Docket No. 355-08

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

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IN THE MATTER OF THE INVESTIGATION INTO THE BUSINESS AND MARKETING PRACTICES OF HORIZON POWER AND LIGHT, LLC	))))	PSC DOCKET NO.

COMPLAINT

1. This Complaint is brought by the Staff ("Staff") of the Delaware Public Service Commission ("Commission") on behalf of the Commission. This Complaint is also brought pursuant to 26 *Del. C.* § 1019.

2. Horizon Power and Light, LLC ("Horizon") is an "Electric Supplier" as that term is defined in 26 *Del. C.* § 1001(11) and is subject to regulation by the Commission pursuant to 26 *Del. C.* Chapter 10.

3. As an Electric Supplier subject to regulation by the Commission, Horizon sells electricity to customers within the State of Delaware.

4. Horizon is a Maryland Limited Liability Company which is registered to do business in Delaware, and whose registered agent for service of process in Delaware is Delaware State Registered Agents, Co., 35A The Commons, 3524 Silverside Road, Wilmington, DE 19810.

5. On January 23, 2007, Horizon obtained an Electric Supplier Certificate from the Commission, as set forth in Commission Order No. 7104. Since then, Horizon has supplied electricity to thousands of customers in Delaware.

6. At all times relevant to this Complaint, Horizon was subject to the Commission's Rules For Certification And Regulation Of Electric Suppliers, adopted in

Commission Order No. 7078 (November 21, 2006) ("Regulations"). True and correct copies of Commission Order No. 7078 and the Regulations are attached hereto as Exhibit A.

7. Horizon is an "Electric Supplier" as that term is defined in Section 1.0 of the Regulations.

8. Section 3.5 of the Regulations provides:

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

9. Section 3.8.2 of the Regulations provides:

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

10. Section 3.8.3 of the Regulations provides:

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

11. In Section 1.0 of the Regulations, "Slamming" is defined as follows:

> The unauthorized enrollment of a customer without the customer's permission or the unauthorized transfer of a customer to another Electric Supplier.

12. Section 5.3 of the Regulations related to Slamming provides:

> An Electric Supplier must obtain verifiable authorization from the Retail Electric Customer before switching Electric Supply Service. If a Retail Electric Customer believes that their Electric Supply service has been switched without authorization, the Retail Electric Customer may request that the Electric Supplier provide evidence of the authorization and verification. The Electric Supplier must submit this

within five (5) business days if feasible, but no longer than 15 business days of the request. If the Retail Electric Customer is not satisfied with this response, the Retail Electric Customer may also file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

13. In Section 1.0 of the Regulations, "Cramming" is defined as follows:

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

14. Section 5.4 of the Regulations related to Cramming provides:

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

15. Section 5.5 of the Regulations provides:

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

16. Section 10. 2 of the Regulations provides:

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

17. Section 1019 of Title 26 of the Delaware Code authorizes the Commission to impose penalties and sanctions upon Electric Suppliers. The penalty shall not exceed

$5,000 for each violation and each day of noncompliance shall be treated as a separate violation.

18. The Commission has received complaints from more than 180 customers of Horizon. The customer complaints reflect possible violations of Sections 3.5, 3.8.2, 5.3, 5.4 and 5.5 of the Regulations by Horizon. In addition, the customer complaints may implicate Section 3.8.3 and other provisions of the Regulations.

19. On information and belief, Horizon made price term changes for thousands of its Residential and/or Small Commercial Customers, without providing the thirty (30) days written notice required by Section 3.5 of the Regulations. As a result of these unlawful price term changes, Horizon's customers were charged substantially higher rates than were available to customers of Delmarva Power & Light Company under its Standard Offer Service.

20. On information and belief, Horizon charged thousands of its Delaware customers unlawfully high electric rates by, among other things, failing to comply with the written notice provision of Section 3.5 of the Regulations.

21. On information and belief, and based upon customer complaints to the Commission, Horizon and/or its marketing or advertising agent made misrepresentations or used deceptive practices in the direct solicitation of customers.

22. On information and belief, and based upon customer complaints to the Commission, Horizon may have engaged in Cramming and/or Slamming.

