

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

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

FINAL

ORDER

3013 Rules for and Regulation of Community Energy Facilities

IN THE MATTER OF THE ADOPTION OF
RULES AND REGULATIONS TO
IMPLEMENT THE PROVISIONS OF
SENATE BILL NO. 2 (SEPT. 2021) WHICH
AMENDED TITLES 6, 26, AND
29 OF THE DELAWARE CODE
RELATING TO COMMUNITY OWNED
ENERGY GENERATING FACILITIES
(OPENED OCTOBER 25, 2023)

PSC REGULATION DOCKET NO. 66

ORDER NO. 10432

AND NOW, this 18th day of April 2024, the Delaware Public Service Commission ("Commission") determines and orders as follows:

WHEREAS, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10114, the Commission is authorized to grant or deny proceedings for the adoption, amendment, or repeal of a regulation upon the motion of an agency member; and

WHEREAS, on December 20, 2023, the Commission re-opened Regulation Docket No. 49, as Commission Staff ("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 to separate Electric Suppliers, Community Energy Facility, and Net Energy Metering to relieve administrative burden on Staff, as well as provide benefit to the public for ease of reference; and

WHEREAS, on December 20, 2023, Staff requested that the Commission open Regulation Docket No. 66 for promulgation of the *Rules for and Regulation of Community Energy Facilities* ("Proposed CEF Rules"), and create a new section of Title 26 Administrative Code, Section 3013 ("Section 3013") for the proposed regulation; and

WHEREAS, on December 20, 2023, by Order No. 10356, the Commission opened this docket, approved publication of the Proposed CEF Rules, directed the Secretary of the Commission ("Secretary") to transmit the Proposed CEF Rules to the Registrar of Regulations ("Registrar") for publication in the February edition of the *Delaware Register of Regulations*, 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 March 6, 2024, with the public comment period remaining open until March 21, 2024; and

WHEREAS, pursuant to 26 *Del. C.* § 102A, the Secretary published the required public notice on the Commission's website located at <https://depssc.delaware.gov>, and in *The News Journal* newspapers and in the *Delaware State News* newspapers, with the certification of the completion of these tasks filed on January 23, 2024; and

WHEREAS, pursuant to 26 *Del. C.* § 209(a) on March 6, 2024 the Commission conducted a public hearing to consider written comments submitted by February 27, 2024; and

WHEREAS, no written comments were submitted for the March 6, 2024 public hearing; and

WHEREAS, no oral public comments were provided at the March 6, 2024 public hearing; and

WHEREAS, the public comment period remained open until March 21, 2024¹; and

WHEREAS, no written comments were received by the March 21, 2024 comment deadline; and

¹ 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.

WHEREAS, the Commission has reviewed the proposed regulation as required by 29 Del. C. § 10118(b)(3)² and has determined that if promulgated, the regulation will support the State's resiliency to climate change by promoting the use of solar energy and installation of solar facilities, giving customers more energy source options and contributing to the State's greenhouse gas emissions reduction targets; and,

WHEREAS, Staff has made no changes to the Proposed CEF Rules as published in the February 2024 edition of the *Delaware Register of Regulations*; and,

WHEREAS, the Commission finds that the Proposed CEF Rules as published in the February 2024 edition of the *Delaware Register of Regulations* are administratively beneficial for Staff, and provide the public a greater ease of reference. The Commission finds that it is appropriate to adopt the Proposed CEF Rules as final and to create a new section of the administrative code, 26 Del. Admin. C. § 3013;

**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 and Regulation of Community Energy Facilities*, to be codified in the new section, 26 Del. Admin. C. § 3013. A marked-up version of the Rules reflecting the amended sections is attached as Exhibit "A".

2. That, pursuant to 29 Del. C. §§ 10113 and 10118, the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the June 1, 2024 edition of the *Delaware Register of Regulations*. An exact copy of the Rules shall be published as the current official regulations in the *Delaware Register of Regulations*.

3. That, pursuant to 29 Del. C. § 10118(g), the effective date of the proposed final regulation shall be the later of June 11, 2024, 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.

