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September 30, 2013

BY FED EX

Alisa Carrow Bentley, Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

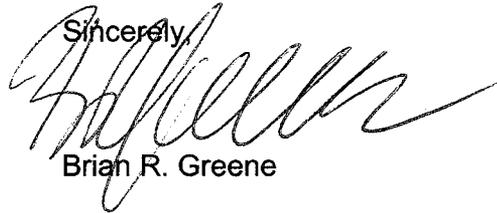
Re: PSC Regulation Docket No. 49

Dear Ms. Bentley:

Enclosed for filing in the referenced matter please find an original and 15 copies of the Comments on behalf of Retail Energy Supply Association in the above matter.

Please contact me should you have any questions regarding this matter.

Sincerely,



Brian R. Greene

BRG/wd

Enclosures

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; Re-Opened January 7, 2003; Re-)
Opened September 22, 2009; Re-Opened September)
7, 2010))

PSC REGULATION DOCKET NO. 49

COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

October 1, 2013

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COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association (“RESA”), by counsel, submits these comments pursuant to the Commission’s Order No. 8424, issued July 30, 2013. RESA welcomes the opportunity to comment on the proposed modifications to the Rules for Certification and Regulation of Electric Suppliers (“Supplier Rules”), a copy of which was attached as Exhibit A to Order No. 8424.

I. Introduction and Background

This proceeding evolved out of the Commission’s review of Delmarva Power and Light Company’s (“Delmarva’s”) integrated resource plan (“IRP”), Docket No. 10-2. RESA intervened in that proceeding, requesting in part that the Commission initiate a separate proceeding to determine whether shorter standard offer service (“SOS”) wholesale supply contracts and implementation of other market improvements such as a purchase of receivables program are appropriate for Delaware.¹ RESA made this request to facilitate the introduction of market improvements in Delaware that will allow for the development of sustainable and continuous retail electric competition for Delaware’s residential and small commercial customers (collectively referred to as “mass market customers”).

At the administrative meeting during which the Commission considered the Hearing Examiner’s report and recommendation, and a proposed settlement agreement, in Docket No. 10-2, the Staff of the Commission recommended that, if the Commission established a separate proceeding as requested by RESA, the parties also undertake a review of the current Supplier Rules and recommend necessary changes. RESA welcomed Staff’s recommendation as necessary to

¹ See Docket No. 10-2, Comments of the Retail Energy Supply Association (submitted Dec. 13, 2011); see also Docket No. 10-2, Comments of the Retail Energy Supply Association (submitted May 27, 2011).

explore all avenues to develop competitive retail electricity markets for residential and small commercial customers in Delaware.

In Docket No. 10-2, the Commission on January 10, 2012 entered Order No. 8083,² approving in large part a settlement agreement relating to Delmarva's IRP which included the following provision:

The signatories to this document also agree that the proper forum to initiate a process to consider rule changes to make electric choice more competitive should be through a separate Working Group outside of the IRP Working Group and future IRP Dockets.

Following up Order No. 8083, the Commission on July 17, 2012 issued Order No. 8187, the Commission re-opened Regulation Docket No. 49 to consider further revisions to the Supplier Rules. In issuing Order No. 8187, the Commission noted that "the signatories to a certain settlement agreement reached in PSC Docket No. 10-2 agreed to consider rule changes to make electric choice more competitive."³ The Commission noted that the purpose of the proposed revisions will be:

. . . to consider rule changes to ensure electric choice for Customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket 10-2; to provide additional protection for Customers; to require Electric Suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to Customers to provide Electric Supply Services; to clarify sections of the Supplier Rules; to make the certification process for Electric Suppliers more uniform; and to address any other pertinent issues that may arise.⁴

Finally with respect to Order No. 8187, the Commission established a workgroup of various stakeholders, including RESA, to address proposed revisions to the Supplier Rules.

² Docket No. 10-2, Order No. 8083 (Jan. 10, 2012)(memorializing the Commission's decision after deliberations at its December 20, 2011 meeting).

³ Order No. 8187 at 1.

⁴ *Id.* at ¶ 2 (footnote omitted).

The workgroup met on three occasions to discuss proposed revisions and, on July 30, 2013. Numerous stakeholders participated in the workgroup and were able to discuss and, in many cases, resolve differences and to agree upon specific language that has been incorporated into the revised Supplier Rules. However, the revised Supplier Rules are not a consensus document, as several recommendations made by RESA were not adopted even though they would result in Supplier Rules that are more appropriate for a competitive market and more in line with the rules from Delaware's neighboring states that have balanced the desire to promote competition without sacrificing customer protections. On July 30, 2013, the Commission entered Order No. 8424 directing that the revised Supplier Rules be published and that interested stakeholder file comments by October 1, 2013.

II. The Status of Delaware Electric Choice for Mass Market Customers.

As the Commission noted, the request to initiate a wholesale review of the Supplier Rules was to "consider rule changes to make electric choice more competitive."⁵ As a result, it stands to reason that any review of the Supplier Rules should be accompanied by a review of the status of electric choice for the customers to whom the Supplier Rules apply.

Since the onset of Delaware's current SOS structure in 2005, more and more retail suppliers have entered, and are entering, the competitive retail electricity markets in restructured states. Competition has evolved in numerous states, including Delaware, for mid-size and large non-residential customers, who may now choose from a variety of electricity products and services offered by numerous market competitors. Based on information on the Commission's website, as of August 2013, the propensity to shop for electricity generally increases as the customer's size increases; for customers with peak load contributions 100 kW and above, between 71% and 89%

⁵ See Order No. 8187 at 1.

(depending on the size of the customer in 100 kW increments) currently receive their electricity from a retail supplier, which equates to between 72% and 84% of customers' peak load contribution (again depending on the size of the customer).⁶

Delmarva Power's residential and small commercial customers, however, have not experienced the same shopping success as mid-size and large non-residential customers. As of August 2013, only 7.8% of Delmarva Power's residential customers are purchasing power from retail suppliers. Only 11 retail suppliers are serving residential load. Only 27% of non-residential customers under 25 kW PLC – usually considered the small commercial class – are purchasing power from retail suppliers.⁷

It is RESA's view that market rules, such as the Supplier Rules, should be designed so as to encourage retail suppliers to enter Delaware and bring the benefits of competition to Delaware customers while at the same time appropriately protecting customers' interests in participating in the marketplace. In a properly structured competitive market, as the number of active retail suppliers increases, the types of services provided by these suppliers will expand, to the benefit of customers who will have more products and services from which to choose. In addition to a variety of commodity purchasing options such as fixed and variable prices, retail suppliers in a truly competitive market will seek to provide value-added products such as combined electricity and natural gas supply products, energy equipment repair and warranty service, energy efficiency and conservation services, utility bill review and auditing, and the option to purchase green energy products. Retail suppliers also offer joint products with affinity partners, including discounts at retail stores and airline miles. As the competitive markets continue to grow and expand,

⁶ See Delmarva Power Electric Supply Choice Enrollment Information Monthly Report for Period Ending August 2013, available at <http://depsec.delaware.gov/electric/DPSC%20Choice%20Report.xls>.

