 Clean Energy Center.

9 **3. Q: What is the purpose of your testimony?**

10 A3: I am providing testimony in support of Delmarva Power & Light Company's
11 (Delmarva or Company) application for approval by the Delaware Public Service
12 Commission (Commission) of an SREC Transfer Agreement, under which Delmarva will
13 purchase SRECs generated by two (2) solar photovoltaic systems owned by WGES in
14 Delaware. The two (2) solar facilities owned by WGES are: 1) projects located at the
15 Wilmington Friends School in Wilmington, Delaware; and 2) a project located at the
16 Purdue, Inc. facility in Bridgeville, Delaware.

17 WGES appreciates the Commission taking up this matter and Delmarva's
18 willingness to negotiate the terms of the SREC Transfer Agreement.

19 **4. Q: Explain why WGES is seeking approval for this Agreement.**

20 A4: WGES has a strong commitment to the environment. In addition to the variety of
21 wind energy products that we offer our electricity customers and the opportunity we
22 provide under our carbon offsets program for our natural gas customers to contribute to a
23 cleaner environment, WGES has become a significant developer of solar electricity

1 generation in the Mid-Atlantic region. WGES has invested approximately \$7.2 million in
2 the development and construction of over 1.8 megawatts of solar power in Delaware.

3 The economic feasibility of WGES's solar investment in Delaware was based, in
4 large part, on the long-term requirements for retail electric suppliers to procure SRECs to
5 meet the State's solar energy goals. Prior to the enactment of legislation in 2011 that
6 placed the responsibility for meeting the RPS on Delmarva; WGES was responsible for
7 procuring SRECs to meet our RPS compliance needs. WGES is unique among retail
8 energy suppliers in that we chose to build solar projects in Delaware that would meet
9 WGES's own solar RPS requirements. The solar projects at the Wilmington Friends
10 School and at the Purdue, Inc. facility in Bridgeville were sized so that the solar output
11 would approximately match WGES's requirements for supplying solar RECs to our
12 customers in the near-term.

13 Because of WGES's unique position as a retail supplier that procured solar
14 generation in order to meet our RPS compliance needs, the Agreement we have reached
15 with Delmarva Power is fair. Moreover, it is fair to Delmarva's customers because the
16 pricing agreement is based on the weighted average of the competitively bid prices for
17 the 2012 auction, and the volume agreement places the risk on WGES.

18 WGES appreciates the consideration shown by the Commission in adopting RPS
19 Rules that allowed us to offer our SRECs to Delmarva. The Agreement that is before the
20 Commission for approval complies with the RPS Rules:

21 Retail Electricity Suppliers that, prior to March 1, 2012, have entered into
22 contracts to purchase or produce RECs and/or SRECs specifically for
23 Delaware RPS compliance may offer to the CREC [Commission
24 Regulated Electric Companies] those RECs and/or SRECs. The price
25 would be determined by separate agreement between the Retail Electricity

1 Supplier and the CREC. In no case shall the CREC be obligated to
2 purchase any RECs/SRECs from the Retail Electricity Supplier.

3
4 26 Del. Admin. C. § 3008-3.2.3.4.

5 Following the adoption of amended RPS Rules in April 2012, I began to discuss
6 options for reaching an agreement with representatives of Delmarva. After multiple
7 rounds of communications lasting several months, we reached the Agreement that is
8 before the Commission now.

9 **5. Q: Describe the main provisions of the SREC Transfer Agreement.**

10 A5: The SREC Transfer Agreement provides for Delmarva to purchase SRECs
11 generated by the referenced solar facilities owned by WGES, limited to 2,440 per year.
12 The term of the SREC Transfer Agreement is twenty (20) years. The prices of the
13 SRECs for the first ten (10) years of the Agreement matches weighted average prices
14 achieved through competitive bidding during the 2012 SREC auction conducted by
15 SRECTrade for the Delaware Sustainable Energy Utility. In the SREC Transfer
16 Agreement before the Commission, the SRECs generated by the named facilities will be
17 sold at the competitively bid price awarded to projects in Tier 2B, at \$131.13. For the
18 remaining ten (10) years of the Agreement, the SRECs would be sold to Delmarva for
19 \$50.00 per SREC.

20 Under the SREC Transfer Agreement, Delmarva agrees to purchase only enough
21 SRECs to satisfy the solar RPS need that corresponds to WGES's retail electricity
22 delivery load, but in no event more than 2,440 per year. Under this arrangement,
23 therefore, the Agreement corresponds to the original intention of WGES's investment,
24 meeting its solar RPS obligations, and leaves with WGES a key risk that it bore in

1 making that investment, the need to maintain retail electricity load in Delaware sufficient
2 to absorb the output of its solar projects.

3 **6. Q: Please provide more detail about the volume purchasing provisions in the**
4 **SREC Transfer Agreement.**

5 A6: As noted above, the SREC Transfer Agreement provides that Delmarva is not
6 obligated to purchase SRECs in excess of those needed to satisfy the solar RPS
7 requirements for WGES's electricity load in Delmarva's service territory, and, in any
8 event, no greater than 2,440.

