

STATE OF DELAWARE

2023 PROGRAM

FOR THE PROCUREMENT OF

SOLAR RENEWABLE ENERGY CREDITS

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APPENDICES

Appendix 1 Form of SREC Transfer Agreement

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Section 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 2023 compliance year (beginning June 1, 2023), retail electricity suppliers must purchase at least 23% of their retail load in Delaware from renewable resources.² That requirement increases incrementally each subsequent compliance year, up to 40% for the 2035 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to customers.

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

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

for the 2023 compliance year was and is 3.00%), and added additional incremental increases for compliance years 2026 through 2035 such that the solar set aside is 10% for the 2035 compliance year.³ For future compliance years, the Delaware Public Service Commission (“*DPSC*”) will establish solar set-asides at levels at least equal to the 2035 set-aside.⁴

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.⁵

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.”⁶ 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.”⁷

³ 26 *Del. C.* § 354(a).

⁴ 26 *Del. C.* § 354(b).

⁵ 26 *Del. C.* § 354(f).

⁶ 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.*

⁷ *Id.* § 359(a).

Section 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.⁸ One REC is equivalent to such characteristics associated with one (1) megawatt-hour ("**MWh**") of energy derived from such a resource. A solar renewable energy credit (an "**SREC**") represents the same non-price characteristics of 1 MWh of energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology.

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

2.2. Banking of SRECs

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

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

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

Generation Units sited in Delaware are entitled to a 10% bonus on REC and SREC production if: (a) 50% or more of the cost of the renewable energy equipment comprising the Generation Unit (including mounting components) is manufactured in Delaware (the “**Delaware Equipment Bonus**”);⁹ 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**”).¹⁰ Generation Units that meet both criteria are entitled to an aggregate 20% bonus. Satisfaction of these criteria must be certified by the DPSC.¹¹

Section 3. The Delaware Renewable Energy Taskforce

The 2010 amendments to REPSA established the Delaware Renewable Energy Taskforce (the “**Taskforce**”) to make “recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware.”¹² 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

⁹ 26 *Del. C.* § 356(d).

¹⁰ 26 *Del. C.* § 356(e).

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

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

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

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

Section 4. Historical SREC Procurement Programs (2011 to Present)

4.1. The SREC Pilot Program

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

4.2. The 2013 SREC Procurement Program

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

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

4.3. The 2014 SREC Procurement Program

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

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

4.4. The 2015 SREC Procurement Program

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

4.5. The 2016 SREC Procurement Program

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

4.6. The 2017 SREC Procurement Program

Based upon its review of the results of the 2016 Program, the Taskforce recommended for DPSC approval a statewide program for the 2017 compliance year (the “**2017 SREC Procurement Program**” or “**2017 Program**”). The 2017 SREC Procurement Program continued the structure of the Pilot Program, the 2013 Program, the 2014 Program, the 2015 Program, and the 2016 Program, with two principal modifications. First, the 2017 Program was based on seven Tiers of SRECs, all competitively bid, but with the intent of acquiring a minimum of 10,000 SRECs, all bid, and up to a total of 20,000 SRECs through the auction process. Second, Tiers N-4 and E-3 were added to allow utility scale systems with nameplate capacity greater than 2

MW to bid into the auction. The DPSC approved the 2017 SREC Procurement Program as submitted on April 20, 2017, pursuant to Order No. 9050. Thereafter, by Order No. 9116, dated September 14, 2017, the DPSC issued its Findings and Opinion in Support of Order No. 9050. In doing so, the DPSC found that the 2017 SREC Procurement Program was in the public interest and met the criteria of REPSA.

