

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION

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

FINAL

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)

PSC REGULATION DOCKET NO. 49

ORDER NO. 7984

This 7th day of June, 2011, the Commission determines and Orders the following:

I. Background

1. Since 1999, Delaware law has directed electric suppliers and Commission-jurisdictional electric distribution utilities to allow consumers to use customer-sited renewable generation to offset, through “net metering,” their electric consumption. 26 **Del.C.** §1014(d)-(k). As required by that law, this Commission adopted regulations to implement (and in some instances to interpret) the various statutory “net metering” directives. And with each statutory expansion of the net metering regime over the years, the Commission has responded with changes to its rules to reflect the further legislative dictates. See 26 **Del. Admin. Code** § 3001-8.0 “Net Metering” (“net metering rules”).¹

2. This particular proceeding - to once again revise the net metering rules – was triggered by the legislative changes related to net metering enacted in July, 2010. 77 **Del. Laws** ch. 453 §§ 1-11 (July 28, 2010) *amending* 26 **Del.C.** §§1001, 1014(d) & (e), *and adding* § 1014(i)-(k) (“Chapter 453”). As the synopsis to the original bill outlined, the main purposes of these new changes were two fold:

This bill will further strengthen net energy metering provisions by providing customers the opportunity to aggregate individual meters for the purpose of allocating net metering credits to electricity accounts other than the account that hosts an energy generating facility. The bill also provides community choice aggregation provisions for community-owned energy generating facilities that are established by a group of customers. Recognizing that not all customers own properties that are favorable for energy generating facilities, the community-owned net metering provisions of this bill will allow a group of customers to invest and participate in distributed renewable energy facilities.

3. The Commission originally proposed revisions to its net metering rules to incorporate the Chapter 453 changes in September, 2010. PSC Order No. 7832 (Sept. 7, 2010). Those proposed revisions engendered responsive comments not only from Delmarva Power & Light Company (“DP&L”) but from other participants with interests in expanding renewable energy facilities. In light of those comments, and upon Staff’s recommendation, the Commission cancelled a hearing on the originally proposed revisions and committed the participants to workshops to further develop the issues identified in the comments. PSC Order No. 7875 (Dec. 7, 2010).²

4. From the workshops and further comments, Staff then advanced a revised, “second-cut” of net metering rule revisions to implement the Chapter 453 statutory changes. The Commission proposed these second-cut changes for

1. The net metering rules are contained as a section in the Commission’s “Rules for Certification and Regulation of Electric Suppliers.”

2. A listing of the participants, and a summary of each’s positions on the proposed revisions (as they emerged through the comments and workshops), is set forth in Staff’s memorandum to the Commission dated April 19, 2011. Because most of those positions are not now being pressed against the later, “second-cut” proposed rule revisions, the Commission sees no need to go into more detail on the information underlying those positions.

consideration and adoption in April, 2011. The April proposal superseded the earlier revisions offered in September, 2010. PSC Order No. 7946 (April 19, 2011).

5. Notice of these further proposed net metering revisions was officially published in the Register of Regulations (14 DE Reg. 1241 (May 1, 2011)) and also advertised in the *The News Journal* and *Delaware State News* newspapers (May 6, 2011). The publications included notice that the Commission would consider the revised regulation on June 7, 2011. Only the Interstate Renewable Energy Council ("IREC") filed written comments in response to these notices. Those comments are discussed below. No objections to the proposed rules were raised at the June 7, 2011 public hearing.

II. Discussion and Decision to Adopt Proposed Rule Revisions

6. The Commission clearly has the power to implement by rule the statutory directives announced in Chapter 453. See 26 Del.C. §1014(d), (e), & (k).

7. The Commission continues to believe that the rule revisions proposed in Order No. 7946 reasonably track the detailed, but still sometimes clouded, statutory directives set forth in Chapter 453. Like the statutory amendments, the rule revisions expand the opportunities for net metering from the original single customer/single account scenario (Condition 1) to single customers with multiple accounts (Condition 2) and multiple customers and multiple accounts served by community energy generation facilities (Condition 3). The revised rules also answer the new statutory command (26 **Del.C.** §1014(e)(3)) that calls for the Commission to provide, for optional use by the net metering supplier or utility, a direct payment alternative for dealing with net excess generation produced by a community generating facility during a billing period. See new rules §§ 8.4.3, 8.5.5 (as now adopted).

