

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 3001

PROPOSED

PUBLIC NOTICE

3001 Rules for Certification and Regulation of Electric Suppliers

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; RE-
OPENED JANUARY 7, 2003; RE-OPENED
SEPTEMBER 22, 2009; RE-OPENED
SEPTEMBER 7, 2010; RE-OPENED JULY 17,
2012)

PSC REGULATION DOCKET NO. 49

**TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER
INTERESTED PERSONS**

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 *Del. Admin. C.* §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Regulations several times since then. The PSC now proposes to revise the Supplier Regulations again. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket No. 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Regulations; and to make the certification process for electric suppliers more uniform.

The PSC is soliciting comments, suggestions, and compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Regulations. If you wish to file any such materials, you should file them using the Commission's DelaFile docketing and file management system on or before **January 25, 2017**. You may also submit an original and ten copies of such written materials with the PSC on or before **January 25, 2017** at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Regulation Docket No. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to psc@state.de.us; include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before **January 25, 2017**.

The PSC will conduct a public hearing on the proposed regulations on **January 10, 2017 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8981 (November 15, 2016) (the "Order") and the proposed revised Supplier Regulations in the December 2016 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Regulations by going to DelaFile (<http://delafile.delaware.gov>), the Commission's docketing and file management system, and by searching for REG. 49.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are "public records" under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC's Dover office identified above during normal business hours. The fee for copying is \$.10 per page, after the first 20 pages. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act ("FOIA")

Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the FOIA Request Form on the PSC's website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 Del.C. ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4th Floor, Carvel State Office Building, Wilmington, DE 19801, or 29 South State Street, Dover, Delaware 19901. Please call either (302) 577-5077 or (302) 241-2555 to arrange for a time to review the documents at either of those locations. The Regulations will also be available on the PSC's website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to psc@state.de.us; please include "Reg. Doc. 49" as the subject of the email.

OPINION AND ORDER NO. 8981

BEFORE COMMISSIONERS:

J. Dallas Winslow, Chair
Joann T. Conaway, Commissioner
Harold Gray, Commissioner
Kim F. Drexler, Commissioner
Mike C. Karia, Commissioner

PROCEDURAL HISTORY

1. In 1999, the General Assembly restructured the electric utility industry such that customers of regulated electric utilities would be free to purchase their electricity supply from entities other than their regulated electric utility. See 26 Del. C. ch 10, "Electric Utility Restructuring."

2. In October 1999, pursuant to the authority provided to it in 26 Del.C. §1012(b), the Delaware Public Service Commission (the "Commission") adopted Rules for Certification and Regulation of Electric Suppliers (the "Supplier Regulations"). Order No. 538 (October 1, 1999). See 26 Del. Admin. C. §3001.

3. The Supplier Regulations have been amended several times since then. See Order Nos. 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), 7435 (Sept. 2, 2008) and 7984 (June 7, 2011).

4. In Order No. 8187 (July 17, 2012), the Commission reopened this docket to consider revising the Supplier Regulations in accordance with the settlement agreement in Docket No. 10-2, which called for the parties to "consider rule changes to ensure electric choice for Customers is more competitive and ... to provide additional protection for Customers," among other considerations.¹ The Commission Staff conducted three workshops to discuss revisions to the Supplier Regulations.

5. In Order No. 8424 (July 30, 2013), the Commission authorized the publication of proposed modifications to the Supplier Regulations that reflected revisions from the workshop process. The proposed revised Supplier Regulations were published in the September 2013 *Register of Regulations* (17 DE. Reg. 310 (9/1/13)).

6. The Commission received comments on the proposed modified Supplier Regulations from several entities, including the Delaware Division of the Public Advocate ("DPA"), Delmarva Power & Light Company ("DPL"), and the Retail Energy Supplier Association ("RESA"). However, no Commission action was taken with respect to these modified Supplier Regulations.

7. In Order No. 8545 (April 15, 2014), the Commission authorized publication of another version of revisions to the Supplier Regulations. These proposed revisions were published in the May 2014 *Register of Regulations*. (17 DE. Reg. 1052 (5/1/14)).

8. The Commission received several comments on this version of modified Supplier Regulations. In December 2014, Staff circulated another revised draft of Supplier Regulations based on the comments received and requested comments by early January 2015 (subsequently extended to mid-January 2015). Although these proposed revisions were not published in the *Register of Regulations*, the DPA, DPL and RESA filed comments and proposed modifications to this revised version of the Supplier Regulations.

9. This version of the proposed Supplier Regulations lay dormant until December 2015, when Staff once again published proposed modifications to the Supplier Regulations. In Order No. 8830 (12/15/15), the Commission authorized publication of these rules, and they were published in the January 2016 *Register of Regulations*.

10. The DPA, DPL and RESA submitted comments on and proposed revisions to this version of the Supplier Regulations.

1. Order No. 8187, ¶2.

11. On January 16, 2016 the Commission issued Order No. 8845 opening Docket No. 15-1693 in response to a petition filed by the Electric Affordability Committee (“EAC”) identifying eight specific proposals to increase customer choice in Delaware. One of those proposals was to “[f]inalize Regulation Docket No. 49 ... by incorporating recommended changes and simplifying supplier requirements where possible.”²

12. In February 2016, Staff, the DPA and RESA met to attempt to narrow the outstanding issues and review comments submitted by the parties in January. In early March 2016, Staff circulated a revised version of the Rules to the DPA and RESA which attempted to incorporate the comments received as of January 2016, as well as to further narrow the issues subsequent to the meeting between the parties in February 2016. During the months of March through early July 2016, the DPA and RESA worked together to modify the Supplier Regulations to encourage customer choice in Delaware. On July 7, 2016, RESA’s counsel circulated the DPA/RESA draft Supplier Regulations to Staff and DPL.

13. On August 15, 2016, the DPA and RESA filed a motion with the Commission in this docket and in Docket No. 15-1693 requesting the Commission to hold the required public hearing on the revised Supplier Regulations on September 6, 2016, and if the Commission did not hold the public hearing on September 6, to postpone the proceedings in Docket No. 15-1693 until the Supplier Regulations were finalized.

14. The Commission met on September 6, 2016 to consider the DPA-RESA Motion. It heard oral argument from the DPA, RESA, Staff and DPL. Staff presented the Commission with an alternative version of modified Supplier Rules and took the position that republication of the Supplier Regulations was required. The DPA and RESA took the position that their revised Supplier Regulations were in the nature of comments on the previously-published Supplier Regulations and that no republication was necessary; however, if the Commission decided that republication was necessary, then the Commission should authorize publication of the DPA-RESA version of the modified Supplier Regulations. The Commission voted unanimously to authorize publication of the DPA-RESA version of the modified Supplier Regulations and to postpone further proceedings in Docket No. 15-1693 until final Supplier Rules were in place. See Order No. 8937 (Sept. 20, 2016) and Order No. 8948 (Oct. 6, 2016).

15. The DPA-RESA version of the Supplier Regulations was published in the October 2016 *Register of Regulations*. (20 DE. Reg. 272 (10/1/16)). The public notice stated that comments were due on October 31, 2016, and that the Commission would hold a public hearing on November 1, 2016 to consider the published Supplier Regulations.

16. As of November 1, 2016, no persons other than the DPA, DPL, RESA and Staff had submitted any comments to the Commission.

17. At our regularly-scheduled meeting on November 1, 2016, we conducted the public hearing and heard oral argument from the DPA, DPL, RESA and Staff, and deliberated in public on the proposed Supplier Regulations and the contested issues. This is our opinion and order memorializing those deliberations.

II. DISCUSSION, DELIBERATIONS AND DECISION

18. While the comment period was pending, the DPA, DPL, RESA and Staff met to determine whether they could narrow or eliminate their areas of disagreement. They were able to reach agreement on all but the following: (1) the appropriate rescission period; (2) whether the current process be retained whereby once a customer opts out of being included on the customer list the opt out remains valid until the customer notifies DPL to the contrary; (3) how frequently the customer list must be updated; and (4) what information should be included in customer lists provided by Delmarva to retail electric suppliers.

A. The Appropriate Rescission Period

1. The Parties’ Positions

19. The DPA and RESA propose a 3-business-day rescission period; Staff proposes a 7-business day rescission period. All parties agree as to the appropriate starting point for the rescission period, which is set forth in Section 6.2.2.7.2 in the published Supplier Regulations. The rescission period in the current Supplier Regulations is 10 calendar days from the day the EDC sends a confirmation letter to the customer.³

20. Staff notes that Delaware’s telemarketing law⁴ requires that telemarketers’ sales transactions only be considered final 7 business days after the customer has received written notice. In Staff’s view, the rescission period should also be 7 business days so that the Supplier Regulations are consistent with the telemarketing law. Additionally, Staff noted that the Commission previously rejected this same argument, and opted for a more conservative approach.⁵

21. RESA⁶ observes that Delaware’s Home Solicitations Act⁷ governing door-to-door sales, as well as the federal

2. Order No. 8845, p. 3, ¶g.

3. See 26 *Del. Admin. C.* §3001 at subsection 3.4.

4. 6 *Del. C.* ch. 25A.

5. Staff 10/21/16 Comments at 6).

6. The DPA supports RESA’s comments and positions on the unresolved issues. See DPA 10/31/16 Comments at 1-2.

7. 6 *Del. C.* §§4401 *et seq.*

Cooling-Off Rule,⁸ provide for a 3-day rescission period.⁹ It contends that the Delaware Telemarketing Registration and Fraud Prevention Act does not apply to sellers or telemarketers “operating within the jurisdiction of the Public Service Commission,” and electric suppliers are within the Commission’s jurisdiction.¹⁰ It points out that a 3-business-day rescission period is consistent with the rescission periods in effect in Maryland, Pennsylvania, and the District of Columbia.¹¹ RESA advises that Maryland’s rules do not contain a rescission period, but rather rely on the 3-business-day rescission periods in the Maryland Door to Door Solicitation Act and the federal cooling-off period.¹² Pennsylvania and the District of Columbia both have 3-business-day rescission periods.¹³

22. Furthermore, RESA contends that a three-business-day rescission period is consistent with the goal of allowing customers to take advantage of products quickly. RESA argues that “[c]ustomers are growing increasingly accustomed to making real-time shopping decisions and immediately reaping the benefits of those decisions – they expect to get what they buy in ‘Amazon time.’”¹⁴ However, under the current Supplier Regulations, customers currently wait between 15-44 days to effect a change in electric suppliers, and under Staff’s 7-business-day rescission period a customer could potentially wait more than two weeks to effect a desired change in electric suppliers.¹⁵ RESA claims that the longer wait time that Staff advocates confuses and frustrates customers, thereby diminishing their shopping experience and denying them the benefits they have chosen.¹⁶ It argues that Staff has not identified any circumstances that justify a longer rescission period than those in the Federal Cooling-Off Rule, the Delaware Home Solicitations Act, or surrounding states, and concludes that there is no reason for treating customers’ decisions regarding electricity differently than their decisions regarding other products.¹⁷

2. Commission Decision

23. Upon review of the parties’ comments and after hearing their oral arguments, the Commission finds that a 3-business day rescission period is appropriate. We understand that this is a shorter period than the rescission period that we approved in 2006, but we note that the Delaware Home Solicitations Act and the Federal Cooling-Off Rule both include a 3-business-day rescission period. We believe our regulations should be consistent with other legal requirements with which customers may already be familiar. We also believe that a 3-business-day rescission period will better effect the General Assembly’s intent that barriers to competition be reduced. (Unanimous).

B. Opt-In or Opt-Out/Frequency of Updates to the Customer List

1. The Parties’ Positions

24. The current Supplier Regulations provide that a customer may elect to opt out of receiving solicitations from retail electricity suppliers. DPL’s practice in implementing this provision is that once the customer exercises that option, the decision stands as long as they remain a DPL customer or until they advise DPL to the contrary. The DPA-RESA proposed Supplier Rules continue that opt-out feature, and would require the customer to affirmatively indicate their preference annually.

25. DPL and Staff argue that the current opt-out practice currently in place should continue in effect.¹⁸ DPL contends that an annual opt-out is too onerous for customers, and that it would also violate the trust that customers have placed in DPL to maintain the confidentiality of their information once they opt out.¹⁹ DPL observes that pursuant to the current Commission-approved opt-out process, when a customer first signs up for electric service, DPL asks the customer if they want to opt out of being placed on the customer list that is made available to third-party suppliers, and that once the customer makes that election, DPL honors it until the customer instructs otherwise.²⁰ DPL claims that the best time for a customer to make this choice is when they first sign up for service, because “they are fully attentive to all aspects of the enrollment process.”²¹ DPL claims that requiring customers to re-confirm their decision to opt out, on an annual basis, is

8. 16 C.F.R. §429.1.

9. RESA 10/28/16 Comments at 4-5.

10. *Id.* at 5.

11. *Id.*

12. *Id.*, citing Md. Commercial Law Code. Ann. §14-302; Code of Md. Regulation 20.53.07.11; Code of Md. Regulation 20.53.06.07.

13. *Id.*, citing District of Columbia Consumer Bill of Rights, §327.44 and 52 Pa. Code §54.5(d).

14. RESA 10/28/16 Comments at 6.

15. *Id.*

16. *Id.* at 7.

17. *Id.* at 6-7.

18. DPL 10/28/16 Comments at 3; Staff 10/27/16 Memorandum at 3. Staff did not identify this as an issue that concerned it in its 10/21/16 comments, but stated its agreement with DPL in the 10/27/16 Memorandum and during oral argument on November 1, 2016.

19. DPL Comments at 2-3.

20. *Id.* at 3.

burdensome and confusing.²² Additionally, DPL argues that if a requirement is implemented for a customer to opt-out annually and the customer does not pay attention to the annual opt-out and so fails to opt out, the trust relationship between the customer and DPL may be violated because the customer may incorrectly believe that DPL has failed to honor its obligation.²³

26. Staff pointed out that its position protected the status quo of the customers' original decision not to participate in third party suppliers' offerings. Staff also noted the similarities with the National DO Not Call Registry that established a permanent registry, which telemarketers cannot call.²⁴

27. RESA urges the Commission to maintain the opt-out process that it adopted in 2006, and to require DPL to refresh the list annually.²⁵ First, it argues that the opt-out process is a reasonable way to implement customer lists: not only did this Commission already so decide in Order No. 7023,²⁶ but so had Pennsylvania, Maryland, Massachusetts and Virginia regulators.²⁷ Second, it contends that DPL's and Staff's opposition was based on what it called the "faulty premise that an opt-out process somehow endangers customers and puts their information at risk," observing that neither DPL's nor Staff's speculation was supported by examples of actual breaches of confidentiality in Delaware or anywhere else, or by studies, or by actual facts. Rather, RESA argues, the Pennsylvania experience showed that opt-out lists have not been problematic.²⁸ Third, RESA notes that the revisions to proposed subsection 3.3.3 addressed DPL's and Staff's concerns regarding safeguarding the list and who could have access to it.²⁹ Fourth, RESA opposes the "forever" nature of the current opt-out provision, arguing that the lists become stale when customers are not reminded of their opportunity to be included on the list, and that the Pennsylvania Commission has found that reminding customers of their ability to be included on the list is a benefit to them and to competition.³⁰ RESA claims that since 2006, approximately 112,000 of DPL's customers (representing about 36% of DPL's customer base) have opted out of being included on the customer list.

2. Commission Decision

28. Upon review of the parties' comments and after hearing oral argument, we conclude that we should maintain the current opt-out process (by which a customer must affirmatively elect not to receive communications and solicitations from retail electric suppliers), and that the opt-out period should not be forever (as it currently is), but that a customer must reaffirm his/her election to opt out every three years. We believe this decision strikes the appropriate balance between encouraging customers to shop and respecting a customer's decision that it does not want its information to be included on the customer list provided to retail electric suppliers. We are concerned by the representation that approximately 36% of DPL's current residential customers have opted out; although we do not know when those elections occurred, it is possible that customers that previously opted out might be interested in learning of the many new options available to them. If they are not interested, they can choose again not to be included on the list. (Unanimous).

29. We reject the DPA-RESA proposal that DPL update the customer list monthly. DPL represents that it updates the list twice annually, in April and October, and we think that is frequent enough that information will not be stale. (Unanimous).

C. Information to be Included in the Customer List

1. The Parties' Positions

30. The DPA-RESA proposed Supplier Regulations would require DPL to provide the following information as part of the customer list:

- Customer account number and any other number that DPL designates as necessary to process an enrollment;
- Customer name;
- Customer service address(es);
- Customer billing address(es);
- Billing country code (if applicable);
- Tariff rate class and schedules;
- Rate subclass/rate subcode (if available);
- Meter read cycle;

21. *Id.*

22. *Id.*

23. *Id.*

24. See Do-Not-Call Implementation Act of 2003, 15 U.S.C. §§6101 *et seq.*, as amended by H.R. 3541,

[Pub.L. 110-187](#) (2008).

25. RESA 10/28/16 Comments at 10.

26. *Id.*

27. *Id.* at 10-11.

28. *Id.* at 11-12.

29. *Id.* at 12.

30. *Id.* at 12-13.

- Load profile group per tariff;
- Transmission/capacity obligation (PJM) (current/future);
- Whether the customer is an SOS customer;
- Historical usage for prior 12 months (consumption/demand);
- On-peak/off-peak consumption (each of 12 months) (KWH) (if available)
- Monthly peak demand (each of 12 months) (KW) (if available);
- Dynamic pricing election, if any;
- Net metering (Y or N); and
- Sales tax status (Y or N).