⁷ *Id.*

competition will drive additional innovation and products through a desire by market participants to remain competitive, as well as in response to consumer demand. Increased competition will also instill downward pressure on the pricing of retail offers in general and should assist Delaware in its drive to reduce energy consumption and demand as required by Delaware's Energy Conservation and Efficiency Act of 2009. All of these factors impact positively Delaware's customers. The results of the Commission's review of the specific provisions in the Supplier Rules, along with a potential review of SOS wholesale contract durations and market enhancement programs, will heavily influence a retail supplier's decision to enter and/or expand its service offerings in Delaware, which is critical for the Delaware to develop a competitive market for mass market customers.

In revising the Supplier Rules, RESA recommends that the Commission proceed with a goal towards developing a sustainable, competitive retail electricity markets that allow all customers, especially mass market customers, to realize the benefits of competition that the General Assembly envisioned when it adopted the Electric Utility Restructuring Act of 1999.⁸ In RESA's view, a well-designed market structure along with effective supplier rules that strikes the appropriate balance between consumer protection and retail market enhancements will encourage retail suppliers to invest and enter the Delaware retail electricity market, offer consumers a myriad of competitive commodity supply choices and improve Delaware's electric shopping percentages. Members of RESA are actively participating in virtually every retail electricity market in states that have opted to restructure, and RESA has participated in numerous proceedings relating to the development of competitive markets. RESA brings to this proceeding a wealth of experience as to what works and what does not with respect to the impact that market rules can have on competition. Moreover, RESA views the opportunity to revise the Supplier Rules as the first of three steps for

⁸ 26 Del. C. § 1001 *et seq.*

Delaware to attain its goal of competitive markets, with the second goal being a formal review of the duration of Delmarva's SOS wholesale supply contracts, and the third goal being the implementation of market enhancement programs such as utility purchase of retail suppliers' receivables. Action with respect to all three of these components is of paramount importance in the creation and livelihood of sustainable, continuous competitive retail electricity markets.

III. RESA's Comments on the Proposed Revised Supplier Rules

A. RESA recommends that certain definitions in § 1.0 be modified.

1. The term "Agent" needs refining.

The term "Agent" should be modified to mean that an Agent is a Person who conducts marketing or sales activities, or both, exclusively on behalf of one Electric Supplier. An Agent is one who only represents one supplier during a sales call, and who clearly is working on behalf of that one supplier's interests. In contrast, a Person that represents numerous suppliers during a sales call, and who represents to the customer that he is acting in the customer's best interests to find the product or service that is right for him by canvassing the market or working with multiple suppliers, would not be an Agent.

In addition, the term Agent, as defined, raises uncertainties with respect to whether Agents need to be licensed by the Commission as retail suppliers. Under the proposed definition, the term Agent includes a retail supplier's "employee, a representative, an independent contractor or a vendor." A "Broker" is a person or entity that acts as an agent or intermediary in the sale or purchase of . . . electricity" It is uncertain whether the proposed Rules intended for the term "Agent" to include the word "agent" in the definition of Broker. Assuming that the answer is yes, then it follows that all Agents would qualify as Brokers, and that all retail suppliers' employees,

representatives, independent contractors, and vendors would be required to obtain a Broker's license from the Commission. This outcome would be problematic for the Commission and for retail suppliers as well. The definition of "Agent" should be modified to clearly state that it does not include Brokers or Aggregators.

The proposed rules should be modified as follows:

"Agent" means a Person who conducts marketing or sales activities, or both, on behalf of an Electric Supplier. ~~including an employee, a representative, an independent contractor or a vendor.~~ **"Agent" does not include Brokers or Aggregators.**

2. **The Term "Disclosure Statement" should be modified to apply only to written disclosures between Electric Suppliers and residential and small commercial customers.**

The proposed Rules require the use of a Disclosure Statement in transactions between Electric Suppliers on the one hand and a "Customer" on the other. In some instances, the Rules specifically limit the mandatory use of the Disclosure Statement to transactions between the Electric Supplier and Residential and Small Commercial Customers. See, e.g., proposed Rule 2.1.1.9. However, this limitation may not be so clear in other proposed Rules. Non-residential customers, other than small commercial customers, are generally sophisticated when it comes to exploring energy offers and evaluation and negotiation offers from Electric Suppliers. There is no need to require a Disclosure Statement for these customers. Accordingly, RESA recommends that the definition of "Disclosure Statement" be modified to limit the application of the Disclosure Statement to residential and small commercial customers only.⁹

⁹ With this modification, references in the proposed Rules to the Disclosure Statement "used for Residential and Small Commercial Customers" could be deleted, given that the Disclosure Statement under RESA's modified definition would only apply to such customers. See, e.g., § 2.1.1.9 and 3.4.4. RESA has not undertaken to propose all such deletions in these comments.

The proposed rules should be modified as follows:

“Disclosure Statement” means a written disclosure of the terms and conditions of service between an Electric Supplier and a **Residential or Small Commercial Customer.**

3. The term “Door to Door Sale” should not include sales to small commercial customers.

As proposed, the term “Door to Door Sale” includes sales calls made to Residential and Small Commercial Customers. Delaware has adopted the Home Solicitations Act (“HSA”), 6 Del. C. § 4401 et seq., which governs door-to-door sales. The HSA applies to sales of consumer goods or services, which the HSA defines as goods or services purchased primarily for personal, family or household purposes. See 6 Del. C. § 4403(2). This would not include sales to non-residential customers since energy sold to a non-residential customer would not be used for personal, family or household purposes. Thus, the proposed Supplier Rules would expand the HSA to apply to non-residential customers, a result that the General Assembly did not intend and for which there is no apparent reason.

Small commercial customers are more sophisticated than residential customers, and simply do not require the same level of consumer protections as do residential customers. Furthermore, the inclusion of small commercial customers could become a burden on retail suppliers’ marketing strategies and could result in customer confusion. As an example of the customer confusion that would be created, any visit or call to a small commercial customer to sell energy would apparently be treated as a door-to-door sale under the Supplier Rules. However, if an office supply salesman visited the same small commercial customer, the HSA would not apply. The inclusion of small

commercial customers in the definition of Door-to-Door Sale is one example where the Supplier Rules could create problems as opposed to eliminate or reduce them,

The proposed rules should be modified as follows:

"Door-to-Door Sale" means a sale, or offer of contracts for sale, in which the Electric Supplier or Electric Supplier's Agent personally solicits a Residential ~~or Small Commercial Retail Electric~~ Customer to sell Electric Supply Service. This term includes sales, in response to or following an invitation by the Electric Supplier and the Customer's agreement to purchase Electric Supply Service made at a place other than the Electric Supplier's place of business. This term does not include any sale which is conducted entirely by mail, telephone or other Electronic means.

