

**STATE OF DELAWARE**

**PILOT PROGRAM**

**FOR THE PROCUREMENT OF**

**SOLAR RENEWABLE ENERGY CREDITS**

**December, 2011 (REVISED)**

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**STATE OF DELAWARE  
PILOT PROGRAM  
FOR THE PROCUREMENT OF  
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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 2011 compliance year (beginning June 1, 2011), retail electricity suppliers must purchase at least 7% of their retail load in Delaware from renewable resources. That requirement increases to 25% for the 2025 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to retail customers.

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

To encourage the development of new renewable energy generation, REPSA mandates that no more than 1% of the renewable energy purchase requirement can be satisfied by purchases from renewable energy generation resources (each, a “**Generation Unit**”) that were in commercial

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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.

operation prior to January 1, 1998. For the 2026 and subsequent compliance years, no such pre-existing Generation Units will be eligible to satisfy any portion of the REPSA requirement.

When it enacted REPSA, the Delaware General Assembly acknowledged that “the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state.”<sup>2</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>3</sup>

## 2. Solar Renewable Energy Credits

### 2.1 General

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

RECs and SRECs are created upon the generation of electricity by an Eligible Energy Resource and the registration of such REC or SREC within GATS. Each owner of an Eligible

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

<sup>3</sup> *Id.* § 359(a).

<sup>4</sup> A REC does not include any emission reduction credits or allowances required to comply with any necessary permits for Generation Units.

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 years or until it is retired to satisfy the requirements of REPSA. Such three-year period is tolled during any period that a REC or SREC is held by the Delaware Sustainable Energy Utility (the “*SEU*”).

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

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

## 3. The Delaware Renewable Energy Taskforce

The 2010 amendments to REPSA established the Renewable Energy Taskforce (the “*Taskforce*”) to make “recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware.”<sup>6</sup> The Taskforce was

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

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

directed to find ways to increase deployment of solar generation and enhance the market for SRECs.

Its responsibilities include making recommendations about the following:

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

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

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

##### 4.1 **Public Solicitations**

The Taskforce believes that the procurement of SRECs by retail electricity suppliers operating in the State of Delaware should be implemented through public solicitations, which can be

efficiently managed by the SEU.<sup>7</sup> The SEU will issue solicitations based on the SREC requirements of the participating retail electricity suppliers. The solicitations will be for SRECs and other environmental attributes<sup>8</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 the SREC Procurement Pilot Program.

#### 4.2 Owner Qualifications

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

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

<sup>8</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>9</sup> An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

<sup>10</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.

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

#### 4.3 Eligible Projects

To qualify for participation in the SREC Procurement Pilot Program, a Generation Unit must: (a) qualify as a “Solar Photovoltaic Energy Resource” in accordance with the DPSC rules; (b) be eligible for certification as an Eligible Energy Resource under REPSA; and (c) be comprised of new (*i.e.*, unused) equipment. Only Generation Units that have received approvals of their “Accepted Completed Solar System Interconnection Applications” dated December 1, 2010 or later will be eligible to participate in the SREC Procurement Pilot Program. Tier 2-B and Tier 3 projects may only participate in the SREC Procurement Pilot Program if they do not receive any supplemental funding from a public source (other than grants in lieu of investment tax credits). Tier 1 and Tier 2-A projects may accept such grants in lieu of investment tax credits as well as grants associated with the Delaware Green Energy Program (“*GEP*”).

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

**GENERATION UNIT TIER DESIGNATIONS**

<u>Tier</u>	<u>Nameplate Rating</u> (DC at STC)
1	Less than or equal to 50 kW
2-A	Greater than 50 kW but less than or equal to 250 kW
2-B	Greater than 250 kW but less than or equal to 500 kW
3	Greater than 500 kW but less than or equal to 2 MW
4	Greater than 2 MW <sup>11</sup>

The capacity of a Generation Unit and its applicable tier will be based on the aggregate nameplate rating of all solar arrays: (a) that are located on the same parcel of land (as established by the local taxing authority) or share a single utility interconnection point; and (b) for which applications are submitted for the same compliance year.<sup>12</sup>

4.4 Ongoing Program Evaluation

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

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<sup>11</sup> The procurement of SRECs for Tier 4 for the 2011 compliance year was satisfied in full with the purchase of SRECs from the Dover Sun Park Project. Accordingly, the process for procuring SRECs from Tier 4 projects is not included in the initial pilot SREC Procurement Pilot Program.

