

**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 COM-)
PETITIVE MARKET FOR RETAIL ELECTRIC)
SUPPLY SERVICE (OPENED APRIL 27,) PSC REGULATION DOCKET NO. 49
1999; RE-OPENED JANUARY 7, 2003; RE-)
OPENED AUGUST 21, 2007; RE-OPENED)
SEPTEMBER 22, 2009; RE-OPENED)
SEPTEMBER 7, 2010); RE-OPENED JULY 17,)
2012)

COMMENTS OF THE DIVISION OF THE PUBLIC ADVOCATE

David L. Bonar, Public Advocate of the State of Delaware (the “DPA”), hereby submits the following comments on the proposed amendments to 26 *Del. C.* §3001 *et seq.*, the regulations governing electric suppliers.

The DPA’s statutory charge is to represent the interests of residential and small commercial customers. Last winter, many customers who elected to receive their electric supply from a retail electric supplier other than Delmarva Power & Light, the Standard Offer Service provider, saw their electric bills skyrocket as they came off fixed or introductory price contracts and were unaware that their contracts would become variable rate contracts. These customers complained to their state representatives, who in turn contacted the Commission Staff and the DPA to voice their concerns. The major changes that the DPA proposes to these regulations are designed to protect customers against being transferred to variable price contracts without their understanding or consent. The DPA’s proposed changes are modeled on the regulations that the Pennsylvania Public Utilities Commission (“PA PUC”) recently adopted.

The DPA also has comments on portions of the regulations to which no changes have been proposed, and has cleaned up some citation and other minor errors. We also made a global change for sections involving record retention to standardize it at three years, which is consistent with Delaware's statute of limitations for contracts. There were many instances where we moved provisions to other sections because we believed they fit better elsewhere; instances where we deleted provisions that we thought were repetitive; and instances where we condensed two or more provisions into one section. Finally, many of the changes are relatively self-explanatory and will not be discussed.

The section references in these comments relate to the DPA's redlined version of the proposed regulations attached hereto as Exhibit A, so the section numbers often will not track with the proposed changes published in the Register of Regulations.

§3001.1 Definitions

1. The definition of "Agent" seems to overlap the definition of "Broker." The definition of "Broker" in 26 *Del. C.* §1001 already includes "Agent." It appears to the DPA that the language beyond "1001" in the definition of "Broker" is unnecessary.

2. The definition of "DP&L" was removed; however, Section 8 of the Rules addressing net metering contains numerous references to DP&L. The definition should remain in the Rules if the Rules continue to refer to DP&L.

3. "Door to Door Sale." The DPA questions why the proposed change does not use language similar to that of 6 *Del. C.* §4403(3) governing home solicitations. 6 *Del. C.* §4403(3) provides as follows:

(3) "Door-to-door sale" shall mean a sale, lease or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's

agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

- a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;
- b. In which the consumer is accorded the right of rescission by the Consumer Credit Protection Act (15 U.S.C. § 1635) or regulations issued pursuant thereto;
- c. In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days;
- d. In which the buyer has initiated the contact and the transaction is conducted and consummated entirely by mail or telephone;
- e. In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or
- f. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

Except as provided above, the term door-to-door sale shall include any sale solicited and consummated via any telephone.

Notably, Section 4403(3) does not exempt sales solicited and consummated by telephone, but the proposed definition does exempt such sales.

4. The DPA has added definitions for "DPA" and "Rules."
5. The DPA does not know what the reference to "ES/A/B" in the definition of "Electronic mail or e-mail" means.
6. There are several definitions that use the terminology "_____ has the same definition set forth in 26 Del. C. §_____." For consistency, the DPA suggests using this same language for the following definitions:

- a. “Eligible Energy Resources” (26 *Del. C.* §352(6));
- b. “Renewable Energy Credit” or “REC” (26 *Del. C.* §352(16));
- c. “Retail Competition” or “Retail Choice” (26 *Del. C.* §1001(18));
- d. “Solar Renewable Energy Credit” or “SREC” (26 *Del. C.* §352(23)).

7. We have removed the words “Retail Electric” from before the word “Customer.” Since “Customer” and “Retail Electric Customer” have the same meaning, it seems superfluous to have two different terms.

8. The definition of “Verification Process” includes a definition of “Electronic” that refers to 6 *Del. C.* 12A-102(5). However, the definitions earlier include a definition for “Electronic” that does not refer to 6 *Del. C.* §12A-102(5). This could be confusing. The DPA recommends that the definitions of “Electronic” be consistent, so either the definition in 6 *Del. C.* §12A-102(5) should be used, or the definition of “Electronic” that is contained earlier in the definitions section should be used.

9. Because the DPA is proposing to add regulations governing fixed price and variable price contracts, we have included definitions for “Fixed Price,” “Introductory Price,” and “Variable Price.” These definitions are identical to the ones recently adopted by the Pennsylvania Public Utilities Commission.

3001.2 Certification of Electric Suppliers

10. **Section 2.1:** The DPA has added a provision to require Applicants for an Electric Supplier Certificate to provide a copy of the Application to the DPA when it files its Application with the Commission.

11. **Section 2.2 (new):** The DPA has added this new section to track Commissioner Clark’s comments at two different Electric Supplier Certificate hearings that he wants Staff to

make a recommendation to the Commission regarding whether an application should be granted or denied and that Staff should not simply be “checking off the boxes” to determine whether the Applicant supplied the information required by the regulations. The addition also requires the Applicant to provide updated information to the Commission and the DPA if any of the information included in the application changes from the time the application is filed until the time that the Commission considers it.

12. **Section 2.3.1:** The DPA understands that the Commission will soon be implementing electronic filing and so questions whether paper copies are necessary.

13. **Section 2.3.1.2 (new):** We moved this requirement from Staff’s proposed Section 2.1.1.6 because we thought it fit better here. We also removed Staff’s proposed 6-month time limit; we do not understand the purpose for a time limitation.

14. **Section 2.3.1.3:** We have added a provision requiring the Applicant to file notice with the Commission and the DPA within five days of any change in the name and/or address of the Applicant’s agent upon whom service of process may be made.

15. **Section 2.3.1.5.4:** We have added language that broadens the regulatory or court actions that trigger a disclosure requirement.

16. **Section 2.3.1.8.7:** The language “If a customer has an outstanding or unpaid balance due, an Electric Supplier may apply the Deposit against such unpaid balance and then remit any excess to the Customer” does not seem to belong in a section describing the disclosures required in an application. We have moved it to Section 3.0.

17. **Section 2.3.1.10.9:** We changed the proposed language in several of this section’s subsections from “beyond certification of the Applicant by the Commission” to “after the effective date of the Certificate.” We believe this change provides greater certainty.

18. **Sections 2.3.1.11 and 2.3.1.12 (new):** We simply moved these provisions out of Section 2.3.1.5.9 because neither of these are a demonstration of “cash or cash equivalents” that will satisfy the required disclosure.

19. **Section 2.3.1.13:** We added the language “with personal knowledge” to this section. We believe that whoever is verifying the application should have personal knowledge of the representations made in it. We also removed the “bona fide” language because we are not sure what it adds.

20. **Section 2.3.1.15.5:** We added provisions regarding the criminal charges/convictions that Staff and the Commission can consider in reaching a determination whether to grant or deny a certificate.

21. **Section 2.3.1.16:** We made significant revisions to Staff’s proposed addition of a Disclosure Statement. Our revisions are based on the PA PUC’s regulations. We also moved some of Staff’s proposed changes to post-certification because they seemed more appropriate there.

22. **Section 2.4 (new):** We moved Staff’s proposed disclosure of marketing materials here.

Section 3.0 Post-Certification Requirements

23. As a general observation, there are many different notice periods governing certain things. The DPA believes it would be better if the periods were more consistent. We understand that the three-business-day rescission for door to door sales contracts is statutory, but other notice periods are not.

24. **Section 3.3:** Regarding the change to provide that a Certificate will be deemed abandoned if the Electric Supplier has not started to provide supply service within 24 months of the date the Certificate is granted: Who is going to monitor the Electric Supplier?

25. **Section 3.4.1:** We have added language stating that the Disclosure Statement required in Section 2.0 may serve as a contract.

26. **Sections 3.4.2 and 3.4.3 (new):** These were moved from various parts of Section 2.0.

27. **Sections 3.4.6, 3.4.7, 3.4.8 and 3.4.9:** These are based on the PA PUC's newly-adopted regulations. Section 3.4.8.2 reflects the DPA's concern about people being placed on variable rate plans without their express consent, and is designed to ensure that does not occur.

28. **Section 3.5:** We added language making clear that the EDC may not provide information about customers to Electric Suppliers without the customer's affirmative assent.

29. **Section 3.6.1:** We added language that makes clear that the Electric Supplier is responsible for identifying persons who have enrolled in the "Do Not Call" registry.

30. **Section 3.6.2.1:** We changed the first name of the agent or representative making the call to the full name; agents or representatives may have several people with the same first name.

31. **Section 3.6.2.5:** We removed this from Staff's original location and put it in a section by itself; we think it makes more sense in a separate section.

32. **Section 3.10.2.3:** We changed this from seven to three business days to be consistent with the door to door statute, 6 *Del. C.* §4404(1).

33. **Section 3.10.3:** The door to door statute requires the identification card to be issued by the Department of Finance. *See 6 Del. C.* §4405.

Section 4.0 Billing and Metering

34. The DPA questions whether Section 4.1.2 continues to be necessary given that the Cooperative is no longer a regulated utility.

Section 5.0 Customer Protection

35. **Section 5.1.3.10:** If this is a telephone solicitation, how will the Customer have received a copy of the Disclosure Statement? Furthermore, the rescission period for phone solicitations is three business days. See 6 *Del. C.* §4403.

36. **Section 5.2.1:** We deleted this sentence because it is not pertinent to certification and regulation of electric suppliers.

37. **Sections 5.2.2 and 5.3.3:** The DPA is troubled by the limitation of the Commission's complaint process to informal complaints. We believe it should be all or nothing: either the Commission should hear all disputes involving an Electric Supplier and its Customer, or it should hear none. Given that the disputes that are most likely to arise are contractual ones involving a non-utility party whose prices and service the Commission has no authority to regulate, we question (from a purely legal perspective) whether the Commission has jurisdiction to hear such disputes.

38. **Section 5.2.4 (new):** We have added a provision that the Disclosure Statement and/or contract shall include a description of the Electric Supplier's complaint resolution process. We do not believe that a customer should have to try to find the complaint resolution process in Commission regulations.

39. **Section 5.6:** These are generally repetitive of what is already in the regulations (*see* Sections 3.6 and 3.7). Therefore, we deleted them from this portion of the regulations.