31. DPL and Staff object to the provision of all of this information.³¹ First, DPL states that it already provides the following information to all retail electric suppliers:

- Customer name;
- Customer mailing address;
- Whether the customer is an SOS customer or has a third-party supplier;
- Customer's rate class;
- Customer's billing cycle;
- Whether the customer is both an electric and gas customer; and
- Whether the customer is a net metering customer.³²

32. DPL contends that the DPA-RESA changes would include "a significant amount of detailed new personal information" about its customers that should not be disclosed to electric suppliers or marketers.³³ It claims that this information that it currently provides to electric suppliers, which is updated twice annually, is adequate for them to market to customers.³⁴ According to DPL, it would set a "bad precedent" were the Commission to approve the disclosure of such personally identifiable information,³⁵ and DPL's customers have a reasonable expectation that DPL will not share the detailed personal information it has about its customers with marketers. DPL says that Delaware is the only jurisdiction within the five territories in which PHI utilities operate that requires it to make a customer list in any form available to suppliers. Finally, DPL argues that the Pennsylvania commission "appears to have made a very conscious choice to promote customer choice to the greatest extent possible and has devoted a significant amount of its own resources, to that effort;" Delaware, however, is different not only in the constitution of the utility territories but also in terms of the resources that this Commission can devote to promoting customer choice.³⁶

33. RESA acknowledges that the DPA-RESA proposed Supplier Regulations include significantly more information than the current Supplier Regulations require. It encourages the Commission to adopt the DPA-RESA requirements, claiming that this additional information is required because "Delaware is at a critical juncture" with respect to developing retail electric competition. RESA notes that despite choice being available for more than 10 years, only 10% of Delmarva's residential customers have shopped as of July 29, 2016.³⁷

34. RESA argues that the information above and beyond what DPL already provides (such as historical usage for last 12 months, on-peak/off-peak consumption, monthly peak demand, dynamic pricing election) will allow it to design products that satisfy customers' individual desires and budgets and that are tailored to customers' needs and wants.³⁸ Historical usage information also allows suppliers to project what their wholesale costs of serving a customer will be, which eliminates unnecessary risk premiums that increase costs. According to RESA, the expanded customer list benefits customers by enabling suppliers to offer lower price products that are not available in the current market.³⁹ Furthermore, RESA contends that the inclusion of customers' account numbers and 22-digit service numbers in the expanded list assists in the enrollment process when customers do not know or have the information needed to enroll.⁴⁰ Next, RESA points out that there is no evidence that the release of this information has caused problems in states that permit the information to be disclosed. It cites to Pennsylvania, where customer information similar to what is being requested here has been disclosed for years, and which the Pennsylvania Commission recently expanded to include natural gas customers.⁴¹

31. Staff did not oppose this provision in its 10/21/16 comments, but did oppose it in the 10/27/16 Staff Memorandum and during oral argument on November 1, 2016.

32. DPL 10/28/16 Comments at 3-4.

33. *Id.* at 4.

34. *Id.* at 5.

35. *Id.*

36. *Id.* at 5-6.

37. RESA 10/28/16 Comments at 7.

38. *Id.* at 8.

39. *Id.*

40. *Id.*

35. Finally, RESA argues that customer lists with sufficient customer information will enable suppliers to use marketing channels that consumer advocates prefer.⁴² RESA contends that consumer advocates generally prefer marketing channels other than door-to-door solicitations and telemarketing, such as kiosks in malls or storefronts. Without access to the additional customer information such as the account number or DPL's 22-digit service number, suppliers are effectively limited to marketing at places where customers have easy access to their utility bills – their homes.⁴³

2. Commission Decision

36. We decline to approve the DPA-RESA proposed regulations with respect to all of the categories of customer information included therein. DPL has represented that it currently provides retail electric suppliers with customers' names, their mailing addresses, their status as an SOS customer or a customer of another supplier, their rate classes, their billing cycles, whether they are electric-only, gas-only or dual customers, and whether they are net metering customers. We believe this is sufficient information for suppliers to tailor their products to particular customers while at the same time protecting the privacy of those customers' information.

37. We are sympathetic to the argument that Pennsylvania does permit disclosure of the information that DPA and RESA included, and that Pennsylvania (and other states that permit the disclosure of more customer information than we approve here) has not experienced any problems with the unintended disclosure of confidential customer information. We acknowledge that Pennsylvania is the "gold standard" in this regard, but believe that this is too great a step to take at this time. (Unanimous).

D. UNCONTESTED REVISIONS

38. The DPA-RESA proposed Supplier Regulations published on October 1, 2016, as amended by the agreement of the DPA, DPL, Staff and RESA, contain significantly more regulatory requirements with which current and potential retail electric suppliers in Delaware will have to comply. Initially, an applicant for certification as a retail electric supplier or broker will be required to provide significantly more information than is currently required. See §2.0. Additionally, the initial security amount that applicants must post has been increased to \$100,000, and thereafter, the required security amount shall be the greater of \$100,000 or 5% of the supplier's annual revenues from supply sales to Delaware residential and small commercial customers. *Id.* at subsections 2.3.3.1, 2.3.3.2. That security amount will be available for the Commission to distribute in accordance with state law if a supplier is found to have violated a statute or regulation governing its provision of service to residential or small commercial customers. *Id.* at subsection 2.3.4.

39. The proposed Supplier Regulations also introduce new requirements for the regulated utility to provide pre-enrollment information about a customer to a supplier when the customer has given his consent. *Id.* at subsections 3.1, 3.2. They also include provisions for safeguarding the customer information provided to a supplier. *Id.* at subsection 3.3.3.

40. The proposed Supplier Regulations will require a regulated utility to process electronic enrollments or drops from an electric supplier within 3 business days after receipt of the electronic transaction. *Id.* at subsection 4.3. The regulated utility will also be required to notify the customer that is enrolling with or dropping from an electric supplier of the enrollment or drop by the end of the next business day following the enrollment or drop. *Id.* at subsection 4.2.

41. The proposed Supplier Regulations make significant changes to the current Supplier Regulations with respect to the information that retail electric suppliers must provide to potential and existing customers. See Section 6.0. For example, a retail electric supply contract must include a list and description of the contract services; the contract duration (in months or years, or the disclosure that the contract is month-to-month); a description of the price of each service, including the duration of an introductory price (if any), a description of and the amount of any other fees or charges (including early termination fees, late fees, minimum monthly charges, enrollment fees and interest charges) and the circumstances under which each such additional fee can be imposed; a description of any non-commodity products or services being provided as part of the contract; a description of any inducement on which a supplier relies to claim that a customer will save money by switching as opposed to remaining on standard offer service; a statement of the customer's rescission rights; when the rescission period begins; a statement of the supplier's termination rights and the circumstances under which the supplier may terminate the contract; a description of the contract renewal procedures (if any), a description of the dispute resolution procedure; and all disclosures required by other applicable laws governing marketing, consumer protection, and door-to-door sales. See subsection 6.2.

42. The proposed Supplier Regulations also provide that a supplier must provide a "Contract Summary" to residential and small commercial customers at the time of the contracting process. The Contract Summary must include several of the disclosures required in subsection 6.2, as well as disclosures on how a variable-price customer can access the variable price applicable to his contract. See subsection 6.3.

43. The proposed Supplier Regulations specifically provide the type and content of notice that must be given to customers regarding changes in the variable price that they will be charged. See section 7.0.

44. The proposed Supplier Regulations provide significant new protections for customers with respect to renewal of a contract, including the notice that must be provided to customers, the information that notice must contain, and when that

41. *Id.* at 8-9.

42. *Id.* at 13.

43. *Id.* at 14.

notice must be provided. See section 8.0. Similarly, they provide for mandatory written notice of changes in the fixed price or certain other material contract terms. See Section 9.0.

45. The proposed Supplier Regulations expand upon certain customer protections (such as anti-cramming and anti-slammings provisions) that are contained in the current Supplier Regulations. For example, the proposed Supplier Regulations prohibit a supplier and its agents from suggesting that a customer is required to choose an electric supplier; from suggesting that the customer's service will suffer if he does not choose an electric supplier; and from suggesting that the supplier has a relationship with the regulated utility, a government agency or another electric supplier that does not exist. See subsection 10.2. The proposed Supplier Regulations also require electric suppliers to train their agents regarding (among other things) state and federal laws and regulations governing marketing, telemarketing, consumer protection and door-to-door sales; the electric supplier's products and services; the electric supplier's prices, price structures and payment options; the customer's right to rescind and cancel contracts; and the proper completion of transaction documents. Suppliers must document their agents' training, maintain those records for three years, and provide them to the Commission and/or the DPA upon request. *Id.* at subsection 10.4.

46. The proposed Supplier Regulations contain significant new customer protections with respect to suppliers' enrollment, telephone and door-to-door marketing, and advertising practices. Importantly, the proposed Supplier Regulations include a requirement that suppliers disclose in their marketing materials a table that shows the price per kWh for an average residential or small commercial customer using 500 kWh, 1000 kWh, and 2000 kWh of electricity. Additionally, the proposed Supplier Regulations require suppliers to obtain a customer's authorization to switch in one of three ways – recorded verbal consent over the telephone, electronic contract or written contract - and to maintain the verification of the customer's consent for the duration of the customer's contract. When a customer enrolls with a supplier during a telemarketing call, the supplier must record the entire sales call and verification. The proposed Supplier Regulations contain specific instructions for what suppliers marketing by telephone and door-to-door must inform a potential customer before making their sales pitch. When a supplier engages in door-to-door sales, it must notify Staff and the DPA, no later than the morning of the day the activity begins, with respect to general information about the activity and the general geographic location of the activity. Finally, the proposed regulations require the supplier (or the independent contractor or vendor it uses) to conduct background checks on agents that will be making door-to-door solicitations. See Section 11.0.

1. Commission Decision

47. We approve the uncontested revisions to the Supplier Regulations. We are satisfied that they strike an appropriate balance between encouraging customers to shop and protecting those customers from unscrupulous marketing and solicitation activities. We also believe that the revisions adequately protect customers from experiencing price shocks such as those that occurred in other states as a result of the polar vortex in 2014. (Unanimous).

48. Pursuant to the provisions of 29 **Del.C.** §10118 (c), substantive changes in the regulations as a result of the public comments, evidence and information, and Commission deliberations requires notice of the changes made to the regulations.

IV. ORDER

AND NOW, this 15th day of November, 2016, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:

49. That the Commission proposes to revise the Supplier Regulations as set forth herein in Exhibit "A."

50. That, pursuant to 29 *Del. C.* §§1134 and 10115(a), the Secretary shall transmit to the *Register of Regulations* for publication in the December 2016 *Delaware Register of Regulations* a copy of this Order; a copy of the existing Supplier Regulations, showing the proposed changes (Exhibit "A"); and a copy of the Notice of Proposed Rulemaking attached hereto as Exhibit "B."

51. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit "B" to be published in The News Journal and the Delaware State News newspapers on or before November 27, 2016. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or electronic e-mail) a copy of such Notice on: (a) the DPA; (b) the Department of Natural Resources and Environmental Control; (c) Delmarva; (d) all certificated electric supplier; (e) RESA; and (f) each person or entity who has made a timely request for advance notice of rulemaking proceedings.

52. That pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the Supplier Regulation on Tuesday, January 10, 2017, beginning at 1:00 p.m. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

53. That, pursuant to 29 **Del.C.** §§10115(a), 10116, and 10118, persons or entities may file written comments, suggestions, compilation of data, briefs, or other written materials, on or before January 10, 2017.

54. That, pursuant to 26 **Del.C.** §1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provision of 26 **Del.C.** §114(b)(1).

55. The Commission reserves the jurisdiction and authority to enter such further Orders in this docket as may be necessary or appropriate.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair
Joann T. Conaway, Commissioner
K. F. Drexler, Commissioner
Mike Karia, Commissioner

ATTEST:

Donna Nickerson, Secretary

3001 Rules for Certification and Regulation of Electric Suppliers
Effective: July 10, 2011

4.0 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.

"Aggregator" means any person or entity who contracts with an electric distribution company, electric supplier or PJM Interconnection (or its successor) to provide energy services, which facilitate battery storage systems for Grid-Integrated Electric Vehicles and related technologies.

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

"Annualized Billing Period" means a period of 12 consecutive monthly billing periods. A Customer's first Annualized Billing Period begins on the first day of the first full monthly billing period after which the Customer-Generator Facility is interconnected with the EDC and is generating electricity. A customer may elect to change the end of the Annualized Billing Period one time in order to better utilize excess generation.

"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

"Community-owned energy generating facility" or **"Community Energy Facility"** means a renewable energy generating facility that has Subscribers who share the energy production of the Community Energy Facility, which may be located either as a stand-alone facility or behind the meter of a Subscriber. The Community-owned energy generating facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities. The Community Energy Facility shall:

- Satisfy all applicable requirements of Section 8.0 Net Metering of this Rule;
- Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
- Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

"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"** 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, who purchases and supplies electricity to the occupants of such building or facility.

"Customer-Generator Facility" means equipment used by a Customer to generate, manage, and monitor electricity. A Customer-Generator Facility, which typically includes an electric generator and/or an equipment package, shall:

- Satisfy all of the applicable requirements of Section 8.0 Net Metering of this Rule;
- Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
- Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

~~“Delaware Electric Cooperative, Inc.” or “Cooperative” or “DEC” or its successor(s).~~

~~“Delmarva Power & Light Company” 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, e.g., Delmarva), 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 by the Commission to Electric Suppliers that have fulfilled the Commission’s certification requirements.~~

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

~~“Eligible 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 7 ~~DE Admin. Code 106, Environmental Standards for Eligible Energy Resources~~);
- 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 7 ~~DE Admin. Code 106, Environmental Standards for Eligible Energy Resources~~);
- 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.~~

~~“Fuel Cell” means an electric generating facility that: (a) includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy, and (b) may include an inverter and fuel processing system or other plant equipment to support the plant’s operation or its energy conversion, including heat recovery equipment.~~

~~“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 electric energy.~~

~~“Grid-Integrated Electric Vehicle” means a battery-run motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for the external control of battery charging and discharging by an electric distribution company, electric supplier, PJM Interconnection, or an aggregator.~~

~~“Host Customer” means the customer account directly connected to a Customer-Generator Facility or Community Energy Facility, or, for a stand-alone Community Energy Facility, the customer account as designated by the Subscribers who share the energy production of the Community Energy Facility.~~

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

~~“Net Metering” (or “Net Energy Metering”) means a service to a Customer whereby electric energy generated by the Customer, through a Customer-Generator Facility and delivered to the local distribution facilities of an Electric Supplier, may be used to offset electric energy provided by the Electric Supplier to the Customer.~~

~~“PJM Interconnection, LLC” or “PJM” 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 a Retail Electric Customer 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.~~

~~“Slamming” means the unauthorized enrollment of a customer without the customer’s permission or 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.” However, for the purposes of these Rules, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for Electric Supply Service shall be exempt from the definition of a Small Commercial Customer.~~

~~“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.~~

~~“Subscriber(s)” means those persons who are otherwise Retail Electric Customers of an electric supplier that are entitled to share in the energy production of a Community Energy Facility.~~

~~“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 May 1, 2006 for Delmarva’s 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.~~

~~13 DE Reg. 950 (01/01/10)~~

~~15 DE Reg. 102 (07/01/11)~~

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 must procure electricity from an entity that complies with PJM’s requirements and is a Certified Electric Supplier in the State.~~

~~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 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 greater of (i) 150 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, except Brokers, 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.~~
 - ~~2.1.5.9.9.10 The Applicant shall disclose whether the entity or any of its affiliated interests has filed for bankruptcy in the past 24 months.~~
 - ~~2.1.1.5.9.11 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 it 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. At the time of the filing, the Applicant shall either provide its Standard Contract for Residential and Small Commercial Customer or a link to it on the Applicant's website. Such contract is subject to review by the Commission Staff and if Staff determines that such contract is not consistent with these Rules for Certification and Regulation of Electric Suppliers ("Rules"), then Staff shall have the authority to require changes in order to make consistent with these 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 Residential or Small Commercial Customer with at least 30 days notice 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, address and the Commission's address and telephone number;~~
 - 2.1.1.9.6 ~~A statement informing the Residential or Small Commercial Customer that, because of relocation outside of their current EDC's service territory, they he/she may terminate his/her contract with his/her Electric Supplier with no termination fee upon a 30-day notice in writing to the Electric Supplier.~~
- 2.2 ~~Notice. Each Applicant except Brokers, 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. ESCs 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 Electric Supply 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 without express Commission Order. No Electric Supplier shall abandon Electric Supply Service within the State without 60 days written notice to the Commission, the affected Electric Distribution Companies, and its Retail Electric Customers.~~
- 3.4 ~~Contracts and Revised Contracts. An Electric Supplier shall supply Electric Supply Service to a Residential or a Small Commercial Customer only by a standard contract containing the provisions described in Section 2.1.1.9, of these Rules. The contract must be signed or verifiable by some other means of authorization by the Residential or Small Commercial Customer. If an Electric Supplier offers a Retail Electric Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the contract signature. A Residential or Small Commercial Customer has ten (10) calendar days from the day the EDC sends the confirmation letter to rescind his/her selection. If the Electric Supplier makes substantive changes to its standard contract for Electric Supply Service to Residential or Small Commercial Customers, the Electric Supplier must notify the Commission Staff to allow for review and comment. If Staff determines that such contract is not consistent with these Rules, 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 Small Commercial Customer's contract with 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 Retail Electric Customer with a copy of its contract which includes the terms and conditions of service.~~
- 3.7 ~~Customer Information. An Electric Supplier may request a list from an Electric Distribution Company which contains Retail Electric Customer's name, service address and mailing address. A Retail Electric Customer may elect to opt out of the list.~~
- 3.8 ~~Marketing and Advertising.~~

- 3.8.1 Pursuant to 26 ~~Del.C.~~ §1012(b) and as further defined in Section 1.0 of these Rules, all Electric Suppliers shall not solicit Retail Electric Customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.
- 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. Electric Suppliers must pay applicable fees and assessments under 26 ~~Del.C.~~ §1012(c)(2). Electric Suppliers must also file any applicable reports required under 26 ~~Del.C.~~ §115(e). The Electric Suppliers except Brokers, 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 and from its Electric Supplier (if the Electric Supplier provides a separate billing), or to receive a combined bill from either Delmarva or its Electric Supplier (if the 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;
- 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 Retail Electric Customer for the 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 Retail Electric Customer's outstanding balance during the billing period;
- 4.2.9 The amount still owed by the 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 the 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 Customer Protection

5.1 Procedures to be followed by the Retail Electric Customer:

- 5.1.1 A Retail Electric Customer should first notify the Electric Supplier of their complaint for resolution of 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 their EDC.
- 5.1.2 If the Retail Electric Customer and Electric Supplier are not able to come to a resolution, the 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 Retail Electric Customer notifies the Electric Supplier that they 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 customer service representatives to handle its Retail Electric Customer's inquiries and complaints.
- 5.2.3 If the Retail Electric Customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will inform the Retail Electric Customer that 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. 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 Gramming. 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.

