

**Dawn Kurtz Crompton**  
Assistant General Counsel



U.S. mail:  
92DC42  
PO Box 6066  
Newark, DE 19714-6066

302.429.3143 – Telephone  
302.429.3801 – Facsimile

All other deliveries:  
92DC42  
500 N. Wakefield Drive  
Newark, DE 19702

Dawn.Crompton@exeloncorp.com

May 17, 2022

**Via DelaFile**

Mr. Matthew Hartigan, Executive Director  
Ms. Donna Nickerson, Secretary  
Delaware Public Service Commission  
Cannon Building, Suite 100  
861 Silver Lake Boulevard  
Dover, DE 19904

**Re: Application for Approval of the 2022 Program for the Procurement of Solar Renewable Energy Credits**

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Dear Secretary Nickerson,

Enclosed for filing is Delmarva Power & Light Company's ("Delmarva") Application for Approval of the 2022 Program for the Procurement of Solar Renewable Energy Credits. We are making a payment of \$50 as the filing fee for this Application.

Should you have any questions or require additional information, please do not hesitate to contact me at Dawn.Crompton@exeloncorp.com or Glenn Moore at glenn.moore@delmarva.com.

Respectfully,

A handwritten signature in blue ink, appearing to read "Dawn Crompton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dawn Kurtz Crompton (#5579)

**Attachment**

cc: Glenn Moore  
Jim Jacoby  
Matthew Hartigan  
Pamela Knotts  
William O'Brien  
Andrew Slater  
Regina Iorii  
Andrea Maucher



STATE OF DELAWARE  
**THE PUBLIC SERVICE COMMISSION**  
 CANNON BUILDING  
 861 SILVER LAKE BLVD., SUITE 100  
 DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7529  
 TELECOPIER: (302) 739-4849

**FILING COVER SHEET**

1. NAME OF APPLICANT: Delmarva Power & Light Company
2. TYPE OF FILING: RATE CHANGE   
 FUEL ADJUSTMENT   
 ADMINISTRATIVE   
 CPCN   
 NEW SERVICE OFFERING   
 OTHER - DESCRIBE  Annual SREC Procurement Application

IF A TELECOMMUNICATIONS FILING, WHAT TYPE OF SERVICE IS IMPACTED?

BASIC \_\_\_\_\_ COMPETITIVE \_\_\_\_\_ DISCRETIONARY \_\_\_\_\_

3. PROPOSED EFFECTIVE DATE: June 1, 2022 (Start of Compliance Year)

IS EXPEDITED TREATMENT REQUESTED? YES  NO

4. SHORT SUMMARY OF FILING This is the annual SREC procurement program filing for the 2022-2023 Compliance year.

5. DOES THIS FILING RELATE TO OTHER DOCKETS: YES  NO

IF YES, LIST DOCKET(S) NO(S): \_\_\_\_\_

6. IS PUBLIC NOTICE REQUIRED? YES NO  
 IF YES, PLEASE ATTACH COPY OF PROPOSED PUBLIC NOTICE.

7. APPLICANT'S CONTACT PERSON: NAME: Dawn Kurtz Crompton  
 TITLE: Assistant General Counsel  
 PHONE: (302) 429-3143  
 FAX: (302) 429-3801  
 EMAIL Dawn.Crompton@ExelonCorp.com  
 WEBSITE (IF APPLICABLE) \_\_\_\_\_

8. DID YOU PROVIDE A COMPLETE COPY OF THE FILING TO THE PUBLIC ADVOCATE?  
 YES  NO  IF YES, WHEN? \_\_\_\_\_

9. FILING FEE ENCLOSED: AMOUNT: \$ \_\_\_\_\_

**NOTE:** House Bill 681, enacted into law 7/13/98, authorizes the Commission to recover the cost of time spent by in-house staff to process all filings initiated after the date of enactment. You may be required to reimburse the Commission for staff time.

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

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER AND LIGHT ) PSC DOCKET NO. 22-\_\_\_\_\_  
COMPANY FOR APPROVAL OF THE 2021 )  
PROGRAM FOR THE PROCUREMENT OF )  
SOLAR RENEWABLE ENERGY CREDITS )

**DELMARVA POWER AND LIGHT COMPANY'S  
APPLICATION FOR APPROVAL OF THE 2022 PROGRAM FOR  
THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS**

Dawn Kurtz Crompton (#5579)  
Assistant General Counsel  
Delmarva Power & Light Company  
500 North Wakefield Drive  
Newark, DE 19702  
(302) 429-3143  
(302) 429-3801 (fax)  
dawn.crompton@exeloncorp.com

Dated: May 17, 2022

Delmarva Power & Light Company (“Delmarva” or “DPL”), through its undersigned counsel, hereby submits this application (the “Application”) pursuant to 26 *Del. C.* § 351 *et seq.* for approval by the Delaware Public Service Commission (the “DPSC”) of the attached 2022 Program for the Procurement of Solar Renewable Energy Credits (the “2022 Program”).

This Application provides legislative background, a program background and a summary of prior auctions, as well as the purpose and key terms of the 2022 Program. This Application also provides the DPSC with the following information for consideration in connection with the Application: (i) the key inputs to the 2022 Program; (ii) the ways in which the 2022 Program differs from the 2021 Program; and (iii) the rationale for continuing the SEU’s involvement in the 2022 Program. While the 2022 Program was developed with the full participation of the Renewable Energy Taskforce (the “Taskforce”), of which Delmarva is a member, Delmarva submits this Application and anticipates that other members of the Taskforce will join in support of certain of Delmarva’s positions, as appropriate. To the extent necessary, a representative from either Delmarva or the Taskforce will be available to testify to any of the issues discussed in this Application.

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 requires retail electricity suppliers, such as Delmarva, to purchase energy from Eligible Energy Resources (as that term is defined in REPSA) to meet a portion of their annual retail load. Beginning with compliance year 2010, REPSA sets forth the minimum percentage of retail energy sales to end-users that must come from Eligible Energy Resources, including a “carve-out” that a certain percentage of Delaware’s renewable portfolio standards (“RPS”) that must be met by solar photovoltaics. 26 *Del. C.* § 354(a). The percentage of retail energy to be supplied from Eligible Energy Resources increases over time to 25% in 2025, with the solar carve-out increasing to 3.5% (*e.g.*, the statutory solar set aside for the 2019 compliance year was 2.0%). *Id.* In 2021, 26 *Del. C.* § 354(a) was amended such that the percentage of retail energy to be supplied from Eligible Energy Resources increased to 40% in 2035, with the solar RPS carve-out increasing to 10%. *Id.* Beginning with compliance year 2012, DPSC-regulated electric companies are responsible for procuring Renewable Energy Credits (“RECs”), Solar Renewable Energy Credits (“SRECs”), and any other attribute needed to comply with Section 354(a) of REPSA with respect to “all energy delivered to such companies’ end use customers.” 26 *Del. C.* § 354(e). Delmarva is the only DPSC-regulated electric supplier responsible for REPSA compliance for its entire distribution load.<sup>1</sup>

3. REPSA was amended in 2010 to require the formation of the Taskforce for the purpose of “making recommendations about the establishment of trading mechanisms and other

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<sup>1</sup> Pursuant to 26 *Del. C.* § 354(e), Delaware’s renewable portfolio standards apply to all retail electricity sales except sales to any industrial customer with a peak demand in excess of 1,500 kilowatts.

structures to support the growth of renewable energy markets in Delaware.” 26 Del. C. § 360(d). The Taskforce was required to include the following members: (i) four appointments by the Secretary of the Delaware Department of Natural Resources and Environmental Control (“DNREC”); (ii) one appointment by the DPSC; (iii) one appointment by Delmarva; (iv) one appointment by the Delaware Electric Cooperative; (v) one appointment by municipal electric companies; (vi) one appointment by the Sustainable Energy Utility (“SEU”); (vii) one appointment by the Delaware Public Advocate; and (viii) one appointment by the Delaware Solar Energy Coalition. 26 Del. C. § 360(d)(1).

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

- a. Establishing a balanced market mechanism for REC and SREC trading;
- b. Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;
- c. Minimizing the cost for complying with REPSA;
- d. Establishing revenue certainty for appropriate investment in solar renewable energy technologies, including consideration of long-term contracts and auction mechanisms;
- e. Establishing mechanisms to maximize in-state solar renewable energy generation and local manufacturing; and

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

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

5. Following its formation and after meeting for almost a year, the Taskforce developed a Pilot Program for the Procurement of Solar Renewable Energy Credits (the “Pilot Program”) to implement the solar carve-out under REPSA through a competitive bidding process. The Pilot Program was designed as a one-year program to be re-evaluated each year to determine whether it was effectively meeting the goals of REPSA. In order to increase the likelihood that a variety of residential and commercial projects would participate in the competitive auction, the Pilot Program established distinct tiers of solar generation units based on the nameplate capacity of the system and whether a bidder offered SRECs from a new or existing system.

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

7. In accordance with the 2011 DPSC Order, the DPSC retained Meister Consultants Group (“Meister”) to evaluate the Pilot Program. Meister produced a report on August 3, 2012 (the “Meister Report”) whereby Meister concluded that the solicitation under the Pilot Program was well subscribed, with each of the program tiers being oversubscribed by at least 200%. Based upon feedback from subscribers as well as its own analysis, Meister identified potential modifications to the Pilot Program to reduce costs to customers and create a more competitive

solicitation. The Taskforce considered the findings in the Meister Report in developing the 2013 SREC Procurement Program (the “2013 Program”).

### **III. The 2013 SREC Procurement Program and Evaluation of the 2013 Program**

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

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

10. The Consultants produced a report on August 7, 2013, which was revised on September 20, 2013 (the “Consultants’ Report”). The Consultants’ Report found that: (a) Delmarva should continue to make long-term purchases of SRECs from existing projects but should consider removing tiers based on project size for the next solicitation; (b) Delmarva should continue to purchase some amount of SRECs on the spot market; (c) Delmarva should maintain the competitive bidding process for all tiers but improve outreach to and education of prospective participants, especially homeowners and non-industry participants; and (d) consideration should be given to making changes to the SREC Transfer Agreement to avoid a large amount of tie bids and to reduce or eliminate any incentive for bidders to bid \$0 for the first seven (7) years of the contract. Overall, the Consultants concluded that the 2013 Program was conducted fairly and in a professional manner, and that the redesign of the Program to include competitive bidding and

permit owners of existing projects to be eligible bidders resulted in lower costs which ultimately benefitted customers.

#### **IV. The 2014 SREC Procurement Program**

11. On January 27, 2014, Delmarva filed an application with the DPSC seeking approval of the 2014 SREC Procurement Program (“2014 Program”). The 2014 Program differed from the 2013 Program in two principal respects. First, Tiers N-1, E-1, and E-2 were combined for purposes of soliciting a targeted allocation of 3,400 SRECs. Second, the administrative price to be paid for the last thirteen (13) years of the long-term agreement for the purchase and transfer of SRECs (“Transfer Agreement”) was reduced from \$50 per SREC to \$35 per SREC. The DPSC held an evidentiary hearing on April 15, 2014 and approved the 2014 Program as submitted (Order No. 8551). On September 9, 2014, the DPSC issued its Findings of Fact, Conclusions of Law and Final Opinion in Order No. 8629 (“2014 DPSC Order”) setting forth the reasons for its approval of the 2014 Program.

#### **V. The 2015 SREC Procurement Program**

12. On December 9, 2014, Delmarva filed an application with the DPSC seeking approval of the 2015 SREC Procurement Program (“2015 Program”). The 2015 Program differed from the 2014 Program in several ways. First, to address the surplus of SRECs in the market and increasing REPSA obligations, the total number of solicitation SRECs to be acquired through the auction from existing and new projects was increased by 3,000. Second, the 2015 Program allowed the SEU the right to reject any bids above the alternative compliance payment of \$400 under RESPA and, similarly, provided Delmarva the option of rejecting bids that exceed a threshold price determined by Delmarva. In addition, bids from a single project in multiple tiers were not permitted, but if a tier was undersubscribed (due to insufficient bids or rejected bids), bids from

other tiers that were oversubscribed could be selected to fill the tier. Finally, while the twenty-year term for contracts was retained, bidders were required to bid a price for the first 10 years and a fixed price of \$35 per SREC for the last ten years. The DPSC held an evidentiary hearing on March 3, 2015, and approved the 2015 Program as submitted (Order No. 8717). On July 21, 2015, the DPSC issued its Findings of Fact, Conclusions of Law and Final Opinion in Order No. 8764 (“2015 DPSC Order”) setting forth the reasons for its approval of the 2015 Program.

## **VI. The 2016 SREC Procurement Program**

13. Based upon the Taskforce’s review of the results of the 2015 Program and recommendations, Delmarva submitted an application for approval of the 2016 SREC Procurement Program (“2016 Program”). The 2016 Program reflected the goals and structure of the Pilot Program, the 2013 Program, the 2014 Program, and the 2015 Program, with some modifications. The 2016 Program continued to be based on five tiers of SRECs, all competitively bid, but with the intent of obtaining a minimum of 9,000 SRECs and a maximum of 15,000 SRECs through the auction process. The 2016 Program included a change to Tiers N-1, N-2, E-1, and E-2 to reduce the upper size limit for eligible bidders from 30 kW to 25 kW to align with the interconnection limits established for smaller (Level 1) solar projects through Delmarva’s interconnection process. The DPSC approved the 2016 Program on May 3, 2016 pursuant to Order No. 8884. Thereafter, by Order No. 8890, dated September 6, 2016, the DPSC issued its Findings of Facts, Conclusions of Law and Opinion in Support of Order No. 8884.