<sup>12</sup> An Owner may, at its discretion, include additional solar arrays at other locations, in which case the capacity of such arrays will be aggregated for purposes of determining the capacity and tier of such project.

## 5. Bid Applications

### 5.1 General Requirements

Each Owner must submit, or designate its Owner Representative to submit, a completed bid application (and only one such bid application)<sup>13</sup> for each Generation Unit for which it intends to participate in the SREC Procurement Pilot Program. The application (the form of which is appended hereto as Appendix A) must include:

- a description of the Generation Unit, including its location, the types of solar panels being used and its nameplate rating (at STC);<sup>14</sup>
- a description of all supplemental funding from public sources (other than grants in lieu of investment tax credits) which the project has received, applied for or is or will be entitled to receive;
- if the Owner is not qualified to submit an application on its own behalf or if the Owner otherwise elects to designate an Owner Representative, the identity of the Owner Representative; and
- designation of the GATS account (of the Owner or Owner Representative) into which the SRECs will be deposited.

In addition, each bid application must be accompanied by:

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

### 5.2 Estimated Output

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

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<sup>13</sup> A Generation Unit may not be included in more than one bid application in any single solicitation. If such unit is not awarded an SREC Transfer Agreement as a result of such solicitation, the Owner is free to submit an application for such unit pursuant to any future solicitation.

<sup>14</sup> The equipment description contained in the application is not binding on an Owner or an Owner Representative, provided that: (a) except as expressly permitted in accordance herewith, the nameplate rating (at STC) of any substitute equipment may not vary from that described in the original application by more than 5% for Tier 1 or Tier 2 projects, or 2.5% for Tier 3 projects; and (b) in no event will the substitution of different equipment affect the Estimated SREC Quantity contained in the original application.

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

For Eligible Energy Resources claiming a bonus based on the use of Delaware-sourced equipment and/or an in-state workforce (as described in Section 2.3 above), the application must include a description of the equipment and/or identification of the contractor or workforce upon which such claim is based and the binding SREC output estimate for such resources should include any such SREC bonus.<sup>15</sup> Failure to claim a bonus at the time an application is submitted will disqualify a project from being entitled to the bonus, regardless of whether Delaware-sourced equipment or an in-state workforce is later employed.

### 5.3 Bid Deposit

Each application to participate in the SREC Procurement Pilot Program must be accompanied by a bid deposit in an amount equal to \$100 per kW (DC) of the nameplate rating (at STC) of the Eligible Energy Resource; provided that the bid deposit will be waived for qualifying projects that provide a copy of their DPSC certification as an Eligible Energy Resource along with their bid application. All bid deposits must be in the form of an acceptable letter of credit, cash or a bid bond<sup>16</sup> and will be held by the SEU on behalf of the participating retail electricity suppliers.

The bid deposits will be returned or released promptly upon: (a) rejection of an application; or (b) termination of an SREC Transfer Agreement based on the imposition by the interconnecting utility of a charge other than a standard interconnection fee (as described in Section 6.4 below). In

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<sup>15</sup> The “bonus” SRECs are not actually credited to retail electricity suppliers until they retire the SRECs to which the bonus applies. However, under the terms of the SREC Transfer Agreements, as long as the Owner provides evidence that the DPSC has certified that the Eligible Energy Resource qualifies for the bonus, payment for the SRECs will include the bonus amount.

<sup>16</sup> A bid bond must be in the form of American Institute of Architects (AIA) Form 310. In addition, any applicant that provides a bid bond as bid security will be required to replace such bond with a deposit in the form of a letter of credit or cash no later than 10 days after the SEU provides notice that its bid application has been granted.