4. The term "Electronic Signature" should be modified.

Section 1 provides a definition for "Electronic Signature." Delaware has adopted the Uniform Electronic Transactions Act, 6 Del. C. § 12A-101 et seq., which provides a legal framework for the use of electronic signatures and records in business transactions. The Act makes electronic records and signatures as legal as paper and manually signed signatures. The proposed Supplier Rules in large part tracks the Act's definition of the term "Electronic Signature" but for one word: the proposed Rules replace the Act's use of the word "record" with the word "document." There is no need for the Supplier Rules to adopt what could be interpreted as a different definition of "Electronic Signature" as the definition in the Act itself.

The proposed rules should be modified as follows:

"Electronic Signature" means an Electronic sound, symbol, or process attached to or logically associated with a ~~document~~ **record** and executed or adopted by a person with the intent to sign the ~~document~~ **record**.¹⁰

¹⁰ Alternatively, the proposed Rule could read as follows: "Electronic signature" has the same definition set forth in 6 Del. C. § 12A-102(9)."

5. RESA seeks clarification as to why the term "Residential Customer" is being altered.

The proposed Rules introduce a new definition of "Residential Customer" which was not discussed in the workgroup. RESA is unclear as to the purpose of this new definition or its ramifications. RESA reserves the right to comment on this proposed change at a later date.

6. The term "Verification Process" should be limited to apply only to residential customers and expanded to include audio recording, written, or electronic verification.

As proposed, the definition of "Verification Process" includes only an audio recording. Given the ever changing nature of technology and the variety of sales channels employed by retail suppliers, RESA recommends that the Verification Process be expanded to include written and electronic verification, in addition to an audio recording. Audio recordings are not always practical or applicable to the sales channel being employed. RESA agrees that requiring verification is reasonable; however, the verification process should be as flexible as possible so as not to artificially limit the options for consumers to enroll with a competitive supplier.

In addition, the proposed definition appears to apply to a sales transaction with any type of customer. RESA does not object to a verification process for residential customers. Arguably, these customers may feel pressure to agree to enroll with an agent on the telephone or during an in person sales call. However, requiring verification of sales transactions for non-residential customers is not necessary and should not be required. These business customers are more sophisticated and often more pressed for time and cannot devote the extra time required to complete a verification. RESA urges the Commission to limit the verification process to residential telemarketing and door-to-door sales only.

The proposed rules should be modified as follows:

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

7. The term “Written Notice” should include notice by electronic mail.

As proposed, the definition of “Written Notice” includes only written notice sent via first-class mail. RESA recommends that Written Notice also be accomplished via e-mail if the retail supplier obtained the customer’s e-mail address during the enrollment process, including web, telephone, and in-person enrollments. More and more, customers are relying on and desire e-mail notifications and not “snail mail,” and therefore retail suppliers should be able to provide notices to their customers by using email addresses that the customers gave them.

The proposed rules should be modified as follows:

“Written notice” means notice in writing, mailed by First Class mail to the person who is being given notice, sent to the current billing address as shown on the records of the EDC or Electric Supplier, or sent via electronic mail to a valid email address provided by the Customer.

B. Section 2.1.1.4 should be modified to reflect that Brokers do not procure electricity.

The last sentence in § 2.1.1.4 needs modification. As written, this provision obligates Brokers that arrange for the purchase of electricity to provide an affirmative statement that they will only “procure electricity from an entity that complies with PJM’s requirements and is a certified Electric Supplier in the State.” Brokers, however, do not “procure” energy; rather, they arrange for the sale of electricity but do not take title to the electricity that is sold. Apparently, the intent of §

2.1.1.4 is to ensure that Brokers only negotiate deals between customers and retail suppliers that are licensed in Delaware. If that is the case, then the Rule should be revised to clearly and unambiguously state that intention.

Additionally, RESA proposes to edit the rule by deleting the word “Certified” before “Electric Supplier,” because Electric Suppliers are, by definition, “certified” by the Commission.

The proposed rules should be modified as follows:

2.1.1.4 Compliance with Regional Requirements. Each Applicant, except for Brokers, must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM. Brokers must submit relevant evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service must demonstrate, through an affirmative statement that it will, only arrange procure electricity sales from an entity that complies with PJM’s requirements and is ~~a~~ an ~~Ceertified~~ Electric Supplier in the State.

C. Section 2.1.1.5.1 should be modified to permit submission of audited financials by a publicly traded parent of a non-publicly traded Applicant

This section has been modified to specify the types of information that non-publicly traded Applicants must submit as indicia of ability render service in Delaware. This section should be expanded to permit non-publicly traded Applicants to submit the certified financial statements of a publicly traded parent, if applicable. Also, the term “Certified” is capitalized in the Rule but is not a defined term. Accordingly, RESA recommends keeping it in lower-case.

The proposed rules should be modified as follows:

2.1.1.5.1 Publicly traded Applicants must file ~~c~~Ceertified financial statements, current within twelve (12) months of the filing, their most recent annual report to shareholders, and their SEC Form 10-K (a link to the report on the SEC website is sufficient). Other indicia of financial capability may also be filed. Non-publicly traded Applicants shall file accounting statements, including balance sheet and income statements, audited financial statements, bank account statements, tax returns or other indicia of financial capability, or the certified

financial statements of a public traded parent, if applicable. Applicants submitting European-style financial statements shall include a statement of similarity.

- D. Staff should not be required to “review” a retail supplier’s Disclosure Statement either during or after the Certificate is granted but, if it does, then the retail supplier should be allowed to rely on Staff’s approval of the Disclosure Statement in any subsequent Commission proceeding.**

Three sections in the Supplier Rules involve Staff’s authority with respect to reviewing and approving retail suppliers’ Disclosure Statements, and RESA recommends that the Commission delete these provisions. First, under § 2.1.1.9, an applicant for an Electric Supplier certificate must provide Staff with its Disclosure Statement. Staff reviews the Disclosure Statement and can determine that it is not consistent with the Supplier Rules or other Delaware law. If that happens, Staff can “require” the applicant to make changes. The applicant’s failure to adopt Staff’s changes can result in “rejection or denial of its application . . . by the Commission after a hearing.”

