

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))

PROPOSED

PUBLIC NOTICE

ORDER NO. 6869

IN THE MATTER OF THE ADOPTION OF
RULES AND REGULATIONS TO IMPLEMENT)
THE PROVISIONS OF 26 **DEL.C.** CH. 10)
RELATING TO THE CREATION OF A COMPETITIVE
MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE
(OPENED APRIL 27, 1999 AND
RE-OPENED JANUARY 7, 2003)

PSC REGULATION DOCKET NO. 49

AND NOW, this 14th day of March, 2006:

WHEREAS, by Order No. 6098 (Jan. 7, 2003), the Delaware Public Service Commission (the "Commission") ordered the Commission Staff ("Staff") to undertake a review of the Commission's *Rules for Certification and Regulation of Electric Suppliers* (the "Rules") and report back to the Commission regarding proposed amendments to the Rules; and

WHEREAS, the Commission provided that, in order to assist Staff in preparing such report, electric suppliers, electric distribution companies, and other interested persons could submit proposed changes to the Rules for Staff's review prior to the submission of its report to the Commission; and

WHEREAS, in compliance with Order No. 6098, Staff conducted several workshops to discuss proposed changes to the Rules; and

WHEREAS, as a result of those workshops and after consideration of all comments from the various interested parties, Staff proposes that the current Rules, a copy of which is attached as Exhibit "B" hereto, be replaced with Staff's draft of the proposed amended Rules (the "Proposed Amended Rules") for the Commission's review and consideration, a copy of which is attached as Exhibit "C" hereto; and

WHEREAS, the Commission believes that the Proposed Amended Rules should be published in the *Delaware Register of Regulations* providing public notice of the revised rulemaking to develop final rules and regulations and to appoint a Hearing Examiner to oversee the process;

Now, therefore, **IT IS HEREBY ORDERED**:

1. Pursuant to 26 **Del.C.** §§353 and 362, the Commission proposes to promulgate the Proposed Amended Rules attached hereto as Exhibit "C".

2. That the Secretary shall transmit to the Registrar of Regulations for publication in the next issue of the *Delaware Register* a copy of this Order with the Current Rules attached thereto as Exhibit "B", the Proposed Amended Rules attached thereto as "Exhibit C", and the Public Notice attached as "Exhibit A."

3. That the Secretary of the Commission shall cause a Public Notice to be published in the *News Journal* and *Delaware State News* newspapers on or before April 1, 2006. The Secretary shall also mail a copy of this Order with the Proposed Amended Rules to the current Electricity Suppliers and all persons or entities who have made a written request for advance notice of the Commission's rulemaking proceedings.

4. That the Proposed Amended Rules shall be published in the *Delaware Register* no later than April 1, 2006.

5. That written comments to the Proposed Amended Rules shall be taken until May 1, 2006.

6. That a workshop to consider all written comments to the Proposed Amended Rules shall be held on Wednesday, May 17, 2006 beginning at 10:00 AM at the office of the Commission, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904.

7. That a public evidentiary hearing on the Proposed Amended Rules shall be held on Thursday, May 25, 2006 beginning at 10:00 AM at the office of the Commission, 861 Silver Lake Boulevard, Cannon Building,

Suite 100, Dover, DE 19904.

8. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, William F. O'Brien is designated as Hearing Examiner in this matter and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to file a report with proposed findings and recommendations concerning the proposed amended Rules on the basis of the materials, evidence, and testimony submitted. Hearing Examiner O'Brien is specifically authorized, in his discretion, to solicit additional comment and conduct, on due notice, such additional public hearing(s) as may be required to develop further materials and evidence concerning the Proposed Amended Rules. James McC. Geddes, Esquire, will continue as Rate Counsel in this matter.

9. That electric suppliers are notified that they may be charged for the cost of this proceeding pursuant to the provisions of 26 **Del.C.** §§114 and 1012(c)(2).

10. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Jaymes B. Lester, Commissioner
Joann T. Conaway, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING CONCERNING AMENDMENTS TO RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS

In PSC Order No. 5207 (Aug. 31, 1999), the Delaware Public Service Commission (the "Commission") adopted Rules for Certification and Regulation of Electric Suppliers (the "Rules").