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

#### 6. **SREC Transfer Agreements**

In order to minimize transaction costs, the SEU will enter into standard form SREC Transfer Agreements with Owners and, if required or elected by such Owners, the Owner Representatives. The SEU will countersign each SREC Transfer Agreement promptly upon determining that the associated application and bid qualify for selection pursuant to the pending solicitation (the date of signing by the SEU, the “*Execution Date*”). Each SREC Transfer Agreement will include:

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

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

## 6.1 Term of Agreement

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

## 6.2 SREC Quantity

Pursuant to each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative will be obligated to transfer (by registering within GATS) and sell to the SEU, and the SEU will be obligated to purchase and pay for, all of the SRECs produced at the Generation Unit up to the Contract Maximum (as defined below). To facilitate more efficient management and accounting for SREC procurement, and to maximize opportunities for the largest possible group of Owners to participate in the SREC Procurement Pilot Program, the quantity of SRECs that may be delivered pursuant to any SREC Transfer Agreement during any annual period will be limited to 110% of the Estimated SREC Quantity for such period (such amount, the “*Contract Maximum*”). All SRECs delivered pursuant to an SREC Transfer Agreement must be created based on the output of the Generation Unit that is the subject of that agreement. In the event a Tier 1, Tier 2-A or Tier 2-B project produces SRECs in excess of the Contract Maximum, the SEU will have the option to elect whether or not to purchase any or all of the surplus SRECs. If it exercises that option, the sale of any such excess SRECs will be subject to the same terms, conditions and pricing applicable to other SREC purchases under the SREC Transfer Agreement. In the event a Tier 3 project produces SRECs in excess of the Contract Maximum, or if the SEU declines to purchase, or purchases only a portion of, the excess SRECs produced by a Tier 1, Tier 2-A or Tier 2-B project, the SEU will transfer any such excess SRECs back to the Owner, who will have the right to sell such excess SRECs in any manner it deems appropriate.

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

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

### 6.3 Pricing

The Taskforce has established administratively set prices for Tier 1 and Tier 2-A projects. Those prices were set based on the assumption that each Owner of such a project will receive a GEP grant in an amount equal to that currently available to DPL customers (*i.e.*, pursuant to the GEP in effect since December 10, 2010). Details of the current GEP grant program may be found at <http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/default.aspx>. For Tier 1 and Tier 2-A projects that have received or will receive GEP grants in excess of that amount, there is an alternate (*i.e.*, reduced) price.<sup>17</sup>

Owners of Tier 2-B and Tier 3 projects are not eligible to receive administratively set prices and will be required to submit bids which will be evaluated and selected based on the lowest bid prices. Owners of Tier 1 and Tier 2-A projects may waive their right to receive administratively set prices, and instead, participate in competitive solicitations for Tier 2-B projects; provided that a Tier 1 or Tier 2-A project that submits a bid in a Tier 2-B solicitation will be subject to the requirements imposed on other Tier 2-B projects, *e.g.*, they cannot receive supplemental public funding other than

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<sup>17</sup> Owners that have applied for, or are entitled to receive, any such excess grant amount may elect to forego such excess amount in order to be eligible for the standard administratively set price.

grants in lieu of investment tax credits and they will be required to install revenue-grade meters with on-line monitoring.

For projects selected in competitive solicitations the SREC price during the first 10 years of the term of the SREC Transfer Agreements will be the bid price. The SREC price for the final 10 years of the SREC Transfer Agreements will be fixed at \$50 per SREC.

#### 6.4 Utility Interconnections

Each Owner must submit a complete interconnection application (Step 1) to the interconnecting utility no later than 60 days after the Execution Date. If, based on that application, the interconnecting utility proposes to assess any fee or charge (other than a standard interconnection application fee), the Owner may, within 10 days of notice of such fee or charge by the interconnecting utility, either reduce the capacity of the Generation Unit to avoid or minimize such fee or charge or terminate the SREC Transfer Agreement.

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

#### 6.5 Guaranteed On-Line Date; Delay Liquidated Damages

All projects must commence operation no later than 12 months after the Execution 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

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<sup>18</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.

Owner Representative shall have submitted a timely and complete interconnection application to the interconnecting utility). In no event will the Guaranteed On-Line Date be extended for more than one additional year.

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

#### 6.6 Payment

All Tier 1 projects receiving administratively set prices will be paid on a quarterly basis, and all other projects will be paid on a monthly basis. Each Owner will stipulate in the SREC Transfer Agreement whether payment is to be made to the Owner or, if applicable, the Owner Representative. Payment will be based on the number of SRECs transferred to and registered in the SEU's GATS account during the relevant billing period.