5.5 General Retail Electric Customer Protections. An Electric Supplier, including Brokers, shall not engage in fraudulent or improper activities, nor shall it disseminate any consumer information obtained pursuant to Section 3.7, and may be subject to penalties as described in Section 10.0 of these Rules.

6.0 Green Power and Renewable Resources

6.1 For the purposes of this Section, a Green Power Product is defined as an Electric Supply Service which is marketed or otherwise advertised as having a generation resource mix consisting of Eligible Energy Resources above the current Compliance Year's Cumulative Minimum Percentage found in Commission Regulation No. 56.

6.2 Electric Suppliers offering a Green Power Product shall register with the PJM-EIS GATS, or its successor. 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 When requested by a Retail Electric Customer or providing information regarding Green Power 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

~~Retail Electric Customer, in writing, that the Electric Supply Service the Retail Electric Customer receives will be used to meet the Electric Supplier's RPS requirements.~~

- 6.5 ~~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.~~
- 6.6 ~~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, except Brokers, 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 Retail Electric Customers by each Retail Electric Customer class served during that quarter;~~
 - 7.1.2 ~~The total amount of electricity (kWh or MWh) supplied to each Retail Electric Customer class; and,~~
 - 7.1.3 ~~The fuel resource mix by percentage for each resource.~~
- 7.2 ~~Each Electric Supplier shall also disclose the information under paragraph 7.1.3 to its Retail Electric Customers annually via bill inserts and each other quarter by providing information on the Retail Electric Customer's bill for that quarter directing the Retail Electric Customer to obtain the information on the Electric Supplier's website or by a telephone request. Each Electric Supplier must maintain and update the information in paragraph 7.1.3 as required by 26 Del.C. §1012. Information reported under paragraph 7.1.3 may be utilized in any consumer education program developed in accordance with 26 Del.C. §1014 (c).~~

8.0 Net Metering

8.1 General Provisions

~~Net Metering can occur in three circumstances as follows:~~

~~Condition 1 – Individual Customer/Single Account/Single Premise where all Net Metering activity occurs at a single customer premise for a single customer account;~~

~~Condition 2 – Individual Customer/Multiple Accounts/Single or Multiple Premises where a single customer can aggregate Net Metering for crediting to multiple accounts and/or premises; and~~

~~Condition 3 – Host Customer/Multiple Subscribers/Multiple Premises where a Community Energy Facility, either behind the meter of a Subscriber or as a stand-alone facility, provides Net Metering for multiple Subscribers and multiple premises.~~

~~Each Electric Supplier providing Electric Supply Service shall offer Customers the option of Net Metering if a Customer generates electricity at the Customer's premises, subject to all of the following requirements:~~

- 8.1.1 ~~The Customer owns and operates; leases and operates; or contracts with a third party who owns and operates the electric generation facility with a capacity that:~~
- 8.1.1.1 ~~Will not exceed 25 kW per DP&L meter for residential Customers;~~
 - 8.1.1.2 ~~Will not exceed 2 MW per DP&L meter for non-residential Customers;~~
 - 8.1.1.3 ~~Will not exceed 100 kW per DP&L meter for farm customers, as those customers are described in Title 3, section 902(3); provided, however, that the Delaware Energy Office may grant exceptions to this limitation in accordance with Title 26, section 1014(d)(1)b;~~
 - 8.1.1.4 ~~For Conditions 2 or 3, the sum of electric generation capacity will not exceed the applicable limits per meter specified in Sections 8.1.1.1 through 8.1.1.3 above;~~
 - 8.1.1.5 ~~Uses as its primary source of fuel: solar, wind, hydro, a fuel cell or gas from the anaerobic digestion of organic material;~~
 - 8.1.1.6 ~~Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and~~
 - 8.1.1.7 ~~Is designed to produce no more than 110% of the Host Customer's expected aggregate electrical consumption, calculated on the average of the two previous 12-month periods of actual electrical usage at the time of installation of energy-generating equipment and subject to the capacity limits specified in Section 8.1.1.1 through Section 8.1.1.3 of this Rule. For new building construction or in instances where less than two previous 12-month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and~~

~~characteristics at the time of installation of energy generating equipment and subject to the capacity limits specified in Sections 8.1.1.1 through Section 8.1.1.3 of this Rule.~~

- ~~8.2 Net metering shall be accomplished through a single meter at the Electric Supplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.~~
- ~~8.2.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the Customer, at the expense of the Electric Supplier, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the Customer pursuant to Sections 8.3 and/or 8.4 of this Rule, or to collect system performance information on the eligible technology for research purposes.~~
- ~~8.2.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.~~
- ~~8.2.3 If the existing electrical meter of a Customer is incapable of measuring the flow of electricity in two directions through no fault of the customer, the Electric Supplier shall be responsible for all expenses involved in purchasing and installing such a meter.~~
- ~~8.2.4 For Condition 3 where a stand-alone Community Energy Facility is installed, the Electric Supplier shall install the metering necessary to provide the data to accomplish the necessary billing and shall be responsible for all expenses involved in purchasing and installing such a meter. The Electric Supplier shall assess the stand-alone Community Energy Facility a customer charge equivalent to the load and energy output characteristics of the generating facility which would be equivalent to the load and energy characteristics of a similarly situated Retail Electric Customer in its Commission-approved tariff, i.e., an equivalent retail tariff.~~
- ~~8.2.5 The equivalent retail tariff shall also be used to assess the stand-alone Community Energy Facility non-volumetric charges to recover the otherwise applicable supply, transmission, and distribution delivery costs. Subscribers to the stand-alone Community Energy Facility remain subject to only their otherwise applicable Commission-approved tariff.~~
- ~~8.3 For Net Metering Condition 1 and Condition 2 if, during any billing period, a Customer-Generator Facility produces more energy than that consumed by the Customer, or aggregate total kWh of the Customer, the Electric Supplier will credit the Customer in kWh's, valued at an amount per kWh equal to the sum of volumetric energy (kWh) components of the delivery service charges and supply service charges for residential Customers and the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non-residential Customers for any excess energy production of their generating facility that exceeds the Customer's on-site, or aggregate total, consumption of kWh in a billing period. During any billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.~~
- ~~8.3.1 Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used. During any subsequent billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.~~
- ~~8.3.2 At the end of the Annualized Billing Period, a Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment for residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges based on a weighted average of the first block of the summer (June through September) and winter Supply Service Charges (October through May) in effect at the end of the Customer's Annualized Billing Period and the preceding 11 billing periods, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. The payment for non-residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges that would otherwise be applicable at the end of the Customer's Annualized Billing Period. If such payment would be less than \$25.00, the Electric Supplier may credit the Customer's account through monthly billing.~~
- ~~8.3.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.~~
- ~~8.3.4 The Customer shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Customer-Generator Facility and consumed by the Customer unless the customer has relinquished such ownership by contractual agreement with a third party.~~

- 8.3.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not Net-Metering would be charged. Electric Suppliers shall not charge a Net-Metering Customer any stand-by fees or similar charges.
 - 8.3.6 If a Net-Metering Customer terminates its service with the Electric Distribution Company or changes Electric Supplier, the Electric Supplier terminating service shall treat the end-of-service period as if it were the end of the Annualized Billing Period for any excess kWh credits.
 - 8.3.7 If the total generating capacity of all Customer-generation using net-metering systems served by an electric utility exceeds (5%) of the capacity necessary to meet the Electric Supplier's aggregated Customer monthly peak demand for a particular calendar year, the Electric Supplier may elect not to provide Net Metering services to additional Customers.
 - 8.3.8 Where applicable, the requirements established in Section 8.6 of these Rules shall apply to this Section 8.3.
- 8.4 For Net Metering Condition 3 where the Community Energy Facility is located behind the meter of a Subscriber that is also the Host Customer, the following will be subject to the requirements established in Section 8.7 of this Rule:
- 8.4.1 During a monthly billing period where the energy from the Community Energy Facility exceeds the consumption of the Host Customer, the Subscribers participating in a Community Energy Facility not located on the same distribution feeder as the Community Energy Facility shall be credited in kilowatt-hours (kWh) valued at an amount per kWh equal to supply service charges according to each account's rate schedule for any of the energy production in excess of the consumption of the Host Customer of the Community Energy Facility. The Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility shall be credited in kWh pursuant to Section 8.3 of this Rule. Any excess energy after crediting Subscribers during a billing period shall be credited in subsequent billing periods. During any billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Host Customer and Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
 - 8.4.2 At the end of the Annualized Billing Period, a Host Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service charge of the Host Customer of the Community Energy Facility as provided under Section 8.3 of this Rule. Such payment shall be made to the Host Customer of the Community Energy Facility, and may be credited to the Host Customer's account through monthly billing if less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the Electric Supplier.
 - 8.4.3 As an alternative to the monthly billing period crediting above, at the end of each monthly billing period DP&L may elect to make payment to the Host Customer of the Community Energy Facility for the value of the generated electricity as established by the Public Service Commission. For purposes of Net Metering by DP&L, such value for generated electricity is established as the otherwise applicable supply service charge of the Host Customer. Additionally, for the Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility, at the end of each monthly billing period DP&L shall also include in the monthly payment to the Host Customer the value for the volumetric kWh delivery service charges. The payment for the value of the volumetric kWh delivery service charges shall be the same as determined in Section 8.3 of this Rule.
- 8.5 For Net Metering Condition 3 where the Community Energy Facility is a stand-alone facility, the following will be subject to the requirements established in Section 8.7 of this Rule:
- 8.5.1 During a monthly billing period where energy is produced from the Community Energy Facility, each Subscriber participating in a Community Energy Facility not located on the same distribution feeder as the Community Energy Facility shall be credited in kilowatt-hours (kWh) valued at an amount per kWh equal to supply service charges according to each account's rate schedule for any of the energy production of the Community Energy Facility. Subscribers located on the same distribution feeder as the Community Energy Facility shall be credited in kWh pursuant to Section 8.3 of this Rule. Any excess energy after crediting Subscribers during a billing period shall be credited in subsequent billing periods. During any billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
 - 8.5.2 During any billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.

- 8.5.3 ~~At the end of the Annualized Billing Period, a Host Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service rate of the Host Customer of the Community Energy Facility pursuant to Section 8.3 of this Rule, and may be credited to the Host Customer's account through monthly billing if less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the Electric Supplier. The Subscribers participating in a Community Energy Facility shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Community Energy Facility unless the Subscribers participating in the Community Energy Facility have relinquished such ownership by contractual agreement with a third party.~~
- 8.5.4 ~~A Community Energy Facility shall not exceed the sum total of the capacity limits as defined under Section 8.1.1.1 through Section 8.1.1.3 of this Rule among the Subscribers of a Community Energy Facility.~~
- 8.5.5 ~~As an alternative to the monthly billing period crediting above, at the end of each monthly billing period DP&L may elect to make payment to the Host Customer of the Community Energy Facility for the value of the generated electricity as established by the Public Service Commission. For purposes of Net Metering by DP&L, such value for generated electricity is established as the otherwise applicable supply service charge of the Host Customer. Additionally, for the Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility, at the end of each monthly billing period DP&L shall also include in the monthly payment to the Host Customer the value for the volumetric kWh delivery service charges. The payment for the value of the volumetric kWh delivery service charges shall be the same as determined in Section 8.3 of this Rule.~~
- 8.6 ~~Subject to the applicable Net Metering provisions of Section 8.0 of this Rule, in instances where one customer has multiple meters under the same account or different accounts, regardless of the physical location and rate class, the customer may aggregate meters for the purpose of net metering regardless of which individual meter receives energy from a Customer Generator Facility, provided that:~~
- 8.6.1 ~~DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and~~
- 8.6.2 ~~The Customer Generator Facility is designed to produce no more than 110% of the Customer's aggregate electrical consumption of the individual meters or accounts that the Customer is entitled to aggregate under this Section 8.6 calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and~~
- 8.6.3 ~~A Customer Generator Facility shall not exceed the sum total of the capacity limits among the participants of a Customer Generator Facility as defined under Section 8.1.1.1 through Section 8.1.1.3 of this Rule; and~~
- 8.6.4 ~~At least ninety days before a Customer commences construction of a Customer Generator Facility or a Customer is entitled to aggregate multiple meters, the customer shall file with DP&L the following information:~~
- 8.6.4.1 ~~a list of individual meters the Customer is entitled to aggregate, identified by name, address, rate schedule, and account number, and ranked according to the order which the Customer desires to apply credit for excess energy to each individual meter; and~~
- 8.6.4.2 ~~a description of the Customer Generator Facility, including the facility's location, capacity, and fuel type or generating technology; and~~
- 8.6.4.3 ~~a complete interconnection application to facilitate a transmission and distribution analysis, including an evaluation of potential reliability, safety and stability impacts and determination of whether infrastructure upgrades are necessary and appropriate allocation of applicable interconnection costs.~~
- 8.6.5 ~~The Customer may change its list of aggregated meters specified in Section 8.6.4.1 no more than once annually by providing ninety days' written notice; and~~
- 8.6.6 ~~Credit shall be applied first to the meter through which the Customer Generator Facility supplies electricity, then through the remaining meters for the Customer's accounts according to the rank order as specified in accordance with Section 8.6.4.1 above; and~~
- 8.6.7 ~~Credit in kilowatt-hours (kWh) shall be valued according to Section 8.3 of this Rule and each account's rate schedule as specified in Section 8.6.4.1 above; and~~
- 8.6.8 ~~DP&L may require that a Customer's aggregated meters as specified in Section 8.6.4.1 above be read on the same billing cycle.~~
- 8.7 ~~Subscribers are eligible to participate in a Community Energy Facility, provided:~~

- ~~8.7.1 A community includes customers sharing a unique set of interests; and~~
- ~~8.7.2 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and~~
- ~~8.7.3 A Community Energy Facility is designed to produce no more than 110% of the community's aggregate electrical consumption of its individual customers, calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and~~
- ~~8.7.4 A Community Energy Facility shall not exceed the sum total of the capacity limits among the participants of a Community Energy Facility as defined under Section 8.1.1.1 through Section 8.1.1.3 of this Rule; and~~
- ~~8.7.5 A Community Energy Facility may include technologies defined under §352(6)(a-h) of Title 26 of the Delaware Code; and~~
- ~~8.7.6 Before Net Metering for a Community Energy Facility may be formed and served by DP&L, the community proposing a Community Energy Facility shall file with the Delaware Energy Office and DP&L the following information:
 - ~~8.7.6.1 a list of individual meters the community is entitled to aggregate identified by name, address, rate schedule, and account number; and~~
 - ~~8.7.6.2 a description of the Community Energy Facility, including the facility's physical location, the Host Customer's physical location, capacity, and fuel type or generating technology; and~~
 - ~~8.7.6.3 the share of kWh credits to be attributed to each meter, which DP&L shall true-up at the end of the annualized billing period.~~~~
- ~~8.7.7 A community proposing a Community Energy Facility may change its list of aggregated meters as specified in Section 8.7.6.1 above no more than quarterly by providing ninety days' written notice to DP&L; and~~
- ~~8.7.8 If the community proposing a Community Energy Facility removes individual customers from the list of aggregated meters as specified in Section 8.7.6.1 above, then that community shall either replace the removed customers, reduce the generating capacity of the Community Energy Facility to remain compliant with the provisions provided under Sections 8.7.3 and 8.7.4 above, or negotiate with DP&L to establish a mutually acceptable agreement for any excess kWh credit; and~~
- ~~8.7.9 DP&L may require that customers participating in a Community Energy Facility have their meters read on the same billing cycle; and~~
- ~~8.7.10 Neither customers nor owners of community owned energy generating facilities shall be subject to regulation as either public utilities or an Electric Supplier.~~
- ~~8.7.11 The Subscribers participating in a Community Energy Facility shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Community Energy Facility unless the Subscribers participating in the Community Energy Facility have relinquished such ownership by contractual agreement with a third party.~~
- ~~8.8 Nothing in these Rules is intended in any way to limit eligibility for net energy metering services based upon direct ownership, joint ownership, or third party ownership or financing agreement related to an electric generation facility, where net energy metering would otherwise be available~~
- ~~8.9 For public utilities regulated by the Commission, net metering aggregation disputes limited to the correct application of Commission approved tariffs shall be resolved by the Commission. All other disputes with an Electric Supplier, DEC, or municipal electric companies shall be resolved by the appropriate governing body with jurisdiction over such disputes.~~
- ~~8.10 Any requirements necessary to permit interconnected operations between the Customer-Generator Facility or Community Energy Facilities; and the Electric Supplier, 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 Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's Model Interconnection Rules and best practices identified by the U.S. Department of Energy. Electric Suppliers shall not require eligible net metering customers who meet all applicable safety and performance standards to install excessive controls, perform or pay for unnecessary tests, or purchase excessive liability insurance.~~
- ~~8.11 Each Electric Supplier shall submit an annual net metering report to the Commission 90 days after the end of the calendar year. Such report shall include the following information from the previous calendar year:
 - ~~8.11.1 The total number of Customer-Generator Facilities and Community-owned energy generating facilities; and~~~~