Second, in § 3.4.4, if a retail supplier receives its certificate and later makes “substantive changes” to its Disclosure Statement, the supplier must notify Staff at least seven business days before offering the new Disclosure Statement to allow Staff to “review and comment” on the changes. Staff can “require” changes to the Disclosure Statement which the supplier must adopt or face revocation of its certificate after a hearing. While the proposed Rule allows the retail supplier to offer the new Disclosure Statement pending Staff’s “review and comment,” if the Staff finds anything in the Disclosure Statement that it found to be inconsistent with the Supplier Rules or other Delaware law, customers who enrolled in the interim may have the option to cancel service with no penalty, which may or may not be a problem for the retail supplier in terms of initial risk and implementation in the event the supplier incurs financial commitments when enrolling customers.

Third, in § 3.4.6, if there are any changes in the law, including the Supplier Rules, that require changes in the terms of retail suppliers' Disclosure Statements, then all suppliers must re-submit their Disclosure Statements to Staff, and Staff "will review the contract(s) for compliance and notify the Electric Supplier of any deficiencies within seven (7) business days of receipt."

These three sections, taken together, should be eliminated because they place Staff in the position of analyzing and approving offerings from competitive suppliers. Moreover, the sections fail to account for the fact that, in a competitive market, there are potentially hundreds of services offerings from numerous sellers. Every time a retail supplier rolls out a new product, it must seek Staff approval and incur risk if it began offering its new produce without Staff's review and approval. In the event of a change in law, Staff could be in the predicament of needing to review hundreds of Disclosure Statements within seven business days. Further, there are no provisions that require the Staff to conduct its review in a set period of time. Absent some timeline associated with this review process, suppliers are unable to move forward with marketing their offers, and customers are denied access to these offers. And, while the rules do stipulate that suppliers are free to make offers prior to receiving comments, they risk having their contracts invalidated if Staff later finds the contracts to be problematic – the customers enrolled on those contracts would be free to cancel the contract without penalty. These provisions potentially frustrate the ability of any offers being made to residential and small commercial customers in Delaware.

The Commission should consider whether Staff has the resources to dedicate to the task of reviewing Disclosure Statements in a timely fashion in the circumstances described above. Furthermore, the term "substantial changes" in §3.4.4 is extremely vague, and the Rule's attempt to define what constitutes "substantial changes" to a Disclosure Statement is not helpful in that regard. A "substantial change" to a Disclosure Statement includes a change to the retail supplier's name as

well as a change in product offering. These two examples of substantial changes do not provide clear guidance to retail suppliers. Finally, other jurisdictions, including Maryland and the District of Columbia, do not place these burdens on their Staffs or market participants, and there is no compelling need for Delaware to do so. Moreover, the Commission has the authority to compel any Electric Supplier to produce contracting documents used in transactions with customers and can impose penalties, including license revocation, if the Commission finds the supplier's materials non-compliant. Such an approach is much more efficient from a staff resource perspective.

Should the Commission desire to accept these sections, RESA recommends that the Staff be required to provide comments within a set period of time upon receipt of submitted materials, and that absent comments from Staff within that set time period, the supplier can consider the materials approved. Moreover, Staff's approval of the Disclosure Statement as consistent with Delaware law should be binding in any future proceeding before the Commission. In other words, it would be unfair to a retail supplier if Staff reviewed and approved a Disclosure Statement, but later accused the same retail supplier for including illegal terms and conditions in its Disclosure Statement. A retail supplier should be allowed to rely upon Staff's approval in any future proceeding regarding the Disclosure Statement.

The proposed rules should be modified as follows:

2.1.1.9 Contracts. At the time of the filing, the Applicant, except Brokers, shall provide a copy of its Disclosure Statement used for Residential and Small Commercial Customers. The Disclosure Statement is subject to review by the Commission Staff and if Staff determines that the Disclosure Statement is not consistent with these Rules for Certification and Regulation of Electric Suppliers ("Rules"), Delaware Code, other Commission regulations, or any other applicable law, order rule or regulation, then Staff shall have the authority to require changes in order to make the Disclosure Statement consistent with these Rules during the license application review process, or the Applicant faces rejection or denial of its application for an of its Electric Supplier Certificate by the Commission after a hearing.

3.4.4 If the Electric Supplier makes substantive changes to its Disclosure Statement for Electric Supply Service to Residential or Small Commercial Customers, the Electric Supplier must notify the Commission Staff at least seven (7) business days prior to offering the Disclosure Statement(s) in Delaware to allow for review and comment. If Staff determines that such Disclosure Statement is not consistent with these Rules, Delaware Code or other Commission regulations, **then within five (5) business days of receiving the revised Disclosure Statement from the Electric Supplier**, Staff shall have the authority to require changes or the Electric Supplier faces revocation of its Electric Supplier Certificate by the Commission after a hearing. ~~Commission Staff shall have the authority at any time to require changes to a standard contract for Residential or Small Commercial Customers. The Supplier may offer Retail Electric Service to Customers prior to receiving comments from Staff, however Customers being served under Disclosure Statements found to be inconsistent with these Rules shall have the option to cancel service without threat of penalty or fee. Substantive changes include, but are not limited to, changes in the Electric Supplier's name and/or changes in product offerings.~~

3.4.6 **Upon Written Notice from Staff**, Electric Suppliers must submit contracts for Electric Supply Service to Residential or Small Commercial Customers for Staff review and comment if there is a change in applicable rules, regulations, or laws requiring a change to the contract. Staff will review the contract(s) for compliance and, **notify the Electric Supplier of any deficiencies** within ~~seven (7)~~ **five (5)** business days of ~~receipt~~ **receiving the revised Disclosure Statement from the Electric Supplier**, **Staff shall have the authority to require changes.**

E. The pricing language in § 2.1.1.9.1.2 should be adopted as written.

Section 2.1.1.9.1.2. provides that each Disclosure Statement must include specific pricing information, including for variable price products. The proposed Rule requires the supplier to provide the conditions of variability, stating on what basis and how often prices may vary, and any limits on variability. Retail suppliers also must allow customers to obtain the price per kWh at least five calendar days before it becomes effective. This section is an improvement over the existing language, which called for a “precise mechanism or formula” by which the price would be determined, which could be read to require the retail supplier to disclose competitively sensitive and proprietary pricing information in its contracts with its customers.

F. The rescission period in § 2.1.1.9.1.7 should be removed, or, alternatively, shortened.

RESA recommends eliminating the Rule's rescission period to promote consistency across the retail energy landscape. Today, there are potentially three different rescission periods in Delaware. First, the existing Supplier Rules allow a residential or small commercial customer to rescind the contract within 10 calendar days of the utility's mailing of the confirmation letter to the customer. Second, the Telemarketing Registration and Fraud Prevention Act, 6 Del. C. § 2501A *et seq.* ("TRFPA") allows for a rescission period of seven business days after the customer has received written notice as required by the TRFPA. *See* 6 Del. C. § 2506A(b)(1).¹¹ Third, under the HSA, residential buyers may cancel the transaction at any time prior to midnight of the third business day after the date of the transaction. *See* 6 Del. C. § 4404(1). The proposed Rule's seven business day rescission period, which begins when the utility sends the confirmation letter to the customer, would merely continue the confusion that already exists under the current Rules.

