

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Sections 209 and 1014(e) (26 **Del.C.** §§209(a)(1) & 1014(e))
26 **DE Admin. Code** 3001

FINAL

ORDER

3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS TO
IMPLEMENT THE PROVISIONS OF 26 **Del. C.**
CH. 10 RELATING TO THE CREATION OF A
COMPETITIVE MARKET FOR RETAIL ELECTRIC
SUPPLY SERVICE (OPENED APRIL 27, 1999;
RE-OPENED JANUARY 7, 2003; SEPTEMBER
22, 2009; SEPTEMBER 7, 2010; JULY 17, 2012;
JULY 14, 2021; AND OCTOBER 12, 2022)

PSC REGULATION DOCKET
NO. 49

ORDER NO. 10291

AND NOW, this 23rd day of August 2023, the Delaware Public Service Commission ("Commission") determines and orders as follows:

WHEREAS, on July 22, 2022, the Governor of the State of Delaware signed into law Senate Bill 298, which amended provisions in 26 **Del.C.** § 1014 relating to net energy metering, including: (1) increasing the cap at which an electric utility may elect not to provide net metering services from the current 5% of its peak demand to 8%; (2) providing that the Commission's net energy metering rules must consider the reliability, safety, and capacity of the electric distribution system; (3) defining "Excess kWh Credit" as any excess production in kWh of a net energy metering customer's generating facility that exceeds the customer's on-site consumption of kWh in a billing period; (4) removing the charges for societal benefits programs from those charges against which a commission-regulated utility applies a net energy metering customer's "Excess kWh Credits" in subsequent monthly billing periods (and to define "societal benefits programs"); (5) providing that electric utilities shall not reimburse or credit net energy metering customers for any "Excess kWh Credits" at the end of the annualized billing period, and that "Excess kWh Credits" shall revert to the electric distribution company at the end of the annualized billing period; (6) providing that, if a net metering customer abandons the property where the generating equipment is located, the equipment may remain connected to the electric distribution system unless the equipment presents a risk to the safety and reliability of the system; and (7) providing that non-residential customers shall be responsible for the reasonable cost of meters that are installed or modified for net-metering purposes and caps such costs for residential customers at \$200; and

WHEREAS, on October 12, 2022, Commission Staff ("Staff") petitioned the Commission to re-open Regulation Docket No. 49, as Staff found that amendments to the *Rules for Certification and Regulation of Electric Suppliers, Net Metering and Community Energy Facilities Rules*, 26 **Del.C.** § 3001 et seq. ("Rules") were necessary for compliance with the new requirements set forth by Senate Bill 298, which are specifically detailed as follows: (1) to update the definition of "Annualized Billing Period" in subsection 1.0 to be effective January 1, 2023 and that a Net Metering Customer may elect to change the end of the Annualized Billing Period on one occasion; (2) to include a definition for "Excess kWh Credit" in subsection 1.0; (3) to include a definition for "Societal Benefits Program" in subsection 1.0; (4) to update subsection 14.0 by removing "Disclosure of Fuel Resource Mix" and reserving the subsection; (5) to update subsection 15.1.2.1.3 by changing "the Delaware Energy Office" to DNREC; (6) to update subsection 15.2 to state that net metering shall be accomplished through a single meter that measures net energy flow during a billing period; (7) to update subsection 15.2.1 to reflect that meters to monitor the flow of electricity may be installed with the consent of the Customer and that consent may be waived by the customer; (8) to update subsection 15.2.2 to remove language that when required a 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; (9) to update subsection 15.2.3 to remove the language and to state that non-residential customers shall be responsible for paying the reasonable cost of any new, replacement, or modified meter or meters installed for net-metering purposes, and that residential customers shall not be responsible for paying more than \$200.00 toward the reasonable costs of any new, replacement, or modified meter or meters installed for net-metering

purposes, and to include that Non-residential and residential customers shall not own the meter or meters; (10) to update subsection 15.3 to state that Electric Suppliers and EDCs shall credit Excess kWh Credits to the customer's subsequent monthly billing periods to offset the customer's consumption in those billing periods; (11) to update subsection 15.3.1 to state that Excess kWh Credits at the end of the Annualized Billing Period shall revert to the EDC providing electric distribution to the Customer; (12) to update subsection 15.3.2 to state that for existing and future Net Energy Metering Customers, both residential and nonresidential, the monthly Excess kWh Credit shall be valued at the sum of the volumetric (kWh) components of the supply service charges and the distribution service charges, not including the charges for Societal Benefits Programs, according to each participating Customer account's rate schedule; (13) to update subsection 15.3.3 to include the defined "Excess kWh Credits" and to replace "Electric Supplier" with "EDC;" (14) to update subsection 15.3.4 to include "or by other means;" (15) to update subsection 15.3.5 to state that "Subsections 15.3 through 15.3.4 shall not apply to Community Energy Facilities, which are addressed in Section 16 of these Regulations;" (16) to update subsection 15.3.6 to state that "Excess kWh Credits for supply service are the responsibility of the entity providing supply to the Customer rather than solely the responsibility of the EDC;" (17) to update subsection 15.3.7 to state that if a Net Energy Metering Customer abandons the property where the energy generating equipment is located, the equipment may remain connected to the electric distribution system, unless the equipment presents a risk to the safety and reliability of the electric distribution system; (18) to update subsection 15.3.8, which in part was previously subsection 15.3.5, to include EDCs; (19) to add subsection 15.3.9, which in part was previously subsection 15.3.6, to state that if a Net Metering Customer terminates its service with the EDC 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; (20) to add subsection 15.3.10, which in part was previously subsection 15.3.6, to state that if the total generating capacity, measured in megawatts (MW) of alternating current (AC), of all Customer generation using net metering systems served by an electric utility exceeds 8% of the capacity necessary to meet the EDC's average Delaware transmission peak demand for the preceding 3 years, the EDC may elect not to provide Net Metering services to additional customers; (21) to add subsection 15.3.11, which in part was previously subsection 15.3.11, to state that where applicable, the requirements established in subsection 15.6 of these Regulations shall apply to this subsection 15.3; and (22) to update the statutory citation in subsection 17.1 to Delaware's Freedom of Information Act ("FOIA") and to provide additional requirements to qualify as a non-public records filing; and

WHEREAS, on October 12, 2022, by Order No. 10109, the Commission reopened this docket, approved publication of the Proposed Amendments, directed the Secretary of the Commission ("Secretary") to transmit the amended Rules to the Registrar of Regulations ("Registrar") for publication in the November edition of the *Delaware Registrar*, as required by 29 Del.C. § 10113, and in accordance with 26 Del.C. § 209(a) and 29 Del.C. § 10118(a), stated that the Commission would hold a public hearing on the proposed amendments on December 14, 2022, with the public comment period remaining open until December 29, 2022; and

WHEREAS, on November 28, 2022, the Division of the Public Advocate (the "DPA") submitted written comments regarding the Proposed Amendments to be considered at the December 14, 2022 hearing, which questioned whether net metering customers who have already made the election to change the end of the Annualized Billing Period on one occasion in order to better utilize excess generation will be permitted to make it a second time; and

WHEREAS, on November 28, 2022, Delmarva Power & Light Company ("Delmarva"), submitted written comments regarding Staff's proposed Amendments ("Proposed Amendments") to be considered at the December 14, 2022 hearing, which, in summary, supported the proposed regulations, but raised an issue with Delmarva's ability to implement billing system upgrades as relevant in subsection 15.3.1 and 15.3.2 before the end of 2023. (See Delmarva Initial Comments, November 28, 2022 for the complete proposed language to Subsections 15.3.1 and 15.3.2.) Because of Delmarva's inability to implement according to Senate Bill 298, Delmarva proposed language to subsection 15.3.1 to reflect that through December 31, 2023 a customer may request payment for any excess kWh credits and also proposed that subsection 15.3.2 shall take effect on January 1, 2024; and

WHEREAS, pursuant to 26 Del.C. § 209(a), on December 14, 2022, the Commission conducted a public hearing to consider written comments submitted by November 28, 2022; (Pursuant to 29 Del.C. § 10118(a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. The Proposed Amendments were published on October 1, 2022.) and

WHEREAS, on December 14, 2022, Delmarva provided oral comments, which first stated its general support for the proposed regulations. Second, Delmarva again commented on its issue pertaining to the implementation of billing system upgrades required by Senate Bill 298, and stated that, "due to the long lead time for complex IT projects that are already in the queue at Delmarva, such changes would only be feasible at the end of 2023." (December 14, 2022 Transcript at 1096, lines 10-13 ("Tr. at ____").) Delmarva stated that this "practical constraint" was raised several times during Energy Stakeholders Meeting and in email exchanges thereafter. (Tr. at 1096, lines 14-16.) Delmarva then stated that its proposed language would expressly memorialize that certain facets of Senate Bill 298 would be effectuated at the end of 2023, which would pertain to subsections 15.3.1 and 15.3.2. (Tr. at 1096-97.) Delmarva then requested that its proposed language be included in the Regulations so that legislative change and or a "request for a waiver" to the Commission would not be needed by Delmarva; (Tr. at 1097, lines 4-10.) and

WHEREAS, on December 14, 2022, DPA provided oral comments. The DPA first stated the question the DPA

submitted in its November 28, 2022 written comments was answered to the DPA's satisfaction. (Tr. at 1098, lines 5-7.) The DPA requested that the Commission approve the Proposed Amendments as final. (Tr. at 1098, lines 8-10.) The DPA then made comment regarding Delmarva's written and oral comments. The DPA first stated that Delmarva seeks to add language to the Regulations which would change what the General Assembly intended because the language Delmarva proposed would postpone when the General Assembly intended Section 1014 to become operative. (Tr. at 1097, lines 11-16.) The DPA directed the Commission's attention to Senate Bill 298, and specifically to subsection § 1014(e)(1)(b). (Tr. at 1098-99.) The DPA stated that the Commission should note that in Senate Bill 298, the calculation does not include any discussion of weighted averages or a number of billing periods, as one of Delmarva's proposed changes does; and there is no postponement until the end of 2023, or the beginning of 2024, as to when these requirements are to take effect. The DPA stated that the Commission cannot make changes to the statute through its own Regulations. (Tr. at 1100, lines 6-10.) Additionally, the DPA stated that with respect to Senator Hansen's forums (where Delmarva stated it voiced its inability to implement the billing system upgrades), the Commission has not considered what happened in the forums happenings to be part of the record before the Commission. (Tr. at 1100-1101 (quoting March 16, 2022 Tr. at 1062-1063).) The DPA accordingly argued that if what happened in the forums was not a part of the record in past matters, then it is not relevant in the instant matter. (Tr. at 1101, lines 4-9.) Second, the DPA then stated its concerns with Delmarva's proposed changes to the Regulations. The DPA noted that case law holds that an administrative agency may not adopt or promulgate rules and regulations that are inconsistent with the provisions of the statute which created it. (See *Wilmington Country Club v. Delaware Liquor Com'n.*, 91 A.2d 250, 254 (Del. Sup. Ct. 1952).) The DPA noted that while subsection 15.3.1 as drafted by Staff restates the statutory language from Senate Bill 298, Delmarva's proposed additions to that subsection would add language to the regulations that is not in the statute. (Tr. at 1103, lines 13-17.) Next, the DPA cited to Delaware case law which states that "[w]here there exists no controlling constitutional or general statutory provision, as is true in Delaware, the authorities support the proposition that an Act takes effect immediately upon its approval by the Governor unless the Legislature has manifested a contrary intention in the Act itself." (See *Conway v. Wolf Liquor Co.*, 200 A.2d, 831, 834 (Del. 1964).) Accordingly, the DPA argued that the effective date of Senate Bill 298 was July 22, 2022 when the Governor signed it into law. (Tr. at 1103, lines 15-16.) Additionally, the DPA stated that because the General Assembly did not specify a different operative date for Senate Bill 298, the effective date and operative date of the amendments are the same and that the Commission is bound by that in promulgating its own regulations. (Tr. at 1103, lines 17-21. See also *Id.* at 1104-05 (The DPA citing other examples where General Assembly postponed operative date of amendments to statutes).) The DPA further stated that the Commission has itself recognized that it cannot go beyond what the statute authorizes it to do. (Tr. at 1105, lines 15-17. See Docket Nos. 21-0408 and 21-0409 (the Commission rejected both of Delmarva's requests, stating that the statutory language did not allow the Commission to do so).) The DPA stated that if Delmarva wants to change the operative date of the statute, Delmarva should seek legislative change; (Tr. at 1106, lines 13-14.) and

WHEREAS, on December 14, 2022, Staff made oral comments regarding Delmarva's proposed changes. Staff first noted that it agreed with the DPA's comments. (Tr. at 1109, lines 8-10.) Staff cited to the recent decision in *State ex rel. Jennings v. City of Seaford*, 278 A.3d 1149, 1161 (Del. Ch. 2022), which provides that "[t]he Court's goal, in construing statutes and regulations, is to ascertain and give effect to the intent of the legislative body". (Citing *Garrison v. Red Clay Consol. Sch. Distr.*, 3 A.3d 264, 267 (Del. 2010).) Staff stated that it does not agree with Delmarva's proposed amendments to 15.3.1 and 15.3.2 because as proposed, Delmarva's changes would conflict with the statute. (Tr. at 1110, lines 3-9.) Staff's position is that because there is no explicit mention as to when the date and provisions in Senate Bill 298 went into effect, and that because Staff is unaware of any source which permits a statute's effective date to become effective at another date, that the effective date of Senate Bill 298 is July 22, 2022. Staff then stated that to adopt a regulation which stated otherwise would conflict with a state statute. (Tr. at 1111, lines 2-5.) Finally, Staff stated that the issue of billing system upgrades and how to proceed should be decided at a later date, in a separate matter; (Tr. at 1111-12.) and

WHEREAS, in accordance with the Administrative Procedures Act ("APA"), public comment remained open until December 29, 2022; (29 Del.C. § 10118(a) requires that the opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing on a proposed regulation) and

WHEREAS, on December 29, 2022, the DPA submitted public comment directed at Delmarva's written comments and its oral argument pertaining to subsection 15.3.1 and 15.3.2. (See DPA Post-Hearing NEM Comments, December 29, 2022.) Again, the DPA commented that Delmarva's proposed, changes to subsections 15.3.1 15.3.2 change the operative date of when the amendments enacted by the General Assembly through the Commission's Regulations. Accordingly, the DPA noted that the proposed changes should be rejected because the Commission does not have the authority to add language to the regulations that is not in the statute. (*Id.* at 4 (citing *Wilmington Country Club v. Delaware Liquor Commission*, 91 A.2d 250, 254 (Del. Super. 1952) ("a public administrative agency such as the Commission may not adopt and promulgate rules and regulations which are inconsistent with the provisions of a statute, particularly with a statute which it is administering or which created the agency.)) Additionally, the DPA argued that the Commission should reject Delmarva's proposed postponement of SB 298's operative date to December 2023 and January 2024 because the General Assembly did not see fit to postpone the operative date of SB 298. The DPA cited *Conway v. Wolf Liquor Co.*, 200 A.2d 831, 834 (Del. 1964), which states "[w]here there exists no controlling constitutional or general statutory provision, as is true in Delaware, the authorities support the proposition that an Act takes effect immediately upon its approval by the Governor unless the Legislature has manifested a contrary intention in the Act itself." Accordingly, the DPA argues that the

effective date of SB 298 was July 22, 2022, when the Governor signed it into law as there was no specification of a different operative date, and to accept otherwise would be an "end run around the statute." (*Id.* at 5-6. The DPA also cited to other statutes in which the General Assembly did postpone operative date.) The DPA then reiterated its oral comments made on December 14, 2022 regarding Senator Hansen's forums and argued that because the Commission stated that Senator Hansen's forums were not part of the record then, the forums should not be considered by the Commission in this matter. (*Id.* at 7.) The DPA requested that the Commission approve as final the Proposed Rules as initially published; and

WHEREAS, the Commission has considered all comments received by December 29, 2022; and

WHEREAS, the Commission has considered all comments received by Delmarva, Staff and the DPA, and notes that just three (3) subsections (subsections 15.3.1 and 15.3.2, and the definition of "Annualized Billing Period") were the only subsections to garner comments. The Commission finds that the remaining Proposed Amendments were uncontested. The Commission therefore finds that the uncontested subsections of the Proposed Amendments, specifically: the amendments in subsection 1.0 to "Excess kWh" and "Societal Benefits Program", and the amendments to subsections 14.0; 15.1.2.1.3; 15.2; 15.2.1; 15.2.1; 15.2.2; 15.2.3; 15.3; 15.3.3; 15.3.4; 15.3.5; 15.3.6; 15.3.7; 15.3.8; 15.3.9; 15.3.10; 15.3.11; and 17.1 should be adopted; and

