

STATE OF DELAWARE

2013 PROGRAM

FOR THE PROCUREMENT OF

SOLAR RENEWABLE ENERGY CREDITS

November 20, 2012

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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.¹ For the 2013 compliance year (beginning June 1, 2013), retail electricity suppliers must purchase at least 10% of their retail load in Delaware from renewable resources.² That requirement increases incrementally each subsequent compliance year, up to 25% for the 2025 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to customers.

REPSA was amended in 2007 to require that a certain portion of each retail electricity supplier's renewable energy requirement be satisfied with energy from solar technologies. The 2010 amendments to REPSA established a solar set aside of 0.60% for the 2013 compliance year, which increases incrementally to 3.50% for the 2025 compliance year. For 2026 and future compliance years, the Delaware Public Service Commission ("**DPSC**") will establish solar set-asides at levels at least equal to the 2025 set-aside.

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

¹ 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.

² RESPA was amended in Jul 2011 to provide: "[b]eginning with compliance year 2012, commission-regulated electric companies shall be responsible for procuring RECs, SRECs and any other attributes needed to comply with subsection (a) of this section with respect to all energy delivered to such companies' end use customers." 26 Del. C. §354(e) Accordingly, Delmarva Power is now responsible for RESPA compliance for its entire delivery load.

When it enacted REPSA, the Delaware General Assembly acknowledged that “the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state.”³ 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.”⁴

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.⁵ One REC is equivalent to such characteristics associated with 1 megawatt-hour (“*MWh*”) of energy derived from such a resource. A solar renewable energy credit (an “*SREC*”) represents the same non-price characteristics of 1 MWh of energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology.

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

2.2 Banking of SRECs

³ 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.*

⁴ *Id.* § 359(a).

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

Once a REC or SREC is created, it continues to exist for three 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.⁶

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.”⁷ The Taskforce was directed to find ways to increase deployment of solar generation and enhance the market for SRECs. Its responsibilities include making recommendations about the following:

- establishing a balanced market mechanism for REC and SREC trading;
- establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;
- minimizing the cost for complying with REPSA;

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

⁷ *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).

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

In 2010, the Taskforce appointed a special subcommittee to consider and make recommendations regarding the SREC procurement process. That subcommittee met on numerous occasions over several months and evaluated a variety of alternative approaches to SREC procurement in an effort to reach a consensus on a comprehensive program designed to meet the objectives set forth in REPSA with respect to the development of solar generation resources. Based on the subcommittee's work, the Taskforce recommended for approval to the DPSC a statewide pilot program for the 2011 compliance year (the "*SREC Procurement Pilot Program*") to encourage solar development in the State of Delaware while minimizing costs for owners, developers, aggregators, consumers and other participants in the SREC market in Delaware.

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

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

Pursuant to Order No. 8093, DPSC retained a consultant to conduct an independent review of the SREC Procurement Pilot Program. The consultant found that the solicitation was well subscribed, with each of the program tiers oversubscribed by at least 2 to 1, and that the legislatively mandated bonuses for use of in-state equipment or workforce were very effective. Based upon feedback from subscribers as well as its own analysis, the consultant identified potential alterations to the program to reduce ratepayer impacts and create a more competitive solicitation. The consultant additionally identified that several system owners commented upon the necessity of owner representatives and their inability to represent themselves in the program.

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

4. Program Administration; Eligibility

4.1 Public Solicitations

The Taskforce believes that the procurement of SRECs by retail electricity suppliers operating in the State of Delaware should be implemented through public solicitations, managed by the SEU.⁸ Solicitations under the Pilot Program were managed by the SEU and the Taskforce has approved the use of the SEU for the Procurement Program.⁹ The solicitations will be for SRECs and other environmental attributes¹⁰ created by the Eligible Energy Resources, but will not cover the energy output of the resources. Upon receipt and

⁸ The SEU will use a third party (the "*SREC Procurement Agent*") to perform some or all of its duties with respect to the 2013 SREC Procurement Program, including conducting solicitations, evaluating bids and executing agreements on behalf of the SEU. As with the SREC Procurement Pilot Program, SRETrade will be the SREC Procurement Agent for the 2013 compliance year.