Section 6.0 Green Power and Renewable Resources

40. In light of the amendment to the Renewable Energy Portfolio Standards Act making Delmarva responsible for purchasing the RECs and SRECs for all Delaware load served by Electric Suppliers, the DPA believes that at a minimum Section 6.3 is no longer necessary.

Respectfully submitted,

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EXHIBIT "A"

DELAWARE PUBLIC SERVICE COMMISSION

**RULES FOR
CERTIFICATION AND REGULATION
OF ELECTRIC SUPPLIERS**

EFFECTIVE: ~~JULY 10, 2014~~ August 1, 2014

3001 Rules for Certification and Regulation of Electric Suppliers

~~1.0~~ ~~4.0~~ Definitions

~~4.02.0~~

“Affiliated Interest” means:

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

“Agent” means a Person who conducts marketing or sales activities, or both, on behalf of an Electric Supplier, including an employee, a representative, an independent contractor or a vendor.

“Aggregator” ~~has the same definition set forth in 26 Del. C. §1001 means any person or entity who contracts with an electric distribution company, electric supplier or PJM Interconnection (or its successor) to provide energy services, which facilitate battery storage systems for Grid-Integrated Electric Vehicles and related technologies.~~

“Ancillary Services” ~~has the same definition set forth in 26 Del. C. §1001 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.~~

“Annualized Billing Period” means a period of 12 consecutive monthly billing periods. A Customer's first Annualized Billing Period begins on the first day of the first full monthly billing period after which the Customer-Generator Facility is interconnected with the EDC and is generating electricity. A customer may elect to change the end of the Annualized Billing Period one time in order to better utilize excess generation.

“Applicant” means:

1. An entity or ~~p~~Person seeking to obtain an Electric Supplier Certificate; or
2. An Electric Supplier seeking to amend their Electric Supplier Certificate.

“Broker” ~~has the same definition set forth in 26 Del. C. §1001, and shall also include anyone who conducts marketing activities including, but not limited to-, promotion and sales of electricity and related services to Retail Electric Customers 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.~~

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

“Commission” ~~has the same definition set forth in 26 Del. C. §1001 means the Delaware Public Service Commission.~~

“Community-owned energy generating facility” or **“Community Energy Facility”** means a renewable energy generating facility that has Subscribers who share the energy production of the Community Energy Facility, which may be located either as a stand-alone facility or behind the meter of a Subscriber. The Community-owned energy generating facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities. The Community Energy Facility shall:

- Satisfy all applicable requirements of Section 8.0 Net Metering of this Rule;
- Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters

Laboratories to ensure that net metering customers meet applicable safety and performance standards; and

- Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

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“**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.

“**Customer**” or ~~“Retail Electric Customer”~~ has the same definition set forth in 26 Del. C. §1001 means a purchaser of electricity for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, who purchases and supplies electricity to the occupants of such building or facility.

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

- Satisfy all of the applicable requirements of Section 8.0 Net Metering of this Rule;
- Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
- Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

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“~~Delaware Electric Cooperative, Inc.~~” or “**Cooperative**” or “**DEC**” has the same definition set forth in 26 Del. C. §1001 or its successor(s).

“~~Delmarva Power & Light Company~~” or “**Delmarva**” or “**DP&L**” has the same definition set forth in 26 Del. C. §1001 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.

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

“**Distribution Facilities**” has the same definition set forth in 26 Del. C. §1001 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.

“**Distribution Services**” has the same definition set forth in 26 Del. C. §1001.

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

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

“**Electric Distribution Company**” or “**EDC**” has the same definition set forth in 26 Del. C. §1001 means a public utility owning and/or operating Transmission and/or Distribution Facilities in Delaware.

"Electric Supplier" has the same definition set forth in 26 Del. C. §1001 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, e.g., Delmarva), that sells electricity to Retail Electric Customers, utilizing the Transmission and Distribution Facilities of an Electric Distribution Company.

"Electric Supplier Certificate" or "ESC" means the Commission order approving an application for certification as an Electric Supplier or Broker shall serve as the ESC.

"Electric Supply Service" has the same definition set forth in 26 Del. C. §1001 means the provision of electricity or electric generation service.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic mail" or "e-mail" means any message transmitted through the internet including, but not limited to, messages transmitted to or from any address affiliated with an internet site owned or operated by the ES/A/B.

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

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

- Solar energy technologies that employ solar radiation to produce electricity;
- Electricity derived from wind energy;
- Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
- Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;
- Electricity generated by a fuel cell powered by Renewable Fuels;
- Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
- Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation **7 Del.E Admin. Code §106, Environmental Standards for Eligible Energy Resources**);
- Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation **7 Del.E Admin. Code §106, Environmental Standards for Eligible Energy Resources**);
- 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.

“Fixed Price” means an all-inclusive per kWh price that will remain the same for at least three billing cycles or the term of the contract, whichever is longer.

~~“Fuel Cell” has the same definition set forth in 26 Del. C. §1001 means an electric generating facility that: (a) includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy, and (b) may include an inverter and fuel processing system or other plant equipment to support the plant’s operation or its energy conversion, including heat recovery equipment.~~

~~“GATS” has the same definition set forth in 26 Del.E Admin Code §3008 means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).~~

~~“Generation Attribute” has the same definition set forth in 26 Del.E Admin Code §3008 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” has the same definition set forth in 26 Del.E Admin Code §3008 means a facility that converts a fuel or an energy resource into electric energy.~~

~~“Grid-Integrated Electric Vehicle” has the same definition set forth in 26 Del. C. §1001 means a battery run motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for the external control of battery charging and discharging by an electric distribution company, electric supplier, PJM Interconnection, or an aggregator.~~

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

“Introductory Price” means an all-inclusive per kWh price for new customers that will remain the same for a limited period of time between one and three billing cycles, followed by a different fixed or variable per kWh price that will be in effect for the remaining billing cycles of the contract term, consistent with the terms and conditions in the Electric Supplier’s Disclosure Statement and contract.

~~“Marketer” has the same definition set forth in 26 Del. C. §1001 means an entity or person that purchases and takes title to electricity for sale to Retail Electric customers.~~

“Net Metering” (or “Net Energy Metering”) means a service to a Customer whereby electric energy generated by the Customer, through a Customer-Generator Facility and delivered to the local distribution facilities of an Electric Supplier, may be used to offset electric energy provided by the Electric Supplier to the Customer.

“Person” has the same definition set forth in 26 Del.E Admin Code §1001.

“PJM Interconnection, LLC” or “PJM” has the same definition set forth in 26 Del.E Admin

~~Code §3008 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.~~

~~“Price” or “Rate” means the charge(s) for Electric Supply Service applied against the billing determinants for electricity usage of the Customer.~~

~~“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 that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of the Renewable Energy Portfolio Standards Act, 26 Del. C. §351 et seq. 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 has the same definition set forth in 26 Del.E Admin Code §3008.~~

~~“Residential Customer” means a Retail Electric Customer eligible to take electric services supplied exclusively for domestic purposes in individually metered dwelling units and in duplexes and triplexes, including the separately metered non-commercial facilities of the residential customer (e.g., garages, water pumps, etc.).~~

~~“Retail Competition” or “Retail Choice” means the opportunity for a Customer to purchase electricity from an Electric Supplier other than the Standard Offer Service Supplier.~~

~~“Rules” means the Commission’s Rules for Certification and Regulation of Electric Suppliers (26 Del. Admin. Code §3001 et seq.).~~

~~“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 the current DP&L’s tariff, currently on file with the Commission, governing Service Classification “Small General Service-Non Demand Rate” or the current Cooperative’s tariff, currently on file with the Commission, governing 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.~~

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

~~“Staff” has the same definition as set forth in 26 Del.E Admin Code §1001.~~

~~“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” has the same definition set forth in 26 Del. C. §1001 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.

“Subscriber(s)” means those persons who are otherwise ~~Retail Electric~~ Customers of an Electric Supplier that are entitled to share in the energy production of a Community Energy Facility.

“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” has the same definition set forth in 26 Del. C. §1001 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.

“Variable Price” means an all-inclusive per kWh price that can change by the hour, day, month, etc. according to the terms and conditions in the Electric Supplier’s Disclosure Statement and Contract.

“Verification Process” is a process by which a Residential or Small Commercial Customer’s intent to enter into a contract to receive Electric Supply Service from an Electric Supplier other than the SOSS is validated. Validation 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). The verification process shall be different and distinct from the solicitation and sales process.

“Written Notice” means notification made in writing and sent by First Class mail and addressed to the individual or entity being given notice at the current billing address contained in the records of the EDC or Electric Supplier. Written notice may also be sent by electronic mail to a valid e-mail address supplied by the Customer and provided the Customer agrees to accept Written Notice in such manner.

3.0 ~~2.0~~ — **Certification of Electric Suppliers**

~~2.04.0~~

2.1 All ~~Electric Suppliers~~ Applicants 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. Applications shall be filed with the Commission and a copy shall be provided to the DPA at the time of filing.

2.2 The Staff will review applications for certification as an Electric Supplier or a Broker and shall recommend to the Commission that it grant, deny, or grant with conditions any application for certification. Furthermore, if there are any changes in any of the information submitted by an Applicant as required by this Section 2.0 between the time the application is submitted and the time the Commission considers the application, the

Applicant shall file an amended application that includes that information and shall provide Staff and the DPA with the amended application.

~~2.3~~ ~~2.1.4~~ Certification Requirements.

~~2.3.1~~ ~~All Electric Suppliers~~ Applicants shall file with the Commission an original and ~~ten~~ ~~(40)~~ ~~five~~ (5) paper copies of an ~~Application~~ for an Electric Supplier Certificate. Applications filed by electronic means shall comply with 26 Del.E Admin Code §1001 Rules of Practice and Procedure of the Delaware Public Service Commission. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately serve the public.

~~2.4.4.12.3.1.1~~ Authority to Do Business In Delaware. Each Applicant shall provide documentation issued by 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. Such documentation shall not have been granted more than twelve (12) months preceding the date of filing an application for an ~~ESC~~.

~~2.3.1.2~~ Certificate of Incorporation/Formation. A certificate issued by the state of incorporation or formation certifying that the Applicant is in good standing and qualified to do business in the state of formation;

~~2.4.4.2-2.3.1.3~~ Resident Agent. Pursuant to 26 Del. C. §401, each Applicant shall file with the Commission 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. The Applicant shall file notice of the change with the Commission within five (5) business days of the change. This information must be updated in a timely manner when changes occur and shall also provide a copy of such change to the DPA.

~~2.4.4.3-2.3.1.4~~ Performance Bonds. Each Applicant, ~~except Brokers,~~ shall submit a copy of ~~their~~ its performance bond or guarantee that ~~they have~~ it has obtained as security to the Electric Distribution Company if required in the ~~Service a~~ Agreement between the Applicant and the Electric Distribution Company. The copy of the performance bond may be provided after the Applicant is granted the ESC, but before the Applicant may begin marketing or offering -Electric Supply Service to Customers.