WHEREAS, the Commission finds that the DPA's comments to the definition of "Annualized Billing Period" were resolved and accordingly finds that the Proposed Amendments to the definition of "Annualized Billing Period" as proposed by Staff should be adopted; and

WHEREAS, on March 1, 2023, Senate Bill 54 was introduced in the Delaware Senate and was signed into law by the Governor on March 30, 2023. Senate Bill 54 extended the effective date of certain provisions of Section 1014 of Title 26 of the Delaware Code which impact Staff's proposed amendments to subsection 15.3.1 and 15.3.2. First, Senate Bill 54 provided that excess kWh Credits at the end of the annualized billing period shall revert to the EDC providing electric distribution to the customer on May 31, 2023, and that a commission-regulated utility may continue to make payments for Annual Excess kWh until May 31, 2023. Senate Bill 54 directly impacts the proposed amendments and the comments received to subsection 15.3.1. Second, Senate Bill 54 provided that effective January 1, 2024, for commission-regulated utilities for existing and future Net Energy Metering Customers, both residential and nonresidential, the monthly Excess kWh Credit shall be valued at the sum of the volumetric (kWh) components of the supply service charges and the distribution service charges, not including the charges for Societal Benefits Programs, according to each participating Customer account's rate schedule. Senate Bill 54 also directly impacts the proposed amendments and the comments the Commission received to subsection 15.3.2. Accordingly, the Commission rejects Staff's proposed amendments to subsection 15.3.1 and 15.3.2. Instead, the Commission may consider a petition to propose amendments to subsections 15.3.1 and 15.3.2 to so to align with Senate Bill 54 at a future time; and

WHEREAS, pursuant to 29 Del.C. § 10118(c), if changes to the amended rules are not substantive, (See 29 Del.C. § 10102(9) (which defines substantive as "when used in connection with regulations, those regulations allowing, requiring or forbidding conduct in which private persons are otherwise free or prohibited to engage, or regulations which state requirements, other than procedural, for obtaining, retaining or renewing a license or any kind of benefit or recompense.")) the agency shall *not* be required to republish the regulation change (*emphasis added*); and

WHEREAS, pursuant to 29 Del.C. § 10113(b)(4), any changes in existing regulations to alter style or form or to correct technical errors are exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

WHEREAS, the Commission finds that seven (7) nonsubstantive changes to subsections 2.2.3; 2.2.16.2; 2.3.2; 2.6; 10.1; 11.8.9; and 16.2.3.1.4 are also necessary; and

WHEREAS, the Commission finds that subsection 2.2.3, which relates to the Authorization of Certification of Electric Suppliers, should be amended to clarify that documentation from the Delaware Secretary of State should be issued within ninety (90) days of filing. In comparison, the unamended version requires that documentation issued within ninety (90) days of filing from both the Delaware Secretary of State and the Delaware Division of Revenue should be provided. The Commission finds that this nonsubstantive clarification is beneficial to applicants and corrects the form of the subsection. Accordingly, the nonsubstantive amendment to subsection 2.2.3 should be adopted; and

WHEREAS, the Commission finds that subsection 2.2.16.2, which relates to a non-publicly traded applicant's financial information for the Certification of Electric Suppliers, should be amended to clarify that if applicable, the certified financial statements of a publicly-traded parent should be current within twelve (12) months of the filing. The Commission believes that this amended language clarifies the language and requirements. Accordingly, the nonsubstantive amendments to subsection 2.2.16.2 should be adopted; and

WHEREAS, the Commission finds that subsection 2.3.2, which specifies the requirements of financial security for electric suppliers, should be amended to clarify that an Applicant for an Electric Supplier Certificate must maintain financial security that complies with the subsection as long as its Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers is valid. The Commission finds that this nonsubstantive amendment serves to clarify the length of time financial security must be maintained and accordingly, finds that this amendment to 2.3.2 should be adopted; and

WHEREAS, the Commission finds that subsection 2.6, which relates to the notice requirements Electric Supplier Applicants must follow, should be amended to clarify that each Applicant shall publish notice of the filing of its application in

one (1) newspaper of general circulation throughout the State in a Commission-approved form, as opposed to two (2) newspapers. The Commission finds that this nonsubstantive amendment serves to reduce the requirement of newspaper print, which today is not as widely read or circulated as when these Rules were first adopted. As such, the Commission believes that this nonsubstantive amendment to 2.6 should be adopted; and

WHEREAS, the Commission finds that subsection 10.1, which relates to General Customer Protections, should be amended to correct the subsection citation so as to reflect the current subsection. The Commission finds that pursuant to 29 Del.C. § 10113(b)(4), this is a change to correct technical errors and accordingly, is exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

WHEREAS, the Commission finds that subsection 11.8.9.1, which relates to the notification requirements of Electric Suppliers of door-to-door sales activities, should be amended to clarify that notification to the Staff and the DPA of the same should be completed by e-mail. The Commission believes that this amendment will serve to provide Staff and the DPA with current knowledge of door-to-door sales activities, and accordingly, finds that the nonsubstantive amendment to subsection 11.8.9.1 should be adopted; and

WHEREAS, the Commission finds that subsection 16.2.3.1.4, which relates to the authorization documentation requirements of community energy facilities, should be amended to clarify that documentation from the Delaware Secretary of State should be issued within ninety (90) days of filing. In comparison, the unamended version requires that documentation issued within ninety (90) days of filing from both the Delaware Secretary of State and the Delaware Division of Revenue should be provided. The Commission finds that this nonsubstantive clarification is beneficial to applicants, and corrects the form of the subsection. Accordingly, the nonsubstantive amendment to subsection 16.2.3.1.4 should be adopted;

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

1. That, for the reasons set forth above, the Commission hereby approves as final the attached *Rules for Certification and Regulation of Electric Suppliers, Net Metering and Community Energy Facilities Rules*, 26 Del.C. § 3001 et seq. A marked-up version of the *Rules* reflecting only the amended sections is attached as Exhibit "A."

2. Pursuant to 26 Del.C. §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations for publication in the October 1, 2023 edition of the *Delaware Register of Regulations*. An exact copy of the Amended Rules shall be published as the current official regulations in the *Delaware Register*.

3. That, pursuant to 29 Del.C. § 10118(g), the effective date of the amendments shall be later of October 11, 2023, or ten (10) days after publication in the *Delaware Register of Regulations*.

4. 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, Chairman (ABSENT)
Joann Conaway, Commissioner
/s/ Harold B. Gray, Commissioner
(Voted via Teleconference pursuant to 29 Del.C.
§10006(A)(d))
Manubhai "Mike" Karia, Commissioner (ABSENT)
/s/ K. F. Drexler, Commissioner
(Voted via Teleconference pursuant to 29 Del.C.
§10006(A)(d))

ATTEST: Malika Davis, Acting Secretary

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities

1.0 Definitions.

"Affiliated Interest" means:

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

3. Any Person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by the Applicant.

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

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

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

"Annualized Billing Period" means a period of 12 consecutive monthly billing periods. For Net Metering Customers, the first Annualized Billing Period begins on the first day of the first full monthly billing period after which the Customer-Generator Facility is interconnected with the Electric Distribution Company and is generating electricity. A Effective January 1, 2023, a Net Metering Customer may elect to change the end of the Annualized Billing Period on one time occasion in order to better utilize excess generation.

"Applicant" means:

1. A Person seeking to obtain an Electric Supplier Certificate;
2. An Electric Supplier seeking to amend its Electric Supplier Certificate; or
3. A Community Energy Facility seeking to obtain a Preliminary Certificate to Operate or a Final Certificate to Operate.

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

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

"Co-location" means the siting of two or more Community Energy Facilities owned or developed by a single entity (or its Affiliated Interests) located on one parcel of land, or on contiguous parcels of land. For purposes of this definition:

1. **"Contiguous"** means touching along a boundary or a point. For example, parcels touching along a boundary are contiguous, as are parcels that meet only at a corner. Parcels, however near to each other, that are separated by a third parcel and do not touch along a boundary or a point are not contiguous. Additionally, parcels that are separated by a public road, railroad, or other right of way accessible at all times to the general public are not considered contiguous;
2. Parcels that are subdivided after July 1, 2021 shall be considered as a single parcel;
3. Projects owned or developed by separate entities (meaning that they are not affiliates) are not considered co-located; and
4. Projects need not be developed contemporaneously to be considered co-located. If a single project is developed and then a second, co-located project is developed on the same or a contiguous parcel at a later date by a single entity or its Affiliated Interests, these two projects will be considered co-located.

"Commission" means the Delaware Public Service Commission.

"Community-owned energy generating facility" or **"Community Energy Facility"** means a renewable energy generating facility that has multiple owners or customers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or customer and that meets all applicable requirements of Section 16.0 of these Regulations.

"Community Energy Facility Subscriber" or **"Subscriber"** means any Customer who participates in a Community Energy Facility project by means of having an active subscription to a Community Energy Facility or owning a portion of the Community Energy Facility. Subscribers are defined by the meter associated with their Delmarva bill.

"Consumer Protection Unit" means the Delaware Department of Justice Consumer Protection Unit or the Director of the Consumer Protection Unit, as applicable.

"Contract" means the total legal obligation resulting from the parties' agreement as effected by these Regulations and other applicable law. Contracts for Electric Supply Service and Community Energy Facility Subscriptions must be accompanied by a Contract Summary.

"Contract Summary" means a written summary of the material terms and conditions of service between an Electric Supplier and a Residential or Small Commercial Customer, or between a Community Energy Facility

and a Subscriber. If the terms of the Contract Summary differ from the terms of the Contract, then the provision(s) most favorable to the Customer shall control.

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

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

“Customer” means a purchaser of electricity with a Delmarva account number for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, who purchases and supplies electricity to the occupants of such building or facility.

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

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

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

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

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

“DNREC” means Delaware Department of Natural Resources and Environmental Control.

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

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

“DPA” means the Delaware Division of the Public Advocate.

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

“Electric Supplier” means an entity or Person certified by the Commission that sells electricity to Customers utilizing the Transmission and/or Distribution Facilities of a nonaffiliated EDC, as defined in 26 Del.C. §1001(14), including:

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

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

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

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

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

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

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

1. Solar energy technologies that employ solar radiation to produce electricity;
2. Electricity derived from wind energy;
3. Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
4. Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;
5. Electricity generated by a fuel cell powered by Renewable Fuels;
6. Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
7. Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
8. Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
9. Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:
 - a. Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;
 - b. Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and
 - c. Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"Excess kWh Credit" means the credit that Electric Suppliers and EDCs provide to their net metering customers for any excess production of the customer's generating facility that exceeds the customer's on-site consumption of kilowatt-hours (kWh) in a billing period.

"FERC" means the Federal Energy Regulatory Commission.

"Final Certificate to Operate" means a certificate granted by the Commission to a Community Energy Facility that has fulfilled the Commission's final certification requirements under subsection 16.2.4 of these Regulations. The Commission order approving an Applicant's application for a Final Certificate to Operate as a Community Energy Facility shall serve as the Final Certificate to Operate.

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

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

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

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

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

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

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

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

"Low-income Customer" means a customer whose gross annual income, by family size, is at or below 200% of the U.S. Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater. Owners or operators of master-metered buildings whose tenants meet the income eligibility requirements for Low-income Customers may also qualify as a "Low-income Customer".

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

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

"Permission to Operate" means Delmarva's approval for a Community Energy Facility to commence operation pursuant to subsection 16.3 of these Regulations.

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

"PJM Interconnection, LLC" or **"PJM"** means the Regional Transmission Organization ("RTO") that is responsible for wholesale energy markets and the interstate transmission of energy throughout a multi-state area, or its successor organization.

"Preliminary Certificate to Operate" means a certificate granted by the Commission to a Community Energy Facility that has fulfilled the Commission's preliminary certification requirements under subsection 16.2.3 of these Regulations, which establishes project viability. The Commission order approving an Applicant's application for a Preliminary Certificate to Operate as a Community Energy Facility shall serve as the Preliminary Certificate to Operate.

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

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

"Regulations" means the Commission's Regulations for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities (26 DE Admin. Code 3001 *et seq.*).

"Renewable Energy Credit" or **"REC"** means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of the Renewable Energy Portfolio Standards Act, 26 Del.C. §351 *et seq.* A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable Energy Portfolio Standard" or **"RPS"** means the percentage of retail electricity sales in the State that is to be derived from Eligible Energy Resources.

"Rescission Period" means the time period within which a Residential or Small Commercial Customer may choose to cancel, without penalty, a Contract for Electric Supply Service with an Electric Supplier or a Contract for subscription credits with a Community Energy Facility.

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

"Residential Subscriber" means a Residential Customer who has subscribed to a Community Energy Facility.

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

"Slamming" means the prohibited unauthorized enrollment of a Customer without the Customer's permission or the unauthorized transfer of a Customer to another Electric Supplier.

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

"Small Commercial Subscriber" means a Small Commercial Customer who has subscribed to a Community Energy Facility.

"Societal Benefits Program" means a program required by law in which a benefit to the public at large accrues as a result of its implementation. Societal Benefits Programs include:

Green Energy Fund under 26 Del.C. §1014 (a);

Low Income Fund under 26 Del.C. §1014 (b);

Charges incurred by the EDC in complying with the state mandated renewable energy portfolio standard under 26 Del.C. § 358(f)(1);

The charge imposed under 26 Del.C. §364 for qualified fuel cells; and

Energy efficiency programs under 29 Del.C. §8059 (h)(1)(e).

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

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

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

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

"State" means the State of Delaware.

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

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

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

"Transmission Facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to Customers (including any Customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the Customer, as defined in 26 **Del.C.** §1001(26).

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

"Unsubscribed Energy" means any community-owned energy generating facility percentage of output that is not allocated to any Subscriber.

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

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

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

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2.0 Certification of Electric Suppliers.

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

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

which the Applicant intends to arrange for the sale of electricity. Any change in the identity of the Electric Suppliers on this list shall be provided to the Commission within five (5) Business Days of the effective date of the change.

- 2.2.19 Retail Experience. A description of the Applicant's experience in retail electricity markets, including:
 - 2.2.19.1 A description of the services it plans to offer in the State, including types of Customers to be served and services provided;
 - 2.2.19.2 A description of the operational experience in retail energy markets of each principal officer, director, or individual responsible for Delaware operations. If no such experience is applicable, the Applicant shall identify the means by which the Applicant proposes to support its managerial, technical, and financial capabilities for the retail sale of Electric Supply Service in the State;
 - 2.2.19.3 For each entity identified below, a list of states in which:
 - 2.2.19.3.1 The Applicant or any of its Affiliated Interests is presently selling or brokering Electric Supply Service to Customers;
 - 2.2.19.3.2 The Applicant or any of its Affiliated Interests has received authority to sell or broker Electric Supply Service to Customers but is currently not providing services;
 - 2.2.19.3.3 The Applicant or any of its Affiliated Interests has pending applications to sell or broker Electric Supply Service to Customers. For each state listed include license, order, or certificate numbers; and
 - 2.2.19.3.4 For each entity in each state listed above, provide the license or certification number, the applicable docket number, if any, and the date the license or certification was granted. Applicant shall provide copies of the order or decision, if any, from the state's public utility commission regarding the Applicant's applications identified in subsections 2.2.19.3.1 and 2.2.19.3.2.
 - 2.2.19.4 The Electric Supplier shall ensure that it can accept, investigate, and resolve Customer complaints in a prompt and responsive manner;
 - 2.2.20 Other Proceedings.
 - 2.2.20.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
 - 2.2.20.1.1 Been denied approval to sell or broker electricity to Customers;
 - 2.2.20.1.2 Been found to be in violation of a state's laws, rules, or regulations;
 - 2.2.20.1.3 Had its authority revoked, modified, or suspended; or
 - 2.2.20.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of retail energy services, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv) any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
 - 2.2.20.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its retail energy services in which the Electric Supplier agreed to pay a civil penalty, provide customer restitution, or make changes to its marketing and sales;
 - 2.2.20.2 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.20.1;
 - 2.2.20.3 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in retail and federal electricity, natural gas, or telecommunications markets;
 - 2.2.21 Pending Proceedings. A list of proceedings in which a revocation or suspension of authority to sell or broker electricity is pending or has been adjudicated, and the name, case number, venue, final orders, and settlement agreements for each case identified. Applicant shall provide copies of each order and settlement agreement. If no such actions have been taken against Applicant, explicitly state that fact; and
 - 2.2.22 FERC Approvals. A copy of any FERC approval as a Marketer, or the date and docket number of the Applicant's application to FERC for such approval. If the date and docket number are provided, a copy of the Applicant's FERC approval must be provided within 30 calendar days of issuance.
- 2.3 Financial Security.
- 2.3.1 Applicability. The financial security requirements of this Section apply only to Applicants that seek an Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers. The requirements of this paragraph do not apply to Standard Offer Service.