## **VII. The 2017 SREC Procurement Program**

14. On March 24, 2017, Delmarva filed an application with the DPSC seeking approval of the 2017 SREC Procurement Program (“2017 Program”). The 2017 Program continued the structure of the 2016 Program, with two modifications. First, the 2017 Program increased the

authorized number of SRECs to be purchased through the long-term auction from 15,000 to 20,000 SRECs. Second, the 2017 Program added Tiers N-4 and E-3 to allow utility scale systems with nameplate capacity greater than 2 megawatts (“MW”) to participate in the competitive auction. The DPSC held an evidentiary hearing on April 20, 2017, and approved the 2017 Program as submitted (Order No. 9050). On September 14, 2017, the DPSC issued its Findings, Opinion and Order No. 9116 (“2017 DPSC Order”) setting forth the reasons for its approval of the 2017 Program.

### **VIII. The 2018 SREC Procurement Program**

15. On April 16, 2018, Delmarva filed an application with the DPSC seeking approval of the 2018 SREC Procurement Program (“2018 Program”). The 2018 Program continued the structure of the 2017 Program, with the following modifications: (1) an increase in the maximum breakpoints for kW for Tiers N-1 and E-2 from 25 kW to 50 kW and Tier N-2 from 200 kW to 500 kW; (2) the addition of Tiers N-5 and E-4; (3) the inclusion of in-state system siting requirements for Tier N-3; (4) the imposition of a bidding limitation for Tier N-2; (5) the use of SRECs held by the SEU to fill undersubscribed Tiers in certain circumstances; and (6) a reduction in the administrative price to be paid for SRECs for the last ten years of the Agreement from \$35 per SREC to the lower of the bid price or \$20 per SREC. The DPSC held an evidentiary hearing on June 19, 2018, and approved the 2018 Program as submitted (Order No. 9235).

### **IX. The 2019 SREC Procurement Program**

16. On February 13, 2019, Delmarva filed an application with the DPSC seeking approval of the 2019 SREC Procurement Program (“2019 Program”). The 2019 Program continued the structure of the 2018 Program, with the following modifications: (1) the reorganization of the Tier structure from nine Tiers to five Tiers, with all Existing Systems

becoming part of Tier 5; (2) the limitation that bids rejected for price in any Tier cannot be used to backfill another Tier; (3) the inclusion of in-state system siting requirements for Tiers 1, 2, and 4; and (4) the requirement that community solar projects enter the Tier appropriate to their system size attributes. The DPSC held an evidentiary hearing on May 7, 2019, and approved the 2019 Program as submitted (Order No. 9380).

#### **X. The 2020 and 2021 SREC Procurement Programs**

17. On February 3, 2020, Delmarva filed an application for the 2020 Program in Docket No. 20-0106. Due to changed circumstances, on April 9, 2020, Delmarva requested that the DPSC indefinitely postpone its consideration of the 2020 Program until such time as Delmarva might renew its application. Delmarva did not seek to renew the 2020 Program during 2020, and on June 3, 2021, Delmarva withdrew its application regarding the 2020 Program.

18. Delmarva filed the application for the 2021 SREC Procurement Program (“2021 Program”) on May 5, 2021. The 2021 Program was based on the 2020 Program, and both the 2020 Program and the 2021 Program were developed with the full participation of, and support from, the Taskforce.

19. The 2021 Program continued the structure of the 2019 Program and 2020 Program, with the following primary modifications: (i) the new systems were defined by the date of the last auction; (ii) in each of Tiers 1-4, a potential of up to an additional 5,000 SRECs could be bid;<sup>2</sup> (iii) any changes to a system that already received a certification number required a second meter and a new certification number; and (iv) an administrative change to Tier 5 that addressed an

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<sup>2</sup> After Tiers 1-5 had been filled by winning bids, Delmarva, at its discretion, was permitted purchase up to an additional 5,000 SRECs from the lowest priced losing bid from any Tier, with its maximum purchase not to exceed 20,000 SRECs.

inconsistency with the 2019 program with respect to the handling of in-state customer-owned new system third-party SREC ownership.

20. On May 17, 2021, the Caesar Rodney Institute (“CRI”) filed a petition for intervention, was granted intervenor status on June 9, 2021. On May 24, 2021, CRI submitted written comments to the DPSC concerning the 2021 Program. The DPSC held an evidentiary hearing on July 14, 2021, and approved the 2021 Program as submitted via Order No. 9865. In doing so, the DPSC found that the 2021 SREC Procurement Program was in the public interest and met the criteria of REPSA.

21. On September 17, 2021, Governor John Carney signed Senate Bill 2 into law, which expanded access to community solar projects in Delaware. Among other things, Senate Bill 2: (1) allows for multiple types of ownership models, defined as “community-owned energy generating facilities,” (“CEFs”) to exist and compete in the marketplace; (2) increases the maximum size of these systems to 4 MW; (3) eliminates the requirement that all customers of a system must be located on the same distribution feeder; (4) eliminates the requirement that all customers of a system must be identified before the system can be built; (5) provides for the regulation of these systems by the DPSC and sets forth the fee and requirements for a Certificate to Operate; (6) provides compensation to the system owner for 10% or less of unsubscribed energy; (7) requires each system owner to certify that it serves at least 15% low income customers; and provides that the DPSC will engage in rule-making in consultation with the Consumer Protection Unit of the Delaware Department of Justice and promulgate rules and regulations by March of 2022.

22. On October 14, 2021, the results of the 2021 SREC Auction were announced. The 2021 Program was undersubscribed in four out of the five Tiers, but the undersubscriptions were

generally minor and the total number of SRECs procured was in line with previous years. The only oversubscribed Tier was Tier 2, while Tier 1 was originally oversubscribed and became undersubscribed due to the price discretion exercised by Delmarva. The price discretion was exercised for any bids over \$45.00 in all Tiers. The weighted average price for all SRECs in the solicitation was \$30.24, and 13,507 effective RECs were contracted.

The results of the 2021 SREC Delaware auction were announced on 10/14/2021. A total of 13,507 SRECs were purchased through this year's procurement. Below are the pricing results for each tier and the overall solicitation:

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Overall
High	\$33.00	\$24.99	\$35.50	\$45.00	\$45.00	\$45.00
Low	\$10.00	\$17.99	\$27.98	\$35.50	\$12.00	\$10.00
Weighted Average	\$26.50	\$22.22	\$32.39	\$38.16	\$32.79	\$30.24

## **XI. The 2022 SREC Procurement Program**

23. Since the approval of the Pilot Program and in connection the 2013 through 2021 Programs (collectively, the “SREC Programs”), the Taskforce has continued to meet to evaluate the results of the SREC Programs and to develop plans for procurement of SRECs in subsequent years. In developing the 2022 SREC Procurement Program (“2022 Program”) presented to the DPSC in this Application, the Taskforce considered a wide range of data and stakeholder feedback and additional discussions that took place during the Taskforce’s meetings. As noted above, the Taskforce considered the DPSC’s comments in connection with Order No. 9865 when developing the 2022 Program. The 2022 Program was developed with the full participation of, and support from, the Taskforce, as well as input from interested stakeholders including members of the public.

24. The purpose of the 2022 Program is to continue the established goals of creating a market for SRECs in Delaware and providing a mechanism for the procurement of SRECs to ensure that retail electricity suppliers meet the requirements set forth in REPSA. With the

exception of the new Tier system described more fully below, the 2022 Program is similar to the 2021 Program.

25. The Taskforce considered the results of the auction for the 2021 Program and the DPSC's reasoning in Order No. 9865 when developing the 2022 Program. The Taskforce met on a regular basis to consider issues related to the SREC Auction process and to develop clarifications and improvements to the 2022 Program in light of the discussion during the July 14, 2021 evidentiary hearing as set forth in Order No. 9865. Each of the Taskforce meetings was open to the public and the Taskforce had the opportunity to consider a wide variety of viewpoints from within the Taskforce and otherwise, including the viewpoints expressed by CRI and by the DPSC in Order No. 9865 concerning improvements to the 2021 Program.

26. In particular, the Taskforce considered the following in developing the 2022 Program: (1) whether to revisit the Tier structure in light of Order No. 9865; (2) from a term of twenty (20) years; (3) the proper remuneration for SRECs produced after the first 10 years of a long-term contract; (4) whether to extend the 20-year term for contracts; (5) how to properly accommodate CEFs in light of the passage of Senate Bill 2; and (6) how many SRECs to offer in each Tier to best address hedging concerns. As discussed below, each of these six suggestions were reviewed and implemented in the 2022 Program as appropriate.

27. The 2022 Program now offers: (i) a three Tier framework in lieu of the five Tier framework from the 2021 Program; (ii) an increased SREC target purchase volume from 10,000 SRECS to 11,000 SRECs for systems under 2 MW to, *inter alia*, account for enlargements of the RPS solar carve-out and accommodate any new CEFs; and (iii) a requirement that all long-term contracts be extended from twenty (20) years to twenty-five (25) years with the SRECs being paid for at the auction price per SREC for the first ten (10) years, and the SRECs receiving no

compensation (\$0) per SREC for the remaining fifteen (15) years of the overall contract term. The 2022 Program otherwise largely continued the structure and processes of the 2021 Program, and still contains: (1) a limitation that bids rejected for price in any Tier cannot be used to backfill another Tier; (2) the inclusion of in-state system siting requirements for certain Tiers;<sup>3</sup> and (3) the requirement that community solar projects enter the appropriate Tier based on their system size attributes and other system criteria.

28. The rationale for these changes is as follows:

**i. Rationale for the Three Tier System:** In light of Order No. 9865, the Taskforce committed to fundamentally reassess SREC procurement program. By and through the 2022 Program, the Taskforce sought to ensure that the auction framework incentivizes solar investments, allows Delmarva to certify compliance with REPSA in a cost-effective manner, and also accounts for future CEF development in Delaware. As such, the Taskforce reworked the Tiers to create a more efficient overall program.

As a result of the forthcoming implementation of DNREC Green Energy Fund Prebuy grant (“GEF Grant”) – which would likely reduce the number of smaller systems that would be eligible to use the procurement auction to sell SRECs – the Taskforce also assessed whether the previous Tier 1 would be undersubscribed and not competitively priced. As part of the Taskforce discussions for the 2022 Program, DNREC and Delmarva intend to commence an SREC prebuy program (“Prebuy Program”) which will help reduce SREC costs. The Prebuy Program will primarily rely upon SRECs generated by the systems receiving the DNREC GEF Grant funds, and until such time as the Prebuy Program

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<sup>3</sup> This 2022 Application establishes new tiers for SREC procurement (*i.e.*, Alpha, Beta, and Gamma), as described more fully in Section C *infra*.

has been launched, GEF Grant recipients will be permitted to bid SRECs into the Alpha Tier. In consideration for receipt of GEF Grant funds, it is expected that recipients will permanently relinquish ownership of their SRECS by contractual agreement, transfer those SRECs to Delmarva pursuant to that agreement, and Delmarva will pay only an annual administrative fee for the Prebuy Program SRECs.

DNREC is still in the process of developing the Prebuy Program, but it is expected that it will only apply to projects in Delmarva's service territory so that Delmarva can leverage the SRECs that were generated in-state to meet the RPS mandates in REPSA. It is also anticipated that the SEU will engage InClimate Inc. ("InClimate") to administer the GEF Grant SRECs, and that any related annual administration costs assessed to Delmarva will be included for recovery as part of the auction process. Once operative, it is estimated that the Prebuy Program will generate 6,000 to 7,000 SRECs per year.

**ii. Rationale for Increased SREC Target Purchase Volume for Systems Under 2 MW:** The Taskforce proposes an increased SREC target purchase volume from 10,000 SRECS to 11,000 SRECs for systems under 2 MW to, *inter alia*, account for enlargements of the RPS solar carve-out and accommodate any new Community Energy Facilities.

**iii. Rationale for the Extension of All Long-Term Contracts to Twenty-Five (25) Years:** The Taskforce extended all long-term contracts from a term of twenty (20) years to a term of twenty-five (25) years with the SRECs being paid for at the auction price per SREC for the first ten (10) years, and the SRECs receiving no compensation (\$0) per SREC for the remaining fifteen (15) years. This change better reflects the 6-10 year project financing model most common among developers that requires capital costs to be

recovered during that time and discounts income that occurs after that point. Accordingly, once those costs are offset within the first ten (10) years, the developers will not receive any further SREC compensation (*i.e.*, \$0 per SREC) for the remaining fifteen (15) years. This change will create longer 25-year terms contracts, which will help minimize auction administration costs to consumers, as well as create more certainty for developers.

29. A full description of the 2022 Program, which includes an appendix with the Solar Renewable Energy Credit Transfer Agreement for the Delaware Renewable Energy Program (“SREC Transfer Agreement”), is attached hereto as **Exhibit A**. A blackline showing changes made to the 2022 Program from the 2021 Program is attached hereto as **Exhibit B**.