~~2.4.4.4-2.3.1.5~~ 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 procure arrange electricity sales from an entity that complies with PJM's requirements and is a Ccertified Electric Supplier in the StateDelaware.

~~2.4.4.4-2.3.1.6~~ Brokers Only: A list of Delaware-certified Electric Suppliers through which the Applicant intends to arrange for the sale of electricity.

~~2.4.1.5-2.3.1.7~~ 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 electric supply service within the State of Delaware. Such evidence shall include, but is not limited to:

~~2.4.1.5.1-2.3.1.7.1~~ Publicly traded Applicants must file ~~C~~certified financial statements, current within twelve (12) months of the application for ESC, including their most recent annual report to shareholders and ~~their~~ SEC Form 10-K (or a link to the report on the SEC website). 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 if applicable, the certified financial statements of a publically traded parent. Applicants submitting European-style financial statements shall include a statement of similarity.~~

~~2.4.1.5.2-2.3.1.7.2~~ Description of the electric supply service(s) the Applicant plans to offer in Delaware, including types of customers to be served, ~~geographic area~~ the EDC service territory in which services are to be offered, and any relevant ~~experience in providing such services in Delaware or other jurisdictions.~~ nature of business being conducted.

~~2.4.1.5.3-2.3.1.7.3~~ A list of states in which Applicant or any of its ~~a~~Affiliated ~~i~~nterests is presently selling or brokering electric supply service to ~~Retail Electric-c~~Customers and a list of states in which Applicant or any of its ~~A~~ffiliated ~~i~~nterests has pending applications to sell or broker electric supply service to ~~Retail Electric-c~~Customers. ~~A paper copy~~Copies of all granted or approved licenses or certificates ~~should shall~~ be included in the application.

~~2.4.1.5.4-2.3.1.7.4~~ A list of states in which Applicant or any of its ~~A~~ffiliated ~~i~~nterests has been denied approval by a State Commission to sell or broker electricity to ~~Retail Electric-C~~Customers, ~~has been found in violation of a state's laws, rules, and/or regulations, or has had its authority revoked, modified, or suspended, or has had any other adverse judicial or regulatory action against it.~~ Applicant should also include any cases in which revocation or suspension of its authority to sell or broker electricity is pending. ~~Applicant shall P~~provide details identifying the name, case number, and date of each action, ~~and shall provide copies of the regulatory authority's or court's decision.~~ If none, explicitly state such.

~~2.4.1.5.5-2.3.1.7.5~~ Relevant operational experience of each principal officer, director, or manager responsible for Delaware operations.

~~2.4.3.1.5-2.3.1.7.6~~ A copy of any FERC approval as a Marketer or ~~the date and docket number of the application to FERC.~~ If the date and docket number are provided, a copy of the FERC approval must be provided within 30 calendar days of issuance.

~~2.1.1.5.7-2.3.1.7.6~~ If the Applicant requires deposits, advance payments, prepayments, financial guarantees or the like (“Deposit”) from Residential or Small Commercial Customers, then the Applicant must list on its application the amount of projected Deposits it plans to collect from Customers during the first year after it obtains its Electric Supplier Certificate. In addition, the Applicant must secure a bond with corporate surety licensed to do business in Delaware to guaranteeing the repayment of all customer deposits and advances upon if the Electric Supplier terminates Electric Supply termination of service or. If a Customer has an outstanding or unpaid balance due, an Electric Supplier may apply the Deposit against such unpaid balance and then remit any excess to the Customer. The Applicant shall file the original of such a bond issued by a qualified surety for permanent retention with the Secretary of the Commission. The amount of the bond ~~will shall~~ be the greater of (i) 150 percent of the ~~projected amount of deposits and advances~~ the Applicant lists on its application as projected Deposits 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 Applicant listed in its application, the Electric Supplier must increase the amount of the bond shall be increased to comply with the requirement in the preceding sentence. Applicant must include a calculation of the projected Deposits for the next one year period.

~~2.3.1.82-4.1.5.8~~ 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.

~~2.1.1.5.9-2.3.1.8.1~~ Demonstration of cash or cash equivalents can be satisfied by the following:

~~2.1.1.5.9.1-2.3.1.8.1.1~~ Cash or cash equivalents, including cashier’s check, sight draft, performance bond proceeds, or traveler’s checks;

~~2.1.1.5.9.2-2.3.1.8.1.2~~ Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

~~2.1.1.5.9.3-2.3.1.8.1.3~~ 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 after the effective date of the Certificate;~~

~~2.1.1.5.9.4-2.3.1.8.1.4~~ 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 after the effective date of the Certificate;~~

~~2.1.1.5.9.5-2.3.1.8.1.5~~ 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 after the effective date of the Certificate;~~

~~2.1.1.5.9.6~~ 2.3.1.8.1.6 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 after the effective date of the Certificate,~~ and payable on an interest-only basis for the same period;

~~2.1.1.5.9.7~~ 2.3.1.8.1.7 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 after the effective date of the Certificate;~~

~~2.1.1.5.9.8~~ 2.3.1.8.1.8 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 after the effective date of the Certificate;~~ and,

~~2.1.1.5.9.9~~ 2.3.1.8.1.9 Identifiable physical assets set forth in a balance sheet or similar statement.

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

~~2.1.1.5.9.11~~ ~~The Commission or its Staff may consider any additional information submitted by the Applicant that demonstrate the financial, operational, managerial, and technical abilities of an Applicant.~~

~~2.3.1.9~~ ~~The Applicant shall disclose whether the entity or any of its Affiliated Interests has filed for bankruptcy in the past 24 months.~~

~~2.3.1.10~~ ~~The Commission or its Staff may consider any additional information submitted by the Applicant that demonstrates its the financial, operational, managerial, and technical abilities of an Applicant.~~

2.3.1.11 ~~2.1.1.6~~ ~~Verification of Application. The application must be verified by accompanied by a signed, sworn verification of a principal or officer of the Applicant with personal knowledge of and responsibility for the information and representations made in the application. Where the Applicant is a corporation or an association, the verification shall be signed by an bona fide officer thereof.~~

~~2.3.1.12~~ ~~2.1.1.7~~ ~~Consent to the Jurisdiction. All Electric Suppliers Applicants shall consent to the jurisdiction of the Commission and the Delaware courts for acts or omissions arising from their activities in the State.~~

2.3.1.13 ~~2.1.1.8~~ ~~Other Requirements Information~~ to be provided by Applicant:

~~2.1.1.8.1-2.3.1.13.1~~ Legal name and, if applicable, tax identification number or employer identification number as well as the name under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant has previously done business in Delaware or elsewhere?;

~~2.1.1.8.2~~ State of incorporation, business address, and address of the principal officer. Provide a certificate issued by the state of formation within the past 6 months certifying that the Applicant is in good standing and qualified to do business in the state of formation;

~~2.1.1.8.3-2.3.1.13.2~~ Name, title, e-mail address (if applicable), mailing address and telephone number of a regulatory contact person. If customer complaint contact person is different, provide name, title, e-mail address, mailing address and telephone number;

~~2.1.1.8.4-2.3.1.13.3~~ A toll-free telephone number of the Applicant's customer service department. Brokers proposing to serve non-residential Customers may provide a Delaware telephone number;

~~2.1.1.8.5-2.3.1.13.4~~ 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 Applicant's organizational structure, including all parent, affiliate and subsidiary companies ;and

~~2.1.1.8.6-2.3.1.13.5~~ Statement detailing any criminal activities, except for misdemeanors or lesser violations, 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. In reaching a determination whether an ESC should be granted, Staff and the Commission may consider the age of the conviction, whether the conviction was for a financial crime or an activity that relates directly to the provision of electric supply service; whether the Applicant/person is currently on probation or paying restitution; and any other fact that the Applicant provides with respect to the criminal charge or conviction; and within the last five (5) years; and

~~2.1.1.8.7-2.3.1.13.6~~ If the Applicant intends to serve Residential or Small Commercial Customers, a general description of the marketing plan(s) and/or method(s) it plans to use in Delaware. Plans should include how (door-to-door, telemarketing, direct mail, etc.) and method (internal resources, Delaware-certified Broker, external third-party, etc.)

~~2.3.1.14~~ ~~2.1.1.9~~ ~~Contracts~~ Disclosure Statement. At the time of the filing, the Applicant, except Brokers, shall either provide its Standard Contract a copy of ~~its~~ the Disclosure Statement to be provided to used for Residential and Small Commercial Customers a link to it on the Applicant's website. The Disclosure Statement Such contract is subject to review by the Commission Staff and if Staff determines that the Disclosure Statement such contract is not consistent with these Rules, other Commission

~~regulations, Rules for Certification and Regulation of Electric Suppliers ("Rules"), the Delaware Code, other Commission regulations, or any other applicable law, order, rule or regulation, then Staff shall recommend rejection of the Application, have the authority to require changes in order to make the Disclosure Statement consistent with these Rules, or the Applicant Electric Supplier faces revocation, rejection or denial of its application for an of its Electric Supplier Certificate by the Commission after a hearing. Such contract~~

~~2.1.1.9.12.3.1.14.1. The Disclosure Statement shall disclose the contract's terms of service in bold type of at least 12 points, including the following terms and conditions, if applicable:~~

~~2.3.1.14.1.1. The Fixed Price, Introductory Price, or Variable Price to be charged per kilowatt hour~~

~~2.3.1.14.1.2. Generation charges shall be disclosed according to the actual prices;~~

~~2.3.1.14.1.3. In the case of an Introductory Price, the Disclosure Statement must inform the customer that the initial price being offered is an Introductory Price; must specify the per kWh Introductory Price; and must state the number of billing cycles that the Introductory Price will be effective. If the price to be billed upon the expiration of the Introductory Price is a Fixed Price, the Disclosure Statement shall specify the new Fixed Price. If the price to be billed upon the expiration of the Introductory Price is a Variable Price, the Disclosure Statement shall specify the conditions of variability, the basis on which prices will vary, and the limits (if any) on price variability.~~

~~2.3.1.14.1.4. The Variable Price statement must include the conditions that will cause the rate to change (that is, the basis(es) on which rates will change and any limits on rate changes . If there is a limit on the Variable Price, such as a specific price cap, a maximum percentage increase in price between billing cycles or minimum/maximum charges per kilowatt hour for electricity during the term of the contract, the Applicant shall clearly explain the applicable limits. If there is no limit on Variable Price, the Disclosure Statement shall state that there is no limit on how much the price may change from one billing cycle to the next billing cycle, and shall further state that historical pricing is not indicative of present or future pricing;~~