² 29 Del. C. §10118(b)(3) requires the Commission to include in the order a brief narrative assessment of the impact, if any, of the regulation on the achievement of the State's greenhouse gas emissions reduction targets, as specified in § 10003 of Title 7, and the impact of the regulation on the State's resiliency to climate change, or a statement that any such impact will be de minimis or that such assessment is not practical for the regulation. If prepared, the narrative assessment should include a brief description of the agency's efforts to consider climate change, resiliency, and the State's greenhouse gas emissions reduction targets in developing the regulation.

BY ORDER OF THE COMMISSION:

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

ATTEST: Crystal Beenick, Commission
Secretary

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

3013 Rules for and Regulation of Community Energy Facilities

1.0 Definitions

The following words and terms when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Affiliate 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 affiliate interest as defined in this regulation; 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 community energy facility. "Agent" does not include brokers or aggregators.

"Applicant" means 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.

"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 26 **DE Admin. Code** 3013.

"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 this regulation and other applicable law. Contracts for 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 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.

"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 the customer 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 or an equipment package, shall:

1. Satisfy all of the applicable requirements of 26 **DE Admin. Code** 3012 Net Metering;
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 successors.

"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 a community energy facility or its agent, personally solicits a residential or small commercial customer to sell community energy facility subscriptions. This term includes sales made at a place other than the 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 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 or operating transmission or distribution facilities in Delaware.

"Electric supplier" means an entity or person certified by the Commission that sells electricity to customers utilizing the transmission 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 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 messages transmitted to or from any address affiliated with an internet site.

"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 (defined by 26 Del.C. §1001) 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 2104, 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 2104, 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.

"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 Section 5.0 of this regulation. 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.

"Generation attribute" means a non-price characteristic of the electrical energy output of a generation unit, including the unit's fuel type, geographic location, emissions, vintage, and renewable portfolio standard eligibility.

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

"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".

"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 Section 6.0 of this regulation.

"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 Section 4.0 of this regulation, 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 community energy facility for subscription credits pursuant to the contract.

"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 or allowances encumbered or used by a generation unit for compliance with local, state, or federal operating 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 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.

"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 Delaware Electric Coop. tariff governing service classification "General Service." However, for the purposes of this regulation, 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.

"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, a community energy facility to a residential or small commercial customer in order to market community energy facility subscriptions.

"TPV" means a a third party verification used as method to record consent from a residential or small commercial customer agreeing to each of the material listed in this regulation and 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 the customer is voluntarily choosing to enroll with 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 the customer is the account holder or authorized to make the switch;
7. If a small commercial customer, that the customer 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 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 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 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).

"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.

"Written notice" means notice in writing, mailed by First Class mail to the person who is being given notice, sent to the current billing address as shown on the records of the electric distribution company or 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.

2.0 Project Eligibility

2.1 To be eligible for certification as a community energy facility, a generating facility must:

2.1.1 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;

2.1.2 Include a technology defined as an "eligible energy resource" under 26 **Del.C.** §352(6)a-h;

2.1.3 Not exceed a capacity of 4 megawatts as measured by the alternating current (AC) rating. Co-location of community energy facilities, which together have a capacity greater than 4 megawatts, shall not be permitted;

2.1.3.1 "Co-location" means the siting of 2 or more community energy facilities owned or developed by a single entity (or its affiliate Interests) located on 1 parcel of land, or on contiguous parcels of land.

2.1.3.2 "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;

2.1.3.3 Parcels that are subdivided after July 1, 2021 shall be considered as a single parcel;

- 2.1.3.4 Projects owned or developed by separate entities (meaning that they are not affiliates) are not considered co-located; and
- 2.1.3.5 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 affiliate interests, these two projects will be considered co-located.
- 2.1.4 Be located in Delmarva's service territory, in Delaware;
- 2.1.5 Interconnect to the distribution facilities and operate in parallel with Delmarva's transmission and distribution facilities;
- 2.1.6 Comply with Delmarva's interconnection tariffs and operating guidelines; and
- 2.1.7 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.

3.0 Applications to the Commission

- 3.1 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 Section 6.0 of this regulation, 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.
- 3.2 Applicants must comply with the electronic filing requirements of 26 DE Admin. Code 1001, "Rules of Practice and Procedure of the Commission".