**A. Term of the 2022 Program**

30. As with the 2021 Program, Delmarva is seeking authority to implement the 2022 Program for one (1) year and intends to file future applications for subsequent annual programs.

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

31. Consistent with the 2021 Program, the 2022 Program will utilize a public solicitation for SRECs for different tiers of solar generators based on project capacity. (*See* Ex. A at Sections 13.1, 16.1). As with the 2021 Program, the SEU will administer all aspects of the bid process for the 2022 Program. (*See* Ex. A at Section 13).<sup>4</sup> It is also anticipated that the SEU will engage InClimate to administer any auctions held in connection with the 2022 Program. The use of the SEU to fulfill this administrative role allows one central entity to manage the program. It also allows the SEU to take advantage of its banking rights under REPSA as the SEU will procure the SRECs from various solar generators and resell the SRECs to participating utilities. Delmarva has

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

found the SEU to be effective and cost efficient in administering the SREC Programs and expects that the SEU will continue to be effective in 2022.

32. There is sufficient rationale to continue the SEU's involvement. Delmarva found the SEU and its contracting agent, InClime, Inc., to be efficient and effective in administering the SREC auction for the Pilot Program and the 2013 Program through the 2021 Program. The Taskforce supports the continued involvement of the SEU in the 2022 Program, and the SEU has represented that they will contract with InClime, Inc. to run the auction. The SEU's involvement will maintain program consistency and allow the SEU to take advantage of its unique banking rights if it purchases SRECs generated by a project in excess of the contract maximum described in the Transfer Agreement. As experienced in the 2021 Program, the fees to be paid to the SEU and InClime, Inc. have declined due to economies of scale and learning curve benefits. It continues to be Delmarva's burden to show that it could not have performed the functions of the SEU and InClime, Inc. more cost effectively. As with the Pilot Program and the 2013 Program through the 2021 Program, the issue of whether Delmarva will be permitted to recover the costs of using the SEU and InClime, Inc. to administer the 2022 Program will not be addressed in this proceeding.

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

33. The 2022 Program will procure SRECs from three different tiers of solar generators.<sup>5</sup> (Ex. A at Section 13.3). The three tiers are as follows:

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<sup>5</sup> As with years past, Delmarva will also continue procuring SRECs from the spot market based on variable spot purchase pricing.

## GENERATION UNIT TIER DESIGNATIONS

<u>Tier Name</u>	<u>Tier Type &amp; Location</u>	<u>Term</u>	<u>Nameplate Rating</u> (DC at STC)	<u>Notes</u>
<b>Alpha</b> <b>6,000 SRECs</b>	Small and Medium scale  In-state Delaware	SRECs transferred to DPL for 25 years (paid 10 years at bid price; no cost to DPL for last 15 years)	Less than or equal to 350 kW	New customer-owned <sup>6</sup> systems (interconnection approval on or after September 24, 2021) of this size in any DE service territory are eligible (inc. systems that elect not to participate in the Prebuy Program)  GEF Grant recipients in the DPL service territory ( <i>i.e.</i> , under 100 kW) are eligible until the Prebuy Program is fully instituted <sup>7</sup>
<b>Beta</b> <b>5,000 SRECs</b>	Large scale  In-state Delaware	SRECs transferred to DPL for 25 years (paid 10 years at bid price; no cost to DPL for last 15 years)	Greater than 350 kW but less than or equal to 2 MW	New systems (interconnection approval on or after September 24, 2021) of this size in any DE service territory are eligible
<b>Gamma</b> <b>5,000 SRECs</b>	Discretionary  Any location	SRECs transferred to DPL for 25 years (paid 10 years at bid price; no cost to DPL for last 15 years)	Any system up to 5 MW	In-state customer-owned new systems with third party SREC ownership, out-of-state, and all Existing Systems

(Ex. A. at p. 15).

<sup>6</sup> In order to qualify as “customer-owned” system, an Owner must own both the solar array and property where the system is located. Projects where an Owner leases or otherwise controls the property where the system is located are solely eligible for the Gamma tier.

<sup>7</sup> As set forth in Section XI of this Application, in consideration for receipt of GEF Grant funds, recipients will permanently transfer their SRECs to Delmarva so that Delmarva can further satisfy its REPSA requirements.

34. Each system is allowed to submit an application in only one Tier. (*See Ex. A at Section 16.1*). However, in the event that a Tier is undersubscribed, bids from other oversubscribed Tiers can be accepted to secure the necessary SRECs to fill the undersubscribed tier in the manner described in Paragraphs 35-39 below. To encourage a diversity of project Owners, the SEU will not award more than 50% of SRECs in Alpha Tier to a single Owner unless Alpha Tier is undersubscribed due to that limitation. In that case, the Owner's additional projects shall be added back to Alpha Tier from the lowest bid price upward until the next highest price bid would cause Alpha Tier to be oversubscribed. Provided these requirements are met, the SEU will accept for each Tier the lowest bid prices for that Tier. (*See Ex. A at Sections 15.3, 16.1, 16.2, 17.1*).

35. Based on Delmarva's forecasted load, it intends to procure a minimum of 11,000 SRECs and may procure up to a maximum of 16,000 SRECs through the long-term auction, as follows:

- Alpha Tier – 6,000\* SRECs
- Beta Tier – 5,000\* SRECs
- Gamma Tier – 5,000\* SRECs

**\*NOTE:** After Alpha and Beta Tiers have been filled by winning bids, Delmarva, at its discretion, may purchase up to an additional 5,000 SRECs from the Gamma Tier and/or lowest priced losing bid from any Tier, with its maximum purchase not to exceed 16,000 SRECs.

36. Delmarva also has authority to exercise price discretion in any Tier and may reject any bids that exceed a per SREC price-point set by Delmarva. Those non-winning bids cannot be used to fill any unsubscribed Tier.

37. If Alpha Tier remains unsubscribed because of insufficient bids, then the lowest non-winning bids from Beta Tier can be used to fill Alpha Tier. If it still remains unsubscribed,

the lowest non-winning bids from Gamma tier can be used to fill Alpha Tier. (Ex. A. at Section 16.1).

38. If Beta Tier then remains unsubscribed due to insufficient bids, then the lowest non-winning bids from Alpha Tier can be used to fill Beta Tier. If it remains unsubscribed, the lowest non-winning bids from Gamma Tier can be used to fill Beta Tier. (Ex. A. at Section 16.1).

39. If Gamma Tier then remains unsubscribed due to insufficient bids, then the lowest non-winning bids from any Tier can be used to fill Gamma Tier. (Ex. A. at Section 16.1).

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

40. Each Owner who is a winning bidder will enter into a standard form Transfer Agreement with the SEU. (See Ex. A at Appendix 1). The form of the Transfer Agreement is largely the same as the one used for the 2021 Program, with modifications to take into account changes in the 2022 Program described in Section XI above.

41. Each SREC Transfer Agreement will have a term of twenty-five (25) years, which is an increase from the twenty (20) year term from the 2021 Program. (Ex. A at Sections 13.3, 15.1). For the first ten (10) years of the SREC Transfer Agreement, the SREC price will be the accepted bid price. (See Ex. A at Section 13.3, 15.3). For the remaining fifteen (15) years of the SREC Transfer Agreement, the SREC price will be \$0 per SREC (*Id.*). The other key administrative terms of those long-term contracts have not changed significantly (note: a revised ‘clean’ version of the 2022 SREC Transfer Agreement is attached as Appendix 1 to Exhibit A to the 2022 Program; Exhibit B to the 2022 Program shows a ‘redline’ version of the changes to the 2022 SREC Transfer Agreement). In addition, the incentives for Delaware workforce and manufacturing remain the same as the 2021 Program.

42. It is the view of the Taskforce that the majority of the administrative processes in the SREC Transfer Agreement should remain static to avoid public confusion over the process and the programs and to allow the Taskforce to improve the solicitation process while building upon the success of past auctions.

43. As with the 2021 Program, in each bid, regardless of Tier, the Owner will provide an Estimated SREC Quantity. Under the SREC Transfer Agreement, the quantity of SRECs delivered to the SEU in any year is limited to 110% of the Estimated SREC Quantity, which amount shall be the Contract Maximum. (Ex. A at Section 15.2). In addition, for the first ten (10) years of the term of any contract, any project with a nameplate rating of 500 kW or greater, the Owner shall be subject to a Minimum Annual Quantity. (Ex. A at Sections 15.2, 15.9). Each Owner subject to a Minimum Annual Quantity must deliver to the SEU SRECs equal to no less than 80% of its Estimated SREC Quantity. (Ex. A at Section 15.2).

**E. The 2022 Program Allows for Just and Reasonable Rates and Is in the Public Interest**

44. The DPSC has jurisdiction over this matter pursuant to 26 *Del. C.* § 360(d)(3). The DPSC is required to “[f]ix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed thereafter by any public utility . . . .” 26 *Del. C.* § 209. The 2022 Program is in the public interest because it is in furtherance of REPSA and will allow for just and reasonable rates.

45. The primary differences between the 2022 Program and the 2021 Program are as follows: the 2022 Program now offers a three Tier framework in lieu of the five Tier framework from the 2021 Program, increased the SREC target purchase volume from 10,000 SRECS to 11,000 SRECs for systems under 2 MW, and requires that all long-term contracts be extended

from a term of twenty (20) years to a term of twenty-five (25) years with the SRECs being paid for at the auction price per SREC for the first ten (10) years, and the SRECs receiving no compensation (\$0) per SREC for the remaining fifteen (15) years of the overall contract term. The 2022 Program otherwise largely continued the structure and processes of the 2021 Program, and still contains: (1) a limitation that bids rejected for price in any Tier cannot be used to backfill another Tier; (2) the inclusion of in-state system siting requirements for Alpha and Beta Tiers; and (3) the requirement that community solar projects enter the appropriate Tier based on their system size attributes and interconnection approval date.

46. The Taskforce proposes to define new systems by the date of the last auction (*i.e.*, anything with interconnection approval after September 24, 2021).

47. The Taskforce recommends that 6,000 SRECs can be bid in the Alpha Tier and that 5,000 SRECs can be bid in each of the Beta and Gamma Tiers.

48. The Taskforce proposes that any system (i) with a preexisting SREC contract and (ii) that has already received a certification number, any changes to the size of any such system shall require a second meter and a new certification number from the DPSC.

49. For the foregoing reasons, the Taskforce believes that the 2022 Program will improve upon the results achieved through the 2021 Program by ensuring the lowest SREC price (and, therefore, customer impact) while continuing to create a market for SRECs at all levels of generation. Delmarva submits that the 2022 Program, with the proposed changes, will allow for just and reasonable rates and is in the public interest.

## **XI. Request for Approval**

50. As with the Pilot Program and the 2013 Program through the 2021 Program, the 2022 Program was developed by the Taskforce over many months with input from a number of

stakeholders and is not opposed by any of those stakeholders. Each of the Taskforce meetings was open to the public.

51. Delmarva and the Taskforce believe the 2022 Program satisfies the goals set forth by REPSA and improves upon the 2021 Program and, as demonstrated above, is in the public interest.

52. The DPSC Staff and the DPA have been thoroughly involved in the design of the 2022 Program through the Taskforce proceedings and did not oppose it. Accordingly, Delmarva respectfully requests that the DPSC approve the Application for the reasons set forth above.

**WHEREFORE**, for the foregoing reasons, Delmarva respectfully requests that the 2022 Program, attached as **Exhibit A**, be approved.

*/s/ Dawn Kurtz Crompton*  
\_\_\_\_\_  
Dawn Kurtz Crompton (#5579)  
Assistant General Counsel  
Delmarva Power & Light Company  
500 North Wakefield Drive  
Newark, DE 19702  
(302) 429-3143  
(302) 429-3801 (fax)  
[dawn.crompton@exeloncorp.com](mailto:dawn.crompton@exeloncorp.com)

Dated: May 17, 2022

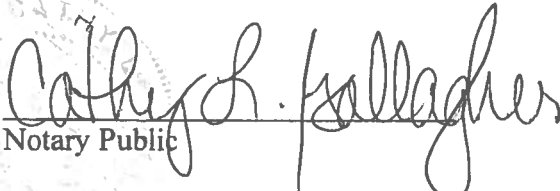
STATE OF Atlantic )  
 ) SS.  
COUNTY OF New Jersey )

On this 4th day of April, 2022, personally came before me, the subscriber a Notary Public in and for the State and County aforesaid William D. Mokoid, Vice President of Delmarva Power & Light Company, a corporation existing under the laws of the State of Delaware, party to this Application, known to me personally to be such, and acknowledged this Application to be his act and deed and the act and deed of said corporation, that the signature of such Vice President is in his own proper handwriting, and that the facts set forth in this Application are true and correct to the best of his knowledge and belief.

