

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE ADOPTION OF)
RULES AND REGULATIONS TO)
IMPLEMENT THE PROVISIONS OF 26 *DEL.*)
C. CH. 10 RELATING TO THE CREATION)
OF A COMPETITIVE MARKET FOR)
RETAIL ELECTRIC SUPPLY SERVICE) PSC REGULATION DOCKET NO. 49
(OPENED APRIL 27, 1999; REOPENED)
JANUARY 7, 2003; SEPTEMBER 22, 2009;)
SEPTEMBER 7, 2010; JULY 17, 2012; AND)
JULY 14, 2021))

FINDINGS, OPINION, AND ORDER NO. 9965

AND NOW, this 26th day of January 2022, the Delaware Public Service Commission (“Commission”) determines and orders as follows:

I. BACKGROUND

1. On September 17, 2021, the Governor of the State of Delaware signed into law Senate Bill 2, which amended the *Renewable Energy Portfolio Standards Act* and the *Electric Utility Restructuring Act of 1999* to accelerate the adoption of community-owned solar photovoltaic systems in Delaware and to establish a regulatory process to be implemented by the Commission relating to community-owned energy generating facilities (“CEFs”).¹

2. Senate Bill 2 instructed the Commission to promulgate regulations: (1) to provide for customers participating in a CEF (“subscribers”) to be credited on their electric bills for the customers’ subscribed percentage of generation produced by the CEF valued at the sum of the volumetric (kwh) components of the distribution service charges and supply service charges;² (2) in consultation with the Consumer Protection Unit of the Delaware Department of Justice (“CPU”), to provide consumer protections for customers of CEFs;³ and (3) to provide

¹ Senate Bill 2 amended §§ 353, 360, 1001, and 1014 of Title 26 of the Delaware Code.

² 26 *Del. C.* § 1014(f)(1).

³ 26 *Del. C.* § 1014(f)(20).

the requirements for obtaining a Certificate to Operate.⁴ Senate Bill 2 directed the Commission to open a rulemaking docket to consider such regulations by August 1, 2021, and to promulgate such regulations no later than March 11, 2022, unless such deadline is extended by law.⁵

3. On July 14, 2021, by Order No. 9842, the Commission reopened the above-captioned docket and directed Commission Staff (“Staff”) to draft amendments to its *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 (“*Supplier Rules*”), in compliance with the new requirements set forth by Senate Bill 2. Staff drafted such amendments and circulated them to those stakeholders who participated in the drafting of Senate Bill 2, including the CPU, the Delaware Division of the Public Advocate (“DPA”), Delmarva Power & Light Company (“Delmarva”), Department of Natural Resources and Environmental Control (“DNREC”), Sierra Club, Delaware Solar Energy Coalition (“DSEC”), Caesar Rodney Institute, Delaware Municipal Electric Corporation, Delaware Electric Cooperative, Delaware Sustainable Energy Utility, and Coalition for Community Solar Access (“CCSA”).

4. In August 2021, Staff reviewed the comments it received on the draft amendments, met on several occasions with various stakeholders, and made certain changes to the draft amendments based on the comments and meetings. On September 15, 2021, by Order No. 9883, the Commission accepted Staff’s revised draft as its proposed regulations (“Proposed Regulations”) and directed publication thereof in the October 1, 2021 edition of the *Delaware Register of Regulations*. The published notice, which also appeared in the October 1, 2021 editions of the *Delaware State News* and *The News Journal* newspapers, established a November 17, 2021 hearing date and a deadline for written public comment of December 2,

⁴ 26 *Del. C.* § 1014(f)(12).

⁵ 26 *Del. C.* § 1014(f)(23).

2021.⁶ The notice provided, however, that to be considered at the November 17, 2021 hearing, written materials must be submitted on or before November 1, 2021.

5. On or before November 1, 2021, the Commission received written comments from 12 different organizations or individuals. Based on those comments, Staff made numerous clarifying revisions to the Proposed Regulations, as well as certain other process changes. Prior to the November 17, 2021 hearing, Staff provided its recommended changes to the Proposed Regulations to the Commission in redline form as well as a clean version (“Revised Proposed Regulations”).

6. On November 17, 2021, the Commission conducted a duly noticed public hearing on the Revised Proposed Regulations (the “Hearing”).⁷ At the Hearing, the Commission heard public comment from 12 individuals and sworn testimony from one witness, who testified on behalf of Staff. The Commission also entered three exhibits into the evidentiary record.⁸ After deliberations, the Commission voted to accept the Revised Proposed Regulations as final, subject to any changes that may be warranted based on any additional written comments received by the December 2, 2021 deadline.

7. On or before December 2, 2021, the Commission received another four submissions of written public comment, which Staff did not believe warranted any further revision to the Revised Proposed Regulations. Based on a clarification sought at the Hearing, however, Staff recommended a revision to the Revised Proposed Regulations at subsection

⁶ The Administrative Procedures Act (“APA”), specifically 29 *Del. C.* § 10118(a), requires that the opportunity for public comment be extended for a minimum of 15 days after the final public hearing on a proposed regulation.

⁷ References to the transcript of the Hearing will be cited as “Tr. ___.”

⁸ Exhibit 1 consists of the affidavits of publication of notice of the Hearing from the *Delaware State News* and *The News Journal* newspapers. Exhibits 2 and 3, respectively, are the Revised Proposed Regulations, in redline form showing the proposed changes Staff made after receiving written public comment, and the Revised Proposed Regulations in clean form.

16.6.6⁹ as well as minor corrections to subsections 16.5.3.11, 16.5.4, and 17.2.2.¹⁰ At its January 26, 2022 meeting, the Commission considered this written order, which ratifies, supports, and memorializes its November 17, 2021 vote to adopt the Revised Proposed Regulations, including Staff's revised subsections described in footnotes 9 and 10, *supra*. Below, the Commission provides a brief summary of the evidence and information submitted as well as our findings of fact and conclusions of law.¹¹

II. SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

8. Below is a summary of Staff's testimony, the written public comments submitted by the participants, and the public comments offered orally at the Hearing. Given that Staff incorporated many of the comments received in the Revised Proposed Regulations, the summary of public comment focuses on those substantive items that remained in dispute as of the December 2, 2021 deadline for written public comment.

9. **Staff.** At the Hearing, Pam Knotts, Senior Policy Advisor for the Commission, testified under oath on behalf of Staff.¹² Ms. Knotts summarized the Proposed Regulations, noting that they track the requirements from Senate Bill 2 to be considered a CEF and add certain details concerning the Commission's certification process. More specifically, the Proposed Regulations:

Increase the maximum size of CEF systems to 4 megawatts;

⁹ At subsection 16.6.6, Staff recommended adding the following underlined language: "On an annual basis, Delmarva may audit an individual Subscriber's subscribed amounts to ensure the amount does not exceed 110% of the Subscriber's annual usage, calculated on the average of the two previous 12-month periods of actual electrical usage, utilized at the time of the reassessment. See Tr. 896.

¹⁰ At subsection 16.5.3.11, Staff recommended replacing "may" with "shall" to clarify that subscriber contract will terminate, with no termination fee, if the subscriber moves out of Delmarva's service territory. At subsection 16.5.4, Staff recommended adding the following underlined language: "A Contract for Residential Subscribers or Small Commercial Subscribers may not:". At subsection 17.2.2, Staff recommended adding "or the Community Energy Facility's Final Certificate to Operate" at the end of that subsection to make sense of its addition of "or Community Energy Facility" at the beginning of that subsection.

