

**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**

**ORDER NO. 8545**

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;		PSC REGULATION DOCKET NO. 49
RE-OPENED JANUARY 7, 2003; RE-OPENED		
SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER		
7, 2010; RE-OPENED JULY 17, 2012		

**AND NOW**, this 15<sup>th</sup> day of April 2014, the Delaware Public Service Commission (the "Commission") determines and orders the following:

**WHEREAS**, the Commission has promulgated certain regulations pertaining to certification of electric suppliers entitled "Rules for Certification and Regulation of Electric Suppliers." See 26 **DE Admin. Code**. §3001 (the "Supplier Rules"); and

**WHEREAS**, the Supplier Rules have been amended several times since their original passage in 1999. (PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), 7435 (Sept. 2, 2008) and 7984 (June 7, 2011); and

**WHEREAS**, by Order No. 8187 dated July 17, 2012, the Commission re-opened PSC Regulation Docket 49 to consider further revisions to the existing Supplier Rules set for the in 26 **DE Admin. Code**. §3001; and

**WHEREAS**, by Order No. 8424 dated July 30, 2013, the Commission authorized the publication in the *Delaware Register of Regulations* of the proposed amendments to the Supplier Rules; and

**WHEREAS**, the Commission received several comments on the proposed amendments; and

**WHEREAS**, the Commission now proposes to modify the Supplier Rules to reflect the comments received; and

**WHEREAS**, the Commission believes that the proposed revised regulation should be published in the *Delaware Register of Regulations* to provide public notice of the rulemaking to develop final regulations;

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

1. That, for the reasons set forth in PSC Order No. 8187 and the body of this Order, the Commission proposes to revise the Supplier Rules as set forth herein in Exhibit "A".

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the May 2014 *Delaware Register of Regulations* a copy of this Order; a copy of the Supplier Rules, showing the proposed changes (Exhibit "A"); and a copy of the Notice of Proposed Rulemaking attached hereto as Exhibit "B".

3. 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 May 1, 2014. 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 by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; (e) the Retail Energy Supply Association; (f) NRG Energy, Inc.; (g) all members of the workgroup formed in accordance with PSC Order No. 8187; (h) Senator Harris B. McDowell, III; (i) Representative Melanie George-Smith and (j) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before June 1, 2014. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the Supplier Rules on Thursday, June 26, 2014 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on the nature and extent of any comments received regarding the proposed revisions to the Supplier Rules, the Commission may then determine that it is necessary to appoint a Hearing Examiner.

6. 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 provisions of 26 **Del.C.** §114(b)(1).

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

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

**NOTICE OF PROPOSED RULE-MAKING AMENDING "RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS"**

**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 **DE Admin. Code.** §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules. 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 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 Rules; and to make the certification process for electric suppliers more uniform. Pursuant to PSC Order No. 8187 a workgroup was formed and met several times to address the issues above.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before June 1, 2014. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware, 19904  
Attn. Reg. Doc. 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](mailto: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 June 1, 2014, but the last date to submit written comments will be on June 8, 2014.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on June 26, 2014 at 1:00 P.M. at the PSC's office at the address set forth above.

You may review PSC Order No. 8545 (April 15, 2014) (the "Order") and the proposed revised Supplier Rules in the May 2014 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules at the PSC's website located at <http://depssc.delaware.gov/electric.shtml>.

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, with the first 20 pages being free of charge. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act 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 Freedom of Information Act 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. 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](mailto:psc@state.de.us), please include "Reg. Doc. 49" as the subject of the email.

### **3001 Rules for Certification and Regulation of Electric Suppliers**

Effective: July 10, 2011 August 1, 2014

#### **1.0 Definitions**

**"Affiliated Interest"** means:

1. Any ~~p~~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 ~~p~~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 ~~p~~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, on behalf of an Electric Supplier, including an employee, a representative, an independent contractor or a vendor.

**"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~~ has the same definition set forth in 26 Del.C. §1001.

**"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~~ has the same definition set forth in 26 Del.C. §1001.

**"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:

1. ~~a~~An entity or ~~p~~Person seeking to obtain an Electric Supplier Certificate; or
2. An Electric Supplier seeking to amend their 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~~ has the same definition set forth in 26 Del.C. §1001, and shall also include anyone who conducts marketing activities including, but not limited to, promotion and sales of electricity and related services 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~~ has the same definition set forth in 26 Del.C. §1001.

**"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 ~~e~~Customer is not reasonably aware of the nature or ~~p~~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 has the same definition set forth in 26 Del.C. §1001.

**"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) has the same definition set forth in 26 Del.C. §1001.**

**~~"Delmarva Power & Light Company"~~ or "Delmarva" or "DP&L" or its successor(s) has the same definition set forth in 26 Del.C. §1001.**

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

**~~"Disclosure Statement"~~** means a written disclosure of the terms and conditions of service between an Electric Supplier and a Customer.

**~~"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 has the same definition set forth in 26 Del.C. §1001.

**~~"Distribution Services"~~** has the same definition set forth in 26 Del.C. §1001.

**~~"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 Retail Electric Customer to sell Electric Supply Service. This term includes sales, in response to or following an invitation by the Electric Supplier and the Customer's agreement to purchase Electric Supply Service made at a place other than the Electric Supplier's place of business. This term does not include any sale which is conducted entirely by mail, telephone or other Electronic means.