**REGARDING: DELMARVA POWER AND LIGHT COMPANY'S APPLICATION FOR APPROVAL OF THE 2022 PROGRAM FOR THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS**

  
\_\_\_\_\_  
William D. Mokoid  
Vice President

SWORN TO AND SUBSCRIBED before me this 4th day of April, 2022.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Cathy L. Gallagher  
NOTARY PUBLIC  
State of New Jersey  
ID # 2417871  
My Commission Expires 2/28/2027

**EXHIBIT A**

**2022 PROGRAM OUTLINE AND FORM OF SREC TRANSFER AGREEMENT**

**STATE OF DELAWARE**

**2022 PROGRAM**

**FOR THE PROCUREMENT OF**

**SOLAR RENEWABLE ENERGY CREDITS**

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## APPENDICES

Appendix 1 Form of SREC Transfer Agreement

**STATE OF DELAWARE  
2022 PROGRAM  
FOR THE PROCUREMENT OF  
SOLAR RENEWABLE ENERGY CREDITS**

**1. Statutory Background**

The Delaware Renewable Energy Portfolio Standards Act (as amended, “**REPSA**”) requires retail electricity suppliers operating in the State of Delaware to purchase energy from “**Eligible Energy Resources**” to meet a portion of their retail load.<sup>1</sup> For the 2022 compliance year (beginning June 1, 2022), retail electricity suppliers must purchase at least 22% of their retail load in Delaware from renewable resources.<sup>2</sup> That requirement increases incrementally each subsequent compliance year, up to 40% for the 2035 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to customers.

REPSA was amended in 2007 to require that a certain portion of each retail electricity supplier’s renewable energy requirement be satisfied with energy from solar technologies. The 2010 amendments to REPSA established a solar set aside of 1.00% for the 2015 compliance year, which increases incrementally to 3.50% for the 2025 compliance year (*e.g.*, the statutory solar set aside for the 2019 compliance year was 2.0%). The 2021 amendments to REPSA retained the established solar set asides which increase incrementally from 1.00% for the 2015 compliance year up to of 3.5% for the 2025 compliance year (*e.g.*, the statutory solar set aside

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

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

for the 2022 compliance year was and is 2.75%), and added additional incremental increases for compliance years 2026 through 2035 such that the solar set aside is 10% for the 2035 compliance year.<sup>3</sup> For future compliance years, the Delaware Public Service Commission (“*DPSC*”) will establish solar set-asides at levels at least equal to the 2035 set-aside.<sup>4</sup>

To encourage the development of new renewable energy generation, REPSA mandates that no more than 1% of the renewable energy purchase requirement can be satisfied by purchases from renewable energy generation resources (each, a “*Generation Unit*”) that were in commercial operation prior to January 1, 1998. For the 2026 and subsequent compliance years, no such pre-existing Generation Units will be eligible to satisfy any portion of the REPSA requirement.<sup>5</sup>

When it enacted REPSA, the Delaware General Assembly acknowledged that “the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state.”<sup>6</sup> It therefore directed the DPSC to “establish, maintain or participate in a market-based renewable energy tracking system to facilitate the creation and transfer of renewable energy credits among retail electricity suppliers.”<sup>7</sup>

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<sup>3</sup> 26 *Del. C.* § 354(a).

<sup>4</sup> 26 *Del. C.* § 354(b).

<sup>5</sup> 26 *Del. C.* § 354(f).

<sup>6</sup> 26 *Del. C.* § 351(b). The benefits recognized by the General Assembly include “improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities.” *Id.*

<sup>7</sup> *Id.* § 359(a).

## **2. Solar Renewable Energy Credits**

### **2.1 General**

To implement the mandate of REPSA, the DPSC adopted regulations that recognize the creation, and facilitate the tracking through PJM Interconnection's Generation Attributes Tracking System ("**GATS**"), of renewable energy credits (each, a "**REC**"). A REC is a tradable instrument that represents the non-price characteristics (*e.g.*, fuel type, geographic location, emissions and vintage) of electric energy derived from an Eligible Energy Resource.<sup>8</sup> One REC is equivalent to such characteristics associated with one (1) megawatt-hour ("**MWh**") of energy derived from such a resource. A solar renewable energy credit (an "**SREC**") represents the same non-price characteristics of 1 MWh of energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology.

RECs and SRECs are created upon the generation of electricity by an Eligible Energy Resource and the registration of such REC or SREC within GATS. Each owner of an Eligible Energy Resource is entitled to one REC or SREC, as applicable, for each MWh of energy generated by the resource. Such owners must therefore have an account within the GATS or have arranged with another entity that has such an account to act on its behalf.

### **2.2 Banking of SRECs**

Once a REC or SREC is created, it continues to exist for three (3) years or until it is retired to satisfy the requirements of REPSA. Such three-year period is tolled during any period that a REC or SREC is held by the Delaware Sustainable Energy Utility (the "**SEU**").

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<sup>8</sup> A REC does not include any emission reduction credits or allowances required to comply with any necessary permits for Generation Units.

### **2.3 Bonus for Use of In-State Equipment or Workforce**

Generation Units sited in Delaware are entitled to a 10% bonus on REC and SREC production if: (a) 50% or more of the cost of the renewable energy equipment comprising the Generation Unit (including mounting components) is manufactured in Delaware (the “*Delaware Equipment Bonus*”);<sup>9</sup> or (b) the Generation Unit is constructed and/or installed either with a workforce at least 75% of whom are Delaware residents or by a company that employs at least 75% Delaware residents (the “*Delaware Workforce Bonus*”).<sup>10</sup> Generation Units that meet both criteria are entitled to an aggregate 20% bonus. Satisfaction of these criteria must be certified by the DPSC.<sup>11</sup>

### **3. The Delaware Renewable Energy Taskforce**

The 2010 amendments to REPSA established the Delaware Renewable Energy Taskforce (the “*Taskforce*”) to make “recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware.”<sup>12</sup> The Taskforce was directed to find ways to increase deployment of solar generation and enhance the market for SRECs. Its responsibilities include making recommendations about the following:

- establishing a balanced market mechanism for REC and SREC trading;
- establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least

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<sup>9</sup> 26 *Del. C.* § 356(d).

<sup>10</sup> 26 *Del. C.* § 356(e).

<sup>11</sup> Eligibility for the Delaware Equipment Bonus and the Delaware Workforce Bonus shall be determined solely by the DPSC.

<sup>12</sup> 26 *Del. C.* § 360(d). The Taskforce is comprised of 11 members representing a broad cross-section of entities interested in and concerned with the implementation of renewable energy policy in Delaware. The 2010 amendment to REPSA stipulates that the Taskforce be made up of: (a) four appointments by the Secretary of the Delaware Department of Natural Resources and Environmental Control, including one from the renewable energy research and development industry, one from the local renewable energy manufacturing industry, and one from an environmental advocacy organization; (b) one appointment by the DPSC; (c) one appointment by Delmarva; (d) one appointment by the Delaware Electric Cooperative; (e) one appointment by municipal electric companies; (f) one appointment by the SEU; (g) one appointment by the Delaware Public Advocate; and (h) one appointment by the Delaware Solar Energy Coalition. *Id.* § 360(d)(1).

impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;

- minimizing the cost for complying with REPSA;
- establishing revenue certainty for appropriate investment in solar renewable energy technologies, including consideration of long-term contracts and auction mechanisms;
- establishing mechanisms to maximize in-state solar renewable energy generation and local manufacturing; and
- ensuring that residential, commercial and utility scale photovoltaic and solar thermal systems of various sizes are financially viable and cost-effective instruments in Delaware.

#### **4. The SREC Pilot Program**

In 2010, the Taskforce appointed a special subcommittee to consider and make recommendations regarding the SREC procurement process. That subcommittee met on numerous occasions over several months and evaluated a variety of alternative approaches to SREC procurement in an effort to reach a consensus on a comprehensive program designed to meet the objectives set forth in REPSA with respect to the development of solar generation resources. Based on the subcommittee's work, the Taskforce recommended for approval to the DPSC a statewide pilot program for the 2011 compliance year (the "*SREC Procurement Pilot Program*" or "*Pilot Program*") to encourage solar development in the State of Delaware while minimizing costs for owners, developers, aggregators, consumers, and other participants in the SREC market in Delaware. The DPSC approved the SREC Procurement Pilot Program with minor modifications pursuant to Order No. 8093, dated December 20, 2011.

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

Following successful implementation of the Pilot Program, the Taskforce recommended for approval to the DPSC of a statewide program for 2013 (the "*2013 SREC Procurement*

*Program*” or “*2013 Program*”). The 2013 SREC Procurement Program continued the goals of the Pilot Program of creating a market for SRECs in Delaware and providing a mechanism for the procurement of SRECs to ensure that the requirements of REPSA are met. The 2013 SREC Procurement Program was based on five Tiers of SRECs, all competitively bid, with the intent of procuring a total of 7,000 SRECs plus an additional 1,000 SRECs through purchases on the spot market. The DPSC approved the 2013 SREC Procurement Program on January 22, 2013, pursuant to Order No. 8281. Thereafter, by Order No. 8450, dated September 10, 2013, the DPSC issued its Findings of Fact, Conclusions of Law and Final Opinion in Support of Order No. 8281. In doing so, the DPSC found that the 2013 SREC Procurement Program was in the public interest and met the criteria of REPSA. The DPSC also accepted DPSC Staff’s recommendation that an independent consultant be hired to evaluate the 2013 SREC Procurement Program. An evaluation was performed by New Energy Opportunities, Inc. and LaCapra Associates, Inc. (the “*Consultants*”) which issued its report dated August 7, 2013, which was revised on September 20, 2013 (the “*Consultants’ Report*”). The Consultants’ Report concluded that the 2013 Program was conducted fairly and in a professional manner and that the changes which were implemented to provide for competitive bidding and the inclusion of owners of existing projects as eligible bidders, resulted in lower overall costs to ratepayers.

**6. The 2014 SREC Procurement Program**

Based upon its review of the results of the 2013 Program and a review of the Consultants’ Report, the Taskforce recommended for approval to the DPSC of a statewide program for the 2014 compliance year (the “*2014 SREC Procurement Program*” or “*2014 Program*”). The 2014 SREC Procurement Program continued the goals of the Pilot Program and 2013 Program with some refinements. The 2014 Program was based on five Tiers of SRECs, all competitively

bid, with the intent of procuring 7,000 SRECs plus an additional 1,000 SRECs through purchases on the spot market. The DPSC approved the 2014 SREC Procurement Program on April 15, 2014 pursuant to Order No. 8551. Thereafter, by Order No. 8629, dated September 9, 2014, the DPSC issued its Findings of Fact, Conclusions of Law, and Opinion in Support of Order No. 8551. In doing so, the DPSC found that the 2014 SREC Procurement Program was in the public interest and met the criteria of REPSA.

**7. The 2015 SREC Procurement Program**

Based upon its review of the results of the 2014 Program, the Taskforce recommended for approval to the DPSC of a statewide program for the 2015 compliance year (the “*2015 SREC Procurement Program*” or “*2015 Program*”). The 2015 SREC Procurement Program confirmed the goals of the Pilot Program, the 2013 Program, and the 2014 Program, with some modifications. The 2015 Program continued to be based on five Tiers of SRECs, all competitively bid, but with the intent of procuring a minimum of 9,000 SRECs and up to a total of 12,000 SRECs through the auction process. The 2015 Program also established an Alternative Compliance Payment of \$400 and permitted Delmarva to establish an upset price for the purchase of SRECs and provided that bids received above these amounts could be rejected by Delmarva. The DPSC approved the 2015 SREC Procurement Program on March 3, 2015 pursuant to Order No. 8717. Thereafter, by Order No. 8764, dated July 21, 2015, the DPSC issued its Findings of Fact, Conclusions of Law and Opinion in Support of Order No. 8717. In doing so, the DPSC found that the 2015 SREC Procurement Program was in the public interest and met the criteria of REPSA.

**8. The 2016 SREC Procurement Program**

Based upon its review of the results of the 2015 Program, the Taskforce recommended for approval to the DPSC of a statewide program for the 2016 compliance year (the “**2016 SREC Procurement Program**” or “**2016 Program**”). The 2016 SREC Procurement Program confirmed the goals of the Pilot Program, the 2013 Program, the 2014 Program, and the 2015 Program, with some modifications. The 2016 Program continued to be based on five Tiers of SRECs, all competitively bid, but with the intent of acquiring a minimum of 9,000 SRECs, all bid, and a maximum of 15,000 SRECs through the auction process. There was also a change made to Tiers N-1, N-2, E-1, and E-2 to reduce the upper size limit for eligible projects from 30 kW to 25 kW to align with the interconnection limits established for smaller (Level 1) solar projects through Delmarva’s interconnection process. The DPSC approved the 2016 SREC Procurement Program as submitted on May 3, 2016, pursuant to Order No. 8884. Thereafter, by Order No. 8890, dated September 6, 2016, the DPSC issued its Findings of Facts, Conclusions of Law and Opinion in Support of Order No. 8884. In doing so, the DPSC found that the 2016 SREC Procurement Program was in the public interest and met the criteria of REPSA.

**9. The 2017 SREC Procurement Program**

Based upon its review of the results of the 2016 Program, the Taskforce recommended for DPSC approval a statewide program for the 2017 compliance year (the “**2017 SREC Procurement Program**” or “**2017 Program**”). The 2017 SREC Procurement Program continued the structure of the Pilot Program, the 2013 Program, the 2014 Program, the 2015 Program, and the 2016 Program, with two principal modifications. First, the 2017 Program was based on seven Tiers of SRECs, all competitively bid, but with the intent of acquiring a minimum of 10,000 SRECs, all bid, and up to a total of 20,000 SRECs through the auction process. Second, Tiers

N-4 and E-3 were added to allow utility scale systems with nameplate capacity greater than 2 MW to bid into the auction. The DPSC approved the 2017 SREC Procurement Program as submitted on April 20, 2017, pursuant to Order No. 9050. Thereafter, by Order No. 9116, dated September 14, 2017, the DPSC issued its Findings and Opinion in Support of Order No. 9050. In doing so, the DPSC found that the 2017 SREC Procurement Program was in the public interest and met the criteria of REPSA.