9 Part VI of the SREC Transfer Agreement contains definitions and rules of
10 construction of the Agreement. There, "Annual Contract Quantity" is defined:

11 "Annual Contract Quantity" means: (a) for the first Contract Year, the
12 Estimated SREC Quantity; and (b) for each subsequent Contract Year,
13 99.5% of the Annual Contract Quantity in effect for the immediately
14 preceding Contract Year. In no event, however, will the Annual Contract
15 Quantity exceed the RPS requirements for solar power associated with
16 Owner's retail electric sales in Buyer's Delaware electric sales service
17 territory less any load associated with transitional supply contracts.
18

19 Our solar projects in Delaware include the Wilmington Friends School at two
20 campuses in Wilmington, and the Purdue, Inc. project in Bridgeville. The Wilmington
21 Friends School projects have a nameplate capacity of 240 kW, with an annual estimated
22 electricity output of 291,000 kWh. The estimated SREC production of this solar facility
23 is 298 SRECs per year.

24 The Purdue, Inc. project in Bridgeville has a nameplate capacity of 1,579 kW,
25 with an annual estimated electricity output of 2,142,000 kWh. The estimated SREC
26 production of this solar facility is 2,142 SRECs per year.

1 WGES’s forecast retail load in Delmarva’s service territory in the 2013
 2 compliance year is approximately 685,000 megawatt-hours. One SREC represents one
 3 megawatt-hour of solar energy production. According to the Delaware RPS, WGES’s
 4 solar RPS requirement in 2013 is 0.60% of retail electric sales, which equals
 5 approximately 4,110 SRECs. Accordingly, Delmarva’s purchase of no more than 2,440
 6 SRECs per year from WGES is less than the full requirement for the solar RPS associated
 7 with WGES’s retail electric load.

8 Note that as the percentage of retail electricity sales that must be provided by
 9 solar energy under the Delaware RPS increases over time, the output of the two (2) solar
 10 projects will represent an ever smaller share of the total SREC requirements associated
 11 with WGES’ retail load, if WGES maintains its competitive retail load. It is likely,
 12 therefore, that Delmarva will purchase additional SRECs from other sources in the future
 13 to meet the growing requirements associated with WGES’s retail customers, providing
 14 future opportunities for other solar project owners and developers.

15 The following table demonstrates that the SRECs Delmarva has agreed to
 16 purchase from WGES meet a portion of the solar RPS requirement associated with
 17 WGES’s forecast retail electric load.

18 **Table 1: WGES Retail Load in 2012 and SRECs Generated**
 19 **by WGES Solar Facilities**

	Wilmington Friends School	Bridgeville
SRECs Generated per Year	298	2,142
Total SREC Production at WGES DE Solar Facilities	2,440	

WGES Forecast 2013 Compliance Year Retail Electric Load	685,000 MWh (approximate)
Solar RPS Requirement for the 2013-2014 Compliance Year	0.60%
SRECs Required for WGES Forecast Retail Electric Load in 2013	4,110 (approximate)

1
2 As shown in Table 2, the solar RPS will increase beyond the 2013-2014
3 compliance year requirements. 26 Del. C. § 354. As the solar RPS increases, the SRECs
4 generated by the WGES solar systems will become a fraction of future solar RPS
5 requirements.

6 **Table 2: Statewide Solar RPS Requirements**

Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Solar Photovoltaics
2010	0.018%
2011	0.20%
2012	0.40%
2013	0.60%
2014	0.80%
2015	1.00%
2016	1.25%
2017	1.50%
2018	1.75%
2019	2.00%
2020	2.25%
2021	2.50%
2022	2.75%
2023	3.00%
2024	3.25%
2025	3.50%

1 **7. Q: Please describe why the pricing provisions in the SREC Transfer Agreement**
2 **are fair and reasonable.**

3 A7: As noted above, the agreed upon prices for the SRECs for the first ten (10) years
4 of the Agreement would be the weighted average prices achieved through competitive
5 bidding during the 2012 SREC auction held by SRECTrade for the Delaware Sustainable
6 Energy Utility. For the Wilmington Friends School solar facility, WGES has agreed to
7 accept the weighted average of the competitively bid prices awarded to projects in Tier
8 2B, of \$131.13 per SREC. The Purdue, Inc. Bridgeville project SRECs are priced at
9 \$154.45 per SREC for the first ten (10) years, the weighted average of the competitively
10 bid prices awarded to similarly-sized solar projects in Tier 3. For the remaining ten (10)
11 years of the Agreement, all SRECs will be sold to Delmarva for \$50.00 per SREC.

12 The pricing arrangement is fair because the prices reflect the weighted average of
13 the competitively bid prices achieved in the 2012 SREC auction. They are market prices
14 achieved in a robust, well subscribed auction. Accordingly, they are fair prices for
15 Delmarva to pay.