4.7. The 2018 SREC Procurement Program

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

4.8. The 2019 SREC Procurement Program

Based upon its review of the results of the 2018 Program, the Taskforce recommended for DPSC approval a statewide program for the 2019 compliance year (the “2019 SREC

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

4.9. The 2020 and 2021 SREC Procurement Programs

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

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

The 2021 Program continued the structure of the 2019 Program and 2020 Program, with the following primary modifications: (i) the new systems were defined by the date of the last

auction; (ii) in each of Tiers 1-4, a potential of up to an additional 5,000 SRECs could be bid;¹³ (iii) any changes to a system that already received a certification number required a second meter and a new certification number; and (iv) an administrative change to Tier 5 that addressed an inconsistency with the 2019 program with respect to the handling of in-state customer-owned new system third-party SREC ownership.

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

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

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

customers; and provides that the PSC will engage in rule-making in consultation with the Consumer Protection Unit of the Delaware Department of Justice and promulgate rules and regulations by March of 2022.

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

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

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

4.10. The 2022 SREC Procurement Program

When developing the 2022 Program, the Taskforce considered the comments that the DPSC made during the July 14, 2021 hearing in connection with Order No. 9865. In order to increase the likelihood that a wide variety of residential and commercial projects would have an opportunity to participate in the 2022 SREC Procurement Program, the Taskforce determined that the 2022 Program would offer: (i) a three Tier framework in lieu of the five Tier framework from the 2021 Program; (ii) an increased SREC target purchase volume from 10,000 SRECS to 11,000 SRECs for systems under 2 MW to, *inter alia*, account for enlargements of the RPS solar carve-out and accommodate any new CEFs; and (iii) a requirement that all long-term contracts

be extended from twenty (20) years to twenty-five (25) years with the SRECs being paid for at the auction price per SREC for the first ten (10) years, and the developers would receive no further SREC compensation (*i.e.*, \$0 per SREC) for the remaining fifteen (15) years of the overall contract term. The 2022 Program otherwise largely continued the structure and processes of the 2021 Program and still contained: (1) a limitation that bids rejected for price in any Tier could be used to backfill another Tier; (2) the inclusion of in-state system siting requirements for certain Tiers; and (3) the requirement that community solar projects enter the appropriate Tier based on their system size attributes and other system criteria. On September 14, 2022, the DPSC issued Order No. 10103 which approved the 2022 SREC Procurement Program as submitted on May 17, 2022. In doing so, the DPSC found that the 2022 SREC Procurement Program was in the public interest and met the criteria of REPSA.

4.11. The 2023 SREC Procurement Program

The Taskforce considered the following in developing the 2023 Program: (1) whether to increase the number of discretionary SRECs available for purchase in the Gamma Tier to help, *inter alia*, mitigate volatility of short-term spot market purchases; and (2) whether the SRECs receiving no compensation (\$0) per SREC for the final fifteen (15) years of the overall twenty-five (25) year contract term may have had a chilling effect on auction participation.

The 2023 Program now offers: (i) an increased discretionary SREC target purchase volume in the Gamma Tier from 5,000 SRECS to 14,000 SRECs for any system up to 5 MW in order to, *inter alia*, mitigate impacts of future volatility in the SREC spot market, as well as account for enlargements of the RPS solar carve-out and accommodate any new CEFs;¹⁴ and (ii)

¹⁴ The Taskforce proposes an increased SREC target purchase volume in the Gamma Tier from 5,000 SRECS to 14,000 SRECs for any system up to 5 MW to, *inter alia*, mitigate the impacts of future volatility in the SREC spot market, as well as account for enlargements of the RPS solar carve-out and accommodate any new Community

increase the SREC price for the last fifteen (15) years of each contract from zero (\$0) compensation per SREC in 2022 to ten dollars (\$10) per SREC for the 2023 SREC Procurement Program.¹⁵

The 2023 Program otherwise largely continued the structure and processes of the 2022 Program, and still: (1) requires a twenty-five (25) year contract for which the first ten (10) years will be compensated at the per SREC auction price; (2) contains a limitation that bids rejected for price in any Tier cannot be used to backfill another Tier; (3) includes an in-state system siting requirement for certain Tiers; and (4) requires that community solar projects enter the appropriate Tier based on their system size attributes and other system criteria.