- 2.3.2 Requirements. An Applicant must submit financial security that complies with this subsection prior to the issuance of an Electric Supplier Certificate. The Applicant must maintain financial security that complies with this subsection as long as its Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers **[is valid]** and must submit replacement security at least seven days prior to the expiration or cancellation of a previously submitted financial security instrument. Upon termination of an Electric Supplier Certificate, the financial security instrument shall remain in force until the Commission determines that all obligations of the Electric Supplier have been satisfied.
- 2.3.3 Amount.
- 2.3.3.1 The initial security amount shall be \$100,000. The Commission may grant modifications of this amount commensurate with the nature and scope of the business the Applicant anticipates conducting in the State upon submission of information in support of the modification. A request for modification of the initial security amount may be made in conjunction with the filing of the application.
- 2.3.3.2 After the initial year, the required security amount shall equal \$100,000 or five percent (5%) of the Electric Supplier's annual revenues from sales of Electric Supply Service to Residential and Small Commercial Customers in Delaware over the prior calendar year, whichever is greater.
- 2.3.3.3 The Commission may determine that an Applicant requesting to be a Broker is required to post security to ensure that the Applicant has sufficient financial ability to operate as a Broker in the State. The Commission shall determine the bonding requirement on a case-by-case basis. A bond, if required, shall be in the amount of \$10,000.
- 2.3.4 Use of Security Amounts. Upon a finding that an Electric Supplier has violated a statute or regulation regarding the provision of service to Residential or Small Commercial Customers, the Commission may direct that amounts from the financial security be distributed consistent with State law.
- 2.3.5 Types of Security. An Applicant may satisfy the financial security requirements of this subsection through an irrevocable letter of credit, cash, cash equivalents, financial instruments that are easily liquidated and readily available to meet their costs of providing Electric Supply Service to Customers, or any combination thereof. Financial security documents must be in a form and contain language that is acceptable to the Commission.
- 2.3.5.1 Letter of Credit. An irrevocable letter of credit must unconditionally obligate the issuing financial institution to honor drafts drawn on such letters for the purpose of paying the obligations of the Electric Supplier pursuant to Delaware law and regulations and must specify that the issuing financial institution will notify the Commission 30 days in advance of the expiration or cancellation of the letter of credit. The letter of credit must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the letter of credit; and that any draft presented by the Commission will be honored by the issuer upon presentation. The letter of credit must be issued by a financial institution with a minimum corporate credit rating of "BBB+" by Standard & Poor's or Fitch or "Baa1" by Moody's Investors Service, or an equivalent short term credit rating by one of these agencies. If, at any time, the corporate debt rating of an issuing financial institution drops below the above specified levels, the Electric Supplier shall notify the Commission in writing and provide replacement security that satisfies the requirements of these Regulations.
- 2.3.5.2 Cash and Cash Equivalent. Cash or cash equivalents, including cashier's checks, sight drafts, performance bond proceeds, or traveler's checks, and applicable interest shall be returned to the Electric Supplier after all obligations are satisfied.
- 2.3.5.3 Certificate of Deposit. Certificate of deposit or other liquid deposit with a reputable bank or other financial institution.
- 2.3.5.4 Preferred stock proceeds. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the Applicant by the Commission.
- 2.3.5.5 Line of Credit. Line of credit issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission.
- 2.3.5.6 Loan. Loan, issued by a qualified subsidiary, affiliate or Applicant, or a qualified corporation holding controlling interest in the Applicant, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission.
- 2.3.5.7 Assets. Identifiable physical assets set forth in a balance sheet or similar statement.

- 2.3.5.8 Other Liability. Liability of Electric Suppliers for violation of law, Commission orders or Commission regulations is not limited by the security requirements of this Section.
- 2.3.5.9 Staff may request other indicia of financial capability.
- 2.4 Other Information. The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- 2.5 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.6 Notice. Each Applicant, except Brokers, shall publish notice of the filing of its application in [~~two (2) newspapers~~ **1 newspaper**] of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application.
- 2.7 Application Fee. An Applicant for an Electric Supplier Certificate shall submit a non-refundable application fee of \$750 with the application.
- 2.8 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.9 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 **Del.C.** §1001 *et seq.*
- 2.10 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny an Electric Supplier Certificate to an Applicant where it finds that doing so is in the public interest.
- 2.11 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within ten (10) Business Days after the change may be grounds for rejection of the application.
- 2.12 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of an application or a recommendation that an application be denied.
- 2.13 Term of ESC. Electric Supplier Certificates are valid until revoked by the Commission or relinquished by the Electric Supplier after the requisite notice to the Commission and to its Customers.
- 2.14 Transfer or Relinquishing of ESC.
- 2.14.1 The transfer of an ESC is prohibited without notice and approval of the Commission.
- 2.14.2 No Electric Supplier shall cease doing business within the State unless it has provided at least sixty (60) days Written Notice to the Commission, the DPA, the affected EDC(s), and its Customers.
- 2.14.3 The Commission will consider an ESC to be relinquished if the Electric Supplier does not provide the required yearly compliance filing in subsection 12.3 of these Regulations within ninety (90) days of the required date. An Electric Supplier shall be allowed 30 days' notice to cure a late annual filing.

3.0 Pre-enrollment Information and Customer Lists.

- 3.1 Notice and Consent for Pre-Enrollment Customer Information.
- 3.1.1 Before requesting pre-contracting Customer information described in subsection 3.2 from the EDC, an Electric Supplier shall:
- 3.1.1.1 Notify the Customer of its intention to request Customer information from the EDC; and
- 3.1.1.2 Obtain the Customer's consent for release of the Customer's information from the EDC.
- 3.1.2 Notice. The Electric Supplier notice required under subsection 3.1.1.1 of this regulation shall specify the Customer information listed in subsection 3.2 to be requested from the EDC.
- 3.1.3 Customer Consent Records.
- 3.1.3.1 A Customer's consent under subsection 3.1.1.2 is valid for a time mutually agreed to by the Customer and the Electric Supplier.

- 3.1.3.2 An Electric Supplier shall maintain a record of a Customer's consent under subsection 3.1.1.2 of this regulation for a period of not less than 180 days from the expiration of the Customer's consent.
- 3.1.3.3 An Electric Supplier's Customer consent records are subject to audit by the Commission.
- 3.1.4 A Customer's consent under this regulation is not a Contract or enrollment for Electric Supplier services.
- 3.2 Pre-Enrollment Information. On request of an Electric Supplier, the EDC shall provide the following applicable Customer information:
 - 3.2.1 Account name;
 - 3.2.2 Billing address;
 - 3.2.3 Service address;
 - 3.2.4 EDC account number and any other number designated by the EDC as necessary to process an enrollment;
 - 3.2.5 Bill cycle;
 - 3.2.6 Voltage level;
 - 3.2.7 EDC rate class or code;
 - 3.2.8 Load profile;
 - 3.2.9 Meter number;
 - 3.2.10 Meter type;
 - 3.2.11 Multiple meter indicator;
 - 3.2.12 Peak load contribution;
 - 3.2.13 Metered demand;
 - 3.2.14 Billed demand;
 - 3.2.15 Monthly historical demand for the previous 12 months;
 - 3.2.16 Monthly historical consumption for the previous 12 months;
 - 3.2.17 Monthly time-of-use data for the previous 12 months;
 - 3.2.18 Interval meter data for the previous 12 months; and
 - 3.2.19 Dynamic pricing election, if any.
- 3.3 Customer Lists. An EDC shall make a customer list available to Electric Suppliers on a secure password-protected web portal. An EDC shall update the names and information included on the customer list semi-annually. A Customer may elect to opt out of the list.
 - 3.3.1 An EDC shall refresh its customer list every three years. Prior to refreshing the customer list, an EDC shall notify customers that the customer list is being refreshed. A Customer's election to opt out shall be valid for a period of three years.
 - 3.3.1.1 The notice from the EDC pursuant to subsection 3.3.1 shall communicate to Customers the following information:
 - 3.3.1.1.1 What the customer list is;
 - 3.3.1.1.2 What information is to be included on the customer list;
 - 3.3.1.1.3 What the more detailed information represents;
 - 3.3.1.1.4 How this information is to be used by Electric Suppliers;
 - 3.3.1.1.5 How the information is to be safeguarded by Electric Suppliers;
 - 3.3.1.1.6 How widely the information will be disseminated;
 - 3.3.1.1.7 The potential benefits to the Customer of having its information included on the customer list; and
 - 3.3.1.1.8 How the Customer may opt out of the customer list.
 - 3.3.1.2 An EDC's annual communication to Customers shall be served electronically to those Customers who have opted to receive their bills via electronic means.
 - 3.3.2 An EDC's customer list shall contain the Customers':
 - 3.3.2.1 Name;
 - 3.3.2.2 Service Address(es);
 - 3.3.2.3 Billing Address(es);
 - 3.3.2.4 Billing Country Code (if available);
 - 3.3.2.5 Tariff Rate Class and Schedule;
 - 3.3.2.6 Rate Subclass/Rate Subcode (if available);

- 3.3.2.7 Meter Read Cycle;
 - 3.3.2.8 Load Profile Group per Tariff;
 - 3.3.2.9 Whether the customer is an SOS customer; and
 - 3.3.2.10 Net Metering (Y or N).
- 3.3.3 An Electric Supplier shall put into place safeguards to prevent the disclosure of information contained in the customer list provided by the EDC. As such, the information contained in the customer list is to be used by the Electric Supplier only for the purpose of marketing and providing electricity supply services directly to Customers. An Electric Supplier shall keep the customer list in a secure and protected location. An Electric Supplier may provide access to the information in the customer list to those authorized by the Electric Supplier who require such information to market and provide electricity supply services to Customers. Otherwise, an Electric Supplier shall not disclose information contained in the customer list except upon authorization of the Customer.
- 3.3.4 An Electric Supplier may disclose a Customer's billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.]
- 3.4 The provisions in this Section 3.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for a period of time deemed reasonable by the Commission.

4.0 Enrollments and Drops. Accelerated Switching

- 4.1 An Electric Supplier may enroll or drop a Customer by sending the appropriate electronic enrollment or drop transaction to the EDC upon the expiration of the rescission period.
- 4.2 An EDC shall send a Written Notice to a Customer enrolling with an Electric Supplier or dropping an Electric Supplier. The EDC shall send the Written Notice by the end of the next Business Day following receipt of the electronic transaction. The Written Notice shall include the date the service with the Electric Supplier or SOSS shall begin.
- 4.3 An EDC shall process an electronic enrollment or drop from an Electric Supplier to be effective within three (3) Business Days after receipt of the electronic transaction.
- 4.4 The EDC shall drop a Customer from its current Electric Supplier when another Electric Supplier enrolls the Customer. An EDC shall assign a Customer who has been dropped by an Electric Supplier and not enrolled by another Electric Supplier to SOS.
- 4.5 An EDC shall not be required to process more than two enrollments and two drops per Customer per bill cycle.
- 4.6 An Electric Supplier may not require that a Customer provide it with advance notice, written or otherwise, before the Customer switches to another supplier or to SOS.
- 4.7 Customer-Initiated Drops
- 4.7.1 A Customer that wants to cancel a Contract shall first attempt to cancel the Contract according to the terms of the Contract.
 - 4.7.2 If a Customer attempts to cancel a Contract by contacting the EDC first, the EDC shall direct the Customer to contact the Electric Supplier through the means detailed in the Contract.
 - 4.7.3 If a Customer's cancellation request has not been received by the EDC from the Customer's Electric Supplier, and the Customer confirms that more than three (3) Business Days have passed since the Customer cancelled the Contract with the Electric Supplier, the EDC shall process a cancellation after notifying the Customer that there may be a cancellation penalty to cancel service with the current Electric Supplier.
 - 4.7.4 A Customer's request to cancel service with the current Electric Supplier under this subsection 4.7 does not limit cancellation provisions contained in the Customer's Contract with the Electric Supplier.
 - 4.7.5 No Electric Supplier shall include provisions in its Contract that would limit or waive this subsection 4.7.
- 4.8 The provisions in this Section 4.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for an amount of time deemed reasonable by the Commission.
- 4.9 Customers Returning to EDC or SOS Supplier for Electric Supply Service. The procedures for a Retail Electric Customer's return to an EDC during the Transition Period and to an EDC if it is the SOS Supplier after the Transition Period for Electric Supply Service shall be in accordance with the Commission's order for each EDC's individual electric restructuring plan.

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5.0 Billing and Metering.

- 5.1 Billing Options.

- 5.1.1 Each Customer in Delmarva's service territory has the right to choose to receive separate bills from Delmarva and from its Electric Supplier (if the Electric Supplier provides a separate billing), or to receive a combined bill from either Delmarva or its Electric Supplier (if the Electric Supplier provides a consolidated billing option), for Electric Supply, Transmission, Distribution, Ancillary and other Services, consistent with these Regulations. If the Customer does not elect a billing option, Delmarva will be responsible for billing the Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Electric Supplier.
- 5.1.2 In the DEC's service territory, the Cooperative will bill each Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Customer's Electric Supplier.
- 5.2 Bill Contents. The bill should be easy to understand, be in clear and plain language and must contain the following information:
 - 5.2.1 The name, address, and toll-free telephone number of the Electric Supplier;
 - 5.2.2 If different from the Electric Supplier, the name, address and toll-free telephone number of the EDC;
 - 5.2.3 The due date for payment;
 - 5.2.4 If applicable, an itemized list of each service or product billed for the current billing period including charges for the public purpose programs and a competitive transition charge (if applicable) or other agreed to charges;
 - 5.2.5 Electricity consumption including whether the consumption was based on actual recorded usage or estimated usage;
 - 5.2.6 The actual cents per kWh (or the appropriate block charges or other pricing mechanism) charged to the Customer for the Customer's actual usage (or estimated usage) of electricity for the current billing period;
 - 5.2.7 The total charge for each service or product;
 - 5.2.8 The amount of payment or other credit applied to Customer's outstanding balance during the billing period;
 - 5.2.9 The amount still owed by the Customer from the previous billing period;
 - 5.2.10 Appropriate taxes and fees;
 - 5.2.11 Definitions of material terms used in the bill; and
 - 5.2.12 If applicable, late fees as defined in the Contract. Late fees must be clearly identified as such; and
 - 5.2.13 The Commission shall have the authority to determine whether the Price to Compare shall appear on Customers' bills and, if so, which Customers and the manner in which the Price to Compare is calculated. Until such a determination is rendered in a subsequent proceeding, the Price to Compare shall continue to appear on bills as it does at the time of the effective date of these Regulations.
- 5.3 Metering.
 - 5.3.1 Delmarva will continue to own all meters and perform all meter reading functions. The Commission can permit others to provide some or all of the metering functions on a competitive basis.
 - 5.3.2 The Cooperative will continue to own and operate all meters and perform meter reading functions.

