

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION

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

PROPOSED

PUBLIC NOTICE

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| IN THE MATTER OF THE ADOPTION OF RULES | |
| AND REGULATIONS TO IMPLEMENT THE PROVISIONS | |
| OF 26 DEL.C. CH 10 RELATING TO THE CREATION OF | |
| A COMPETITIVE MARKET FOR RETAIL ELECTRIC | |
| SUPPLY SERVICE (OPENED APRIL 27, 1999; | |
| RE-OPENED JANUARY 7, 2003; RE-OPENED AUGUST | |
| 21, 2007 | |

PSC REGULATION DOCKET NO. 49

ORDER NO. 7326

This 4th day of December, 2007, the Commission determines and Orders the following:

1. By PSC Order No. 7252 (Aug. 21, 2007), this Commission re-opened the captioned docket¹ and directed Commission Staff to review the July 2007 statutory amendments² to 26 **Del.C.** §1014 regarding an electric utility's "net metering" obligations and report back with proposed revisions to § 8 of the Commission's *Rules for Certification and Regulation of Electric Suppliers* ("*Electric Supplier Rules*") relating to such obligations.³
2. By Memorandum dated November 26, 2007, Staff identified several complex provisions from the statutory amendments that require interpretation including the definition of "NEG" (likely "net excess generation"), the treatment of Renewable Energy Credits ("RECs") associated with NEG, and the payment obligations arising from a supplier's transfer of excess RECs to the Green Energy Fund, all under 26 **Del.C.** §1014(e)(1), as amended. With its Memorandum, Staff proposed certain revisions to § 8 of the Commission's *Electric Supplier Rules* to reflect its interpretation of the changes to the statutory "net metering" requirements.

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

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §§362 and 1014(d) and 29 **Del.C.** §10115, the Commission proposes to revise the "Net Energy Metering" provisions of its *Rules for Certification and Regulation of Electric Suppliers*, originally adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised by PSC Orders Nos. 7023 (Sept. 5, 2006) and 7078 (Nov. 21, 2006). A copy of the redlined version of the "Net Energy Metering" rules (*i.e.*, § 8) is appended as Exhibit "A" to this Order.
 2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order; a copy of the redlined version of § 8 of the *Rules for Certification and Regulation of Electric Suppliers* (Exhibit "A"); and the Notice of Proposed Rule-Making, attached hereto as Exhibit "B." In addition, the Secretary shall cause such Notice of
1. By Order No. 7252 (Aug. 21, 2007), the Commission also opened Docket No. 07-219, *In the Matter of the Commission's Consideration of the "Net Metering" Standard Set Forth in 16 U.S.C. § 2621(d)(11) Related to the "Net Metering" of Customer-Generated Electric Supply*, but then, at Ordering ¶ 1, decided that no further proceedings in that docket were necessary.
2. See 76 Del. Laws ch. 164 §§ 1-3 (July 24, 2007), amending 26 **Del.C.** §§ 1014(d), (d)(1) & (d)(2) and adding §§ 1014(e) & (f).
3. The Electric Supplier Rules were originally adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised by PSC Orders Nos. 7023 (Sept. 5, 2006) and 7078 (Nov. 21, 2006)).

Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on January 3, 2008. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) Delaware Electric Cooperative, Inc.; (e) all certificated electric suppliers; and (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings. The Secretary shall also post an electronic version of this Order on the Commission's website under an appropriate heading.

3. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before February 6, 2008. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to § 8 of the *Rules for Certification and Regulation of Electric Suppliers* on March 25, 2008 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, Senior Hearing Examiner Ruth Ann Price is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Price shall organize, classify, and summarize the materials and comments and file a Report with the Commission with her recommendations concerning the proposed revisions to §8 of the *Rules for Certification and Regulation of Electric Suppliers*. Hearing Examiner Price is specifically delegated the power, under 26 **Del.C.** §102A, to determine the content and manner of any further public notices that might be necessary or appropriate. Hearing Examiner Price may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

5. That William F. O'Brien, Deputy Attorney General, is designated Staff Counsel for this matter.

6. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they may be charged the costs of this proceeding.

