

**STATE OF DELAWARE**

**2017 PROGRAM**

**FOR THE PROCUREMENT OF**

**SOLAR RENEWABLE ENERGY CREDITS**

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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 2017 compliance year (beginning June 1, 2017), retail electricity suppliers must purchase at least 16.00% of their retail load in Delaware from renewable resources.<sup>2</sup> 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 1.00% for the 2015 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

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

<sup>2</sup> REPSA was amended in July of 2011 to provide: “[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 & Light Company (“*Delmarva*“) is now responsible for REPSA compliance for its entire delivery load.

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.

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>3</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>4</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>5</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.

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<sup>3</sup> 26 *Del. C.* § 351(b). The benefits recognized by the General Assembly include “improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities.” *Id.*

<sup>4</sup> *Id.* § 359(a).

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

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

## 2.2 Banking of SRECs

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

## 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>6</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

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

structures to support the growth of renewable energy markets in Delaware.”<sup>7</sup> The Taskforce was directed to find ways to increase deployment of solar generation and enhance the market for SRECs. Its responsibilities include making recommendations about the following:

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

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

In 2010, the Taskforce appointed a special subcommittee to consider and make recommendations regarding the SREC procurement process. That subcommittee met on numerous occasions over several months and evaluated a variety of alternative approaches to SREC procurement in an effort to reach a consensus on a comprehensive program designed to meet the objectives set forth in REPSA with respect to the development of solar generation resources.

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<sup>7</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; (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).

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. The DPSC approved the SREC Procurement Pilot Program with minor modifications pursuant to Order No. 8093, dated December 20, 2011.

**5. The 2013 SREC Procurement Program**

Following successful implementation of the SREC Procurement Pilot Program ("Pilot Program"), the Taskforce recommended for approval to the DPSC of a statewide program for 2013 (the "*2013 SREC Procurement Program*"). The 2013 SREC Procurement Program continued the goals of the Pilot Program of creating a market for SRECs in Delaware and providing a mechanism for the procurement of SRECs to ensure that the requirements of REPSA are met. The 2013 SREC Procurement Program ("2013 Program") was based on five (5) Tiers of SRECs, all competitively bid, with the intent of procuring a total of 7,000 SRECs plus an additional 1,000 SRECs through purchases on the spot market. The DPSC approved the 2013 SREC Procurement Program on January 22, 2013, pursuant to Order No. 8281. Thereafter, by Order No. 8450, dated September 10, 2013, the DPSC issued its Findings of Fact, Conclusions of Law and Final Opinion in Support of Order No. 8281. In doing so, the DPSC found that the 2013 SREC Procurement Program was in the public interest and met the criteria of REPSA. The DPSC also accepted DPSC Staff's recommendation that an independent consultant be hired to evaluate the 2013 SREC Procurement Program. An evaluation was performed by New Energy Opportunities, Inc. and LaCapra Associates, Inc. (the "Consultants") which issued its report dated August 7, 2013, revised September 20, 2013 ("Consultants' Report"). The Consultants' Report concluded that the 2013 Program was conducted fairly and in a professional manner and that the changes which were

implemented to provide for competitive bidding and the inclusion of owners of existing projects as eligible bidders, resulted in lower overall costs to ratepayers.

6. **The 2014 SREC Procurement Program**

Based upon its review of the results of the 2013 Program and a review of the Consultants' Report, the Taskforce recommended for approval to the DPSC of a statewide program for the 2014 compliance year (the "***2014 SREC Procurement Program***"). The 2014 SREC Procurement Program ("2014 Program") continued the goals of Pilot Program and 2013 Program with some refinements. The 2014 Program was based on five Tiers of SRECs, all competitively bid, with the intent of procuring 7,000 SRECs plus an additional 1,000 SRECs through purchases on the spot market. The DPSC approved the 2014 SREC Procurement Program on April 15, 2014 pursuant to Order No. 8551. Thereafter, by Order No. 8629, dated September 9, 2014, the DPSC issued its Findings of Fact, Conclusions of Law, and Opinion in Support of Order No. 8551. In doing so, the DPSC found that the 2014 SREC Procurement Program was in the public interest and met the criteria of REPSA.