**~~"Electric Distribution Company" or "EDC"~~** means a public utility owning and/or operating Transmission and/or Distribution Facilities in Delaware has the same definition set forth in 26 Del.C. §1001.

**~~"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 has the same definition set forth in 26 Del.C. §1001.

**~~"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 or Broker shall serve as the ESC.

**~~"Electric Supply Service"~~** means the provision of electricity or electric generation service has the same definition set forth in 26 Del.C. §1001.

**~~"Electronic"~~** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**~~"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.

**~~"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 has the same definition set forth in 26 Del.C. §1001.

**"GATS"** means the Generation Attribute Tracking System developed by PJM Environmental Information Services, Inc. (PJM-EIS) has the same definition set forth in 26 DE Admin. Code 3008.

**"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 has the same definition set forth in 26 DE Admin. Code 3008.

**"Generation Unit"** means a facility that converts a fuel or an energy resource into electric energy has the same definition set forth in 26 DE Admin. Code 3008.

**"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 has the same definition set forth in 26 Del.C. §1001.

**"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 has the same definition set forth in 26 Del.C. §1001.

**"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"** has the same definition set forth in 26 DE Admin. Code 1001.

**"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 has the same definition set forth in 26 DE Admin. Code 3008.

**"Price"** or **"Rate"** means the charge(s) for Electric Supply Service applied against the billing determinants for electricity usage of the Customer.

**"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 that is equal to 1 megawatt-hour of retail electricity sales in the State that is 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~~ the Renewable Energy Portfolio Standards Act, 26 Del.C. §351 et seq.

**"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~~ has the same definition set forth in 26 DE Admin. Code 3008.

**"Residential Customer"** means a Retail Electric Customer eligible to take services supplied exclusively for domestic purposes in individually metered dwelling units and in duplexes and triplexes, including the separately metered non-commercial facilities of the residential customer (e.g., garages, water pumps, etc.).

**"Retail Competition" or "Retail Choice"** means the right of a Customer to purchase electricity from an Electric Supplier other than the Standard Offer Service Supplier.

**"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 the current DP&L's tariff, currently on file with the Commission, governing Service Classification "Small General Service-Non Demand Rate" or the current Cooperative's tariff, currently on file with the Commission, governing 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.

**"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"** has the same definition as set forth in 26 DE Admin. Code 1001.

**"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~~ has the same definition as set forth in 26 Del.C. §1001.

**"State"** means ~~the~~ State of Delaware.

**"Subscriber(s)"** means those persons who are otherwise Retail Electric Customers of an ~~e~~Electric ~~s~~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~~ has the same definition as set forth in 26 Del.C. §1001.

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

**"Verification Process"** is a process by which a Residential or Small Commercial Customer's intent to enter into a contract to receive Electric Supply Service from an Electric Supplier other than the EDC is validated. Validation can be obtained through audio recording, in writing, or by Electronic means as the term "Electronic" is defined in 6 Del.C. §12A-102(5). This process is separate from the solicitation and sales process.

**"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 EDC or Electric Supplier, or via electronic mail to a valid e-mail address if such address is provided by the Customer.

## 2.0 Certification of Electric Suppliers

- 2.1 All ~~Electric Suppliers~~ Applicants 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~~ Applicants shall file with the Commission an original and ~~ten (10)~~ five (5) paper copies of an Application for an Electric Supplier Certificate. Applications filed by electronic means shall comply with 26 DE Admin. Code 1001 Rules of Practice and Procedure of the Delaware Public Service 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.
- 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, issued within twelve (12) months of filing, 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, except Brokers, shall submit a copy of ~~their~~ its performance bond or guarantee that ~~they have~~ it has obtained as security to the Electric Distribution Company if required in the ~~Sservice~~ Agreement between the Applicant and the Electric Distribution Company. The copy of the performance bond may be provided after the Electric Supplier is granted the ESC, but must be provided to the Commission prior to marketing or offering Electric Supply Service to Customers.
- 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 demonstrate, through an affirmative statement that it will, only procure arrange electricity sales from an entity that complies with PJM's requirements and is a ~~Ccertified~~ Electric Supplier in the State.
- 2.1.1.4.1 Brokers Only: A list of Electric Suppliers through which the Applicant intends to arrange for the sale of electricity.
- 2.1.1.5 Financial, Operational, Managerial and Technical Ability. Each Applicant shall be required to present substantial evidence supporting ~~their~~ its 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 Publicly traded Applicants must file Ccertified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders, and their SEC Form 10-K (a link to the report on the SEC website is sufficient). Other indicia of financial capability may also be filed. Non-publicly traded Applicants shall file 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 publically traded parent. Applicants submitting European-style financial statements shall include a statement of similarity.
- 2.1.1.5.2 Description of the Applicant's experience in the energy market and a Bbrief description of the nature of business being conducted services it plans to offer in Delaware, including types of customers to be served, services provided and geographic area the EDC service territory 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 or brokering electric supply service to Retail Electric customers and a list of states in which Applicant or any of its Aaffiliated linterests has pending applications to sell or broker electric supply service to Retail Electric customers. Include license or certificate numbers
- 2.1.1.5.4 A list of states in which Applicant or any of its Aaffiliated linterests has been denied approval by a State Commission to sell or broker electricity to Retail Electric Customers, has been found in violation of a state's laws, rules, and/or regulations, or has had its authority revoked, modified, or suspended. Applicant should also include any cases in which revocation or