#### 6.7 Metering

All Tier 1 projects receiving administratively set prices must install either a standard, utility-grade meter or a revenue-grade meter, in either case with on-line monitoring. All other projects must have a revenue-grade meter with on-line monitoring.

#### 6.8 Conditions Precedent

The SEU's purchase obligations under each SREC Transfer Agreement will be conditioned on: (a) the Owner providing evidence that it has received a certification number from the DPSC confirming that the referenced Generation Unit qualifies as an Eligible Energy Resource; and (b) for Generation Units that are eligible in accordance with GATS rules and procedures, the Owner executing a standing order directing that all SRECs generated by such unit (up to the Contract Maximum) be transferred to the SEU's GATS account. For projects claiming a bonus based on the

use of Delaware-sourced equipment or an in-state workforce (as described in Section 2.3 above), the SEU's obligations will also be subject to delivery of confirmation from the DPSC that the resource qualifies for the claimed bonus (which confirmation may be delivered within 30 days of the commencement of operation of the resource).

#### 6.9 Performance Credit Support

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

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

#### 6.10 Project Maintenance; Inspections

Owners and, if applicable, Owner Representatives will be responsible for maintaining Generation Units so that they remain Eligible Energy Resources and are able to produce their

respective Estimated SREC Quantities. Owners and Owner Representatives must notify the SEU of any substantive changes to the operational characteristics of the Generation Unit.<sup>19</sup>

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

#### 6.11 Excused Performance

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

#### 6.12 Default Provisions

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

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

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

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

### 6.13 Remedies

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

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

If a Tier 3 project fails to produce the Minimum Annual Quantity of SRECs during any annual period, the Owner will owe damages equal to the amount of the shortfall, multiplied by the difference, if positive, between: (a) the lower of the prevailing market price of SRECs (as reasonably determined by the SEU) or the amount of the “Alternative Compliance Payment” (as defined in REPSA) for the year in which such shortfall occurs; and (b) the price for SRECs under the SREC Transfer Agreement. Such damages shall be due and payable no later than 30 days after the end of the annual period to which they apply. Payment of such damages will be the Owner’s sole liability for the failure to deliver the Minimum Annual Quantity.

### 6.14 Replacement of Owner Representative

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

participate in the SREC Procurement Pilot Program on its own behalf fails to designate a replacement Owner Representative within such period, the SEU will have the right to designate the replacement Owner Representative, in its reasonable discretion.

## 7. **Bid Awards**

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

### 7.1 Solicitations for Tier 1 and Tier 2-A Projects

A solicitation for Tier 1 or Tier 2-A projects will remain open until it is fully subscribed. All qualifying applications submitted pursuant to any such solicitation will be accepted for a period of 5 business days following the opening of such solicitation. If the total capacity of the Tier 1 or Tier 2-A projects received during such 5-day period is less than the allocation for such solicitation, all such applications will be accepted and SREC Transfer Agreements will continue to be awarded, on a “first come-first serve” basis, until the applicable solicitation is fully subscribed.

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

If all of the Tier 1 and Tier 2-A projects in the lottery that claimed both the Delaware Equipment Bonus and the Delaware Workforce Bonus are awarded SREC Transfer Agreements and more than a *de minimis* amount of the applicable solicitation remains unsubscribed, a second lottery

will be conducted among the remaining projects that claimed either such bonus. Such lottery will continue until: (a) all such projects have been awarded SREC Transfer Agreements; (b) the applicable solicitation is fully subscribed or only a *de minimis* portion of such solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; or (c) a project is selected that would cause such solicitation to be oversubscribed.

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

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

## 7.2 Competitive Solicitations

All Tier 2-B and Tier 3 projects will be required to submit price bids in competitive solicitations. In addition, Tier 1 and Tier 2-A projects may waive their right to receive an administratively set price, and instead, elect to participate in a competitive solicitation for Tier 2-B projects, provided they (a) waive their right to receive any GEP grant or other supplemental public

funding other than grants in lieu of investment tax credits,<sup>20</sup> and (b) comply with the requirements and conditions applicable to Tier 2-B projects.

The price bid for each project participating in a competitive solicitation must be for a fixed dollar amount, which amount cannot escalate or otherwise vary during the initial 10-year period of the term. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids in each solicitation; provided that the SEU will not accept any bids in excess of \$280 per SREC.