Section 5. Program Administration; Eligibility

5.1. Public Solicitations

The Taskforce believes that the procurement of SRECs by retail electricity suppliers¹⁶ operating in the State of Delaware should be implemented through public solicitations, managed by the SEU.¹⁷ Solicitations under the Pilot Program and the 2013 Program through the 2022 Program were managed by the SEU, and the Taskforce has approved the use of the SEU for the

Energy Facilities. The Taskforce considered the continued market demand for SRECs nationally given the competition for new supply resources – both through voluntary commitments by corporations or mandatory state RPS increases – and is proposing the Gamma Tier increase to secure additional long-term contracts to help mitigate volatility in SREC spot market prices.

¹⁵ For the 2023 SREC Procurement Program, the Taskforce increased the SREC price from zero (\$0) compensation per SREC in 2022 to ten dollars (\$10) per SREC for the last fifteen (15) years of each twenty-five (25) year contract. The Taskforce considered whether the SRECs receiving no compensation (\$0) per SREC for the final fifteen (15) years may have had a chilling effect on auction participation. This increase was made to encourage more robust auction participation and seek to increase overall competitiveness for the 2023 SREC Procurement Program.

¹⁶ In 2011, the statute was amended so that REPSA obligations were assigned to only DPSC-regulated electric companies. 26 *Del. C.* § 354.

¹⁷ The SEU will use a third party (the “*SREC Procurement Agent*”) to perform some or all of its duties with respect to the 2023 SREC Procurement Program, including conducting solicitations, evaluating bids, and executing agreements on behalf of the SEU. The SREC Procurement Agent for the 2023 SREC Procurement Program will be InClime, Inc. who has run all of the SREC Procurements since 2014.

2023 SREC Procurement Program.¹⁸ The solicitations will be for SRECs and other environmental attributes¹⁹ 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 2023 SREC Procurement Program.

5.2. Owner Qualifications

To apply as an owner (an “**Owner**”) of an Eligible Energy Resource pursuant to the 2023 SREC Procurement Program, the applicant must own, lease, control, or be the direct assignee of all of the SRECs created by such resource.²⁰ An Owner that is qualified to submit an application on its own behalf may, at its option, elect to designate an Owner Representative. If the Owner elects to have the Owner Representative submit the application, the Owner Representative will submit all required elements of the bid application during the bidding window. If the bid is successful, the Owner Representative will then be able to provide the Owner with the Transfer Agreement and all other post-bid requirements. The Owner Representative may or may not have an executed agreement to control the SRECs generated by the participant’s Eligible Energy Resource system. The Owner Representative may or may not manage the Owner’s facility for the duration of the contract. Some Owner Representatives will report meter readings, and receive

¹⁸ As with the Pilot Program and the 2013 Program through the 2022 Program, the recovery of costs incurred by the SEU will be dealt with in separate proceedings.

¹⁹ 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.

²⁰ An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

payment for SRECs sold under the contract, while other Owner Representatives will turn over control of the facility to the Owner after the facility's SREC Delaware account is finalized.

Affiliates of retail electricity suppliers are permitted to participate in the 2023 SREC Procurement Program as Owners or Owner Representatives (as long as they satisfy the applicable requirements for being an Owner or Owner Representative).

5.3. Eligible Projects

To qualify for participation in the 2023 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 2023 SREC Procurement Program, the Taskforce determined that the 2023 Program would offer: (i) an increased discretionary SREC target purchase volume in the Gamma Tier from 5,000 SRECS to 14,000 SRECs for any system up to 5 MW in order to, *inter alia*, account for enlargements of the RPS solar carve-out and accommodate any new CEFs; and (ii) increase the SREC price for the last fifteen (15) years of each contract from \$0 compensation per SREC in 2022 to \$10 per SREC for the 2023 SREC Procurement Program.