- suspension of authority to sell or broker electricity is pending. Provide details identifying the name, case number, and date of each action. If, none explicitly state such.
- 2.1.1.5.5 Relevant operational experience of each principal officer, director, or manager responsible for Delaware operations.
- 2.1.1.5.6 A copy of any FERC approval as a Marketer or the date and docket number of the application to FERC. If the date and docket number are provided, a copy of the FERC approval must be provided within 30 calendar days of issuance.
- 2.1.1.5.7 If the Applicant requires deposits, advance payments, prepayments, financial guarantees or the like from Residential or Small Commercial eCustomers, then the Applicant must list on its application the amount of projected Deposits it plans to collect from Customers during the first year after it obtains its Electric Supplier Certificate. In addition, the Applicant must secure a bond with corporate surety licensed to do business in Delaware to guaranteeing the repayment of all customer Deposits and advances upon the termination of service. if the Electric Supplier terminates Electric Supply Service. If a Customer has an outstanding or unpaid balance due, an Electric Supplier may apply the Deposit against such unpaid balance and then remit any excess to the Customer. The Applicant shall file the original of such a bond issued by a qualified surety for permanent retention with the Secretary of the Commission. The amount of the bond will shall be the greater of (i) 150 percent of the projected amount of deposits and advances the Applicant lists on its application as projected Deposits 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 in the Applicant's application, the Electric Supplier must increase the amount of bond shall be increased to comply with the requirement in the preceding sentence. Applicant must include a calculation of the projected amount of deposits and advances for the next one year period.
- 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~~ accompanied by a signed, sworn verification of a principal or officer of the Applicant with responsibility for the information and representations made in the application. Where the Applicant is a corporation or an association, the verification shall be signed by a bona fide officer thereof.
- 2.1.1.7 Consent to the Jurisdiction. All ~~Electric Suppliers Applicants~~ Applicants 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 to be provided by Applicant:
- 2.1.1.8.1 Legal name and, if applicable, tax identification number or employer identification number as well as the name under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant has previously done business in Delaware;
- 2.1.1.8.2 State of incorporation, business address, and address of the principal officer. Provide a certificate issued by the state of formation within the past 6 months certifying that the Applicant is in good standing and qualified to do business in the state of formation;
- 2.1.1.8.3 Name, title, email address (if applicable), mailing address and telephone number of a regulatory contact person. If customer complaint contact person is different, provide name, title, e-mail address, mailing address and telephone number;
- 2.1.1.8.4 A toll-free telephone number of customer service department. Brokers proposing to serve non-residential Customers may provide a Delaware telephone number;
- 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 Applicant's organizational structure including all parent, affiliate and subsidiary companies;~~
- 2.1.1.8.6 Statement detailing any criminal activities, except for misdemeanors or lesser, of which the Applicant or any of its ~~a~~Affiliated interests has been charged or convicted, or which the principal or corporate officers of the Applicant or any of its ~~a~~Affiliated interests has been charged or convicted within the last five (5) years; and
- 2.1.1.8.7 If the Applicant intends to serve Residential or Small Commercial Customers, a general description of the marketing plan(s) and/or method(s) it plans to use in Delaware. Plans should include how (door-to-door, telemarketing, direct mail, etc.) and method (internal resources, Delaware certified Broker, external third-party, etc.)
- 2.1.1.9 Contracts. At the time of the filing, the Applicant, ~~except Brokers,~~ shall ~~either provide its Standard Contract a copy of its Disclosure Statement used for Residential and Small Commercial Customers or a link to it on the Applicant's website. Such contract~~ The Disclosure Statement is subject to review by the Commission Staff and if Staff determines that ~~such contract the Disclosure Statement~~ is not consistent with these Rules for Certification and Regulation of Electric Suppliers ("Rules"), Delaware Code, other Commission regulations, or any other applicable law, order rule or regulation, then Staff shall have the authority to require changes in order to make the Disclosure Statement consistent with these Rules, ~~or Electric Supplier the Applicant faces revocation of its rejection or denial of its application for an~~ Electric Supplier Certificate by the Commission after a hearing. ~~Such contract~~
- 2.1.1.9.1 The Disclosure Statement shall be in clear and plain language and include explicit terms and conditions which at a minimum contain the following in plain type:
- 2.1.1.9.1.1 A clear and conspicuous statement of the duration of the contract;
- 2.1.1.9.1.2 ~~The p~~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 A price description of each service, including all fixed and variable costs. If the product is a variable Price product the contract shall identify the initial Price per kWh and include a statement that explains the conditions of variability (stating on what basis and how often Prices may vary) and the limits on Price variability, if any. Applicants offering a variable Price product shall provide a toll-free number or link on the Applicant's website where customers may obtain the Price per kWh at least five (5) calendar days prior to the Price effective date. Customers may waive the five (5) calendar day advance notice by certifying that (s)he has access to ongoing price information via automated price response equipment. This waiver must be prominent and in 10-point type or larger.
- 2.1.1.9.1.3 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. A

complete list of any other charges, including, fixed monthly charges and minimum monthly charges;