**10. The 2018 SREC Procurement Program**

Based upon its review of the results of the 2017 Program, the Taskforce recommended for DPSC approval a statewide program for the 2018 compliance year (the “**2018 SREC Procurement Program**” or “**2018 Program**”). The 2018 SREC Procurement Program continued the structure of the Pilot Program, the 2013 Program, the 2014 Program, the 2015 Program, the 2016 Program, and the 2017 Program, with the following modifications: (1) an increase in the maximum breakpoints for kW for Tiers N-1 and E-2 from 25 kW to 50 kW and Tier N-2 from 200 kW to 500 kW; (2) the addition of Tiers N-5 and E-4; (3) the inclusion of in-state system siting requirements for Tier N-3; (4) the imposition of a bidding limitation for Tier N-2; (5) the use of SRECs held by the SEU to fill undersubscribed Tiers in certain circumstances; and (6) a reduction in the administrative price to be paid for SRECs for the last ten years of the Agreement from \$35 per SREC to the lower of the bid price or \$20 per SREC. The DPSC approved the 2018 SREC Procurement Program as submitted on June 19, 2018, pursuant to Order No. 9235. In doing so, the DPSC found that the 2018 SREC Procurement Program was in the public interest and met the criteria of REPSA.

**11. The 2019 SREC Procurement Program**

Based upon its review of the results of the 2018 Program, the Taskforce recommended for DPSC approval a statewide program for the 2019 compliance year (the “**2019 SREC Procurement Program**” or “**2019 Program**”). The 2019 SREC Procurement Program continued the structure of the Pilot Program, the 2013 Program, the 2014 Program, the 2015 Program, the 2016 Program, the 2017 Program, and the 2018 Program, with the following modifications: (1) the reorganization of the Tier structure from nine Tiers to five Tiers, with all Existing Systems becoming part of Tier 5; (2) the limitation that bids rejected for price in any Tier cannot be used to backfill another Tier; (3) the inclusion of in-state system siting requirements for Tiers 1, 2, and 4; and (4) the requirement that community solar projects enter the Tier appropriate to their system size attributes. The DPSC approved the 2019 SREC Procurement Program as submitted on May 7, 2019, pursuant to Order No. 9380. In doing so, the DPSC found that the 2019 SREC Procurement Program was in the public interest and met the criteria of REPSA.

**12. The 2020 and 2021 SREC Procurement Programs**

On February 3, 2020, Delmarva filed an application for the 2020 Program in Docket No. 20-0106. Due to changed circumstances, on April 9, 2020, Delmarva requested that the DPSC indefinitely postpone its consideration of the 2020 Program until such time as Delmarva might renew its application. Delmarva did not seek to renew the 2020 Program during 2020, and on June 3, 2021, Delmarva withdrew its application regarding the 2020 Program.

Delmarva filed the application for the 2021 SREC Procurement Program (“2021 Program”) on May 5, 2021. The 2021 Program was based on the 2020 Program, and both the

2020 Program and the 2021 Program were developed with the full participation of, and support from, the Taskforce.

The 2021 Program continued the structure of the 2019 Program and 2020 Program, with the following primary modifications: (i) the new systems were defined by the date of the last auction; (ii) in each of Tiers 1-4, a potential of up to an additional 5,000 SRECs could be bid;<sup>13</sup> (iii) any changes to a system that already received a certification number required a second meter and a new certification number; and (iv) an administrative change to Tier 5 that addressed an inconsistency with the 2019 program with respect to the handling of in-state customer-owned new system third-party SREC ownership.

On May 17, 2021, the Caesar Rodney Institute (“CRI”) filed a petition for intervention, was granted intervenor status on June 9, 2021. On May 24, 2021, CRI submitted written comments to the DPSC concerning the 2021 Program. The DPSC held an evidentiary hearing on July 14, 2021, and approved the 2021 Program as submitted via Order No. 9865. In doing so, the DPSC found that the 2021 SREC Procurement Program was in the public interest and met the criteria of REPSA.

On September 17, 2021, Governor John Carney signed Senate Bill 2 into law, which expanded access to community solar projects in Delaware. Among other things, Senate Bill 2: (1) allows for multiple types of ownership models, defined as “community-owned energy generating facilities,” (“CEFs”) to exist and compete in the marketplace; (2) increases the maximum size of these systems to 4 MW; (3) eliminates the requirement that all customers of a system must be located on the same distribution feeder; (4) eliminates the requirement that all

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<sup>13</sup> After Tiers 1-5 have been filled by winning bids, Delmarva, at its discretion, was permitted purchase up to an additional 5,000 SRECs from the lowest priced losing bid from any Tier, with its maximum purchase not to exceed 20,000 SRECs.

customers of a system must be identified before the system can be built; (5) provides for the regulation of these systems by the DPSC and sets forth the fee and requirements for a Certificate to Operate; (6) provides compensation to the system owner for 10% or less of unsubscribed energy; (7) requires each system owner to certify that it serves at least 15% low income customers; and provides that the PSC will engage in rule-making in consultation with the Consumer Protection Unit of the Delaware Department of Justice and promulgate rules and regulations by March of 2022.

On October 14, 2021, the results of the 2021 SREC Auction were announced. The 2021 Program was undersubscribed in four out of the five Tiers, but the undersubscriptions were generally minor and the total number of SRECs procured was in line with previous years. The only oversubscribed Tier was Tier 2, while Tier 1 was originally oversubscribed and became undersubscribed due to the price discretion exercised by Delmarva. The price discretion was exercised for any bids over \$45.00 in all Tiers. The weighted average price for all SRECs in the solicitation was \$30.24, and 13,507 effective RECs were contracted.

The results of the 2021 SRECDelaware auction were announced on 10/14/2021. A total of 13,507 SRECs were purchased through this year's procurement. Below are the pricing results for each tier and the overall solicitation:

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Overall
High	\$33.00	\$24.99	\$35.50	\$45.00	\$45.00	\$45.00
Low	\$10.00	\$17.99	\$27.98	\$35.50	\$12.00	\$10.00
Weighted Average	\$26.50	\$22.22	\$32.39	\$38.16	\$32.79	\$30.24

### 13. Program Administration; Eligibility

#### 13.1 Public Solicitations

The Taskforce believes that the procurement of SRECs by retail electricity suppliers<sup>14</sup> operating in the State of Delaware should be implemented through public solicitations, managed by the SEU.<sup>15</sup> Solicitations under the Pilot Program and the 2013 Program through the 2021 Program were managed by the SEU, and the Taskforce has approved the use of the SEU for the 2022 SREC Procurement Program.<sup>16</sup> The solicitations will be for SRECs and other environmental attributes<sup>17</sup> created by the Eligible Energy Resources, but will not cover the energy output of the resources. Upon receipt and evaluation of the applications received in response to each solicitation, the SEU will award bids and execute agreements based on the criteria set forth in this 2022 SREC Procurement Program.

#### 13.2 Owner Qualifications

To apply as an owner (an “*Owner*”) of an Eligible Energy Resource pursuant to the 2022 SREC Procurement Program, the applicant must own, lease, control, or be the direct assignee of all of the SRECs created by such resource.<sup>18</sup> Any party participating in the 2022 SREC

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<sup>14</sup> In 2011, the statute was amended so that REPSA obligations were assigned to only DPSC-regulated electric companies. 26 Del. C. § 354.

<sup>15</sup> The SEU will use a third party (the “*SREC Procurement Agent*”) to perform some or all of its duties with respect to the 2022 SREC Procurement Program, including conducting solicitations, evaluating bids, and executing agreements on behalf of the SEU. The SREC Procurement Agent for the 2022 SREC Procurement Program will be InClimate, Inc. InClimate, Inc. is a spinoff of SRECTrade and was established solely to operate utility and public agency renewable procurement programs. InClimate, Inc. will be operated by Kevin Quilliam who oversaw the SREC auctions for the Pilot Program and the 2013 Program through the 2021 Program.

<sup>16</sup> As with the Pilot Program and the 2013 Program through the 2021 Program, the recovery of costs incurred by the SEU will be dealt with in separate proceedings.

<sup>17</sup> In addition to SRECs, environmental attributes include those attributes created from the Generation Unit’s generation of electricity from solar energy in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources, such as emission credits, carbon credits, air quality credits, green credits, carbon tax credits, emissions reduction credits, greenhouse gas credits, certificates, tags, offsets, allowances, and similar products, rights, claims, or benefits, whether now existing or arising in the future. However, environmental attributes do not include tax credits other than carbon tax credits.

<sup>18</sup> An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

Procurement Program may submit an application jointly with an entity that has executed agreements<sup>19</sup> to control the SRECs produced by two or more Eligible Energy Resources (such entity, an “*Owner Representative*”).

An Owner that is qualified to submit an application on its own behalf may, at its option, elect to designate an Owner Representative. Affiliates of retail electricity suppliers are permitted to participate in the 2022 SREC Procurement Program as Owners or Owner Representatives (as long as they satisfy the applicable requirements for being an Owner or Owner Representative).

### **13.3 Eligible Projects**

To qualify for participation in the 2022 SREC Procurement Program, a Generation Unit must: (a) qualify as a “Solar Photovoltaic Energy Resource” in accordance with the DPSC rules; and (b) be eligible for certification as an Eligible Energy Resource under REPSA.

In order to increase the likelihood that a wide variety of residential and commercial projects have an opportunity to participate in the 2022 SREC Procurement Program, the Taskforce determined that the 2022 Program would offer: (i) a three Tier framework in lieu of the five Tier framework from the 2021 Program; (ii) an increased SREC target purchase volume from 10,000 SRECS to 11,000 SRECs for systems under 2 MW to, *inter alia*, account for enlargements of the RPS solar carve-out and accommodate any new CEFs; and (iii) a requirement that all long-term contracts be extended from twenty (20) years to twenty-five (25) years with the SRECs being paid for at the auction price per SREC for the first ten (10) years, and the SRECs receiving no compensation (\$0) per SREC for the remaining fifteen (15) years of the overall contract term. The 2022 Program otherwise largely continued the structure and

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<sup>19</sup> An Owner Representative need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources. It need only have executed agreements with Owners of two or more such resources.

processes of the 2021 Program, and still contains: (1) a limitation that bids rejected for price in any Tier cannot be used to backfill another Tier; (2) the inclusion of in-state system siting requirements for certain Tiers; and (3) the requirement that community solar projects enter the appropriate Tier based on their system size attributes and other system criteria.

The Tiers are as follows:

### GENERATION UNIT TIER DESIGNATIONS

<u>Tier Name</u>	<u>Tier Type &amp; Location</u>	<u>Term</u>	<u>Nameplate Rating (DC at STC)</u>	<u>Notes</u>
<b>Alpha</b> <b>6,000 SRECs</b>	Small and Medium scale  In-state Delaware	SRECs transferred to DPL for 25 years (paid 10 years at bid price; no cost to DPL for last 15 years)	Less than or equal to 350 kW	New customer-owned <sup>20</sup> systems (interconnection approval on or after September 24, 2021) of this size in any DE service territory are eligible (inc. systems that elect not to participate in the Prebuy Program)  GEF Grant recipients in the DPL service territory ( <i>i.e.</i> , under 100 kW) are eligible until the Prebuy Program is fully instituted <sup>21</sup>
<b>Beta</b> <b>5,000 SRECs</b>	Large scale  In-state Delaware	SRECs transferred to DPL for 25 years (paid 10 years at bid price; no cost to DPL for last 15 years)	Greater than 350 kW but less than or equal to 2 MW	New systems (interconnection approval on or after September 24, 2021) of this size in any DE service territory are eligible
<b>Gamma</b> <b>5,000 SRECs</b>	Discretionary  Any location	SRECs transferred to DPL for 25 years (paid 10 years at bid price; no cost to DPL for last 15 years)	Any system up to 5 MW	In-state customer-owned new systems with third party SREC ownership, Out-of-state and all Existing Systems

<sup>20</sup> In order to qualify as “customer-owned” system, an Owner must own both the solar array and property where the system is located. Projects where an Owner leases or otherwise controls the property where the system is located are solely eligible for the Gamma tier.

<sup>21</sup> As set forth in Section XI of the Delmarva’s Application for the 2022 Program for the Procurement of Solar Renewable Energy Credits, DNREC and Delmarva intend to commence an SREC prebuy program (“Prebuy

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

### **13.4 Ongoing Program Evaluation**

The Taskforce will evaluate the 2022 SREC Procurement Program on a periodic basis to consider whether any changes or modifications are necessary or advisable. Any changes or modifications to the program (*e.g.*, the allocation of SRECs among the different Tiers) would be prospective only, and executed SREC Transfer Agreements (as defined below) would not be affected. Any material changes to the 2022 SREC Procurement Program would be subject to approval of the appropriate regulatory bodies.