¹¹ The APA provides that when adopting or amending a regulation, an agency shall issue its conclusion in an order which includes a "brief summary of the evidence and information submitted" and a "brief summary of its findings of fact with respect to the evidence and information..." 29 *Del. C.* § 10118(b).

¹² Tr. 805-817.

Eliminate the requirement that all customers of a system must be located on the same distribution feeder;

Eliminate the requirement that all customers of a system must be identified before the system can be built;

Set forth the requirements for certification as a CEF;

Provide compensation to the CEF owner for 10% or less of unsubscribed energy;

Require each CEF owner to certify that it serves at least 15% low-income customers; and

Provide for the regulation of these systems by the Public Service Commission.¹³

10. Ms. Knotts testified that the Proposed Regulations set up a two-step process for a developer or owner of a generating facility to become certified as a CEF.¹⁴ First, the applicant must obtain a Preliminary Certificate to Operate, which establishes project viability. To qualify for a Preliminary Certificate to Operate, the applicant must offer proof of site control and provide a completed interconnection study or a signed interconnection agreement with Delmarva. To obtain a Final Certificate to Operate, the applicant must provide details regarding its financial, managerial, and operational ability to adequately serve the public as a CEF. At this stage, the applicant provides the background and experience of its operating team, it provides the required bonding, and it provides a form of contract and contract summary it will be using for residential subscribers.

11. According to Ms. Knotts, the two-step process was developed because the solar developers who participated in this proceeding advised Staff that, in order to obtain project financing, they needed certification from the Commission that establishes project viability.¹⁵ However, at the time when they need to secure financing, they may not have determined yet

¹³ Tr. 807-809.

¹⁴ Tr. 809.

¹⁵ Tr. 810.

who would be operating the facility and therefore could not demonstrate, at that time, managerial and operational capabilities. Nor could they provide the contracts they would use for residential subscribers at that time. For these reasons, Staff developed the two-step process for certification.

12. Ms. Knotts testified that Staff included stakeholders in its development of the Proposed Regulations.¹⁶ After the Commission re-opened this docket, Staff circulated an initial draft of the amendments to those stakeholders who participated in the drafting of Senate Bill 2. Staff continued to engage the stakeholders, incorporating many of their recommendations, throughout the rulemaking process. Ms. Knotts concluded that the Commission's adoption of the Proposed Regulations as final would be in the public interest because they track the requirements of Senate Bill 2 and, in so doing, remove certain barriers to the development of community energy facilities in Delaware and expand the number of Delmarva customers who can participate in distributed solar generation.¹⁷

13. **DPA.** On November 1, 2021, the DPA submitted written comments and Andrew Slater, Public Advocate, spoke at the Hearing. Most of the DPA's recommendations were clarifying in nature and Staff accepted many of them as part of its Revised Proposed Regulations.¹⁸ The DPA stated, however, that its most critical recommendation was for the Commission to delete proposed subsection 16.10.4, which Staff kept in its Revised Proposed Regulations.¹⁹ Proposed subsection 16.10.4 states:

Delmarva shall recover the credited supply and distribution costs provided to Subscribers and the Community Energy Facility in accordance with its tariff.

¹⁶ Tr. 811-812.

¹⁷ Tr. 813-814.

¹⁸ Tr. 818.

¹⁹ DPA's 11/1/2021 comments, at 7.

14. The DPA noted that Delmarva's tariff currently has no specific provision addressing recovery of credited supply and distribution costs provided to CEF subscribers. The DPA stated the following:

As a result of a discussion with Delmarva representatives on October 20, 2021, Delmarva stated that it interprets Senate Bill 2 to permit it to recover CEF-related costs from non-CEF customers. Delmarva explained that it plans to request the Commission for approval of a tracker in which it will record bill credits and recover them through a surcharge assessed against *all Delmarva customers* – not the CEF or its Subscribers.²⁰

This proposal is in direct opposition to the language and intent of Senate Bill 2, which specifically provides that “the community-owned energy generating facility shall be responsible for *any additional costs* incurred by the electric distribution company, including billing-related costs associated with community-owned energy generating facility customers.” [26 *Del. C.* § 1014(f)(6)] (emphasis added).²¹

15. The DPA contended that § 1014(f)(6) clearly placed “the responsibility for *any* costs that Delmarva incurs on the CEF and its subscribers.”²² The DPA noted that the statute uses the term “including,” which means that the listing in the statute is “exemplary, not exclusive.”²³ The DPA contended that if the General Assembly had wanted to limit the costs for which CEFs and their subscribers would be responsible, it could easily have done so, but it did not because it recognized the potential for non-CEF customers to subsidize CEF subscribers.²⁴

16. At the Hearing, the Public Advocate reiterated the DPA's position that proposed subsection 16.10.4 ignores the intent of § 1014(f)(6).²⁵ He noted that the statute is silent on Delmarva filing a tariff to recover any costs from non-CEF customers. The Public Advocate contrasted the statutory silence on recovering costs from non-CEF customers to the statutory

²⁰ *Id.* at 5-6 (emphasis in the original).

²¹ *Id.* at 6.

²² *Id.* at 6.

²³ *Id.* at 6.

²⁴ *Id.* at 7-8.

²⁵ Tr. 819-820.

pronouncement relating to the Bloom Energy fuel cells, which specifically instructed the Commission to approve a tariff providing for a non-bypassable charge to recover Bloom's fuel cell costs from all ratepayers.²⁶ Instead, the Public Advocate asserted that the General Assembly provided that CEFs will be responsible for "any additional costs" – with no exceptions.²⁷

17. In addition, the Public Advocate argued that at no time during any of the community solar forums or calls during which Senate Bill 2 was being crafted was the issue raised.²⁸ Had the topic been raised, it would have been vetted in the proper forum and brought to the attention of the General Assembly "for the needed remedy."²⁹ The Public Advocate noted that § 1014(f)(6) does not limit the "additional costs" for which CEFs are responsible to "billing related costs" because of the use of the word "including" prior to "billing related costs."³⁰ The Public Advocate cited judicial caselaw³¹ and the legislative drafting manual for the proposition that "including" is not a limiting term.

18. The Public Advocate also asserted that, if the Commission changes the calculation of the 15% low-income requirement from a percentage of the number of customers to a percentage of the generation capacity, there will be fewer low-income customers participating in the CEF program.³² Regarding Delmarva's recommendation for a periodic review by the Commission, the Public Advocate pointed out that the statute already instructs the Commission to review the financial health of the utility.³³

²⁶ Tr. 820.

²⁷ Tr. 821.

²⁸ Tr. 821. When asked by the Public Advocate if she recalled whether the recovery of CEF costs from all the ratepayers was discussed at Senator Hansen's forums, Staff Witness Knotts testified that she did not "remember that issue being directly addressed." Tr. 816-817.

²⁹ Tr. 822.

³⁰ Tr. 822-823.

³¹ The caselaw cited (*i.e.*; *City of Dover v. International Tel. & Tel. Co.*, 514 A.2d 1086, 1089 (Del. 1986) and *Woessner v. Air Liquide, Inc.*, 242 F.3d 469, 475 (3d Cir. 2001) also appeared in DPA's 11/1/2021 written comments, at 6.

³² Tr. 914-915.

³³ *Id.*

19. **DNREC.** Tom Noyes, DNREC's Principal Planner for Utility Policy, offered limited comments at the Hearing. Mr. Noyes stated that DNREC is not proposing substantive changes to the Revised Proposed Regulations because of the extensive stakeholder work behind the proposal and because the Revised Proposed Regulations reflect Senate Bill 2.³⁴

20. **Delmarva.** On November 1, 2021, Delmarva submitted initial written comments. Many of Delmarva's recommendations were procedural or clarifying in nature, or related to its own reporting requirements, which were adopted by Staff in the Revised Proposed Regulations.