2.1.1.9.1.4 A statement of the ~~Electric Supplier's~~ Applicant's termination rights, which shall explain the specific conditions, under which the ~~Electric Supplier~~ Applicant may terminate service. At a minimum, the Electric Supplier shall provide the Residential or Small Commercial Customer with at least 30 calendar days notice of termination of the contract and procedures to maintain ongoing service. In addition, the Disclosure Statement must adhere to the provisions in 26 **DE Admin. Code** 3002-3.2.2 regarding good faith disputes;

2.1.1.9.1.5 The ~~Electric Supplier's local or~~ Applicant's toll-free telephone number, address and web address, if applicable; and the Commission's address, web address, Delaware toll-free telephone number and telephone number;

2.1.1.9.1.6 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 their/his/her contract with their/his/her Electric Supplier with no termination fee upon a 30-day notice in writing to the Electric Supplier.

2.1.1.9.1.7 A statement informing the Residential or Small Commercial Customer that they/he/she has seven (7) business days from the day the EDC sends the confirmation letter to rescind their/his/her selection without penalty or fee.

2.1.1.9.1.8 A statement of the Residential or Small Commercial Customers termination rights, which shall explain the specific conditions, under which the Residential or Small Customer may terminate service. The Electric Supplier shall provide the Residential or Small Commercial Customer with at least ten (10) calendar days written or e-mail notice of any Price changes for a fixed Price contract. E-mail notice may only be used if the Customer has provided a valid e-mail address and consent to receive Price information via e-mail. Electric Suppliers are encouraged to use an acknowledgment receipt to confirm the validity of e-mail addresses. The Residential or Small Commercial Customer shall have the right to terminate a contract based on a change in Price for a fixed Price contract. Customers choosing a variable Price product with month-to-month changes in Price shall have the right to terminate service with not more than thirty (30) calendar days notice to the Electric Supplier in the manner set forth in the contract.

2.1.1.9.1.9 A statement regarding contract renewal procedures, if any, including automatic renewal if applicable.

2.1.1.9.1.10 An area for the Customer to acknowledge receipt of the document by written signature, Electronic Signature or verbal consent. For a contract entered into verbally through audio recording, Electric Suppliers must affirm to the Customer that the supplier will send the customer the Disclosure Statement within three (3) business days of obtaining the Customers' verbal authorization to enroll. A Disclosure Statement correctly addressed to a Customer with sufficient first class postage attached shall be considered received by the Customer three (3) days after it has been properly deposited in the US mail. If delivered electronically, the Disclosure Statement is considered received by the Customer on the date it was electronically transmitted to the e-mail address provide by the Customer.

2.1.1.9.2 All Customer contracts shall include all material terms and be written in clear plain language understandable to the Customer with any exclusions, exceptions, add-ons, package offers, limited time offers or other deadlines prominently communicated. Penalties and procedures for ending contracts should be clearly communicated.

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. The form of notice will be provided to the Applicant after receipt of the application.

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, within 15 business days of receipt, 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.**

- 2.6 Public Interest. The Commission may choose to deny an ESC to an Applicant where it finds that doing so is in the public interest.

### 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. The Commission will consider the ESC abandoned if the Electric Supplier does not: (a) begin serving Customers within twenty-four (24) months of the ESC being granted; and/or (b) provide the required yearly compliance filing in Section 3.9.2 of these Rules within ninety (90) days of the required due date.
- 3.4 Contracts and Revised Contracts for Residential or Small Commercial Customers.
- 3.4.1 An Electric Supplier shall supply Electric Supply Service to a Residential or a Small Commercial Customer only by a ~~standard~~ contracts containing the provisions described in Section 2.1.1.9, of these Rules.
- 3.4.2 The contract must be signed or verifiable by some other means of authorization by the Residential or Small Commercial Customer. Other means of authorization shall include an Electronic Signature or verifiable verbal authorization. An Electric Supplier that contracts with a Customer by means of the internet shall confirm the identity of the person signing the contract. An Electric Supplier may use a distinct username and password to confirm the identity of the contracting Customer.
- 3.4.3 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.~~
- 3.4.4 If the Electric Supplier makes substantive changes to its ~~standard contract~~ Disclosure Statement for Electric Supply Service to Residential or Small Commercial Customers, the Electric Supplier must notify the Commission Staff at least seven (7) business days prior to offering the Disclosure Statement(s) in Delaware to allow for review and comment. If Staff determines that such ~~contract~~ Disclosure Statement is not consistent with these Rules, Delaware Code or other Commission regulations, then within seven (7) business days of receiving the revised Disclosure Statement from the Electric Supplier, Staff shall have the authority to require changes to it or the Electric Supplier may face revocation of its Electric Supplier Certificate by the Commission after a hearing. Commission Staff shall have the authority at any time to require changes to a ~~standard contract for Residential or Small Commercial Customers.~~ Substantive changes include, but are not limit to, changes in the Electric Supplier's name and/or changes in product offerings.
- 3.4.5 Residential and Small Commercial Customers must be notified not less than thirty (30) calendar days in advance of the expiration of the initial contract for a fixed Price product if the contract is for a duration of longer than ninety (90) days. The notification should include whether the contract will automatically renew, any change in Price, the duration of the renewed contract, or if service will continue on a month-to-month or other basis. Notification shall be provided by written notice. E-mail may be used provided the Customer has chosen to receive communications regarding changes in Price from the Electric Supplier in this manner.
- 3.4.6 Upon Written Notice from Staff, Electric Suppliers must submit contracts for Electric Supply Service to Residential or Small Commercial Customers for Staff review and comment. If there is a change in applicable rules, regulations, or laws requiring a change to the contract, Staff will review the contract(s) for compliance and notify the Electric Supplier of any deficiencies within seven (7) business days of receiving the revised Disclosure Statement from the Electric Supplier.
- 3.5 Price and Terms of Service. Any ~~p~~Price term shall ~~not~~ be inconsistent with pricing the terms of service in a Residential or Small Commercial Customer's contract with their Electric Supplier. The Electric Supplier must provide ~~thirty (30) Written Notice~~ five (5) calendars days in advance to its Residential or Small Commercial Customer(s) of any price and/or terms of service changes. Electric Suppliers may not add a new charge for a new service, existing service, or service option without first obtaining consent from the Customer.
- 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. The