As a result of an inquiry regarding the Rules from an electric supplier, by Order No. 6098 (Jan. 7, 2003), the Commission ordered the Commission Staff to undertake a review of the Rules and report back to the Commission regarding proposed amendments to the Rules. In order to assist Staff in preparing such a report, the Commission provided that electric suppliers, electric distribution companies, and other interested persons could submit proposed changes to the Rules for Staff's review prior to the submission of Staff's report to the Commission.

In compliance with Order No. 6098, Staff conducted several workshops to discuss proposed changes to the Rules. As a result of those workshops, and after consideration of all comments from the various interested parties, Staff has produced a draft of the proposed amended Rules (the "Proposed Amended Rules") for the Commission's review and consideration.

The Commission has authority to promulgate such Proposed Amended Rules pursuant to 26 **Del.C.** §§353 and 362.

The Commission hereby solicits written comments, suggestions, data compilations, briefs, or other written materials concerning the Proposed Amended Rules. Anyone desiring to submit such written comments, suggestions, data compilations, briefs, or other written materials concerning the Proposed Amended Rules shall file ten (10) copies of such materials with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. All such materials shall be filed with the Commission on or before May 1, 2006. Persons who wish to participate in the proceedings but who do not wish to submit written materials are asked to send a letter to the Commission informing the Commission of their intent to participate on or before May 1, 2006.

A public workshop will be held at the Commission's office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 on Wednesday, May 17, 2006, beginning at 10:00 AM.

The Commission will conduct a public hearing concerning the Proposed Amended Rules on Thursday, May 25, 2006, beginning at 10:00 AM at the Commission's office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The Current Rules and the Proposed Amended Rules and all materials submitted in connection with this docket will be available for public inspection and copying at the Commission's offices during normal business hours. The fee for copying is \$0.25 per page. The Current Rules and the Proposed Amended Rules may also be reviewed at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 N. French Street, Wilmington, DE 19801, during normal business hours by appointment. Finally, the Proposed Amended Rules will be available for review on the Commission's website located at www.state.de.us/delpac.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing, by telephone, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries may also be sent via Internet e-mail to david.bloom@state.de.us.

Reg. Docket No. 49, Creation of a Competitive Market for Retail Electric Supply Service

RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS

Effective: August 31, 1999

1.0 Definitions

"Affiliated Interest" means:

1. Any person or entity who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the Applicant;
2. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in 1 above; or
3. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by the Applicant.

"Ancillary Services" means those services that are necessary for to support the transmission of capacity and distribution of electricity energy from supply resources to loads and for while maintaining reliable operation of the transmission and distribution transmission and distribution system.

"Applicant" means an entity or person seeking to obtain an Electric Supplier Certificate.

"Broker" means an entity or person that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to Retail Electric Customers.

"Commission" means the Delaware Public Service Commission

"Cramming" means the practice of charging Customers for services that they have not ordered or have been sold in a deceptive manner such that the customer is not reasonably aware of the nature or price of the service for which he or she is being charged.

"Customer" or **"Retail Electric Customer"** a purchaser of electricity for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

"Delaware Electric Cooperative, Inc." or **"Cooperative"** or **"DEC"** or its successor(s).

"Delmarva Power & Light Company d/b/a Conectiv Power Delivery" or **"Delmarva"** or **"DP&L"** or its successor(s).

"Distribution Services" means those services, including metering, relating to the delivery of electricity to a Retail Electric Customer through Distribution Facilities.

"Distribution Facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to Retail Electric Customers, up through and including the point of physical connection with electric facilities owned by the Retail Electric Customer.

"Electric Distribution Company" or **"EDC"** means a public utility owning and/or operating Transmission and/or Distribution Facilities in Delaware.

"Electric Supplier" means an entity or person certified by the Commission, including municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999), Broker, Marketer or other entity (including public utilities and their affiliates), that sells electricity

to Retail Electric Customers, utilizing the Transmission and Distribution Facilities of an Electric Distribution Company.

“Electric Supplier Certificate” or “ESC” means a certificate granted to Electric Suppliers by the Commission which have fulfilled the Commission’s certification requirements.

“Electric Supply Service” means the provision of electricity or electric generation service.

“Eligible Renewable Energy Resources” means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

- Solar energy technologies that employ solar radiation to produce electricity;
- Electricity derived from wind energy;
- Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
- Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth’s crust;
- Electricity generated by a fuel cell powered by Renewable Fuels;
- Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
- Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation);
- Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation _____);
- Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:
 - Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;
 - Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility’s average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and
 - Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

“FERC” means The Federal Energy Regulatory Commission.