21. Delmarva supported subsection 16.10.4, which states that "Delmarva shall recover the credited supply and distribution costs provided to Subscribers and the Community Energy Facility in accordance with its tariff." Delmarva stated that it will file for a new tariff provision that will call for recovery of the supply credits via its existing procurement cost adjustment ("PCA") and for the recovery of distribution credits through a distribution rate rider.³⁵ Delmarva noted that the proposed recovery mechanism will be subject to Commission review and approval.

22. Delmarva asserted that, if it were required to recover the credits provided to subscribers from the CEFs, the CEFs may be deterred from participating in Delaware's community solar program.³⁶ The community solar program is expected to constitute an important component of achieving Delaware's RPS requirements. Delmarva noted that distribution bill credit amounts are not recovered from community solar facilities in its affiliates' jurisdictions, including the District of Columbia and Maryland. Instead, those costs are recovered via a tariffed rate rider.³⁷

³⁴ Tr. 827.

³⁵ Delmarva's 11/1/2021 comments, at 9-10.

³⁶ *Id.* at 9.

³⁷ *Id.* at 9, n.1.

23. Delmarva recommended adding to the Proposed Regulations a Commission review requirement to avoid problems that may emerge due to CEFs over time.³⁸ Delmarva suggested language that directed the Commission to “periodically review the impact of Community Solar Rules and recommend changes or adjustments necessary for the economic health of utilities, the continued reliability of the electric grid, and the interests of electric distribution customers.”

24. At the Hearing, counsel for Delmarva stated that Delmarva fully supported the Revised Proposed Regulations, other than the omission of Delmarva’s recommended periodic review by the Commission.³⁹ According to Delmarva, in order to mitigate complications with real world application of the regulations, which may emerge over time with advances in technology or with legislative changes, Commission review should be required “to enable the process of revisitation of these [regulations] as needed.”⁴⁰

25. On December 2, 2021, Delmarva submitted additional written comments expressing its full support of the Revised Proposed Regulations. In particular, Delmarva supported subsection 16.10.4, which contemplates that Delmarva’s recovery of supply credits to subscribers (and unsubscribed energy credits to CEFs) will occur via the PCA and that Delmarva will submit a proposed tariff to recover distribution credits through a distribution rate rider. Delmarva agreed with the statements at the Hearing from Staff and several solar developers that recovering credit-related costs from the CEFs would undermine Delaware’s community solar program and would likely deter CEFs from participating in the program.⁴¹

26. **CCSA, Sierra Club, and DSEC (“Joint Commenters”).** On November 1, 2021, the Joint Commenters submitted written comments, stating that they were generally

³⁸ *Id.* at 10.

³⁹ Tr. 831.

⁴⁰ *Id.*

⁴¹ Delmarva’s 12/2/2021 comments, at 2.

supportive of the Proposed Regulations; however, certain changes were necessary to ensure the efficient functioning of a market and to facilitate project financing.

27. The Joint Commenters objected to including CEFs in the same requirement for third-party verification of subscriptions that retail suppliers are subject to when enrolling new customers.⁴² The Joint Commenters asserted that community solar contracts offer some form of tangible economic benefit, typically in the form of guaranteed bill savings. In addition, community solar subscribers can typically cancel their subscription at any time. For these reasons, no third-party verification of enrollment was necessary at this juncture.

28. The Joint Commenters recommended that the regulations require CEF applicants to provide a security deposit in order “to avoid speculative, poorly conceived projects that enter the program but fail to move forward or deliver their promised benefits.”⁴³ They further recommended that projects larger than 500 kilowatts post a security deposit equal to \$25 per kilowatt, meaning that for a four-megawatt project, the security deposit would be \$100,000. The security deposit should be in a form acceptable to the Commission such as cash, a letter of credit, or a surety bond and should be refundable when the project is ready for commercial operation. In addition, according to the Joint Applicants, CEF applicants should be required to have obtained all non-ministerial permits and approvals because permitting is a significant development risk that should be borne by the project developer.⁴⁴

29. The Joint Commenters recommended that the regulations specify the duration of Delmarva’s obligation to purchase power from a given CEF.⁴⁵ In other states that have community solar programs, the utility is required to enter into a power purchase agreement with community solar projects that guarantee payment for energy generated by the project for

⁴² Joint Commenters’ 11/1/2021 comments, at 4.

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 5-6.

⁴⁵ *Id.* at 11.

a period of at least 25-35 years, which matches the estimated life span of the solar panels installed in each project. According to the Joint Commenters, it is necessary to clearly state the project's guaranteed term in the regulations to ensure project owners and commercial lenders can clearly understand the revenue stream that will be financed.⁴⁶

30. The Joint Commenters stated that their highest priority issue was Delmarva's recovery of costs from CEFs.⁴⁷ Senate Bill 2 states that the CEF "shall be responsible for any additional costs incurred by the electric distribution company, including billing-related costs associated with community-owned energy generating facility customers." The Joint Commenters are concerned that the regulations do not require the normal due process required for imposing additional charges on customers, such as an evidentiary hearing. Instead, the regulations require that Delmarva submit "semi-annual reports" with the Commission. The Joint Commenters proposed language that would impose a cost cap in the form of a one-time per megawatt charge, as well as clarify that the upgrade costs may not be a profit generating source for Delmarva. Under the Joint Commenters' proposal, if the total costs are \$500,000 or lower, then the utility may proceed with the semi-annual report approach. However, if the cost exceeds \$500,000, a proceeding will be required to determine whether such costs are necessary. According to the Joint Commenters, the most important aspect of this issue was the lack of certainty that an unknown charge would create for project financing.⁴⁸

31. On December 2, 2021, the Joint Commenters submitted additional comments asserting:

In its comments, the DPA seems to be conflating the value of the monetary bill credit community solar customers receive with DPL's incremental costs to administer the program. DPA's argument that Subsection 16.10.4 should be amended to require community-owned energy generating facilities to pay [Delmarva] for all of the bill credit costs demonstrates DPA's

⁴⁶ *Id.* at 11-12.

⁴⁷ *Id.* at 12.

⁴⁸ *Id.* at 13.

misunderstanding of how successful community solar programs work. As we noted during the hearing, **if adopted, this would prevent any and all projects from being built** and would completely undermine the policy goals of [Senate Bill 2]. Alternatively, if the position held by the [Joint Commenters], PSC Staff, [Delmarva] and others is adopted, the [Senate Bill 2] CEF program will look very similar to other Exelon community solar programs in Maryland and D.C. and would spur developer and subscriber interest.⁴⁹

32. The Joint Commenters also expressed their support for changing the percentage basis for the 15% low-income requirement from number of low-income customers to the capacity of the low-income subscriptions. Because low-income customers often reside in smaller houses or apartments, they typically subscribe to smaller subscription sizes from community solar facilities, according to the Joint Commenters. By counting the number of low-income subscribers, rather than the percentage of capacity, the actual capacity going to serve low-income households would likely be much less than 15% of the program.⁵⁰

33. **TurningPoint Energy.** On November 1, 2021, Salar Naini, Executive Vice President, Business Development of TurningPoint Energy, submitted written comments. Mr. Naini supported CCSA's written comments, with the exception of CCSA's recommendation to include a permitting requirement as part of project qualification. According to Mr. Naini, at one point, Senator Hansen's working group included a permitting requirement in a draft of the legislation, but the stakeholders agreed to remove the requirement and instead only include the requirements that remained in Senate Bill 2. Adding a permitting requirement now, therefore, would contradict legislative intent, according to Mr. Naini.⁵¹

34. At the Hearing, Mr. Naini explained that, prior to Senate Bill 2, the biggest barrier to CEF development was that unless a customer was on the same distribution feeder as the CEF, they only received credit against their generation charges, not their distribution

⁴⁹ Joint Commenters' 12/2/2021 comments, at 1 (emphasis in original).