6.0 Electric Supplier Contracts and Contract Summaries.

- 6.1 An Electric Supplier shall provide a Contract and Contract Summary in the same language used by the Electric Supplier or its Agent to market, sell, or describe the Contract terms to prospective Residential and Small Commercial Customers.
- 6.2 Contract Requirements.
 - 6.2.1 Only a licensed Electric Supplier may execute a Contract for Electricity Supply Service with a Customer.
 - 6.2.2 A Contract for Residential and Small Commercial Customers shall be written in clear and plain language and contain all material terms and conditions, including:
 - 6.2.2.1 A list and description of the Contract services;
 - 6.2.2.2 The Contract duration, expressed in months or years, or the disclosure that the Contract is month-to-month;
 - 6.2.2.3 A description of the Price of each service, including:
 - 6.2.2.3.1 The Price and the duration of the Introductory Price, if applicable. If the Price to be charged upon the expiration of the Introductory Price is a Fixed Price, the Fixed Price that will be charged upon the expiration of the Introductory Price;
 - 6.2.2.3.2 For Variable Price Contracts:
 - 6.2.2.3.2.1 The Price to be charged, per kilowatt-hour, for the first billing cycle of the Contract;
 - 6.2.2.3.2.2 An explanation of the basis(es) on which the Price will vary and any limits on Price variability;

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

- 6.2.2.12 A statement that the Residential or Small Commercial Customer may terminate the Contract prior to the stated term of the Contract, including:
 - 6.2.2.12.1 The manner in which the Residential or Small Commercial Customer shall notify the Electric Supplier of the early cancellation of the Contract;
 - 6.2.2.12.2 The duration of the notice period before early cancellation;
 - 6.2.2.12.3 The remedies available to the Electric Supplier if early cancellation occurs; and
 - 6.2.2.12.4 The amount of any early cancellation fee, except that an Electric Supplier shall not charge an early cancellation for the commodity portion of a Variable Price Contract;
- 6.2.2.13 A statement describing Contract renewal procedures, if any, including the timing of the notices that the Residential or Small Commercial Customer will receive prior to the renewal date;
- 6.2.2.14 A dispute procedure, including that the Electric Supplier must adhere to the provision in 26 **DE Admin. Code** §3002-3.2.2 regarding good faith disputes; and
- 6.2.2.15 All disclosures required by applicable laws and regulations that govern marketing, consumer protection, and door-to-door sales, including the Delaware Home Solicitation Sales Act, 6 **Del.C.** §4401 *et seq.*

6.3 Contract Summary Requirements.

- 6.3.1 At the time of completion of the contracting process, an Electric Supplier shall provide Residential and Small Commercial Customers with a copy of the executed Contract and completed Contract Summary.
- 6.3.2 If the Contract is completed through a telephone solicitation, the Electric Supplier shall send the Contract Summary with the Contract to the Residential or Small Commercial Customer.
- 6.3.3 If the Contract is completed through the internet, the Contract Summary shall be:
 - 6.3.3.1 Made available for download by the Residential or Small Commercial Customer at the time of contracting; and
 - 6.3.3.2 Transmitted to the Residential or Small Commercial Customer by the Electric Supplier by mail or by email if the customer consents to receipt of email disclosures.
- 6.3.4 If the Contract is completed in person, the Contract and the Contract Summary shall be reviewed with and provided to the Residential or Small Commercial Customer by the Electric Supplier in hard copy or electronically, and the executed Contract and Contract Summary provided to the Residential or Small Commercial Customer at the time of contracting in hard copy or electronically if the customer consents to electronic disclosures.
- 6.3.5 An Electric Supplier offering a Variable Price Contract to Residential or Small Commercial Customers shall include in its Contract Summary:
 - 6.3.5.1 The disclosures required by subsection 6.2.2.3.2.2;
 - 6.3.5.2 A toll free telephone number or website link where the Residential or Small Commercial Customer may access historical pricing information as described in subsection 6.2.2.3.2.3, along with the disclaimer in subsection 6.2.2.3.2.4; and
 - 6.3.5.3 The disclosures required by subsection 7.1.3.

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7.0 Notice of Change in Variable Price.

- 7.1 When a Residential or Small Commercial Customer's Variable Price changes, an Electric Supplier shall make available to the Residential or Small Commercial Customers the Variable Price for the next billing period:
 - 7.1.1 The Variable Price shall be made available at least 12 days prior to close of the customer's billing period;
 - 7.1.2 The Variable Price shall be made available in a clear, easy to access format prescribed by the Electric Supplier;
 - 7.1.3 The Electric Supplier shall promptly provide the Residential or Small Commercial Customer written directions on how to access the Variable Price:
 - 7.1.3.1 At the time of contracting;
 - 7.1.3.2 In the Contract Summary;
 - 7.1.3.3 When sending any notice as required in these Regulations;
 - 7.1.3.4 Upon request; or
 - 7.1.3.5 If the Electric Supplier changes the directions for accessing the Variable Price.
- 7.2 For the purposes of the disclosure mandated in subsection 7.1, an Electric Supplier may provide an estimated Variable Price for the Residential or Small Commercial Customer's next billing period, provided the estimated Variable Price is made available at least twelve (12) days prior to the close of the customer's billing period. If

the Electric Supplier provides an estimated Variable Price, the Electric Supplier shall not use a rate for billing purposes that is higher than the estimate.

8.0 Contract Renewal for Residential and Small Commercial Customers.

- 8.1 An Electric Supplier shall provide Residential and Small Commercial Customers with Written Notice of the pending renewal of a Contract forty-five (45) days before the end of the Contract Term is scheduled to occur.
- 8.2 The Written Notice required under subsection 8.1 shall:
 - 8.2.1 Inform the Residential or Small Commercial Customer that the failure to respond to the Written Notice will result in the automatic renewal of the Contract;
 - 8.2.2 Inform the Residential or Small Commercial Customer of any changes in the material terms and conditions of the expiring Contract upon renewal, and include a copy of the Contract and Contract Summary;
 - 8.2.3 Inform the Residential or Small Commercial Customer how to terminate the Contract without penalty;
 - 8.2.4 Inform the Residential or Small Commercial Customer that terminating the Contract without selecting another Electric Supplier will return the Residential or Small Commercial Customer to SOS; and
 - 8.2.5 For a Fixed Price Contract that renews to a Variable Price Contract, the Electric Supplier's Written Notice to Residential or Small Commercial Customers must:
 - 8.2.5.1 Inform the Residential or Small Commercial Customer how to access the Variable Price for the next billing cycle in accordance with Section 7.0;
 - 8.2.5.2 Explain the basis(es) on which the Variable Price will vary and any limits on Price variability;
 - 8.2.5.2.1 If there is a limit on Price variability, such as a specific Price cap, a maximum percentage increase in Variable Price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the term of the Contract, the Electric Supplier shall clearly explain applicable limits.
 - 8.2.5.2.2 If there is not a limit on Price variability, the Electric Supplier shall clearly and conspicuously state that there is not a limit on how much the Variable Price may change from one billing cycle to the next.
 - 8.2.6 If the Supplier proposes to renew a Fixed Price Contract with a Variable Price Contract and the change to the Variable Price will be equal to or exceed 30 percent of the Residential or Small Commercial Customer's Fixed Price, the Electric Supplier shall provide Written Notice of the new Variable Price to the customer at least 12 days prior to the close of the customer's billing period.
 - 8.2.7 An Electric Supplier shall maintain records that the Written Notices provided under this Section 8.0 were provided to its Residential or Small Commercial Customers.

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

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

10.0 Customer Protection.

- 10.1 General Customer Protections. No Electric Supplier or Broker shall engage in fraudulent or improper activities, nor shall it disseminate any Customer information obtained pursuant to subsection 3.1. Electric Suppliers or Brokers found to have violated these provisions may be subject to certificate revocation and/or penalties as described in subsection ~~2.4.3~~ **17.2.1** and 26 Del.C. §1019.
- 10.2 Electric Suppliers and Agents shall not:
 - 10.2.1 Engage in false, misleading, or deceptive conduct or make false, misleading or deceptive statements or representations in any dealings with Customers;

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

- 10.7.2 If the Customer (or a Broker acting on behalf of a Customer) and Electric Supplier are not able to come to a resolution, the Customer or Broker may contact the DPA with its complaint. If the DPA is unable to effect a satisfactory resolution, the Customer or Broker may file a formal complaint with the Commission as described in 26 **DE Admin. Code** §1001-2.2.1 "Rules of Practice and Procedure of the Delaware Public Service Commission."
- 10.7.3 A Broker acting on behalf of a Customer must provide written proof to the Commission and the DPA, with a copy to the Electric Supplier, that it is authorized to act on the Customer's behalf in order to file and maintain a complaint.
- 10.8 Complaint Procedures to be Followed by the Electric Supplier.
- 10.8.1 The Electric Supplier shall use good faith efforts to respond to and resolve complaints.
- 10.8.2 An Electric Supplier shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices. The Electric Supplier shall cooperate with the Commission and other government agencies that are investigating complaints about marketing or sales practices prohibited by State and Federal laws and with local law enforcement officials that are investigating complaints about violations of local municipal law.
- 10.8.3 An Electric Supplier shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints. The process shall document as a record the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint. An Electric Supplier shall retain the record for three years in a system capable of retrieving that record by customer name and account number or by other effective means to obtain access to the information.
- 10.8.4 If the Customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will inform the Customer that it may contact the DPA.
- 10.8.5 In any complaint proceeding before the DPA or the Commission, the burden of proof shall be on the Marketer or Broker to establish, if applicable, that its Agents were adequately trained and that the Customer was enrolled in accordance with these Regulations.
- 10.9 Return of Customer Deposits. If a Customer has an outstanding or unpaid balance due, an Electric Supplier may apply the Deposit against such unpaid balance. Any remaining deposit amount shall be returned to the Customer.
- 10.10 Assignment of Contracts.
- 10.10.1 At least thirty (30) days prior to the effective date of any assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another, the Electric Suppliers shall jointly:
- 10.10.1.1 Provide Written Notice of the assignment or transfer to the Customers of the Electric Supplier, with a copy to the Commission, the EDC, and the DPA; and
- 10.10.1.2 Coordinate with the EDC to effectuate the transfers of service.
- 10.10.1.3 Notice to Customer. The Electric Suppliers shall jointly send a letter to the Customers informing them of the assignment or transfer. The letter shall include:
- 10.10.1.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;
- 10.10.1.3.2 Customer service contact information for the assignee; and
- 10.10.1.3.3 A statement that the terms and conditions of the Customer's Contract at the time of assignment shall remain the same for the remainder of the Contract term.
- 10.10.1.4 The Electric Suppliers shall file a notice with the Commission, the DPA, and the EDC, of the assignment or transfer of the Customer Contracts and include a copy of the letter sent to Customers.
- 10.10.2 Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. Records shall be maintained for a period of three (3) years or until the Contracts are expired, whichever is longer.
- 10.10.3 An assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another is not an enrollment or drop.
- 10.11 Record Retention. All Electric Suppliers shall retain a copy of the Customer's Contract, Contract Summary, billing and payment history, and verification of enrollment for a period of three years after enrollment or termination of the Contract, whichever is later.

11.0 Enrollment, Marketing, and Advertising.

- 11.1 An Electric Supplier shall comply with all federal, State and local laws applicable to the advertising or marketing of Electric Supply Service, and it shall be a violation of these Regulations to fail to comply with such laws.
- 11.2 No Electric Supplier shall make misrepresentations or use deceptive practices relating to its own services or the services provided by the Customer's EDC in its solicitations, advertising or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and person-to person contacts.
- 11.3 An Electric Supplier's solicitation, advertising and marketing materials must include the name, toll-free telephone number, and address of the Electric Supplier.
- 11.4 If an Electric Supplier makes changes to its Contract for Electric Supply Service to Residential or Small Commercial Customers that substantively modifies the terms and conditions of service, including changes to the Electric Supplier's name and changes in product offerings, then the Electric Supplier shall provide copies of the modified Contract and Contract Summary to Staff and DPA at least three (3) Business Days before offering the revised terms and conditions in Delaware. For purposes of this requirement, a change to the Contract Price shall not be considered a change in a term or condition of service.
- 11.5 Marketing/Sales Activities.
 - 11.5.1 Marketing materials that offer terms of service for acceptance by Residential and Small Commercial Customers shall include Prices, as follows:
 - 11.5.1.1 If using a Fixed Price, the Electric Supplier shall factor in the Fixed Price and any other monthly fees and charges charged to the Residential or Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customers using 500, 1,000 or 2,000 kWh of electricity;
 - 11.5.1.2 If using a Variable Price, the Electric Supplier shall factor in the Variable Price and any other monthly fees and charges charged to the Residential or Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customer using 500, 1,000 and 2,000 kWh of electricity; and
 - 11.5.1.3 The Electric Supplier shall note the effective date of the Prices shown in the table provided under subsections 11.5.1.1 and 11.5.1.2.
 - 11.5.2 Advertising materials targeted for Residential or Small Commercial Customers shall be made available upon request of the Commission or DPA in the event of a formal or informal complaint or investigation.
- 11.6 Enrollment Authorization. An Electric Supplier must obtain authorization from the Customer before switching a Customer's provider of Electric Supply Service.
 - 11.6.1 There are three (3) principal ways in which an Electric Supplier may obtain a Residential or Small Commercial Customer's authorization to enter into a Contract for Electric Supply Service:
 - 11.6.1.1 Recorded verbal consent via the telephone;
 - 11.6.1.2 Electronic contract; or
 - 11.6.1.3 Written contract.
 - 11.6.2 If an Electric Supplier offers a Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the Contract signature.
- 11.7 Telephone Solicitations and Enrollments.
 - 11.7.1 When a Residential or Small Commercial Customer enrolls with an Electric Supplier during a Telemarketing call, the Electric Supplier shall record the entire telephone call between the Residential or Small Commercial Customer and the Electric Supplier or its Agent, and also record a TPV.
 - 11.7.2 The Electric Supplier shall maintain a copy of the recorded sales call and TPV, if applicable, for the duration of the Residential or Small Commercial Customer's Contract.
 - 11.7.3 During the sales portion of a Telemarketing call, the Electric Supplier or its Agent shall:
 - 11.7.3.1 Begin the conversation by stating the following:
 - 11.7.3.1.1 His or her name and, upon request, his or her Agent identification number;
 - 11.7.3.1.2 The name of the Electric Supplier that the Agent is representing;
 - 11.7.3.1.3 The purpose of the telephone call is to sell Electric Supply Service; and
 - 11.7.3.1.4 That he or she is not working for and is independent of the Residential or Small Commercial Customer's Electric Distribution Company or another Electric Supplier.
 - 11.7.3.2 Disclose all material Contract terms and conditions; including:
 - 11.7.3.2.1 If a Variable Price, the information in subsection 6.2.2.3.2.2 and the first month's Variable Price;

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

- 11.8.5.5 Offer a business card or other material that lists:
 - 11.8.5.5.1 The Electric Supplier's name and contact information, including telephone number;
 - 11.8.5.5.2 The docket number of the proceeding in which the Commission granted the Electric Supplier's ESC; and
 - 11.8.5.5.3 The Agent's name and any other identification numbers provided to the sales Agent by the Electric Supplier or Agent.
- 11.8.6 An Agent performing a Door-to-Door Sale may not request a potential Residential or Small Commercial Customer's (1) Electric Supplier or EDC account number or (2) electric bill until he or she has provided the information required in subsections 11.8.5.1 through 11.8.5.5.
- 11.8.7 In connection with any Door-to-Door Sale, it is a violation of these Regulations for any Electric Supplier or Agent to:
 - 11.8.7.1 Fail to leave the Residential or Small Commercial Customer's premises upon request in a prompt and courteous manner;
 - 11.8.7.2 Leave the Residential or Small Commercial Customer's premises after completing a sale without furnishing the Residential or Small Commercial Customer with a completed Contract signed by the Residential or Small Commercial Customer that includes all required disclosures and a Contract Summary. The completed Contract and Contract Summary may be provided electronically if the Residential or Small Commercial Customer consents to electronic receipt;
 - 11.8.7.3 Fail to inform each Residential or Small Commercial Customer orally, at the time the Residential or Small Commercial Customer signs the Contract, of the right to rescind without penalty or fee within three (3) Business Days from the date of the transaction;
 - 11.8.7.4 Misrepresent in any manner the Residential or Small Commercial Customer's right to rescind without penalty or fee within three (3) Business Days from the date of the transaction; and
 - 11.8.7.5 Fail or refuse to honor a valid notice of cancellation received during the Rescission Period within three (3) Business Days after the receipt of such notice from the Residential or Small Commercial Customer.
- 11.8.8 Background Checks for Door-to-Door Agents. An Electric Supplier shall not permit an Agent to conduct Door-to-Door Sales to Residential or Small Commercial Customers until it has completed a criminal background investigation on the Agent. The criminal background investigation shall include:
 - 11.8.8.1 The Electric Supplier, or the independent contractor or vendor it utilizes, obtaining and reviewing the criminal history results from the following searches:
 - 11.8.8.1.1 Delaware state and county courts;
 - 11.8.8.1.2 A nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System;
 - 11.8.8.1.3 The U.S. Department of Justice National Sex Offender Public Registry; and
 - 11.8.8.1.4 Every other state in which the Agent resided during the last twelve (12) months.
 - 11.8.8.2 For a current Agent who conducts Door-to-Door Sales, an Electric Supplier must obtain a criminal history record for such individual not later than ninety (90) days after the effective date of these Regulations.
- 11.8.9 Notification Regarding Door-to-Door Sales Activities.
 - 11.8.9.1 When an Electric Supplier engages in Door-to-Door Sales, the Electric Supplier shall notify Staff and DPA **[by e-mail]** no later than the morning of the day that the activity begins. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.
 - 11.8.9.2 An Electric Supplier shall provide the EDC with general, nonproprietary information about the Door-to-Door activity that caused the Electric Supplier to provide notice to Staff and DPA. The Electric Supplier shall provide this general information to the EDC no later than the morning of the day that the sales and marketing activities begin. The EDC shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may address customer inquiries knowledgeably. An EDC may not use the information for other purposes.
- 11.9 Internet Enrollments.
 - 11.9.1 For electronic contracting on the internet, the Electric Supplier's website must be configured to prompt the Residential or Small Commercial Customer to review and agree to the Contract and Contract Summary before the Contract is final, and to print or save the Contract and Contract Summary.