~~2.3.1.15.1.5 For contracts with a Variable Price, a telephone number and internet address at which a customer may obtain the previous twelve (12) months' average monthly billed prices for that customer's rate class and service territory. If an Applicant does not have 12 months' data because it has not been providing service for that long, it shall provide the data for the time that it has been providing service. For all other customers, the Disclosure Statement shall include the Applicant's toll-free telephone number; address and web address, if applicable; and the Commission's address, web address, Delaware toll-free telephone number and telephone~~

number;

be in clear and plain language and include explicit terms and conditions which at a minimum contain the following in plain type:

~~2.1.1.9.1.1~~ 2.3.1.14.6 A clear and conspicuous statement of the duration of the contract;

~~2.1.1.9.1.2~~ The price stated in cents per kWh. A price description of each service, including all fixed and variable costs. If the product is a variable Price product the contract shall identify the initial Price per kWh and include a statement that explains the conditions of variability (stating on what basis and how often Prices may vary) and the limits on Price variability, if any. Applicants offering a variable Price product shall provide a toll-free number or link on the Applicant's website where customers may obtain the Price per kWh at least five (5) calendar days prior to the Price effective date. Customers may waive the five (5) calendar day advance notice by certifying that (s)he has access to ongoing price information via automated price response equipment. This waiver must be prominent and in 10-point type or larger, or a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined for a variable price product;

~~2.1.1.9.1.3~~ 2.3.1.14.7 A complete list of any other fees and the amount thereof, 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 a description of the specific conditions under which such fees can be imposed;

~~2.3.1.14.8~~ A complete list of any other charges, including, ~~f~~Fixed monthly Price charges and minimum monthly charges;

~~2.1.1.9.1.4~~ 2.3.1.14.9 A statement of the Applicant's Electric Supplier's termination rights, which shall explain the specific conditions, under which the Applicant Electric Supplier may terminate service. At a minimum, the Applicant shall provide the Residential or Small Commercial Customer with at least 30 calendar days Written nNotice of termination of the contract and procedures to maintain ongoing service. In addition, the Disclosure Statement must adhere to the provisions in 26 DE Admin Code 3002-3-2.2 regarding good faith disputes;

~~2.1.1.9.1.5~~ The Applicant's Electric Supplier's local or toll-free telephone number; address and web address, if applicable; and the Commission's address, web address, Delaware toll-free telephone number and telephone number;

~~2.1.1.9.1.6~~ 2.3.1.14.10 A statement informing the Residential or Small

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Commercial Customer that ~~if they/he/she relocate, because of relocation~~ outside of their current EDC's service territory, ~~they/he/she~~ may terminate ~~their/his/her~~ contract with ~~their/his/her~~ Electric Supplier ~~—with no termination fee upon providing 30-days' Written Notice in writing to the Electric Supplier.~~ Applicant.

~~2.1.1.9.1.7 A statement informing the Residential or Small Commercial Customer that they/he/she has seven (7) business days from the day the EDC sends the confirmation letter to rescind their/his/her selection without penalty or fee.~~

2.3.1.14.11 Include the following statement on the top of the first page of the Disclosure Statement in bold-faced type that is a minimum of 12-points large and that is in the same language, e.g., Spanish, as that principally used in the sales presentation:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

2.3.1.14.12 Include the following provision immediately before the area for the customer's signature in bold-faced type that is a minimum of 12-points large and that is in the same language, e.g., Spanish, as that principally used in the sales presentation:

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (Name of Electric Supplier) at (Address) not later than midnight of (date that is three business days after the date of the transaction) stating: "I hereby cancel this transaction."

(Date) _____ "

(Buyer's signature)

~~2.1.1.9.1.8 2.3.1.14.13 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 or e-mail 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. The Residential or Small Commercial Customer shall have the right to 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.~~

~~2.1.1.9.1.92.3.1.14.14—A statement regarding contract renewal procedures, if any, including automatic renewal if applicable; and~~

~~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 a contract 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 Customers' 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 three (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 electronically transmitted to the e-mail address provide by the Customer.~~

~~2.1.1.9.2—All Customer contracts shall include all material terms and be written in clear plain language understandable to the Customer with any exclusions, exceptions, add-ons, package offers, limited time offers or other deadlines prominently communicated. Penalties and procedures for ending contracts should be clearly communicated.~~

~~2.3.1.14.15 A discussion of the Electric Supplier's complaint process to be followed in the event of a dispute.~~

~~2.4 Marketing Materials. If the Applicant has prepared marketing materials for dissemination in Delaware, Applicant shall include copies of all print, broadcast, electronic media, telecommunication, direct mail or in-person written marketing materials, including but not limited to scripts for telemarketing, advertisements, website presentations, and any other material of a similar nature, that Applicant will use to market and promote its produces to Delaware residents.~~

~~2.2-2.5 Notice. Each Applicant, except Brokers, shall publish notice of the filing of ~~the~~ its application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission. The form of notice will be provided to the Applicant after receipt of the application.~~

~~2.3-2.6 Application Fee. A non-refundable application fee of \$750 shall be submitted with the application for Certification. An application will not be considered filed until the application fee is received.~~

2.4.2.7 Incomplete or Abandoned Applications. An Applicant that files an application for an ESC that is incomplete or does not include the information required by these rules or the required Application Fee will be provided a list of deficiencies by Commission Staff within 15 business days of receipt. The Applicant will then have thirty (30) days to cure any identified deficiencies, and failure to do so will result in rejection of the application. Commission Staff may extend the period to correct deficiencies an additional sixty (60) days for good cause.

2.5.2.8 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.**

2.62.9 Public Interest. The Commission may ~~choose to deny an application for an ESC to an Applicant~~ where it finds that doing so is in the public interest.

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. The Commission will consider the ESC abandoned if the Electric Supplier does not: (a) begin serving Customers within twenty-four (24) months of the ESC being granted; and/or (b) provide the required yearly compliance filing in Section 3.910.2 of these Rules within ninety (90) days of the ~~deadline for submission of such compliance filing required due date.~~

3.4 Contracts ~~and Revised Contracts~~ for Residential or Small Commercial Customers.

3.4.1 An Electric Supplier shall supply Electric Supply Service to a Residential or a Small Commercial Customer only by ~~a standard a~~ contracts containing the provisions described in Section ~~2.4.1.9, 3.4~~ of these Rules. The Disclosure Statement may serve as the contract for purposes of this section as long as it has all of the required terms and conditions set forth in Section 2.3.1 and this Section 3.4, and is either signed by the customer or the customer's intention to enter into a business transaction with the Electric Supplier is verifiable by some other means, such as an electronic signature or verifiable verbal authorization.

3.4.2 The contract shall include an area for the Customer to acknowledge receipt of the document by written signature, Electronic Signature or verbal consent. For a contract 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 Customers' 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 three (3) days after it has been properly deposited in the United States mail. If delivered electronically, the Disclosure Statement is considered received by the Customer on the date it was electronically transmitted to the e-mail address provide by the Customer.

3.4.3 The Electric Supplier must provide the Customer with an executed copy of the contract which includes the terms and conditions of service. The Customer may be provided with the contract via e-mail only if the Customer has provided a valid e-mail address and has consented to receive information from the Electric Supplier via e-mail. Electric Suppliers are encouraged to use an acknowledgement receipt to memorialize the Customer's consent and to confirm the validity of e-mail addresses.

3.4.23.4.4 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 verifiable verbal authorization. An Electric Supplier that contracts with a Customer by means of the internet shall confirm the identity of the person signing the contract. An Electric Supplier may use a distinct username and password to confirm the identity of the contracting Customer.

3.4.33.4.5 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.~~

3.4.6 Every Electric Supplier's contract shall include the following statement on the top of the first page of the Disclosure Statement in bold-faced type that is a minimum of 12-points large and that is in the same language, e.g., Spanish, as that principally used in the sales presentation:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

3.4.7 Every Electric Supplier's contract shall include the following provision immediately before the area for the customer's signature in bold-faced type that is a minimum of 12-points large and that is in the same language, e.g., Spanish, as that principally used in the sales presentation:

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (Name of Electric Supplier) at (Address) not later than midnight of (date that is three business days after the date of the transaction) stating: "I hereby cancel this transaction."

(Date) _____ "

(Buyer's signature)

3.4.43.4.8 If the Electric Supplier makes substantive changes to either its Disclosure Statement standard contract or its contract(s) for Electric Supply Service to Residential or Small Commercial Customers, the Electric Supplier must notify the Commission Staff and the DPA at least seven (7) business days prior to using the

~~Disclosure statement and/or offering the Disclosure Statement contract(s) in Delaware to allow for review and comment. If Staff determines that such Disclosure Statement contract is not consistent with these Rules, other Commission regulations, the Delaware Code or any other applicable law, order, rule or regulation, Staff shall reject the changes and provide Written Notice to the Electric Supplier of its rejection. The Electric Supplier may submit a revised contract for reconsideration by Staff. other Commission regulations, then within seven (7) business days of receiving the revised Disclosure Statement from the Electric Supplier, Staff shall have the authority to require changes to it or the Electric Supplier may face 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. Substantive changes include, but are not limit to, changes in the Electric Supplier's name and/or changes in product offerings.~~

~~3.4.8.1 An Electric Supplier shall provide the following Written Notices to Residential and Small Commercial Customers upon the renewal of a fixed term contract or upon any change in contract terms:~~

~~3.4.8.1.1. Except for customers on Introductory Price contracts and Fixed Price contracts with a term of three (3) or fewer months: An initial notice shall be provided to each affected Residential and Small Commercial Customer 45 to 60 days prior to the expiration date of the fixed term contract or the effective date of the proposed change in terms. The initial notice shall include:~~

~~3.4.8.1.1.1. A description of the proposed change(s) in terms of service;~~

~~3.4.8.1.1.2. The date that the change(s) shall become effective or when the fixed term contract is to expire;~~

~~3.4.8.1.1.3 A statement indicating when a follow-up option notice shall be issued with details regarding the proposed change(s);~~

~~3.4.8.1.1.4 A statement explaining that the options notice shall discuss the Residential or Small Commercial Customer's options with respect to the proposed change in terms of service or expiring fixed term contract;~~

~~3.4.8.1.1.5. A statement indicating whether the existing fixed term contract has a cancellation fee, and an explanation of the fee and how to avoid it if possible, including the date by which the Residential or Small Commercial Customer can choose an alternative Electric Supplier and avoid the fee;~~

~~3.4.8.1.2. An options notice shall be provided to each affected Residential and Small Commercial Customer (including those on Introductory Price contracts and Fixed Price contracts with a term of three (3) or fewer months): At least 30 days prior to the expiration date of the fixed term contract or the effective date of the proposed change(s) in terms. The options notice shall include the following:~~

~~3.4.8.1.2.1. A statement advising the Residential or Small Commercial Customer of the specific changes being proposed and informing the Customer of its/his/her options, including the ability to accept the proposed changes, to select another Electric Supplier within a certain time period, or to return to SOS;~~

3.4.8.1.2.2. Information regarding new pricing or renewal pricing, including the price to be charged per kilowatt hour for the first billing cycle of generation service; and

3.4.8.1.2.3. Instructions on how a Residential or Small Commercial Customer may exercise its/his/her options;

3.4.8.2. If a Residential or Small Customer does not respond to the notices, then the terms and conditions of the existing contract shall be continued on a month-to-month basis unless the product is no longer being offered by the Electric Supplier. In such case, the Residential or Small Commercial Customer shall be placed on a Fixed Price contract where any change in pricing is provided to that Customer at least ten (10) calendar days prior to the new price being charged. Cancellation fees may not be changed if a Customer elects to terminate the month-to-month contract.