contract may be provided by e-mail if the Electric Supplier obtained a valid e-mail address and permission to provide the contract by e-mail from the Retail Electric Customer during the enrollment process. The Disclosure Statement may serve as a contract. Electric Suppliers are encouraged to use an acknowledgment receipt to confirm the validity of e-mail addresses.

- 3.7 Customer Information. An Electric Supplier may request a list from an Electric Distribution Company which contains Retail Electric Customer's names, service classification, if the Customer is a SOS customer, service addresses and mailing addresses. A Retail Electric Customer may elect to opt out of the list. The EDC shall provide notice of the opt out procedures to Customers on an annual basis.

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~~ no Electric Suppliers shall ~~not~~ solicit Retail Electric Customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations. If telemarketing is permitted, then:

3.8.1.1 Agents, or representatives, of Electric Suppliers soliciting through telemarketing must provide the first name and, on request, the operator identification number of the marketing representative making the call.

3.8.1.2 Agents, or representatives, of Electric Suppliers soliciting through telemarketing must state the name of the Electric Supplier on whose behalf the call is being made and shall not represent that the Electric Supplier is acting on behalf of an EDC or any governmental agency.

3.8.1.3 Agents, or representatives, of Electric Suppliers soliciting through telemarketing must promptly state that the purpose of the call is to sell Electric Supply Service and shall, upon request explain the difference between Electric Supply Service, SOS, and Distribution Services.

3.8.1.4 Customers requesting to be removed from an Electric Supplier's database(s) or telemarketing list(s) must be removed within two (2) business days of the request.

- 3.8.2 An Electric Supplier or its marketing or advertising agent shall not make misrepresentations or use deceptive practices relating to its own services or the services provided by the Customer's EDC in its direct 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.

3.8.2.1 No solicitations, advertising and marketing materials may suggest a relationship that does not exist with a SOSS, EDC, government agency or another Electric Supplier.

3.8.2.2 Solicitations, advertising and marketing materials must include the name and address of the Electric Supplier.

3.8.2.3 Solicitations, advertising and marketing materials must include the Electric Supplier's toll-free telephone number for inquiries, verification and complaints.

3.8.2.4 Any marketing materials that make statements concerning Prices, terms and conditions of service shall contain accurate information. Any marketing materials through which a Customer may contract with an Electric Supply must accurately disclose the Prices, terms and conditions of the products or services that the Electric Supplier is offering or selling to the Customer.

3.8.2.5 For person-to-person and telemarketing solicitations, the Agent of the Electric Supplier shall state that he/she is not working for and is independent of the Customer's EDC.

- 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.

- 3.8.4 Electric Suppliers shall disclose, in writing, to Commission Staff the proposed plan(s) and/or marketing method(s) intended to be utilized in Delaware (if different than described in the Applicant's original application) not fewer than 5 business days before utilizing the plan and/or method in Delaware.

- 3.8.5 Electric Suppliers must notify the Commission Staff not fewer than 5 business days before the start of a marketing campaign and submit to the Commission Staff a copy of the marketing materials specific to its Delaware operations. A marketing campaign means the dissemination or distribution of informational and advertising materials regarding the Electric Supplier's services and products to the public by print, broadcast, electronic media, in person, direct mail or by telecommunication.