“Green Power”—electricity generated from any one of the following renewable resources: solar; hydro; wind; biomass (the burning of agricultural wastes and landfill gas); and geothermal (heat from the earth).

“GATS” means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

“Generation Attribute” means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit’s fuel type, geographic location, emissions, vintage, and RPS eligibility.

“Generation Unit” means a facility that converts a fuel or an energy resource into electrical energy

“Marketer” means an entity or person that purchases and takes title to electricity for sale to Retail Electric customers.

“PJM Interconnection, LLC or PJM”- the Pennsylvania New Jersey Maryland Independent System Operator that is responsible for the operation and control of the bulk electric power system throughout all or portions of Delaware, Pennsylvania, New Jersey, Maryland, Virginia and District of Columbia. means the Regional Transmission Organization (“RTO”) that is responsible for wholesale energy markets and the interstate transmission of energy throughout a multi-state area, or its successor organization.

“Residential Customer” means Customers eligible to take Residential services under the

Delmarva Power or the Delaware Electric Cooperative's tariff, currently on file with the Commission.

"Renewable Energy Credit" or "REC" means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of Delaware Public Service Commission Regulation Docket No. 56. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable Energy Portfolio Standard" or "RPS" refers to the Rules and Procedures to Implement the Renewable Energy Portfolio Standard, Delaware Public Service Commission Regulation Docket No. 56.

"Retail Electric Customer" means a purchaser of electricity for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

"Slamming" means the unauthorized transfer of a customer to another Electric Supplier.

"Small Commercial Customer" means a Retail Electric Customer taking service under DP&L's tariff, currently on file with the Commission, Service Classification "Small General Service-Non Demand Rate" or the Cooperative's tariff, currently on file with the Commission, Service Classification "General Service."

"Standard Offer Service" or "SOS" means the provision of Electric Supply Service after the Transition Period by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier.

"Standard Offer Service Supplier" or "SOSS" means an Electric Supplier that provides Standard Offer Service to Customers within an Electric Distribution Company's service territory after the Transition Period.

"State" means The State of Delaware.

"Telemarketing" means any unsolicited telephone calls initiated by, or on behalf of, an Electric Supplier to a Customer in order to market Electric Supply Service.

"Transition Period" means the period of time described in 26 Del.C. §1004, which: begins October 1, 1999 and ends ~~September 30, 2002~~ May 1, 2006 for Delmarva's ~~non-residential customers;~~ begins October 1, 1999 and ends September 30, 2003 for Delmarva's residential customers; and begins April 1, 2000 and ends March 31, 2005 for all Cooperative customers.

"Transmission Facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to Customers (including any Customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the Customer.

"Transmission Services" means the delivery of electricity from supply sources through Transmission Facilities.

2.0 Certification of Electric Suppliers

2.1 All Electric Suppliers must obtain an Electric Supplier Certificate from the Commission to sell Electric Supply Service to or arrange the purchase on behalf of Retail Electric Customers prior to offering contracts to Customers or commencing service.

2.1.1. Certification Requirement.

All Electric Suppliers shall file with the Commission an original and ten (10) copies of an Application for an Electric Supplier Certificate. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately serve the public.

2.1.1.1 Authority to Do Business In Delaware.

Each Applicant shall provide documentation from the Delaware Secretary of State and/or the Delaware Division of Revenue that it is legally authorized and qualified to do business in the State of Delaware.

2.1.1.2 Resident Agent.

Pursuant to 26 Del.C. §401, each Applicant shall file a designation in writing of the name and post-office address of a person resident within the State upon whom service of any notice, order or

process may be made. This information must be updated if changed.

2.1.1.3 Performance Bonds.

Each Applicant shall submit a copy of their performance bond or guarantee that they have obtained as security to the Electric Distribution Company if required in the Service Agreement between the Applicant and the Electric Distribution Company.

2.1.1.4 Compliance with Regional Requirements.

Each Applicant, except for Brokers, must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM. Brokers must submit relevant evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service for their Retail Electric Customers must procure electricity from an entity that complies with PJM's requirements.