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

BY ORDER OF THE COMMISSION:

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

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING TO AMEND "NET ENERGY METERING" PROVISIONS OF ELECTRIC SUPPLIER RULES

TO: ALL RETAIL ELECTRIC SUPPLIERS IN DELAWARE, ALL DELAWARE RETAIL ELECTRIC CUSTOMERS WHO GENERATE ELECTRICITY AND OTHER INTERESTED PERSONS

Since 1999, Commission-jurisdictional electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators (powered by renewable resources) to "net meter" their electric production and consumption. See *Rules for Certification and Regulation of Electric Suppliers* ("*Electric Supplier Rules*"), § 8.0 (adopted by PSC Orders Nos. 7023 (Sept. 5, 2006) & 7078 (Nov. 21, 2006)).

In July of 2007, the General Assembly expanded that statutory command: (a) to widen the customer classes eligible for net metering; (b) to increase permissible generator capacities for these additional classes of eligible customers; (c) to more particularly define the types of renewable generation eligible for net metering; and (d) to expand the "net metering" obligation beyond Commission-jurisdictional utilities. See 76 Del. Laws ch. 164 §§1-3 (July 24, 2007), amending 26 **Del.C.** §1014.

As a result of these statutory changes, the Commission now proposes changes to the "net metering" section of its *Electric Supplier Rules*. You can review the proposed amendments at the Commission's office in

Dover at the address below (and obtain copies for \$0.25 per page) or visit the Commission's Internet website located at <http://depsec.delaware.gov>, under PSC Order No. 7326 (Dec. 4, 2007). You can also review PSC Order No. 7326 and the proposed amendments in the January 2008 issue of the *Delaware Register of Regulations*.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed revisions to its "net metering" rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **Wednesday, February 6, 2008**. You should file such materials with the PSC at the following address:

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

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to karen.nickerson@state.de.us.

A Commission Hearing Examiner will conduct an Evidentiary Hearing to consider the proposed amendments and to receive comment and evidence concerning it on **Tuesday, March 25, 2008** at 10:00 a.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed "net metering" amendments on the basis of the evidence and information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 **Del.C.** §§362 and 1014(d).

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to funmi.jegede@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

3006 Rules for Certification and Regulation of Electric Suppliers

1.0 Definitions

"Affiliated Interest" means:

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

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

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

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

"Commission" means the Delaware Public Service Commission

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

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

"Delmarva Power & Light Company" or **"Delmarva"** or **"DP&L"** or its successor(s).

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

"Distribution Facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to Retail Electric Customers, up

through and including the point of physical connection with electric facilities owned by the Retail Electric Customer.

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

“Electric Supplier” means an entity or person certified by the Commission, including municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999), Broker, Marketer or other entity (including public utilities and their affiliates), that sells electricity to Retail Electric Customers, utilizing the Transmission and Distribution Facilities of an Electric Distribution Company.

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

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

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

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

“FERC” means the Federal Energy Regulatory Commission.

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

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

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

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

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

“Residential Customer” means a Retail Electric Customer eligible to take Residential services under the Delmarva Power or the Delaware Electric Cooperative’s tariff, currently on file with the Commission.

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

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

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

“Small Commercial Customer” means a Retail Electric Customer taking service under DP&L’s tariff, currently on file with the Commission, Service Classification “Small General Service-Non Demand Rate” or the Cooperative’s tariff, currently on file with the Commission, Service Classification “General Service.” However, for the purposes of these Rules, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for Electric Supply Service shall be exempt from the definition of a Small Commercial Customer.

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

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

“State” means The State of Delaware.

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

“Transition Period” means the period of time described in 26 Del.C. §1004, which: begins October 1, 1999 and ends May 1, 2006 for Delmarva’s customers; and begins April 1, 2000 and ends March 31, 2005 for all Cooperative customers.