⁵⁰ *Id.* at 3.

⁵¹ TurningPoint's 11/1/2021 comments, at 2.

charges.⁵² With Senate Bill 2, all subscribers can receive bill credits applied against both the generation and distribution charges. According to Mr. Naini, the DPA's suggestion that CEFs pay for the bill credits, however, would effectively reverse that benefit, resulting in no projects being built.⁵³

35. **ECA Solar.** On October 29, 2021, Todd Fryatt of ECA Solar, a Massachusetts-based solar developer, submitted written comments. Mr. Fryatt proposed a number of clarifying edits as well as a reduction to Staff's review period of an application for a Final Certificate to Operate, in subsection 16.2.4.2, from 90 days to 45 days.⁵⁴ In addition, Mr. Fryatt recommended increasing the allowable number of CEF subscriptions, per customer, from four to 10, in subsection 16.6.2. Mr. Fryatt asserted that a limitation of four subscriptions per customer will negatively affect "low-income facilities, local government entities, non-profits (*i.e.*, public educational institutions) and master metered facilities" because it will limit their ability to fully participate in community-based solar photovoltaic systems.⁵⁵ On November 22, 2021, Mr. Fryatt submitted additional written comment, seeking definitions of "master-metered facility" and "public entity" and again recommending an increase from four to 10 CEFs for the limitation on CEFs per subscriber.

36. At the Hearing, Vincent Moschella of ECA Solar asserted that the limitation of four CEF subscriptions per customer may restrict access to the low-income community because master-metered low-income facilities may only be able to subscribe a portion of their consumption to a particular CEF project, thereby leaving the rest of the building out of the program.⁵⁶ By leaving out that portion of the building, the amount of solar that can be built will be limited because of the 15% low-income mandate, according to Mr. Moschella. Mr.

⁵² Tr. 847-848.

⁵³ Tr. 849.

⁵⁴ In the Revised Proposed Regulations, Staff reduced its review period in subsection 16.2.4.2 from 90 days to 60 days.

⁵⁵ ECA Solar's 10/29/2021 comments, at 2-3.

⁵⁶ Tr. 856.

Moschella also asserted that the inclusion of a \$100,000 bond for projects does nothing except add administrative burden to the State. Given that the CEF program does not have a firm cap, there is no harm in issuing certificates of eligibility without a deposit requirement.⁵⁷

37. **Chaberton Energy.** On November 1, 2021, Michael Biggins, Development Manager for Chaberton Energy, submitted written comments. Mr. Biggins generally supported the proposed amendments but urged the Commission to revise the amendments as suggested by the Joint Commenters.

38. **Sierra Club.** On November 1, 2021, the Delaware Chapter of the Sierra Club submitted written comments, noting that it also filed joint comments with CCSA and DSEC. The Sierra Club objected to the requirement for photo identification for individuals to qualify for low-income eligibility in subsection 16.4.2.3.⁵⁸ The Sierra Club also recommended more specifics as to what costs are recoverable from CEFs and a maximum amount that Delmarva may recover per CEF to ensure that any costs being recovered are both necessary and appropriate in scale. The Sierra Club also recommended that Delmarva be required to deliver information to the CEFs to ensure that customers are receiving the bill credits for which they are paying and that any credit rollovers are accounted for correctly.

39. At the Hearing, Dustyn Thompson of the Delaware Chapter of the Sierra Club, asserted that community solar is a form of virtual net metering and that a goal of Senate Bill 2 was to bring community solar in line with net metering regarding the bill credits received by subscribers.⁵⁹ Prior to Senate Bill 2, participants had to be on the same distribution feeder to receive the same, full benefit received by rooftop solar participants in the net metering program.

⁵⁷ Tr. 858.

⁵⁸ Staff removed the requirement for photo identification as part of its Revised Proposed Regulations.

⁵⁹ Tr. 862.

The intent of Senate Bill 2 was to line up the benefits between rooftop solar and community solar, according to Mr. Thompson.⁶⁰

40. **DSEC.** At the Hearing, Dale Davis from DSEC stated that the regulations are at a point “where we think we’ve got a workable program.”⁶¹ Mr. Davis expressed some concern regarding the suggested, last-minute changes to the Proposed Regulations. While they may be worth consideration, he did not believe they should be included at this point in time.⁶² Mr. Davis asserted that Delaware is finally getting a viable community solar program with a significant amount of low-income participation.

41. **Affinity Energy Management (“Affinity”).** On November 1, 2021, Ed Jackson, of Affinity, submitted written comments. Mr. Jackson’s main concern was the ability for low- and moderate-income customers to qualify despite not holding an individual Delmarva account in their name. He noted that Affinity works with several non-profits that own residential or multi-family properties that house low-income tenants. Mr. Jackson acknowledged that the Proposed Regulations addressed his concern, but he recommended that the owner or operator of a multi-family property be able to attest to their tenants’ low-income eligibility rather than require the tenants to submit proof of low-income eligibility.⁶³ At the Hearing, Mr. Jackson noted that the Revised Proposed Regulations took into account his written comments.⁶⁴

42. **United States Solar Corporation (“US Solar”).** On November 1, 2021, Ross Abbey, Director, Regulatory and Legislative Affairs for US Solar, submitted written comments. Mr. Abbey requested numerous clarifying changes, several of which Staff

⁶⁰ Tr. 863-866.

⁶¹ Tr. 869.

⁶² Tr. 870.

⁶³ In the Revised Proposed Regulations, Staff added subsection 16.4.1.3, which provides that for master-metered buildings, proof of income eligibility may consist of a written attestation of the owner or operator that their tenants meet the income eligibility requirements.

⁶⁴ Tr. 871-872.

incorporated in the Revised Proposed Regulations. In addition, Mr. Abbey recommended that subsection 16.2.4.3 limit the validity of a Final Certificate to Operate to 25 years from the date of commercial operation, to coincide with the 25-year warranty for solar panels.⁶⁵ According to Mr. Abbey, having a known term for the program helps facilitate project finance and contracting by setting a common expectation across all stakeholders.

43. Mr. Abbey also recommended that the 15% low-income subscriber requirement be pegged to 15% of the CEF's capacity rating (rather than to the number of subscribers in the CEF), because it makes monitoring, enforcement, and compliance much easier.⁶⁶ According to Mr. Abbey, pegging the 15% low-income requirement to the CEF's capacity simplifies enforcement, because any shortfall in meeting the 15% requirement during the term of the CEF would result in unsubscribed energy until the CEF remedies the shortfall. Unsubscribed energy is compensated at a much lower rate, which creates an incentive for the CEF operator to avoid falling below the 15% low-income capacity requirement, as done in other states.

44. Mr. Abbey recommended deleting subsection 16.4.3, which states that a CEF's "failure to satisfy the low-income requirements may result in a penalty, including monetary assessment, or revocation of its Final Certificate to Operate."⁶⁷ Mr. Abbey asserted that the specter of project default would risk causing collateral harm to the project's other subscribers and project financing. Mr. Abbey suggested that, instead, the Commission move to a 15% capacity requirement and rely on the lower compensation rate for unsubscribed energy as a disincentive to falling below the 15% low-income capacity requirement.⁶⁸

45. Mr. Abbey recommended deleting subsection 16.5.4.4, which provides that contracts for residential or small commercial subscribers may not contain a provision that

⁶⁵ US Solar's 11/1/2021 comments, at 4.