⁹ As with the Pilot Program, the recovery of costs incurred by the SEU will be dealt with in separate proceedings.

¹⁰ 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.

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 2013 SREC Procurement Program.

4.2 Owner Qualifications

To apply as an owner (an "*Owner*") of an Eligible Energy Resource pursuant to the 2013 SREC Procurement Program, the applicant must own, lease, control or be the direct assignee of all of the SRECs created by such resource.¹¹ Any party participating in the 2013 SREC Procurement Program may submit an application jointly with an entity that has executed agreements¹² to control the SRECs produced by two or more Eligible Energy Resources (such entity, an "*Owner Representative*").

An Owner that is qualified to submit an application on its own behalf may, at its option, elect to designate an Owner Representative. Affiliates of retail electricity suppliers are permitted to participate in the 2013 SREC Procurement Program as Owners or Owner Representatives (so long as they satisfy the applicable requirements for being an Owner or Owner Representative).

4.3 Eligible Projects

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

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

¹¹ An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

¹² An Owner Representative need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources. It need only have executed agreements with Owners of two or more such resources.

GENERATION UNIT TIER DESIGNATIONS

<u>New Systems</u> ¹³	
<u>Tier</u>	<u>Nameplate Rating</u> (DC at STC)
N-1	Less than or equal to 30 kW
N-2	Greater than 30 kW but less than or equal to 200 kW ¹⁴
N-3	Greater than 200 kW but less than or equal to 2 MW
<u>Existing Systems</u> ¹⁵	
<u>Tier</u>	<u>Nameplate Rating</u> (DC at STC)
E-1	Less than or equal to 30 kW ¹⁶
E-2	Greater than 30 kW but less than or equal to 2 MW

The capacity of a Generation Unit and its applicable tier will be based on the aggregate nameplate rating of all solar arrays: (a) that are located on the same parcel of land (as established by the local taxing authority) or share a single utility interconnection point; and (b) for which applications are submitted for the same compliance year.¹⁷

4.4 Ongoing Program Evaluation

The Taskforce will evaluate the 2013 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

¹³ Eligible "*New Systems*" are systems with final interconnection approval after the first date of the preceding auction process (i.e., April 2, 2012 for compliance year 2012).

¹⁴ 35% of the new systems procurement is reserved for Tier N-2. New systems procurement from Tier N-3 shall not exceed 35%.

¹⁵ Eligible "*Existing Systems*" are systems with final interconnection approval before the first date of the preceding auction process. New Systems and Existing Systems may be referred to individually as a "system" or collectively as "systems" throughout.

¹⁶ 50% of the existing systems procurement is reserved for Tier E-1. Existing systems procurement from Tier E-2 shall not exceed 50%.

¹⁷ An Owner may, at its discretion, include additional solar arrays at other locations, in which case the capacity of such arrays will be aggregated for purposes of determining the capacity and tier of such project.

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

5. Bid Applications

5.1 General Requirements

Each Owner must submit, or designate its Owner Representative to submit, a completed bid application (and only one such bid application)¹⁸ for each Generation Unit for which it intends to participate in the 2013 SREC Procurement Program. However, for New Systems that are an addition to or expansion of Existing Systems, a separate application may be submitted for both the New System and the Existing System provided that the New System has a separate meter from the Existing System installed in accordance with the requirements of Section 6.7. The application (the form of which is appended hereto as Appendix A) must include:

- a description of the Generation Unit, including its location, the types of solar panels being used and its nameplate rating (at STC);¹⁹
- if the Owner elects to designate an Owner Representative, the identity of the Owner Representative; and
- designation of the GATS account (of the Owner or Owner Representative) into which the SRECs will be deposited.

In addition, each bid application must be accompanied by:

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

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

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

¹⁸ 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.