The 2023 Program otherwise largely continued the structure and processes of the 2022 Program, and still: (1) requires a twenty-five (25) year contract for which the first ten (10) years will be compensated at the per SREC auction price; (2) contains a limitation that bids rejected for price in any Tier cannot be used to backfill another Tier; (3) includes an in-state system siting requirement for certain Tiers; and (4) requires that community solar projects enter the appropriate Tier based on their system size attributes and other system criteria.

The Tiers are as follows:

GENERATION UNIT TIER DESIGNATIONS

<u>Tier Name</u>	<u>Tier Type & Location</u>	<u>Term</u>	<u>Nameplate Rating (DC at STC)</u>	<u>Notes</u>
Alpha 6,000 SRECs	Small and Medium scale In-state Delaware	SRECs transferred to DPL for 25 years (paid 10 years at bid price; \$10/SREC cost to DPL for last 15 years)	Less than or equal to 350 kW	New customer-owned ²¹ systems (interconnection approval on or after October 14, 2022) of this size in any DE service territory are eligible
Beta 5,000 SRECs	Large scale In-state Delaware	SRECs transferred to DPL for 25 years (paid 10 years at bid price; \$10/SREC cost to DPL for last 15 years)	Greater than 350 kW but less than or equal to 2 MW	New systems (interconnection approval on or after October 14, 2022) of this size in any DE service territory are eligible
Gamma 14,000 SRECs	Discretionary Any location	SRECs transferred to DPL for 25 years (paid 10 years at bid price; \$10/SREC cost to DPL for last 15 years)	Any system up to 5 MW	In-state customer-owned new systems with third party SREC ownership, Out-of-state and all Existing Systems

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

²¹ In order to qualify as “customer-owned” system, an Owner must own both the solar array and property where the system is located. Projects where an Owner leases or otherwise controls the property where the system is located are solely eligible for the Gamma tier.

by the local taxing authority) or share a single utility interconnection point; and (b) for which applications are submitted for the same compliance year.

5.4. Ongoing Program Evaluation

The Taskforce will evaluate the 2023 SREC Procurement Program on a periodic basis to consider whether any changes or modifications are necessary or advisable. Any changes or modifications to the program (*e.g.*, the allocation of SRECs among the different Tiers) would be prospective only and executed SREC Transfer Agreements (as defined below) would not be affected. Any material changes to the 2023 SREC Procurement Program would be subject to approval of the appropriate regulatory bodies.

Section 6. Bid Applications

6.1. General Requirements

Each Owner must submit, or designate its Owner Representative to submit, a completed bid application (and only one such bid application)²² for each Generation Unit for which it intends to participate in the 2023 SREC Procurement Program. However, for systems that are an addition to or expansion of Existing Systems the requirements vary by the specific details of the system configuration.

- a. If an original system on a parcel already has a contract in the Procurement program, a separately metered system addition with a separate Delaware PSC certificate number from the original system can enter a bid application into the auction without regard to the existing system on the parcel.

²² 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.

- b. If two systems exist on the same parcel each with separate Delaware PSC certificate numbers neither system has an existing contract under a previous solicitation, and they both have the same labor and equipment bonuses and qualify for the same Tier, they must be submitted as a single application per the requirements of Section 2.3 above.
- c. If two systems exist on the same parcel each with separate Delaware PSC certificate numbers, neither system has an existing contract under a previous solicitation, and they have different labor and/or equipment bonuses, and qualify for the same Tier based on date of interconnection, they must be submitted as a single application per the requirements of Section 2.3 above using the lowest labor and equipment bonus of the systems in the combined bid.
- d. If two systems exist on the same parcel each with separate Delaware PSC certificate numbers, neither system has an existing contract under a previous solicitation, and they are required to be placed in separate Tiers due to the date of interconnection, 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 7.7.