23. On information and belief, Horizon engaged in improper activities in violation of Section 5.5 and other provisions of the Regulations including, but not limited to, the following:

a) Not providing customers with contract documents;

b) Sending customers contract documents that have not been reviewed/approved by the Commission;

c) Raising customer rates without proper notice, for example, at the expiration of a contract;

d) Making misrepresentations to potential customers, for example, misleading customers into believing that solicitations from Horizon are being made by representatives of Delmarva Power, or on behalf of Delmarva;

e) Misrepresenting to customers and potential customers price reductions that they would receive on their electric rates;

f) Charging customers inappropriate cancellation fees;

g) Terminating customer contracts prematurely; and

h) Charging customers a rate in excess of Horizon's contract rate.

24. Pursuant to 26 *Del. C.* § 1019, the Commission has the authority, under appropriate circumstances, to modify, suspend, or revoke Horizon's Electric Supplier Certificate.

Wherefore, Staff requests that the Commission grant the following relief:

a) Enter an order opening a docket to investigate any and all aspects of Horizon's operations, activities, and conduct as an Electric Supplier;

b) Authorize Staff to engage in a comprehensive and thorough investigation in the docket a) to determine whether Horizon has violated any statutory or regulatory provisions, b) to identify and determine any and all effects and

consequences that such violations had on its customers, and c) to review, evaluate, and report on any other matter related to these proceedings and Horizon's activities, conduct, and practices;

c) Authorize the Secretary of the Commission to serve this Complaint on Horizon. The Secretary shall inform Horizon that, pursuant to Rule 16 of the Commission's *Rules of Practice and Procedure*, Horizon is required to file an Answer to the Staff's Complaint within twenty (20) days after service of the Complaint;

d) That if Horizon fails to cooperate in the production of its records, that the Commission compel Horizon to make available for inspection by the Commission's Staff and provide Staff with access to all of Horizon's books, accounts, reports, records, memoranda, and other documents and data related to these proceedings;

e) That the Commission impose appropriate penalties upon Horizon for any unlawful conduct it has engaged in related to any violation of any statutes or regulations;

f) That the Commission take additional steps to deal with any unlawful conduct engaged in by Horizon, including, but not limited to, the imposition of restrictions and conditions upon Horizon in connection with its operations in Delaware;

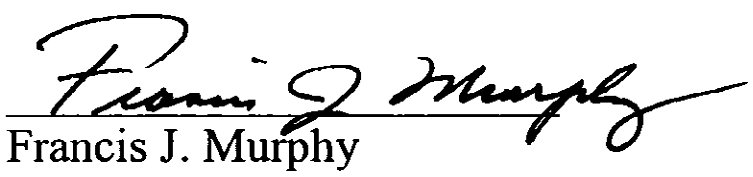
g) That, if appropriate, the Commission modify, suspend, or revoke Horizon's Electric Supplier Certificate;

h) That, pursuant to 26 *Del. C.* §§ 114, 1012, and 1019, the Commission recover the costs of this proceeding from Horizon; and

i) That the Commission compel Horizon to refund to customers any unlawful electric charges, cancellation fees, or other sums improperly collected by Horizon; and

j) That the Commission grant such other and further relief as is just and proper.

MURPHY & LANDON



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Attorney for Commission Staff

Exhibit A

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF 26 DEL. C. CH. 10 RELATING TO THE CREATION OF A COMPETITIVE MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE (OPENED APRIL 27, 1999 AND RE-OPENED JANUARY 7, 2003)	)	PSC REGULATION DOCKET NO. 49

ORDER NO. 7078

AND NOW, this 21st day of November, 2006;

WHEREAS, in 1999, the Commission originally adopted "Rules for Certification and Regulation of Electric Suppliers (the "Rules")," for the purpose of establishing the required rules, regulations, and standards for electric suppliers, who, as a result of the "Electric Utility Restructuring Act of 1999" ("Restructuring Act"), were allowed to compete with Delmarva Power & Light Company ("DP&L") for the supply of electric service in the State of Delaware (see PSC Order No. 5207 (Aug. 31, 1999)); and