¹⁹ The equipment description contained in the application is not binding on an Owner or an Owner Representative, provided that: (a) except as expressly permitted in accordance herewith, the nameplate rating (at STC) of any substitute equipment may not vary from that described in the original application by more than 5% for Tier 1 or Tier 2 projects, or 2.5% for Tier 3 projects; and (b) in no event will the substitution of different equipment affect the Estimated SREC Quantity contained in the original application.

5.2 Estimated Output

Each application to sell SRECs pursuant to the 2013 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.²⁰ Failure to claim a bonus at the time an application is submitted will disqualify a project from being entitled to the bonus, regardless of whether Delaware-sourced equipment or an in-state workforce is later employed.

5.3 Bid Deposit

Each application to participate in the 2013 SREC Procurement Program must be accompanied by a bid deposit in an amount equal to \$100 per kW (DC) of the nameplate rating (at STC) of the Eligible Energy Resource; provided that the bid deposit will be waived for qualifying projects that provide a copy of their DPSC certification as an Eligible Energy Resource along with their bid application. All bid deposits must be in the form of an acceptable letter of credit, cash or a bid bond²¹ 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

²⁰ 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.

²¹ A bid bond must be in the form of American Institute of Architects (AIA) Form 310. In addition, any applicant that provides a bid bond as bid security will be required to replace such bond with a deposit in the form of a letter of credit or cash no later than 10 days after the SEU provides notice that its bid application has been granted.

other than a standard interconnection fee (as described in Section 6.4 below). In addition, if an Owner claims in its application that a project will be entitled to the Delaware Equipment Bonus or the Delaware Workforce Bonus and such project is not certified by the DPSC as being eligible for either such "claimed" bonus, the bid deposit will be forfeited and the SREC Transfer Agreement will be terminated. Otherwise, the bid deposit will be returned upon completion and commencement of operation of the Generation Unit on or prior to the Guaranteed On-Line Date (as defined in Section 6.5 below) and the posting of performance credit support (as described in Section 6.9 below). For Generation Units that commence operation after such date, the bid deposit will be used to pay delay liquidated damages (as described in Section 6.5 below) and the balance, if any, will be returned to the Owner promptly after the commencement of operation and the posting of performance credit support (as described in Section 6.9 below). 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 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 later of June 1, 2013 or 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.

6.2 SREC Quantity

Pursuant to each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative will be obligated to transfer (by registering within GATS) and sell to the SEU, and the SEU will be obligated to purchase and pay for, all of the SRECs produced at the Generation Unit up to the Contract Maximum (as defined below). To facilitate more efficient management and accounting for SREC procurement, and to maximize opportunities for the largest possible group of Owners to participate in the 2013 SREC Procurement Program, the quantity of SRECs that may be delivered pursuant to any SREC Transfer Agreement during any annual period will be limited to 110% of the Estimated SREC Quantity for such period (such amount, the "*Contract Maximum*"). All SRECs delivered pursuant to an SREC Transfer Agreement must be created based on the output of the Generation Unit that is the subject of that agreement. In the event a Tier N-1, Tier N-2 or Tier E-1 project produces SRECs in excess of the Contract Maximum, the SEU will have the option to elect whether or not to purchase any or all of the surplus SRECs. If it exercises that option, the sale of any such excess SRECs will be subject to the same terms, conditions and pricing applicable to other SREC purchases under the SREC Transfer Agreement. In the event a Tier N-3 or Tier E-2 project produces SRECs in excess of the Contract Maximum, or if the SEU declines to purchase, or purchases only a portion of, the excess SRECs produced by a Tier N-1, Tier N-2 or Tier E-1 project, the SEU will transfer any such excess SRECs back to the Owner, who will have the right to sell such excess SRECs in any manner it deems appropriate.

For Tier N-3 and Tier E-2 projects that have a nameplate rating of 500 kW or greater, the Owner and, if applicable, the Owner Representative will be obligated to sell to the SEU, for each annual period, a quantity of SRECs equal to no less than 80% of the Estimated SREC Quantity for such period (the "*Minimum Annual Quantity*").