12.0 Reports to be Provided by Electric Suppliers to the Commission and DPA

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

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13.0 Green Power Products.

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

- 13.6 When requested by a Customer or providing information regarding Green Power Products Options through marketing and advertising material(s) or solicitation(s), an Electric Supplier must label its fuel resource mix in a manner that accurately describes its electric generating resources.
- 13.7 An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless its generation attributes include one or more of the renewable energy sources listed in 26 **Del.C.** §352(6)(a)-(i).
- 13.8 Electric Suppliers offering Green Power Options shall meet the disclosure of the fuel resource mix requirements stated in Section 14.0 of these Regulations.

14.0 Disclosure of Fuel Resource Mix. RESERVED

- 14.1 ~~Each Electric Supplier, except Brokers, shall file a report with the Commission disclosing the aggregate proportions of fuel resource mix for the electricity supplied to its Customers in Delaware for each quarter during the year. Such reports shall be filed not later than sixty (60) calendar days following the end of each quarter. The reports shall include, but are not limited to:~~
 - 14.1.1 ~~The total number of Customers by each Customer class served during that quarter;~~
 - 14.1.2 ~~The total amount of electricity (kWh or MWh) supplied to each Customer class; and~~
 - 14.1.3 ~~The fuel resource mix by percentage for each resource.~~
- 14.2 ~~Each Electric Supplier and SOSS shall also disclose the information under subsection 14.1.3 to its Customers annually via bill inserts or a bill message with website link to the Supplier's or SOSS's fuel resource mix and each of the other three quarters by providing information on the Customer's bill for that quarter directing the Customer to obtain the information on the Electric Supplier's website or by a telephone request. Each Electric Supplier must maintain and update the information in subsection 14.1.3 as required by 26 **Del.C.** §1012. Information reported under subsection 14.1.3 may be utilized in any consumer education program developed in accordance with 26 **Del.C.** §1014(c).~~

15.0 Net Metering

- 15.1 General Provisions
 - 15.1.1 Net Metering can occur in two 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; and
 - 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.See Section 16.0 of these Regulations for the rules governing Community Energy Facilities.
 - 15.1.2 Each Electric Supplier providing Electric Supply Service shall offer Customers the option of Net Metering if a Customer generates electricity at the Customer's premises, subject to all of the following requirements:
 - 15.1.2.1 The Customer owns and operates; leases and operates; or contracts with a third party who owns and operates the electric generation facility with a capacity that:
 - 15.1.2.1.1 Will not exceed 25 kW per DP&L meter for residential Customers;
 - 15.1.2.1.2 Will not exceed 2 MW per DP&L meter for non residential Customers;
 - 15.1.2.1.3 Will not exceed 100 kW per DP&L meter for farm customers, as those customers are described in 3 **Del.C.** §902(3); provided, however, that ~~the Delaware Energy Office~~ DNREC may grant exceptions to this limitation in accordance with 26 **Del.C.** §1014(d)(1)b;
 - 15.1.2.1.4 For Condition 2, the sum of electric generation capacity will not exceed the applicable limits per meter specified in subsections 15.1.2.1.1 through 15.1.2.1.3 above;
 - 15.1.2.1.5 Uses as its primary source of fuel: solar, wind, hydro, a fuel cell or gas from the anaerobic digestion of organic material;
 - 15.1.2.1.6 Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and
 - 15.1.2.1.7 Is designed to produce no more than 110% of the Host Customer's expected aggregate electrical consumption, calculated on the average of the two previous 12 month periods of actual electrical usage at the time of installation of energy generating equipment and subject to the capacity limits specified in subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy

generating equipment and subject to the capacity limits specified in subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations.

- 15.2 Net metering shall be accomplished through a single meter ~~at the Electric Supplier's expense, that runs forward and backward in order to measure~~ measures net energy flow during a billing period.
- 15.2.1 ~~An To maintain system safety and reliability, 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 which consent may be waived by the Customer.~~ The additional metering shall be used only to provide the information necessary to accurately bill or credit the Customer pursuant to subsection 15.3 of these Regulations, or to collect system performance information on the eligible technology for research purposes.
- 15.2.2 ~~Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification.~~ If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.
- 15.2.3 ~~If the existing electrical meter of a Customer is incapable of measuring the flow of electricity in two directions through no fault of the customer, the Electric Supplier shall be responsible for all expenses involved in purchasing and installing such a meter. Non-residential customers shall be responsible for paying the reasonable cost of any new, replacement, or modified meter or meters installed for net-metering purposes. Residential customers shall not be responsible for paying more than \$200.00 toward the reasonable cost of any new, replacement, or modified meter or meters installed for net-metering purposes. Non-residential and residential customers shall not own the meter or meters, which shall remain the property of the electric distribution company.~~
- 15.3 ~~For Net Metering Condition 1 and Condition 2 if, during any billing period, a Customer Generator Facility produces more energy than that consumed by the Customer, or aggregate total kWh of the Customer, the Electric Supplier will credit the Customer in kWh's, valued at an amount per kWh equal to the sum of volumetric energy (kWh) components of the delivery service charges and supply service charges for residential Customers and the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non-residential Customers for any excess energy production of their generating facility that exceeds the Customer's on-site, or aggregate total, consumption of kWh in a billing period. During any billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges. Electric Suppliers and EDCs shall credit Excess kWh Credits to the customer's subsequent monthly billing periods to offset the customer's consumption in those billing periods.~~
- 15.3.1 ~~Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used. During any subsequent billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges~~ **[Credits at the end of the Annualized Billing Period shall revert to the EDC providing electric distribution to the Customer** credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used. During any subsequent billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges].
- 15.3.2 ~~At the end of the Annualized Billing Period, a Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment for residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges based on a weighted average of the first block of the summer (June through September) and winter Supply Service Charges (October through May) in effect at the end of the Customer's Annualized Billing Period and the preceding 11 billing periods, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. The payment for non-residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges that would otherwise be applicable at the end of the Customer's Annualized Billing Period. If such payment would be less than \$25.00, the Electric Supplier may credit the Customer's account through monthly billing. [For existing and future Net Energy Metering Customers, both residential and nonresidential, the monthly Excess kWh Credit shall be valued at the sum of the volumetric (kWh) components of the supply service charges and distribution service charges, not including the charges for Societal Benefits Programs, according to each participating Customer account's rate schedule.~~ At the end of the Annualized Billing

Period, a Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment for residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges based on a weighted average of the first block of the summer (June through September) and winter Supply Service Charges (October through May) in effect at the end of the Customer's Annualized Billing Period and the preceding 11 billing periods, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. The payment for non-residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges that would otherwise be applicable at the end of the Customer's Annualized Billing Period. If such payment would be less than \$25.00, the Electric Supplier may credit the Customer's account through monthly billing.]

- 15.3.3 Any ~~excess kWh credits~~ Excess kWh Credits shall not reduce any fixed monthly Customer charges imposed by the ~~Electric Supplier~~ EDC.
- 15.3.4 The Customer shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Customer-Generator Facility and consumed by the Customer unless the customer has relinquished such ownership by contractual agreement with a third party or by other means.
- 15.3.5 Subsections 15.3 through 15.3.4 shall not apply to Community Energy Facilities, which are addressed in Section 16.0 of these Regulations.
- 15.3.6 Excess kWh Credits for supply service are the responsibility of the entity providing supply to the Customer rather than solely the responsibility of the EDC.
- 15.3.7 In the event that a Net Energy Metering Customer abandons the property where the energy generating equipment is located, the equipment may remain connected to the electric distribution system, unless the equipment presents a risk to the safety and reliability of the electric distribution system.
- ~~15.3.5~~ 15.3.8 Electric Suppliers and EDCs shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not Net-Metering would be charged. Electric Suppliers shall not charge a Net-Metering Customer any stand-by fees or similar charges.
- ~~15.3.6~~ 15.3.9 If a Net Metering Customer terminates its service with the ~~Electric Distribution Company~~ EDC or changes Electric Supplier, the Electric Supplier terminating service shall treat the end of service period as if it were the end of the Annualized Billing Period for any excess kWh credits.
- ~~15.3.7~~ 15.3.10 If the total generating capacity measured in megawatts (MW) of alternating current (AC) of all Customer-generation using net metering systems served by an electric utility exceeds ~~(5%)~~ 8% of the capacity necessary to meet the ~~Electric Supplier's aggregated Customer monthly peak demand for a particular calendar year, the Electric Supplier~~ EDC's average Delaware transmission peak demand for the preceding 3 years, the EDC may elect not to provide Net Metering services to additional Customers.
- ~~15.3.8~~ 15.3.11 Where applicable, the requirements established in subsection 15.6 of these Regulations shall apply to this subsection 15.3.
- 15.4 RESERVED.
- 15.5 RESERVED.
- 15.6 Subject to the applicable Net Metering provisions of Section 15.0 of these Regulations, in instances where one customer has multiple meters under the same account or different accounts, regardless of the physical location and rate class, the customer may aggregate meters for the purpose of net metering regardless of which individual meter receives energy from a Customer-Generator Facility, provided that:
 - 15.6.1 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and
 - 15.6.2 The Customer-Generator Facility is designed to produce no more than 110% of the Customer's aggregate electrical consumption of the individual meters or accounts that the Customer is entitled to aggregate under this subsection 15.6 calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and
 - 15.6.3 A Customer-Generator Facility shall not exceed the sum total of the capacity limits among the participants of a Customer-Generator Facility as defined under subsections 15.1.1.1 through 15.1.1.3 of these Regulations; and
 - 15.6.4 At least ninety days before a Customer commences construction of a Customer-Generator Facility or a Customer is entitled to aggregate multiple meters, the customer shall file with DP&L the following information:

- 15.6.4.1 a A list of individual meters the Customer is entitled to aggregate, identified by name, address, rate schedule, and account number, and ranked according to the order which the Customer desires to apply credit for excess energy to each individual meter; and
 - 15.6.4.2 a A description of the Customer-Generator Facility, including the facility's location, capacity, and fuel type or generating technology; and
 - 15.6.4.3 a A complete interconnection application to facilitate a transmission and distribution analysis, including an evaluation of potential reliability, safety and stability impacts and determination of whether infrastructure upgrades are necessary and appropriate allocation of applicable interconnection costs.
- 15.6.5 The Customer may change its list of aggregated meters specified in subsection 15.6.4.1 no more than once annually by providing ninety days' written notice; and
- 15.6.6 Credit shall be applied first to the meter through which the Customer-Generator Facility supplies electricity, then through the remaining meters for the Customer's accounts according to the rank order as specified in accordance with subsection 15.6.4.1 above; and
- 15.6.7 Credit in kilowatt-hours (kWh) shall be valued according to subsection 15.3 of these Regulations and each account's rate schedule as specified in subsection 15.6.4.1 above; and
- 15.6.8 DP&L may require that a Customer's aggregated meters as specified in subsection 15.6.4.1 above be read on the same billing cycle.
- 15.7 RESERVED.
- 15.8 Nothing in these Rules is intended in any way to limit eligibility for net energy metering services based upon direct ownership, joint ownership, or third-party ownership or financing agreement related to an electric generation facility, where net energy metering would otherwise be available
- 15.9 For public utilities regulated by the Commission, net metering aggregation disputes limited to the correct application of Commission-approved tariffs shall be resolved by the Commission. All other disputes with an Electric Supplier, DEC, or municipal electric companies shall be resolved by the appropriate governing body with jurisdiction over such disputes.
- 15.10 Any requirements necessary to permit interconnected operations between the Customer-Generator Facility and the Electric Supplier, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's Model Interconnection Rules and best practices identified by the U.S. Department of Energy. Electric Suppliers shall not require eligible net metering customers who meet all applicable safety and performance standards to install excessive controls, perform or pay for unnecessary tests, or purchase excessive liability insurance.
- 15.11 Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the end of the calendar year. Such report shall include the following information from the previous calendar year:
- 15.11.1 The total number of Customer-Generator Facilities;
 - 15.11.2 The total estimated rated generating capacity of its net-metered Customer-Generator Facilities;
 - 15.11.3 The total estimated net kilowatt-hours received from Customer-Generator Facilities; and
 - 15.11.4 The total estimated amount of energy produced by Customer-Generator Facilities, using a methodology approved by the Commission.
 - 15.11.5 The annual net-metering report may be revised as necessary to reflect changes in information available from net metered facilities upon consultation and agreement between the Electric Supplier and the Staff of the Commission.
- 15.12 The Commission shall periodically review the impact of net-metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.
- 15.13 A retail electric customer having on its premises one or more grid Grid-Integrated Electric Vehicles shall be credited in kilowatt-hours (kWh) for energy discharged to the grid from the Grid-Integrated Electric Vehicle's battery at the same kWh rate that customer pays to charge the battery from the grid, as determined in subsection 15.3 of these Regulations. Excess kWh credits shall be handled in the same manner as Net Metering as described in subsection 15.3 of these Regulations. To qualify under this section of the Rule, the Grid-Integrated Electric Vehicle must meet the requirements in subsections 15.1.1.1., 15.1.1.2, and 15.1.1.5 of these Regulations. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in subsections 15.3, 15.10, and 15.11 of these Regulations.
- 15.14 The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with subsection 15.13 of these Regulations. Such tariffs may include rate and credit structures that vary from those set forth in subsection 15.13 of these Regulations, as long as alternative rate and credit structures are not inconsistent with the development of Grid-Integrated Electric Vehicles.