7. **The 2015 SREC Procurement Program**

Based upon its review of the results of the 2014 Program, the Taskforce recommended for approval to the DPSC of a statewide program for the 2015 Compliance year (the "***2015 SREC Procurement Program***"). The 2015 SREC Procurement Program ("2015 Program") confirmed the goals of the Pilot Program, the 2013 Program and the 2014 Program, with some modifications. The 2015 Program continued to be based on five Tiers of SRECs, all competitively bid, but with the intent of procuring a minimum of 9,000 SRECs and up to a total of 12,000 SRECs through the auction process. The 2015 Program also established an Alternative Compliance Payment of \$400 and permitted Delmarva to establish an upset price for the purchase of SRECs and provided that bids received above these amounts could be rejected by Delmarva. The DPSC approved the 2015

SREC Procurement Program on March 3, 2015 pursuant to Order No. 8717. Thereafter, by Order No. 8764, dated July 21, 2015, the DPSC issued its Findings of Fact, Conclusions of Law and Opinion in Support of Order No. 8717. In doing so, the DPSC found that the 2015 SREC Procurement Program was in the public interest and met the criteria of REPSA.

8. **The 2016 SREC Procurement Program**

Based upon its review of the results of the 2015 Program the Taskforce recommended for approval the DPSC of a statewide program for the 2016 Compliance Year (the “2016 SREC Procurement Program”). The 2016 SREC Procurement Program (“2016 Program”) confirmed the goals of the Pilot Program, the 2013 Program, 2014 Program and the 2015 Program, with same modifications. The 2016 Program continued to be based on five Tiers of SRECs, all competitively bid, but with the intent of acquiring a minimum of 9,000 SRECs, all bid, and up to a total of 15,000 SRECs through the auction process. There was also a change made to Tiers N-1, N-2, E-1 and E-2 in that a reduction in the break points for kW was implemented to reduce the break point from 30 kW to 25 kW. The DPSC approved the 2016 SREC Procurement Program as submitted on May 3, 2016, pursuant to Order No. 8884. Thereafter, by Order No. 8890, dated September 6, 2016, the DPSC issued its Findings of Facts, Conclusions of Law and Opinion in Support of Order No. 8884. In doing so, the DPSC found that the 2016 Procurement Program was in the public interest and met the criteria of REPSA.

## 9. Program Administration; Eligibility

### 9.1 Public Solicitations

The Taskforce believes that the procurement of SRECs by retail electricity suppliers<sup>8</sup> operating in the State of Delaware should be implemented through public solicitations, managed by the SEU.<sup>9</sup> Solicitations under the Pilot Program, the 2013 Program, the 2014 Program, the 2015 Program and the 2016 Program were managed by the SEU and the Taskforce has approved the use of the SEU for the 2017 SREC Procurement Program.<sup>10</sup> The solicitations will be for SRECs and other environmental attributes<sup>11</sup> created by the Eligible Energy Resources, but will not cover the energy output of the resources. Upon receipt and evaluation of the applications received in response to each solicitation, the SEU will award bids and execute agreements based on the criteria set forth in this 2017 SREC Procurement Program.

### 9.2 Owner Qualifications

To apply as an owner (an “*Owner*”) of an Eligible Energy Resource pursuant to the 2017 SREC Procurement Program, the applicant must own, lease, control or be the direct assignee of all of the SRECs created by such resource.<sup>12</sup> Any party participating in the 2017 SREC Procurement

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<sup>8</sup> In 2011, the statute was amended so that RPS obligations were assigned to only commission-regulated electric companies. 26 *Del. C.* §354.

<sup>9</sup> The SEU will use a third party (the “*SREC Procurement Agent*”) to perform some or all of its duties with respect to the 2015 SREC Procurement Program, including conducting solicitations, evaluating bids and executing agreements on behalf of the SEU. The SREC Procurement Agent for the 2016 SREC Procurement Program will be InClime, Inc. InClime, Inc. is a spinoff of SRECTrade and was established solely to operate utility and public agency renewable procurement programs. InClime, Inc. will be operated by Kevin Quilliam who oversaw the SREC auctions for the Pilot Program, the 2013 Program, the 2014 Program, the 2015 Program and the 2016 Program.