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

6.3 Pricing

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

6.4 Utility Interconnections

If, based on an Owner's interconnection application, the interconnecting utility proposes to assess any fee or charge (other than a standard interconnection application fee), the Owner may, within 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 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.²² 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

²² 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.

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 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 1/30th 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 N-1, N-2 and E-1 projects will be paid on a quarterly basis, and all other projects will be paid on a monthly basis. Each Owner will stipulate in the SREC Transfer Agreement whether payment is to be made to the Owner or, if applicable, the Owner Representative. Payment will be based on the number of SRECs transferred to and registered in the SEU's GATS account during the relevant billing period.

6.7 Metering

All Tier N-1, N-2, E-1 and E-2 Projects must install either a revenue-grade meter on site or revenue-grade online monitoring. All Tier N-3 Projects must install revenue-grade online monitoring.

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 N-3 or Tier E-2 projects with a nameplate rating of 500 kW or greater will also be required to provide supplemental credit support in the form of cash, a letter of credit or other collateral acceptable to the SEU. For each of the first 7 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 8th 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.²³

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.

²³ 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. C. § 3008(3.1.8) and any additional correspondence related to such notice(s).

6.11 Excused Performance

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

6.12 Default Provisions

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

- the full SREC output of a Generation Unit (up to the Contact Maximum) is not made available to the SEU within the timeframe required ;
- for a Tier N-3 or Tier E-2 project with a nameplate rating of 500 kW or greater, the project fails to generate the Minimum Annual Quantity during any annual period and the Owner fails to pay applicable damages (as described in Section 6.13 below) within 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 2013 SREC Procurement Program and such failure is not cured within 30 days of notice of such failure.

6.13 Remedies

Upon a breach or default by an Owner or an Owner Representative under an SREC Transfer Agreement, the SEU will be entitled to all of its remedies at law and in equity, including specific performance of and/or termination of the agreement. 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 N-3 or Tier E-2 project with a nameplate rating of 500 kW or greater fails to produce the Minimum Annual Quantity of SRECs during any annual period, the Owner will owe damages equal to the amount of the shortfall, multiplied by the difference, if positive, between: (a) the lower of the prevailing market price of SRECs (as reasonably determined by the SEU) or the amount of the "Alternative Compliance Payment" (as defined in REPSA) for the year in which such shortfall occurs; and (b) the price for SRECs under the SREC Transfer Agreement. Such damages shall be due and payable no later than 30 days after the end of the annual period to which they apply. Payment of such damages will be the Owner's sole liability for the failure to deliver the Minimum Annual Quantity.

6.14 Replacement of Owner Representative

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

7. Bid Awards

Promptly upon receipt of an application to sell SRECs from an Owner Representative or Owner in response to a solicitation issued pursuant to the 2013 SREC Procurement 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 Competitive Solicitations

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

The price bid for each project must be for a fixed dollar amount, which amount cannot escalate or otherwise vary during the initial 7-year period of the term. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids in each solicitation. The SEU may select an Owner in any lower Tier (i.e. N-2 or E-1) to fill the requirements of any higher Tier (i.e. N-3 or E-2) subject to certain limitations. For Tier N-1, 30% of the total procurement must be awarded to Owners submitting bids in Tier N-1. For Tier

N-2, at least 35% of the total procurement must be awarded to Owners submitting bids in Tier N-2. For Tier E-1 at least 50% of the total procurement must be awarded to Owners submitting bids in E-1. Provided these stated minimums are met, the SEU will accept for each Tier the lowest bid prices.

If a tier allocation is not fully subscribed in the initial solicitation, a second solicitation may be held within the following six 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.

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

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

8. **Solicitation for 2013 Compliance Year**

8.1 **Resource Allocation**

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

New Systems - 4,000 SRECs

- Tier N-1 – 1,200 SRECs
- Tier N-2 – 1,400 SRECs
- Tier N-3 – 1,400 SRECs

Existing Systems - 3,000 SRECs

- Tier E-1 – 1,500 SRECs
- Tier E-2 – 1,500 SRECs

Spot Market Purchases - 1,000 SRECs

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