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

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

2.0 Certification of Electric Suppliers

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

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

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

2.1.1.2 Resident Agent. Pursuant to 26 Del.C. §401, each Applicant shall file a designation in writing of the name and post-office address of a person resident within the State upon whom service of any notice, order or process may be made. This information must be updated if changed.

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

2.1.1.4 Compliance with Regional Requirements. Each Applicant, except for Brokers, must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver

electricity through compliance with all applicable requirements of PJM. Brokers must submit relevant evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service must procure electricity from an entity that complies with PJM's requirements and is a Certified Electric Supplier in the State.

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

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

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

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

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

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

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

2.1.1.5.7 If the Applicant requires deposits, advance payments, prepayments, financial guarantees or the like from customers, then the Applicant must secure a bond with corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The amount of the bond will be the greater of (i) 150 percent of the projected amount of deposits and advances for the next one year period; or (ii) \$50,000. If at any time the actual amount of the deposits and advances held by the Applicant exceeds the amount projected, the amount of bond shall be increased to comply with the requirement in the preceding sentence.

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

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

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

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

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

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

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

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

2.1.1.5.9.7 Guarantee, issued by a corporation, co-partnership, or

other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

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

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

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

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

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

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

2.1.1.8 Other Requirements:

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

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

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

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

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

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

2.1.1.9 Contracts. At the time of the filing, the Applicant shall either provide its Standard Contract for Residential and Small Commercial Customer or a link to it on the Applicant's website. Such contract is subject to review by the Commission Staff and if Staff determines that such contract is not consistent with these Rules for Certification and Regulation of Electric Suppliers ("Rules"), then Staff shall have the authority to require changes in order to make consistent with these Rules or Electric Supplier faces revocation of its Electric Supplier Certificate by the Commission after a hearing. Such contract shall be in clear and plain language and include explicit terms and conditions which at a minimum contain the following:

2.1.1.9.1 A clear statement of the duration of the contract;

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

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

2.1.1.9.4 A statement of the Electric Supplier's termination rights, which shall explain the specific conditions, under which the Electric Supplier may terminate service. At a minimum, the Electric Supplier shall provide the Residential or Small Commercial Customer with at least 30 days notice of termination of the contract and procedures to maintain ongoing service;

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

2.1.1.9.6 A statement informing the Residential or Small Commercial Customer that, because of relocation outside of their current EDC's service territory, they he/she may terminate his/her contract with his/her Electric Supplier with no termination fee upon a 30-day notice in writing to the Electric Supplier.

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

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

for Certification.

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

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

3.0 Post-Certification Requirements

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

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

3.3 Transfer or Abandonment of ESC. The transfer of an ESC is prohibited without express Commission Order. No Electric Supplier shall abandon Electric Supply Service within the State without 60 days written notice to the Commission, the affected Electric Distribution Companies, and its Retail Electric Customers.

3.4 Contracts and Revised Contracts. An Electric Supplier shall supply Electric Supply Service to a Residential or a Small Commercial Customer only by a standard contract containing the provisions described in Section 2.1.1.9, of these Rules. The contract must be signed or verifiable by some other means of authorization by the Residential or Small Commercial Customer. If an Electric Supplier offers a Retail Electric Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the contract signature. A Residential or Small Commercial Customer has ten (10) calendar days from the day the EDC sends the confirmation letter to rescind his/her selection. If the Electric Supplier makes substantive changes to its standard contract for Electric Supply Service to Residential or Small Commercial Customers, the Electric Supplier must notify the Commission Staff to allow for review and comment. If Staff determines that such contract is not consistent with these Rules, Commission Staff shall have the authority at any time to require changes to a standard contract for Residential or Small Commercial Customers.

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

3.6 Information that Must be Provided to a Customer by the Electric Supplier. The Electric Supplier must provide the Retail Electric Customer with a copy of its contract which includes the terms and conditions of service.