4.0 Application for Preliminary Certificate to Operate

- 4.1 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.
- 4.2 Applications for a preliminary certificate to operate must contain at least the following:
 - 4.2.1 Application fee. An applicant for a preliminary certificate to operate shall submit a non-refundable application fee of \$750 with the application;
 - 4.2.2 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 affiliate interests, or any current or previous officer, director, or manager has previously done business in Delaware;
 - 4.2.3 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;
 - 4.2.4 Authorization. Documentation from the Delaware Secretary of State, issued within 90 days of filing, and the Delaware Division of Revenue, that the applicant is legally authorized and qualified to do business in the State;
 - 4.2.5 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;
 - 4.2.6 Leadership. The names, titles, addresses, and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials;
 - 4.2.7 Corporate structure. A description of the applicant's corporate structure, including any affiliate interests engaged in operations in the United States related to energy. Include a graphical depiction of such structure;
 - 4.2.8 Contact information. The name, title, e-mail address (if applicable), mailing address and telephone number of the applicant;
 - 4.2.9 Website. The community energy facility's website address (if any), accessible to prospective and current subscribers;
 - 4.2.10 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;
 - 4.2.11 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;

- 4.2.12 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
- 4.2.13 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.
- 4.3 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.
- 4.4 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 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 12 months, for good cause shown.

5.0 Application for Final Certificate to Operate

- 5.1 After the community energy facility complies with subsections 6.1.1 and 6.1.2, it may then seek a final certificate to operate from the Commission.
- 5.2 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.
- 5.3 Applications for a final certificate to operate must contain at least the following:
 - 5.3.1 Changes. Any changes to the information provided with the application for a preliminary certificate to operate, submitted under Section 4.0 of this regulation;
 - 5.3.2 Regulatory contact person. The contact information for a regulatory contact person (if applicable) responsible for the community energy facility's Delaware operations;
 - 5.3.3 Subscriber complaint contact person. The contact information for a subscriber complaint contact person, if different from the regulatory contact person;
 - 5.3.4 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;
 - 5.3.5 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;
 - 5.3.6 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;
 - 5.3.7 Criminal activities:
 - 5.3.7.1 A statement detailing any criminal activities relating to fraud or financial misconduct, of which the applicant or any of its affiliate interests, officers, and directors (and prior officers and directors who left the applicant's employ less than 3 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;
 - 5.3.7.2 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:
 - 5.3.7.2.1 Delaware state and county courts for crimes committed within the past 5 years;
 - 5.3.7.2.2 A nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System for crimes committed within the past 5 years;
 - 5.3.7.2.3 The U.S. Department of Justice National Sex Offender Public Registry for crimes committed within the past 10 years; and
 - 5.3.7.2.4 Every other state in which the agent resided during the last 12 months for crimes committed within the past 5 years.

- 5.3.7.3 Nothing in this regulation shall prohibit a community energy facility from conducting background checks on its agents that are more extensive than the requirements in subsection 5.3.7.2, in accordance with applicable law.
- 5.3.8 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 8.0 of this regulation 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;
- 5.3.9 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 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;
- 5.3.10 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;
- 5.3.11 Bankruptcy. A disclosure as to whether the applicant, or any of its affiliate interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 60 months;
- 5.3.12 Staff request. Other commercially reasonable indicia of financial capability, upon a request from staff;
- 5.3.13 Services. A description of the services it plans to offer in the State, including the types of subscribers to be served and services provided;
- 5.3.14 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;
- 5.3.15 Other states. A list of states or federal jurisdictions in which the applicant or any of its affiliate interests has:
- 5.3.15.1 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);
 - 5.3.15.2 Been denied approval to sell subscriptions or act as a community energy facility;
 - 5.3.15.3 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;
 - 5.3.15.4 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:
 - 5.3.15.4.1 The applicant;
 - 5.3.15.4.2 Any of the applicant's affiliate interests;
 - 5.3.15.4.3 Any officer, principal, or director of the applicant; or
 - 5.3.15.4.4 Any prior officer, principal, or director serving in that capacity at the time of the judicial or regulatory action; and
 - 5.3.15.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past 5 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;
- 5.3.16 Copies of orders. A copy of any document, order, or decree identified in response to subsection 5.3.15;