- 3.8.6 In-person Sales of Electric Supply Service to Residential and Small Commercial Customers

3.8.6.1 An Electric Supplier or its marketing or advertising Agent engaging in in-person marketing or advertising and/or Door-to-Door Sales must comply with the following:

3.8.6.1.1 Produce photo identification with the full name of the Agent;

3.8.6.1.2 Promptly state the purpose of the visit;

3.8.6.1.3 State the name of the Electric Supplier he/she is representing;

- 3.8.6.1.4 Must not present any materials that suggest any relationship between the Electric Supplier and the EDC or SOSS;
    - 3.8.6.1.5 Must provide the address and toll-free telephone number of the Electric Supplier;
    - 3.8.6.1.6 Must not interfere if the Customer chooses to leave the location; and
    - 3.8.6.1.7 Must leave the premises immediately upon request of the occupant or owner of the premises or any person with whom the marketing, advertising or sale is being conducted.
  - 3.8.6.2 In connection with any Door-to-Door Sale of Electric Supply Service, it is a violation of these Rules for any Electric Supplier's representative, or Agent to:
    - 3.8.6.2.1 Fail to furnish the Customer with a fully completed receipt or copy of the Disclosure Statement at the time of its execution, which is in compliance with these Rules;
    - 3.8.6.2.2 Fail to inform each Customer orally, at the time the Customer signs the Electric Supply Service contract, of the right to rescind without penalty or fee within seven (7) business days from the day the EDC sends the confirmation letter;
    - 3.8.6.2.3 Misrepresent in any manner the Customer's right to rescind without penalty or fee within seven (7) business days from the day the EDC sends the confirmation letter and/or;
    - 3.8.6.2.4 Fail or refuse to honor any valid notice of cancellation by a Customer within seven (7) business days after the receipt of such notice from the Customer or the Customer's EDC.
  - 3.8.6.3 Any Electric Supplier's representative, or Agent of an Electric Supplier who solicits a Door-to-Door Sale of Electric Supply Service at a residential dwelling shall prominently display a Door-to-Door Salesperson photo identification card issued by the Electric Supplier while soliciting a Door-to-Door Sale. The Door-to-Door Salesperson identification card shall be displayed on the person of the Electric Supplier's representative, or Agent of an Electric Supplier in such a manner so that a potential Customer shall be able to view the Door-to-Door Salesperson's identification card during any transaction with the Electric Supplier's representative, or Agent of an Electric Supplier soliciting a Door-to-Door Sale.
    - 3.8.6.3.1 A Door-to-Door Salesperson identification card shall contain and prominently display the following information concerning an Electric Supplier's representative, or agent of an Electric Supplier:
      - 3.8.6.3.1.1 The Electric Supplier's business name and toll-free customer service number;
      - 3.8.6.3.1.2 The Person's photograph;
      - 3.8.6.3.1.3 The full legal name of the Electric Supplier's representative, or Agent of an Electric Supplier;
      - 3.8.6.3.1.4 The telephone number of the Electric Supplier;
      - 3.8.6.3.1.5 The Electric Supplier's address; and
      - 3.8.6.3.1.6 A toll-free number, if different from that provided in Sections 3.8.6.3.1.1 or 3.8.6.3.1.3 above, to verify that the salesperson is an Agent of the Electric Supplier.
    - 3.8.6.3.2 A Door-to-Door Sale shall be conducted by an Electric Supplier's representative, or Agent of an Electric Supplier at a residential dwelling between the hours of 9 a.m. to 8 p.m. prevailing Delaware time, only.
  - 3.8.6.4 An Electric Supplier may not permit a Person or Agent to conduct Door-to-Door Sales and marketing activities until it has conducted a criminal background investigation. The criminal background investigation shall include:
    - 3.8.6.4.1 The Electric Supplier obtaining and reviewing a criminal history record from the Delaware State Police and from every other state in which the Person resided for the last twelve (12) months. For a current employee or Agent who conducts sales and marketing activities, an Electric Supplier must obtain a criminal history record not later than ninety (90) days after the effective date of this regulation; and
    - 3.8.6.4.2 The Electric Supplier checking the sex offender registry commonly referred to as the "Megan's Law" registry maintained by the Delaware State Police.
- 3.8.7 Electric Suppliers shall promptly and courteously leave the premises upon request of any Person and comply with a Person's request to be exempted from Door-to-Door Sales and marketing and annotate its existing marketing or sales databases or lists consistent with this request within two (2) business days. The Person's request to be exempted from the Electric Supplier's solicitation list shall not expire.
- 3.8.8 Electric Suppliers and Agents shall make accurate representations regarding its relationship with the EDC, the Commission, and any governmental agency.