3.4.9 Electric Suppliers shall provide Residential and Small Commercial Customers taking service pursuant to fixed price contracts with at least ten (10) calendar days Written Notice or e-mail notice of any Price changes. E-mail notice may be used only if the Customer has provided a valid e-mail address and has consented to receive Price information via e-mail. The Residential or Small Commercial Customer shall have the right to terminate a contract based on a change in Price for a Fixed Price contract without incurring a cancellation fee. Residential and Small Commercial 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 renewed contract, or if service will continue on a month-to-month or other basis. Notification shall be provided by written notice. E-mail may be used provided the Customer has chosen to receive communications regarding changes in Price from the Electric Supplier in this manner.~~

~~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) business days of receiving the revised Disclosure Statement from the Electric Supplier.~~

~~3.5 Price and Terms of Service. Any pPrice term shall not be inconsistent with pricing the terms of service in a Residential or Small Commercial Customer's contract with their Electric Supplier. The Electric Supplier must provide thirty (30) wWritten nNotice five (5) calendar days in advance 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~~

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

~~provided by e-mail if the Electric Supplier obtained a valid e-mail address and permission to provide the contract by e-mail from the Retail Electric Customer during the enrollment process. The Disclosure Statement may serve as a contract. Electric Suppliers are encouraged to use an acknowledgement receipt to confirm the validity of e-mail addresses.~~

~~3.7.3.5~~ Customer Information. An Electric Supplier may request a list from an Electric Distribution Company which contains ~~Retail Electric~~ Customer's names, service classification, if the Customer is a SOS customer, service addresses and mailing addresses; however, the EDC shall not provide such information for any Customer who has not affirmatively granted permission to the EDC to disclose its/his/her information. 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.~~

~~3.8.3.6~~ Marketing and Advertising.

~~3.8.1.3.6.1~~ Pursuant to 26 Del. C. §-1012-(b) and as further defined in Section 1.0 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. Electric Suppliers are responsible for identifying persons who have enrolled in the "Do Not Call" registry.

~~3.6.2~~ If telemarketing is permitted, then:

~~3.8.1.4.3.6.2.1~~ Agents, or representatives, of Electric Suppliers soliciting through telemarketing must provide the first full name and, on request by the Customer, the operator identification number of the marketing representative making the call.

~~3.8.1.23.6.2.2~~ Agents, or representatives, of Electric Suppliers soliciting through telemarketing must state the name of the Electric Supplier on whose behalf the call is being made and shall affirmatively state that s/he is not working for and is independent of both the Customer's EDC and the Commission. ~~and shall not represent that the Electric Supplier is acting on behalf of an EDC or any governmental agency.~~

~~3.8.1.33.6.2.3~~ Agents, or representatives, of Electric Suppliers soliciting through telemarketing must promptly state that the purpose of the call is to sell Electric Supply Service and shall, upon request explain the difference between Electric Supply Service, SOS, and Distribution Services.

~~3.8.1.4.3.6.2.4~~ Customers requesting ~~to be removed~~ from an Electric Supplier's database(s) or telemarketing list(s) must be removed within two (2) business days of the request.

~~3.6.2.5~~ No Agent or representative of an Electric Supplier soliciting through telemarketing shall request a potential customer's Electric Supplier or EDC account number until the Agent or representative has provided the information required in Sections 3.6.2.1 through 3.6.2.3.

~~3.6.2.6.~~ The Agent or representative of an Electric Supplier shall confirm that the person with whom they are speaking has the authority to enter into a contract in the event that the solicited person elects to do so.

~~3.6.2.7~~ No Agent or representative of an Electric Supplier shall represent that the Electric Supplier is acting on behalf of an EDC or any governmental agency.

~~3.6.2.8.~~ Electric Suppliers are responsible for any fraudulent, deceptive or otherwise unlawful conduct performed by its employees, Agents or

representatives.

3.7 ~~3.8.2~~ ~~An No~~ Electric Supplier or its marketing or advertising agent shall ~~not~~ make misrepresentations or use or engage in deceptive practices relating to its own services or the services provided by the Customer's EDC in its ~~direct~~ solicitations, advertising or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and in- person-to person contacts.

~~3.8.2.13.7.1~~ No solicitations, advertising and marketing materials may suggest a relationship that does not exist with a SOSS, EDC, government agency or another Electric Supplier.

~~3.8.2.23.7.2~~ Solicitations, advertising and marketing materials must include full the Electric Supplier's contact information of the Electric Supplier for inquiries, verification and complaints. Such information shall include, but is not limited to, the name of the Electric Supplier, its business address, and a toll-free telephone number.

~~3.8.2.4~~ 3.7.3 Any marketing materials that make statements concerning Prices, terms and conditions of service shall contain accurate information. Any marketing materials through which a Customer may subsequently enter into a contract with an Electric Supplier must accurately disclose the Prices, terms and conditions of the products or services that the Electric Supplier is offering or selling to the Customer. This section does not obviate the requirement that the Electric Supplier provide a Disclosure Statement and/or contract to the customer if the customer determines to enter into a business transaction with the Electric Supplier.

~~3.8.2.5~~ 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~~ ~~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 ~~3.8.4~~ Electric Suppliers shall ~~disclose, in writing, provide~~ to Commission Staff and the DPA ~~the any proposed changes in its marketing plans and/or methods to be used in Delaware plan(s) and/or marketing methods intended to be utilized in Delaware not fewer than five (5) business days before utilizing commencing use of the plan and/or method in Delaware. This includes providing the Commission Staff and the DPA with~~

~~3.8.5~~ Electric Suppliers must notify the Commission Staff not fewer than 5 business days before the start of a marketing campaign and submit to the Commission Staff a copy of the marketing materials specific to its the Electric Supplier's Delaware operations. A "Marketing" campaign means the dissemination or distribution of informational and advertising materials regarding the Electric Supplier's services and products to the public by print, broadcast, electronic media, telecommunication, in person, direct mail or by telecommunication in person, including but not limited to scripts for telemarketing, advertisements, website presentations, and any other material of a similar nature, that Applicant will use to market and promote its products to Delaware residents.

3.10 ~~3.8.6~~ In-Person Sales of Electric Supply Service to Residential and Small Commercial Customers

~~3.8.6.13.10.1~~ An Electric Supplier or its marketing or advertising Agent engaging in in-person marketing or advertising and/or Door-to-Door Sales must ~~comply with the following~~:

~~3.8.6.1.13.10.1.1~~ ~~Produce-Wear~~ photo identification with the full name of the Agent on his/her clothing in such a manner that it is clearly visible to the person being solicited;

~~3.8.6.1.23.10.1.2~~ Promptly state the purpose of the visit;

~~3.8.6.1.33.10.1.3~~ State the name of the Electric Supplier he/she is representing;

~~3.8.6.1.4~~ ~~Must not present any materials that suggest any relationship between the Electric Supplier and the EDC or SQSS;~~

~~3.8.6.1.53.10.1.4~~ ~~Must p~~Provide the address and toll-free telephone number of the Electric Supplier;

~~3.8.6.1.63.10.1.5~~ ~~Must n~~Not object or interfere if the Customer chooses to leave the location; and

~~3.8.6.1.73.10.1.6~~ ~~Must l~~Leave the premises immediately upon request of the occupant or owner of the premises or any person with whom the marketing, advertising or sale is being conducted; and

3.10.1.7 Confirm that the person with whom they are speaking has the authority to enter into a contract in the event that the solicited person elects to do so.;

~~3.10.2-3.8.6.2~~ In connection with any Door-to-Door Sale of Electric Supply Service, it is a violation of these Rules for any Electric Supplier's representative, or Agent to:-

3.10.2.1 Represent that the Electric Supplier is acting on behalf of an EDC or any governmental agency;

3.10.2.2 Request the potential customer's Electric Supplier or EDC account number until the Agent or representative has provided the information required in Section 3.10.1;

~~3.8.6.2.13.10.2.3~~ Fail to furnish the Customer with a fully completed receipt or copy of the Disclosure Statement or contract at the time of its execution, which is in compliance with these Rules;

~~3.8.6.2.23.10.2.4~~ 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;

~~3.8.6.2.33.10.2.5~~ 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 and/or;

~~3.8.6.2.43.10.2.6~~ 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.

~~3.10.3-3.8.6.3~~ Anyll Electric Supplier's' representatives, or and Agents of an Electric Supplier who solicits a Door-to-Door Sale of Electric Supply Service at a residential dwelling shall prominently display a Door-to-Door Salesperson photo identification card issued by the Electric Supplier as required by 6 Del. C. §4405 while soliciting a Door-to-Door Sale. The Door-to-Door Salesperson identification card shall be displayed on the person of the Electric Supplier's representative, or Agent of an Electric Supplier in such a manner so that it is immediately visible to a potential Customer shall be able to view the Door-to-Door Salesperson's identification card during any transaction with the Electric Supplier's representative, or Agent of an Electric Supplier soliciting a Door-to-Door Sale.

~~3.8.6.3.13.10.3.1~~ A Door-to-Door Salesperson identification card shall contain and prominently display the following information concerning an Electric Supplier's representative, or agent of an Electric Supplier:

~~3.8.6.3.1.43.10.3.1.1~~ The Electric Supplier's business name and toll-free customer service number;

~~3.8.6.3.1.23.10.3.1.2~~ The Person's photograph;

~~3.8.6.3.1.33.10.3.1.3~~ The full legal name of the Electric Supplier's representative, or Agent of an Electric Supplier;

~~3.8.6.3.1.43.10.3.1.4~~ The telephone number of the Electric Supplier;

~~3.8.6.3.1.5-3.10.3.1.5~~ The Electric Supplier's address; and

~~3.10.3.1.6.~~ The address of the representative or Agent's place of business;

~~3.10.3.1.7~~ The Electric Supplier's Delaware business license number; and

~~3.8.6.3.1.63.10.3.1.8~~ A toll-free number, if different from that provided in Sections 3.8.6.3.1.43.10.14 or 3.8.6.3.1.33.10.3.14 above, to verify that the salesperson is an Agent of the Electric Supplier.