⁶⁶ *Id.* at 9.

⁶⁷ *Id.* at 11.

⁶⁸ *Id.* at 9, 11.

“limits or releases the liability of the Community Energy Facility for not performing the contract.”⁶⁹ According to Mr. Abbey, subsection 16.5.4.4 is an unjustified restriction on the freedom to contract. For example, when an applicant is unable to build a CEF because the interconnection cost turns out to be infeasible, subscribers should not be allowed to file a legal claim for exemplary or business-expectation damages. Mr. Abbey noted that US Solar’s standard subscriber agreement allows for no-fault cancellation under this scenario prior to the project achieving commercial operation.

46. At the Hearing, Mr. Abbey reiterated his recommendation for a “program contract” term because having a known term for the “public contract” helps facilitate project finance.⁷⁰ Mr. Abbey also sought clarification of subsection 16.6.6.1 regarding how often Delmarva will test a subscriber’s subscription size to ensure it does not exceed the 110% of usage maximum. (Staff Witness Knotts responded that subscription size is tested annually.⁷¹) Mr. Abbey also favored basing the 15% low-income requirement on capacity rather than number of subscribers because it is easier to administer and monitor.⁷²

47. Mr. Abbey also objected to subsection 16.6.6.3, which prohibits CEFs from charging subscribers more than the bill credits received, because while CEFs typically provide a discount, they should be able to charge a premium, if agreed to by the subscriber.⁷³ (In response, Staff Witness Knotts testified that most of the discussions with industry stakeholders involved a guaranteed discount for subscribers and she could not, therefore, envision a business model where the CEF charged more than the subscriber saved from the bill credits.)⁷⁴

⁶⁹ *Id.* at 13.

⁷⁰ Tr. 891.

⁷¹ Tr. 896. In addition, see footnote 8, *supra*, for the clarification Staff made to subsection 16.6.6 in the final draft of the Revised Proposed Regulations.

⁷² Tr. 901-902.

⁷³ Tr. 898.

⁷⁴ Tr. 899.

48. **Laurel Passera.** At the Hearing, Laurel Passera, Policy Director for CCSA, asserted that, based on her experience in other states, “it is very important to ensure a disciplined approach for community solar projects that requires a high bar for entry.”⁷⁵ As such, CEFs should be required to post a performance security deposit, which she suggested would be provided to Delmarva, within 10 days of receiving a Preliminary Certificate to Operate. Regarding Delmarva’s recovery of billing related costs from CEFs, Ms. Passera stated that, after many discussions with Staff and other stakeholders, she believes that Staff landed on a good compromise solution in the Revised Proposed Regulations.⁷⁶

49. Ms. Passera disagreed with the DPA’s position with respect to cost recovery of the bill credits.⁷⁷ Requiring CEFs to pay Delmarva for the bill credits would “completely undermine the program.”⁷⁸ According to Ms. Passera, the main reason stakeholders approached the General Assembly to amend the existing statute was to update the bill credit value from being a generation-only rate to a generation and delivery rate. The DPA’s proposal to charge CEFs the value of the bill credit would not only ensure that no projects are built, but it would also undermine the intent of the General Assembly’s effort to update the statute.⁷⁹

50. **John Nichols.** On November 1, 2021, John Nichols submitted written comments. Mr. Nichols noted that CEFs will reduce the amount of electricity Delmarva delivers, which means, because of volumetric pricing, that Delmarva will need to increase distribution rates to collect the revenue required to maintain infrastructure. As a measure of Delmarva’s support for community-based solar, Mr. Nichols recommended that the regulations require Delmarva to bear all costs attributed to revenue losses due to CEFs. In addition, Mr. Nichols recommended that the Commission direct Delmarva to study, at its own expense, the

⁷⁵ Tr. 838-839.

⁷⁶ Tr. 841.

⁷⁷ Tr. 842.

⁷⁸ *Id.*

⁷⁹ Tr. 843.

expected loss of revenue before the Commission adopts the Proposed Regulations.⁸⁰ Mr. Nichols also submitted a chart, produced by the Global Carbon Project, showing global CO2 emissions by country.

51. At the Hearing, Mr. Nichols noted that, according to Our World in Data, which is a site maintained by Oxford University, even if the U.S. carbon emissions went to zero, global emissions would continue to rise.⁸¹ In addition, Mr. Nichols asserted that the Proposed Regulations fail to address the significant environmental problems associated with large-scale solar deployments, and he recommended an independent environmental assessment to determine adverse effects on flora and fauna.⁸²

52. **Anne Kirby.** On November 1, 2021, Anne Kirby submitted written comments. Ms. Kirby questioned the need for a photo identification and a utility bill for low-income eligibility. Ms. Kirby also asserted that the regulations should clarify that a non-community solar project may be co-located with a CEF. Ms. Kirby recommended that if a subscriber increases usage, for example by purchasing an electric vehicle, there should be an easy pathway for increasing their subscription level. Ms. Kirby also stated that a CEF should not be penalized if a low-income subscriber has elevated out of qualification during participation.

53. At the Hearing, Ms. Kirby stated that she represents Green Building United. Ms. Kirby questioned Staff as to whether the recommendations from her written comments were incorporated in the Revised Proposed Regulations. Staff Witness Knotts responded that several of Ms. Kirby's recommendations were incorporated, including removing the need for a photo identification and a utility bill for low-income eligibility and clarifying that a non-community solar project may be co-located with a CEF.⁸³ However, Staff did not allow for

⁸⁰ Mr. Nichols' 11/1/2021 comments, at 1.

⁸¹ Tr. 872-873.

⁸² Tr. 877.

⁸³ Tr. 884-885.

low-income subscribers who lose their eligibility for low-income status to continue to be qualified as low-income because that would be inconsistent with the low-income requirement from Senate Bill 2.⁸⁴

54. **Mid-Atlantic Solar and Storage Industry Association (“MSSIA”).** On December 2, 2021, Michael Andrew Wall of MSSIA submitted written comments. Mr. Wall asserted that third-party verification like that required for retail utility sales is unnecessary because community solar subscribers typically receive a financial benefit from their subscription. Mr. Wall also supported Delmarva’s reporting of billing costs under subsection 16.10.2 and the 24-month deadline for obtaining a Final Certificate to Operate after issuance of the Preliminary Certificate to Operate, with the possibility of a 12-month extension. Mr. Wall recommended, however, the additional requirement of a refundable security deposit as a condition of such extension so that unviable projects are not allowed to continue consuming resources.⁸⁵

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

55. The Commission has jurisdiction over this matter pursuant to 26 *Del. C.* § 1014(f)(1), (f)(20), and (f)(23).

56. Based on the public comment received in this matter, Staff made numerous clarifying, procedural, or otherwise minor revisions to the Proposed Regulations, which were published in the October 1, 2021 *Register of Regulations*. Under the APA, if such changes are not substantive, the Commission is not required to republish the regulation as a new proposal, which would be subject to the public comment and hearing requirements for new proposals.⁸⁶ Staff submits that the instant revisions to the Proposed Regulations are nonsubstantive changes. No participant has suggested otherwise.

⁸⁴ Tr. 886.

⁸⁵ MSSIA’s 12/2/2021 comments, at 2.

⁸⁶ 29 *Del. C.* § 10118(c).