- ~~8.11.2 The total estimated rated generating capacity of its net metered Customer-Generator Facilities and Community-owned energy generating facilities; and~~
- ~~8.11.3 The total estimated net kilowatt-hours received from Customer-Generator Facilities and Community-owned energy generating facilities; and~~
- ~~8.11.4 The total estimated amount of energy produced by Customer-Generator Facilities and Community-owned energy generating facilities, using a methodology approved by the Commission.~~
- ~~8.11.5 The annual net metering report may be revised as necessary to reflect changes in information available from net metered facilities upon consultation and agreement between the Electric Supplier and the Staff of the Delaware Public Service Commission.~~
- ~~8.12 The Commission shall periodically review the impact of net metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.~~
- ~~8.13 A retail electric customer having on its premises one or more grid Grid-Integrated Electric Vehicles shall be credited in kilowatt-hours (kWh) for energy discharged to the grid from the Grid-Integrated Electric Vehicle's battery at the same kWh rate that customer pays to charge the battery from the grid, as determined in Section 8.3 of this Rule. Excess kWh credits shall be handled in the same manner as Net Metering as described in Section 8.3 of this Rule. To qualify under this section of the Rule, the Grid-Integrated Electric Vehicle must meet the requirements in Sections 8.1.1.1., 8.1.1.2, and 8.1.1.5 of this Rule. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in Sections 8.3, 8.10, and 8.11 of this Rule.~~
- ~~8.14 The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with Section 8.13 of this Rule. Such tariffs may include rate and credit structures that vary from those set forth in Section 8.13 of this Rule, as long as alternative rate and credit structures are not inconsistent with the development of Grid-Integrated Electric Vehicles.~~

~~12 DE Reg. 518 (10/01/08)~~

~~13 DE Reg. 950 (01/01/10)~~

~~15 DE Reg. 102 (07/01/11)~~

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.~~

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.

“Agent” means a Person who conducts marketing or sales activities, or both, interacting directly with Customers based on a contractual arrangement with and on behalf of an Electric Supplier. “Agent” does not include Brokers or Aggregators.

“Aggregator” means any Person or entity who contracts with an Electric Distribution Company, Electric Supplier or PJM Interconnection (or its successor) to provide energy services, which facilitate battery storage systems for Grid-Integrated Electric Vehicles and related technologies.

“Ancillary Services” means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

“Annualized Billing Period” means a period of 12 consecutive monthly billing periods. A Customer's first Annualized Billing Period begins on the first day of the first full monthly billing period after which the Customer-Generator Facility is interconnected with the Electric Distribution Company and is generating electricity. A Customer may elect to change the end of the Annualized Billing Period one time in order to better utilize excess generation.

“Applicant” means:

1. A Person seeking to obtain an Electric Supplier Certificate; or
2. An Electric Supplier seeking to amend its Electric Supplier Certificate.

“Broker” means an entity or Person that acts as an agent or intermediary on behalf of the Customer in the sale or purchase of, but that does not take title to, electricity for sale to retail electric Customers.

“Business Day” means any calendar day except Saturdays, Sundays or legal holidays as defined in 1 Del.C. §501.

“Commission” means the Delaware Public Service Commission.

“Community-owned energy generating facility” or “Community Energy Facility” means a renewable energy generating facility that has Subscribers who share the energy production of the Community Energy Facility, which may be located either as a stand-alone facility or behind the meter of a Subscriber. The Community-Owned Energy Generating Facility shall be interconnected to the distribution system and operated in parallel with an EDC transmission and distribution facilities. The Community Energy Facility shall:

1. Satisfy all applicable requirements of Section 15.0 Net Metering of these regulations;
2. Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
3. Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

“Contract” means the total legal obligation resulting from the parties' agreement as effected by these Regulations and other applicable law. A Contract for Electric Supply Service must be accompanied by a Contract Summary.

“Contract Summary” means a written summary of the material terms and conditions of service between an Electric Supplier and a Residential or Small Commercial Customer. If the terms of the Contract Summary differ from the terms of the Contract, then the provision(s) most favorable to the Customer shall control.

“Cooperative” or “**DEC**” means Delaware Electric Cooperative, Inc. or its successor(s).

“Cramming” means the prohibited 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” 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, who purchases and supplies electricity to the occupants of such building or facility.

“Customer-Generator Facility” means equipment used by a Customer to generate, manage, and monitor electricity. A Customer-Generator Facility, which typically includes an electric generator and/or an equipment package, shall:

1. Satisfy all of the applicable requirements of Section 15.0 Net Metering of these Regulations;
2. Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
3. Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

“Delmarva” or “**DP&L**” means Delmarva Power & Light Company or its successor(s).

“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 Customers, up through and including the point of physical connection with electric facilities owned by the Customer.

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

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Door-to-Door Sale" means a sale, or offer of Contracts for sale, in which the Electric Supplier or Electric Supplier's Agent personally solicits a Residential or Small Commercial Customer to sell Electric Supply Service. This term includes sales made at a place other than the Electric Supplier's place of business. This term does not include:

1. Sales made at Public Events;
2. For Small Commercial Customers, sales in response to or following a pre-scheduled appointment between the Small Commercial Customer and the Electric Supplier; and
3. Any sale which is conducted entirely by mail, telephone or other Electronic means.

"DPA" means the Delaware Division of the Public Advocate.

"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 that sells electricity to Customers utilizing the Transmission and/or Distribution Facilities of a nonaffiliated EDC, as defined in 26 Del.C. §1001(14), including:

1. Affiliates of an EDC;
2. Municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999);
3. Electric cooperatives which, having exempted themselves from the Commission's jurisdiction pursuant to 26 Del.C. §§202(g) and 223, choose to provide electricity outside their assigned service territories; and
4. Any Broker, Marketer or other entity (including public utilities and their Affiliates).

"Electric Supplier Certificate" or "ESC" means a certificate granted by the Commission to Electric Suppliers that have fulfilled the Commission's certification requirements. The Commission order approving an Applicant's application for certification as an Electric Supplier, Marketer, or Broker shall serve as the Electric Supplier Certificate.

"Electric Supply Service" means the provision of electricity and related services to Customers, as defined in 26 Del.C. §1001(15).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, as defined in 6 Del.C. 12A-§102(5).

"Electronic mail" or "e-mail" means any message transmitted through the internet including, but not limited to, messages transmitted to or from any address affiliated with an internet site.

"Electronic Signature" means an Electronic sound, symbol, or process attached to or logically associated with a document or record and executed or adopted by a Person with the intent to sign the document or record, as defined in 6 Del.C. §12A-102(9).

"Eligible 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:

1. Solar energy technologies that employ solar radiation to produce electricity;
2. Electricity derived from wind energy;
3. Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
4. 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;
5. Electricity generated by a fuel cell powered by Renewable Fuels;
6. Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
7. 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 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
8. 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 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
9. Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

- a. 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;
- b. 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
- c. 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.

"Fixed Price" means a Price that will remain the same for at least three billing cycles or the term of the Contract, whichever is longer.

"Fuel Cell" means an electric generating facility that: (a) includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy, and (b) may include an inverter and fuel processing system or other plant equipment to support the plant's operation or its energy conversion, including heat recovery equipment.

"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.

"Grid-Integrated Electric Vehicle" means a battery-run motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for the external control of battery charging and discharging by an Electric Distribution Company, Electric Supplier, PJM Interconnection, or an Aggregator."

"Host Customer" means the customer account directly connected to a Customer-Generator Facility or Community Energy Facility, or, for a stand-alone Community Energy Facility, the customer account as designated by the Subscribers who share the energy production of the Community Energy Facility.

"Introductory Price" means a Price offered by an Electric Supplier for new Customers that will remain the same for a limited period of time between one and three billing cycles followed by a different Fixed or Variable Price that will be in effect for the remaining billing cycles of the Contract term, consistent with terms and conditions in the Contract.

"Marketer" means an entity or Person that purchases and takes title to electricity for sale to Customers in this State, as defined in 26 Del.C. §1001(19).

"Net Metering" or **"Net Energy Metering"** means a service to a Customer whereby electric energy generated by the Customer, through a Customer-Generator Facility and delivered to the local distribution facilities of an Electric Supplier, may be used to offset electric energy provided by the Electric Supplier to the Customer.

"Person" means a natural person; a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent or employee of such agency.

"PJM Interconnection, LLC" or **"PJM"** 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.

"Price" or **"Rate"** means all charges (excluding taxes), including Fixed or Variable, to be charged by the Electric Supplier for Electric Supply Service pursuant to the Contract.

"Public Event" means an event in a public location at which an Electric Supplier may market and solicit Residential and Small Commercial Customers to enroll.

"Regulations" means the Commission's Regulations for Certification and Regulation of Electric Suppliers (26 DE Admin. Code §3001 *et seq.*).

"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 the Renewable Energy Portfolio Standards Act, 26 Del.C. §351 *et seq.* 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” means the percentage of retail electricity sales in the State that is to be derived from Eligible Energy Resources.

“Rescission Period” means the time period within which a Residential or Small Commercial Customer may choose to cancel, without penalty, a Contract for Electric Supply Service with an Electric Supplier.

“Residential Customer” means a retail electric Customer eligible to take service classified as Residential under the tariff of the Customer’s Electric Distribution Company currently on file with the Commission.

“Secretary” means the Secretary of the Commission, or any employee of the Commission designated by the Secretary and authorized by the Executive Director.

“Slamming” means the prohibited unauthorized enrollment of a Customer without the Customer’s permission or the unauthorized transfer of a Customer to another Electric Supplier.

“Small Commercial Customer” means a Customer taking service under a current Electric Distribution Company tariff governing Service Classification “Small General Service-Non Demand Rate” or the current Cooperative tariff governing Service Classification “General Service.” However, for the purposes of these Regulations, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for Electric Supply Service shall be exempt from the definition of a Small Commercial Customer.

“Solar Renewable Energy Credit” or (“SREC”) means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from solar photovoltaic energy resources and that is used to track and verify compliance with the provisions of the Renewable Energy Portfolio Standards Act, 26 **Del.C.** §351 et seq.

“Staff” means full-time professional employees of, and outside counsel and consultants retained by, the Commission who render advice to the Commission.

“Standard Offer Service” or “SOS” means the provision of Electric Supply Service by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier, as defined in 26 **Del.C.** §1001(23).

“Standard Offer Service Supplier” or “SOSS” means an EDC serving within its certificated territory, as defined in 26 **Del.C.** §1001(24).

“State” means the State of Delaware.

“Subscriber(s)” means those persons who are otherwise Customers of an Electric Supplier that are entitled to share in the energy production of a Community Energy Facility.

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

“Third party verification” or “TPV” means a method to record consent from a Residential or Small Commercial Customer agreeing to each of the below-listed material Contract terms that is recorded by an independent person not party to the agreement or that may be performed by an automated, computerized system. To be valid, the TPV must occur without the presence of the sales agent, and at the outset must describe how the Residential or Small Commercial Customer can cancel the TPV and the enrollment at any time prior to completion without penalty. The consent from the Residential or Small Commercial Customer must be given without unreasonable assistance from the individual conducting the TPV and must include an acknowledgement from the Residential or Small Commercial Customer:

1. That he or she is voluntarily choosing to enroll with an Electric Supplier;
2. Of the type of product offered (introductory, variable, fixed, or some combination);
3. Of the Price that will be charged for the first month’s service and when or if the Price may change;
4. Of the duration of the Contract;
5. Of the amount of an early termination fee (if applicable);
6. If a Residential Customer, that he or she is the account holder or authorized to make the switch;
7. If a Small Commercial Customer, that he or she is authorized to make the switch;
8. That the Residential or Small Commercial Customer has been provided with information on how the Contract can be renewed and, if applicable, what the Supplier can do if the Customer fails to respond to the renewal notice;
9. That the Residential or Small Commercial Customer has been provided information on how to access the Electric Supplier’s historical pricing information;
10. That the Residential or Small Commercial Customer has been provided information on how to access future pricing information; and

11. That the Residential or Small Commercial Customer has received the Electric Supplier's customer support contact information.

"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, as defined in 26 **Del.C.** §1001(26).

"Transmission Services" means the delivery of electricity from supply sources through Transmission Facilities, as defined in 26 **Del.C.** §1001(27).

"Variable Price" means a Price that can change from month to month (but not more frequently) on a Residential or Small Commercial Customer's bill according to the terms and conditions in the Contract.

"VREC" or "Voluntary Renewable Energy Credit" means a tradable instrument comprised of all the generation attributes equal to 1 megawatt-hour of electricity derived from the types of renewable energy sources listed in 26 **Del.C.** §352(6)(a)-(i) and that is generated via PJM-EIS GATS, its successor, another regional renewable energy certificate tracking system, or Green e-Energy and used to track and verify compliance with the provisions of these Regulations.

"Written Notice" means notice in writing, mailed by First Class mail to the Person who is being given notice, sent to the current billing address as shown on the records of the Electric Distribution Company or Electric Supplier, or via Electronic mail to a valid e-mail address if the Customer authorizes the receipt of the applicable communication via electronic means and provides a valid e-mail address.

2.0 Certification of Electric Suppliers.

- 2.1 Before a Person may offer a Contract or commence service to a Customer, such Person or entity must obtain an Electric Supplier Certificate from the Commission to sell Electric Supply Service to, or arrange the purchase on behalf of, Customers.
- 2.2 Certification Requirement. All Applicants shall file with the Commission an original and five (5) copies of an application for an Electric Supplier Certificate or comply with the electronic filing requirements of 26 **DE Admin. Code** §1001 Rules of Practice and Procedure of the Commission. 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 consistent with applicable State laws. Applications shall contain at least the following information:
- 2.2.1 Name, Etc. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name(s) under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant, its Affiliated Interests, or any current or previous officer, director, or manager has previously done business in Delaware;
- 2.2.2 Certifications. Certification(s) issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
- 2.2.3 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;
- 2.2.4 Registered Agent. The name and post office address of a Registered Agent, pursuant to 26 **Del.C.** §401, within the State upon whom service of any notice, order or process may be made;
- 2.2.5 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
- 2.2.6 Corporate Structure. A description of the Applicant's corporate structure, including all parent, affiliated, and subsidiary companies. Include a graphical depiction of such structure;
- 2.2.7 Contact Information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicant's:
- 2.2.7.1 Regulatory contact person responsible for the Electric Supplier's Delaware operations; and
- 2.2.7.2 Customer complaint contact person, if different from the regulatory contact person;
- 2.2.8 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
- 2.2.9 Toll Free Number. A toll-free telephone number to the Applicant's customer service center where Customers may call with questions about the Electric Supplier's services, including the Contract and

- Contract Summary. Brokers proposing to serve non-residential Customers may provide a Delaware telephone number:
- 2.2.10 Website. The Electric Supplier's website address, accessible to prospective and current Customers:
- 2.2.11 Consent to Jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Electric Supplier's and its Agent's activities in the State:
- 2.2.12 Criminal Activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution:
- 2.2.13 Marketing Plans and Materials. If the Applicant intends to serve Residential or Small Commercial Customers, the Applicant shall provide, to the extent then known or in existence:
- 2.2.13.1 A description of the marketing plan(s) and/or method(s) it plans to use in Delaware. This description shall identify whether Door-to-Door, Telemarketing, direct mail, or other marketing channels will be used and, where applicable, the identification of third party vendors that the Applicant will utilize to implement one or more marketing methods. The application shall include the manner in which the Applicant will ensure oversight, training, and compliance with the specific provisions of these Regulations with regard to Telemarketing, Door to Door, and in-person sales:
- 2.2.13.2 Copies of all print, broadcast, electronic media, telecommunication, direct mail or in-person written marketing materials, including but not limited to scripts for Telemarketing, advertisements, website presentations, and any other material of a similar nature, that the Applicant will use to market and promote its products to Delaware Residential and Small Commercial Customers:
- 2.2.14 Contracts and Contract Summaries. A copy of the Applicant's standard Contract(s) form that it intends to offer to Residential and Small Commercial Customers, and the standard Contract Summary form it intends to include with its Contracts for Residential and Small Commercial Customers. A Contract or Contract Summary that does not comply with the requirements of these Regulations or other applicable Delaware laws and regulations may be grounds for rejection of the application:
- 2.2.15 Performance Bonds. Each Applicant, except Brokers, shall submit a copy of its performance bond or guarantee that it has obtained as security to the Electric Distribution Company if required in the service agreement between the Applicant and the Electric Distribution Company. The copy of the performance bond may be provided after the Electric Supplier Certificate is granted, but must be provided to the Commission prior to marketing or offering Electric Supply Service to Customers:
- 2.2.16 Financial Information.
- 2.2.16.1 If publicly traded, the Applicant's: (1) certified financial statements current within twelve (12) months of the filing, and (2) its most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website):
- 2.2.16.2 If not publicly traded, the Applicant's accounting statements, including balance sheet and income statements, audited financial statements, bank account statements, tax returns or other indicia of financial capability, or, if applicable, the certified financial statements of a publicly traded parent:
- 2.2.16.3 Applicants submitting European-style financial statements shall include a statement of similarity:
- 2.2.16.4 Staff may request other indicia of financial capability.
- 2.2.17 Bankruptcy. The Applicant shall disclose whether it, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months:
- 2.2.18 Regional and Wholesale Experience.
- 2.2.18.1 If the Applicant is a Marketer:
- 2.2.18.1.1 A description of the Applicant's experience in the PJM regulated wholesale energy market or other regional energy markets; and
- 2.2.18.1.2 A statement detailing that the Applicant has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM.
- 2.2.18.2 If the Applicant is a Broker:
- 2.2.18.2.1 Evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service must demonstrate, through an affirmative statement, that it will only arrange electricity sales from an entity that complies with PJM's requirements and is a Certified Electric Supplier in the State, and must provide a list of Electric Suppliers through which the Applicant intends to arrange for the sale of electricity. Any change in the identity of

the Electric Suppliers on this list shall be provided to the Commission within five (5) Business Days of the effective date of the change.