<sup>10</sup> As with the Pilot Program, the 2013 Program, the 2014 Program, the 2015 Program and the 2016 Program, the recovery of costs incurred by the SEU will be dealt with in separate proceedings.

<sup>11</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>12</sup> An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

Program may submit an application jointly with an entity that has executed agreements<sup>13</sup> to control the SRECs produced by two or more Eligible Energy Resources (such entity, an “*Owner Representative*”).

An Owner that is qualified to submit an application on its own behalf may, at its option, elect to designate an Owner Representative. Affiliates of retail electricity suppliers are permitted to participate in the 2017 SREC Procurement Program as Owners or Owner Representatives (as long as they satisfy the applicable requirements for being an Owner or Owner Representative).

### 9.3 Eligible Projects

To qualify for participation in the 2017 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 2017 SREC Procurement Program, the Taskforce has determined to continue with the distinct Tiers of Generation Units (based on their date of interconnection approval and nameplate capacity) that had been established for the 2016 Program, with one minor modification for which different pricing, bid rules and other contract terms and conditions will apply. The Tiers are as follows:

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<sup>13</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.

## GENERATION UNIT TIER DESIGNATIONS

<u>New Systems<sup>14</sup></u>	
<u>Tier</u>	<u>Nameplate Rating (DC at STC)</u>
N-1	Less than or equal to 25 kW
N-2	Greater than 25 kW but less than or equal to 200 kW
N-3	Greater than 200 kW but less than or equal to 2 MW
N-4	Greater than 2MW
<u>Existing Systems<sup>15</sup></u>	
<u>Tier</u>	<u>Nameplate Rating (DC at STC)</u>
E-1	Less than or equal to 25 kW
E-2	Greater than 25 kW but less than or equal to 2 MW
E-3	Greater than 2MW

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>16</sup>

### 9.4 Ongoing Program Evaluation

The Taskforce will evaluate the 2017 SREC Procurement Program on a periodic basis to consider whether any changes or modifications are necessary or advisable. Any changes or

<sup>14</sup> Eligible “*New Systems*” are systems with final interconnection approval after the first date of the preceding auction process (i.e., June 10, 2016 for compliance year 2017).

<sup>15</sup> 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.

<sup>16</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.

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 2017 SREC Procurement Program would be subject to approval of the appropriate regulatory bodies.

10. **Bid Applications**

10.1 **General Requirements**

Each Owner must submit, or designate its Owner Representative to submit, a completed bid application (and only one such bid application)<sup>17</sup> for each Generation Unit for which it intends to participate in the 2017 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 11.7. The application is an on-line application which is located and is to be completed on the SEU's website at [www.SRECDelaware.com](http://www.SRECDelaware.com). The application must include, among other things: a description of the Generation Unit, including its location, the types of solar panels being used and its nameplate rating (at STC);<sup>18</sup> and

- if the Owner elects to designate an Owner Representative, the identity of the Owner Representative must be provided.

In addition, each bid application must be accompanied by:

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<sup>17</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>18</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 or Tier 4 projects; and (b) in no event will the substitution of different equipment affect the Estimated SREC Quantity contained in the original application.

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

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

## 10.2 Estimated Output

Each application to sell SRECs pursuant to the 2017 SREC Procurement Program must include a binding estimate of: (a) the annual energy output of the Eligible Energy Resource, as determined using PVWatts Solar PV Energy Calculator or such other modeling technique as may be acceptable to the SEU; and (b) the annual SREC production levels (such estimate of the SREC production levels, the "*Estimated SREC Quantity*"). The estimates for energy output and SREC production levels shall be subject to an annual degradation factor of 0.5%.

For Eligible Energy Resources claiming a bonus based on the use of Delaware-sourced equipment and/or an in-state workforce (as described in Section 2.3 above), the application must include a statement that it intends to qualify for the Delaware-sourced equipment and/or in-state workforce bonus and the binding SREC output estimate for such resources should include any such SREC bonus.<sup>19</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.