2.1.1.5 Financial, Operational, Managerial and Technical Ability.

Each Applicant shall be required to present substantial evidence supporting their financial, operational, managerial and technical ability to render service ~~with~~ within the State of Delaware. Such evidence shall include, but is not limited to:

2.1.1.5.1) Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

2.1.1.5.2 Brief description of the nature of business being conducted, including types of customers to be served, services provided and geographic area in which services are to be provided.

2.1.1.5.3 A list of states in which Applicant or any of its affiliated interests is presently selling Electric Supply Service to Retail Electric customers and a list of states in which Applicant or any of its affiliated interests has pending applications to sell Electric Supply Service to Retail Electric customers.

2.1.1.5.4 A list of states in which Applicant or any of its affiliated interests has been denied approval by a State Commission to sell electricity to Retail Electric Customers or has had its authority revoked.

2.1.1.5.5 Relevant operational experience of each principal officer responsible for Delaware operations.

2.1.1.5.6 A copy of any FERC approval as a Marketer or date and docket number of the application to FERC.

2.1.1.5.7 If the Applicant requires deposits, advance payments, prepayments, financial guarantees or the like from customers, then the Applicant must secure a bond with corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The amount of the bond will be the lesser of (i) ~~450~~ 110 percent of the projected amount of deposits and advances for the next one year period; or (ii) \$50,000. If at any time the actual amount of the deposits and advances held by the Applicant exceeds the amount projected, the amount of bond shall be increased to comply with the requirement in the preceding sentence.

2.1.1.5.8 All new Applicants shall demonstrate in their applications that they possess a minimum of \$100,000 of assets in excess of encumbrances or a minimum of \$100,000 in cash, cash equivalents, or financial instruments that are reasonably liquid and readily available to meet their costs of providing electricity to Customers or any combination thereof.

2.1.1.5.9 Demonstration of cash or cash equivalents can be satisfied by the following:

2.1.1.5.9.1 Cash or cash equivalents, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

2.1.1.5.9.2 Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

2.1.1.5.9.3 Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.4 Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.5 Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.6 Loan, issued by a qualified subsidiary, affiliate of Applicant, or a qualified corporation holding controlling interest in the Applicant, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission, and payable on an interest-only basis for the same period;

2.1.1.5.9.7 Guarantee, issued by a corporation, co-partnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.8 Guarantee, issued by a qualified subsidiary, affiliate of Applicant, or a qualified corporation holding controlling interests in the Applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the Applicant by the Commission; and,

2.1.1.5.9.9 Identifiable physical assets set forth in a balance sheet or similar statement.

2.1.1.5.10 The Applicant shall disclose whether the entity or any of its affiliated interests has filed for bankruptcy in the past 24 months.

2.1.1.5.11 The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.

2.1.1.6 Verification of Application. The Application must be verified by a principal or officer of the Applicant.

2.1.1.7 Consent to the Jurisdiction. All Electric Suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.

2.1.1.8 Other Requirements:

2.1.1.8.1 Legal name as well as the name under which the Applicant proposes to do business in Delaware;

2.1.1.8.2 State of incorporation, business address, and address of the principal officer;

2.1.1.8.3 Name, title and telephone number of a regulatory contact person;

2.1.1.8.4 A toll-free telephone number of customer service department;

2.1.1.8.5 Description of the Applicant's experience in the energy market and a brief description of the services its plans to offer in Delaware and the type of customers it plans to serve; and

2.1.1.8.6 Statement detailing any criminal activities of which the Applicant or any of its affiliated interests has been charged or convicted, or which the principal or corporate officers of the Applicant or any of its affiliated interests has been charged or convicted.

2.1.1.9 Contracts. ~~The Applicant shall provide the Commission with a copy of its standard contract that it proposes to use with its prospective customers. The Applicant shall make available on its website, in a timely manner, its Standard Contract for Residential and Small Commercial Customers. Such standard contract shall be filed twenty one(21) calendar days prior is subject to use review by the Applicant Commission Staff shall have the authority at any time to require changes to a standard contract and if Staff determines that such contract is not consistent with these Rules for Certification and Regulation of Electric Suppliers, then Staff shall have the authority to require changes in order to make consistent with these Rules for Certification and Regulation of Electric Suppliers ("Rules") or Electric Supplier faces revocation of its Electric Supplier Certificate by the Commission after a hearing.~~ Such contract shall be in clear and plain language and include explicit terms and conditions which at a minimum contain the following:

2.1.1.9.1 A clear statement of the duration of the contract;

2.1.1.9.2 The price stated in cents per kWh or a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined;

2.1.1.9.3 A complete list of any other fees, including early termination penalties, late fees, and interest charges, which can be imposed on the customer, including but not limited to the magnitude of the fees and the specific conditions under which such fees can be imposed;

2.1.1.9.4 A statement of the Electric Supplier's termination rights, which shall explain the specific conditions, under which the Electric Supplier may terminate service. At a minimum, the

Electric Supplier shall provide the ~~customer~~ Residential or the Small Commercial Customer with at least 30 days notice ~~prior to the next meter read date to terminate service~~ of termination of the contract and procedures to maintain ongoing service;

2.1.1.9.5 The Electric Supplier's local or toll-free telephone number; the ~~name, address and local or toll-free telephone number of a company contact person; the Electric Distribution Company's emergency telephone number~~ web address; and the Commission's address and telephone number; and

2.1.1.9.6 A statement that the ~~customer should call the Electric Distribution Company in the event of an electric related emergency, such as a power outage; and~~

2.1.1.9.6 A statement informing the ~~customer that if he/she relocates outside his/her current EDC area, he/she~~ Residential or Small Commercial Customer that, because of relocation, they may terminate his/her their contract with his/her their Electric Supplier after providing upon a 30-day notice in writing to the Electric Supplier.

2.2. Notice. Each Applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

2.3. Application Fee. A non-refundable application fee of \$750 shall be submitted with the application for Certification.

2.4. Incomplete or Abandoned Applications. Applications that do not include the necessary fees, supporting documentation or information may be rejected. The Commission Staff will provide the Applicant with a list of deficiencies and the Applicant will be given time to provide the necessary information to complete its certification. However, an incomplete or abandoned application will be closed four (4) months after the filing date, unless such time frame is extended by the Commission.

2.5. Waiver of Certification Requirements. Upon the request of any Applicant, the Commission may, for good cause, waive any of the requirements of these Rules that are not required by statute. The waiver may not be inconsistent with the purpose of these Rules or Chapter X of Title 26 of **Del.C.**

3.0 Post-Certification Requirements

3.1 Term of ESC. are valid until revoked by the Commission or abandoned by the Electric Supplier after the requisite notice to the Commission and to their customers.

3.2 Minimum Length of Service by Electric Supplier. For each Retail Electric Customer class, each Electric Supplier must offer Electric Supply Service to each of its Retail Electric Customers for a minimum period of one billing cycle.

3.3 Transfer or Abandonment of ESC. The transfer of an ESC is prohibited. No ~~electric service provider shall~~ Electric Supplier shall abandon service without 60 days written notice to the Commission, the affected Electric Distribution Companies, and its ~~customers~~ Retail Electric Customers.

3.4 Contracts and Revised Contracts. An Electric Supplier shall supply Electric Supply Service ~~only by a contract substantially similar to the a Residential or a Small Commercial Customer only by a~~ standard contract ~~filed by the Electric Supplier under~~ containing the provisions described in Section 2.1.1.9, of these rules. The contract must be signed ~~and dated by~~ or verifiable by some other means of authorization by the Residential or the customer Small Commercial Customer. If an Electric Supplier offers ~~the a Retail Electric Customer~~ a check, prize, or other incentive which requires a signature, that signature cannot be used as the contract signature. ~~A customer Residential or a Small Commercial Customer has ten (10) calendar days from the day the utility EDC sends the confirmation letter to rescind their selection. If the Electric Supplier makes substantive changes to its standard contract form for Residential or Small Commercial Customers, the Electric Supplier must submit these changes to notify the Commission Staff to allow for review and comment. Such revised contract shall be filed twenty one (21) calendar days prior to use by the Electric Supplier. Commission Staff shall have the authority at any time to require changes to a standard contract, if~~ If Staff determines that such contract is not consistent with these Rules for Certification and Regulation of Electric Suppliers, Commission Staff shall have the authority at any time to require changes to a standard contract for Residential or Small Commercial Customers.

3.5 Price Terms. Any price term shall not be inconsistent with pricing terms in a Residential or a Small Commercial Customer's contract with ~~his/her their~~ their Electric Supplier. The Electric Supplier must provide thirty_ (30) days written notice to its Residential or Small Commercial Customer(s) of any price term changes.