Because of Delaware's unique multiple credits,²³ if a system addition (add-on) is not separately metered, and the multiple credits (bonus(es)) differ from the Existing System, the original certification number from the Existing System may be amended by the DPSC to reflect the lesser of the credit multipliers, and if the Existing System has an SREC procurement contract, the additional SRECs from the system cannot be paid the contract price as per Section 6.2. An

²³ 26 *Del. C.* § 356.

add-on to an Existing System, with different bonus(es) from the Existing System, must be separately metered in order to participate in the SREC Procurement program. The SREC procurement program application is an on-line application which is located and is to be completed on the SEU's website at www.SRECDelaware.com. 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);²⁴ and
- if the Owner elects to designate an Owner Representative, the identity of the Owner Representative must be provided.

In addition, each bid application must be accompanied by:

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

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

6.2. Estimated Output

Each application to sell SRECs pursuant to the 2023 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

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

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.²⁵ 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.

6.3. Bid Deposit

Each application to participate in the 2023 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 bond,²⁶ 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

²⁵ 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.

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

interconnecting utility of a charge other than a standard interconnection fee (as described in Section 7.4 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 7.5 below) and the posting of performance credit support (as described in Section 7.9 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 7.5 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 7.9 below). Bid deposits will not earn interest.

Section 7. 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; and
- 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.

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

7.1. Term of Agreement

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

- For projects which have received certification as an Eligible Energy Resource from the Delaware Public Service Commission as of the Bid Date, the term of the Agreement shall commence on June 1, 2023.
- For projects which have not received certification as an Eligible Energy Resource from the Delaware Public Service Commission as of the Bid Date, the term of the Agreement shall commence on the later of June 1, 2023, or the first day of the month that the Project generates its first SREC.
- 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.

7.2. 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 2023 SREC Procurement Program, the quantity of SRECs that may be delivered pursuant to any SREC Transfer Agreement during any annual period will be limited to 110% of the Estimated SREC

Quantity for such period (such amount, the “*Contract Maximum*”). All SRECs delivered pursuant to an SREC Transfer Agreement must be created based on the output of the Generation Unit that is the subject of that Agreement. In the event a project produces SRECs in excess of the Contract Maximum, the SEU will have the option to elect whether or not to purchase any or all of the surplus SRECs. If it exercises that option, the sale of any such excess SRECs will be subject to the same terms, conditions and pricing applicable to other SREC purchases under the SREC Transfer Agreement. In the event a project produces SRECs in excess of the Contract Maximum and the SEU declines to purchase, or purchases only a portion of, the excess SRECs produced by that project, the SEU will transfer any such excess SRECs back to the Owner, who will have the right to sell such excess SRECs in any manner it deems appropriate.

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

The Estimated SREC Quantity may not be amended unless the Owner reduces the capacity of a Generation Unit either to avoid or minimize any interconnection fees or charges sought to be imposed by the interconnecting utility (as described in Section 7.4 below) or to allow the Generation Unit to fit within a pending solicitation (as described in Sections 8.1 and 8.2 below).

7.3. Pricing

All projects will be required to submit bids which will be evaluated and selected based on the lowest bid prices. Owners are required to submit bids only in their applicable Tier. For the 2023 SREC Procurement Program, the SREC price during the first ten (10) years of the term

of the SREC Transfer Agreements will be the bid price, and the SREC price for the last fifteen (15) years of the SREC Transfer Agreements will be \$10 per SREC.

7.4. 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.²⁷ 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.

7.5. 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

²⁷ 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.

(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 1/30th 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.

7.6. 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.

7.7. Metering

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

7.8. 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).

7.9. Performance Credit Support

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

To secure their obligations to deliver the Minimum Annual Quantity, Owners or Owner Representatives of projects with a nameplate rating of 500 kW or greater will also be required to provide supplemental credit support in the form of cash, a letter of credit, or other collateral acceptable to the SEU. For each of the first ten (10) years of the SREC Transfer Agreement, such supplemental credit support shall be in an amount equal to five percent (5%) of the value (at the applicable price set forth in the SREC Transfer Agreement) of the first-year Estimated SREC Quantity; 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 eleventh (11) 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.

7.10. 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.²⁸

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.