- 5.3.17 Copies of settlements. 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
- 5.3.18 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.
- 5.4 Review of the application for final certificate to operate. Staff shall make a recommendation to the Commission to approve or deny the application within 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.
- 5.5 Terms of final certificate to operate. Final certificates to operate are valid until revoked by the Commission pursuant to subsection 14.5 or relinquished by the community energy facility after the requisite notice to the Commission and to its subscribers.
- 5.6 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 4 months of a failure by the applicant to respond to such requests.
- 5.7 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 this regulation that are not required by statute. The waiver may not be inconsistent with the purpose of this regulation, 26 Del.C. §1001 *et seq.*, or state or federal consumer protection laws.
- 5.8 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 15 business days after the change may be grounds for rejection of the application.
- 5.9 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.

6.0 Permission to Operate from Delmarva

- 6.1 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:
- 6.1.1 A description of the energy generating facility, including the facility's host location, capacity, and fuel type or generating technology; and
- 6.1.2 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.
- 6.2 After the community energy facility complies with subsections 6.1.1 and 6.1.2, it may then seek a final certificate to operate from the Commission as set forth in Section 5.0 of this regulation.
- 6.3 After receiving a final certificate to operate from the Commission, the community energy facility shall submit to Delmarva:
- 6.3.1 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;
- 6.3.2 The subscribed percentage of generation attributed to each subscriber;
- 6.3.3 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 2 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
- 6.3.4 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.
- 6.4 Delmarva will consider a request to convert an existing net metering interconnection application under 26 DE Admin. Code 3012 to a community energy facility interconnection application under 26 DE Admin. Code 3013 to be a new application, which would create a new interconnection position.

7.0 Low-income Customer Verification

- 7.1 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:
- 7.1.1 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
 - 7.1.2 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.
 - 7.1.3 For owners or operators of master-metered buildings, a written attestation that their tenants meet the income eligibility requirements for low-income customers.
- 7.2 When the community energy facility provides Delmarva with its low-income customer certification under subsection 6.3.4, 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.
- 7.3 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.
- 7.4 Every 3 years, the community energy facility shall certify to the Commission in writing that it meets the low-income requirements as set forth in subsection 6.3.4 and Section 7.0 of this regulation.

8.0 Community Energy Facility Contracts and Contract Summaries:

- 8.1 Only a community energy facility with a final certificate to operate may execute a contract for community energy facility credits with a subscriber.
- 8.2 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:
- 8.2.1 Be printed in Times New Roman 12-point font; and
 - 8.2.2 Have 1-inch margins on all sides and utilize reasonable numbering, lettering, line, and paragraph spacing.
- 8.3 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:
- 8.3.1 A list and description of the contract services;
 - 8.3.2 The contract duration, expressed in months or years, or the disclosure that the contract is month-to-month;
 - 8.3.3 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;
 - 8.3.4 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;
 - 8.3.5 A description of any other services provided to the subscribers as part of the contract;
 - 8.3.6 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;
 - 8.3.7 A statement regarding the rescission period that:
 - 8.3.7.1 The subscriber may rescind the contract within 3 business days from the start of the rescission period; and
 - 8.3.7.2 The rescission period begins on 1 of the following dates, as applicable:
 - 8.3.7.2.1 When the subscriber signs the contract;
 - 8.3.7.2.2 When the subscriber transmits the acceptance of the contract electronically; or
 - 8.3.7.2.3 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 3 business days after it has been properly deposited in the United States mail; and