3.6 Information that Must be Provided to a Customer by the Electric Supplier. The Electric Supplier must provide the ~~customer~~ Retail Electric Customer with ~~the following~~ a copy of its contract which includes the

terms and conditions of service.

3.7 Customer Information. An Electric Supplier cannot release ~~customer~~ or request Retail Electric Customer information without the written authorization of the customer.

3.8 Marketing and Advertising.

3.8.1 Pursuant to 26 **Del.C.** §1012(b) and as further defined in Section I of these Rules, all Electric Suppliers are prohibited from using Telemarketing to solicit customers. This prohibition does not include initial contact by any medium other than a voice telephone call or a Retail Electric Customer's telephone response to any non-telephone initial contact.

3.8.2 An Electric Supplier or its marketing or advertising agent shall not make misrepresentations or use deceptive practices in its direct solicitations, advertising or marketing materials.

3.8.3 An Electric Supplier or its marketing or advertising agent must comply with all federal, state or local laws applicable to advertising or marketing products or services.

3.9 Reports to be Provided to the Commission. All Electric Suppliers shall provide such information concerning Delaware operations to the Commission as the Commission may from time to time request, including any reporting requirements contained herein. Information provided pursuant to this paragraph and designated "proprietary" or "confidential" shall be held in accordance with paragraph 1 in Section 10.0 of these Rules, and shall be afforded proprietary treatment subject to the provisions of the Rules, Commission regulations, and Delaware Law.

3.10 Fees and Assessments. ~~ESGs~~ Electric Suppliers must pay the fees and assessments under 26 **Del.C.** §1012(c)(2). ~~ESGS~~ ESs must also file any reports required under 26 **Del.C.** §115(e). The ESG must also pay the Public Utilities Taxes pursuant to 30 **Del.C.** Chapter 55.

3.11 Record Retention. All Electric Suppliers will retain customer account records for a period of two (2) years.

4.0 Billing and Metering

4.1 Billing Options.

4.1.1 Each Retail Electric Customer in Delmarva's service territory has the right to choose to receive separate bills from Delmarva Power & Light Company ~~d/b/a Connectiv Power Delivery~~ and from its Electric Supplier (if the ES Electric Supplier provides a separate billing), or to receive a combined bill from either Delmarva or its Electric Supplier (if the ES Electric Supplier provides a consolidated billing option), for Electric Supply, Transmission, Distribution, Ancillary and other Services, consistent with these Rules. If the Retail Electric Customer does not elect a billing option, Delmarva will be responsible for billing the Retail Electric Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Electric Supplier.

4.1.2 In the Delaware Electric Cooperative's service territory, the Cooperative will bill each Retail Electric Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Retail Electric Customer's Electric Supplier.

4.2 Bill Contents. The bill should be easy to understand and must contain the following information:

4.2.1 The name, address, and local or toll-free telephone number of the Electric Supplier;

4.2.2 If different from the Electric Supplier, the name, address and toll-free telephone number of the Electric Distribution Company;

4.2.3 The due date for payment;

~~An~~ 4.2.4 If applicable, An itemized list of each service or product billed for the current billing period including charges for the Public Purpose Programs and a Competitive Transition Charge (if applicable) or other agreed to charges;

4.2.5 Electricity consumption including whether the consumption was based on actual recorded usage or estimated usage;

4.2.6 The actual cents per kWh (or the appropriate block charges or other pricing mechanism) charged to the ~~customer~~ Retail Electric Customer for the ~~customer's~~ Retail Electric Customer's actual usage (or estimated usage) of electricity for the current billing period;

4.2.7 The total charge for each service or product;

4.2.8 The amount of payment or other credit applied to ~~customer's~~ Retail Electric Customer's outstanding balance during the billing period; ~~and~~

4.2.9 The amount still owed by the ~~customer~~ Retail Electric Customer from the previous billing period;

- 4.2.10 Appropriate taxes and fees; and
- 4.2.11 If applicable, late fees as defined in contract.

4.3 Metering.

4.3.1 During the Transition Period, Delmarva will continue to own all meters and perform all meter-reading functions. After the Transition Period, or earlier if requested by Delmarva, the Commission can permit others to provide some or all of the metering functions on a competitive basis.