~~3.8.6.3.23.10.3.2~~ A Door-to-Door Sale shall be conducted by an Electric Supplier's representative, or Agent of an Electric Supplier at a residential dwelling between the hours of 9 a.m. to 8 p.m. prevailing Delaware time, only.

~~3.10.4-3.8.6.4~~ An Electric Supplier may not permit a Person or Agent to conduct Door-to-Door Sales and marketing activities until it has completed a criminal background investigation. The criminal background investigation shall include:

~~3.8.6.4.13.10.4.1~~ The Electric Supplier obtaining and reviewing a 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

~~3.8.6.4.23.10.4.2~~ The Electric Supplier checking the sex offender registry commonly referred to as the "Megan's Law" registry maintained by the Delaware State Police.

~~3.10.5~~ ~~3.8.7~~ Electric Suppliers shall promptly and courteously leave the premises upon request of any Person and comply with a Person's request to be exempted from Door-to-Door Sales and marketing and annotate its existing marketing or sales databases or lists consistent with this request within two (2) business days. The Person's request to be exempted from the Electric Supplier's solicitation list shall not expire.

~~3.8.8~~ Electric Suppliers and Agents shall make accurate representations regarding its relationship with the EDC, the Commission, and any governmental agency.

~~3.10.6~~ ~~3.8.9~~ Marketing and advertising materials targeted for Residential and Small Commercial Customers shall be made available upon request of the Commission Staff or the DPA.

~~3.8.10~~ Pursuant to 26 Del. C. §1019(a), a penalty for a violation of an Electric Supplier Rule shall not exceed \$5,000 for each such violation, with the overall penalty not to exceed an amount reasonable and appropriate for the violation. Each day of noncompliance shall be treated as a separate violation.

3.11 Return of Customer Deposits. If a Customer has an outstanding or unpaid balance due, an Electric Supplier may apply the Deposit against such unpaid balance. Any remaining deposit amount shall be returned to the Customer.

3.12 Applicant shall comply with the provisions of 26 Del. Admin Code §3002-3.2.2 regarding good faith disputes

~~3.9.3.13~~ Reports to be Provided to the Commission and DPA.

~~3.9.13.13.1~~ Upon request of the Commission, Commission Staff, or the DPA ~~Division of the Public Advocate~~, a certified Electric Supplier shall provide information concerning ~~their~~ its Delaware operations to the requesting party. ~~the~~ Any information provided pursuant to this paragraph ~~and that is~~ designated "proprietary" or "confidential" shall be treated in the manner prescribed in ~~under~~ ~~held in accordance with paragraph 1 in Section X of these Rules~~ 8 Del.E Admin Code §1202-6.2, and shall be afforded such proprietary treatment subject to the provisions of the Rules, Commission Delaware regulations, and Delaware Law.

~~3.9.2~~ ~~3.13.2~~ Every Electric Supplier shall provide the following information to the Commission and the DPA within ~~thirty-five (305)~~ calendar days of occurrence, and annually by April 30th of each year:

~~3.9.2.13.13.2.1~~ Any changes in the Electric Supplier's ownership, legal name, name under which it is doing business in Delaware, or tax identification number or employer identification number ~~provided in Section 2.1.1.8.1 of these Rules;~~

Comment [r1]: I don't think this is the correct cite.

~~3.9.2.23.13.2.2~~ Any changes in the Electric Supplier's business address; provided in Section 2.1.1.8.2 of these Rules;

~~3.9.2.33.13.2.3~~ Any changes to the regulatory contact person; listed in Section 2.1.1.8.3 of these Rules

~~3.9.2.43.13.2.4~~ A list of aAny states in which the Electric Supplier's or Affiliated Interest's has had its authority to sell electricity to or broker the sale of electricity to Customers has been revoked, modified or suspended; in the last twelve (12) months

~~3.9.2.53.13.2.5~~ Any changes to the organizational structure; provided in Section 2.1.1.8.5 of these Rules including but not limited to any change in the principal officers responsible for Delaware operations;

~~3.9.2.63.13.2.6~~ A statement detailing aAny criminal activities, except for misdemeanors or lesser, of which the Electric Supplier or any of its aAffiliated iInterests has been charged or convicted, or which the principal or corporate officers or any Affiliated Interests of the Electric Supplier has been charged or convicted in the last twelve (12) months;

~~3.9.2.73.13.2.7~~ A list of aAny states in which any formal complaint investigations have been initiated against the Electric Supplier or any of its Affiliated Interests; and in the last twelve (12) months

~~3.9.2.83.13.2.8~~ A list of aAny states in which any type of regulatory or disciplinary actions hasve been taken against the Electric Supplier or any of its Affiliated Interests in the last twelve (12) months.

~~3.9.3~~ ~~3.14~~ Electric Suppliers that have provided bond under Section 2.1.1.5.7 2.3.1.4 of these Rules must provide the actual amount of deposits and advances collected in the last year and a calculation demonstrating that the amount of the bond is the greater of 150 percent of the projected amount of deposits and held by the Electric Supplier for the next one year period or \$50,000. The Electric Supplier shall ~~and~~ provide a bond in the larger amount if such calculation demonstrates that a change is necessary and shall provide proof that it has obtained the necessary bond to the Commission Staff within ten (10) days of securing such bond.

~~3.10-3.15~~ 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). TheAll Electric Suppliers except Brokers, must also pay the Public Utilities Taxes pursuant to 30 Del. C. Chapter 55.

~~3.11-3.16~~ Record Retention. All Electric Suppliers willshall retain customer account records (including audiophonic, telephonic and other verbal verifications) for a period of at least three-two (23) years.

~~3.12~~ Required Notification. All Electric Suppliers must notify the Commission within ten (10) calendar days of any of the following actions:

~~3.12.1~~ Revocation of authority to sell electricity or to broker the sale of electricity in any jurisdiction;

~~3.12.2~~ Revocation of an Affiliated Interest's authority to sell electricity or to broker the sale of electricity in any jurisdiction;

~~3.12.3~~ A change in the principal officers responsible for Delaware operations provided in Section 2.1.1.5.5 of these Rules; and/or

~~3.12.4 A change in ownership of any Person or entity having direct control of the company;~~

3.17 Pursuant to 26 Del. C. §1019(a), a penalty for a violation of an Electric Supplier Rule shall not exceed \$5,000 for each such violation, with the overall penalty not to exceed an amount reasonable and appropriate for the violation. Each day of noncompliance shall be treated as a separate violation.

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.~~

~~4.1.23~~ The billing party shall be responsible for paying all late fees incurred as a result of the payment transmittal process between the Supplier and the EDC.

4.2 Bill Contents. The bill should be easy to understand, be in clear and plain language and must contain the following information:

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

4.2.2 If different from the Electric Supplier, the name, address and toll-free telephone number of the ~~EDC~~ 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 ~~P~~public ~~P~~urpose ~~P~~rograms and a ~~C~~ompetitive ~~T~~ransition ~~C~~harge (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 ~~the 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 Definitions of technical terms used in the bill;
- 4.2.14 If applicable, late fees as defined in the contract. Late fees must be clearly identified as such; and
- 4.2.13 The Price to compare for Electric Supply Service of the Standard Offer Service Supplier.
- 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.

~~4.4 Billing disputes? Termination for non-payment of Supplier? DPL could eventually cut off a customer for non-payment of supplier portion.~~

5.0 Customer Protection

- 5.1 Enrollment Authorization. An Electric Supplier must obtain authorization from the ~~Retail Electric~~ Customer before switching a Customer's provider of Electric Supply Service. Authorization may be obtained by written, electronic, or verbal means.
 - 5.1.1 Written authorization must be provided on a contract(s) conforming to Sections ~~2.1.1-92.3.1.5~~ and 3.4 of these Rules.
 - 5.1.2 Electronic authorization must be provided by Electronic Signature on contract(s) conforming to Sections ~~2.1.1-92.3.1.5~~ 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 to the Customer? within one business day after receiving 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.
 - 5.1.3 Verbal authorization provided over the telephone as a result of telemarketing or as a result of a Door-to-Door Sale must undergo a Verification Process. The Electric Supplier may choose an independent third-party verification system or the Electric Supplier shall implement its own audio recording system which includes the entire conversation with the Customer. The Verification Process shall:
 - 5.1.3.1 Include the full name and/or Agent identification number of the person conducting the Verification Process;

- 5.1.3.2 Include the full name and/or Agent identification number of the Agent or representative who conducted the Telemarketing or Door-to-Door Sale;
- 5.1.3.3 Include the entire name, account number and service and billing address of the Customer;
- 5.1.3.4 Include a an affirmative statement that the person is the account holder or authorized to make the switch in Electric Supply Service providers;
- 5.1.3.5 Identify the name of the Electric Supplier to which the Customer is switching;
- 5.1.3.6 Indicate the date of the Verification Process;
- 5.1.3.7 Include an affirmative statement that the Customer is voluntarily choosing to switch Electric Suppliers;
- 5.1.3.8 State the Price per kWh, whether the Price is fixed for a period of time or variable, and the length of the contract;
- 5.1.3.9 State the amount of any cancellation fees and/or any other charges included in Section ~~2.1.4.9.1.3~~; 2.3.1.15.7;
- 5.1.3.10 Confirm that the Customer has been given a copy of the Disclosure Statement and will not be switched from the current Electric Supplier or SOSS until the ~~ten (10) three business~~ day rescission period has expired;
- 5.1.3.11 State the toll-free number of the Electric Supplier; and
- 5.1.3.12 Advise the Customer of the right to rescind the contract ~~in accordance with Section 2.1.4.9.1.7 of these Rules.~~

5.1.4 If the Electric Supplier is informed that the authorization could not be verified, the Electric Supplier shall contact the Customer by telephone or in writing to explain that the authorization could not be verified. The Electric Supplier may correct the problem so that the authorization can be verified through the Verification Process.

5.1.45 The Electric Supplier shall maintain the authorization and the recording of the Verification Process for three years from the date of the commencement of the Customer's contract, whether an initial contract or a renewal. ~~if required, for the duration of the Customer's initial contract. For any renewal(s) of the contract, authorization and verification information must only be kept on file for thirty (30) days.~~

~~5.1.5 When the Electric Supplier is informed that the authorization could not be verified, the Electric Supplier shall contact the Customer by telephone or in writing to explain that the authorization could not be verified. The Electric Supplier may correct the problem so that the authorization can be verified through the Verification Process.~~

5.42 Complaint Process to be followed by the ~~Retail Electric~~ Customer (or a Broker acting on behalf of a Customer):

5.42.1 A ~~Retail Electric~~-Customer (or a Broker acting on behalf of a 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.~~

5.42.2 If the ~~Retail Electric~~-Customer (or a Broker acting on behalf of a Customer) and Electric Supplier are not able to come to a resolution, the ~~Retail Electric~~ Customer ~~or Broker~~ may file an informal complaint with the Commission as described in ~~Rules 14 and 15 of the~~26 DE Admin Code 1001(2.2.1) "Rules of Practice and Procedure of the Delaware Public Service Commission". ~~Other provisions of 26 Del.E Admin. Code et seq. 1001 related to filing complaints with the Commission shall not be available to a Retail Electric~~-Customer (or a Broker acting on behalf of a Customer) to resolve their complaint.