2.2.19 Retail Experience. A description of the Applicant's experience in retail electricity markets, including:

2.2.19.1 A description of the services it plans to offer in the State, including types of Customers to be served and services provided;

2.2.19.2 A description of the operational experience in retail energy markets of each principal officer, director, or individual responsible for Delaware operations. If no such experience is applicable, the Applicant shall identify the means by which the Applicant proposes to support its managerial, technical, and financial capabilities for the retail sale of Electric Supply Service in the State;

2.2.19.3 For each entity identified below, a list of states in which:

2.2.19.3.1 The Applicant or any of its Affiliated Interests is presently selling or brokering Electric Supply Service to Customers;

2.2.19.3.2 The Applicant or any of its Affiliated Interests has received authority to sell or broker Electric Supply Service to Customers but is currently not providing services;

2.2.19.3.3 The Applicant or any of its Affiliated Interests has pending applications to sell or broker Electric Supply Service to Customers. For each state listed include license, order, or certificate numbers; and

2.2.19.3.4 For each entity in each state listed above, provide the license or certification number, the applicable docket number, if any, and the date the license or certification was granted. Applicant shall provide copies of the order or decision, if any, from the state's public utility commission regarding the Applicant's applications identified in subsections 2.2.19.3.1 and 2.2.19.3.2.

2.2.19.4 The Electric Supplier shall ensure that it can accept, investigate, and resolve Customer complaints in a prompt and responsive manner;

2.2.20 Other Proceedings.

2.2.20.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:

2.2.20.1.1 Been denied approval to sell or broker electricity to Customers;

2.2.20.1.2 Been found to be in violation of a state's laws, rules, or regulations;

2.2.20.1.3 Had its authority revoked, modified, or suspended; or

2.2.20.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of retail energy services, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv) any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and

2.2.20.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its retail energy services in which the Electric Supplier agreed to pay a civil penalty, provide customer restitution, or make changes to its marketing and sales;

2.2.20.2 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.20.1;

2.2.20.3 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in retail and federal electricity, natural gas, or telecommunications markets;

2.2.21 Pending Proceedings. A list of proceedings in which a revocation or suspension of authority to sell or broker electricity is pending or has been adjudicated, and the name, case number, venue, final orders, and settlement agreements for each case identified. Applicant shall provide copies of each order and settlement agreement. If no such actions have been taken against Applicant, explicitly state that fact; and

2.2.22 FERC Approvals. A copy of any FERC approval as a Marketer, or the date and docket number of the Applicant's application to FERC for such approval. If the date and docket number are provided, a copy of the Applicant's FERC approval must be provided within 30 calendar days of issuance.

2.3 Financial Security.

2.3.1 Applicability. The financial security requirements of this Section apply only to Applicants that seek an Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers. The requirements of this paragraph do not apply to Standard Offer Service.

2.3.2 Requirements. An Applicant must submit financial security that complies with this subsection prior to the issuance of an Electric Supplier Certificate. The Applicant must maintain financial security that complies

with this subsection as long as its Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers and must submit replacement security at least seven days prior to the expiration or cancellation of a previously submitted financial security instrument. Upon termination of an Electric Supplier Certificate, the financial security instrument shall remain in force until the Commission determines that all obligations of the Electric Supplier have been satisfied.

2.3.3 Amount.

2.3.3.1 The initial security amount shall be \$100,000. The Commission may grant modifications of this amount commensurate with the nature and scope of the business the Applicant anticipates conducting in the State upon submission of information in support of the modification. A request for modification of the initial security amount may be made in conjunction with the filing of the application.

2.3.3.2 After the initial year, the required security amount shall equal \$100,000 or five percent (5%) of the Electric Supplier's annual revenues from sales of Electric Supply Service to Residential and Small Commercial Customers in Delaware over the prior calendar year, whichever is greater.

2.3.3.3 The Commission may determine that an Applicant requesting to be a Broker is required to post security to ensure that the Applicant has sufficient financial ability to operate as a Broker in the State. The Commission shall determine the bonding requirement on a case-by-case basis. A bond, if required, shall be in the amount of \$10,000.

2.3.4 Use of Security Amounts. Upon a finding that an Electric Supplier has violated a statute or regulation regarding the provision of service to Residential or Small Commercial Customers, the Commission may direct that amounts from the financial security be distributed consistent with State law.

2.3.5 Types of Security. An Applicant may satisfy the financial security requirements of this subsection through an irrevocable letter of credit, cash, cash equivalents, financial instruments that are easily liquidated and readily available to meet their costs of providing Electric Supply Service to Customers, or any combination thereof. Financial security documents must be in a form and contain language that is acceptable to the Commission.

2.3.5.1 Letter of Credit. An irrevocable letter of credit must unconditionally obligate the issuing financial institution to honor drafts drawn on such letters for the purpose of paying the obligations of the Electric Supplier pursuant to Delaware law and regulations and must specify that the issuing financial institution will notify the Commission 30 days in advance of the expiration or cancellation of the letter of credit. The letter of credit must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the letter of credit; and that any draft presented by the Commission will be honored by the issuer upon presentation. The letter of credit must be issued by a financial institution with a minimum corporate credit rating of "BBB+" by Standard & Poor's or Fitch or "Baa1" by Moody's Investors Service, or an equivalent short term credit rating by one of these agencies. If, at any time, the corporate debt rating of an issuing financial institution drops below the above specified levels, the Electric Supplier shall notify the Commission in writing and provide replacement security that satisfies the requirements of these Regulations.

2.3.5.2 Cash and Cash Equivalent. Cash or cash equivalents, including cashier's checks, sight drafts, performance bond proceeds, or traveler's checks, and applicable interest shall be returned to the Electric Supplier after all obligations are satisfied.

2.3.5.3 Certificate of Deposit. Certificate of deposit or other liquid deposit with a reputable bank or other financial institution.

2.3.5.4 Preferred stock proceeds. 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.

2.3.5.5 Line of Credit. 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.

2.3.5.6 Loan. Loan, issued by a qualified subsidiary, affiliate or 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.

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

2.3.5.8 Other Liability. Liability of Electric Suppliers for violation of law, Commission orders or Commission regulations is not limited by the security requirements of this Section.

2.3.5.9 Staff may request other indicia of financial capability.

- 2.4 Other Information. 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.
- 2.5 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.6 Notice. Each Applicant, except Brokers, shall publish notice of the filing of its application in two (2) newspapers of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application.
- 2.7 Application Fee. An Applicant for an Electric Supplier Certificate shall submit a non-refundable application fee of \$750 with the application.
- 2.8 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.9 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 Del.C. §1001 et seq.
- 2.10 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny an Electric Supplier Certificate to an Applicant where it finds that doing so is in the public interest.
- 2.11 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within ten (10) Business Days after the change may be grounds for rejection of the application.
- 2.12 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of an application or a recommendation that an application be denied.
- 2.13 Term of ESC. Electric Supplier Certificates are valid until revoked by the Commission or relinquished by the Electric Supplier after the requisite notice to the Commission and to its Customers.
- 2.14 Transfer or Relinquishing of ESC.
- 2.14.1 The transfer of an ESC is prohibited without notice and approval of the Commission.
- 2.14.2 No Electric Supplier shall cease doing business within the State unless it has provided at least sixty (60) days Written Notice to the Commission, the DPA, the affected EDC(s), and its Customers.
- 2.14.3 The Commission will consider an ESC to be relinquished if the Electric Supplier does not provide the required yearly compliance filing in subsection 12.3 of these Regulations within ninety (90) days of the required date. An Electric Supplier shall be allowed 30 days' notice to cure a late annual filing.

3.0 Pre-enrollment Information and Customer Lists.

- 3.1 Notice and Consent for Pre-Enrollment Customer Information.
- 3.1.1 Before requesting pre-contracting Customer information described in subsection 3.2 from the EDC, an Electric Supplier shall:
- 3.1.1.1 Notify the Customer of its intention to request Customer information from the EDC; and
- 3.1.1.2 Obtain the Customer's consent for release of the Customer's information from the EDC.
- 3.1.2 Notice. The Electric Supplier notice required under subsection 3.1.1.1 of this regulation shall specify the Customer information listed in subsection 3.2 to be requested from the EDC.
- 3.1.3 Customer Consent Records.
- 3.1.3.1 A Customer's consent under subsection 3.1.1.2 is valid for a time mutually agreed to by the Customer and the Electric Supplier.
- 3.1.3.2 An Electric Supplier shall maintain a record of a Customer's consent under subsection 3.1.1.2 of this regulation for a period of not less than 180 days from the expiration of the Customer's consent.
- 3.1.3.3 An Electric Supplier's Customer consent records are subject to audit by the Commission.
- 3.1.4 A Customer's consent under this regulation is not a Contract or enrollment for Electric Supplier services.

- 3.2 Pre-Enrollment Information. On request of an Electric Supplier, the EDC shall provide the following applicable Customer information:
- 3.2.1 Account name;
 - 3.2.2 Billing address;
 - 3.2.3 Service address;
 - 3.2.4 EDC account number and any other number designated by the EDC as necessary to process an enrollment;
 - 3.2.5 Bill cycle;
 - 3.2.6 Voltage level;
 - 3.2.7 EDC rate class or code;
 - 3.2.8 Load profile;
 - 3.2.9 Meter number;
 - 3.2.10 Meter type;
 - 3.2.11 Multiple meter indicator;
 - 3.2.12 Peak load contribution;
 - 3.2.13 Metered demand;
 - 3.2.14 Billed demand;
 - 3.2.15 Monthly historical demand for the previous 12 months;
 - 3.2.16 Monthly historical consumption for the previous 12 months;
 - 3.2.17 Monthly time-of-use data for the previous 12 months;
 - 3.2.18 Interval meter data for the previous 12 months; and
 - 3.2.19 Dynamic pricing election, if any.
- 3.3 Customer Lists. An EDC shall make a customer list available to Electric Suppliers on a secure password-protected web portal. An EDC shall update the names and information included on the customer list semi-annually. A Customer may elect to opt out of the list.
- 3.3.1 An EDC shall refresh its customer list every three years. Prior to refreshing the customer list, an EDC shall notify customers that the customer list is being refreshed. A Customer's election to opt out shall be valid for a period of three years.
 - 3.3.1.1 The notice from the EDC pursuant to subsection 3.3.1 shall communicate to Customers the following information:
 - 3.3.1.1.1 What the customer list is;
 - 3.3.1.1.2 What information is to be included on the customer list;
 - 3.3.1.1.3 What the more detailed information represents;
 - 3.3.1.1.4 How this information is to be used by Electric Suppliers;
 - 3.3.1.1.5 How the information is to be safeguarded by Electric Suppliers;
 - 3.3.1.1.6 How widely the information will be disseminated;
 - 3.3.1.1.7 The potential benefits to the Customer of having its information included on the customer list; and
 - 3.3.1.1.8 How the Customer may opt out of the customer list.
 - 3.3.1.2 An EDC's annual communication to Customers shall be served electronically to those Customers who have opted to receive their bills via electronic means.
 - 3.3.2 An EDC's customer list shall contain the Customers':
 - 3.3.2.1 Name;
 - 3.3.2.2 Service Address(es);
 - 3.3.2.3 Billing Address(es);
 - 3.3.2.4 Billing Country Code (if available);
 - 3.3.2.5 Tariff Rate Class and Schedule;
 - 3.3.2.6 Rate Subclass/Rate Subcode (if available);
 - 3.3.2.7 Meter Read Cycle;
 - 3.3.2.8 Load Profile Group per Tariff;
 - 3.3.2.9 Whether the customer is an SOS customer; and
 - 3.3.2.10 Net Metering (Y or N).

3.3.3 An Electric Supplier shall put into place safeguards to prevent the disclosure of information contained in the customer list provided by the EDC. As such, the information contained in the customer list is to be used by the Electric Supplier only for the purpose of marketing and providing electricity supply services directly to Customers. An Electric Supplier shall keep the customer list in a secure and protected location. An Electric Supplier may provide access to the information in the customer list to those authorized by the Electric Supplier who require such information to market and provide electricity supply services to Customers. Otherwise, an Electric Supplier shall not disclose information contained in the customer list except upon authorization of the Customer.

3.3.4 An Electric Supplier may disclose a Customer's billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.]

3.4 The provisions in this Section 3.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for a period of time deemed reasonable by the Commission.

4.0 Enrollments and Drops. Accelerated Switching

4.1 An Electric Supplier may enroll or drop a Customer by sending the appropriate electronic enrollment or drop transaction to the EDC upon the expiration of the rescission period.

4.2 An EDC shall send a Written Notice to a Customer enrolling with an Electric Supplier or dropping an Electric Supplier. The EDC shall send the Written Notice by the end of the next Business Day following receipt of the electronic transaction. The Written Notice shall include the date the service with the Electric Supplier or SOS shall begin.

4.3 An EDC shall process an electronic enrollment or drop from an Electric Supplier to be effective within three (3) Business Days after receipt of the electronic transaction.

4.4 The EDC shall drop a Customer from its current Electric Supplier when another Electric Supplier enrolls the Customer. An EDC shall assign a Customer who has been dropped by an Electric Supplier and not enrolled by another Electric Supplier to SOS.

4.5 An EDC shall not be required to process more than two enrollments and two drops per Customer per bill cycle.

4.6 An Electric Supplier may not require that a Customer provide it with advance notice, written or otherwise, before the Customer switches to another supplier or to SOS.

4.7 Customer-Initiated Drops

4.7.1 A Customer that wants to cancel a Contract shall first attempt to cancel the Contract according to the terms of the Contract.

4.7.2 If a Customer attempts to cancel a Contract by contacting the EDC first, the EDC shall direct the Customer to contact the Electric Supplier through the means detailed in the Contract.

4.7.3 If a Customer's cancellation request has not been received by the EDC from the Customer's Electric Supplier, and the Customer confirms that more than three (3) Business Days have passed since the Customer cancelled the Contract with the Electric Supplier, the EDC shall process a cancellation after notifying the Customer that there may be a cancellation penalty to cancel service with the current Electric Supplier.

4.7.4 A Customer's request to cancel service with the current Electric Supplier under this subsection 4.7 does not limit cancellation provisions contained in the Customer's Contract with the Electric Supplier.

4.7.5 No Electric Supplier shall include provisions in its Contract that would limit or waive this subsection 4.7.

4.8 The provisions in this Section 4.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for an amount of time deemed reasonable by the Commission.

5.0 Billing and Metering.

5.1 Billing Options.

5.1.1 Each Customer in Delmarva's service territory has the right to choose to receive separate bills from Delmarva and from its Electric Supplier (if the Electric Supplier provides a separate billing), or to receive a combined bill from either Delmarva or its Electric Supplier (if the Electric Supplier provides a consolidated billing option), for Electric Supply, Transmission, Distribution, Ancillary and other Services, consistent with these Regulations. If the Customer does not elect a billing option, Delmarva will be responsible for billing the Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Electric Supplier.

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

5.2 Bill Contents. The bill should be easy to understand, be in clear and plain language and must contain the following information:

5.2.1 The name, address, and toll-free telephone number of the Electric Supplier;

5.2.2 If different from the Electric Supplier, the name, address and toll-free telephone number of the EDC;

5.2.3 The due date for payment;

5.2.4 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;

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

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

5.2.7 The total charge for each service or product;

5.2.8 The amount of payment or other credit applied to Customer's outstanding balance during the billing period;

5.2.9 The amount still owed by the Customer from the previous billing period;

5.2.10 Appropriate taxes and fees;

5.2.11 Definitions of material terms used in the bill; and

5.2.12 If applicable, late fees as defined in the Contract. Late fees must be clearly identified as such; and

5.2.13 The Commission shall have the authority to determine whether the Price to Compare shall appear on Customers' bills and, if so, which Customers and the manner in which the Price to Compare is calculated. Until such a determination is rendered in a subsequent proceeding, the Price to Compare shall continue to appear on bills as it does at the time of the effective date of these Regulations.