57. The APA's definition of "substantive" provides that "requirements, other than procedural, for obtaining ... a license of any kind" are "substantive."⁸⁷ Here, each change to the Proposed Regulations is either: (1) clarifying in nature (and therefore not changing the substance or intent of the original subsection); or (2) procedural in nature; that is, relating to the process by which a CEF applicant obtains its Certificate to Operate. The APA's definition of "substantive" carves out procedural requirements; therefore, the Commission agrees with Staff and finds that the changes to the Proposed Regulations are nonsubstantive. In addition, the Commission agrees with Staff that the four written submissions filed after the Hearing (as summarized above) do not warrant further revision to the Revised Proposed Regulations.

58. As most participants recognized in this rulemaking, Staff engaged in a robust stakeholder process, over several months, in drafting and revising the Proposed Regulations.⁸⁸ Even so, the Commission understands that, with a new, multifaceted program, unanticipated issues will arise, which may warrant our review of the CEF rules for further improvement, provided any further revisions remain consistent with the language and the intent of Senate Bill 2. Based on the record in this matter, however, the Commission agrees with Staff⁸⁹ and finds that the proposed amendments comply with the new requirements from Senate Bill 2 and are in the public interest because they will accelerate the adoption of community-owned solar photovoltaic systems in Delaware. Regarding the remaining objections from the participants in this matter, the Commission offers the following discussion and conclusions.

59. **Subsection 16.10.4 – Delmarva's recovery of the billing credits.** Subsection 16.10.4 authorizes Delmarva "to recover the credited supply and distribution costs provided to Subscribers and the Community Energy Facility in accordance with its tariff." While

⁸⁷ 29 *Del. C.* § 10102(9).

⁸⁸ Importantly, Staff consulted with the Consumer Protection Unit of the Department of Justice on the consumer protection requirements in the regulations, as required by Senate Bill 2. 26 *Del. C.* § 1014(f)(20).

⁸⁹ Tr. 813.

Delmarva's tariff does not at this time specify how such recovery will take place, the participants agree that subsection 16.10.4 paves the way for Delmarva to file for approval of a mechanism for recovery of the billing credits it will provide to CEF subscribers – not from CEFs but from its customers. In this way, Delmarva will be socializing the cost of the billing credits across all or part of its customer base, as it does now for the billing credits it provides for net-metered rooftop solar generation via its distribution rate, which is set by base rate cases.⁹⁰

60. The DPA argued that because Senate Bill 2 provides that CEFs “shall be responsible for any additional costs incurred by the electric distribution company...,” Delmarva must recover the billing credits from the CEFs as an “additional cost.”⁹¹ The Commission disagrees that the intent of the General Assembly was to include the billing credits as an “additional cost” to be collected from the CEFs. As many of the participants asserted, collecting the billing credits from the CEFs would, in effect, take away the full retail rate⁹² compensation the General Assembly provided to CEF subscribers under Senate Bill 2.⁹³

61. Moreover, it is unclear that the billing credits for distribution are an “additional cost” or whether they are more accurately viewed as a reallocation of existing distribution costs necessary to serve CEF subscribers that will be socialized across Delmarva's customer base (in a manner to be determined later).⁹⁴ The billing credits for generation are not an “additional cost” because much of the supply cost will be “recovered” by virtue of the savings to Delmarva from the avoided supply purchases from its wholesale suppliers (due to the generation from

⁹⁰ See Tr. 919.

⁹¹ DPA's 11/1/2021 comments, at 5-7.

⁹² More precisely, Senate Bill 2 provides for billing credits to be applied against the supply and distribution components of the retail rate, but not the social and environmental rate riders. 26 *Del. C.* § 1014(f)(1).

⁹³ See Tr. 842-843, 847-850, 862-866, 918-919.

⁹⁴ Staff argued that the billing credits are not “additional costs.” Tr. 919-922.

the CEFs),⁹⁵ with any remaining supply costs (due in part to the difference between the price of wholesale supply and Delmarva's standard offer service rates) reallocated from CEF subscribers to Delmarva's customer base (in a manner to be determined later).

62. By approving subsection 16.10.4, the Commission is not approving any particular mechanism for recovery of the billing credits and, to be clear, is not determining whether such recovery of the distribution credits will take place via rate rider (as Delmarva prefers)⁹⁶ or via the distribution rate itself or whether such recovery of the remaining supply costs will be recovered via the PCA (as Delmarva prefers)⁹⁷ or otherwise. The Commission is acknowledging, however, that Delmarva's recovery of the billing credits from its customers (rather than the CEFs) is appropriate, given the intent of Senate Bill 2 to facilitate the development of CEFs by applying the billing credits against both the supply and distribution rates of CEF subscribers.

63. **Subsection 16.10.2 – CEF responsibility for additional costs incurred by Delmarva.** In accordance with Senate Bill 2, subsection 16.10.2 provides that the CEF shall be responsible for any additional costs incurred by Delmarva for its implementation of the CEF program, including billing-related costs associated with the CEF subscribers. At subsection 16.10.2.1, Delmarva is obligated to submit a report to the Commission, within 30 days of the effective date of these regulations, that provides such costs and a calculation of the associated charges to CEFs. Thereafter, Delmarva must file semi-annual reports on its cost recovery mechanism, pursuant to subsection 16.10.2.2. The Joint Commenters recommended that subsection 16.10.2 specify additional procedures that Delmarva must follow to gain approval

⁹⁵ 26 Del. C. § 1014(f)(4) provides that Delmarva "shall use energy generated from a [CEF] to offset purchases from wholesale electricity suppliers for standard offer service."

⁹⁶ Delmarva's 11/1/2021 comments, at 9-10.

⁹⁷ *Id.*

from the Commission before such charges are imposed, if the “additional costs” exceed \$500,000.

64. The Commission first notes that charges to CEFs reflecting Delmarva’s incremental cost of implementing the CEF program are not the equivalent of charges to customers for electric service, and therefore do not require the same level of process before they can be imposed. The CEF developers will see Delmarva’s costs 30 days after the effective date of these regulations, with updates provided semi-annually. If they object to the charges, they can seek redress at the Commission, at any time. In fact, subsection 16.10.2.3 specifies that if a CEF disputes the charges or the cost recovery mechanism, it may file a complaint with the Commission in accordance with the Commission’s Rule of Practice and Procedure. The Commission finds that the reporting and complaint procedures provide sufficient transparency and due process for these charges regarding Delmarva’s incremental cost associated with the CEF program.

65. **Subsection 16.6.2 – four or ten CEFs per subscriber.** ECA Solar’s two representatives objected to the limitation of four CEFs per subscriber in subsection 16.6.2, arguing that the limitation may restrict access to the program and could disproportionately affect low-income families.⁹⁸ ECA Solar recommends that the four-CEF limitation be increased to ten.

66. The Commission approves the four-CEF limitation because it is not clear from the record that CEF participation will be materially hindered by allowing no more than four CEF subscriptions per subscriber. Furthermore, no other solar developer objected to the four-CEF limitation and Delmarva, which must ensure its billing system can process multiple CEFs per customer, supported the limitation. Delmarva’s input on this issue is important as it must:

⁹⁸ ECA Solar’s 11/1/2021 comments, at 2-3; Tr. 856.

(1) track credits per CEF subscription; (2) display separate credit amounts for each CEF subscription on its customers' bills; and (3) identify each CEF on the bill.⁹⁹

67. **Program term.** The Joint Commenters recommended that the regulations specify the duration of Delmarva's obligation to purchase power from a given CEF, noting that in other states that have community solar programs, the utility is required to enter into a power purchase agreement ("PPA") with community solar projects which guarantees payment for energy generated by the project for a period of at least 25-35 years.¹⁰⁰ According to the Joint Commenters and US Solar, CEF investors need a guaranteed program term associated with a revenue stream in order to finance community solar projects.