## 10.3 Bid Deposit

Each application to participate in the 2017 SREC Procurement Program must be accompanied by a bid deposit in an amount equal to \$100 per kW (DC) of the nameplate rating (at

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<sup>19</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.

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>20</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 11.4 below). In addition, if an Owner claims in its application that a project will be entitled to the Delaware Equipment Bonus or the Delaware Workforce Bonus and such project is not certified by the DPSC as being eligible for either such “claimed” bonus, the SEU has the option to declare that the bid deposit will be forfeited and the SREC Transfer Agreement will be terminated. Otherwise, the bid deposit will be returned upon completion and commencement of operation of the Generation Unit on or prior to the Guaranteed On-Line Date (as defined in Section 11.5 below) and the posting of performance credit support (as described in Section 11.9 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 11.5 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 11.9 below). Bid deposits will not earn interest.

#### 11. **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.

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<sup>20</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.

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 A**. Some of the principal terms and conditions of the SREC Transfer Agreement are described in this Section.

#### 11.1 Term of Agreement

All SREC Transfer Agreements will have a term of twenty (20) years. The term will commence as follows:

- For New Systems or Existing Systems for which the Operation Date is prior to thirty (30) days following the close of the solicitation, the term of the Agreement shall commence on June 1, 2017.
- For New Systems or Existing Systems for which the Operation Date is not thirty (30) days prior to the close of the solicitation, the term of the Agreement shall commence on the Operation Date regardless of when the Agreement is executed by the Owner or Owner Representative.

- Under either scenario, the date on which the term of the Agreement begins is the “**Commencement Date**”, regardless of when the Agreement is signed by the Owner or Owner Representative. If the Owner or Owner Representative does not sign the Agreement until after the Commencement Date, they forfeit the right to compensation for any SRECs created prior to the Commencement Date.

## 11.2 SREC Quantity

Pursuant to each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative, will be obligated to transfer (by providing permission to move the System to the SEU’s GATS account) and sell to the SEU, and the SEU will be obligated to purchase and pay for, all of the SRECs produced at the Generation Unit up to the Contract Maximum (as defined below). To facilitate more efficient management and accounting for SREC procurement, and to maximize opportunities for the largest possible group of Owners to participate in the 2017 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, Tier N-4, or Tier E-1, or Tier E-3 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, N-4 or Tier E-2, E-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 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, Tier N-4, and Tier E-2, Tier E-3 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 11.4 below) or to allow the Generation Unit to fit within a pending solicitation (as described in Sections 12.1 and 12.2 below).

### 11.3 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 2017 SREC Procurement Program, the SREC price during the first ten (10) years of the term of the SREC Transfer Agreements will be the bid price, and the SREC price for the last ten (10) years of the SREC Transfer Agreements will be fixed at \$35 per SREC, except that for Tiers N-4 and E-3, the price for the last ten (10) years of the Agreement will be the lower of the bid price or \$35 per SREC.

### 11.4 Utility Interconnections

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

If an Owner reduces the capacity of a Generation Unit to avoid or minimize an interconnection charge, the Estimated SREC Quantity will be reduced by the same percentage and any excess deposit will be returned to the Owner.<sup>21</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.

11.5. Guaranteed On-Line Date; Delay Liquidated Damages

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

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

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<sup>21</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.

#### 11.6 Payment

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

#### 11.7 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, N-4 and E-3 Projects must install revenue-grade online monitoring.

#### 11.8 Conditions Precedent

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

#### 11.9 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, Tier N-4 or Tier E-2, E-3 projects with a nameplate rating of 500 kW or greater will also be required to provide supplemental credit support in the form of cash, a letter of credit or other collateral acceptable to the SEU. For each of the first ten (10) years of the SREC Transfer Agreement, such supplemental credit support shall be in an amount equal to five percent (5%) of the value (at the applicable price set forth in the SREC Transfer Agreement) of the first-year Estimated SREC Quantity; for each year thereafter, it shall be in an amount equal to ten percent (10%) of the value of the Estimated SREC Quantity for the 10<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.

#### 11.10 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>22</sup>

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

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<sup>22</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).