- 3.8.9 Marketing and advertising materials targeted for Residential and Small Commercial Customers shall be made available upon request of the Commission in the event of a formal or informal complaint or investigation.
- 3.8.10 Pursuant to 26 Del.C. §1019(a), a penalty for a violation of an Electric Supplier Rule shall not exceed \$5,000 for each such violation, with the overall penalty not to exceed an amount reasonable and appropriate for the violation. Each day of noncompliance shall be treated as a separate violation.
- 3.9 Reports to be Provided to the Commission.
- 3.9.1 All Electric Suppliers shall provide such information concerning their 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 treated under 8 DE Admin. Code 1202-6.2~~, and shall be afforded such proprietary treatment subject to the provisions of the Rules, ~~Commission Delaware~~ regulations, and Delaware Law.
- 3.9.2 Every Electric Supplier shall provide the following information to the Commission within thirty (30) calendar days of occurrence and annually by April 30<sup>th</sup> of each year:
- 3.9.2.1 Any changes in the Electric Supplier’s name or tax identification number or employer identification number provided in Section 2.1.1.8.1 of these Rules
- 3.9.2.2 Any changes in the Electric Supplier’s business address provided in Section 2.1.1.8.2 of these Rules
- 3.9.2.3 Any changes to the regulatory contact person listed in Section 2.1.1.8.3 of these Rules
- 3.9.2.4 A list of any states 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 in the last twelve (12) months
- 3.9.2.5 Any changes to the organizational structure provided in Section 2.1.1.8.5 of these Rules
- 3.9.2.6 A statement detailing any criminal activities, except for misdemeanors or lesser, of which the Electric Supplier or any of its affiliated interests has been charged or convicted, or which the principal or corporate officers or any Affiliated Interests of the Electric Supplier has been charged or convicted in the last twelve (12) months
- 3.9.2.7 A list of any states in which any formal complaint investigations have been initiated in the last twelve (12) months
- 3.9.2.8 A list of any states in which disciplinary actions have been taken in the last twelve (12) months
- 3.9.3 Electric Suppliers that have provided bond under Section 2.1.1.5.7 of these Rules must provide the actual amount of deposits and advances collected in the last year and a calculation demonstrating that the amount of the bond is the greater of 150 percent of the projected amount of deposits and held by the Electric Supplier for the next one year period or \$50,000 and provide a bond in the larger amount if such calculation demonstrates that a change is necessary.
- 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 All~~ 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~~ shall retain customer account records for a period of two (2) years.
- 3.12 Required Notification. All Electric Suppliers must notify the Commission within ten (10) calendar days of any of the following actions:
- 3.12.1 Revocation of authority to sell electricity or to broker the sale of electricity in any jurisdiction;
- 3.12.2 Revocation of an Affiliated Interest’s authority to sell electricity or to broker the sale of electricity in any jurisdiction;
- 3.12.3 A change in the principal officers responsible for Delaware operations provided in Section 2.1.1.5.5 of these Rules; and/or
- 3.12.4 A change in ownership of any Person or entity having direct control of the company.

## **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.

4.1.3 The billing party shall be responsible for paying all late fees incurred as a result of the payment transmittal process between the Supplier and the EDC.

4.2 Bill Contents. The bill should be easy to understand, be in clear and plain language 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 ~~P~~ublic ~~P~~urpose ~~P~~rograms and a ~~C~~ompetitive ~~T~~ransition ~~C~~harge (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 Definitions of technical terms used in the bill;

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

4.2.13 The Price to compare for Electric Supply Service of the Standard Offer Service Supplier.

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 Enrollment Authorization. An Electric Supplier must obtain authorization from the Retail Electric Customer before switching a Customer's provider of Electric Supply Service. Authorization may be obtained by written, electronic, or verbal means.

5.1.1 Written authorization must be provided on a contract(s) conforming to Sections 2.1.1.9 and 3.4 of these Rules.

5.1.2 Electronic authorization must be provided by Electronic Signature on contract(s) conforming to Sections 2.1.1.9 and 3.4 of these Rules. Electric Suppliers shall acknowledge receipt of a Customer enrollment completed using an Electronic Signature by providing a confirmation of receipt within one business day after receiving authorization. The confirmation may be provided by e-mail. Electric Suppliers are encouraged to use an acknowledgment receipt to confirm the validity of e-mail addresses.

5.1.3 Verbal authorization provided over the telephone as a result of telemarketing or as a result of a Door-to-Door Sale must undergo a Verification Process. The Electric Supplier may choose an independent third-party verification system or the Electric Supplier shall implement its own audio recording system which includes the entire conversation with the Customer. The Verification Process shall:

5.1.3.1 Include the name and/or Agent identification number of the person conducting the Verification Process;

5.1.3.2 Include the name and/or Agent identification number of the Agent or representative who conducted the Telemarketing or Door-to-Door Sale;