5.23 5.2.3 A Broker acting on behalf of a ~~Retail Electric~~-Customer must provide written proof to the Commission, with a copy to the Electric Supplier, that it is authorized to act on the Customer's behalf in order to file and maintain a complaint.

5.2.4 The Electric Supplier shall include a description of its complaint resolution process in the Disclosure Statement and/or contract with a ~~Retail Electric~~ Customer.

5.23 Procedures to be Followed by the Electric Supplier:

5.23.1 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.

5.23.2 An Electric Supplier shall have a sufficient number of customer service representatives that are knowledgeable and able to handle its ~~Retail Electric~~ Customer's inquiries and complaints.

5.23.3 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 the Customer may contact the Commission. In addition, all Electric Suppliers must adhere to the provisions of 26 DE Admin Code 3002-3.2.2.

5.23.4 The Electric Supplier shall prepare and maintain a report of these complaints and keep these reports on file for a period of ~~two-three~~ (23) 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:

5.23.4.1 Type of complaint;

5.23.4.2 Date of complaint;

5.23.4.3 Resolution; and,

5.23.4.4 Date resolved.

5.34 Slamming. An Electric Supplier must obtain verifiable authorization from the ~~Retail Electric~~-Customer as prescribed in Section 5.1 of these Rules 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 26 DE Admin Code 1001 et seq~~ Rules of Practice and Procedure of the Delaware Public Service Commission. If, after a hearing, the Commission finds that slamming has occurred, the Customer shall be returned to SOS within five (5) business days. The Electric Supplier shall also be subject to penalties as authorized by 26 Del. C. §1019.

~~5.45~~ Cramming. If after a hearing, the Commission determines that an Electric Supplier has billed ~~unauthorized charges that have not been explicitly authorized by the to a Retail Electric~~ Customer, that Electric Supplier may be subject to penalties as authorized by 26 Del. C. §1019, ~~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 refund all of those charges to the ~~Retail Electric~~ Customer, and shall, at the Customer's request, return the Customer to SOS within five (5) business days.

~~5.56~~ General Retail Electric Customer Protections.

~~5.6.1~~ An Electric Supplier, including a 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 26 Del. C. §1019 and in Section 10.0 of these Rules.

~~5.6.2~~ Electric Suppliers shall not engage in false, misleading, or deceptive conduct or make false, misleading or deceptive statements or representations in any dealings with Retail Electric Customers.

~~5.6.3~~ Electric Suppliers are responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the Electric Supplier, its employees, Agents, or representatives.

~~5.6.4~~ Electric Suppliers, or their Agents, shall not say or suggest to a Retail Electric Customer that s/he is required to choose an Electric Supplier for any reason.

~~5.6.5~~ Electric Suppliers, or their Agents, shall not make false or mislead representations including misrepresenting Rates or savings offered by the Electric Supplier.

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 as defined in ~~Commission Regulation No. 66~~ 26 DE Admin Code 3008-1.1.

~~6.46~~ 6 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.

~~6.57~~ 7 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 6.1 of this Section.

~~6.68~~ 8 Electric Suppliers offering Green Power shall have to meet disclosure of fuel resource mix stated in Section 7.0 of these Rules.

~~6.9~~ 9 All Electric Supplies must comply with Commission's Rules and Procedures to Implement the Renewable Energy Portfolio Standard as set forth in 26 DE Admin Code 3008 as

applicable.

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~~ not later than sixty (60) calendar days following the end of 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 and SOSS shall also disclose the information under paragraph 7.1.3 to its ~~Retail Electric~~ Customers annually via bill inserts or a bill message with website link to the Supplier's or SOSS's fuel resource mix and each of the other three quarters by providing information on the ~~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).

8.0 Net Metering

8.1 General Provisions

Net Metering can occur in three circumstances as follows:

Condition 1 – Individual Customer/Single Account/Single Premise where all Net Metering activity occurs at a single customer premise for a single customer account;

Condition 2 – Individual Customer/Multiple Accounts/Single or Multiple Premises where a single customer can aggregate Net Metering for crediting to multiple accounts and/or premises; and

Condition 3 – Host Customer/Multiple Subscribers/Multiple Premises where a Community Energy Facility, either behind the meter of a Subscriber or as a stand-alone facility, provides Net Metering for multiple Subscribers and multiple premises.

Each Electric Supplier providing Electric Supply Service shall offer Customers the option of Net Metering if a Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.1.1 The Customer: owns and operates; leases and operates; or contracts with a third party who owns and operates the electric generation facility with a capacity that:

8.1.1.1 Will not exceed 25 kW per DP&L meter for residential Customers;

8.1.1.2 Will not exceed 2 MW per DP&L meter for non residential Customers;

8.1.1.3 Will not exceed 100 kW per DP&L meter for farm customers, as those customers are described in Title 3, section 902(3); provided, however, that the Delaware Energy Office may grant exceptions to this limitation in accordance with Title 26, section 1014(d)(1)b;

- 8.1.1.4 For Conditions 2 or 3, the sum of electric generation capacity will not exceed the applicable limits per meter specified in Sections 8.1.1.1 through 8.1.1.3 above;
 - 8.1.1.5 Uses as its primary source of fuel: solar, wind, hydro, a fuel cell, or gas from the anaerobic digestion of organic material;
 - 8.1.1.6 Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and
 - 8.1.1.7 Is designed to produce no more than 110% of the Host Customer's expected aggregate electrical consumption, calculated on the average of the two previous 12 month periods of actual electrical usage at the time of installation of energy generating equipment and subject to the capacity limits specified in Section 8.1.1.1 through Section 8.1.1.3 of this Rule. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment and subject to the capacity limits specified in Sections 8.1.1.1 through Section 8.1.1.3 of this Rule.
- 8.2 Net Metering shall be accomplished through a single meter at the Electric Supplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.
- 8.2.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the Customer, at the expense of the Electric Supplier, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the Customer pursuant to Sections 8.3 and/or 8.4 of this Rule, or to collect system performance information on the eligible technology for research purposes.
 - 8.2.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.
 - 8.2.3 If the existing electrical meter of a Customer is incapable of measuring the flow of electricity in two directions through no fault of the customer, the Electric Supplier shall be responsible for all expenses involved in purchasing and installing such a meter.
 - 8.2.4 For Condition 3 where a stand-alone Community Energy Facility is installed, the Electric Supplier shall install the metering necessary to provide the data to accomplish the necessary billing and shall be responsible for all expenses involved in purchasing and installing such a meter. The Electric Supplier shall assess the stand-alone Community Energy Facility a customer charge equivalent to the load and energy output characteristics of the generating facility which would be equivalent to the load and energy characteristics of a similarly situated ~~Retail Electric~~ Customer in its Commission-approved tariff, i.e., an equivalent retail tariff.
 - 8.2.5 The equivalent retail tariff shall also be used to assess the stand-alone Community Energy Facility non-volumetric charges to recover the otherwise

applicable supply, transmission, and distribution delivery costs. Subscribers to the stand-alone Community Energy Facility remain subject to only their otherwise applicable Commission-approved tariff.

- 8.3 For Net Metering Condition 1 and Condition 2 if, during any billing period, a Customer-Generator Facility produces more energy than that consumed by the Customer, or aggregate total kWh of the Customer, the Electric Supplier will credit the Customer in kWh's, valued at an amount per kWh equal to the sum of volumetric energy (kWh) components of the delivery service charges and supply service charges for residential Customers and the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non-residential Customers for any excess energy production of their Customer-Generator Facility that exceeds the Customer's on-site, or aggregate total, consumption of kWh in the applicable billing period. During any billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
- 8.3.1 Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used. During any subsequent billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the Customer for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
- 8.3.2 At the end of the Annualized Billing Period, a Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment for residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges based on a weighted average of the first block of the summer (June through September) and winter Supply Service Charges (October through May) in effect at the end of the Customer's Annualized Billing Period and the preceding 11 billing periods, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. The payment for non-residential customer accounts shall be calculated by multiplying the excess kWh credits by the Customer's Supply Service Charges that would otherwise be applicable at the end of the Customer's Annualized Billing Period. If such payment would be less than \$25.00, the Electric Supplier may credit the Customer's account through monthly billing.
- 8.3.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.
- 8.3.4 The Customer shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Customer-Generator Facility and consumed by the Customer unless the customer has relinquished such ownership by contractual agreement with a third party.
- 8.3.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not Net Metering would be charged. Electric Suppliers shall not charge a Net Metering Customer any stand-by fees or similar charges.
- 8.3.6 If a Net Metering Customer terminates its service with the Electric Distribution Company or changes Electric Supplier, the Electric Supplier terminating service shall treat the end of service period as if it were the end of the Annualized Billing

Period for any excess kWh credits.

8.3.7 If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds (5%) of the capacity necessary to meet the Electric Supplier's aggregated Customer monthly peak demand for a particular calendar year, the Electric Supplier may elect not to provide Net Metering services to additional Customers.

8.3.8 -Where applicable, the requirements established in Section 8.6 of these Rules shall apply to this Section 8.3.

8.4 For Net Metering Condition 3 where the Community Energy Facility is located behind the meter of a Subscriber that is also the Host Customer, the following will be subject to the requirements established in Section 8.7 of this Rule:

8.4.1 During a monthly billing period where the energy from the Community Energy Facility exceeds the consumption of the Host Customer, the Subscribers participating in a Community Energy Facility not located on the same distribution feeder as the Community Energy Facility shall be credited in kilowatt-hours (kWh) valued at an amount per kWh equal to supply service charges according to each account's rate schedule for any of the energy production in excess of the consumption of the Host Customer of the Community Energy Facility. The Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility shall be credited in kWh pursuant to Section 8.3 of this Rule. Any excess energy after crediting Subscribers during a billing period shall be credited in subsequent billing periods. During any billing period prior to the end of the Annualized Billing Period, the crediting of excess energy kWh will result in the reduction of cost paid by the Host Customer and Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.

8.4.2 At the end of the Annualized Billing Period, a Host Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service charge of the Host Customer of the Community Energy Facility as provided under Section 8.3 of this Rule. Such payment shall be made to the Host Customer of the Community Energy Facility, and may be credited to the Host Customer's account through monthly billing if less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the Electric Supplier.