There is no reason to have three rescission periods and not strive for consistency. Either eliminating the rescission period in the Supplier Rules or, alternatively, modifying the Supplier Rules so that they are consistent with the HSA, would promote consistency, reduce confusion, and would not prejudice customers. To that end, RESA recommends (1) eliminating the rescission period or (2) as a clear second alternative, applying it to residential customers only and aligning it with the requirements of the HSA. Either outcome will bring Delaware's consumer protection rules into alignment with the surrounding state jurisdictions. For example, Maryland relies on the

¹¹ Under 6 Del. C. § 2503A(g)(2), "[a] seller or telemarketing business operating within the jurisdiction of the Public Service Commission" is exempt from the TRFPA. Assuming that Electric Suppliers are "within the jurisdiction" of the Commission by virtue of the fact that, among other things, they must be certificated and must adhere to the Commission's various orders, rules, and regulations, then the TRFPA and its rescission period would not apply to the sales activities of Electric Suppliers.

requirements found in its Door to Door Solicitation Act, and does not require a rescission period for any customer class in its electricity consumer protection regulations.¹² The District of Columbia has adopted a residential rescission period of three days from the date of the contract.¹³ Pennsylvania regulations include rescission periods that align with its Door-to-Door Solicitation Act requirements, which mirror Delaware's HSA – three days from the date the contract is signed.¹⁴ Thus, eliminating the rescission period or reducing it to three days from the date of the contract is in line with Delaware's neighboring jurisdictions.

Finally, both TRFPA and HSA provide that the trigger for the rescission period is the date the customer signs the contract and/or receives a copy of the Terms of Service – the dates of both of which are known to the Electric Supplier. In Delaware, the practice has been that the rescission period begins on the day the EDC sends the enrollment confirmation to the customer – a date that is wholly outside of the control of the Electric Supplier. This practice is embodied in Delmarva's retail and supplier tariffs. Should the Commission either eliminate or modify the rule as recommended by RESA, RESA urges the Commission to require Delmarva to file a compliance filing to update impacted tariffs and supplier agreements to reflect those changes.

*RESA recommends that the rescission period be eliminated from the proposed Rules. If the rescission period is to be maintained, RESA recommends that it be so for residential customers and be shortened. This would require revisions to the proposed Rule as follows:*¹⁵

2.1.1.9.1.7 A statement informing the Residential ~~or Small Commercial~~ Customer that they/he/she has ~~seven~~ **three (37)** business days from the **day the customer receives the**

¹² See, e.g., Md. Commercial Law Code Ann. § 14-302 (three-day rescission period for door-to-door sales); Code of Md. Regulation 20.53.07.11 (no rescission period for residential customers); Code of Md. Regulation 20.53.06.07 (no rescission period for non-residential customers).

¹³ See District of Columbia Consumer Bill of Rights, § 327.44.

¹⁴ 52 Pa. Code § 54.5(d).

¹⁵ The latter portion of RESA's proposed modification to this Rule is borrowed from the Pennsylvania regulations.

Disclosure Statement from the Electric Supplier EDC sends the confirmation letter to rescind their/his/her selection without penalty or fee. A Disclosure Statement correctly addressed to a customer with sufficient first class postage attached shall be considered received by the customer 3 days after it has been properly deposited in the US mail. If delivered in-person, the Disclosure Statement is considered received by the customer on the date of delivery. If delivered electronically, the Disclosure Statement is considered received by the customer on the date it was transmitted electronically.

G. Modifications are needed with respect to notifications by e-mail.

Several sections, including § 2.1.1.9.1.8; § 3.4.5; and § 5.1.2,¹⁶ allow for e-mail notification but encourage the supplier to “use an acknowledgement receipt to confirm the validity of email addresses.” These sections allow for e-mail notice if the customer provided a valid email address and consented to email notice. If that is the case, then there is no need to require a receipt from the customers. First, the customer has already consented to receipt by email, and second, the customer can opt not to send a receipt and not notify the supplier even though the customer had consented to receiving notices via email. Moreover, the Rules do not require the use of acknowledgement receipts, but rather “encourage” their use. In the event of a notification issue, it would be up to the retail supplier to prove that it provided notice to the customer as required under the Disclosure Statement. E-mail notifications should be valid if the addresses are received from the customer and the customer consents to e-mail notification.

The proposed rules should be modified as follows:

2.1.1.9.1.8 A statement of the Residential or Small Commercial Customers termination rights, which shall explain the specific conditions, under which the Residential or Small Customer may terminate service. The Electric Supplier shall provide the Residential or Small Commercial Customer with at least ten (10) calendar days Written Notice of any Price changes for a fixed Price contract. E-mail notice may only be used if the Customer has provided a valid e-mail address and consent to receive Price information via e-mail. ~~Electric Suppliers are encouraged to use an acknowledgement receipt to confirm the validity of e-mail addresses.~~ The Residential or Small Commercial Customer shall have the right to

¹⁶ Additional necessary modifications to § 5.1.2 are also discussed in Section III.R of these comments.

terminate a contract based on a change in Price for a fixed Price contract. Customers choosing a variable Price product with month-to-month changes in Price shall have the right to terminate service with not more than thirty (30) calendar days' notice to the Electric Supplier in the manner set forth in the contract.

3.4.5 Residential and Small Commercial Customers must be notified not less than thirty (30) calendar days in advance of the expiration of the initial contract for a fixed Price product if the contract is for a duration of longer than ninety (90) days. The notification should include whether the contract will automatically renew, any change in Price, the duration of the contract, or if service will continue on a month-to-month or other basis. Notification shall be provided by **Written Notice**. **Email may be used** provided the Customer has chosen to receive communications regarding changes in Price from the Electric Supplier in this manner. ~~**Electric Suppliers are encouraged to use an acknowledgement receipt to confirm the validity of e-mail addresses.**~~

5.1.2 Electronic authorization must be provided by Electronic Signature on contract(s) conforming to Sections 2.1.1.9 and 3.4 of these Rules. Electric Suppliers shall acknowledge receipt of a Customer enrollment completed using an Electronic Signature by providing a confirmation of receipt within **one business day after twenty-four (24) hours** of receiving the authorization. The confirmation may be provided by e-mail. ~~**Electric Suppliers are encouraged to use an acknowledgement receipt to confirm the validity of e-mail addresses.**~~

H. Section 2.1.1.9.1.10 requires modification as it pertains to telemarketing contracts.

This section requires that each Disclosure Statement include "an area for the Customer to acknowledge receipt of the document by written signature, Electronic Signature, or verbal consent." RESA questions how this provision would apply to verbal contracts resulting from telemarketing activity, which are entered into over the phone by either a recorded call or a third-party verification, or both, and the retail supplier sends the contract to the customer after the call is completed. RESA recommends that this provision specifically exclude telemarketing contracts, and instead require that the enrollment record include a statement by the retail supplier that the customer will receive the Disclosure Statement within three (3) business days.