WHEREAS, in PSC Order No. 6098 (Jan. 7, 2003), the Commission directed Staff to undertake a full review of the Rules promulgated in 1999 and report back to the Commission regarding any proposed amendments to the Rules Staff believed were appropriate in light of recent statutory and regulatory changes (i.e., PSC Regulation Docket No. 56 -- renewable portfolio standards and House Bill No. 6 -- amendments to the Restructuring Act), and after consultation with interested electric suppliers; and

WHEREAS, on March 14, 2006 by PSC Order No. 6869, the Commission directed publication of notice of the proposed amendments to the Rules and set the deadline of May 1, 2006 for the filing of comments by interested parties; and

WHEREAS, the designated Hearing Examiner on May 25, 2006, held a duly noticed public hearing on the proposed amendments to the Rules and the comments received on the proposed changes from the parties participating in the proceeding; and

WHEREAS, after the public hearing, the Hearing Examiner considered additional written comments of the interested parties, as well as Staff's testimony in support of the proposed amendments to the Rules, and issued a report dated July 13, 2006 of his Findings and Recommendations to the Commission; and

WHEREAS, the Commission, in public session on August 22, 2006, reviewed the Hearing Examiner's Report and heard comment on the written exceptions filed to the Report dealing with: (1) the appropriate rescission period; and (2) what customer information, if any, should be made available to third-party suppliers; and

WHEREAS, by Order No. 7023, the Commission (in an abundance of caution) determined that the revised Rules made "substantive" changes from the proposed rules published April 1, 2006, so that, as required by 29 *Del. C.* Section 10118(c), the amended Rules were published in the October 1, 2006 issue of the Delaware Register of Regulations to allow for another opportunity for comment either in writing or at a public hearing; and

WHEREAS, the Commission received no new comments relating to the final proposed Rules; and

WHEREAS, the Commission held a public hearing on November 21, 2006, to consider final adoption of the Rules;

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

1. The Commission hereby adopts and incorporates by reference, in its entirety, its prior Order No. 7023 (Sep. 5, 2006).

2. The Commission hereby adopts and approves the proposed *Rules for Certification and Regulation of Electric Suppliers* attached hereto as Exhibit "A" (being the same Regulations that were approved and published pursuant to Order No. 7023). The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations, the exact text of the Regulations attached hereto as Exhibit "A" for publication on January 1, 2007.

3. The effective date of this Order shall be the later of January 10, 2007, or ten days after the date of publication in the Delaware Register of Regulations of the Regulations attached hereto as Exhibit "A."

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

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

EXHIBIT A

DELAWARE PUBLIC SERVICE COMMISSION

RULES FOR
CERTIFICATION AND REGULATION
OF ELECTRIC SUPPLIERS

EFFECTIVE: AUGUST 31, 1999

1.0 Definitions

"Affiliated Interest"-means:

1. Any person or entity who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the Applicant;

2. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in 1 above; or

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

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

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

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

"Commission" means the Delaware Public Service Commission

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

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

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

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

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

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

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

"Electric Supplier Certificate" or "ESC" means a certificate granted by the Commission to Electric Suppliers that have fulfilled the Commission's certification requirements.

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

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

Solar energy technologies that employ solar radiation to produce electricity;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that comply with environmental standards promulgated by DNREC in its "Environmental Standards for Eligible Energy Resources" (10 DE Reg. 351 Aug. 1, 2006);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC in its "Environmental Standards for Eligible Energy Resources" (10 DE Reg. 351 Aug. 1, 2006) , and is not combusted to produce energy in a waste to energy facility or in an incinerator;

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"FERC" means the Federal Energy Regulatory Commission.

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

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

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

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

"PJM Interconnection, LLC" or "PJM" means the Regional Transmission Organization ("RTO") that is responsible for wholesale energy markets and the interstate transmission of energy throughout a multi-state area, or its successor organization. "Residential Customer" means a Retail Electric Customer eligible to take Residential services under the Delmarva Power or the Delaware Electric Cooperative's tariff, currently on file with the Commission.

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

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

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

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

exempt from the definition of a Small Commercial Customer.

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

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

"State" means The State of Delaware.