- 8.3.8 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;
- 8.3.9 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 30 days' written notice of termination of the contract;
- 8.3.10 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;
- 8.3.11 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;
- 8.3.12 A statement that the community energy facility may terminate the contract prior to the stated term of the contract, including:
 - 8.3.12.1 The circumstances under which early cancellation by the community energy facility may occur;
 - 8.3.12.2 The manner in which the community energy facility shall notify the residential or small commercial subscriber of the early cancellation of the contract;
 - 8.3.12.3 The duration of the notice period before early cancellation by the community energy facility; and
 - 8.3.12.4 The remedies available to the residential or small commercial subscriber if early cancellation occurs;
- 8.3.13 A statement that the subscriber may terminate the contract prior to the stated term of the contract, including:
 - 8.3.13.1 The manner in which the subscriber shall notify the community energy facility of the early cancellation of the contract;
 - 8.3.13.2 The duration of the notice period before early cancellation;
 - 8.3.13.3 The remedies available to the community energy facility if early cancellation occurs; and
 - 8.3.13.4 The amount of any early cancellation fee;
- 8.3.14 A statement describing contract renewal procedures, if any, including the timing of the notices that the subscriber will receive prior to the renewal date;
- 8.3.15 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;
- 8.3.16 If a community energy facility requires a security deposit from a subscriber:
 - 8.3.16.1 The amount of the security deposit;
 - 8.3.16.2 A description of when and under what circumstances the security deposit will be returned;
 - 8.3.16.3 A description of how the security deposit may be used; and
 - 8.3.16.4 A description of how the security deposit will be protected;
- 8.3.17 The data privacy policies of the community energy facility;
- 8.3.18 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
- 8.3.19 The method of providing notice to the subscribers when the community energy facility is out of service for more than 3 business days, including notice of the estimated duration of the outage and the estimated production that will be lost due to the outage.
- 8.4 A contract for residential subscribers or small commercial may not:
 - 8.4.1 Provide the application of the law of any jurisdiction other than the United States and Delaware;
 - 8.4.2 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;
 - 8.4.3 Provide for a location of arbitration outside of the county of the residential subscriber's residence or the small commercial subscriber's location; or
 - 8.4.4 Contain a provision that limits or releases the liability of the community energy facility for not performing the contract.
- 8.5 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.
- 8.6 If a residential or small commercial contract is completed through the internet, the executed contract and completed contract summary shall be:
 - 8.6.1 Made available for download by the subscriber at the time of contracting; and

- 8.6.2 Transmitted to the subscriber by the community energy facility by mail or by email if the subscriber consents to receipt of email disclosures.
- 8.7 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.
- 8.8 A subscriber that wants to cancel a contract shall first attempt to cancel the contract according to the terms of the contract.
- 8.9 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.
- 8.10 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 30 days and no more than 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 5 years.
- 8.11 The written notice to residential and small commercial subscribers required under subsection 8.10 shall:
- 8.11.1 Be printed in Times New Roman 12-point typeface or larger with 1-inch margins on all sides, and reasonable numbering, lettering, line and paragraph spacing;
- 8.11.2 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;
- 8.11.3 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
- 8.11.4 Inform the subscriber how to terminate the contract without penalty.
- 8.12 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 5 years after enrollment or termination of the contract, whichever is later.

9.0 Subscription Requirements

- 9.1 A subscriber shall not receive credit for more than 110% of the subscriber's expected aggregate electrical consumption, calculated on the average of the 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.
- 9.2 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.
- 9.3 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 30 days of the change. In cases of relocation, subscribers are entitled to at least 1 revision to their subscription size per move.
- 9.4 Subscribers shall not sell or transfer a community energy facility subscription to another party other than the community energy facility owner.
- 9.5 The community energy facility shall provide updated individual subscriber's subscribed percentage to Delmarva if there are any changes to subscriber's subscribed percentage.
- 9.6 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 2 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.
- 9.6.1 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 2 previous 12-month periods of actual electrical usage, utilized at the time of the reassessment.
- 9.6.2 In cases where the community energy facility fails to provide a subscriber's updated subscribed percentage within 30 days after notification by Delmarva, Delmarva shall be permitted to set the subscriber's percentage of credits to zero.
- 9.6.3 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.
- 9.7 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.

- 9.8 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.
- 9.8.1 REC means renewable energy credit, 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 or allowances encumbered or used by a generation unit for compliance with local, state, or federal operating or air quality permits associated with the 1 megawatt-hour of electricity.
- 9.8.2 SREC means solar renewable energy credit, 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.
- 9.9 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 30 days prior to the requested change.
- 9.10 The community energy facility may update its subscribers' percentage of generation allocation no more than once per month. The community energy facility shall provide 30 days' written notice to Delmarva before any such changes.
- 9.11 Delmarva shall only allow meter aggregation for subscriber accounts for which Delmarva provides electric distribution services.
- 9.12 Delmarva may require all subscribers of a community energy facility to have their meters read on the same billing cycle.
- 9.13 A subscriber may subscribe to more than 1 community energy facility but not more than 4, and no subscriber may subscribe for greater than 110% of their aggregate electrical consumption as defined in 26 Del.C. §1014(f)(2).