16.0 Community Energy Facilities

- 16.1 Project eligibility: To be eligible for certification as a Community Energy Facility, a generating facility must:
- 16.1.1 Have multiple owners or Subscribers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or Subscriber;
 - 16.1.2 Include a technology defined as an "eligible energy resource" under 26 **Del.C.** §352(6)a-h;
 - 16.1.3 Not exceed a capacity of four (4) megawatts as measured by the alternating current (AC) rating. Co-location of Community Energy Facilities, which together have a capacity greater than four (4) megawatts, shall not be permitted;
 - 16.1.4 Be located in Delmarva's service territory, in Delaware;
 - 16.1.5 Interconnect to the Distribution Facilities and operate in parallel with Delmarva's Transmission and Distribution Facilities;
 - 16.1.6 Comply with Delmarva's interconnection tariffs and operating guidelines; and
 - 16.1.7 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 the generating facility meets applicable safety and performance standards.
- 16.2 Application to the Commission for Preliminary and Final Certificates to Operate:
- 16.2.1 Before a Community Energy Facility may offer a Contract or commence service to a Subscriber, and before Delmarva provides the Community Energy Facility with a Permission to Operate under subsection 16.3 of these Regulations, the Community Energy Facility must apply for and obtain from the Commission both a Preliminary Certificate to Operate, which establishes project viability, and a Final Certificate to Operate, which establishes compliance with all application requirements.
 - 16.2.2 Applicants must comply with the electronic filing requirements of 26 **DE Admin. Code** 1001, "Rules of Practice and Procedure of the Commission".
 - 16.2.3 Preliminary Certificate to Operate. Applications for a Preliminary Certificate to Operate must contain all required information and exhibits and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the managerial and operational ability to adequately serve the public consistent with applicable State laws.
 - 16.2.3.1 Applications for a Preliminary Certificate to Operate must contain at least the following:
 - 16.2.3.1.1 Application fee. An Applicant for a Preliminary Certificate to Operate shall submit a non-refundable application fee of \$750 with the application;
 - 16.2.3.1.2 Identity of the Applicant. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name or trade names under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant, its Affiliated Interests, or any current or previous officer, director, or manager has previously done business in Delaware;
 - 16.2.3.1.3 Certifications. Certification or certifications issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
 - 16.2.3.1.4 Authorization. Documentation from the Delaware Secretary of State, **issued within 90 days of filing,** and the Delaware Division of Revenue, ~~issued within ninety (90) days of filing,~~ that the Applicant is legally authorized and qualified to do business in the State;
 - 16.2.3.1.5 Registered Agent. The name and post office address of a Registered Agent within the State upon whom service of any notice, order or process may be made;
 - 16.2.3.1.6 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
 - 16.2.3.1.7 Corporate structure. A description of the Applicant's corporate structure, including any Affiliated Interests engaged in operations in the United States related to energy. Include a graphical depiction of such structure;
 - 16.2.3.1.8 Contact information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicant;
 - 16.2.3.1.9 Website. The Community Energy Facility's website address (if any), accessible to prospective and current Subscribers;
 - 16.2.3.1.10 Consent to jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Community Energy Facility's and its Agent's activities in the State;

- 16.2.3.1.11 Proof of site control. The Applicant shall provide a fully executed lease agreement, a deed of sale, a property deed, or a binding option agreement with defined lease or purchase terms for the parcel where the Community Energy Facility is, or will be, located;
- 16.2.3.1.12 Interconnection feasibility. A completed interconnection study or signed interconnection agreement with Delmarva. If Delmarva determines that an interconnection study is unnecessary, then a written statement from Delmarva to that effect, which includes the facility's capacity and generating technology, may substitute for a completed interconnection study; and
- 16.2.3.1.13 Verification of application for a Preliminary Certificate to Operate. A signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 16.2.3.2 Review of the application for a Preliminary Certificate to Operate. Staff shall make a recommendation to the Commission to approve, conditionally approve, or deny the application within 45 days from the date of the completed application. The Commission may choose to approve, approve with conditions, modify, or deny a Preliminary Certificate to Operate to an Applicant where it finds that doing so is in the public interest.
- 16.2.3.3 Expiration of Preliminary Certificate to Operate. A Community Energy Facility's Preliminary Certificate to Operate shall expire upon the Commission's granting of a Final Certificate to Operate or twenty-four (24) months from the issuance of the Preliminary Certificate to Operate, whichever is earlier. Upon the request of an Applicant, the Commission may extend the 24-month period by twelve (12) months, for good cause shown.
- 16.2.4 Final Certificate to Operate. Applications for a Final Certificate to Operate must contain all required information and exhibits and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws.
 - 16.2.4.1 Applications for a Final Certificate to Operate must contain at least the following:
 - 16.2.4.1.1 Changes. Any changes to the information provided with the application for a Preliminary Certificate to Operate, submitted under subsection 16.2.3 of these Regulations;
 - 16.2.4.1.2 Regulatory contact person. The contact information for a regulatory contact person (if applicable) responsible for the Community Energy Facility's Delaware operations;
 - 16.2.4.1.3 Subscriber complaint contact person. The contact information for a Subscriber complaint contact person, if different from the regulatory contact person;
 - 16.2.4.1.4 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
 - 16.2.4.1.5 Customer Service number. A telephone number to the Applicant's Subscriber service center where Subscribers may call with questions about the Community Energy Facility's services, including the Contract and Contract Summary;
 - 16.2.4.1.6 Consent to jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Community Energy Facility's and its Agent's activities in the State;
 - 16.2.4.1.7 Criminal activities:
 - 16.2.4.1.7.1 A statement detailing any criminal activities relating to fraud or financial misconduct, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution;
 - 16.2.4.1.7.2 A statement by the Community Energy Facility that it (or its Agent) will run criminal background checks on any person engaged to conduct Door-to-Door Sales on its behalf, obtaining and reviewing the criminal history results for crimes committed against a person, from the following searches:
 - 16.2.4.1.7.2.1 Delaware state and county courts for crimes committed within the past five (5) years;
 - 16.2.4.1.7.2.2 nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System for crimes committed within the past five (5) years;

- 16.2.4.1.7.2.3 The U.S. Department of Justice National Sex Offender Public Registry for crimes committed within the past ten (10) years; and
- 16.2.4.1.7.2.4 Every other state in which the Agent resided during the last twelve (12) months for crimes committed within the past five (5) years.
- 16.2.4.1.7.3 Nothing in these Regulations shall prohibit a Community Energy Facility from conducting background checks on its Agents that are more extensive than the requirements in subsection 16.2.4.1.7.2, in accordance with applicable law.
- 16.2.4.1.8 **Contract and Contract Summaries.** A copy of the Applicant's standard Contract form that it intends to offer to Residential Subscribers, and the standard Contract Summary form it intends to include with its Contract for Residential Subscribers. A Contract or Contract Summary that does not comply with the requirements of Section 16.5 of these Regulations or other applicable Delaware laws and regulations may be grounds for rejection of the application. Staff may develop a standard Contract Summary Form that it requires from all Applicants;
- 16.2.4.1.9 **Marketing materials.** A statement by the Community Energy Facility that it (or its Agent) will retain copies of all print, broadcast, electronic media, telecommunication, direct mail or in-person written marketing materials, including but not limited to scripts for Telemarketing, advertisements, website presentations, social media posts or advertisements, and any other material of a similar nature, that the Applicant (or its Agent) will use to market and promote its products to Delaware Residential and Small Commercial Customers, and will furnish them to the Commission, DPA, and Consumer Protection Unit upon request. Marketing conducted by a lead generation firm is not exempt from this subsection;
- 16.2.4.1.10 **Surety bonds and financial information.** A Community Energy Facility bond executed by a company authorized to transact surety business in the State of Delaware by the Department of Insurance. Such bond will permit the Commission to direct that the proceeds of this bond be paid or disbursed to satisfy the Applicant's financial obligations to the Commission or other Delaware government entity. The bond will permit a Delaware court to direct proceeds of the bond be paid to a person that has obtained a judgment against an Applicant and has previously attempted to collect the judgment through all other means available through the court. The amount of the bond shall be \$10,000 plus \$25,000 per each megawatt of capacity in excess of 1 megawatt;
- 16.2.4.1.11 **Bankruptcy.** A disclosure as to whether the Applicant, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past sixty (60) months;
- 16.2.4.1.12 **Staff request.** Other commercially reasonable indicia of financial capability, upon a request from Staff;
- 16.2.4.1.13 **Services.** A description of the services it plans to offer in the State, including the types of Subscribers to be served and services provided;
- 16.2.4.1.14 **Experience.** A description of the operational experience in Community Energy Facilities of each principal officer, director, or individual responsible for Delaware operations. If no such experience is applicable, the Applicant shall identify the means by which the Applicant proposes to support its managerial, operational, and financial capabilities for the sale of subscriptions in the State;
- 16.2.4.1.15 **Other states.** A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
- 16.2.4.1.15.1 Been granted approval to sell subscriptions or act as a Community Energy Facility or similar structure, including license or certificate numbers (including those states where a license or approval is not required but where the Applicant has sold subscriptions or acted as a Community Energy Facility);
 - 16.2.4.1.15.2 Been denied approval to sell subscriptions or act as a Community Energy Facility;
 - 16.2.4.1.15.3 Had its authority revoked, modified, or suspended or been found to be in violation of, or is the subject of a pending investigation regarding, a state's laws, rules, or regulations relating to Community Energy Facilities or similar structures;
 - 16.2.4.1.15.4 Had any other adverse judicial or regulatory action pertaining to the provision of Community Energy Facility services or the violation of state or federal consumer protection laws, including any formal docketed complaints filed against:
 - 16.2.4.1.15.4.1 The Applicant;
 - 16.2.4.1.15.4.2 Any of the Applicant's Affiliated Interests;

- 16.2.4.1.15.4.3 Any officer, principal or director of the Applicant; or
- 16.2.4.1.15.4.4 Any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
- 16.2.4.1.15.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its provision of Community Energy Facility services or the alleged violation of state or federal consumer protection laws in which the Community Energy Facility agreed to pay a civil penalty provide customer restitution, or make changes to its marketing, sales, billing, or collections practices;
- 16.2.4.1.16 Copies of orders. A copy of any document, order, or decree identified in response to subsection 16.2.4.1.15, as well as a copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in retail or wholesale energy markets; and
- 16.2.4.1.17 Verification of application for a Final Certificate to Operate. A signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 16.2.4.2 Review of the application for Final Certificate to Operate. Staff shall make a recommendation to the Commission to approve or deny the application within sixty (60) days from the date of the completed application. The Commission may choose to approve, approve with conditions, modify, or deny a Final Certificate to Operate to an Applicant where it finds that doing so is in the public interest.
- 16.2.4.3 Terms of Final Certificate to Operate. Final Certificates to Operate are valid until revoked by the Commission pursuant to subsection 16.11.5 or relinquished by the Community Energy Facility after the requisite notice to the Commission and to its Subscribers.
- 16.2.5 Incomplete or abandoned applications for Preliminary or Final Certificates to Operate. The Commission may reject an application for a Preliminary or Final Certificate to Operate that is not complete or that does not contain subsequent information requested by Staff within four (4) months of a failure by the Applicant to respond to such requests.
- 16.2.6 Waiver of certification requirements for Preliminary or Final Certificates to Operate. Upon the request of an Applicant, the Commission may, upon notice and opportunity for comment, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations, 26 Del.C. §1001 et seq, or state or federal consumer protection laws.
- 16.2.7 Changes in application information. Applicants shall inform Staff of any changes to the information submitted in the application for a Preliminary or Final Certificate to Operate that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within fifteen (15) Business Days after the change may be grounds for rejection of the application.
- 16.2.8 Accuracy of information. Failure to provide accurate and factual information, the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission may be grounds for rejection of an application for a Preliminary or Final Certificate to Operate.
- 16.3 Permission to Operate from Delmarva:
 - 16.3.1 A Community Energy Facility shall provide the following information to Delmarva prior to receiving a Permission to Operate from Delmarva, pursuant to its interconnection process:
 - 16.3.1.1 A description of the energy generating facility, including the facility's host location, capacity, and fuel type or generating technology; and
 - 16.3.1.2 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.
 - 16.3.2 After the Community Energy Facility complies with subsections 16.3.1.1 and 16.3.1.2, it may then seek a Final Certificate to Operate from the Commission as set forth in subsection 16.2.4 of these Regulations.
 - 16.3.3 After receiving a Final Certificate to Operate from the Commission, the Community Energy Facility shall submit to Delmarva:

- 16.3.3.1 A list of individual Delmarva account numbers the Community Energy Facility desires to aggregate including the name and address associated with the account number, including which accounts serve Low-income Customers;
 - 16.3.3.2 The subscribed percentage of generation attributed to each Subscriber;
 - 16.3.3.3 Certification that the subscription level of each Subscriber does not exceed 110% of that Subscriber's expected aggregate electrical consumption calculated, for existing buildings, on the average of the two previous 12-month periods of actual electrical usage at the time of subscription with the Community Energy Facility and estimated, for new building construction, at 110% of the consumption of units with similar size and characteristics; and
 - 16.3.3.4 Certification that Subscribers in the Community Energy Facility include at least 15% Low-income Customers. The requirement of "at least 15% Low-income Customers" will be measured by the number of Low-income Customers as a percentage of the total number of Subscribers of the Community Energy Facility.
- 16.3.4 Delmarva will consider a request to convert an existing Net Metering interconnection application under Section 15.0 of these Regulations to a Community Energy Facility interconnection application under Section 16.0 to be a new application, which would create a new interconnection position.
- 16.4 Low-income Customer verification:
- 16.4.1 The Community Energy Facility shall require income data verification to determine eligibility for Low-income Customers. Proof of eligibility required for Low-income Customers shall include:
 - 16.4.1.1 Proof of income of the account holder (e.g., pay stub or W2), proof of participation in a low income discount program including Medicaid, SSI, TANF, GA, WIC, LIHEAP, SNAP or food stamps, or proof that the Low-income Customer lives in a census block where the median household income is at or below 200% of the U.S. Federal Poverty Guidelines or 60% of the state median household income published by the United States Census Bureau, whichever is greater, or by living in a low-income master-metered building; or
 - 16.4.1.2 A written attestation by the Low-income Customer that their total household income is at or below 200% of the Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater.
 - 16.4.1.3 For owners or operators of master-metered buildings, a written attestation that their tenants meet the income eligibility requirements for Low-income Customers.
 - 16.4.2 When the Community Energy Facility provides Delmarva with its Low-income Customer certification under subsection 16.3.3.4, it must also provide such certification to the Commission. The Commission may audit the Community Energy Facility to ensure compliance with the low-income requirements.
 - 16.4.3 A Community Energy Facility's failure to satisfy the low-income requirements may result in a penalty, including monetary assessment, or revocation of its Final Certificate to Operate.
 - 16.4.4 Every three (3) years, the Community Energy Facility shall certify to the Commission in writing that it meets the low-income requirements as set forth in subsections 16.3.3.4 and 16.4 of these Regulations.
- 16.5 Community Energy Facility Contracts and Contract Summaries:
- 16.5.1 Only a Community Energy Facility with a Final Certificate to Operate may execute a Contract for Community Energy Facility credits with a Subscriber.
 - 16.5.2 Community Energy Facilities shall provide to prospective Residential and Small Commercial Subscribers a Contract and Contract Summary in the same language used by the Community Energy Facility or its Agent to market, sell, or describe the Contract terms. Residential and Small Commercial Contracts and Contract Summaries must:
 - 16.5.2.1 Be printed in Times New Roman 12-point font; and
 - 16.5.2.2 Have one-inch margins on all sides and utilize reasonable numbering, lettering, line, and paragraph spacing.
 - 16.5.3 A Contract for Residential or Small Commercial Subscribers shall be written in clear and plain language and shall contain all material terms and conditions, including:
 - 16.5.3.1 A list and description of the Contract services;
 - 16.5.3.2 The Contract duration, expressed in months or years, or the disclosure that the Contract is month-to-month;
 - 16.5.3.3 A description of the Price of each service, including the Price of the subscription and the duration of the Introductory Price, if applicable, and whether the price is subject to change over time;
 - 16.5.3.4 A description of any other fees or charges, including but not limited to early termination penalties, late fees, fees to access the Community Energy Facility's services, minimum monthly charges,

- enrollment fees, and interest charges; a description of the specific condition under which such fees or charges can be imposed; and the amount of such fees or charges or the method by which such fees or charges shall be computed;
- 16.5.3.5 A description of any other services provided to the Subscribers as part of the Contract;
- 16.5.3.6 If the Community Energy Facility claims that Subscribers will save money by entering into the Contract, a description of any calculations and assumptions on which it relies to make this claim;
- 16.5.3.7 A statement regarding the Rescission Period that:
 - 16.5.3.7.1 The Subscriber may rescind the Contract within three (3) Business Days from the start of the Rescission Period; and
 - 16.5.3.7.2 The Rescission Period begins on one of the following dates, as applicable;
 - 16.5.3.7.2.1 When the Subscriber signs the Contract;
 - 16.5.3.7.2.2 When the Subscriber transmits the acceptance of the Contract electronically; or
 - 16.5.3.7.2.3 When the Subscriber receives the Contract and Contract Summary, if received by mail. There shall be a rebuttable presumption that a Contract and Contract Summary correctly addressed to a Subscriber with sufficient first-class postage attached shall be received three (3) Business Days after it has been properly deposited in the United States mail; and
- 16.5.3.8 A statement that the actual number of credits could vary monthly and is dependent on the generation output of the Community Energy Facility, if applicable;
- 16.5.3.9 A statement of the Community Energy Facility's termination rights, which shall explain the specific conditions under which the Community Energy Facility may terminate service. At a minimum, the Community Energy Facility shall provide the Subscriber at least thirty (30) days' Written Notice of termination of the Contract;
- 16.5.3.10 The Community Energy Facility's local or toll-free telephone number to obtain information and handle complaints; its mailing address and website address; the Commission's address, website address, and Delaware toll-free telephone number; and the DPA's address, website address, and telephone number;
- 16.5.3.11 A statement informing the Subscriber that, in the event of a relocation outside of Delmarva's service territory, they shall terminate their Contract with no termination fee;
- 16.5.3.12 A statement that the Community Energy Facility may terminate the Contract prior to the stated term of the Contract, including:
 - 16.5.3.12.1 The circumstances under which early cancellation by the Community Energy Facility may occur;
 - 16.5.3.12.2 The manner in which the Community Energy Facility shall notify the Residential or Small Commercial Subscriber of the early cancellation of the Contract;
 - 16.5.3.12.3 The duration of the notice period before early cancellation by the Community Energy Facility; and
 - 16.5.3.12.4 The remedies available to the Residential or Small Commercial Subscriber if early cancellation occurs;
- 16.5.3.13 A statement that the Subscriber may terminate the Contract prior to the stated term of the Contract, including:
 - 16.5.3.13.1 The manner in which the Subscriber shall notify the Community Energy Facility of the early cancellation of the Contract;
 - 16.5.3.13.2 The duration of the notice period before early cancellation;
 - 16.5.3.13.3 The remedies available to the Community Energy Facility if early cancellation occurs; and
 - 16.5.3.13.4 The amount of any early cancellation fee;
- 16.5.3.14 A statement describing Contract renewal procedures, if any, including the timing of the notices that the Subscriber will receive prior to the renewal date;
- 16.5.3.15 All disclosures required by applicable laws and regulations that govern marketing, consumer protection, and door-to-door sales, including the Delaware Home Solicitation Sales Act, 6 Del.C. §4401 et seq;
- 16.5.3.16 If a Community Energy Facility requires a security deposit from a Subscriber,
 - 16.5.3.16.1 The amount of the security deposit;
 - 16.5.3.16.2 A description of when and under what circumstances the security deposit will be returned;
 - 16.5.3.16.3 A description of how the security deposit may be used; and
 - 16.5.3.16.4 A description of how the security deposit will be protected;