- 5.1.3.3 Include the entire name, account number and service and billing address of the Customer;
- 5.1.3.4 Include an affirmative statement that the person is the account holder or authorized to make the switch in Electric Supply Service providers;
- 5.1.3.5 Identify the name of the Electric Supplier to which the Customer is switching;
- 5.1.3.6 Indicate the date of the Verification Process;
- 5.1.3.7 Include an affirmative statement that the Customer is voluntarily choosing to switch Electric Suppliers;
- 5.1.3.8 State the Price per kWh, whether the Price is fixed for a period of time or variable, and the length of the contract;
- 5.1.3.9 State the amount of any cancellation fees and/or any other charges included in Section 2.1.1.9.1.3;
- 5.1.3.10 Confirm that the Customer has been given a copy of the Disclosure Statement and will not be switched from the current Electric Supplier or SOSS until the ten (10) day rescission period has expired;
- 5.1.3.11 State the toll-free number of the Electric Supplier; and
- 5.1.3.12 Advise the Customer of the right to rescind the contract in accordance with Section 2.1.1.9.1.7 of these Rules.
- 5.1.4 The Electric Supplier shall maintain the authorization and Verification Process, if required, for the duration of the Customer's initial contract. For any renewal(s) of the contract, authorization and verification information must only be kept on file for thirty (30) days.
- 5.1.5 When the Electric Supplier is informed that the authorization could not be verified, the Electric Supplier shall contact the Customer by telephone or in writing to explain that the authorization could not be verified. The Electric Supplier may correct the problem so that the authorization can be verified through the Verification Process.
- 5.42 Procedures to be followed by the Retail Electric Customer (or a Broker acting on behalf of a Customer):
  - 5.42.1 A Retail Electric Customer (or a Broker acting on behalf of a 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.
  - 5.42.2 If the Retail Electric Customer (or a Broker acting on behalf of a Customer) and Electric Supplier are not able to come to a resolution, the Retail Electric Customer or Broker may file an informal complaint with the Commission as described in Rules 14 and 15 of the 26 DE Admin. Code 1001(2.2.1) "Rules of Practice and Procedure of the Delaware Public Service Commission". Other provisions of 26 DE Admin. Code 1001 et seq. related to filing complaints with the Commission shall not be available to a Retail Electric Customer (or a Broker acting on behalf of a Customer) to resolve their complaint.
  - 5.2.3 A Broker acting on behalf of a Retail Electric Customer must provide written proof to the Commission, 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.
- 5.23 Procedures to be Followed by the Electric Supplier:
  - 5.23.1 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.
  - 5.23.2 An Electric Supplier shall have a sufficient number of customer service representatives that are knowledgeable and able to handle its Retail Electric Customer's inquiries and complaints.
  - 5.23.3 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. In addition, all Electric Suppliers must adhere to the provisions of 26 DE Admin. Code 3002-3.2.2
  - 5.23.4 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:
    - 5.23.4.1 Type of complaint;
    - 5.23.4.2 Date of complaint;
    - 5.23.4.3 Resolution; and,
    - 5.23.4.4 Date resolved.
- 5.34 Slamming. An Electric Supplier must obtain verifiable authorization from the Retail Electric Customer before switching Electric Supply Service. Verifiable authorization means a written signature, Electronic Signature or



an audio recording of the Customer expressly authorizing a change in Electric Suppliers or the terms of 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~~ **26 DE Admin. Code 1001 et seq.**

5.45 Cramming. If the Commission determines that an Electric Supplier has billed ~~unauthorized charges to a that have not been explicitly authorized by the~~ 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.

5.56 General Retail Electric Customer Protections.

5.6.1 An Electric Supplier, including ~~a~~ 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 **26 Del.C. §1019** and Section 10.0 of these Rules.

5.6.2 Electric Suppliers shall not engage in false, misleading, or deceptive conduct or make false, misleading or deceptive statements or representations in any dealings with Retail Electric Customers.

5.6.3 Electric Suppliers are responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the Electric Supplier, its employees, Agents, or representatives.

5.6.4 Electric Suppliers, or their Agents, shall not say or suggest to a Retail Electric Customer that s/he is required to choose an Electric Supplier for any reason.

5.6.5 Electric Suppliers, or their Agents, shall not make false or mislead representations including misrepresenting Rates or savings offered by the Electric Supplier.

## **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~~ **26 DE Admin. Code 3008-3.2.**

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 the applicable PJM-EIS GATS rules and shall pay the applicable PJM-EIS GATS fees.

6.3 Electric Suppliers offering a Green Power Product shall ~~submit~~ retire RECs or SRECs, where applicable, 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 with PJM-EIS GATS.~~

6.4 Within 120 days of the end of each Renewable Energy Portfolio Standards Compliance Year, each Retail Electric Supplier, who offers a Green Power Product, shall file an annual report detailing its compliance with its marketed or otherwise advertised generation resource mix, including, but not limited to, evidence of the specified number of SRECs and RECS retired in PJM –EIS's GATS. A report from the Green-e® Energy program for the applicable compliance year may be used to show compliance with the marketed or otherwise advertised generation resource mix if it includes evidence of the specified RECS and SRECS retired.

6.5 SRECs or RECs retired for compliance with this Regulation may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

6.46 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 if~~ the Electric Supply Service the Retail Electric Customer receives will be used to meet the Electric Supplier's RPS requirements.

6.57 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.

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

- 6.9 All Electric Supplies must comply with Commission's Rules and Procedures to Implement the Renewable Energy Portfolio Standard as set forth in 26 DE Admin. Code 3008 as applicable.

## 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~~ not later than sixty (60) calendar days following the end of 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 and SOSS shall also disclose the information under paragraph 7.1.3 to its Retail Electric 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 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 or 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, uUpon receipt of a request for access to information designated by any Applicant, Electric Supplier, or EDC as 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 will follow the procedures set forth in 8 DE Admin. Code §§1202-3.7 and 6.2.~~
- 10.2 ~~Failure to Comply with these Rules. The failure by If any Electric Supplier or Applicant fails to comply with these requirements and the requirements in other Sections of any Delaware law, Commission Order, provision of these Rules, or other Delaware regulation, the Commission may result in impose civil penalties on such Applicant or Electric Supplier, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, or other sanction as determined by the Commission and as allowed under 26 Del.C. §1019.~~
- 10.3 ~~Suspension or revocation of a license or certification by any state or federal authority, including but not limited to any enforcement action by PJM or similar entity may result in suspension or revocation of the ESC.~~

**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)**

**17 DE Reg. 1052 (05/01/14) (Prop.)**