5.3 Metering.

5.3.1 Delmarva will continue to own all meters and perform all meter reading functions. The Commission can permit others to provide some or all of the metering functions on a competitive basis.

5.3.2 The Cooperative will continue to own and operate all meters and perform meter reading functions.

6.0 Electric Supplier Contracts and Contract Summaries.

6.1 An Electric Supplier shall provide a Contract and Contract Summary in the same language used by the Electric Supplier or its Agent to market, sell, or describe the Contract terms to prospective Residential and Small Commercial Customers.

6.2 Contract Requirements.

6.2.1 Only a licensed Electric Supplier may execute a Contract for Electricity Supply Service with a Customer.

6.2.2 A Contract for Residential and Small Commercial Customers shall be written in clear and plain language and contain all material terms and conditions, including:

6.2.2.1 A list and description of the Contract services;

6.2.2.2 The Contract duration, expressed in months or years, or the disclosure that the Contract is month-to-month;

6.2.2.3 A description of the Price of each service, including:

6.2.2.3.1 The Price and the duration of the Introductory Price, if applicable. If the Price to be charged upon the expiration of the Introductory Price is a Fixed Price, the Fixed Price that will be charged upon the expiration of the Introductory Price;

6.2.2.3.2 For Variable Price Contracts:

6.2.2.3.2.1 The Price to be charged, per kilowatt-hour, for the first billing cycle of the Contract;

6.2.2.3.2.2 An explanation of the basis(es) on which the Price will vary and any limits on Price variability;

6.2.2.3.2.2.1 If there is a limit on price variability, such as a specific Price cap, a maximum percentage increase in Price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the term of the Contract, the Electric Supplier shall clearly explain applicable limits;

6.2.2.3.2.2.2 If there is not a limit on Price variability, the Electric Supplier shall clearly and conspicuously state that there is not a limit on how much the Price may change from one billing cycle to the next;

- 6.2.2.3.2.3 A telephone number and Internet address at which a Residential or Small Commercial Customer may obtain the previous 24 months' average monthly billed prices for that customer's rate class and EDC service territory. If an Electric Supplier has not been providing service in a rate class and EDC service territory for 24 months, the Electric Supplier shall provide the average monthly billed prices for the months available to date;
- 6.2.2.3.2.4 In plain language, a statement that historical pricing is not indicative of present or future pricing; and
- 6.2.2.3.2.5 A statement describing how the Residential or Small Commercial Customer may access future pricing information in accordance with Section 7.0 of these Regulations;
- 6.2.2.4 A description of any other fee(s) or charge(s), including but not limited to early termination penalties, late fees, fees to access the Electric Supplier's services, minimum monthly charges, enrollment fees, and interest charges; a description of the specific condition under which such fees or charges can be imposed; and the amount of such fee(s) or charge(s);
- 6.2.2.5 A description of any other non-commodity products or services provided to the Residential or Small Commercial Customer as part of the Contract;
- 6.2.2.6 If the Electric Supplier claims that Residential or Small Commercial Customers will save money by entering into the Contract as opposed to staying with SOS, the Electric Supplier shall include in the Contract a description of any inducement, if applicable, on which it relies to make this claim;
- 6.2.2.7 A statement that:
 - 6.2.2.7.1 The Residential or Small Commercial Customer may Rescind the Contract within three (3) Business Days from the start of the Rescission Period; and
 - 6.2.2.7.2 The Rescission Period begins on one of the following dates, as applicable:
 - 6.2.2.7.2.1 When the Residential or Small Commercial Customer signs the Contract;
 - 6.2.2.7.2.2 When the Residential or Small Commercial Customer transmits the electronic acceptance of the Contract electronically; or
 - 6.2.2.7.2.3 When the Residential or Small Commercial Customer receives the Contract and Contract Summary, if received by mail. There shall be a rebuttable presumption that a Contract and Contract Summary correctly addressed to a Residential or Small Commercial Customer with sufficient first class postage attached shall be received three (3) days after it has been properly deposited in the United States mail;
- 6.2.2.8 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 Residential or Small Commercial Customer with at least 30 days' Written Notice of termination of the Contract and procedures to maintain ongoing service;
- 6.2.2.9 The Electric Supplier's local or toll-free telephone number to obtain information and handle complaints; mailing address and website address; the Commission's address, website address, Delaware toll-free telephone number; and the DPA's address, website address, and telephone number.
- 6.2.2.10 A statement informing the Residential or Small Commercial Customer that, because of relocation outside of their current EDC's service territory, they he/she may terminate his/her Contract with no termination fee;
- 6.2.2.11 A statement that the Electric Supplier may terminate the Contract prior to the stated term of the Contract, including:
 - 6.2.2.11.1 The circumstances under which early cancellation by the Electric Supplier may occur;
 - 6.2.2.11.2 The manner in which the Electric Supplier shall notify the Residential or Small Commercial Customer of the early cancellation of the Contract;
 - 6.2.2.11.3 The duration of the notice period before early cancellation by the Electric Supplier; and
 - 6.2.2.11.4 The remedies available to the Residential or Small Commercial Customer if early cancellation occurs;
- 6.2.2.12 A statement that the Residential or Small Commercial Customer may terminate the Contract prior to the stated term of the Contract, including:
 - 6.2.2.12.1 The manner in which the Residential or Small Commercial Customer shall notify the Electric Supplier of the early cancellation of the Contract;
 - 6.2.2.12.2 The duration of the notice period before early cancellation;
 - 6.2.2.12.3 The remedies available to the Electric Supplier if early cancellation occurs; and

6.2.2.12.4 The amount of any early cancellation fee, except that an Electric Supplier shall not charge an early cancellation for the commodity portion of a Variable Price Contract;

6.2.2.13 A statement describing Contract renewal procedures, if any, including the timing of the notices that the Residential or Small Commercial Customer will receive prior to the renewal date;

6.2.2.14 A dispute procedure, including that the Electric Supplier must adhere to the provision in 26 DE Admin. Code §3002-3.2.2 regarding good faith disputes; and

6.2.2.15 All disclosures required by applicable laws and regulations that govern marketing, consumer protection, and door-to-door sales, including the Delaware Home Solicitation Sales Act, 6 Del.C. §4401 et seq.

6.3 Contract Summary Requirements.

6.3.1 At the time of completion of the contracting process, an Electric Supplier shall provide Residential and Small Commercial Customers with a copy of the executed Contract and completed Contract Summary.

6.3.2 If the Contract is completed through a telephone solicitation, the Electric Supplier shall send the Contract Summary with the Contract to the Residential or Small Commercial Customer.

6.3.3 If the Contract is completed through the internet, the Contract Summary shall be:

6.3.3.1 Made available for download by the Residential or Small Commercial Customer at the time of contracting; and

6.3.3.2 Transmitted to the Residential or Small Commercial Customer by the Electric Supplier by mail or by email if the customer consents to receipt of email disclosures.

6.3.4 If the Contract is completed in person, the Contract and the Contract Summary shall be reviewed with and provided to the Residential or Small Commercial Customer by the Electric Supplier in hard copy or electronically, and the executed Contract and Contract Summary provided to the Residential or Small Commercial Customer at the time of contracting in hard copy or electronically if the customer consents to electronic disclosures.

6.3.5 An Electric Supplier offering a Variable Price Contract to Residential or Small Commercial Customers shall include in its Contract Summary:

6.3.5.1 The disclosures required by subsection 6.2.2.3.2.2;

6.3.5.2 A toll free telephone number or website link where the Residential or Small Commercial Customer may access historical pricing information as described in subsection 6.2.2.3.2.3, along with the disclaimer in subsection 6.2.2.3.2.4; and

6.3.5.3 The disclosures required by subsection 7.1.3.

7.0 Notice of Change in Variable Price.

7.1 When a Residential or Small Commercial Customer's Variable Price changes, an Electric Supplier shall make available to the Residential or Small Commercial Customers the Variable Price for the next billing period:

7.1.1 The Variable Price shall be made available at least 12 days prior to close of the customer's billing period;

7.1.2 The Variable Price shall be made available in a clear, easy to access format prescribed by the Electric Supplier;

7.1.3 The Electric Supplier shall promptly provide the Residential or Small Commercial Customer written directions on how to access the Variable Price:

7.1.3.1 At the time of contracting;

7.1.3.2 In the Contract Summary;

7.1.3.3 When sending any notice as required in these Regulations;

7.1.3.4 Upon request; or

7.1.3.5 If the Electric Supplier changes the directions for accessing the Variable Price.

7.2 For the purposes of the disclosure mandated in subsection 7.1, an Electric Supplier may provide an estimated Variable Price for the Residential or Small Commercial Customer's next billing period, provided the estimated Variable Price is made available at least twelve (12) days prior to the close of the customer's billing period. If the Electric Supplier provides an estimated Variable Price, the Electric Supplier shall not use a rate for billing purposes that is higher than the estimate.

8.0 Contract Renewal for Residential and Small Commercial Customers.

8.1 An Electric Supplier shall provide Residential and Small Commercial Customers with Written Notice of the pending renewal of a Contract forty-five (45) days before the end of the Contract Term is scheduled to occur.

8.2 The Written Notice required under subsection 8.1 shall:

- 8.2.1 Inform the Residential or Small Commercial Customer that the failure to respond to the Written Notice will result in the automatic renewal of the Contract;
- 8.2.2 Inform the Residential or Small Commercial Customer of any changes in the material terms and conditions of the expiring Contract upon renewal, and include a copy of the Contract and Contract Summary;
- 8.2.3 Inform the Residential or Small Commercial Customer how to terminate the Contract without penalty;
- 8.2.4 Inform the Residential or Small Commercial Customer that terminating the Contract without selecting another Electric Supplier will return the Residential or Small Commercial Customer to SOS; and
- 8.2.5 For a Fixed Price Contract that renews to a Variable Price Contract, the Electric Supplier's Written Notice to Residential or Small Commercial Customers must:
 - 8.2.5.1 Inform the Residential or Small Commercial Customer how to access the Variable Price for the next billing cycle in accordance with Section 7.0;
 - 8.2.5.2 Explain the basis(es) on which the Variable Price will vary and any limits on Price variability:
 - 8.2.5.2.1 If there is a limit on Price variability, such as a specific Price cap, a maximum percentage increase in Variable Price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the term of the Contract, the Electric Supplier shall clearly explain applicable limits.
 - 8.2.5.2.2 If there is not a limit on Price variability, the Electric Supplier shall clearly and conspicuously state that there is not a limit on how much the Variable Price may change from one billing cycle to the next.
- 8.2.6 If the Supplier proposes to renew a Fixed Price Contract with a Variable Price Contract and the change to the Variable Price will be equal to or exceed 30 percent of the Residential or Small Commercial Customer's Fixed Price, the Electric Supplier shall provide Written Notice of the new Variable Price to the customer at least 12 days prior to the close of the customer's billing period.
- 8.2.7 An Electric Supplier shall maintain records that the Written Notices provided under this Section 8.0 were provided to its Residential or Small Commercial Customers.

9.0 Notice of Change in Fixed Price or Material Terms; Expiration; and Cancellation.

- 9.1 Changes in Fixed Price or Material Terms. An Electric Supplier shall provide Written Notice to its Residential or Small Commercial Customers of any change in the Fixed Price or other material terms of service. The Written Notice must precede the effective date of the proposed changes by at least thirty (30) days and no more than sixty (60) days. Customers shall have at least thirty (30) days to respond to the Electric Supplier's Written Notice before the changes become effective.
- 9.2 Expiration or Cancellation of Contracts That Will Not Be Renewed. An Electric Supplier shall provide Written Notice to its Residential or Small Commercial Customer(s) at least thirty (30) days before expiration or cancellation of a Contract that will not be renewed. The Written Notice shall include:
 - 9.2.1 Final bill payment instructions;
 - 9.2.2 A statement informing the Residential or Small Commercial Customer that, unless the customer selects a new service provider, cancellation of the Contract shall return the customer to SOS; and
 - 9.2.3 The toll free telephone number and the website address of the Commission.

10.0 Customer Protection.

- 10.1 General Customer Protections. No Electric Supplier or Broker shall engage in fraudulent or improper activities, nor shall it disseminate any Customer information obtained pursuant to subsection 3.1. Electric Suppliers or Brokers found to have violated these provisions may be subject to certificate revocation and/or penalties as described in subsection 2.1.3 and 26 Del.C. §1019.
- 10.2 Electric Suppliers and Agents shall not:
 - 10.2.1 Engage in false, misleading, or deceptive conduct or make false, misleading or deceptive statements or representations in any dealings with Customers;
 - 10.2.2 Say or suggest to a prospective Customer that the prospective Customer is required to choose an Electric Supplier;
 - 10.2.3 Say or suggest to a prospective Customer that the prospective Customer's service will suffer degradation or risk if the prospective Customer does not choose an Electric Supplier; or
 - 10.2.4 Suggest a relationship that does not exist with the Customer's SOSS, EDC, government agency or another Electric Supplier.

- 10.3 Electric Suppliers and Brokers are responsible for any false, fraudulent, deceptive or unlawful marketing or billing acts performed by their Agents in the conduct of marketing or sales activities on behalf of the Electric Supplier or Broker.
- 10.4 Agent Training.
- 10.4.1 An Electric Supplier shall ensure the training of its Agents on the following subjects:
- 10.4.1.1 State and Federal laws and regulations that govern marketing, Telemarketing, consumer protection and door-to-door sales, including consumer protection regulations required by Delaware law and regulations;
 - 10.4.1.2 Responsible and ethical sales practices as described in this regulation;
 - 10.4.1.3 The Electric Supplier's products and services;
 - 10.4.1.4 The Electric Supplier's Prices, Price structures and payment options;
 - 10.4.1.5 The Customer's right to rescind and cancel Contracts;
 - 10.4.1.6 The applicability of an early termination fee for Contract cancellation when the Electric Supplier has one;
 - 10.4.1.7 The necessity of correctly and fully explaining the Contract, Contract Summary, relying on approved sales script and knowledge of the contents of the script if one is used;
 - 10.4.1.8 The proper completion of transaction documents;
 - 10.4.1.9 The Electric Supplier's Contract and Contract Summary;
 - 10.4.1.10 Information about how Customers may contact the Electric Supplier to obtain information about billing, disputes and complaints; and
 - 10.4.1.11 The confidentiality and protection of Customer information.
- 10.4.2 An Electric Supplier shall document the training of an Agent and maintain a record of the training for 3 years from the date the training was completed.
- 10.4.3 An Electric Supplier shall make training materials and training records available to the Commission and/or the DPA upon request.
- 10.4.4 When an Electric Supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the Electric Supplier's behalf, the Electric Supplier shall confirm that the contractor or vendor has provided Electric Supplier-approved training to Agents in accordance with this section.
- 10.4.5 The Electric Supplier shall routinely monitor Telemarketing calls and Door-to-Door sales calls to:
- 10.4.5.1 Evaluate the Electric Supplier's training program; and
 - 10.4.5.2 Ensure that Agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to Customers.
 - 10.4.5.3 The Supplier shall maintain records of such monitoring activities, results, and actions taken in response to the results of the monitoring activities and make such records available to the Commission and/or the DPA upon request.
- 10.5 Slamming. An Electric Supplier shall not engage in Slamming. If a Customer believes that their Electric Supply Service has been switched without authorization, the Customer may request that the Electric Supplier provide evidence of the authorization and verification. The Electric Supplier must provide this to the Customer within five (5) Business Days if feasible, but no longer than fifteen (15) Business Days of the request. If the Customer is not satisfied with this response, the Customer may file a complaint with the Commission pursuant to 26 **DE Admin. Code** §1001 *et seq.*
- 10.6 Cramming. An Electric Supplier shall not engage in Cramming. If the Commission determines that an Electric Supplier may have engaged in Cramming, the Electric Supplier may be subject to investigation and, after a hearing, the Commission may impose penalties or require the Electric Supplier to void and/or refund all of the charges in question.
- 10.7 Complaint Procedures to be followed by the Customer (or a Broker acting on behalf of a Customer).
- 10.7.1 A Customer (or a Broker acting on behalf of a Customer) should first notify the Electric Supplier of its complaint.
 - 10.7.2 If the Customer (or a Broker acting on behalf of a Customer) and Electric Supplier are not able to come to a resolution, the Customer or Broker may contact the DPA with its complaint. If the DPA is unable to effect a satisfactory resolution, the Customer or Broker may file a formal complaint with the Commission as described in 26 **DE Admin. Code** §1001-2.2.1 "Rules of Practice and Procedure of the Delaware Public Service Commission."