- 16.5.3.17 The data privacy policies of the Community Energy Facility;
 - 16.5.3.18 A statement that the Community Energy Facility does not make representations or warranties concerning the tax implications of any bill credits provided to the Subscriber; and
 - 16.5.3.19 The method of providing notice to the Subscribers when the Community Energy Facility is out of service for more than three (3) Business Days, including notice of the estimated duration of the outage and the estimated production that will be lost due to the outage.
- 16.5.4 A Contract for Residential Subscribers or Small Commercial may not:
- 16.5.4.1 Provide the application of the law of any jurisdiction other than the United States and Delaware;
 - 16.5.4.2 Except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, as amended, or the Delaware Uniform Arbitration Act, Chapter 57 of Title 10, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under applicable law;
 - 16.5.4.3 Provide for a location of arbitration outside of the county of the Residential Subscriber's residence or the Small Commercial Subscriber's location; or
 - 16.5.4.4 Contain a provision that limits or releases the liability of the Community Energy Facility for not performing the Contract.
- 16.5.5 At the time of completion of the contracting process, a Community Energy Facility shall provide the Residential or Small Commercial Subscriber with a copy of the executed Contract and completed Contract Summary.
- 16.5.6 If a Residential or Small Commercial Contract is completed through the Internet, the executed Contract and completed Contract Summary shall be:
- 16.5.6.1 Made available for download by the Subscriber at the time of contracting; and
 - 16.5.6.2 Transmitted to the Subscriber by the Community Energy Facility by mail or by email if the Subscriber consents to receipt of email disclosures.
- 16.5.7 If a Residential or Small Commercial Contract is completed in person, the executed Contract and the completed Contract Summary shall be reviewed with the Subscriber and provided to the Subscriber in hard copy at the time of contracting, or electronically at the time of contracting if the Subscriber consents to electronic disclosures.
- 16.5.8 A Subscriber that wants to cancel a Contract shall first attempt to cancel the Contract according to the terms of the Contract.
- 16.5.9 If a Subscriber attempts to cancel a Contract by contacting Delmarva first, Delmarva shall direct the Subscriber to contact the Community Energy Facility through the means detailed in the Contract.
- 16.5.10 For Residential and Small Commercial Contracts with automatic renewal provisions, the Community Energy Facility must provide Subscribers with Written Notice of the pending renewal of a Contract at least thirty (30) days and no more than sixty (60) days before the cancellation deadline pursuant to the automatic renewal provision and must otherwise comply with the requirements of 6 Del.C. §2734. The Community Energy Facility must retain records showing that the Written Notice was provided, including copies of the Written Notices, for at least five (5) years.
- 16.5.11 The Written Notice to Residential and Small Commercial Subscribers required under subsection 16.5.10 shall:
- 16.5.11.1 Be printed in Times New Roman 12-point typeface or larger with one-inch margins on all sides, and reasonable numbering, lettering, line and paragraph spacing;
 - 16.5.11.2 In bold style font, inform the Subscriber that the failure to respond to the Written Notice will result in the automatic renewal of the Contract;
 - 16.5.11.3 Inform the Subscriber of any changes in the material terms and conditions of the expiring Contract upon renewal, and include a copy of the proposed Contract and Contract Summary; and
 - 16.5.11.4 Inform the Subscriber how to terminate the Contract without penalty.
- 16.5.12 Record Retention. All Community Energy Facilities shall retain a copy of the Residential or Small Commercial Subscriber's Contract, Contract Summary, verification of enrollment, and the Community Energy Facility's billing and payment history, for a period of five (5) years after enrollment or termination of the Contract, whichever is later.
- 16.6 Subscription requirements:
- 16.6.1 A Subscriber shall not receive credit for more than 110% of the Subscriber's expected aggregate electrical consumption, calculated on the average of the two (2) previous 12-month periods of actual electrical usage at the time of subscription with the Community Energy Facility. For new building construction, electrical consumption shall be estimated at 110% of the consumption of units with similar size and characteristics.

- 16.6.2 A Community Energy Facility shall not have subscriptions larger than 200 kilowatts constituting more than 60% of its capacity, not including the host's self-consumption.
- 16.6.3 Subscriptions shall be portable, provided that the Subscriber remains within Delmarva's service territory. The Community Energy Facility must notify Delmarva of a Subscriber's change in address, and any change in subscription size, within thirty (30) days of the change. In cases of relocation, Subscribers are entitled to at least one revision to their subscription size per move.
- 16.6.4 Subscribers shall not sell or transfer a Community Energy Facility subscription to another party other than the Community Energy Facility owner.
- 16.6.5 The Community Energy Facility shall provide updated individual Subscriber's subscribed percentage to Delmarva if there are any changes to Subscriber's subscribed percentage.
- 16.6.6 On an annual basis, Delmarva may audit an individual Subscriber's subscribed amounts to ensure the amount does not exceed 110% of the Subscriber's annual usage, calculated on the average of the two previous 12-month periods of actual electrical usage, utilized at the time of the reassessment. If Delmarva determines that a Subscriber's subscribed amount exceeds the 110% cap, Delmarva shall notify the Community Energy Facility.
 - 16.6.6.1 Upon such notification, the Subscriber's Community Energy Facility must resize the Subscriber's subscription size to ensure it does not exceed 110% of the historic annual usage, calculated on the average of the two previous 12-month periods of actual electrical usage, utilized at the time of the reassessment.
 - 16.6.6.2 In cases where the Community Energy Facility fails to provide a Subscriber's updated subscribed percentage within thirty (30) days after notification by Delmarva, Delmarva shall be permitted to set the Subscriber's percentage of credits to zero.
 - 16.6.6.3 Community Energy Facilities may not charge a Subscriber an amount greater than the dollar value of the credits received by the Subscriber from Delmarva for each billing period.
- 16.6.7 The Community Energy Facility shall ensure that the net-metered generation output from the facility is accurate. The amount of electricity generated each month available for allocation as subscribed or unsubscribed energy shall be determined by a production meter that meets or exceeds the ANSI C12.1-2008 accuracy standards installed, maintained, and owned by Delmarva, and paid for by the owner of the Community Energy Facility.
- 16.6.8 The Community Energy Facility shall retain ownership of all RECs and SRECs associated with the electric energy it produces unless it has relinquished such ownership by contractual agreement with a third party or its Subscribers.
- 16.6.9 The Community Energy Facility may change its list of Subscribers no more than once per month. The Community Energy Facility shall provide a written request to Delmarva for any such changes no less than thirty (30) days prior to the requested change.
- 16.6.10 The Community Energy Facility may update its Subscribers' percentage of generation allocation no more than once per month. The Community Energy Facility shall provide thirty (30) days' written notice to Delmarva before any such changes.
- 16.6.11 Delmarva shall only allow meter aggregation for Subscriber accounts for which Delmarva provides electric distribution services.
- 16.6.12 Delmarva may require all Subscribers of a Community Energy Facility to have their meters read on the same billing cycle.
- 16.6.13 A Subscriber may subscribe to more than one Community Energy Facility but not more than four, and no Subscriber may subscribe for greater than 110% of their aggregate electrical consumption as defined in 26 **Del.C.** §1014(f)(2).
- 16.7 Community Energy Facility Bills to its Subscribers:
 - 16.7.1 The Community Energy Facility alone is responsible for the billing and collection of any subscription fees directly to Subscribers.
 - 16.7.2 The Community Energy Facility's bill to its Subscribers shall be easy to understand, be in clear and plain language, and must contain the following information in at least 12-point font:
 - 16.7.2.1 The name, address, website (if any), and customer service telephone number of the Community Energy Facility;
 - 16.7.2.2 The due date for payment;
 - 16.7.2.3 If applicable, an itemized list of each service or product billed for the current billing period including other agreed to charges;
 - 16.7.2.4 The number of credits (kWh) generated by the Community Energy Facility for the Subscriber;

- 16.7.2.5 The actual price per credit (kWh) charged to the Subscriber;
 - 16.7.2.6 The total charge for each service or product;
 - 16.7.2.7 The amount of payment or other credit applied to Subscriber's outstanding balance during the billing period;
 - 16.7.2.8 The amount still owed by the Subscriber from the previous billing period;
 - 16.7.2.9 Appropriate taxes and fees;
 - 16.7.2.10 Definitions of material terms used in the bill; and
 - 16.7.2.11 If applicable, late fees as defined in the Contract. Late fees must be clearly identified as such.
- 16.7.3 A Community Energy Facility without a valid Final Certificate to Operate shall not bill its Subscribers.
- 16.8 Change in ownership and assignment of Contracts:
- 16.8.1 Prior to the effective date of any assignment or transfer of the ownership of a Community Energy Facility to a person or company who is not an existing Community Energy Facility, the new owner must obtain a Final Certificate to Operate under subsection 16.2.4 of these Regulations
 - 16.8.2 At least thirty (30) days prior to the effective date of any assignment or transfer of the Contracts of a Community Energy Facility to another existing Community Energy Facility, the Community Energy Facilities shall jointly:
 - 16.8.2.1 Provide Written Notice of the assignment or transfer to the Subscribers of the Community Energy Facility, with a copy to the Commission, Delmarva and the DPA;
 - 16.8.2.2 Coordinate with Delmarva the transfer of ownership;
 - 16.8.2.3 Send a letter to the Subscribers informing them of the assignment or transfer. The letter shall include:
 - 16.8.2.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;
 - 16.8.2.3.2 Customer service contact information for the assignee; and
 - 16.8.2.3.3 A statement that the terms and conditions of the Subscriber's Contract at the time of assignment shall remain the same for the remainder of the Contract term.
 - 16.8.3 Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. The Community Energy Facility must maintain such records for a period of five (5) years or until the Contracts expire, whichever is longer.
- 16.9 Delmarva's billing of Community Energy Facility credits to Subscribers:
- 16.9.1 Bill credits. Delmarva shall calculate the amount of the bill credit for a Community Energy Facility Subscriber as the Subscriber's subscribed percentage of generation valued at the sum of the volumetric (kWh) components of the distribution service charges and tariff supply service charges according to each Subscriber's customer account rate schedule. For Subscribers under hourly priced service, the applicable rate shall be the average hourly price from the previous calendar year. For Subscribers being served by other than the Standard Offer Service Supplier, the applicable rate for supply service shall be the Standard Offer Service rate for the Subscriber's rate classification.
 - 16.9.1.1 Delmarva shall display the monthly bill credit amount on the Subscriber's monthly Delmarva bill as a discrete monetary line item, showing the kWh credit multiplied by the applicable rate. For Subscribers who subscribe to multiple Community Energy Facilities, the bill must show separate credit amounts for each Community Energy Facility, identifying which Community Energy Facility produced the credit. Delmarva shall subtract the bill credit amount from the full amount due on the Subscriber's monthly electricity bill.
 - 16.9.1.2 Any excess net bill credit that rolls over from previous months shall be displayed as a dollar amount on the Subscriber's monthly bill as a negative "Balance Forward". For Subscribers who subscribe to multiple Community Energy Facilities, the bill will aggregate the excess net bill credits and display the excess credits on the Subscriber's monthly bill as a negative "Balance Forward".
 - 16.9.2 Annualized billing period. Delmarva shall establish an annualized billing period for each Subscriber.
 - 16.9.2.1 The annualized billing period shall begin on the day a Subscriber first earns a Community Energy Facility bill credit based on the delivery of energy.
 - 16.9.2.2 The annualized billing period shall continue for a period of 12 months, until the subscription ends, or until the Subscriber's Delmarva account is closed, whichever occurs earlier.
 - 16.9.2.3 A Subscriber may request a refund from Delmarva if a credit balance remains on their account at the end of the annualized billing period.
 - 16.9.3 Unsubscribed Energy:

- 16.9.3.1 Delmarva shall compensate Community Energy Facilities for any Unsubscribed Energy that constitutes 10% or less of the Community Energy Facility's generation output using the average annual locational marginal price of energy in the DPL Zone based on the prior calendar year.
 - 16.9.3.2 Delmarva shall not compensate Community Energy Facilities for any Unsubscribed Energy that is greater than 10% of the Community Energy Facility's generation output.
- 16.10 Delmarva's recovery of costs:
- 16.10.1 Interconnection costs. The Community Energy Facility shall be responsible for all costs associated with its interconnection to Delmarva's distribution system. Any requirements necessary to permit interconnected operations between the Community Energy Facility and Delmarva, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by Delmarva.
 - 16.10.2 Additional costs. The Community Energy Facility shall be responsible for any additional costs incurred by Delmarva, including billing-related costs associated with the Community Energy Facility Subscribers.
 - 16.10.2.1 Within 30 days of the effective date of these Regulations, Delmarva shall present a report to the Commission that provides such costs incurred by Delmarva and a calculation of the associated charges to Community Energy Facilities. The costs and recovery thereof shall be set forth through a rider on Community Energy Facilities.
 - 16.10.2.2 Reporting on the cost recovery mechanism shall be presented in semi-annual reports which shall be filed by Delmarva with the Commission.
 - 16.10.2.3 If a Community Energy Facility disputes the charges or the cost recovery mechanism, the Community Energy Facility may file a complaint in accordance with the Commission's Rules of Practice and Procedure, codified at 26 **DE Admin. Code** 1001, subsection 2.2, *et. seq.*]
 - 16.10.3 Energy offset. Delmarva shall use the energy generated from a Community Energy Facility to offset purchases from wholesale electricity suppliers for Standard Offer Service.
- 16.11 Regulation, fees, penalties:
- 16.11.1 Neither Subscribers nor owners of Community Energy Facilities shall be subject to regulation as either public utilities or Electric Suppliers, except as set forth in 26 **Del.C.** §1014(f)(15).
 - 16.11.2 Community Energy Facilities must pay applicable fees and assessments under 26 **Del.C.** §1014(f)(13) and (15), which include the fees set forth in 26 **Del.C.** §114 and the annual gross revenue assessment in 26 **Del.C.** §115. Under §115, the "gross operating revenue" shall equal the sum of the net-metering credits produced by the Community Energy Facility and the revenue derived from unsubscribed energy.
 - 16.11.3 Community Energy Facilities shall adhere to State and the Federal Energy Regulatory Commission rules and regulations.
 - 16.11.4 Community Energy Facilities shall comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other state and federal laws, rules, or regulations that apply to such a facility.
 - 16.11.5 If a Community Energy Facility fails to comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other laws, rules, or regulations that apply to such a facility, the Commission may impose penalties, including monetary assessments, and may suspend or revoke the Final Certificate to Operate, and impose other sanctions permitted by law.
 - 16.11.6 If the Commission revokes the Final Certificate to Operate, Delmarva shall cease providing credits to Subscribers of that Community Energy Facility and shall not provide any further credits unless and until the Community Energy Facility provides Delmarva with proof of a valid Final Certificate to Operate.
- 16.12 Consumer protection:
- 16.12.1 Enforcement. In addition to the penalties described in subsection 16.11.5 of these Regulations, any violation of the consumer protection rules set forth in this subsection shall be deemed an unlawful practice in violation of 6 **Del.C.** §2513 and may be investigated and prosecuted by the Consumer Protection Unit, in accordance with 6 **Del.C.** §§1203C, 2513(b)(3), and 29 **Del.C.** §2520(b). No action or inaction by the Commission under these Regulations shall affect the right of the Consumer Protection Unit to enforce State consumer protection laws.
 - 16.12.2 General consumer protections:
 - 16.12.2.1 The Community Energy Facility is responsible for any discriminatory, false, fraudulent, deceptive or unlawful marketing, sales, billing, or collections acts performed by its Agents, including lead generation firms, in the conduct of marketing, sales, billing, or collections activities on behalf of the Community Energy Facility.
 - 16.12.2.2 No Community Energy Facility shall:

- 16.12.2.2.1 Engage in illegal, fraudulent, false, misleading, or deceptive conduct or make false, misleading, or deceptive statements or representations in any dealings with Subscribers or prospective Subscribers;
- 16.12.2.2.2 Discriminate against any Subscriber or prospective Subscriber, based wholly or partly, on race, color, creed, national origin, or gender of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason;
- 16.12.2.2.3 Refuse to provide service to a Subscriber except by the application of standards that are reasonably related to the Community Energy Facility's economic and business purposes; or
- 16.12.2.2.4 Engage in Slamming or Cramming. If it is reported that the Community Energy Facility has engaged in Slamming or Cramming, or both, the Community Energy Facility may be subject to investigation and, after a hearing, the Commission may impose penalties or require the Community Energy Facility to void or refund all of the charges in question.
- 16.12.2.3 Customer information. The Community Energy Facility shall put into place safeguards to prevent the disclosure of Subscribers' Customer information and shall provide Subscribers with a copy of its Customer information privacy policy. A Community Energy Facility shall keep the Subscriber's Customer information in a secure and protected location and shall treat information received from prospective Subscribers, including those who do not subscribe, in accordance with this subsection. The Community Energy Facility shall not disclose Customer information except:
 - 16.12.2.3.1 Upon authorization by the Subscriber;
 - 16.12.2.3.2 To a state or federal authority;
 - 16.12.2.3.3 To Delmarva; or
 - 16.12.2.3.4 As otherwise authorized by law.
- 16.12.3 Consumer protection relating to enrollment, marketing, and advertising:
 - 16.12.3.1 A Community Energy Facility shall comply with all federal, State and local laws applicable to the advertising or marketing of its services, and it shall be a violation of these Regulations to fail to comply with such laws.
 - 16.12.3.2 No Community Energy Facility shall make misrepresentations or use deceptive practices relating to its own services, the services of another Community Energy Facility, or the services provided by Delmarva in its solicitations, advertising, or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and person-to-person contacts, including Door-to-Door Sales. Deceptive practices include, but are not limited to:
 - 16.12.3.2.1 Saying or suggesting to a prospective Subscriber that they are required to choose a Community Energy Facility;
 - 16.12.3.2.2 Saying or suggesting to a prospective Subscriber that their service will suffer degradation or risk if they do not choose a Community Energy Facility; and
 - 16.12.3.2.3 Suggesting a relationship that does not exist with the Subscriber's SOSS, Delmarva, any government agency, or another Community Energy Facility.
 - 16.12.3.3 Telephone Solicitations and Enrollments:
 - 16.12.3.3.1 A Community Energy Facility soliciting Subscribers by telephone shall comply with all applicable Delaware and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. §§6151 *et seq.*), the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C. §§6101 *et seq.*), and the Delaware Telemarketing Fraud Act (6 **Del. C.** §§ 2501A *et seq.*).
 - 16.12.3.3.2 When a Residential or Small Commercial Subscriber enrolls with a Community Energy Facility during a Telemarketing call, the Community Energy Facility shall record the entire telephone call between the Subscriber and the Community Energy Facility or its Agent.
 - 16.12.3.3.3 The Community Energy Facility shall maintain a copy of the recorded sales call and TPV, if applicable, for a period of five years after the expiration of the Residential or Small Commercial Subscriber's Contract.
 - 16.12.3.3.4 The Community Energy Facility shall immediately halt any Telemarketing call upon the request of the prospective Residential or Small Commercial Subscriber.
 - 16.12.3.4 Door-to-Door Solicitations and Enrollments:
 - 16.12.3.4.1 Door-to-Door Sales at a residential dwelling shall be conducted by a Community Energy Facility's Agent between the hours of 9:00 a.m. to 8:00 p.m. prevailing Delaware time. When a local ordinance has stricter limitations, the Agent shall comply with the local ordinance.
 - 16.12.3.4.2 For Door-to-Door Sales, the Agent shall promptly:

- 16.12.3.4.2.1 Identify the Community Energy Facility they are representing;
- 16.12.3.4.2.2 State that the individual and the Community Energy Facility do not represent Delmarva or any governmental agency;
- 16.12.3.4.2.3 State that the purpose of the visit is to sell a Community Energy Facility subscription;
- 16.12.3.4.2.4 Prominently display an identification badge; and
- 16.12.3.4.2.5 Offer a business card or other material that lists:
 - 16.12.3.4.2.5.1 The Community Energy Facility's name and contact information, including telephone number; and
 - 16.12.3.4.2.5.2 The Agent's name and any other identification numbers provided to the sales Agent by the Community Energy Facility or Agent.
- 16.12.3.4.3 Until the Agent has provided the information required in subsection 16.12.3.4.2 of these Regulations, an Agent performing a Door-to-Door Sale may not request a potential Residential or Small Commercial Subscriber's:
 - 16.12.3.4.3.1 Community Energy Facility account number;
 - 16.12.3.4.3.2 Delmarva account number; or
 - 16.12.3.4.3.3 Electric bill.
- 16.12.3.4.4 In connection with any Door-to-Door Sale, it is a violation of these Regulations for any Community Energy Facility or Agent to:
 - 16.12.3.4.4.1 Fail to leave the prospective Subscriber's premises upon request in a prompt and courteous manner; or
 - 16.12.3.4.4.2 Fail to inform each Residential or Small Commercial Subscriber orally, at the time the Residential or Small Commercial Subscriber signs the Contract, of the right to rescind without penalty or fee within three (3) Business Days from the date of the transaction.
- 16.12.3.5 Internet enrollments. For electronic contracting on the Internet, the Community Energy Facility's website must be configured to prompt the Residential or Small Commercial Subscribers to review and agree to the Contract and Contract Summary before the Contract is final, and to print or save the Contract and Contract Summary.
- 16.12.3.6 The Community Energy Facilities shall not be entitled to the Customer List described in subsection 3.3 of these Regulations.
- 16.12.3.7 Agent Training:
 - 16.12.3.7.1 A Community Energy Facility shall ensure the training of its Agents on the following subjects:
 - 16.12.3.7.1.1 State and Federal laws and regulations that govern marketing, Telemarketing, and Door-to-Door Sales (for those Agents engaging in Telemarketing or Door-to-Door Sales), including consumer protection regulations required by Delaware law and regulations;
 - 16.12.3.7.1.2 The Community Energy Facility's products and services;
 - 16.12.3.7.1.3 The Community Energy Facility's Prices, Price structures and payment options;
 - 16.12.3.7.1.4 The Subscriber's right to rescind and cancel Contracts;
 - 16.12.3.7.1.5 The applicability of an early termination fee for Contract cancellation when the Community Energy Facility has one;
 - 16.12.3.7.1.6 The Community Energy Facility's Contract and Contract Summary;
 - 16.12.3.7.1.7 The necessity of correctly and fully explaining the Contract and Contract Summary, while relying on a standard sales script and knowledge of the contents of the sales script, if one is used;
 - 16.12.3.7.1.8 The proper completion of transaction documents;
 - 16.12.3.7.1.9 Information about how Subscribers may contact the Community Energy Facility to obtain information about billing, disputes, and complaints; and
 - 16.12.3.7.1.10 The confidentiality and protection of Subscribers' Customer information.
 - 16.12.3.7.2 A Community Energy Facility shall document the training of an Agent and maintain a record of the training for three (3) years from the date the training was completed.
 - 16.12.3.7.3 A Community Energy Facility shall make training materials and training records available to the Commission, DPA, and the Consumer Protection Unit upon request.
 - 16.12.3.7.4 When a Community Energy Facility contracts with an independent contractor or vendor to perform marketing or sales activities on the Community Energy Facility's behalf or purchases leads from an independent contractor or vendor, the Community Energy Facility shall confirm

that the contractor or vendor has provided Community Energy Facility-approved training to its Agents in accordance with this subsection.

16.12.3.7.5 The Community Energy Facility shall routinely monitor Telemarketing calls and Door-to-Door sales calls to:

16.12.3.7.5.1 Evaluate the Community Energy Facility's training program; and

16.12.3.7.5.2 Ensure that Agents are providing accurate and complete information, complying with applicable regulations and providing courteous service to Subscribers.

16.12.3.7.6 The Community Energy Facility shall maintain records of such monitoring activities, results, and actions taken in response to the results of the monitoring activities and make such records available to the Commission, DPA, and the Consumer Protection Unit upon request.

16.13 Complaint procedures:

16.13.1 Complaint procedures to be followed by the Subscriber (or a Broker acting on behalf of a Subscriber):

16.13.1.1 A Subscriber (or a Broker acting on behalf of a Subscriber) should first notify the Community Energy Facility of their complaint.

16.13.1.2 If the Community Energy Facility does not resolve the complaint, the Subscriber (or a Broker acting on behalf of a Subscriber) may file an informal or formal complaint with the Commission pursuant to 26 **DE Admin. Code** 1001, subsections 2.2 and 2.3.

16.13.1.3 A Broker acting on behalf of a Subscriber must provide written proof to the Commission and the DPA, with a copy to the Community Energy Facility, that it is authorized to act on the Subscriber's behalf in order to file a complaint.

16.13.2 Complaint Procedures to be Followed by the Community Energy Facility:

16.13.2.1 The Community Energy Facility shall use good faith efforts to respond to and resolve complaints.

16.13.2.2 The Community Energy Facility shall investigate Subscriber inquiries, disputes, and complaints concerning marketing, sales, billing, and collections practices. The Community Energy Facility shall cooperate with the Commission, DPA, the Consumer Protection Unit, and other government agencies that are investigating complaints about marketing, sales, billing, or collections practices prohibited by State and Federal laws, and with local law enforcement officials that are investigating complaints about violations of local municipal law.

16.13.2.3 The Community Energy Facility shall implement an internal process for responding to and resolving Subscriber inquiries, disputes, and complaints. The process shall document as a record the Subscriber inquiry, dispute, or complaint, subsequent communications between the Community Energy Facility and the Subscriber, and the resolution of the inquiry, dispute or complaint. The Community Energy Facility shall retain the record for five (5) years from the later of the date of resolution of the complaint or the date of last contact with the Subscriber in a system capable of retrieving that record by Subscriber name and account number or by other effective means to obtain access to the information.

16.13.2.4 If the Subscriber and the Community Energy Facility are not able to come to a resolution, the Community Energy Facility will inform the Subscriber that the Subscriber may contact the DPA and the Consumer Protection Unit, or both.

16.13.2.5 In any complaint proceeding, the burden of proof shall be on the Community Energy Facility to establish, if applicable, that its Agents were adequately trained, and that the Subscriber was enrolled in accordance with these Regulations.

16.14 Reports to be Provided to the Commission and DPA:

16.14.1 Community Energy Facilities shall provide such information concerning their State operations to the Commission and the DPA as the Commission may from time-to-time request, including any reporting requirements contained herein. Reports shall be filed electronically in DelaFile under the docket number for the matter by which the Commission granted the Community Energy Facility its Final Certificate to Operate.

16.14.2 Required 10-Day Notifications. Community Energy Facilities shall notify the Commission and the DPA within ten (10) Business Days of any of the following actions:

16.14.2.1 Revocation of authority to sell subscriptions in any jurisdiction;

16.14.2.2 Revocation of an Affiliated Interest's authority to sell subscriptions in any jurisdiction; or

16.14.2.3 A change in the principal officers responsible for Delaware operations previously provided pursuant to these Regulations.

16.14.3 Required 30-Day Notifications and Annual Reports. A Community Energy Facility shall provide the following information to the Commission and the DPA within thirty (30) calendar days of occurrence and annually by April 30th of each year:

- 16.14.3.1 Any changes in the Community Energy Facility's name or tax identification number or employer identification number previously provided pursuant to these Regulations;
- 16.14.3.2 Any changes in the Community Energy Facility's business address previously provided pursuant to these Regulations;
- 16.14.3.3 Any changes to the regulatory contact or Customer complaint person previously identified pursuant to these Regulations;
- 16.14.3.4 The identify of any state in which the Community Energy Facility has had its authority to sell subscriptions to Customers revoked, modified or suspended since the filing of the last annual report;
- 16.14.3.5 Any changes to the organizational structure previously provided pursuant to these Regulations;
- 16.14.3.6 A statement detailing any criminal activities relating to fraud or financial misconduct of which the Community Energy Facility or any of its Affiliated Interests has been arrested, indicted or convicted, or which the principal or corporate officers have been arrested, indicted or convicted, since the filing of the last annual report;
- 16.14.3.7 A copy of any stipulation, order, or decree concerning a formal, docketed complaint or investigation of the Community Energy Facility's marketing and sales activities in other jurisdictions;
- 16.14.3.8 A list of any states in which any formal complaint investigations have been initiated against the Community Energy Facility or any of its Affiliated Interests since the filing of the last annual report; and
- 16.14.3.9 A list of any states in which disciplinary actions have been taken against the Community Energy Facility or any of its Affiliated Interests since the filing of the last annual report.

16.14.4 As required by subsection 16.4.5 of these Regulations, every three (3) years, Community Energy Facilities shall provide a certification to the Commission in writing that it meets the low-income provisions as set forth in subsection 16.4.

16.15 Delmarva reporting requirements:

16.15.1 Delmarva shall submit an annual Community Energy Facility report to the Commission, ninety (90) days after the end of the calendar year. Such report shall include the following information from the previous calendar year:

- 16.15.1.1 The total number of Community Energy Facilities;
- 16.15.1.2 The total rated generating capacity of its Community Energy Facilities;
- 16.15.1.3 The total net kilowatt-hours received by Subscribers from Community Energy Facilities; and
- 16.15.1.4 The total amount of energy produced by Community Energy Facilities.

16.15.2 The annual Community Energy Facilities report may be revised as necessary to reflect changes in information available from Community Energy Facilities upon consultation and agreement between Delmarva and Staff.

16.15.3 Delmarva shall provide to the Community Energy Facilities an informational report including, but not limited to, the allocation of credits to Subscribers in the corresponding billing period.

- 16.15.3.1 The report shall be provided no later than the last day of each calendar month following the month of the Community Energy Facilities meter reading by Delmarva.
- 16.15.3.2 Within 30 days of the effective date of these Regulations, Delmarva shall present a proposed form of the monthly report to the Commission for its review and approval.

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17.0 Other General Rules.

- 17.1 Proprietary Information. Under Delaware's Freedom of Information Act, 29 **Del.C.** ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 **Del.C.** ~~§10002(d)(2)~~ §10002(o). 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. A redacted public version and an attestation that the information is not subject to public inspection or disclosure must accompany the information filed. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or

confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

17.2 Failure to Comply with these Rules.

17.2.1 The failure by any Electric Supplier or a Community Energy Facility to comply with these requirements and the requirements in other Sections of these Regulations may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, suspension or revocation of the Community Energy Facility's Final Certificate to Operate, or other sanction as determined by the Commission.

17.2.2 If an Electric Supplier or Community Energy Facility has a similar license issued by another state, the federal government, or PJM or similar entity suspended or revoked, the Commission may suspend or revoke the Electric Supplier's ESC or the Community Energy Facility's Final Certificate to Operate after notice and an evidentiary hearing.

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

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

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

13 DE Reg. 150 (01/01/10)

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

20 DE Reg. 827 (04/01/17)

25 DE Reg. 963 (04/01/22)

27 DE Reg. 262 (10/01/23) (Final)