4.3.2 The Delaware Electric Cooperative will continue to own and operate all meters and perform meter-reading functions.

5.0 **Retail Electric Customer Protection**

5.1 Procedures to be followed by the Retail Electric Customer:

5.1.1 A ~~customer~~ Retail Electric Customer should first notify the Electric Supplier of ~~his/her~~ their complaint for resolution of ~~his/her~~ their Electric Supply Services. In the event of an electricity-related emergency, such as a power outage, or in the event of problems related to a Retail Electric Customer's EDC, the Retail Electric Customer should contact ~~his/her~~ their EDC.

5.1.2 If the ~~customer~~ Retail Electric Customer and Electric Supplier are not able to come to a resolution, the ~~customer~~ Retail Electric Customer may file a complaint with the Commission as described in Rules 14 and 15 of the Rules of Practice and Procedure of the Commission.

5.2 Procedures to be followed by the Electric Supplier:

5.2.1 If a ~~customer~~ Retail Electric Customer notifies the Electric Supplier that ~~he/she~~ they ~~has a~~ have a complaint, the Electric Supplier shall use good faith efforts to respond to and resolve the complaint.

5.2.2 An Electric Supplier shall have ~~a sufficient number of a sufficient number of~~ customer service representatives to handle its ~~customers~~ 'Retail Electric Customers' inquiries and complaints.

5.2.3 If the ~~customer~~ Retail Electric Customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will inform the ~~customer~~ Retail Electric Customer that ~~he/she~~ they may contact the Commission.

5.2.4 The Electric Supplier shall prepare and maintain a ~~report~~ of these complaints and keep these reports on file for a period of two (2) years. Upon request by the Commission ~~or~~ its Staff or the Division of Public Advocate, an Electric Supplier shall furnish a copy of such report to the Commission. The report shall contain the following information:

5.2.4.1 Type of complaint;

5.2.4.2 Date of complaint;

5.2.4.3 Resolution; and,

5.2.4.4 Date resolved.

5.3 ~~Slamming. If the Commission determines that an Electric Supplier has slammed a Retail Electric Customer, then that Electric Supplier may be subject to penalties that may be imposed by the Commission through a hearing process. An Electric Supplier that causes a customer to be transferred to the Electric Supplier's electric supply service, without obtaining an executed, unrescinded contract as required in Section III, paragraph 4 of these Rules, shall be deemed in violation of this Slamming Rule. In such a case, the Electric Supplier must void and/or refund any charges it has imposed on the slammed customer. The customer will only be liable to its authorized Electric Supplier for future service at a rate that is no more than the rate the customer paid before the slamming incident occurred. An Electric Supplier must obtain verifiable authorization from the Retail Electric Customer before switching Electric Supply Service. If a Retail Electric Customer believes that their Electric Supply Service has been switched without authorization, the Retail Electric Customer may request that the Electric Supplier provide evidence of the authorization and verification. The Electric Supplier must submit this within five (5) business days if feasible, but no longer than 15 business days of the request. If the Retail Electric Customer is not satisfied with this response, the Retail Electric Customer may also file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission~~

5.4 Cramming. If the Commission determines that an Electric Supplier has billed unauthorized charges to a Retail Electric Customer, that Electric Supplier may be subject to penalties that may be imposed by the Commission through a hearing process. An Electric Supplier that has imposed unauthorized charges on a Retail Electric Customer must void and/or refund all of those charges to the Retail Electric Customer.

6.0 **Green Power ~~And Renewable Resources~~ Product Standards**

~~6.1 All Electric Suppliers offering Green Power shall have to meet disclosure of fuel resource mix stated in Section VII of these Rules.~~

6.1 For the purposes of this Section, a Green Power ~~option~~ Product is defined as an Electric Supply Service, which ~~has is marketed or otherwise advertised as having~~ a generation resource mix consisting of at least 50% Green Power. An Electric Supplier can provide a Green Power option of any proportion higher than that stated in this paragraph provided it meets the standards in paragraph 3 of this Section. Eligible Renewable Energy Resources above the current Compliance Year's Cumulative Minimum Percentage found in Commission Regulation Docket No. 56.

6.2 Electric Suppliers offering a Green Power Product shall register with the PJM-EIS GATS, or its successor at law. Electric Suppliers shall keep the account in good standing and shall be subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.

6.3 Electric Suppliers offering a Green Power Product shall submit RECs equal to the marketed or otherwise advertised generation resource mix consisting of Eligible Energy Resources as part of their filing of the annual Retail Electricity Supplier's Verification of Compliance in the State of Delaware Renewable Energy Portfolio Standard Report.