16 **8. Q: Does this conclude your testimony?**

17 A8: Yes, it does.

1
2 **DELMARVA POWER & LIGHT COMPANY**
3 **BEFORE THE DELAWARE PUBLIC SERVICE COMMISSION**
4 **DIRECT TESTIMONY OF WILLIAM R. SWINK**
5 **PSC DOCKET NO. 13-_____**
6

7 **1. Q: Please state your name, occupation, and business address.**

8 A1: My name is William R. Swink. I am the Manager of Energy Transactions for
9 utility divisions of Pepco Holdings, Inc. (PHI), including Delmarva Power & Light
10 Company (Delmarva or Company). My business address is 701 Ninth Street, NW,
11 Washington, DC 20068.

12 **2. Q: What are your responsibilities in that position?**

13 A2: My Department is responsible for managing the portfolio of products required to
14 meet customers' energy requirements for all of PHI's electric utility brands that are not
15 supplied through either the SOS reverse auction process or retail/choice suppliers.

16 **3. Q: What is the purpose of your testimony?**

17 A3: I am providing testimony in support of Delmarva's application for Commission
18 approval to enter into an SREC Transfer Agreement, under which Delmarva Power will
19 purchase SRECs generated by two (2) solar photovoltaic systems owned by Washington
20 Gas Energy Services, Inc. (WGES) in Delaware.

21 **4. Q: Under what authority is Delmarva Power agreeing to purchase WGES's**
22 **SRECs?**

1 A4: The form of agreement to be executed by the parties, consistent with the form of
2 agreement used in the Delmarva SREC Pilot Program, such Program having been
3 approved by the Delaware Public Service Commission by Order No. 8093, complies with
4 the RPS Rules in Delaware:

5 Retail Electricity Suppliers that, prior to March 1, 2012, have entered into
6 contracts to purchase or produce RECs and/or SRECs specifically for
7 Delaware RPS compliance may offer to the CREC [Commission
8 Regulated Electric Companies] those RECs and/or SRECs. The price
9 would be determined by separate agreement between the Retail Electricity
10 Supplier and the CREC. In no case shall the CREC be obligated to
11 purchase any RECs/SRECs from the Retail Electricity Supplier.
12

13 26 Del. Admin. C. § 3008-3.2.3.4.

14 Following the adoption of amended RPS Rules in April 2012, Delmarva and
15 WGES began discussing the parameters of a potential agreement. The Agreement that is
16 before the Commission was reached after several months of negotiations between both
17 companies.

18 **5. Q: How many SRECs does Delmarva expect to purchase from WGES?**

19 A5: Under the terms of the SREC Transfer Agreement, Delmarva is not obligated to
20 purchase SRECs in excess of those needed to satisfy the solar RPS requirements for
21 WGES's electricity load in Delmarva's service territory, and in no event greater than
22 2,440 per year. WGES's solar systems generate 2,440 SRECs per year, which is less
23 than the number of SRECs that are required to meet the solar RPS for WGES's current
24 electric delivery load. Therefore, for the compliance year 2013-2014, Delmarva will
25 purchase all 2,440 SRECs. Should WGES's retail electric delivery load fall below the
26 level associated with the SRECs generated by the two (2) solar photovoltaic systems,
27 Delmarva's purchasing obligation would fall by a corresponding amount.

1 This aspect of the SREC Transfer Agreement is contained in Part VI, under the
2 definition of “Annual Contract Quantity.”

3 “Annual Contract Quantity” means: (a) for the first Contract Year, the
4 Estimated SREC Quantity; and (b) for each subsequent Contract Year,
5 99.5% of the Annual Contract Quantity in effect for the immediately
6 preceding Contract Year. In no event, however, will the Annual Contract
7 Quantity exceed the RPS requirements for solar power associated with
8 Owner’s retail electric sales in Buyer’s Delaware electric sales service
9 territory less any load associated with transitional supply contracts.

10
11 **6. Q: Is the price that Delmarva will pay for WGES’s SRECs reasonable?**

12 A6: Yes.

13 For the first ten (10) years of the SREC Transfer Agreement, WGES and
14 Delmarva have agreed to prices for the SRECs that are the same as the weighted average
15 prices achieved through competitive bidding during the 2012 SREC auction held by the
16 Delaware Sustainable Energy Utility. For WGES’s Wilmington Friends School project, a
17 Tier 2B facility, the price is \$131.13 per SREC, the weighted average of the
18 competitively bid prices for Tier 2B projects in the 2012 SREC Auction. WGES’s
19 Purdue, Inc. Bridgeville project SRECs are priced at \$154.45 per SREC for the first ten
20 (10) years, the weighted average price awarded to similarly-sized solar projects in Tier 3
21 during the 2012 SREC Auction. For the remaining ten (10) years of the Agreement,
22 Delmarva will buy all the SRECs for \$50.00 per SREC.

23 The pricing arrangement is reasonable, because the prices reflect the weighted
24 average of competitively bid prices that were awarded in the 2012 SREC auction. The
25 2012 auction was well subscribed. Therefore, these market prices are fair prices for
26 Delmarva to pay.

1 Of utmost importance in this arrangement, is that Delmarva's customers will not
2 be harmed as a result of this transaction. Because of the pricing arrangement, Delmarva
3 will pay WGES the same prices paid to winners of the 2012 auction. Therefore,
4 Delmarva's customers will not pay any premium for WGES's SRECs.

5 **7. Q: Does this conclude your direct testimony?**

6 A7: Yes, it does.