- 10.7.3 A Broker acting on behalf of a Customer must provide written proof to the Commission and the DPA, with a copy to the Electric Supplier, that it is authorized to act on the Customer's behalf in order to file and maintain a complaint.
- 10.8 Complaint Procedures to be Followed by the Electric Supplier.
- 10.8.1 The Electric Supplier shall use good faith efforts to respond to and resolve complaints.
- 10.8.2 An Electric Supplier shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices. The Electric Supplier shall cooperate with the Commission and other government agencies that are investigating complaints about marketing or sales practices prohibited by State and Federal laws and with local law enforcement officials that are investigating complaints about violations of local municipal law.
- 10.8.3 An Electric Supplier shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints. The process shall document as a record the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint. An Electric Supplier shall retain the record for three years in a system capable of retrieving that record by customer name and account number or by other effective means to obtain access to the information.
- 10.8.4 If the Customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will inform the Customer that it may contact the DPA.
- 10.8.5 In any complaint proceeding before the DPA or the Commission, the burden of proof shall be on the Marketer or Broker to establish, if applicable, that its Agents were adequately trained and that the Customer was enrolled in accordance with these Regulations.
- 10.9 Return of Customer Deposits. If a Customer has an outstanding or unpaid balance due, an Electric Supplier may apply the Deposit against such unpaid balance. Any remaining deposit amount shall be returned to the Customer.
- 10.10 Assignment of Contracts.
- 10.10.1 At least thirty (30) days prior to the effective date of any assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another, the Electric Suppliers shall jointly:
- 10.10.1.1 Provide Written Notice of the assignment or transfer to the Customers of the Electric Supplier, with a copy to the Commission, the EDC, and the DPA; and
- 10.10.1.2 Coordinate with the EDC to effectuate the transfers of service.
- 10.10.1.3 Notice to Customer. The Electric Suppliers shall jointly send a letter to the Customers informing them of the assignment or transfer. The letter shall include:
- 10.10.1.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;
- 10.10.1.3.2 Customer service contact information for the assignee; and
- 10.10.1.3.3 A statement that the terms and conditions of the Customer's Contract at the time of assignment shall remain the same for the remainder of the Contract term.
- 10.10.1.4 The Electric Suppliers shall file a notice with the Commission, the DPA, and the EDC, of the assignment or transfer of the Customer Contracts and include a copy of the letter sent to Customers.
- 10.10.2 Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. Records shall be maintained for a period of three (3) years or until the Contracts are expired, whichever is longer.
- 10.10.3 An assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another is not an enrollment or drop.
- 10.11 Record Retention. All Electric Suppliers shall retain a copy of the Customer's Contract, Contract Summary, billing and payment history, and verification of enrollment for a period of three years after enrollment or termination of the Contract, whichever is later.

11.0 Enrollment, Marketing, and Advertising.

- 11.1 An Electric Supplier shall comply with all federal, State and local laws applicable to the advertising or marketing of Electric Supply Service, and it shall be a violation of these Regulations to fail to comply with such laws.
- 11.2 No Electric Supplier shall make misrepresentations or use deceptive practices relating to its own services or the services provided by the Customer's EDC in its solicitations, advertising or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and person-to person contacts.

- 11.3 An Electric Supplier's solicitation, advertising and marketing materials must include the name, toll-free telephone number, and address of the Electric Supplier.
- 11.4 If an Electric Supplier makes changes to its Contract for Electric Supply Service to Residential or Small Commercial Customers that substantively modifies the terms and conditions of service, including changes to the Electric Supplier's name and changes in product offerings, then the Electric Supplier shall provide copies of the modified Contract and Contract Summary to Staff and DPA at least three (3) Business Days before offering the revised terms and conditions in Delaware. For purposes of this requirement, a change to the Contract Price shall not be considered a change in a term or condition of service.
- 11.5 Marketing/Sales Activities.
- 11.5.1 Marketing materials that offer terms of service for acceptance by Residential and Small Commercial Customers shall include Prices, as follows:
- 11.5.1.1 If using a Fixed Price, the Electric Supplier shall factor in the Fixed Price and any other monthly fees and charges charged to the Residential or Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customers using 500, 1,000 or 2,000 kWh of electricity;
- 11.5.1.2 If using a Variable Price, the Electric Supplier shall factor in the Variable Price and any other monthly fees and charges charged to the Residential or Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customer using 500, 1,000 and 2,000 kWh of electricity; and
- 11.5.1.3 The Electric Supplier shall note the effective date of the Prices shown in the table provided under subsections 11.5.1.1 and 11.5.1.2.
- 11.5.2 Advertising materials targeted for Residential or Small Commercial Customers shall be made available upon request of the Commission or DPA in the event of a formal or informal complaint or investigation.
- 11.6 Enrollment Authorization. An Electric Supplier must obtain authorization from the Customer before switching a Customer's provider of Electric Supply Service.
- 11.6.1 There are three (3) principal ways in which an Electric Supplier may obtain a Residential or Small Commercial Customer's authorization to enter into a Contract for Electric Supply Service:
- 11.6.1.1 Recorded verbal consent via the telephone;
- 11.6.1.2 Electronic contract; or
- 11.6.1.3 Written contract.
- 11.6.2 If an Electric Supplier offers a Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the Contract signature.
- 11.7 Telephone Solicitations and Enrollments.
- 11.7.1 When a Residential or Small Commercial Customer enrolls with an Electric Supplier during a Telemarketing call, the Electric Supplier shall record the entire telephone call between the Residential or Small Commercial Customer and the Electric Supplier or its Agent, and also record a TPV.
- 11.7.2 The Electric Supplier shall maintain a copy of the recorded sales call and TPV, if applicable, for the duration of the Residential or Small Commercial Customer's Contract.
- 11.7.3 During the sales portion of a Telemarketing call, the Electric Supplier or its Agent shall:
- 11.7.3.1 Begin the conversation by stating the following:
- 11.7.3.1.1 His or her name and, upon request, his or her Agent identification number;
- 11.7.3.1.2 The name of the Electric Supplier that the Agent is representing;
- 11.7.3.1.3 The purpose of the telephone call is to sell Electric Supply Service; and
- 11.7.3.1.4 That he or she is not working for and is independent of the Residential or Small Commercial Customer's Electric Distribution Company or another Electric Supplier.
- 11.7.3.2 Disclose all material Contract terms and conditions; including:
- 11.7.3.2.1 If a Variable Price, the information in subsection 6.2.2.3.2.2 and the first month's Variable Price;
- 11.7.3.2.2 The duration of any Introductory Price and a description of the Price after the Introductory Price ends;
- 11.7.3.2.3 How the Residential or Small Commercial Customer may access future Price information;
- 11.7.3.2.4 The Residential or Small Commercial Customer's right to rescind the Contract within three (3) Business Days from receipt of the Contract; and
- 11.7.3.2.5 The amount of any early cancellation fees and/or any other charges;

- 11.7.3.3 Explain that the Residential or Small Commercial Customer must be the account holder or authorized to make the switch;
- 11.7.3.4 Ensure that the Residential or Small Commercial Customer understands that he or she is voluntarily choosing to switch Electric Suppliers;
- 11.7.3.5 State that the Contract will be provided to the Residential or Small Commercial Customer by U.S. mail, or by email with the Residential or Small Commercial Customer's consent, within three (3) Business Days of the contracting conversation, and that the Residential or Small Customer will not be switched from the current Electric Supplier or SOSS until the Rescission Period has expired;
- 11.7.3.6 Explain the Electric Supplier's TPV process, if applicable; and
- 11.7.3.7 Provide the toll-free number of the Electric Supplier.
- 11.7.4 No Electric Supplier shall request a potential Residential or Small Commercial Customer's Electric Supplier or EDC account number until the Electric Supplier has provided to the potential Residential or Small Commercial Customer the information required in subsections 11.7.3.1.1. through 11.7.3.1.4.
- 11.7.5 The Electric Supplier shall immediately halt any Telemarketing call upon the request of the prospective Residential or Small Commercial Customer.
- 11.7.6 Pursuant to 26 Del.C. §1012(b) and as further defined in Section 1.0, no Electric Supplier shall solicit Residential or Small Commercial Customers by means of Telemarketing where such Telemarketing is prohibited by applicable laws and regulations. An Electric Supplier soliciting customers by telephone shall comply with all applicable Delaware and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. §§6151 *et seq.*) and the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C. §§6101 *et seq.*).
- 11.8 Door-to-Door Solicitations and Enrollments.
 - 11.8.1 For Door-to-Door Contracts, the Electric Supplier must obtain:
 - 11.8.1.1 Written or Electronic authorization; and
 - 11.8.1.2 A completed TPV or other process established by the Electric Supplier to verify the transaction. A process other than a TPV shall:
 - 11.8.1.2.1 Be separate from the sales transaction process and initiated only after the sales transaction has been finalized; and
 - 11.8.1.2.2 Be initiated only after the Agent has physically exited the Residential or Small Commercial Customer's premises;
 - 11.8.2 Door-to-Door Sales at a residential dwelling shall be conducted by an Electric Supplier's Agent between the hours of 9 a.m. to 8 p.m. EST. When a local ordinance has stricter limitations, an Electric Supplier shall comply with the local ordinance.
 - 11.8.3 When conducting Door-to-Door Sales or appearing at a Public Event, an Agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with an SOSS, EDC, government agency, or another Electric Supplier.
 - 11.8.4 An Electric Supplier or its marketing Agent engaging in Door-to-Door Sales or appearing at Public Events shall:
 - 11.8.4.1 Display a photo identification badge that contains the following information:
 - 11.8.4.1.1 The Agent's full legal name;
 - 11.8.4.1.2 The Electric Supplier's business name, business address, and toll-free telephone number; and
 - 11.8.4.1.3 The order number of the proceeding in which the Commission granted the Electric Supplier's ESC.
 - 11.8.5 If a Door-to-Door Sale, the Agent shall promptly:
 - 11.8.5.1 Identify the Electric Supplier he/she is representing;
 - 11.8.5.2 State that the individual and the Electric Supplier do not represent the Customer's EDC or any governmental agency;
 - 11.8.5.3 State that the purpose of the visit is to sell Electric Supply Service.
 - 11.8.5.4 Prominently display an identification badge; and
 - 11.8.5.5 Offer a business card or other material that lists:
 - 11.8.5.5.1 The Electric Supplier's name and contact information, including telephone number;
 - 11.8.5.5.2 The docket number of the proceeding in which the Commission granted the Electric Supplier's ESC; and
 - 11.8.5.5.3 The Agent's name and any other identification numbers provided to the sales Agent by the Electric Supplier or Agent.

11.8.6 An Agent performing a Door-to-Door Sale may not request a potential Residential or Small Commercial Customer's (1) Electric Supplier or EDC account number or (2) electric bill until he or she has provided the information required in subsections 11.8.5.1 through 11.8.5.5.

11.8.7 In connection with any Door-to-Door Sale, it is a violation of these Regulations for any Electric Supplier or Agent to:

11.8.7.1 Fail to leave the Residential or Small Commercial Customer's premises upon request in a prompt and courteous manner;

11.8.7.2 Leave the Residential or Small Commercial Customer's premises after completing a sale without furnishing the Residential or Small Commercial Customer with a completed Contract signed by the Residential or Small Commercial Customer that includes all required disclosures and a Contract Summary. The completed Contract and Contract Summary may be provided electronically if the Residential or Small Commercial Customer consents to electronic receipt;

11.8.7.3 Fail to inform each Residential or Small Commercial Customer orally, at the time the Residential or Small Commercial Customer signs the Contract, of the right to rescind without penalty or fee within three (3) Business Days from the date of the transaction;

11.8.7.4 Misrepresent in any manner the Residential or Small Commercial Customer's right to rescind without penalty or fee within three (3) Business Days from the date of the transaction; and

11.8.7.5 Fail or refuse to honor a valid notice of cancellation received during the Rescission Period within three (3) Business Days after the receipt of such notice from the Residential or Small Commercial Customer.

11.8.8 Background Checks for Door-to-Door Agents. An Electric Supplier shall not permit an Agent to conduct Door-to-Door Sales to Residential or Small Commercial Customers until it has completed a criminal background investigation on the Agent. The criminal background investigation shall include:

11.8.8.1 The Electric Supplier, or the independent contractor or vendor it utilizes, obtaining and reviewing the criminal history results from the following searches:

11.8.8.1.1 Delaware state and county courts;

11.8.8.1.2 A nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System;

11.8.8.1.3 The U.S. Department of Justice National Sex Offender Public Registry; and

11.8.8.1.4 Every other state in which the Agent resided during the last twelve (12) months.

11.8.8.2 For a current Agent who conducts Door-to-Door Sales, an Electric Supplier must obtain a criminal history record for such individual not later than ninety (90) days after the effective date of these Regulations.

11.8.9 Notification Regarding Door-to-Door Sales Activities.

11.8.9.1 When an Electric Supplier engages in Door-to-Door Sales, the Electric Supplier shall notify Staff and DPA no later than the morning of the day that the activity begins. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.

11.8.9.2 An Electric Supplier shall provide the EDC with general, nonproprietary information about the Door-to-Door activity that caused the Electric Supplier to provide notice to Staff and DPA. The Electric Supplier shall provide this general information to the EDC no later than the morning of the day that the sales and marketing activities begin. The EDC shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may address customer inquiries knowledgeably. An EDC may not use the information for other purposes.

11.9 Internet Enrollments.

11.9.1 For electronic contracting on the internet, the Electric Supplier's website must be configured to prompt the Residential or Small Commercial Customer to review and agree to the Contract and Contract Summary before the Contract is final, and to print or save the Contract and Contract Summary.

12.0 Reports to be Provided to the Commission and DPA.

12.1 Electric Suppliers shall provide such information concerning their State operations to the Commission and the DPA as the Commission may from time to time request, including any reporting requirements contained herein.

12.2 Required 10-Day Notifications. Electric Suppliers shall notify the Commission and the DPA within ten (10) Business Days of any of the following actions:

12.2.1 Revocation of authority to sell electricity or to broker the sale of electricity in any jurisdiction;

- 12.2.2 Revocation of an Affiliated Interest's authority to sell electricity or to broker the sale of electricity in any jurisdiction;
- 12.2.3 A change in the principal officers responsible for Delaware operations previously provided pursuant to these Regulations; or
- 12.2.4 A change in ownership of any Person having 10% ownership of the Electric Supplier or the ability to control more than 10% of the Electric Supplier's voting securities.
- 12.3 Required 30-Day Notifications and Annual Reports. An Electric Supplier shall provide the following information to the Commission and the DPA within thirty (30) calendar days of occurrence and annually by April 30th of each year:
 - 12.3.1 Any changes in the Electric Supplier's name or tax identification number or employer identification number previously provided pursuant to these Regulations;
 - 12.3.2 Any changes in the Electric Supplier's business address previously provided pursuant to these Regulations;
 - 12.3.3 Any changes to the regulatory contact and/or Customer complaint person previously identified pursuant to these Regulations;
 - 12.3.4 The identify of any state in which the Electric Supplier has had its authority to sell electricity to or broker the sale of electricity to Customers revoked, modified or suspended since the filing of the last annual report;
 - 12.3.5 Any changes to the organizational structure previously provided pursuant to these Regulations;
 - 12.3.6 A statement detailing any criminal activities, except for misdemeanors or lesser, of which the Electric Supplier or any of its Affiliated Interests has been convicted, or which the principal or corporate officers have been convicted, since the filing of the last annual report;
 - 12.3.7 A copy of any stipulation, order, or decree concerning a formal, docketed complaint or investigation of the Electric Supplier's marketing and sales activities in other jurisdictions;
 - 12.3.8 A list of any states in which any formal complaint investigations have been initiated since the filing of the last annual report; and
 - 12.3.9 A list of any states in which disciplinary actions have been taken since the filing of the last annual report.
- 12.4 Fees and Assessments. Electric Suppliers must pay applicable fees and assessments under 26 Del.C. §1012(c)(2). Electric Suppliers must also file any applicable reports required under 26 Del.C. §115(e). All Electric Suppliers, except Brokers, must also pay the Public Utilities Tax pursuant to 30 Del.C. §5501 et seq.

13.0 Green Power Products.

- 13.1 For the purposes of this Section, a Green Power Product is defined as an Electric Supply Service which is marketed or otherwise advertised as having generation attributes consisting of the types of renewable energy sources listed in 26 Del.C. §352(6)(a)-(i). The Electric Supplier shall identify the percentage of renewable resources in the Contract. Commission-regulated electric companies are responsible for complying with the Renewable Energy Portfolio Standards Act's requirements as per 26 Del.C. §354(e).
- 13.2 Electric Suppliers offering a Green Power Option shall register with either: (a) the PJM-EIS GATS, (b) its successor, (c) another applicable regional renewable energy certificate tracking system, or (d) Green-e Energy. Electric Suppliers shall keep their account(s) in good standing and shall be subject to the applicable rules of PJM-EIS GATS, its successor, another applicable regional renewable energy certificate tracking system, or Green-e Energy as applicable.
- 13.3 Electric Suppliers offering a Green Power Option shall retire VRECs equal to the marketed or otherwise advertised generation.
- 13.4 Within 120 days of the end of each Compliance Year, as defined in 26 Del.C. §352(3), each Electric Supplier that offers a Green Power Product Option shall file a report detailing its compliance with its marketed or otherwise advertised generation, including, but not limited to, evidence of the specified number of VRECs retired.
- 13.5 Any unused VRECs retired for compliance with this Regulation may be dated no earlier than three (3) years prior to the beginning of the current compliance year.
- 13.6 When requested by a Customer or providing information regarding Green Power Products Options 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.
- 13.7 An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless its generation attributes include one or more of the renewable energy sources listed in 26 Del.C. §352(6)(a)-(i).

13.8 Electric Suppliers offering Green Power Options shall meet the disclosure of the fuel resource mix requirements stated in Section 14.0 of these Regulations.