The proposed rules should be modified as follows:

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

I. Section 3.4.2 warrants clarification as to how to “confirm the identity” of the customer.

Under § 3.4.2, a supplier that contracts with a customer over the internet shall “confirm the identity of the person making the contract.” This proposed Rule was added, presumably by Staff, after the conclusion of the workgroup. There is no provision detailing what it means to “confirm” someone’s identity. This uncertainty begs for problems down the road and is impractical as written. RESA recommends this provision be deleted.

The proposed rules should be modified as follows:

3.4.2 The contract must be signed or verifiable by some other means of authorization by the Residential or Small Commercial Customer. Other means of authorization shall include an Electronic Signature or verbal authorization. ~~An Electric Supplier that contracts with a customer by means of the internet shall confirm the identity of the person making the contract.~~

J. Section 3.5 should be altered to ensure consistency with § 2.1.1.9.1.2 and to allow for notification via e-mail.

Section 3.5 requires retail suppliers to provide 10 calendar days’ written notice to residential and small commercial customers of any price and/or terms of service changes. RESA favors deleting § 3.5, as any restriction of a supplier’s ability to utilize a change-of-law provision, which are common in today’s supplier contracts, ultimately will lead to suppliers building risk premiums

into their prices offered to customers. In RESA's view, if a contract allows for change-of-law provisions or automatic renewals, then the contract should govern. That being said, if the Commission is inclined to adopt a notification period, the 10-day requirement in § 3.5 conflicts with the requirement in § 2.1.1.9.1.2 that retail suppliers post new variable pricing information five calendar days before the effective date. If there is to be a notification period, RESA recommends that the proposed 10-day period under § 3.5 be shortened to five days to be consistent with § 2.1.1.9.1.2.

Also, § 3.5 requires "written notice," which under the definitional section as explained above can only be accomplished via first-class mail. The circumstances described in § 3.5 support RESA's recommendation to expand the definition of "Written Notice" to include e-mail notification because of the short time period involved and customers' general preferences for e-mail notification.

Finally, the last sentence in § 3.5 should be deleted. It covers adding charges for a new service, existing service, or service option without consent, which is covered elsewhere in the Rules such as in the "Cramming" section, and is therefore redundant. See § 5.5. The proposed rule should be modified as follows:

3.5 Price and Terms of Service. Any Price term shall be consistent with pricing the terms of service in a Residential or Small Commercial Customer's contract with their Electric Supplier. The Electric Supplier must provide ~~ten (10)~~ **five (5)** calendar days **Written Notice** to its Residential or Small Commercial Customer(s) of any price and/or terms of service changes. ~~Electric Suppliers may not add a new charge for a new service, existing service, or service option without first obtaining consent from the Customer.~~

K. Section 3.7 should be expanded to allow for additional information sharing, which leads to more competitive offers.

Section 3.7 allows retail suppliers to request a list from the utility that includes customers' names, SOS service classification if the customer is an SOS customer, and also service and mailing addresses. Customer may opt-out of the list on an annual basis.

RESA recommends that the information included in § 3.7 be expanded to include the customer's: (1) SOS rate class, (2) shopping status ; (3) dynamic pricing election, if any; (4) residential distribution rate schedule; (5) meter read cycle, (6) historical usage for the prior 12 months (consumption/demand); and (7) account number. The provision of customer lists will encourage the development of competition in the mass market, as lists allow retail suppliers to more efficiently and effectively identify customers, communicate with and educate customers about available products and choice in general, and to design products that satisfy customers' individual desires and budgets. The more information in the lists, the more useful they will be. Further, the provision of customer lists helps place retail suppliers on equal footing with the utility in terms of being able to efficiently locate, educate, and serve customers.

Including more information on the customer lists has not been an issue in Pennsylvania, where retail suppliers have access to lists that contain approximately 25 data points.¹⁷ These lists have been available to retail suppliers for almost two years, and experience has demonstrated that customers have benefited from greater access to supplier offers and there have been few to no issues with slamming or other negative impacts. The PAPUC recently expanded the availability of customer lists to the natural gas suppliers as well, and earlier this summer, issued an order directing the utilities to implement an account number look up tool to facilitate the ability of customers to

¹⁷ *Interim Guidelines For Eligible Customer Lists*, Docket No. M-2010-2183412, Final Order on Reconsideration entered November 15, 2011 (Electric ECL Order). A copy of the Final Order is available here: <http://www.puc.state.pa.us/pcdocs/1157758.docx>.

find out about and sign up for supplier offers at public events – where they do not have ready access to their utility account numbers. Suppliers must log into the utility’s secure supplier portal to obtain access to the look up tool which is used to look up the account numbers for customers who opted out of being included on the customer list. Suppliers can be held accountable for any transgressions. Pennsylvania, with millions of electric and gas customers, has proven that the provision of customer lists with numerous data points can assist in the development of competitive retail markets without causing the major problems that some would have this Commission believe it will.

The proposed rules should be modified as follows:

3.7 Customer Information. An Electric Supplier may request a list from an Electric Distribution Company which contains Retail Electric Customer’s:

3.7.1. names;

3.7.2. service classification;

3.7.3. if the Customer is a SOS customer;

3.7.4. service addresses;

3.7.5. mailing addresses;

3.7.6. **SOS rate class;**

3.7.7 **dynamic pricing election, if any;**

3.7.8. **residential distribution rate schedule;**

3.7.9. **meter read cycle;**

3.7.10. **historical usage for prior 12 months (consumption/demand);**

3.7.11 **account number.**

A Retail Electric Customer may elect to opt out of the list. The EDC shall provide notice of the opt-out procedures to Customers on an annual basis.

L. RESA does not object to providing marketing and advertising materials as required in § 3.8.4 and § 3.8.5.

Sections 3.8.4 requires retail suppliers to disclose their marketing plans or methods to Staff not fewer than five business days before utilizing the plan or method in Delaware. Section 3.8.5 requires retail suppliers to notify Staff not fewer than five business days before the start of a marketing campaign and to submit copies of marketing materials to Staff. The purpose of these sections, as discussed in the workgroup, is to allow Staff to keep up to date on what products are being offered in the market, which suppliers are offering them, and which marketing channels they are utilizing. RESA does not object to these provisions provided that the information is provided to Staff for informational purposes and not for Staff's approval of marketing channels, materials or plans.¹⁸

M. Sections 3.8.2.1 and 3.8.6.1.4 should be amended to recognize that the use of the EDC's name when marketing may, at times, be useful and necessary.