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

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

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

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

2.0 Certification of Electric Suppliers

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

2.1.1 Certification Requirement.

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

2.1.1.1 Authority to Do Business In Delaware.

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

2.1.1.2 Resident Agent.

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

2.1.1.3 Performance Bonds.

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

2.1.1.4 Compliance with Regional Requirements.

Each Applicant, except for Brokers, must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM. Brokers must submit relevant evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service must procure electricity from an entity that complies with PJM's requirements and is a Certified Electric Supplier in the State.

2.1.1.5 Financial, Operational, Managerial and Technical Ability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1.1.5.9.7 Guarantee, issued by a corporation, co-partnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

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

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

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

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

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

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

2.1.1.8 Other Requirements:

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

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

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

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

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

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

2.1.1.9 Contracts.

At the time of the filing, the Applicant shall either provide its

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

2.1.1.9.1 A clear statement of the duration of the contract;

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

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

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

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

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

2.2. Notice.

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

2.3 Application Fee.

A non-refundable application fee of $750 shall be submitted with the application for Certification.

2.4 Incomplete or Abandoned Applications.

Applications that do not include the necessary fees, supporting documentation or

information may be rejected. The Commission Staff will provide the Applicant with a list of deficiencies and the Applicant will be given time to provide the necessary information to complete its certification. However, an incomplete or abandoned application will be closed four (4) months after the filing date, unless such time frame is extended by the Commission.

2.5 Waiver of Certification Requirements.

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

3.0 Post-Certification Requirements

3.1 Term of ESC.

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

3.2 Minimum Length of Electric Supply Service by Electric Supplier.

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

3.3 Transfer or Abandonment of ESC.

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

3.4 Contracts and Revised Contracts.

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

3.5 Price Terms.

Any price term shall not be inconsistent with pricing terms in a Residential or Small

Commercial Customer's contract with their Electric Supplier. The Electric Supplier must provide thirty (30) days written notice to its Residential or Small Commercial Customer(s) of any price term changes.

3.6 Information that Must be Provided to a Customer by the Electric Supplier.

The Electric Supplier must provide the Retail Electric Customer with a copy of its contract which includes the terms and conditions of service.

3.7 Customer Information.

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

3.8 Marketing and Advertising.

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

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

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

3.9 Reports to be Provided to the Commission.

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

3.10 Fees and Assessments.

Electric Suppliers must pay applicable fees and assessments under 26 Del. C. § 1012 (c) (2). Electric Suppliers must also file any applicable reports required under 26 Del. C. § 115 (e). The Electric Supplier, except Brokers, must also pay the Public Utilities Taxes pursuant to 30 Del. C. Chapter 55.

3.11 Record Retention.

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

4.0 Billing and Metering

4.1 Billing Options.

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

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

4.2 Bill Contents.

The bill should be easy to understand and must contain the following information:

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

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

4.2.3 The due date for payment;

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

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

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

4.2.7 The total charge for each service or product;

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

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

billing period;

4.2.10 Appropriate taxes and fees; and

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

4.3 Metering.

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

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

5.0 Customer Protection

5.1 Procedures to be followed by the Retail Electric Customer:

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

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

5.2 Procedures to be Followed by the Electric Supplier:

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

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

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

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

5.2.4.1 Type of complaint;

5.2.4.2 Date of complaint;

5.2.4.3 Resolution; and,

5.2.4.4 Date resolved.

5.3 Slamming.

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

5.4 Cramming.

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

5.5 General Retail Electric Customer Protections.

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

6.0 Green Power and Renewable Resources

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

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

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

6.4 When requested by a Retail Electric Customer or providing information regarding

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

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

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

7.0 Disclosure of Fuel Resource Mix

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

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

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

7.1.3 The fuel resource mix by percentage for each resource.

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

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

8.0 Net Energy Metering

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

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

8.1.2 The facility uses renewable resources;

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

8.1.4 The facility is not used by the Retail Electric Customer to supply property other than the Customer's premises.

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

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

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

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

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

10.0 Other General Rules

10.1 Proprietary Information.

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

10.2 Failure to Comply with These Rules.

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