#### 11.11 Excused Performance

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

#### 11.12 Default Provisions

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

- the full SREC output of a Generation Unit (up to the Contact Maximum) is not made available to the SEU within the timeframe required ; or
- for a Tier N-3, N-4 or Tier E-2, E-3 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 11.13 below) within thirty (30) days after the end of such annual period; or
- the required credit support is not maintained.

In addition, an Owner Representative will be in default under an SREC Transfer Agreement if it fails to qualify as an Owner Representative under the terms of the 2017 SREC Procurement Program and such failure is not cured within thirty (30) days of notice of such failure.

#### 11.13 Remedies

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

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

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

If a Tier N-3, N-4 or Tier E-2, E-3 project with a nameplate rating of 500 kW or greater fails to produce the Minimum Annual Quantity of SRECs during any annual period, the Owner will owe damages equal to the amount of the shortfall, multiplied by the difference, if positive, between: (a) the lower of the prevailing market price of SRECs (as reasonably determined by the SEU) or the amount of the “Alternative Compliance Payment” (as defined in REPSA) for the year in which such shortfall occurs; and (b) the price for SRECs under the SREC Transfer Agreement. Such damages shall be due and payable no later than thirty (30) days after the end of the annual period to which they apply. Payment of such damages will be the Owner’s sole liability for the failure to deliver the Minimum Annual Quantity.

#### 11.14 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.

## **12. 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 2017 SREC Procurement Program, the SEU will review the application to verify whether it is complete and complies with all applicable procedures. Partial or incomplete applications will be rejected. Any and all bids above a determined price, as established by Delmarva Power, and bids above the Alternative Compliance

Payment of \$400, will be rejected. In addition, owners of Existing Systems who default on their bids by not signing a contract will be prohibited from bidding in a subsequent long term auction.

#### 12.1 Competitive Solicitations

All projects will be required to submit price bids in competitive solicitations. A given system is only allowed to bid into one (1) auction and one (1) 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 ten (10) year period of the term of the Agreement. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids in each solicitation. If Tier N-1 and/or Tier N-2 have losing bids that are lower priced than winning bids for Tier N-3, such bids will be applied to Tier N-3 in order to minimize the weighted average bid price of Tier N-3. Bids from Tier N-3 will not be applied to Tier N-1 or Tier N-2, and bids from Tier N-2 will not be applied to Tier N-1. Provided these stated minimums are met, the SEU will accept for each Tier the lowest bid prices.

If any Tier is undersubscribed because of insufficient bids, bids from any other Tiers can win those SRECs. If any Tier is undersubscribed because of rejected bids, bids from any Tiers (except N-4 and E-3) can win those SRECs. The SEU will announce all solicitations for competitively priced bids at least thirty (30) days in advance of the bid date.

#### 12.2 Bidding Ties

If there are multiple bids at the same price that would cause a competitive solicitation to be oversubscribed (a “*Bidding Tie*”), the SEU will first select all applicants that claimed the Delaware Equipment Bonus and the Delaware Workforce Bonus. If this causes the solicitation to still be oversubscribed, a lottery will be held among only applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus. If there is still a Bidding Tie after awarding all applicants that claimed the Delaware Equipment Bonus and Delaware Workforce Bonus, the SEU will give

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

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

Tier. In such case, the reduced capacity of the Generation Unit will be reallocated from the Tier originally bid to such lower Tier and any excess deposit will be returned to the Owner.

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

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

### 13. **Solicitation for 2017 Compliance Year**

#### 13.1 **Resource Allocation**

Based on forecasted load, the SREC solicitations for the 2017 compliance year will be for up to 20,000 SRECs, which will be allocated as follows:

- Tiers N-1, E-1, E-2 – 4,400 SRECs
- Tier N-2 – 2,300 SRECs
- Tier N-3 – 3,300 SRECs

Upon conclusion of the fulfillment of the 10,000 SRECs for the Tiers noted above, Delmarva Power may procure up to 10,000 additional SRECs through the auction. If any Tier within the first 10,000 is undersubscribed because of rejected bids, bids from any Tier, except Tiers N-4 and E-3, can win those SRECs. If any Tier within the first 10,000 SRECs is undersubscribed because of insufficient bids, bids from any other Tiers can win those SRECs.