3.7 Customer Information. An Electric Supplier may request a list from an Electric Distribution Company which contains Retail Electric Customer's name, service address and mailing address. A Retail Electric Customer may elect to opt out of the list.

3.8 Marketing and Advertising.

3.8.1 Pursuant to 26 **Del.C.** §1012(b) and as further defined in Section I of these Rules, all Electric Suppliers shall not solicit Retail Electric Customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.

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

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

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

3.10 Fees and Assessments. Electric Suppliers must pay applicable fees and assessments under 26 **Del.C.** §1012(c)(2). Electric Suppliers must also file any applicable reports required under 26 **Del.C.** §115(e). The

Electric Supplier, except Brokers, must also pay the Public Utilities Taxes pursuant to 30 Del.C. Chapter 55.

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

4.0 Billing and Metering

4.1 Billing Options.

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

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

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

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

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

4.2.3 The due date for payment;

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

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

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

4.2.7 The total charge for each service or product;

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

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

4.2.10 Appropriate taxes and fees; and

4.2.11 If applicable, late fees as defined in the contract.

4.3 Metering.

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

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

5.0 Customer Protection

5.1 Procedures to be followed by the Retail Electric Customer:

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

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

5.2 Procedures to be Followed by the Electric Supplier:

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

5.2.2 An Electric Supplier shall have customer service representatives to handle its Retail Electric Customer's inquiries and complaints.

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

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

5.2.4.1 Type of complaint;

5.2.4.2 Date of complaint;

5.2.4.3 Resolution; and,

5.2.4.4 Date resolved.

5.3 Slamming. An Electric Supplier must obtain verifiable authorization from the Retail Electric Customer before switching Electric Supply Service. If a Retail Electric Customer believes that their Electric Supply Service has been switched without authorization, the Retail Electric Customer may request that the Electric Supplier provide evidence of the authorization and verification. The Electric Supplier must submit this within five (5) business days if feasible, but no longer than 15 business days of the request. If the Retail Electric Customer is not satisfied with this response, the Retail Electric Customer may also file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

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

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

6.0 Green Power and Renewable Resources

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

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

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

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

6.5 An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless it meets the minimum resource mix requirement of paragraph 2 of this Section.

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

7.0 Disclosure of Fuel Resource Mix

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

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

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

7.1.3 The fuel resource mix by percentage for each resource.

7.2 Each electric supplier shall also disclose the information under paragraph 7.1.3 to its retail electric customers annually via bill inserts and each other quarter by providing information on the retail electric customer's bill for that quarter directing the retail electric customer to obtain the information on the electric supplier's website or by a telephone request. Each electric supplier must maintain and update the information in paragraph 7.1.3 as required by 26 Del.C. §1012. Information reported under paragraph 7.1.3 may be utilized in any consumer education program developed in accordance with 26 Del.C. §1014 (c).

7.3 If an Electric Supplier, except Brokers, cannot provide the data in paragraph 1(c) specifically for its Retail Electric Customers in Delaware, then the Commission will accept comparable percentages for the load served in PJM.

8.0 Net Energy Metering

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

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

~~8.1.2 The facility uses renewable resources;~~

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

~~8.1.4 The facility is not used by the Retail Electric Customer to supply property other than the~~

~~Customer's premises.~~

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

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

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

8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Annualized Period" means a period of 12 consecutive monthly billing periods ending at the discretion of the Customer, either December 31st or July 31st of each year or the nearest billing cycle. A Customer-generator's first Annualized Period begins on the first day of the first full monthly billing period after which the Customer-generator's facility is interconnected and is generating electricity.

"Avoided Cost of Wholesale Power" means the annual average locational marginal price ("LMP") of energy in the applicable energy supplier's transmission zone. This cost (including the method of calculation) can be obtained through the Electric Supplier's tariff as approved by the Commission.

"Customer-generator" means a residential, commercial, or industrial Customer that generates electricity on the Customer's side of the meter.