## **14. Bid Applications**

### **14.1 General Requirements**

Each Owner must submit, or designate its Owner Representative to submit, a completed bid application (and only one such bid application)<sup>22</sup> for each Generation Unit for which it intends to participate in the 2022 SREC Procurement Program. However, for systems that are an addition to or expansion of Existing Systems, a separate application may be submitted for both the new system and the Existing System provided that the new system has a separate meter from the Existing System installed in accordance with the requirements of Section 15.7. Because

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Program”) which will help reduce SREC costs. The Prebuy Program will primarily rely upon SRECs generated by the systems receiving the DNREC GEF Grant funds, and until such time as the Prebuy Program has been launched, GEF Grant recipients will be permitted to bid SRECs into the Alpha Tier.

<sup>22</sup> A Generation Unit may not be included in more than one bid application in any single solicitation. If such unit is not awarded an SREC Transfer Agreement as a result of such solicitation, the Owner is free to submit an application for such unit pursuant to any future solicitation.

of Delaware's unique multiple credits,<sup>23</sup> if a system addition (add-on) is not separately metered, and the multiple credits (bonus(es)) differ from the Existing System, the original certification number from the Existing System may be amended by the DPSC to reflect the lesser of the credit multipliers, and if the Existing System has an SREC procurement contract, the additional SRECs from the system cannot be paid the contract price as per Section 15.2. An add-on to an Existing System, with different bonus(es) from the Existing System, must be separately metered in order to participate in the SREC Procurement program. The SREC procurement program application is an on-line application which is located and is to be completed on the SEU's website at [www.SRECDelaware.com](http://www.SRECDelaware.com). The application must include, among other things:

- a description of the Generation Unit, including its location, the types of solar panels being used, and its nameplate rating (at STC);<sup>24</sup> and
- if the Owner elects to designate an Owner Representative, the identity of the Owner Representative must be provided.

In addition, each bid application must be accompanied by:

- the appropriate deposit; and
- an analysis of the estimated annual energy output using PVWatts Solar PV Energy Calculator or such other modeling technique as may be acceptable to the SEU.

Once an Owner's bid is accepted, it must submit a standard form agreement to sell SRECs to the SEU (an "*SREC Transfer Agreement*") executed by the Owner and, if necessary or elected, an Owner Representative.

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<sup>23</sup> 26 Del. C. § 356.

<sup>24</sup> The equipment description contained in the application is not binding on an Owner or an Owner Representative, provided that: (a) except as expressly permitted in accordance herewith, the nameplate rating (at STC) of any substitute equipment may not vary from that described in the original application by more than 5% for projects with a nameplate rating of less than 500 kW, or 2.5% for projects with a nameplate rating of 500 kW or greater; and (b) in no event will the substitution of different equipment affect the Estimated SREC Quantity contained in the original application.

## **14.2 Estimated Output**

Each application to sell SRECs pursuant to the 2022 SREC Procurement Program must include a binding estimate of: (a) the annual energy output of the Eligible Energy Resource, as determined using PVWatts Solar PV Energy Calculator or such other modeling technique as may be acceptable to the SEU; and (b) the annual SREC production levels (such estimate of the SREC production levels, the “*Estimated SREC Quantity*”). The estimates for energy output and SREC production levels shall be subject to an annual degradation factor of 0.5%.

For Eligible Energy Resources claiming a bonus based on the use of Delaware-sourced equipment and/or an in-state workforce (as described in Section 2.3 above), the application must include a statement that it intends to qualify for the Delaware-sourced equipment and/or in-state workforce bonus and the binding SREC output estimate for such resources should include any such SREC bonus.<sup>25</sup> Failure to claim a bonus at the time an application is submitted will disqualify a project from being entitled to the bonus, regardless of whether Delaware-sourced equipment or an in-state workforce is later employed.

## **14.3 Bid Deposit**

Each application to participate in the 2022 SREC Procurement Program must be accompanied by a bid deposit in an amount equal to \$100 per kW (DC) of the nameplate rating (at STC) of the Eligible Energy Resource; provided that the bid deposit will be waived for qualifying projects that provide a copy of their DPSC certification as an Eligible Energy Resource along with their bid application. All bid deposits must be in the form of an acceptable

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<sup>25</sup> The “bonus” SRECs are not actually credited to retail electricity suppliers until they retire the SRECs to which the bonus applies. However, under the terms of the SREC Transfer Agreements, as long as the Owner provides evidence that the DPSC has certified that the Eligible Energy Resource qualifies for the bonus, payment for the SRECs will include the bonus amount.

letter of credit, cash, or a bid bond,<sup>26</sup> and will be held by the SEU on behalf of the participating retail electricity suppliers.

The bid deposits will be returned or released promptly upon: (a) rejection of an application; or (b) termination of an SREC Transfer Agreement based on the imposition by the interconnecting utility of a charge other than a standard interconnection fee (as described in Section 15.4 below). In addition, if an Owner claims in its application that a project will be entitled to the Delaware Equipment Bonus or the Delaware Workforce Bonus and such project is not certified by the DPSC as being eligible for either such “claimed” bonus, the SEU has the option to declare that the bid deposit will be forfeited and the SREC Transfer Agreement will be terminated. Otherwise, the bid deposit will be returned upon completion and commencement of operation of the Generation Unit on or prior to the Guaranteed On-Line Date (as defined in Section 15.5 below) and the posting of performance credit support (as described in Section 15.9 below). For Generation Units that commence operation after such date, the bid deposit will be used to pay delay liquidated damages (as described in Section 15.5 below) and the balance, if any, will be returned to the Owner promptly after the commencement of operation and the posting of performance credit support (as described in Section 15.9 below). Bid deposits will not earn interest.

## **15. SREC Transfer Agreements**

In order to minimize transaction costs, the SEU will enter into standard form SREC Transfer Agreements with Owners and, if elected by such Owners, the Owner Representatives. The SEU will countersign each SREC Transfer Agreement promptly upon determining that the

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<sup>26</sup> A bid bond must be in the form of American Institute of Architects (AIA) Form 310. In addition, any applicant that provides a bid bond as bid security will be required to replace such bond with a deposit in the form of a letter of credit or cash no later than ten (10) days after the SEU provides notice that its bid application has been granted.

associated application and bid qualify for selection pursuant to the pending solicitation (the date of signing by the SEU, the “*Execution Date*”). Each SREC Transfer Agreement will include:

- the Owner’s agreement to maintain the Generation Unit as an Eligible Energy Resource;
- an acknowledgment by the Owner and, if applicable, the Owner Representative that: (a) the SEU and retail electricity suppliers have the right to inspect the Generation Unit (which right may be assigned to qualified third parties); and (b) the SEU has the right to resell the SRECs in any market where they are eligible to be traded, including states other than Delaware; and
- if the Owner is designating an Owner Representative, the appointment of the Owner Representative as the Owner’s exclusive agent to manage SRECs within GATS on the Owner’s behalf.

The form of the SREC Transfer Agreement is appended hereto as **Appendix 1**. Some of the principal terms and conditions of the SREC Transfer Agreement are described in this Section.

### **15.1 Term of Agreement**

All SREC Transfer Agreements will have a term of twenty-five (25) years. The term will commence as follows:

- For projects for which the Operation Date is prior to thirty (30) days following the close of the solicitation, the term of the Agreement shall commence on June 1, 2022.
- For projects for which the Operation Date is not thirty (30) days prior to the close of the solicitation, the term of the Agreement shall commence on the Operation Date regardless of when the Agreement is executed by the Owner or Owner Representative.
- Under either scenario, the date on which the term of the Agreement begins is the “*Commencement Date*,” regardless of when the Agreement is signed by the Owner or Owner Representative. If the Owner or Owner Representative does not

sign the Agreement until after the Commencement Date, they forfeit the right to compensation for any SRECs created prior to the Commencement Date.

## **15.2 SREC Quantity**

Pursuant to each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative, will be obligated to transfer (by providing permission to move the System to the SEU's GATS account) and sell to the SEU, and the SEU will be obligated to purchase and pay for, all of the SRECs produced at the Generation Unit up to the Contract Maximum (as defined below). To facilitate more efficient management and accounting for SREC procurement, and to maximize opportunities for the largest possible group of Owners to participate in the 2022 SREC Procurement Program, the quantity of SRECs that may be delivered pursuant to any SREC Transfer Agreement during any annual period will be limited to 110% of the Estimated SREC Quantity for such period (such amount, the "*Contract Maximum*"). All SRECs delivered pursuant to an SREC Transfer Agreement must be created based on the output of the Generation Unit that is the subject of that Agreement. In the event a project produces SRECs in excess of the Contract Maximum, the SEU will have the option to elect whether or not to purchase any or all of the surplus SRECs. If it exercises that option, the sale of any such excess SRECs will be subject to the same terms, conditions and pricing applicable to other SREC purchases under the SREC Transfer Agreement. In the event a project produces SRECs in excess of the Contract Maximum and the SEU declines to purchase, or purchases only a portion of, the excess SRECs produced by that project, the SEU will transfer any such excess SRECs back to the Owner, who will have the right to sell such excess SRECs in any manner it deems appropriate.

For projects that have a nameplate rating of 500 kW or greater, the Owner and, if applicable, the Owner Representative, will be obligated to sell to the SEU, for each annual

period, a quantity of SRECs equal to no less than 80% of the Estimated SREC Quantity for such period (the “*Minimum Annual Quantity*”).

The Estimated SREC Quantity may not be amended unless the Owner reduces the capacity of a Generation Unit either to avoid or minimize any interconnection fees or charges sought to be imposed by the interconnecting utility (as described in Section 15.4 below) or to allow the Generation Unit to fit within a pending solicitation (as described in Sections 16.1 and 16.2 below).

### **15.3 Pricing**

All projects will be required to submit bids which will be evaluated and selected based on the lowest bid prices. Owners are required to submit bids only in their applicable Tier. For the 2022 SREC Procurement Program, the SREC price during the first ten (10) years of the term of the SREC Transfer Agreements will be the bid price, and the SREC price for the last fifteen (15) years of the SREC Transfer Agreements will be \$0 per SREC.

### **15.4 Utility Interconnections**

If, based on an Owner’s interconnection application, the interconnecting utility proposes to assess any fee or charge (other than a standard interconnection application fee), the Owner may, within ten (10) days of notice of such fee or charge by the interconnecting utility, either reduce the capacity of the Generation Unit to avoid or minimize such fee or charge or terminate the SREC Transfer Agreement. In order to take advantage of this right, each Owner must submit a complete interconnection application (Step 1) to the interconnecting utility no later than one hundred twenty (120) days after the Execution Date.

If an Owner reduces the capacity of a Generation Unit to avoid or minimize an interconnection charge, the Estimated SREC Quantity will be reduced by the same percentage

and any excess deposit will be returned to the Owner.<sup>27</sup> If an Owner elects to terminate the SREC Transfer Agreement based on the imposition of an interconnection fee or charge, the entire deposit will be returned.

### **15.5 Guaranteed On-Line Date; Delay Liquidated Damages**

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

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

### **15.6 Payment**

All projects will be paid on a monthly basis. Each Owner will stipulate in the SREC Transfer Agreement whether payment is to be made to the Owner or, if applicable, the Owner

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<sup>27</sup> A reduction in capacity to avoid or minimize an interconnection charge will not affect pricing under the SREC Transfer Agreement, regardless of whether the reduced capacity would have qualified the project to submit an application for a lower Tier.

Representative. Payment will be based on the number of SRECs transferred to and registered in the SEU's GATS account during the relevant billing period.

### **15.7 Metering**

All projects with a nameplate capacity (DC) less than 500 kW must install either a revenue-grade meter on site or revenue-grade online monitoring. All projects with a nameplate capacity (DC) of 500 kW or greater must install revenue-grade online monitoring. An add-on to an Existing System, with different bonus(es), must be separately metered in order to participate in the SREC Procurement Program.

### **15.8 Conditions Precedent**

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

### **15.9 Performance Credit Support**

Pursuant to the terms of each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative, will grant the SEU a security interest in all of the SRECs (up to the

Contract Maximum) generated by the project to secure their respective obligations under the agreements, including the obligation to deliver and sell the SREC output of the project.

To secure their obligations to deliver the Minimum Annual Quantity, Owners or Owner Representatives of projects with a nameplate rating of 500 kW or greater will also be required to provide supplemental credit support in the form of cash, a letter of credit, or other collateral acceptable to the SEU. For each of the first ten (10) years of the SREC Transfer Agreement, such supplemental credit support shall be in an amount equal to five percent (5%) of the value (at the applicable price set forth in the SREC Transfer Agreement) of the first-year Estimated SREC Quantity. The supplemental credit support must be replenished to the required level in the event any portion of the credit support is drawn or used.

#### **15.10 Project Maintenance; Inspections**

Owners and, if applicable, Owner Representatives will be responsible for maintaining Generation Units so that they remain Eligible Energy Resources and are able to produce their respective Estimated SREC Quantities. Owners and Owner Representatives must notify the SEU of any substantive changes to the operational characteristics of the Generation Unit.<sup>28</sup>

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

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<sup>28</sup> Owners and Owner Representatives are also required to provide the SEU with copies of any notice(s) submitted to the DPSC pursuant to 26 *Del. Admin. C.* § 3008 (3.1.8) and any additional correspondence related to such notice(s).