10.0 Community Energy Facility Bills to its Subscribers

- 10.1 The community energy facility alone is responsible for the billing and collection of any subscription fees directly to subscribers.
- 10.2 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:
- 10.2.1 The name, address, website (if any), and customer service telephone number of the community energy facility;
- 10.2.2 The due date for payment;
- 10.2.3 If applicable, an itemized list of each service or product billed for the current billing period including other agreed to charges;
- 10.2.4 The number of credits (kWh) generated by the community energy facility for the subscriber;
- 10.2.5 The actual price per credit (kWh) charged to the subscriber;
- 10.2.6 The total charge for each service or product;
- 10.2.7 The amount of payment or other credit applied to subscriber's outstanding balance during the billing period;
- 10.2.8 The amount still owed by the subscriber from the previous billing period;
- 10.2.9 Appropriate taxes and fees;
- 10.2.10 Definitions of material terms used in the bill; and
- 10.2.11 If applicable, late fees as defined in the contract. Late fees must be clearly identified as such.
- 10.3 A community energy facility without a valid Final Certificate to Operate shall not bill its subscribers.

11.0 Change in Ownership and Assignment of Contracts

- 11.1 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 Section 5.0 of this regulation

- 11.2 At least 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:
- 11.2.1 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;
- 11.2.2 Coordinate with Delmarva the transfer of ownership;
- 11.2.3 Send a letter to the subscribers informing them of the assignment or transfer. The letter shall include:
- 11.2.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;
- 11.2.3.2 Customer service contact information for the assignee; and
- 11.2.3.3 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.
- 11.3 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 5 years or until the contracts expire, whichever is longer.

12.0 Delmarva's Billing of Community Energy Facility Credits to Subscribers

- 12.1 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.
- 12.1.1 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.
- 12.1.2 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".
- 12.2 Annualized billing period. Delmarva shall establish an annualized billing period for each subscriber.
- 12.2.1 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.
- 12.2.2 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.
- 12.2.3 A subscriber may request a refund from Delmarva if a credit balance remains on their account at the end of the annualized billing period.
- 12.3 Unsubscribed Energy
- 12.3.1 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.
- 12.3.2 Delmarva shall not compensate community energy facilities for any unsubscribed energy that is greater than 10% of the community energy facility's generation output.

13.0 Delmarva's Recovery of Costs

- 13.1 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.
- 13.2 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.
- 13.2.1 Within 30 days of the effective date of this regulation, 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.

13.2.2 Reporting on the cost recovery mechanism shall be presented in semi-annual reports which shall be filed by Delmarva with the Commission.

13.2.3 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.

13.3 Energy offset. Delmarva shall use the energy generated from a community energy facility to offset purchases from wholesale electricity suppliers for standard offer service.

14.0 Regulation, Fees, Penalties

14.1 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).

14.2 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.

14.3 Community energy facilities shall adhere to State and the Federal Energy Regulatory Commission rules and regulations.

14.4 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.

14.5 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.

14.6 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.

15.0 Consumer Protection

15.1 Enforcement. In addition to the penalties described in subsection 14.5 of this regulation, 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 this regulation shall affect the right of the Consumer Protection Unit to enforce State consumer protection laws.

15.2 General consumer protections

15.2.1 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.

15.2.2 No community energy facility shall:

15.2.2.1 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;

15.2.2.2 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;

15.2.2.3 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

15.2.2.4 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.

15.2.3 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:

15.2.3.1 Upon authorization by the subscriber;

15.2.3.2 To a state or federal authority;

15.2.3.3 To Delmarva; or

15.2.3.4 As otherwise authorized by law.

15.3 Consumer protection relating to enrollment, marketing, and advertising

15.3.1 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 this regulation to fail to comply with such laws.

15.3.2 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:

15.3.2.1 Saying or suggesting to a prospective subscriber that they are required to choose a community energy facility;

15.3.2.2 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

15.3.2.3 Suggesting a relationship that does not exist with the subscriber's SOSS, Delmarva, any government agency, or another community energy facility.