68. Under the Delaware CEF program, Delmarva will not purchase energy from the CEFs under a PPA, and, therefore, there is no contract term to establish in the regulations. Consistent with Senate Bill 2, a CEF's revenue stream will continue for as long as it complies with the regulations and has subscribers – and so long as the CEF statute and regulations remain in effect. Fixing a program term, therefore, would not guarantee a revenue stream for CEFs like a PPA's contract term would – it would simply provide an arbitrary termination date for the CEF project. For these reasons, the Commission declines to establish an end date for CEF projects at this time.

69. **Percentage basis for low-income measurement.** The Joint Commenters and US Solar recommended that the percentage calculation for the 15% low-income requirement be based on the generation capacity of low-income participation measured against the project capacity, rather than on the number of low-income subscribers measured against total subscribers for a project. They submit that a capacity measurement would be easier to administer and enforce and would enhance low-income participation. The DPA, on the other

⁹⁹ Subsection 16.9.1.1.

¹⁰⁰ Joint Commenters' 11/1/2021 comments, at 11.

hand, asserted that moving to a capacity measurement would result in fewer low-income participants.¹⁰¹

70. Senate Bill 2 requires that CEFs certify that “participants in the community-owned energy generating facility include at least 15% low income customers...”¹⁰² Given the specific references to “participants” and “customers” and the absence of any reference to capacity, it is reasonable for the Proposed Regulations to require a measurement of the percentage of low-income participation as the number of low-income subscribers divided by the number total subscribers for each CEF. It is unclear how such a measurement would be more difficult to administer and enforce than a measurement based on capacity. If a CEF loses one low-income customer, which results in that CEF falling below the 15% requirement, it follows that the CEF needs to add one low-income customer, irrespective of the usage of the lost customer and the added customer. That would not be the case if the percentage requirement were based on capacity. Regarding whether a capacity requirement would result in greater or less low-income participation, the Commission is concerned foremost with complying with the language and intent of Senate Bill 2 and, as noted above, the percentage measurement based on number of participants clearly meets the Senate Bill 2 requirement for low-income participation.

71. **Security deposit and permitting requirement.** The Joint Commenters and Ms. Passera recommended that projects larger than 500 kilowatts post a security deposit equal to \$25 per kilowatt, meaning that for a four-megawatt project, the security deposit would be \$100,000.¹⁰³ According to the Joint Commenters, a deposit requirement will help to avoid speculative, poorly conceived projects, and would be refundable upon the successful completion of the project. In addition, the Joint Commenters asserted that CEF applicants

¹⁰¹ Tr. 914-915.

¹⁰² 26 *Del. C.* § 1014(f)(16)e.

¹⁰³ Joint Commenters’ 11/1/2021 comments, at 5.

should be required to have already obtained all non-ministerial permits and approvals because permitting is a significant development risk.¹⁰⁴

72. On the other hand, Mr. Moschella of ECA Solar asserted that the inclusion of a deposit requirement does nothing except add administrative burden to the State and, given that Delaware's CEF program does not have a firm cap on the number of projects allowed, there is no harm in issuing certificates of eligibility.¹⁰⁵ Mr. Naini of TurningPoint asserted that adding a permitting requirement now would contradict legislative intent.¹⁰⁶

73. At this time, the Commission does not believe a deposit requirement, or a permitting requirement, is warranted. The Proposed Regulations already require CEF applicants to demonstrate project viability via proof of site control, interconnection feasibility, and operational and financial capabilities.¹⁰⁷ Senate Bill 2 includes these three requirements – but does not expressly require deposits or completed permitting.¹⁰⁸ If, once the new CEF program is underway, Delmarva encounters issues concerning non-viable projects consuming resources, it can advise the Commission and we can revisit the inclusion of deposit or permitting requirements.

74. **Subsection 16.5.4.4 – release from liability.** Mr. Abbey of US Solar recommended deleting subsection 16.5.4.4, which provides that contracts for residential or small commercial subscribers may not contain a provision that “limits or releases the liability of the Community Energy Facility for not performing the contract.”¹⁰⁹ Mr. Abbey argued that when an applicant is unable to build a CEF because the interconnection cost turns out to be infeasible, subscribers should not be allowed to file a legal claim for exemplary or business expectation damages. The Commission notes, however, that a CEF cannot contract with

¹⁰⁴ *Id.* at 5-6.

¹⁰⁵ Tr. 858.

¹⁰⁶ TurningPoint's 11/1/2021 comments, at 2.

¹⁰⁷ *See* subsections 16.2.3.1.11, 16.2.3.1.12, and 16.2.4.1.14.

¹⁰⁸ 26 *Del. C.* § 1014(f)(12).

¹⁰⁹ US Solar's 11/1/2021 comments, at 13.

subscribers until it obtains a Final Certificate to Operate, which means that the CEF will already have seen Delmarva's interconnection study and the cost of any necessary upgrades before it undertakes any contractual obligations with subscribers.¹¹⁰ Mr. Abbey's example, therefore, does not apply to the Delaware program. Moreover, the Commission views the prohibition on a release from liability *for nonperformance* of the residential and small commercial contract as an important consumer protection. Such a clause, however, does not prevent a CEF from including a contract term that expressly allows for early termination under specified, reasonable terms and conditions. As such, the Commission will not remove subsection 16.5.4.4 at this time.

75. **Subsection 16.4.3 – penalty for low-income noncompliance.** The Commission declines Mr. Abbey's recommendation to delete the subsection 16.4.3 penalty for a CEF's failure to meet the 15% low-income requirement because the penalty section is consistent with Senate Bill 2¹¹¹ and having a meaningful penalty set out in the regulations will likely assist in enforcement.

76. **Subsection 16.6.6.3 – prohibition on charging subscribers more than billing credits.** The Commission also declines Mr. Abbey's recommendation to delete the prohibition on charging subscribers more than the value of the billing credits at subsection 16.6.6.3. Staff Witness Knotts testified that the models that the industry stakeholders discussed with Staff did not involve a premium paid by subscribers, and she could not envision a business model where the CEF charged more than the subscriber saved from the bill credits.¹¹² Moreover, subsection 16.6.6.3 is an important protection for unsophisticated consumers who may find themselves

¹¹⁰ See subsections 16.2.1 and 16.2.3.1.12.

¹¹¹ 26 Del. C. § 1014(f)(13) provides that the "Commission may impose penalties, including monetary assessments, and may suspend or revoke the Certificate to Operate" on a CEF for its failure to comply with the regulations.

¹¹² Tr. 899.

losing money on a CEF subscription when the intent of Senate Bill 2 was to remove the existing economic barriers to community solar in order to promote its development.

77. **Periodic review of regulations.** In its initial comments and at the Hearing, Delmarva argued for the insertion of a subsection that requires the Commission to periodically review the CEF regulations to avoid problems that may emerge due to CEFs over time.¹¹³ Based on its additional written comment, submitted December 2, 2021, it appears that Delmarva no longer objects to Staff's omission of such a requirement. In any event, as noted by the DPA,¹¹⁴ the statute already instructs the Commission to review the impact of the regulations on the financial health of the utility.¹¹⁵ In addition, the APA provides that agencies may initiate proceedings to amend a regulation on the motion of an agency member or at the request of any person who so petitions the agency.¹¹⁶ For these reasons, the Commission finds that a requirement in the regulations for periodic review of the regulations is unnecessary.