A. IREC Comments

8. As referenced above, IREC submitted written comments in response to the second revised proposed revisions. Those comments focused on the details of various provisions in the proposed rules. Thus, IREC asserted that certain provisions in the proposed revised rules deviate from the governing statutory directives:

- a. by limiting the value of monthly carry-over excess generation credits available to residential customers to the volumetric components of delivery and supply charges rather than the full sum of delivery and supply service charges;
- b. by creating a distinction in the single customer contexts (Conditions 1 & 2) between meters on the same distribution feeder as the customer's generator and those on a different feeder and, in the latter scenario, allowing carry-over net excess generation to be credited only against volumetric supply charges on the "other-feeder" accounts; and
- c. by allowing the net metering supplier or utility to impose customer charges and other non-volumetric charges which might recover otherwise applicable supply, transmission, and distribution delivery costs on "stand-alone" community generation facilities.

IREC also urged other changes. In particular, IREC asked:

- a. that, in the context of the alternative direct payment scheme for community generation (Condition 3), the monthly payment to the host should encompass only the retail supply charge amount for the net excess kwh (as a proxy for the utility's avoided costs) *plus* a value for the REC generated (as determined by Commission); and
- b. that the notice times for alerting the net metering supplier or utility that the customer wished to net meter several aggregated accounts or that customers wished to institute community generation aggregation be shortened from 90 to 60 days.

9. After the submission of the IREC comments, Staff prepared a third set of revised rules and circulated them to the identified participants. This "third" revision accepted IREC's challenge to the on-the-same feeder/off-feeder distinction for net excess generation crediting in Conditions 1 and 2 and deleted that provision. However, Staff's final version rejected some of the IREC challenges and added clarifications or corrections to address the other IREC challenges. In a memorandum dated June 7, 2011, Staff outlined the reasons for its actions.

10. After the circulation of Staff's third revision to the active participants, IREC informed Staff that Staff's changes had adequately addressed IREC's concerns and that IREC had no further objection to the proposed "third" revised rules. No other participant in the proceeding voiced any other objection to the proposed rules, as revised with Staff's latest changes. Thus, they appear to have gained support among the participants. Given all this, the Commission sees no need to respond in detail to the issues raised by IREC's June 1, 2011 comments.

11. However, one challenge calls for some response. As indicated, IREC argued that in the optional direct payment scenario for community generation, the monthly payment amount for any monthly net excess generation should reflect the sum of the volumetric retail supply charges applied to the net excess generation kilowatt-hours, plus a dollar value amount for the REC generated by the facility. The Commission need not get into any protracted discussion of what is the most "correct" method for calculating an alternative payment. It is enough to note that this State's net metering law explicitly says that the RECs generated by a net metering customer remain with the customer. 26 **Del.C.** § 1014(e)(1), (2). The proposed revised rules repeat that allocation. The alternative payment calculation set forth in the revised rules respects these directives: it "values" the alternative payment amount solely in terms of the net excess *energy* produced. The community

generator retains control over the REC, and its value.

B. Adoption

12. As indicated, Staff's third revision of the proposed rules appears to have support (or at least no objection) from all those who have participated in this docket. In light of that, the Commission adopts Staff's third revision (attached hereto as Exhibit A) as the final rule revisions in this matter.

13. The third revised rules set forth in Exhibit A reflect several administrative changes that correct several cross-references and numbering sequences in the proposed rules noticed in Order No. 7946. In addition, as noted above, the Exhibit A rules do reflect other additional changes made in response to the comments filed by IREC. While these latter rewrites go beyond clerical detail, the Commission does not believe that any of the changes reflect a substantive alteration from the rules proposed by Order 7946. Neither the administrative nor the IREC-driven changes trigger 26 **Del.C.** §10118(c) so as to call for republication and further comments and hearings.

14. Chapter 453 set a deadline of July 1, 2011 for the Commission to adopt revised regulations for the expanded net metering regime of aggregated accounts (Condition 2) and aggregated customers served by community generation facilities (Condition 3). While the directives in Chapter 493 were detailed, they still had their ambiguities. The Commission has endeavored to meet the deadline and thus promptly expand the net metering opportunities provided under the Chapter 453 statutory changes. In doing so, the Commission readily acknowledges that as the new net metering opportunities are implemented "in the field" practical and technical difficulties might arise that are not addressed adequately, if at all, in the rule revisions now being adopted. So too, actual experience in the new metering levels might provide further insights on how to best read the statutory directives of Chapter 453. In either case, the Commission stands ready to revisit its net metering rules to consider how to deal with later difficulties, while still adhering to the statutory net metering framework, as amended by Chapter 453.