15.3.3 Telephone Solicitations and Enrollments:

15.3.3.1 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.).

15.3.3.2 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.

15.3.3.3 The community energy facility shall maintain a copy of the recorded sales call and TPV, if applicable, for a period of 5 years after the expiration of the residential or small commercial subscriber's contract.

15.3.3.3.1 TPV means a a third party verification used as method to record consent from a residential or small commercial customer agreeing to each of the material listed in this regulation and 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:

15.3.3.3.1.1 That the customer is voluntarily choosing to enroll with a community energy facility;

15.3.3.3.1.2 Of the type of product offered (introductory, variable, fixed, or some combination);

15.3.3.3.1.3 Of the price that will be charged for the first month's service and when or if the price may change;

15.3.3.3.1.4 Of the duration of the contract;

15.3.3.3.1.5 Of the amount of an early termination fee (if applicable);

15.3.3.3.1.6 If a residential customer, that the customer is the account holder or authorized to make the switch;

15.3.3.3.1.7 If a small commercial customer, that the customer is authorized to make the switch;

15.3.3.3.1.8 That the residential or small commercial customer has been provided with information on how the contract can be renewed and, if applicable, what the community energy facility can do if the customer fails to respond to the renewal notice;

15.3.3.3.1.9 That the residential or small commercial customer has been provided information on how to access the community energy facility's historical pricing information;

- 15.3.3.3.1.10 That the residential or small commercial customer has been provided information on how to access future pricing information; and
 - 15.3.3.3.1.11 That the residential or small commercial customer has received the community energy facility's customer support contact information.
- 15.3.3.4 The community energy facility shall immediately halt any telemarketing call upon the request of the prospective residential or small commercial subscriber.
- 15.3.4 Door-to-Door Solicitations and Enrollments
 - 15.3.4.1 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.
 - 15.3.4.2 For door-to-door sales, the agent shall promptly:
 - 15.3.4.2.1 Identify the community energy facility they are representing;
 - 15.3.4.2.2 State that the individual and the community energy facility do not represent Delmarva or any governmental agency;
 - 15.3.4.2.3 State that the purpose of the visit is to sell a community energy facility subscription;
 - 15.3.4.2.4 Prominently display an identification badge; and
 - 15.3.4.2.5 Offer a business card or other material that lists:
 - 15.3.4.2.5.1 The community energy facility's name and contact information, including telephone number; and
 - 15.3.4.2.5.2 The agent's name and any other identification numbers provided to the sales agent by the community energy facility or agent.
 - 15.3.4.3 Until the agent has provided the information required in subsection 15.3.4.2 of this regulation, an agent performing a door-to-door sale may not request a potential residential or small commercial subscriber's:
 - 15.3.4.3.1 Community energy facility account number;
 - 15.3.4.3.2 Delmarva account number; or
 - 15.3.4.3.3 Electric bill.
 - 15.3.4.4 In connection with any door-to-door sale, it is a violation of this regulation for any community energy facility or agent to:
 - 15.3.4.4.1 Fail to leave the prospective subscriber's premises upon request in a prompt and courteous manner; or
 - 15.3.4.4.2 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 business days from the date of the transaction.
- 15.3.5 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.
- 15.3.6 The community energy facilities shall not be entitled to the customer list described in 26 DE Admin. Code 3001, subsection 3.3.
- 15.3.7 Agent Training:
 - 15.3.7.1 A community energy facility shall ensure the training of its agents on the following subjects:
 - 15.3.7.1.1 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;
 - 15.3.7.1.2 The community energy facility's products and services;
 - 15.3.7.1.3 The community energy facility's prices, price structures and payment options;
 - 15.3.7.1.4 The subscriber's right to rescind and cancel contracts;
 - 15.3.7.1.5 The applicability of an early termination fee for contract cancellation when the community energy facility has one;
 - 15.3.7.1.6 The community energy facility's contract and contract summary;
 - 15.3.7.1.7 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;
 - 15.3.7.1.8 The proper completion of transaction documents;

15.3.7.1.9 Information about how subscribers may contact the community energy facility to obtain information about billing, disputes, and complaints; and

15.3.7.1.10 The confidentiality and protection of subscribers' customer information.

15.3.7.2 A community energy facility shall document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.

15.3.7.3 A community energy facility shall make training materials and training records available to the Commission, DPA, and the Consumer Protection Unit upon request.