If a Tier 2-B or Tier 3 allocation is not fully subscribed in the initial solicitation, a second solicitation will be held within the following six months for the balance of the allocation for such tier. The SEU will announce all solicitations for competitively priced bids at least 30 days in advance of the bid date.

### 7.3 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 give each applicant involved in the Bidding Tie for such tier a 5-day period to reduce its price bid and will then evaluate any revised bids submitted by the applicants involved in such Bidding Tie. The SEU will then award one or more SREC Transfer Agreements to some or all of the applicants involved in such Bidding Tie as follows:

- first, if any such applicant submits a reduced price bid, to such applicant(s) on the basis of the lowest price bid until: (a) the pending solicitation is fully subscribed or only a *de minimis* portion of such solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; (b) the next highest price bid would cause the pending solicitation to be oversubscribed; or (c) there is a Bidding Tie with respect to the remaining bids;
- second, if after completion of the first step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SEU will award SREC Transfer Agreements based on a lottery among the remaining applicants involved in such Bidding Tie that claimed the Delaware Equipment Bonus and the Delaware Workforce Bonus;

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<sup>20</sup> Owners of Tier 1 and Tier-2-A projects that have applied for, or are entitled to receive, GEP grants and desire to participate in a solicitation for Tier 2-B projects may elect to forego receipt of such grants in order to qualify to submit a price bid in such a competitive solicitation for Tier 2-B projects.

- 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 the remaining applicants involved in such Bidding Tie that claimed either the Delaware Equipment Bonus or the Delaware Workforce Bonus; and
- fourth, if after completion of the third 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.

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: (a) the pending solicitation is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; or (b) there are no remaining applications with a bid price below \$280 per SREC. 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.

## 8. Solicitation for 2011 Compliance Year

### 8.1 Resource Allocation

Based on forecasted load, the SREC solicitations for the 2011 compliance year will be for 11,472 SRECs,<sup>21</sup> which will be allocated as follows:

- Tier 1 – 2,972 SRECs
- Tier 2-A – 2,000 SRECs
- Tier 2-B – 2,000 SRECs<sup>22</sup>
- Tier 3 – 4,500 SRECs

### 8.2 Pricing

The Taskforce has established administratively set prices for Tier 1 and Tier 2-A projects for the 2011 solicitation that it believes will encourage development of new solar generating resources while taking into account reasonable project development costs (as such costs may be off-set by available grants, subsidies and tax benefits). The pricing set forth herein was established based on assumptions developed by the Taskforce and by utilizing PV Planner software.<sup>23</sup>

The administratively set prices established for the SREC Procurement Pilot Program are as follows:

#### **PRICING**

<i>Project</i>	<i>Base Price</i>		<i>Alternate Price</i>	
	<i>Years 1-10</i>	<i>Years 11-20</i>	<i>Years 1-10</i>	<i>Years 11-20</i>
Tier 1	\$260 per SREC	\$50 per SREC	\$235 per SREC	\$50 per SREC
Tier 2-A	\$240 per SREC	\$50 per SREC	\$175 per SREC	\$50 per SREC

<sup>21</sup> In addition to the SRECs being solicited through the SREC Procurement Pilot Program, Delmarva has already contracted to purchase 9,846 Tier 4 SRECs from the Dover Sun Park Project, of which 2,846 are being utilized for the 2011 compliance year.

<sup>22</sup> The anticipated SREC supply from any Tier 1 and Tier 2-A projects selected in a solicitation for a Tier 2-B project will be counted as part of the Tier 2-B allocation.

<sup>23</sup> PV Planner software has been developed over a 16-year period by the Center for Energy and Environmental Policy in consultation with the U.S. National Renewable Energy Laboratory and others. It utilizes meteorological data to forecast PV cell output and incorporates a vast quantity of data to model financial performance of solar generation units.