8.4.3 As an alternative to the monthly billing period crediting above, at the end of each monthly billing period DP&L may elect to make payment to the Host Customer of the Community Energy Facility for the value of the generated electricity as established by the Public Service Commission. For purposes of Net Metering by DP&L, such value for generated electricity is established as the otherwise applicable supply service charge of the Host Customer. Additionally, for the Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility, at the end of each monthly billing period DP&L shall also include in the monthly payment to the Host Customer the value for the volumetric kWh delivery service charges. The payment for the value of the volumetric kWh delivery service charges shall be the same as determined in Section 8.3 of this Rule.

8.5 For Net Metering Condition 3 where the Community Energy Facility is a stand-alone facility, the following will be subject to the requirements established in

Section 8.7 of this Rule:

- 8.5.1 During a monthly billing period where energy is produced from the Community Energy Facility, each Subscriber participating in a Community Energy Facility not located on the same distribution feeder as the Community Energy Facility shall be credited in kilowatt-hours (kWh) valued at an amount per kWh equal to supply service charges according to each account's rate schedule for any of the energy production of the Community Energy Facility. Subscribers located on the same distribution feeder as the Community Energy Facility shall be credited in kWh pursuant to Section 8.3 of this Rule. Any excess energy after crediting Subscribers during a billing period shall be credited in subsequent billing periods. During any billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
 - 8.5.2 During any billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the Subscribers for the equivalent volumetric energy kWh of delivery service charges, if applicable, and supply service charges.
 - 8.5.3 At the end of the Annualized Billing Period, a Host Customer may request a payment from the Electric Supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service rate of the Host Customer of the Community Energy Facility pursuant to Section 8.3 of this Rule, and may be credited to the Host Customer's account through monthly billing if less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the Electric Supplier. The Subscribers participating in a Community Energy Facility shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Community Energy Facility unless the Subscribers participating in the Community Energy Facility have relinquished such ownership by contractual agreement with a third party.
 - 8.5.4 A Community Energy Facility shall not exceed the sum total of the capacity limits as defined under Section 8.1.1.1 through Section 8.1.1.3 of this Rule among the Subscribers of a Community Energy Facility.
 - 8.5.5 As an alternative to the monthly billing period crediting above, at the end of each monthly billing period DP&L may elect to make payment to the Host Customer of the Community Energy Facility for the value of the generated electricity as established by the Public Service Commission. For purposes of Net Metering by DP&L, such value for generated electricity is established as the otherwise applicable supply service charge of the Host Customer. Additionally, for the Host Customer and Subscribers located on the same distribution feeder as the Community Energy Facility, at the end of each monthly billing period DP&L shall also include in the monthly payment to the Host Customer the value for the volumetric kWh delivery service charges. The payment for the value of the volumetric kWh delivery service charges shall be the same as determined in Section 8.3 of this Rule.
- 8.6 Subject to the applicable Net Metering provisions of Section 8.0 of this Rule, in instances where one customer has multiple meters under the same account or different accounts, regardless of the physical location and rate class, the customer may aggregate meters for the purpose of net metering regardless of which individual meter receives energy from a Customer-Generator Facility, provided that:

- 8.6.1 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and
- 8.6.2 The Customer-Generator Facility is designed to produce no more than 110% of the Customer's aggregate electrical consumption of the individual meters or accounts that the Customer is entitled to aggregate under this Section 8.6 calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and
- 8.6.3 A Customer-Generator Facility shall not exceed the sum total of the capacity limits among the participants of a Customer-Generator Facility as defined under Section 8.1.1.1 through Section 8.1.1.3 of this Rule; and
- 8.6.4 At least ninety days before a Customer commences construction of a Customer-Generator Facility or a Customer is entitled to aggregate multiple meters, the customer shall file with DP&L the following information:
 - 8.6.4.1 a list of individual meters the Customer is entitled to aggregate, identified by name, address, rate schedule, and account number, and ranked according to the order which the Customer desires to apply credit for excess energy to each individual meter; and
 - 8.6.4.2 a description of the Customer-Generator Facility, including the facility's location, capacity, and fuel type or generating technology; and
 - 8.6.4.3 a complete interconnection application to facilitate a transmission and distribution analysis, including an evaluation of potential reliability, safety and stability impacts and determination of whether infrastructure upgrades are necessary and appropriate allocation of applicable interconnection costs.
- 8.6.5 The Customer may change its list of aggregated meters specified in Section 8.6.4.1 no more than once annually by providing ninety days' written notice; and
- 8.6.6 Credit shall be applied first to the meter through which the Customer-Generator Facility supplies electricity, then through the remaining meters for the Customer's accounts according to the rank order as specified in accordance with Section 8.6.4.1 above; and
- 8.6.7 Credit in kilowatt-hours (kWh) shall be valued according to Section 8.3 of this Rule and each account's rate schedule as specified in Section 8.6.4.1 above; and
- 8.6.8 DP&L may require that a Customer's aggregated meters as specified in Section 8.6.4.1 above be read on the same billing cycle.
- 8.7 Subscribers are eligible to participate in a Community Energy Facility, provided:
 - 8.7.1 A community includes customers sharing a unique set of interests; and
 - 8.7.2 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and

- 8.7.3 A Community Energy Facility is designed to produce no more than 110% of the community's aggregate electrical consumption of its individual customers, calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and
- 8.7.4 A Community Energy Facility shall not exceed the sum total of the capacity limits among the participants of a Community Energy Facility as defined under Section 8.1.1.1 through Section 8.1.1.3 of this Rule; and
- 8.7.5 A Community Energy Facility may include technologies defined under §352(6)(a-h) of Title 26 of the Delaware Code; and
- 8.7.6 Before Net Metering for a Community Energy Facility may be formed and served by DP&L, the community proposing a Community Energy Facility shall file with the Delaware Energy Office and DP&L the following information:
- 8.7.6.1 a list of individual meters the community is entitled to aggregate identified by name, address, rate schedule, and account number; and
 - 8.7.6.2 a description of the Community Energy Facility, including the facility's physical location, the Host Customer's physical location, capacity, and fuel type or generating technology; and
 - 8.7.6.3 the share of kWh credits to be attributed to each meter, which DP&L shall true-up at the end of the annualized billing period.
- 8.7.7 A community proposing a Community Energy Facility may change its list of aggregated meters as specified in Section 8.7.6.1 above no more than quarterly by providing ninety days' written notice to DP&L; and
- 8.7.8 If the community proposing a Community Energy Facility removes individual customers from the list of aggregated meters as specified in Section 8.7.6.1 above, then that community shall either replace the removed customers, reduce the generating capacity of the Community Energy Facility to remain compliant with the provisions provided under Sections 8.7.3 and 8.7.4 above, or negotiate with DP&L to establish a mutually acceptable agreement for any excess kWh credit; and
- 8.7.9 DP&L may require that customers participating in a Community Energy Facility have their meters read on the same billing cycle; and
- 8.7.10 Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation as either public utilities or an Electric Supplier.
- 8.7.11 The Subscribers participating in a Community Energy Facility shall retain ownership of all RECs associated with electric energy produced from all eligible energy resources of the Community Energy Facility unless the Subscribers participating in the Community Energy Facility have relinquished such ownership by contractual agreement with a third party.

- 8.8 Nothing in these Rules is intended in any way to limit eligibility for net energy metering services based upon direct ownership, joint ownership, or third-party ownership or financing agreement related to an electric generation facility, where net energy metering would otherwise be available.
- 8.9 For public utilities regulated by the Commission, net metering aggregation disputes limited to the correct application of Commission-approved tariffs shall be resolved by the Commission. All other disputes with an Electric Supplier, DEC, or municipal electric companies shall be resolved by the appropriate governing body with jurisdiction over such disputes.
- 8.10 Any requirements necessary to permit interconnected operations between the Customer-Generator Facility or Community Energy Facilities; and the Electric Supplier, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's Model Interconnection Rules and best practices identified by the U.S. Department of Energy. Electric Suppliers shall not require eligible net metering customers who meet all applicable safety and performance standards to install excessive controls, perform or pay for unnecessary tests, or purchase excessive liability insurance.
- 8.11 Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the end of the calendar year. Such report shall include the following information from the previous calendar year:
- 8.11.1 The total number of Customer-Generator Facilities and Community-owned energy generating facilities; and
- 8.11.2 The total estimated rated generating capacity of its net-metered Customer-Generator Facilities and Community-owned energy generating facilities; and
- 8.11.3 The total estimated net kilowatt-hours received from Customer-Generator Facilities and Community-owned energy generating facilities; and
- 8.11.4 The total estimated amount of energy produced by Customer-Generator Facilities and Community-owned energy generating facilities, using a methodology approved by the Commission.
- 8.11.5 The annual net-metering report may be revised as necessary to reflect changes in information available from net metered facilities upon consultation and agreement between the Electric Supplier and the Staff ~~of the Delaware Public Service Commission~~.
- 8.12 The Commission shall periodically review the impact of net-metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.
- 8.13 A ~~retail electric e~~Customer having on its premises one or more grid Grid-Integrated Electric Vehicles shall be credited in kilowatt-hours (kWh) for energy discharged to the grid from the Grid-Integrated Electric Vehicle's battery at the same kWh rate that customer pays to charge the battery from the grid, as determined in Section 8.3 of this Rule. Excess kWh credits shall be handled in the same manner as Net Metering as described in Section 8.3 of this Rule. To qualify under this section of the Rule, the Grid-Integrated Electric Vehicle must meet the requirements in Sections 8.1.1.1, 8.1.1.2, and 8.1.1.5 of this Rule. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in Sections 8.3, 8.10, and 8.11 of this Rule.

8.14 The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with Section 8.13 of this Rule. Such tariffs may include rate and credit structures that vary from those set forth in Section 8.13 of this Rule, as long as alternative rate and credit structures are not inconsistent with the development of Grid-Integrated Electric Vehicles.

| **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 or SOSS 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. eCh. 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 by any Applicant, Electric Supplier, or EDC as 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 will follow the procedures set forth in 8 DE Admin Code §§1202-3.7 and 6.2.~~

10.2 ~~Failure to Comply with These Rules. The failure by any~~ If any Electric Supplier or Applicant fails to comply with any Delaware law, Commission Order, the requirements in other Sections of provision of these Rules, or other Delaware regulation, the Commission may ~~result in~~ impose civil penalties on such Applicant or Electric Supplier, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, or other sanction as determined by the Commission ~~and as allowed under 26 Del. C. §1019.~~

10.3 ~~Suspension or revocation of a license or certification by any state or federal authority, including but not limited to any enforcement action by PJM or similar entity may result in suspension or revocation of the ESC.~~