15.3.7.4 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.

15.3.7.5 The community energy facility shall routinely monitor telemarketing calls and door-to-door sales calls to:

15.3.7.5.1 Evaluate the community energy facility's training program; and

15.3.7.5.2 Ensure that agents are providing accurate and complete information, complying with applicable regulations and providing courteous service to subscribers.

15.3.7.6 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.

16.0 Complaint Procedures

16.1 Complaint procedures to be followed by the subscriber (or a broker acting on behalf of a subscriber)

16.1.1 A subscriber (or a broker acting on behalf of a subscriber) should first notify the community energy facility of their complaint.

16.1.2 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.

16.1.3 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.

16.2 Complaint procedures to be followed by the community energy facility

16.2.1 The community energy facility shall use good faith efforts to respond to and resolve complaints.

16.2.2 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.

16.2.3 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 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.

16.2.4 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, the Consumer Protection Unit, or both.

16.2.5 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 this regulation.

17.0 Reports to be Provided to the Commission and DPA

17.1 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.

- 17.2 Required 10-Day notifications. Community energy facilities shall notify the Commission and the DPA within 10 business days of any of the following actions:
- 17.2.1 Revocation of authority to sell subscriptions in any jurisdiction;
 - 17.2.2 Revocation of an affiliate interest's authority to sell subscriptions in any jurisdiction; or
 - 17.2.3 A change in the principal officers responsible for Delaware operations previously provided pursuant to this regulation.
- 17.3 Required 30-Day notifications and annual reports. A community energy facility shall provide the following information to the Commission and the DPA within 30 calendar days of occurrence and annually by April 30th of each year:
- 17.3.1 Any changes in the community energy facility's name or tax identification number or employer identification number previously provided pursuant to this regulation;
 - 17.3.2 Any changes in the community energy facility's business address previously provided pursuant to this regulation;
 - 17.3.3 Any changes to the regulatory contact or customer complaint person previously identified pursuant to this regulation;
 - 17.3.4 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;
 - 17.3.5 Any changes to the organizational structure previously provided pursuant this regulation;
 - 17.3.6 A statement detailing any criminal activities relating to fraud or financial misconduct of which the community energy facility or any of its affiliate 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;
 - 17.3.7 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;
 - 17.3.8 A list of any states in which any formal complaint investigations have been initiated against the community energy facility or any of its affiliate interests since the filing of the last annual report; and
 - 17.3.9 A list of any states in which disciplinary actions have been taken against the community energy facility or any of its affiliate interests since the filing of the last annual report.
- 17.4 As required by subsection 7.4 of this Regulation, every 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 Section 7.0.

18.0 Delmarva Reporting Requirements

- 18.1 Delmarva shall submit an annual community energy facility 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:
- 18.1.1 The total number of community energy facilities;
 - 18.1.2 The total rated generating capacity of its community energy facilities;
 - 18.1.3 The total net kilowatt-hours received by subscribers from community energy facilities; and
 - 18.1.4 The total amount of energy produced by community energy facilities.
- 18.2 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.
- 18.3 Delmarva shall provide to the community energy facilities an informational report including the allocation of credits to subscribers in the corresponding billing period.
- 18.3.1 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.
 - 18.3.2 Within 30 days of the effective date of this regulation, Delmarva shall present a proposed form of the monthly report to the Commission for its review and approval.

19.0 Other General Rules

- 19.1 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(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.

19.2 Failure to Comply with 26 **DE Admin. Code** 3001 *et seq.*

19.2.1 The failure by any community energy facility to comply with the requirements in 26 **DE Admin. Code** 3013 and the requirements in other Sections of 26 **DE Admin. Code** 3001 *et seq.* may result in penalties, including monetary assessments, suspension, or revocation of the community energy facility's final certificate to operate, or other sanction as determined by the Commission.

19.2.2 If a 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 community energy facility's final certificate to operate after notice and an evidentiary hearing.

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