### **15.11 Excused Performance**

Owners will be excused from any delay in performance or failure to perform under an SREC Transfer Agreement caused by conditions beyond their reasonable control (*i.e.*, force majeure as defined in the SREC Transfer Agreement); provided that such relief shall be limited to the amount of time the condition exists that caused the delay but in no event greater than a period of one (1) year for any single force majeure event

### **15.12 Default Provisions**

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

- the full SREC output of a Generation Unit (up to the Contact Maximum) is not made available to the SEU within the timeframe required; or
- for a project with a nameplate rating of 500 kW or greater, the project fails to generate the Minimum Annual Quantity during any annual period and the Owner fails to pay applicable damages (as described in Section 15.13 below) within thirty (30) days after the end of such annual period; or
- the required credit support is not maintained.

In addition, an Owner Representative will be in default under an SREC Transfer Agreement if it fails to qualify as an Owner Representative under the terms of the 2022 SREC Procurement Program and such failure is not cured within thirty (30) days of notice of such failure.

### **15.13 Remedies**

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

Representative, will be entitled to their respective remedies at law and in equity. Equitable remedies will include specific performance of the Agreement.

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

If a project with a nameplate rating of 500 kW or greater fails to produce the Minimum Annual Quantity of SRECs during any annual period, the Owner will owe damages equal to the amount of the shortfall, multiplied by the difference, if positive, between: (a) the lower of the prevailing market price of SRECs (as reasonably determined by the SEU) or the amount of the “Alternative Compliance Payment” (as defined in REPSA) for the year in which such shortfall occurs; and (b) the price for SRECs under the SREC Transfer Agreement. Such damages shall be due and payable no later than thirty (30) days after the end of the annual period to which they apply. Payment of such damages will be the Owner’s sole liability for the failure to deliver the Minimum Annual Quantity.

#### **15.14 Replacement of Owner Representative**

An Owner may remove its Owner Representative at any time and for any reason (or no reason) in its sole and absolute discretion.

#### **16. Bid Awards**

Promptly upon receipt of an application to sell SRECs from an Owner Representative or Owner in response to a solicitation issued pursuant to the 2022 SREC Procurement Program, the SEU will review the application to verify whether it is complete and complies with all applicable procedures. Partial or incomplete applications will be rejected. Any and all bids above a

determined price, as established by Delmarva Power, and bids above the Alternative Compliance Payment of \$150,<sup>29</sup> will be rejected. In addition, owners of Existing Systems who default on their bids (*e.g.*, by not signing a contract) will be prohibited from bidding in a subsequent long-term auction.

### **16.1 Competitive Solicitations**

All projects will be required to submit price bids in competitive solicitations. The SEU will announce all solicitations for competitively priced bids at least thirty (30) days in advance of the bid date. The price bid for each project must be for a fixed dollar amount, which amount cannot escalate or otherwise vary during the initial ten (10) year period of the term of the Agreement. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids in each solicitation.

Each system is allowed to submit an application in only one Tier. However, in the event that a Tier is undersubscribed, bids from other oversubscribed Tiers can be accepted to secure the necessary SRECs to fill the undersubscribed tier in the manner described below. To encourage a diversity of project Owners, the SEU will not award more than 50% of SRECs in Alpha Tier to a single Owner unless Alpha Tier is undersubscribed due to that limitation. In that case, the Owner's additional projects shall be added back to Alpha Tier from the lowest bid price upward until the next highest price bid would cause Alpha Tier to be oversubscribed. Provided these requirements are met, the SEU will accept for each Tier the lowest bid prices for that Tier.

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<sup>29</sup> The 2021 *REPSA* Amendments decreased the Alternative Compliance Payment from \$400 to \$150. *See* 26 *Del. C.* § 358(e).

Delmarva also has authority to exercise price discretion in any Tier and may reject any bids that exceed a per SREC price-point set by Delmarva. Those non-winning bids cannot be used to fill any unsubscribed Tier.

If Alpha Tier remains unsubscribed because of insufficient bids, then the lowest non-winning bids from Beta Tier can be used to fill Alpha Tier. If it still remains unsubscribed, the lowest non-winning bids from Gamma tier can be used to fill Alpha Tier.

If Beta Tier then remains unsubscribed due to insufficient bids, then the lowest non-winning bids from Alpha Tier can be used to fill Beta Tier. If it remains unsubscribed, the lowest non-winning bids from Gamma Tier can be used to fill Beta Tier.

If Gamma Tier then remains unsubscribed due to insufficient bids, then the lowest non-winning bids from any Tier can be used to fill Gamma Tier.

## **16.2 Bidding Ties**

If there are multiple bids at the same price that would cause a competitive solicitation to be oversubscribed (a “*Bidding Tie*”), the SEU will first select all applicants that claimed the Delaware Equipment Bonus and the Delaware Workforce Bonus. If this causes the solicitation to still be oversubscribed, a lottery will be held among only applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus. If there is still a Bidding Tie after awarding all applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus, the SEU will give each applicant involved in the Bidding Tie for such Tier a five-day period to reduce its price bid and will then evaluate any revised bids submitted by the applicants involved in such Bidding Tie. The SEU will then award one or more SREC Transfer Agreements to some or all of the applicants involved in such Bidding Tie as follows:

- first, if any such applicant submits a reduced price bid, to such applicant(s) on the basis of the lowest price bid until: (a) the pending solicitation is fully subscribed

or only a *de minimis* portion of such solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; (b) the next highest price bid would cause the pending solicitation to be oversubscribed; or (c) there is a Bidding Tie with respect to the remaining bids; and

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

If a project selected based on bid price or by lottery would cause the pending solicitation to be oversubscribed, the SEU will give the applicant the option to reduce the capacity of the Generation Unit to the remaining balance of the pending solicitation. If the applicant elects not to reduce the capacity of the Generation Unit, its bid application will be rejected, and the solicitation will continue until the pending solicitation is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed. If the applicant elects to reduce the capacity of the Generation Unit so that it fits within a pending solicitation, the Estimated SREC Quantity will be reduced by an equal percentage. In addition, if such reduction qualifies the project for a lower Tier, the original form of SREC Transfer Agreement will be terminated and replaced with the form of agreement applicable to the lower Tier. In such case, the reduced capacity of the Generation Unit will be reallocated from the Tier originally bid to such lower Tier and any excess deposit will be returned to the Owner.

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

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

## **17. Solicitation for 2022 Compliance Year**

### **17.1 Resource Allocation**

Based on Delmarva's forecasted load, it intends to procure a minimum of 11,000 SRECs and may procure up to a maximum 16,000 SRECs through the long-term auction, as follows:

- Alpha Tier – 6,000\* SRECs
- Beta Tier – 5,000\* SRECs
- Gamma Tier – 5,000\* SRECs

**\*NOTE:** After Alpha and Beta Tiers have been filled by winning bids, Delmarva, at its discretion, may purchase up to an additional 5,000 SRECs from the Gamma Tier and/or lowest priced losing bid from any Tier, with its maximum purchase not to exceed 16,000 SRECs.

**APPENDIX 1**

**Form of SREC Transfer Agreement**

**SOLAR RENEWABLE ENERGY CREDIT**

**TRANSFER AGREEMENT**

**DELAWARE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT  
2022 SREC PROCUREMENT PROGRAM**

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

**2022 SREC PROCUREMENT PROGRAM**

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

**2022 SREC PROCUREMENT PROGRAM**

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, pertains to the sale and transfer by the Owner (as identified below) of solar renewable energy credits created by a solar power project (as described in more detail below, the “*Project*”)<sup>1</sup> to SEU One, LLC (or any successor organization thereto, the “*SEU*”).

**PART I  
PROJECT AND OWNER INFORMATION**

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

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

B. Owner Representative (if one is designated):

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

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

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

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

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

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

C. Payee (check one):

- Owner
- Owner Representative

D. Project:

- Street address:<sup>5</sup> \_\_\_\_\_  
(or parcel number if property does not have street address)
- City, state, and zip code: \_\_\_\_\_
- Nameplate capacity: \_\_\_\_\_ kW<sup>6</sup>
- Tier designation (check one):
  - Alpha Tier Project (Small and Medium Scale; In-State Delaware; Less than or equal to 350 kW; New systems (interconnection approval on or after September 24, 2021) of this size in any DE service territory are eligible (inc. systems that elect not to participate in the Prebuy Program); GEF Grant recipients in the DPL service territory (*i.e.*, under 100 kW) are eligible until the Prebuy Program is fully instituted)
  - Beta Tier Project (Large Scale; In-State Delaware; Greater than 350 kW but less than or equal to 2 MW; New systems (interconnection approval on or after September 24, 2021) of this size in any DE service territory are eligible)
  - Gamma Tier Project (Discretionary; Any location; Any system up to 5 MW; Includes existing, leased systems, and out of state systems)
- Operational status (check one):
  - Project under development as of Bid Date

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<sup>5</sup> If the Project is located at multiple locations, the street address or parcel number for each location must be provided. A separate page may be attached if necessary.

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

- Operation Date has occurred as of Bid Date  
Operation Date: \_\_\_\_\_
- Purchase Obligation Date (check one):
  - June 1, \_\_\_\_
  - First day of the month following project certification by DPSC as Eligible Energy Resource
- Utility interconnection:  
\_\_\_\_\_ Interconnecting Utility
- SREC credits (check if applicable):
  - The Project qualifies for a 10% credit on SREC output (if applicable, the “*Delaware Equipment Bonus*”) because the Project is sited in the State of Delaware and a minimum of 50% of the cost of renewable energy equipment, inclusive of mounting components, is manufactured in Delaware.
  - The Project qualifies for a 10% credit on SREC output (if applicable, the “*Delaware Workforce Bonus*”) because the Project is sited in the State of Delaware and is or will be constructed and/or installed either with a workforce at least 75% of whom are Delaware residents or by a company that employs at least 75% Delaware residents.
- Energy and SREC output
 

Estimated first year total energy output: \_\_\_\_\_ kWh (exclusive of any bonuses described below)

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

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

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

Estimated SREC Quantity (first year) \_\_\_\_\_ SRECs

E. Bid information:

- Date of receipt of Owner’s application: \_\_\_\_\_  
[To be filled in by the SEU]
- Bid Price: \$\_\_\_\_\_ / SREC (for first 10 Contract Years)

**PART II**  
**TERMS AND CONDITIONS**

Section 2.1 Purchase and Sale of SRECs.

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

2.1.2 Excess SRECs. If a project creates any Excess Amount during any Contract Year, the SEU shall, no later than thirty (30) days after the end of such Contract Year, notify the Owner whether or not it will purchase all or any portion of such Excess Amount. Failure by the SEU to notify the Owner of such election within such time period shall be deemed an election by the SEU to not purchase the Excess Amount or any portion thereof for such Contract Year. In the event that the SEU does not purchase any portion of the Excess Amount created by a project for any Contract Year, the SEU shall promptly transfer such SRECs to the GATS account of the Owner or to any other GATS account they specify. The SEU will also hold the SRECs in the SEU GATS account for the Owner if they so desire.

2.1.3 GATS Registration. The Owner or, if one is designated, the Owner Representative, shall be responsible for transferring the Project SRECs to the SEU by executing all required documents to move the Project generator to the GATS account of the SEU.

2.1.4 Term of Purchase.

- (a) If the Operation Date of the Project did not occur prior to the Bid Date, the SEU’s obligation to purchase SRECs (the “**Purchase Obligation Date**”) shall commence as of the later of June 1, 2022, or the first day of the month after the Project is certified as an Eligible Energy Resource by the DPSC.
- (b) If the Operation Date of the Project occurred prior to the Bid Date, the SEU’s obligation to purchase SRECs shall commence as of June 1, 2022.

- (c) Under either scenario described in Subsections (a) or (b) of this Section, the date on which the term of the Agreement begins will be the Commencement Date.
- (d) The SEU's obligation to purchase SRECs shall continue from the Commencement Date for a period of ten (10) years.

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

## Section 2.2 Operational Matters.

### 2.2.1 Interconnection.

- (a) The Owner shall be solely responsible for interconnecting the Project to the electric transmission or distribution system of the Interconnecting Utility. In order to invoke its rights under this Section 2.2.1 (b)-(d), the Owner shall submit a complete interconnection application (Step 1) to the Interconnecting Utility no later than one hundred twenty (120) days after the Execution Date.
- (b) If the Interconnecting Utility notifies the Owner that there will be a fee or charge (other than a standard interconnection application fee) required to interconnect the Project, the Owner may, within ten (10) days of such notice, elect to: (i) reduce the capacity of the Project to avoid or minimize such fee or charge; or (ii) terminate this Agreement.
- (c) If the Owner elects to reduce the capacity of the Project pursuant to Section 2.2.1(b), it shall provide the SEU with written notice specifying the reduced nameplate capacity of the Project and upon such election, the Estimated SREC Quantity (first year) shall be deemed to be reduced by the same percentage as the reduction in the nameplate capacity. Promptly upon receipt of such election, the SEU shall return or release any excess Bid Deposit to the Owner.
- (d) If the Owner elects to terminate this Agreement pursuant to Section 2.2.1(b), it shall provide the SEU with written notice of termination promptly upon receipt of such election; the SEU shall thereafter return or release the entire Bid Deposit to the Owner.