7.11. 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

7.12. Default Provisions

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

- the full SREC output of a Generation Unit (up to the Contact Maximum) is not made available to the SEU within the timeframe required; or
- for a project with a nameplate rating of 500 kW or greater, the project fails to generate the Minimum Annual Quantity during any annual period and the Owner

²⁸ 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).

fails to pay applicable damages (as described in Section 7.13 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 2023 SREC Procurement Program and such failure is not cured within thirty (30) days of notice of such failure.

7.13. Remedies

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

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

If a project with a nameplate rating of 500 kW or greater fails to produce the Minimum Annual Quantity of SRECs during any annual period, the Owner will owe damages equal to the amount of the shortfall, multiplied by the difference, if positive, between: (a) the lower of the prevailing market price of SRECs (as reasonably determined by the SEU) or the amount of the “Alternative Compliance Payment” (as defined in REPSA) for the year in which such shortfall occurs; and (b) the price for SRECs under the SREC Transfer Agreement. Such damages shall

be due and payable no later than thirty (30) days after the end of the annual period to which they apply. Payment of such damages will be the Owner's sole liability for the failure to deliver the Minimum Annual Quantity.

7.14. 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.

Section 8. 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 2023 SREC Procurement Program, the SEU will review the application to verify whether it is complete and complies with all applicable procedures. Partial or incomplete applications will be rejected. Any and all bids above a determined price, as established by Delmarva Power, and bids above the Alternative Compliance Payment of \$150,²⁹ will be rejected. In addition, owners of Existing Systems who default on their bids (*e.g.*, by not signing a contract) will be prohibited from bidding in a subsequent long-term auction.

8.1. Competitive Solicitations

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

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

Agreement. The SEU will award SREC Transfer Agreements to such projects with the lowest price bids in each solicitation.

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

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

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

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

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

8.2. Bidding Ties

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

- first, if any such applicant submits a reduced price bid, to such applicant(s) on the basis of the lowest price bid until: (a) the pending solicitation is fully subscribed or only a *de minimis* portion of such solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; (b) the next highest price bid would cause the pending solicitation to be oversubscribed; or (c) there is a Bidding Tie with respect to the remaining bids; and
- second, if after completion of the first step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SEU will award SREC Transfer Agreements based on a lottery among the remaining applicants involved in such Bidding Tie that claimed the Delaware Equipment Bonus or the Delaware Workforce Bonus; and
- third, if after completion of the second step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SEU will award SREC Transfer Agreements based on a lottery among remaining applicants involved in such Bidding Tie that claimed neither the Delaware Equipment Bonus nor the Delaware Workforce Bonus.

If a project selected based on bid price or by lottery would cause the pending solicitation to be oversubscribed, the SEU will give the applicant the option to reduce the capacity of the Generation Unit to the remaining balance of the pending solicitation. If the applicant elects not

to reduce the capacity of the Generation Unit, its bid application will be rejected, and the solicitation will continue until the pending solicitation is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed. If the applicant elects to reduce the capacity of the Generation Unit so that it fits within a pending solicitation, the Estimated SREC Quantity will be reduced by an equal percentage. In addition, if such reduction qualifies the project for a lower Tier, the original form of SREC Transfer Agreement will be terminated and replaced with the form of agreement applicable to the lower Tier. In such case, the reduced capacity of the Generation Unit will be reallocated from the Tier originally bid to such lower Tier and any excess deposit will be returned to the Owner.

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

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

Section 9. Solicitation for 2023 Compliance Year

9.1. Resource Allocation

Based on Delmarva's forecasted load, it intends to procure a minimum of 11,000 SRECs and may procure up to a maximum 25,000 SRECs through the long-term auction, as follows:

- Alpha Tier – 6,000* SRECs
- Beta Tier – 5,000* SRECs
- Gamma Tier – 14,000* SRECs

*NOTE: After Alpha and Beta Tiers have been filled by winning bids, Delmarva, at its discretion, may purchase up to an additional 14,000 SRECs from the Gamma Tier and/or lowest priced losing bid from any Tier, with its maximum purchase not to exceed 25,000 SRECs.