6.4 An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless it meets the minimum resource mix requirement of paragraph 6.1 of this Section.

6.5 When requested by a Customer or providing information regarding a Green Power Product through marketing and advertising material(s) or solicitation(s), an Electric Supplier must label its fuel resource mix in a manner that accurately describes its electric generating resources. The Electric Supplier must also inform the Customer, in writing, that the Electric Supply Service the Customer receives will be used to meet the Electric Supplier's RPS requirements.

6.6 Electric Suppliers offering Green Power shall have to meet disclosure of fuel resource mix stated in Section 7.0 of these Rules.

7.0 Disclosure of Fuel Resource Mix

7.1 Each Electric Supplier shall file a report with the Commission disclosing the aggregate proportions of fuel resource mix for the electricity supplied to its customers in Delaware for each quarter during the year. Such reports shall be filed by last date of the month succeeding each quarter. The reports shall include, but are not limited to:

7.1.1 The total number of ~~customers~~ Retail Electric Customers by each ~~customer~~ Retail Electric Customer class served during that quarter;

7.1.2 The total amount of electricity (kWh or MWh) supplied to each ~~customer~~ Retail Electric Customer class; and,

7.1.3 The fuel resource mix by percentage for ~~the following resources: coal, oil, natural gas, nuclear, hydro, solar, wind, biomass, geothermal, and other~~ each resource.

7.2 The Commission will keep the information reported under paragraphs 7.1.1 and 7.1.2 confidential. Information to paragraph 7.1.3 shall not be held confidential, and the Commission or an Electric Supplier shall disclose such information to any member of the public requesting it. Each Electric Supplier shall also disclose the information under paragraph 7.1.3 to its Customers no less frequently than on a quarterly basis. Information reported under paragraph 7.1.3 may be utilized in any consumer education program developed in accordance with 26 **Del.C.** §1014(c).

7.3 If an Electric Supplier cannot provide the data in paragraph 7.1(~~e~~) specifically for its customers in Delaware, then the Commission will accept comparable percentages for the load served in ~~the Pennsylvania Jersey Maryland (the Pennsylvania Jersey Maryland PJM regional power pool. Regional power pool.~~

8.0 Net Energy Metering

8.1 Each Electric Supplier providing Electric Supply Service to residential ~~and small commercial~~ and medium commercial Retail Electric Customers shall offer these Retail Electric Customers the option of net energy metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.1.1 The Retail Electric Customer owns or operates the electric generation facility;

8.1.2 The facility uses renewable resources;

8.1.3 The facility has a capacity of not more than 25 kilowatts;

8.1.4 The facility is not used by the Retail Electric Customer to supply property other than the Retail Electric Customer's premises.

8.2 Net metering is the interconnection with Distribution Facilities through a single meter that runs forward and backward in order to measure net energy flow during a billing period.

8.3 If, during any billing period, a Retail Electric Customer's facility generates more energy than that consumed by the Retail Electric Customer, the Electric Supplier will credit the Retail Electric Customer such additional power in the following billing period at least at the same price the Electric Supplier charged or would have charged the Retail Electric Customer under the contract.

8.4 Any requirements necessary to permit interconnected operations between the ~~customers~~ Retail Electric Customer's generating facility and the EDC, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the EDC.

~~8.5 An EDC shall not impose special fees on net energy metering Customers, such as backup charges, additional controls, or liability insurance, as long as the generation facility meets the interconnection standards and all relevant safety and power quality standards.~~

~~8.6 Refunds and credits from net energy metering shall not apply to services provided by the EDC other than Electric Supply Service.~~

9.0 Customers Returning to EDC or SOS Supplier for Electric Supply Service

The procedures for a Retail Electric Customer's return to an EDC during the Transition Period and to an EDC if it is the SOS Supplier after the Transition Period for Electric Supply Service shall be in accordance with the Commission's order for each EDC's individual electric restructuring plan.

10.0 Other General Rules

10.1 Proprietary Information. Under Delaware's Freedom of Information Act, 29 **Del.C.** ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 **Del.C.** §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

10.2 Failure to Comply with These Rules. The failure by any Electric Supplier to comply with these requirements and the requirements in other Sections of these Rules may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, or other sanction as determined by the Commission.

3 DE Reg. 538 (10/01/99)

9 DE Reg. 1529 (04/01/06) (Prop.)