The proposed Rules prohibit use of the EDC's name and logo when soliciting, advertising, and marketing to customers. See §§ 3.8.2.1 and 3.8.6.1.4. RESA recognizes that confusion, intentional or unintentional, may at times result from retail suppliers' use of the EDC's name during solicitations. In that regard, the proposed Rules introduce several safeguards to eliminate any perception that there is a corporate or agency relationship between the EDC and the retail supplier. For example, Electric Suppliers and their agents cannot misrepresent or use deceptive practices relating to their own services or the EDC's. Rule 3.8.2. The proposed Rules also obligate Electric Suppliers and their Agents to make "accurate representations regarding its relationship with the

¹⁸ To shield commercially sensitive elements of the marketing materials and plans from competitors, RESA would expect most retail Electric Suppliers to file their respective plans with the Commission under a protective order to maintain confidentiality.

EDC, the Commission, and any governmental agency.” Rule 3.8.8. Therefore, the proposed Rules already address any confusion that might exist about the Electric Supplier’s relationship with the EDC, and proposed prohibition of using the EDC’s name would be inconsistent with the various proposed Rules that demand accurate and truthful representations by suppliers.

Prohibiting an Electric Supplier from using the EDC’s name can serve to create confusion and communication voids because the Electric Supplier may not be able to adequately explain the product it is selling or the EDC’s role in delivering electricity to the customers. For example, it can be informative for a retail supplier to use the EDC’s name when describing the types of charges that can be expected from the EDC versus the supplier, and stating that the EDC will continue to bill and provide reliable service to the customer. Moreover, an Electric Supplier will may need to confirm the customer is eligible to enroll for service by confirming the utility service territory in which the customer resides. The Delmarva Power service territory is quite fragmented and it can be challenging for suppliers to ensure they are enrolling only customers who are eligible to receive the offer. The outright prohibition of using the EDC’s name does not decrease the chances that a customer will become confused about the relationship between the EDC and the supplier, and could make it worse. Instead, RESA recommends that these rules be revised to eliminate the proposed prohibition of using the EDC’s name.

The proposed rules should be modified as follows:

3.8.2.1 No solicitations, advertising and marketing materials may depict the SOSS and/or EDC ~~name or~~ logo.

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

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

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

3.8.2.45 Any marketing materials that make statements concerning Prices, terms and conditions of service shall contain information that accurately discloses the Prices, terms and conditions of the products or services that the Electric Supplier is offering or selling to the Customer.

* * *

3.8.6.1.4 Must not present any materials including or depicting the logo ~~or name~~ of the SOSS and/or EDC or suggest any relationship between the Electric Supplier and the EDC or SOSS;

N. **Section 3.8.6.2 warrants modification to be consistent with Delaware's Home Solicitation Act.**

As explained above, RESA recommends that the Commission adopt either no rescission period or, alternatively, a rescission period that is consistent with the HSA's cancellation period of three business days from the date of the transaction. Section 3.8.6.2, pertaining exclusively to door-to-door sales, is inconsistent with the Delaware HSA's cancellation period of three business days from the date of the transaction, and instead would afford customers seven business days from the date the utility mails the confirmation letter to the customer. Also as explained above, having three separate rescission periods (there is another rescission period applicable to telemarketing sales) regarding energy sales in Delaware continues the current confusion relating to such sales and tacks on more laws and safeguards than are required to serve the public interest.

The proposed rules should be modified as follows:

3.8.6.2.2 Fail to inform each Customer orally, at the time the Customer signs the Electric Supply Service contract, of the right to rescind without penalty or fee within **seven three (73) business days** from the ~~day the EDC sends the confirmation letter~~ **date of the transaction**;

3.8.6.2.3 Misrepresent in any manner the Customer's right to rescind without penalty or fee within **seven three (73) business days** from the ~~day the EDC sends the confirmation letter~~ **date of the transaction** and/or;

3.8.6.2.4 Fail or refuse to honor any valid notice of cancellation by a Customer within ~~seven~~ **three (73)** business days after the receipt of such notice from the Customer or the Customer's EDC.

- O. Section 3.8.6.4 should be modified to (1) eliminate the requirement for criminal background checks, or (2) as an alternative, require a Federal background check and not a Delaware State Policy background check. If there is to be a check of any kind, it should apply only to Door-to-Door Sales agents who have person-to-person contact.**

Section 3.8.6.4 requires criminal background investigations for any "Person or Agent to conduct Door-to-Door Sales and marketing activities...." Under § 3.8.6.4.1, the Electric Supplier must obtain a background check from the Delaware State Police and every other state in which the Person resided for the last 12 months.

RESA recommends that the background check requirement be deleted from the proposed Rules. The Delaware General Assembly, in adopting and amending the HSA, has not required background checks, and there is no rational reason to treat sellers of energy-related products and service different from sellers of non-energy products and services. If, however, the Commission is inclined to require a background check, RESA recommends that it adopt the Federal background check instead of the Delaware State Police check. Members of RESA, and many Electric Suppliers in general, transact business in various states and markets, and it is reasonable to require the Agent to undergo, and the Electric Supplier to obtain, only a background check that would be valid in those multiple jurisdictions.¹⁹

Assuming the Commission requires a background check, RESA notes that the term "marketing activities" in the proposed Rule is not defined and could be construed to broaden the

¹⁹ Additionally, the requirements for a Delaware State Police background check include a fee of \$52.50 per check, and requests must either be mailed in to the State Police or the person must request his/her own background check in person at one of three state police barrack locations. Finally, there is a two to four week waiting period for results on all background checks, regardless of whether the person has a clean record or not.

personnel that must submit to a background investigation to corporate employees or agents who have no in-person contact with customers. The Commission, if it requires background checks, should only do so for those individuals who will actually do the door-to-door selling and have interactions with individual residential customers, which are likely to occur at individuals' homes. However, to the extent that the term "marketing activities" is intended to go beyond that, RESA objects.

Assuming the Commission is not inclined to delete the criminal background requirement altogether, the proposed rules should be modified as follows:

3.8.6.4 An Electric Supplier may not permit a Person or Agent to conduct Door-to-Door Sales ~~and marketing activities~~ until it has conducted a criminal background investigation. The criminal background investigation shall include:

3.8.6.4.1 The Electric Supplier obtaining and reviewing a **Federal** criminal history record ~~from the Delaware State Police and from every other state in which the Person resided for the last twelve (12) months~~. For a current employee or Agent who conducts sales and marketing activities, an Electric Supplier must obtain a criminal history record not later than ninety (90) days after the effective date of this regulation; and

3.8.6.4.2 The Electric Supplier checking the sex offender registry commonly referred to as the "Megan's Law" registry maintained by the Delaware State Police.

3.8.6.4.3 The Electric Supplier may not hire a Person or Agent for Door-to-Door Sales ~~or marketing~~ who was convicted of a felony or misdemeanor when the conviction reflects adversely on the persons suitability for such employment.