SEU Use Only

Application Number: \_\_\_\_\_  
Bid Date: \_\_\_\_\_  
Intake Personnel: \_\_\_\_\_  
Application Complete: Yes/No

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

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

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

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

Name (company or individual): \_\_\_\_\_  
Street address: \_\_\_\_\_  
City, state and zip code: \_\_\_\_\_  
Email address: \_\_\_\_\_  
GATS Account No.:<sup>2</sup> \_\_\_\_\_  
Other Eligible Energy Resources  
owned by Owner:<sup>3</sup> \_\_\_\_\_

**Owner Representative Information (to be filled in if applicable)**<sup>4</sup>

Name (company or individual): \_\_\_\_\_  
Street address: \_\_\_\_\_  
City, state and zip code: \_\_\_\_\_  
Email address: \_\_\_\_\_  
GATS Account No.: \_\_\_\_\_  
Other Eligible Energy Resources  
owned by Owner Representative: \_\_\_\_\_

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

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

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

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

**Description of Project**

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

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

Nameplate capacity (kW-DC)<sup>5</sup> \_\_\_\_\_

Tier designation (check one):

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

Module type (make and model): \_\_\_\_\_

Inverter type (make and model): \_\_\_\_\_

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

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

Mounting location (specify one):

- Ground
- Rooftop

Operational status (check one):

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

Estimated energy and SREC output:

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

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

Utility interconnection:

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

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

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

**Required Information**

Supplemental funding from public sources<sup>6</sup> (provide information for any funding applied for, awarded and/or received):

- Delaware Green Energy Program Grant  
 Application Date: \_\_\_\_\_  
 Utility: \_\_\_\_\_  
 Award Date: \_\_\_\_\_  
 Amount: \_\_\_\_\_
- Other public supplemental funding (provide additional sheet if necessary)  
 Source: \_\_\_\_\_  
 Application Date: \_\_\_\_\_  
 Award Date: \_\_\_\_\_  
 Amount: \_\_\_\_\_

Eligibility for Delaware Equipment Bonus (check if applicable):

- The Project is sited in the State of Delaware and a minimum of 50% of the total cost of renewable energy equipment, inclusive of mounting components, is manufactured in Delaware<sup>7</sup>

Eligibility for Delaware Workforce Bonus (check if applicable):

- The Project is sited in the State of Delaware and is or will be constructed and/or installed either with a workforce at least 75% of whom are Delaware residents or by a company that employs at least 75% Delaware residents<sup>8</sup>

Price Bid:<sup>9</sup> \$ \_\_\_\_\_ per SREC (applicable during first 10 years)

[For any Owner of a Tier 1 or Tier 2-A project submitting a price bid]

THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT BY SUBMITTING THE PRICE BID SET FORTH ABOVE, THIS APPLICATION WILL BE EVALUATED ON A COMPETITIVE BASIS WITH OTHER PRICE BIDS AND THAT IT WILL BE DEEMED TO HAVE WAIVED ANY AND ALL RIGHTS IT MAY HAVE PURSUANT TO THE 2011 SREC PROCUREMENT PILOT PROGRAM TO RECEIVE AN ADMINISTRATIVELY SET PRICE FOR SRECS GENERATED BY THE PROJECT.

\_\_\_\_\_  
Owner

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

THE UNDERSIGNED HEREBY CERTIFIES THAT: (A) IT IS THE OWNER IDENTIFIED HEREIN; (B) THIS IS THE ONLY APPLICATION BEING SUBMITTED PURSUANT TO THE 2011 SREC PROCUREMENT PILOT PROGRAM THAT INCLUDES THE PROJECT DESCRIBED HEREIN; (C) THE INFORMATION SET FORTH IN THIS APPLICATION IS TRUE, ACCURATE AND COMPLETE; AND (D) IT HAS FULLY, COMPLETELY AND ACCURATELY IDENTIFIED ALL SUPPLEMENTAL FUNDING FROM PUBLIC SOURCES (OTHER THAN GRANTS IN LIEU OF INVESTMENT TAX CREDITS) FOR WHICH IT HAS APPLIED OR WHICH IT HAS BEEN AWARDED OR RECEIVED.

\_\_\_\_\_  
Owner

<sup>6</sup> Excluding any grants in lieu of investment tax credits.

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

<sup>8</sup> Eligibility for the Delaware Workforce Bonus shall be determined solely by the DPSC.

<sup>9</sup> For all Tier 2-B and Tier 3 Projects and for any Tier 1 and Tier 2-A Projects that have elected to waive their right to receive an administratively set price.

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

**Attachments**

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

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

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