14.0 Disclosure of Fuel Resource Mix.

14.1 Each Electric Supplier, except Brokers, 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 not later than sixty (60) calendar days following the end of each quarter. The reports shall include, but are not limited to:

14.1.1 The total number of Customers by each Customer class served during that quarter;

14.1.2 The total amount of electricity (kWh or MWh) supplied to each Customer class; and

14.1.3 The fuel resource mix by percentage for each resource.

14.2 Each Electric Supplier and SOSS shall also disclose the information under subsection 14.1.3 to its Customers annually via bill inserts or a bill message with website link to the Supplier's or SOSS's fuel resource mix and each of the other three quarters by providing information on the Customer's bill for that quarter directing the Customer to obtain the information on the Electric Supplier's website or by a telephone request. Each Electric Supplier must maintain and update the information in subsection 14.1.3 as required by 26 Del.C. §1012. Information reported under subsection 14.1.3 may be utilized in any consumer education program developed in accordance with 26 Del.C. §1014(c).

15.0 Net Metering

15.1 General Provisions

15.1.1 Net Metering can occur in three circumstances as follows:

Condition 1 - Individual Customer/Single Account/Single Premise where all Net Metering activity occurs at a single customer premise for a single customer account;

Condition 2 - Individual Customer/Multiple Accounts/Single or Multiple Premises where a single customer can aggregate Net Metering for crediting to multiple accounts and/or premises; and

Condition 3 - Host Customer/Multiple Subscribers/Multiple Premises where a Community Energy Facility, either behind the meter of a Subscriber or as a stand-alone facility, provides Net Metering for multiple Subscribers and multiple premises.

15.1.2 Each Electric Supplier providing Electric Supply Service shall offer Customers the option of Net Metering if a Customer generates electricity at the Customer's premises, subject to all of the following requirements:

15.1.2.1 The Customer owns and operates; leases and operates; or contracts with a third party who owns and operates the electric generation facility with a capacity that:

15.1.2.1.1 Will not exceed 25 kW per DP&L meter for residential Customers;

15.1.2.1.2 Will not exceed 2 MW per DP&L meter for non residential Customers;

15.1.2.1.3 Will not exceed 100 kW per DP&L meter for farm customers, as those customers are described in 3 Del.C. §902(3); provided, however, that the Delaware Energy Office may grant exceptions to this limitation in accordance with 26 Del.C. §1014(d)(1)b;

15.1.2.1.4 For Conditions 2 or 3, the sum of electric generation capacity will not exceed the applicable limits per meter specified in subsections 15.1.2.1.1 through 15.1.2.1.3 above;

15.1.2.1.5 Uses as its primary source of fuel: solar, wind, hydro, a fuel cell or gas from the anaerobic digestion of organic material;

15.1.2.1.6 Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and

15.1.2.1.7 Is designed to produce no more than 110% of the Host Customer's expected aggregate electrical consumption, calculated on the average of the two previous 12 month periods of actual electrical usage at the time of installation of energy generating equipment and subject to the capacity limits specified in subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment and subject to the capacity limits specified in subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations.

15.2 Net metering shall be accomplished through a single meter at the Electric Supplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.

- 15.2.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the Customer, at the expense of the Electric Supplier, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the Customer pursuant to subsections 15.3 and 15.4 of these Regulations, or to collect system performance information on the eligible technology for research purposes.
- 15.2.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.
- 15.2.3 If the existing electrical meter of a Customer is incapable of measuring the flow of electricity in two directions through no fault of the customer, the Electric Supplier shall be responsible for all expenses involved in purchasing and installing such a meter.
- 15.2.4 For Condition 3 where a stand-alone Community Energy Facility is installed, the Electric Supplier shall install the metering necessary to provide the data to accomplish the necessary billing and shall be responsible for all expenses involved in purchasing and installing such a meter. The Electric Supplier shall assess the stand-alone Community Energy Facility a customer charge equivalent to the load and energy output characteristics of the generating facility which would be equivalent to the load and energy characteristics of a similarly situated Retail Electric Customer in its Commission-approved tariff, i.e., an equivalent retail tariff.
- 15.2.5 The equivalent retail tariff shall also be used to assess the stand-alone Community Energy Facility non-volumetric charges to recover the otherwise applicable supply, transmission, and distribution delivery costs. Subscribers to the stand-alone Community Energy Facility remain subject to only their otherwise applicable Commission-approved tariff.
- 15.3 For Net Metering Condition 1 and Condition 2 if, during any billing period, a Customer-Generator Facility produces more energy than that consumed by the Customer, or aggregate total kWh of the Customer, the Electric Supplier will credit the Customer in kWh's, valued at an amount per kWh equal to the sum of volumetric energy (kWh) components of the delivery service charges and supply service charges for residential Customers and the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non-residential Customers for any excess energy production of their generating facility that exceeds the Customer's on-site, or aggregate total, consumption of kWh in a billing period. During any billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
- 15.3.1 Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used. During any subsequent billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
- 15.3.2 At the end of the Annualized Billing Period, a Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment for residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges based on a weighted average of the first block of the summer (June through September) and winter Supply Service Charges (October through May) in effect at the end of the Customer's Annualized Billing Period and the preceding 11 billing periods, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. The payment for non-residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges that would otherwise be applicable at the end of the Customer's Annualized Billing Period. If such payment would be less than \$25.00, the Electric Supplier may credit the Customer's account through monthly billing.
- 15.3.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.
- 15.3.4 The Customer shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Customer-Generator Facility and consumed by the Customer unless the customer has relinquished such ownership by contractual agreement with a third party.
- 15.3.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not Net-Metering would be charged. Electric Suppliers shall not charge a Net-Metering Customer any stand-by fees or similar charges.

- 15.3.6 If a Net Metering Customer terminates its service with the Electric Distribution Company or changes Electric Supplier, the Electric Supplier terminating service shall treat the end of service period as if it were the end of the Annualized Billing Period for any excess kWh credits.
- 15.3.7 If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds (5%) of the capacity necessary to meet the Electric Supplier's aggregated Customer monthly peak demand for a particular calendar year, the Electric Supplier may elect not to provide Net Metering services to additional Customers.
- 15.3.8 Where applicable, the requirements established in subsection 15.6 of these Regulations shall apply to this subsection 15.3.
- 15.4 For Net Metering Condition 3 where the Community Energy Facility is located behind the meter of a Subscriber that is also the Host Customer, the following will be subject to the requirements established in subsection 15.7 of these Regulations:
- 15.4.1 During a monthly billing period where the energy from the Community Energy Facility exceeds the consumption of the Host Customer, the Subscribers participating in a Community Energy Facility not located on the same distribution feeder as the Community Energy Facility shall be credited in kilowatt-hours (kWh) valued at an amount per kWh equal to supply service charges according to each account's rate schedule for any of the energy production in excess of the consumption of the Host Customer of the Community Energy Facility. The Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility shall be credited in kWh pursuant to subsection 15.3 of these Regulations. Any excess energy after crediting Subscribers during a billing period shall be credited in subsequent billing periods. During any billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Host Customer and Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
- 15.4.2 At the end of the Annualized Billing Period, a Host Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service charge of the Host Customer of the Community Energy Facility as provided under subsection 15.3 of these Regulations. Such payment shall be made to the Host Customer of the Community Energy Facility, and may be credited to the Host Customer's account through monthly billing if less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the Electric Supplier.
- 15.4.3 As an alternative to the monthly billing period crediting above, at the end of each monthly billing period DP&L may elect to make payment to the Host Customer of the Community Energy Facility for the value of the generated electricity as established by the Public Service Commission. For purposes of Net Metering by DP&L, such value for generated electricity is established as the otherwise applicable supply service charge of the Host Customer. Additionally, for the Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility, at the end of each monthly billing period DP&L shall also include in the monthly payment to the Host Customer the value for the volumetric kWh delivery service charges. The payment for the value of the volumetric kWh delivery service charges shall be the same as determined in subsection 15.3 of these Regulations.
- 15.5 For Net Metering Condition 3 where the Community Energy Facility is a stand-alone facility, the following will be subject to the requirements established in subsection 15.7 of these Regulations:
- 15.5.1 During a monthly billing period where energy is produced from the Community Energy Facility, each Subscriber participating in a Community Energy Facility not located on the same distribution feeder as the Community Energy Facility shall be credited in kilowatt-hours (kWh) valued at an amount per kWh equal to supply service charges according to each account's rate schedule for any of the energy production of the Community Energy Facility. Subscribers located on the same distribution feeder as the Community Energy Facility shall be credited in kWh pursuant to subsection 15.3 of these Regulations. Any excess energy after crediting Subscribers during a billing period shall be credited in subsequent billing periods. During any billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
- 15.5.2 During any billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
- 15.5.3 At the end of the Annualized Billing Period, a Host Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service rate of the Host Customer of the Community Energy Facility pursuant to

subsection 15.3 of these Regulations, and may be credited to the Host Customer's account through monthly billing if less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the Electric Supplier. The Subscribers participating in a Community Energy Facility shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Community Energy Facility unless the Subscribers participating in the Community Energy Facility have relinquished such ownership by contractual agreement with a third party.

15.5.4 A Community Energy Facility shall not exceed the sum total of the capacity limits as defined under subsection 15.1.1.1 through subsection 15.1.1.3 of these Regulations among the Subscribers of a Community Energy Facility.

15.5.5 As an alternative to the monthly billing period crediting above, at the end of each monthly billing period DP&L may elect to make payment to the Host Customer of the Community Energy Facility for the value of the generated electricity as established by the Public Service Commission. For purposes of Net Metering by DP&L, such value for generated electricity is established as the otherwise applicable supply service charge of the Host Customer. Additionally, for the Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility, at the end of each monthly billing period DP&L shall also include in the monthly payment to the Host Customer the value for the volumetric kWh delivery service charges. The payment for the value of the volumetric kWh delivery service charges shall be the same as determined in subsection 15.3 of these Regulations.

15.6 Subject to the applicable Net Metering provisions of Section 15.0 of these Regulations, in instances where one customer has multiple meters under the same account or different accounts, regardless of the physical location and rate class, the customer may aggregate meters for the purpose of net metering regardless of which individual meter receives energy from a Customer-Generator Facility, provided that:

15.6.1 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and

15.6.2 The Customer-Generator Facility is designed to produce no more than 110% of the Customer's aggregate electrical consumption of the individual meters or accounts that the Customer is entitled to aggregate under this subsection 15.6 calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and

15.6.3 A Customer-Generator Facility shall not exceed the sum total of the capacity limits among the participants of a Customer-Generator Facility as defined under subsections 15.1.1.1 through 15.1.1.3 of these Regulations; and

15.6.4 At least ninety days before a Customer commences construction of a Customer-Generator Facility or a Customer is entitled to aggregate multiple meters, the customer shall file with DP&L the following information:

15.6.4.1 a list of individual meters the Customer is entitled to aggregate, identified by name, address, rate schedule, and account number, and ranked according to the order which the Customer desires to apply credit for excess energy to each individual meter; and

15.6.4.2 a description of the Customer-Generator Facility, including the facility's location, capacity, and fuel type or generating technology; and

15.6.4.3 a complete interconnection application to facilitate a transmission and distribution analysis, including an evaluation of potential reliability, safety and stability impacts and determination of whether infrastructure upgrades are necessary and appropriate allocation of applicable interconnection costs.

15.6.5 The Customer may change its list of aggregated meters specified in subsection 15.6.4.1 no more than once annually by providing ninety days' written notice; and

15.6.6 Credit shall be applied first to the meter through which the Customer-Generator Facility supplies electricity, then through the remaining meters for the Customer's accounts according to the rank order as specified in accordance with subsection 15.6.4.1 above; and

15.6.7 Credit in kilowatt-hours (kWh) shall be valued according to subsection 15.3 of these Regulations and each account's rate schedule as specified in subsection 15.6.4.1 above; and

15.6.8 DP&L may require that a Customer's aggregated meters as specified in subsection 15.6.4.1 above be read on the same billing cycle.

15.7 Subscribers are eligible to participate in a Community Energy Facility, provided:

15.7.1 A community includes customers sharing a unique set of interests; and

- 15.7.2 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and
- 15.7.3 A Community Energy Facility is designed to produce no more than 110% of the community's aggregate electrical consumption of its individual customers, calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and
- 15.7.4 A Community Energy Facility shall not exceed the sum total of the capacity limits among the participants of a Community Energy Facility as defined under subsection 15.1.1.1 through 15.1.1.3 of these Regulations; and
- 15.7.5 A Community Energy Facility may include technologies defined under 26 Del.C. §352(6)(a-h); and
- 15.7.6 Before Net Metering for a Community Energy Facility may be formed and served by DP&L, the community proposing a Community Energy Facility shall file with the Delaware Energy Office and DP&L the following information:
- 15.7.6.1 a list of individual meters the community is entitled to aggregate identified by name, address, rate schedule, and account number; and
- 15.7.6.2 a description of the Community Energy Facility, including the facility's physical location, the Host Customer's physical location, capacity, and fuel type or generating technology; and
- 15.7.6.3 the share of kWh credits to be attributed to each meter, which DP&L shall true-up at the end of the annualized billing period.
- 15.7.7 A community proposing a Community Energy Facility may change its list of aggregated meters as specified in subsection 15.7.6.1 above no more than quarterly by providing ninety days' written notice to DP&L; and
- 15.7.8 If the community proposing a Community Energy Facility removes individual customers from the list of aggregated meters as specified in subsection 15.7.6.1 above, then that community shall either replace the removed customers, reduce the generating capacity of the Community Energy Facility to remain compliant with the provisions provided under subsections 15.7.3 and 15.7.4 above, or negotiate with DP&L to establish a mutually acceptable agreement for any excess kWh credit; and
- 15.7.9 DP&L may require that customers participating in a Community Energy Facility have their meters read on the same billing cycle; and
- 15.7.10 Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation as either public utilities or an Electric Supplier.
- 15.7.11 The Subscribers participating in a Community Energy Facility shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Community Energy Facility unless the Subscribers participating in the Community Energy Facility have relinquished such ownership by contractual agreement with a third party.
- 15.8 Nothing in these Rules is intended in any way to limit eligibility for net energy metering services based upon direct ownership, joint ownership, or third-party ownership or financing agreement related to an electric generation facility, where net energy metering would otherwise be available
- 15.9 For public utilities regulated by the Commission, net metering aggregation disputes limited to the correct application of Commission-approved tariffs shall be resolved by the Commission. All other disputes with an Electric Supplier, DEC, or municipal electric companies shall be resolved by the appropriate governing body with jurisdiction over such disputes.
- 15.10 Any requirements necessary to permit interconnected operations between the Customer-Generator Facility or Community Energy Facilities; and the Electric Supplier, 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 Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's Model Interconnection Rules and best practices identified by the U.S. Department of Energy. Electric Suppliers shall not require eligible net metering customers who meet all applicable safety and performance standards to install excessive controls, perform or pay for unnecessary tests, or purchase excessive liability insurance.
- 15.11 Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the end of the calendar year. Such report shall include the following information from the previous calendar year:
- 15.11.1 The total number of Customer-Generator Facilities and Community-owned energy generating facilities;
- 15.11.2 The total estimated rated generating capacity of its net-metered Customer-Generator Facilities and Community-owned energy generating facilities;

- 15.11.3 The total estimated net kilowatt-hours received from Customer-Generator Facilities and Community-owned energy generating facilities; and
- 15.11.4 The total estimated amount of energy produced by Customer-Generator Facilities and Community-owned energy generating facilities, using a methodology approved by the Commission.
- 15.11.5 The annual net-metering report may be revised as necessary to reflect changes in information available from net metered facilities upon consultation and agreement between the Electric Supplier and the Staff of the Commission.
- 15.12 The Commission shall periodically review the impact of net-metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.
- 15.13 A retail electric customer having on its premises one or more grid Grid-Integrated Electric Vehicles shall be credited in kilowatt-hours (kWh) for energy discharged to the grid from the Grid-Integrated Electric Vehicle's battery at the same kWh rate that customer pays to charge the battery from the grid, as determined in subsection 15.3 of these Regulations. Excess kWh credits shall be handled in the same manner as Net Metering as described in subsection 15.3 of these Regulations. To qualify under this section of the Rule, the Grid-Integrated Electric Vehicle must meet the requirements in subsections 15.1.1.1., 15.1.1.2, and 15.1.1.5 of these Regulations. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in subsections 15.3, 15.10, and 15.11 of these Regulations.
- 15.14 The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with subsection 15.13 of these Regulations. Such tariffs may include rate and credit structures that vary from those set forth in subsection 15.13 of these Regulations, as long as alternative rate and credit structures are not inconsistent with the development of Grid-Integrated Electric Vehicles.

16.0 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.

17.0 Other General Rules.

- 17.1 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.
- 17.2 Failure to Comply with these Rules.
- 17.2.1 The failure by any Electric Supplier to comply with these requirements and the requirements in other Sections of these Regulations may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, or other sanction as determined by the Commission.
- 17.2.2 If an Electric Supplier has a similar license issued by another state, the federal government, or PJM or similar entity suspended or revoked, the Commission may suspend or revoke the Electric Supplier's ESC after notice and an evidentiary hearing.

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

10 DE Reg. 1160 (01/01/07)

12 DE Reg. 518 (10/01/08)

15 DE Reg. 102 (07/01/11)

20 DE Reg. 425 (12/01/16) (Prop.)