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

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

2.2.4 Changes to Operational Characteristics. The Owner and, if one is designated, the Owner Representative, shall promptly notify the SEU of any substantive changes to the operational characteristics of the Project, including providing the SREC Procurements Administrator with copies of any notices/forms submitted to the DPSC pursuant to 26 Del. Admin C. § 3008 (3.1.10 & 3.1.11) and any DPSC correspondence relating to any such notices. System add-ons with Delaware labor and/or workforce bonuses that differ from the original system are required to include a new meter for generation tracking if the original facility is to maintain any bonuses associated with the original certification. Any misrepresentation of system characteristics or failure to comply with the DPSC regulations may result in a change in certification of the original system and addition or decertification of the addition. Misrepresentations of system characteristics will be judged in a case-by-case basis by the DPSC and the SEU will use the final DPSC certification to determine the system's continued compliance with the contract.

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

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

## Section 2.3 Conditions.

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

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

2.3.3 GATS Registration. The SEU's obligation to purchase Project SRECs is subject to the Owner's completion of all requirements to move the Project generator to the SEU's GATS account.

2.3.4 Certifications. The Owner shall deliver to the SEU, promptly upon receipt thereof: (a) a copy of the DPSC certification of the Project as an Eligible Energy Resource; (b) the Owner's GATS account number and a copy of the Owner's GATS registration if an Existing System is already registered in GATS, or the required documentation to allow the SEU to register the system in the SEU GATS account. If the Project is designated as being eligible for the Delaware Equipment Bonus and/or the Delaware Workforce Bonus in Part I, the Owner shall provide the SEU with a copy of the DPSC certification that the Project qualifies for such credit(s) no later than thirty (30) days after the Operation Date.

## Section 2.4 Purchase Price and Payment Terms.

### 2.4.1 Purchase Price.

- (a) The Purchase Price for Project SRECs created during Contract Years 1 through 10 will be the bid price set forth in the application submitted for such Project.
- (b) The Purchase Price for Project SRECs created during Contract Years 11-25 shall be \$0 per SREC.

2.4.2 SREC Bonus. If the Delaware Equipment Bonus or the Delaware Workforce Bonus is specified in Part I and the DPSC certifies that the Project qualifies for either such bonus, payment of the Purchase Price will be based on the number of Project SRECs plus an additional (10%). If the Delaware Equipment Bonus and the Delaware Workforce Bonus is specified in Part I and the DPSC certifies that the Project qualifies for both such bonuses, payment of the Purchase Price will be based on the number of Project SRECs plus an additional twenty percent (20%). Under either scenario, the bonus will be only paid during the first ten (10) year term of the Agreement.

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

### 2.4.4 Limitations.

- (a) The SEU shall not be obligated to pay for any SRECs in excess of the sum of: (i) the Maximum Annual Quantity; plus (ii) if applicable, any portion of the Excess Amount which it has elected to purchase pursuant to Section 2.1.2.

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

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

## Section 2.5 Completion Guarantee.

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

### 2.5.2 Damages for Delayed Operation Date.

- (a) If the Operation Date does not occur by the Guaranteed On-Line Date, the Owner shall pay to the SEU, and if such amount is not paid, the SEU shall be entitled to draw against the Bid Deposit, an amount equal to 1/30 of the original Bid Deposit amount for each day (or portion thereof) of such delay, for up to thirty (30) days of delay.
- (b) If the Operation Date does not occur by the date which is 31 days after the Guaranteed On-Line Date, the SEU shall have the right to terminate this Agreement.
- (c) The remedies set forth in Sections 2.5.2(a) and 2.5.2(b) shall be the Owner's exclusive remedy based on a delay in achieving or a failure to achieve the Operation Date by the Guaranteed On-Line Date.
- (d) The Owner acknowledges and agrees that: (i) the SRECs being purchased by the SEU are for the benefit of certain retail electric suppliers operating in the State of Delaware; (ii) in the event the Operation Date does not occur by the Guaranteed On-Line Date, the damages to be suffered by the SEU and such electric suppliers would be difficult or impossible to determine with certainty; (iii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the damages set forth in Section 2.5.2(a) represent reasonable and genuine estimates of such damages; and (iv) such damages are not intended to and do not constitute a penalty.

Section 2.6 Representations, Warranties and Acknowledgements.

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

- (a) unless it is an individual, it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, and is duly authorized and qualified to do business therein, in Delaware and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary;
- (b) it is not in violation of any Applicable Law in any manner that would reasonably be expected to affect its performance under this Agreement;
- (c) there are no legal, administrative, or arbitral proceedings or actions, controversies, or investigations, now pending or to its knowledge threatened against it which, if adversely determined, could reasonably be expected to affect its performance under this Agreement;
- (d) none of the execution, delivery, or performance of this Agreement conflict with or result in a violation of the terms of its charter or by-laws or any agreement by which it is bound;
- (e) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action;
- (f) this Agreement has been duly and validly executed and delivered by it and, when executed and delivered by the SEU, will constitute its legal, valid, and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles;
- (g) it has rights in, and good title to the Collateral, and has full power and authority to grant to the SEU the security interest in the Collateral and to execute, deliver, and perform its obligations in accordance with the terms of this Agreement without the consent or approval of any other Person other than any consent or approval that has been obtained;
- (h) the security interest granted by the Owner to the SEU pursuant to Section 5.2.1 constitutes a valid, legal, and, upon the filing of the financing statements referred to in Section 5.2.2, a first-priority perfected security interest in all the Collateral granted by the Owner as security for the Secured Obligations;

- (i) the Project is an Eligible Energy Resource as defined by REPSA and will obtain all necessary approvals, regulatory or otherwise, to perform the obligations set forth herein;
- (j) the information set forth in Part I is true and accurate in all respects;
- (k) the Owner has received no supplemental funding from public sources other than the funding, if any, identified in Part I; and
- (l) all major components of the Project are or will be new and unused and are being or will be used for the first time in the Project.

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

- (a) the SEU has executed this Agreement and is purchasing Project SRECs for the benefit of certain retail electricity suppliers operating in the State of Delaware;
- (b) in executing and performing this Agreement, the SEU is acting on behalf of such suppliers;
- (c) such suppliers are third party beneficiaries of this Agreement who are entitled to directly enforce the terms hereof; and
- (d) the SEU may appoint a third-party (the “*Contracting Agent*”) to perform any or all of the obligations and responsibilities of the SEU pursuant to this Agreement and, in such event, the Owner shall recognize the authority of the Contracting Agent to perform such obligations and responsibilities.

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

Section 2.7 Change in Estimated SREC Quantity. An Owner may not modify the Estimated SREC Quantity except as expressly permitted hereunder.

Section 2.8 Default and Remedies.

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

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

- (b) any representation or warranty of such Party made pursuant to this Agreement shall have been incorrect when made and shall remain incorrect thirty (30) days after notice thereof;
- (c) with respect to the Owner and, if one is designated, the Owner Representative: (i) the Bid Deposit or, if applicable, the Supplemental Credit Support is not maintained or the issuer thereof repudiates its obligations thereunder; or (ii) the lien required pursuant to Section 5.2 ceases to be a perfected, first priority security interest;
- (d) with respect to the Owner and, if one is designated, the Owner Representative, the nameplate rating of the Project varies from that set forth in Part I by more than: (i) 5% for a Project with a nameplate rating less than 500 kW; or (ii) 2.5% for a Project with a nameplate rating of 500 kW or greater, except that bids that were granted partial fill may submit a new system size at the time they accept the partial fill;
- (e) with respect to the Owner and, if one is designated, the Owner Representative, any Project SRECs (up to the Maximum Annual Quantity and, if applicable, any portion of any Excess Amount that the SEU elects to purchase pursuant to Section 2.1.2) are not transferred to the SEU;
- (f) with respect to the Owner and, if one is designated, the Owner Representative, the Project shall have been designated in Part I as eligible for the Delaware Equipment Bonus or the Delaware Workforce Bonus and the DPSC shall have failed to certify the Project as eligible for any such designated credit within thirty (30) days after the Operation Date;
- (g) with respect to the Owner Representative (but not the Owner), either: (i) any representation or warranty of the Owner Representative made pursuant to Part III shall have been incorrect when made and shall remain incorrect thirty (30) days after notice thereof; or (ii) the Owner Representative fails to perform any obligation pursuant to Part III for a period of 30 days following receipt of notice of such failure;
- (h) such Party fails to perform any other obligation pursuant to this Agreement for a period of thirty (30) days following receipt of notice of such failure; or
- (i) a proceeding is instituted against such Party seeking to adjudicate it as bankrupt or insolvent and such proceeding is not dismissed within sixty (60) days of filing; such Party makes a general assignment for the benefit of its creditors; a receiver is appointed on account of the insolvency of such Party; such Party files a petition seeking to take advantage of any Applicable Law relating to bankruptcy, insolvency, reorganization,

winding up or composition or readjustment of debts; or such Party is unable to pay its debts when due or as they mature.

#### 2.8.2 General Remedies.

- (a) Upon the occurrence of an Event of Default by the Owner, the SEU shall be entitled to: (i) exercise any remedies described in this Agreement which, unless specified to be exclusive, shall be deemed non-exclusive; (ii) exercise any remedies available at law or in equity, including specific performance, termination of this Agreement, and/or recovery of damages equal to the incremental cost of replacing the expected SREC output of the Project for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the SEU); and/or (iii) suspend its performance hereunder.
- (b) Upon the occurrence of an Event of Default by the Owner Representative pursuant to Section 2.8.1(g), the Owner and/or the SEU shall be entitled to: (i) remove such Owner Representative as a Party to this Agreement by delivery of written notice to such Owner Representative and the other Party and, if necessary, replace such Owner Representative; and (iii) exercise any remedies available at law or in equity, including specific performance; *provided, however*, that neither the Owner nor the SEU may terminate this Agreement based on such an Event of Default by the Owner Representative.
- (c) Upon the occurrence of an Event of Default by the SEU, the Owner shall be entitled to: (i) exercise any remedies described in this Agreement which, unless specified to be exclusive, shall be deemed non-exclusive; (ii) exercise any remedies available at law or in equity, including specific performance or termination of this Agreement and recovery of damages equal to the difference, if positive, between the Purchase Price under this Agreement and the market price for SRECs in Delaware for the remaining term of this Agreement (based on a reasonable forecast of the market price for SRECs, as determined by an independent expert designated by the Owner); and/or (iii) suspend its performance hereunder. During any such suspension, the Owner and, if one is designated, the Owner Representative, shall have the right to transfer and sell Project SRECs to one or more third parties in order to mitigate its damages hereunder.

### 2.8.3 Specific Remedies.

- (a) Upon the occurrence of an Event of Default described in Section 2.8.1(f), the SEU may terminate this Agreement and recover damages equal to the remaining balance of the Bid Deposit. Payment or forfeiture of such amount shall be the exclusive liability of the Owner in such event.
- (b) The Owner and, if one is designated, the Owner Representative, acknowledges and agrees that: (i) in the event not all Project SRECs are transferred to the SEU or the Project fails to qualify for the Delaware Workforce Bonus after the SEU allots a portion of its procurement for SREC credits, the damages to be suffered by the SEU and certain retail electricity suppliers would be difficult or impossible to determine with certainty; (ii) after taking into account the terms of this Agreement and all relevant circumstances as of the date hereof, the damages set forth in Section 2.8.3(a) represent reasonable and genuine estimates of such damages; and (iii) such damages are not intended to and do not constitute a penalty.

### 2.8.4 Limitations of Liability.

- (a) Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, or indirect damages, lost profits, or other business interruption damages by statute, in tort or contract, or otherwise.
- (b) Except to the extent provided otherwise in this Agreement, the Owner Representative shall not be liable for a breach or default by the Owner.

## Section 2.9 Force Majeure.

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

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

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

address, and mitigate the impact of, the Force Majeure event; and (c) provide prompt notice to the other Party as soon as it is able to resume performance.

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

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

### **PART III OWNER REPRESENTATIVE**

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

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

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

Section 3.3 Termination or Replacement of Owner Representative.

3.3.1 Right to Terminate or Replace. The Owner may, at its discretion, terminate and/or replace the Owner Representative at any time and for any reason (or no reason), *provided, however*, that: (a) the Owner shall immediately notify the SEU of such termination or replacement; and (b) any replacement Owner Representative shall execute a counterpart of this Agreement and agree to be bound by the terms hereof.

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

3.3.3 Replacement Owner Representative. Immediately upon receipt by the SEU of: (i) written notice in accordance herewith from the Owner that it has designated a

replacement Owner Representative; and (ii) an executed counterpart of this Agreement, signed by such replacement Owner Representative, such replacement Owner Representative shall be deemed to be a Party to this Agreement.

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

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is duly authorized and qualified to do business therein, in Delaware and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary;
- (b) it is not in violation of any Applicable Law in any manner that would reasonably be expected to affect its performance under this Agreement;
- (c) there are no legal, administrative or arbitral proceedings or actions, controversies, or investigations, now pending or to its knowledge threatened against it which, if adversely determined, could reasonably be expected to affect its performance under this Agreement;
- (d) none of the execution, delivery, or performance of this Agreement conflict with or result in a violation of the terms of its charter or by-laws or any agreement by which it is bound;
- (e) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action;
- (f) this Agreement has been duly and validly executed and delivered by it and, when executed and delivered by the Owner and the SEU, will constitute its legal, valid, and binding obligation enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles;
- (g) the description of the Project set forth in Part I is true and accurate in all respects; and
- (h) it owns, leases, controls, or is the direct assignee of all of the SRECs created by the Project and at least one other Eligible Energy Resource.

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