**NOW THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF
NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 **Del.C.** §§209(a) & 1014(d), (e), (k), and 29 **Del.C.** §10113, the amendments and revisions to Sections 1 and 8 of the Commission's "Rules for Certification and Regulation of Electric Suppliers" (26 **Del. Admin. Code** §3001-8.0 "Net Metering") as set forth in Exhibit A to this Order are hereby adopted. Such revisions, and the consequently amended "Rules for Certification and Regulation of Electric Suppliers" shall become effective, pursuant to 29 **Del.C.** §10118(g), ten days after the final publication of this Order and the revised rules in the *Delaware Register of Regulations*.

2. That, pursuant to 29 **Del.C.** §§10113 & 10118, the Secretary shall forthwith transmit to the Registrar of Regulations a copy of this Order and Exhibit A for publication of the latter as final rules in the next issue of the *Delaware Register of Regulations*. This Order and Exhibit A shall also be posted to the Commission's website.

3. That any differences in the rules set forth in Exhibit A from those published at 14 DE Reg. 1241 are found not to be substantive changes for purposes of 29 **Del.C.** §10118(c).

4. That Delmarva Power & Light Company shall file with the Commission revised tariffs, applicable Interconnection Standards for Generators, and such other forms as may be necessary to comply with this Order within 30 days of publication of these final rules in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

~~3001 Regulations Governing Service Supplied by Electrical Corporations~~
3001 Rules for Certification and Regulation of Electric Suppliers

Effective: ~~August 31, 1999~~ July 10, 2011

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.

“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 ~~General Provisions~~ 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)

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 its plans to offer in Delaware and the type of customers it plans to serve; and
 - 2.1.1.8.6 Statement detailing any criminal activities of which the Applicant or any of its affiliated interests has been charged or convicted, or which the principal or corporate officers of the Applicant or any of its affiliated interests has been charged or convicted.
- 2.1.1.9 Contracts. 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 Cramming. If the Commission determines that an Electric Supplier has billed unauthorized charges to a Retail Electric Customer, that Electric Supplier may be subject to penalties that may be imposed by the Commission through a hearing process. An Electric Supplier that has imposed unauthorized charges on a Retail Electric Customer must void and/or refund all of those charges to the Retail Electric Customer.
- 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 ~~Is intended primarily to offset all~~ For Conditions 2 or 3 part, the sum of the Customer's own electricity requirements 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 ~~powered by renewable fuels,~~ 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 not used by the Customer to supply electricity to property other than the Customer's premises.~~ 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, the or aggregate total kWh of the Customer, the Electric Supplier will credit the Customer~~, and the meters of the Customer located on the same distribution feeder as the Customer-Generator Facility,~~ 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. [For Customer meters not located on the same distribution feeder as the Customer-Generator Facility, credit for excess energy will be credited in kWh's, valued at an amount per kWh equal to the volumetric energy (kWh) component of the supply service charge.] 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 ~~[or 8.5.5]~~ 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 ~~[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.]~~ 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 ~~[or Section 8.5.5]~~ 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.~~[5.4(i)]~~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.~~[56]~~.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.~~[56]~~.4.1 above; and

8.6.8 DP&L may require that a Customer's aggregated meters as specified in Section 8.~~[56]~~.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 ~~[As an alternative to Section 8.4 and Section 8.5 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 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. 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.
- 8.410 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.

- 8.511 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:
- 8.511.1 The total number of Customer-Generator Facilities and Community-owned energy generating facilities;
and
- 8.511.2 The total estimated rated generating capacity of its net-metered Customer-generators Generator Facilities and Community-owned energy generating facilities; and
- 8.511.3 The total estimated net kilowatt-hours received from Customer-generators Generator Facilities and Community-owned energy generating facilities; and
- 8.511.4 The total estimated amount of energy produced by Customer-generators Generator Facilities and Community-owned energy generating facilities, using a methodology approved by the Commission.
- 8.1[91].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.
- 8.612 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.
- 8.713 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 8.1.1.65 of this Rule. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in Sections 8.3, 8.410, and 8.511 of this Rule.
- 8.814 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)

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

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

10.0 Other General Rules

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

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

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

12 DE Reg. 518 (10/01/08)
15 DE Reg. 102 (07/01/11) (Final)