"Customer-generator Facility" means the equipment used by a Customer-generator to generate, manage, and monitor electricity. A Customer-generator facility typically includes an electric generator and/or an equipment package, as defined herein (also referred to as the "generating facility" or "generator").

"NEG" means Net Excess Generation.

"Net Metering" means a system of metering electricity in which the Electric Supplier credits a Customer-generator at the full applicable retail rate by classification for each kilowatt-hour produced by a renewable energy system installed on the Customer-generator's side of the electric revenue meter, up to the total

amount of electricity used by that Customer during an Annualized Period. At the end of the Annualized Period, any remaining credits are to be credited to the Green Energy Fund at a rate equal to the Electric Supplier's Avoided Cost of Wholesale Power.

8.2 General Provisions

8.2.1 Each Electric Supplier providing Electric Supply Service to Residential, and Non Residential Customers shall offer these Retail Electric Customers the option of net energy metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.2.1.1 The Retail Electric Customer owns or operates the electric generation facility; with a capacity that:

8.2.1.2 Will not exceed 25 kW per DP&L meter for Residential Customers;

8.2.1.3 Will not exceed 2 MW per DP&L meter for Non Residential Customers;

8.2.1.4 Is intended primarily to offset all or part of the Customer's own electricity requirements;

8.2.1.5 Uses as its primary source of fuel - solar, wind, hydro, a fuel cell powered by renewable fuels, or gas from the anaerobic digestion of organic material;

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

8.2.1.7 Is not used by the Retail Electric Customer to supply property other than the Customer's premises.

8.3 Net metering is the interconnection with Distribution Facilities through a single meter at the supplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.

8.3.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the net-metering Customer, at the expense of the Electric Supplier.

8.3.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

8.4 If, during any billing period, a Retail Electric Customer's facility generates more energy than that consumed by the Customer, the Electric Supplier will credit the Customer in kilowatt-hours (kWh), valued at an amount per kilowatt-hour: (1) equal to the sum of delivery service charges and supply service charges for Residential Customers but does not include the monthly Customer charge; and (2) the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non Residential Customers for any excess production of their generating facility that exceeds the Customer's on-site consumption of kWh in a billing period.

8.4.1 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 or until the end of the annualized billing period.

8.4.2 Any unused credits at the end of the 12-month period shall be forfeited to the Electric Supplier at the Electric Supplier's Avoided Cost of Wholesale Power for use solely to augment existing funding for the Green Energy Fund.

8.4.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.

8.4.4 The Customer-generator retains ownership of Renewable Energy Credits ("REC") associated with electric energy produced and consumed by the Customer-generator. The RECs associated with NEG convey to the purchasing Electric Supplier.

8.4.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not net-metering would be charged. Electric Suppliers shall not charge a net-metering Customer any stand-by fees or similar charges.

8.4.6 If a net metering Customer terminates its service with the electric provider (or switches electric providers), the electric provider shall treat the end of service period as if it were the end of the Annualized Period for any excess kWh credits at the electric provider's Avoided Cost of Wholesale Power.

8.4.7 If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds 1 percent (1%) of the capacity necessary to meet the electric utility's

aggregated Customer monthly peak demand for a particular calendar year, the electric utility may elect not to provide net metering services to any additional Customer-generators

8.5 Any requirements necessary to permit interconnected operations between the Retail Electric Customer's generating 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 ("IREC") Model Interconnection Rules and best practices identified by the U.S. Department of Energy.

8.6 Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the annualized billing period. The report shall include the following information from the prior compliance year:

8.6.1 The total number of Customer-generator facilities;

8.6.2 The total estimated rated generating capacity of its net-metered Customer-generators;

8.6.3 The total estimated net kilowatt-hours received from Customer-generators; and

8.6.4 The total estimated amount of energy produced by Customer-generators, using a methodology approved by the Commission.

8.7 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.

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

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

10.0 Other General Rules

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

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

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

11 DE Reg. 901 (01/01/08) (Prop.)