P. Section 3.9.2.7 should be limited to docketed investigations.

In § 3.9.2.7, retail suppliers must provide information, on an annual basis, of "A list of states in which any formal complaint investigations have been initiated in the last twelve (12) months." RESA recommends that this section be clarified to apply only to formal, docketed investigations initiated by a public service commission (e.g., a show cause order issued by a state commission).

The proposed rules should be modified as follows:

3.9.2.7 A list of any states in which any formal, **docketed** complaint investigations have been initiated in the last twelve (12) months

Q. Section 4.2.13 should be modified to include more detail as to how, and how often, the price-to-compare is calculated.

Section 4.2.13 requires that each bill contain, among other things, the price-to-compare (“PTC”). The PTC is the price per kWh that a customer would receive were he or she to receive SOS. It is also used as a comparison tool to help customers decide how offers from retail suppliers compare to their utility’s standard offer. For customers interested only in obtaining the lowest price, the PTC allows customers to determine if an offer represents a savings compared to the SOS rate. However, the PTC is not useful and can be confusing for customers evaluating value-added products and services from retail suppliers. Many suppliers offer renewable energy products, affinity rewards points like airline or hotel points, free electric usage days, energy efficiency and home energy audits, etc., all of which may be at a premium and not comparable to the PTC.

The inclusion of the PTC on a customer’s bill can create confusion if the PTC does not accurately reflect all of the charges that a customer would avoid were he or she to take service from a retail supplier. More specifically, the PTC should reflect all embedded charges and related costs of providing Standard Offer Services, including the costs for energy, capacity and ancillary services; incremental expenses and carrying charges incurred in the provision of Standard Offer Service; and any applicable taxes. Additionally, merely including the PTC as it exists today, with no reference to when the PTC will next change, will present incorrect and inadequate information to customers. For example, if a retail supplier is offering a 12-month product, and the SOS rate is scheduled to change in three months, a customer will not have accurate information to truly compare the market offer with SOS.

Moreover, there is no need for a PTC to appear on bills issued to non-residential customers or to shopping customers. Non-residential bills are more sophisticated and are normally able to negotiate products and services more complex than a typical SOS offering. Shopping customers have already made the decision to shop and do not need the PTC on their bills.

For these reasons, RESA suggests that the Supplier Rules provide that the PTC either not appear on the bill or, if it is to appear, that it be couched in terms such as (for a bill issued in April 2013): “The residential supply price-to-compare through May 31, 2013 is XX cents per kWh. Effective June 1, 2013, through September 30, 2013, the residential supply price-to-compare will be YY cents per kWh. Effective October 1, 2013, through May 31, 2014, the residential supply price-to-compare will be ZZ cents per kWh. The residential supply price-to-compare effective June 1, 2014 has not yet been determined.”

To the extent the Commission chooses to maintain the requirement to include the PTC on the bill, the proposed rules should be modified as follows:

4.2.13 Bills transmitted by the EDC or SOSS to Residential Customers receiving SOS must include the Price to compare (“PTC”) for Electric Supply Service of the Standard Offer Service Supplier SOSS. The PTC must include all generation and transmission charges and other costs relating to the EDC’s and/or SOSS’s procurement of SOS supply. The EDC or SOSS shall present the PTC to customers as follows:

“The residential supply price-to-compare through [Month, Day, Year] is XX cents per kWh. Effective [Month, Day, Year], through [Month, Day, Year], the residential supply price-to-compare will be YY cents per kWh. Effective [Month, Day, Year], through [Month, Day, Year], the residential supply price-to-compare will be ZZ cents per kWh. The residential supply price-to-compare effective [Month, Day, Year] has not yet been determined.”

R. The 24-hour confirmation in Section 5.1.2 should be changed to one business day and limited to web enrollments.

Section 5.12 requires suppliers to acknowledge Electronic Signatures within “24 hours.”

RESA recommends that this be altered to one business day, which would be easier to track and less burdensome for retail suppliers.

The proposed rules should be modified as follows:

5.1.2 Electronic authorization must be provided by Electronic Signature on contract(s) conforming to Sections 2.1.1.9 and 3.4 of these Rules. Electric Suppliers shall acknowledge receipt of a Customer enrollment completed using an Electronic Signature by providing a confirmation of receipt within ~~twenty-four (24) hours~~ **one business day** of receiving the authorization. The confirmation may be provided by e-mail. ~~Electric Suppliers are encouraged to use an acknowledgement receipt to confirm the validity of e-mail addresses.~~

S. Section 5.1.3.10 should be modified to apply solely to Door-to-Door sales or, alternatively, to exclude telemarketing sales.

Under Section 5.1.3, verbal authorizations as a result of door-to-door and telemarketing sales must undergo a verification process. That process shall, among other things, “[c]onfirm that the Customer has been given a copy of the Disclosure Statement.” See § 5.1.3.10. The problem with § 5.1.3.10 is that it would require telemarketers to give the Disclosure Statement to customers before or during the phone call, which is incompatible with telemarketing sales and, indeed, inconsistent with the Supplier Rules and Delaware law that allow for such sales.

When this section was before the workgroup, it required the verification process to “[c]onfirm that the Customer has been given a copy of their contract *for Door-to-Door Sales only*.” (Emphasis added). Between the conclusion of the last workgroup meeting and the publication of these Supplier Rules, the words “for Door-to-Door Sales only” were deleted. RESA recommends

that the deleted words be re-inserted into § 5.1.3.12 or that the section specifically exclude telemarketing sale.

The proposed rules should be modified as follows:

5.1.3.10 For Door-to-Door sales only, cConfirm that the Customer has been given a copy of the Disclosure Statement. **For contracts entered into verbally through audio recording, the verification must affirm to the customer that the supplier will send the customer the Disclosure Statement within three (3) business days of obtaining the customer's verbal authorization to enroll. A Disclosure Statement correctly addressed to a customer with sufficient first class postage attached shall be considered received by the customer 3 days after it has been properly deposited in the US mail. If delivered electronically, the Disclosure Statement is considered received by the customer on the date it was transmitted electronically.**

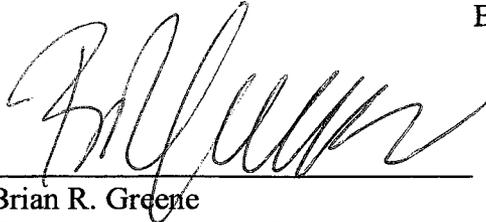
IV. Conclusion

RESA commends the Commission for re-opening this proceeding to review and revise the Supplier Rules in an effort to develop robust and sustainable competitive electricity markets and to ensure appropriate consumer protections. RESA appreciates the opportunity to comment on the proposed Rules and requests that the Commission adopt RESA's proposed modifications as set forth and explained above.

Respectfully submitted,

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