78. **Third-party verification of enrollments.** The Joint Commenters,¹¹⁷ MSSIA,¹¹⁸ and Laurel Passera¹¹⁹ objected to the inclusion of a requirement for third-party verification of CEF enrollments. The Proposed Regulations, however, do not require third-party verification. The definition of third-party verification at Section 1.0 provides certain requirements for third-party verification *when it is conducted* but does not, by itself, require CEFs to conduct third-party verification. Subsection 16.12.3.3, which addresses CEF third-party verification, only requires that CEFs retain third-party verification recordings, *if applicable*, for five years. If a CEF chooses not to conduct third-party verification, then the

¹¹³ Delmarva's 11/1/2021 comments, at 10; Tr. 831-832.

¹¹⁴ Tr. 915.

¹¹⁵ Under 26 *Del. C.* § 1014(g), 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."

¹¹⁶ 29 *Del. C.* § 10114.

¹¹⁷ Joint Commenters' 11/1/2021 comments, at 4.

¹¹⁸ MSSIA's 11/1/2021 comments, at 1.

¹¹⁹ Tr. 844.

retention requirement is not applicable. Subsection 11.7.1, on the other hand, specifically requires *electric suppliers* to conduct third-party verification. No analogous requirement exists in Section 16 that would apply to CEFs.

79. **Revenue loss study and environmental assessment.** Mr. Nichols recommended that the Commission direct Delmarva to study the expected loss of revenue due to the CEF program before the Commission adopts the Proposed Regulations.¹²⁰ While the Commission is certainly interested in the billing impact on Delmarva's customer base due to the CEF program, and will be reviewing such impact moving forward, Senate Bill 2 clearly establishes the value of the billing credits from CEF generation, directs the Commission to administer a program based on those credits, and provides a deadline of March 11, 2022 for these regulations. For these reasons, such a study is not warranted prior to adoption of the regulations and the Commission therefore declines Mr. Nichol's recommendation.

80. The Commission also declines Mr. Nichols' recommendation for an independent environmental assessment of the adverse effects of large-scale solar deployments¹²¹ because Senate Bill 2 includes no such directive and, instead, directs the Commission to promulgate regulations by March 11, 2022, to allow the CEF program to commence without delay. Furthermore, such a study, if warranted, would be more appropriately considered by DNREC.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 *Del. C.* § 1014(f)(1), (f)(20), and (f)(23), and for the reasons set forth above, the Commission hereby adopts as final the proposed amendments (as revised) to its *Supplier Rules*, which are attached as Exhibit "A" as a clean copy and Exhibit "B" in the

¹²⁰ Mr. Nichols' 11/1/2021 comments, at 1.

¹²¹ Tr. 877.

form required by the *Delaware Manual for Drafting Regulations* for submission to the Registrar of Regulations.¹²²

2. That, pursuant to 29 *Del. C.* § 10118(e), the Secretary of the Commission shall transmit a copy of this Order, including Exhibits "A" and "B," to the Registrar of Regulations for publication in the March 1, 2022 edition of the *Delaware Register of Regulations*. An exact copy of the amended regulations shall be published in the *Delaware Register of Regulations* as the Commission's official regulation as defined in 29 *Del. C.* § 1132.

3. That, pursuant to 29 *Del. C.* § 10118(g), the effective date of the amendments shall be the later of March 11, 2022, or ten days after publication in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

/s/ Joann T. Conaway

Joann Conaway, Commissioner

/s/ Harold Gray

Harold Gray, Commissioner

¹²² The required form is that underlined text is used to indicate new text added at the time of the proposed action, ~~stricken~~ text indicates text being deleted at the time of the proposed action, **[bracketed bold]** language indicates text added between when the regulation was proposed and the time the final order is issued, and ~~**[bracketed bold stricken]**~~ text indicates language deleted between when the regulation was proposed and the time the final order is issued. *Delaware Manual for Drafting Regulations*, at 9.

/s/ Manubhai Karia

Manubhai "Mike" Karia, Commissioner

/s/ Kim Drexler

Kim F. Drexler, Commissioner

ATTEST:

Malika Davis
Malika Davis, Acting Secretary



EXHIBIT A

**TITLE 26 PUBLIC UTILITIES
DELAWARE ADMINISTRATIVE CODE**

1

PSC Order No. 9965; Exhibit "A"

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
3000 Energy Regulations**

**3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering,
and Community Energy Facilities**

1.0 Definitions.

"Affiliated Interest" means:

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

"Agent" means a Person who conducts marketing or sales activities, or both, interacting directly with Customers based on a contractual arrangement with and on behalf of an Electric Supplier or a Community Energy Facility. "Agent" does not include Brokers or Aggregators.

"Aggregator" 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" means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

"Annualized Billing Period" means a period of 12 consecutive monthly billing periods. For Net Metering Customers, the 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 Electric Distribution Company and is generating electricity. A Net Metering Customer may elect to change the end of the Annualized Billing Period one time in order to better utilize excess generation.

"Applicant" means:

1. A Person seeking to obtain an Electric Supplier Certificate;
2. An Electric Supplier seeking to amend its Electric Supplier Certificate; or
3. A Community Energy Facility seeking to obtain a Preliminary Certificate to Operate or a Final Certificate to Operate.

"Broker" means an entity or Person that acts as an agent or intermediary on behalf of the Customer in the sale or purchase of, but that does not take title to, electricity for sale to retail electric Customers or an entity or Person that acts as an agent or intermediary on behalf of the Customer in the purchase of a subscription to a Community Energy Facility but does not take title to the subscription.

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

"Co-location" means the siting of two or more Community Energy Facilities owned or developed by a single entity (or its Affiliated Interests) located on one parcel of land, or on contiguous parcels of land. For purposes of this definition:

TITLE 26 PUBLIC UTILITIES DELAWARE ADMINISTRATIVE CODE

2

1. "Contiguous" means touching along a boundary or a point. For example, parcels touching along a boundary are contiguous, as are parcels that meet only at a corner. Parcels, however near to each other, that are separated by a third parcel and do not touch along a boundary or a point are not contiguous. Additionally, parcels that are separated by a public road, railroad, or other right of way accessible at all times to the general public are not considered contiguous;

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

3. Projects owned or developed by separate entities (meaning that they are not affiliates) are not considered co-located; and

4. Projects need not be developed contemporaneously to be considered co-located. If a single project is developed and then a second, co-located project is developed on the same or a contiguous parcel at a later date by a single entity or its Affiliated Interests, these two projects will be considered co-located.

"Commission" means the Delaware Public Service Commission.

"Community-owned energy generating facility" or **"Community Energy Facility"** means a renewable energy generating facility that has multiple owners or customers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or customer and that meets all applicable requirements of Section 16.0 of these Regulations.

"Community Energy Facility Subscriber" or **"Subscriber"** means any Customer who participates in a Community Energy Facility project by means of having an active subscription to a Community Energy Facility or owning a portion of the Community Energy Facility. Subscribers are defined by the meter associated with their Delmarva bill.

"Consumer Protection Unit" means the Delaware Department of Justice Consumer Protection Unit or the Director of the Consumer Protection Unit, as applicable.

"Contract" means the total legal obligation resulting from the parties' agreement as effected by these Regulations and other applicable law. Contracts for Electric Supply Service and Community Energy Facility Subscriptions must be accompanied by a Contract Summary.

"Contract Summary" means a written summary of the material terms and conditions of service between an Electric Supplier and a Residential or Small Commercial Customer, or between a Community Energy Facility and a Subscriber. If the terms of the Contract Summary differ from the terms of the Contract, then the provision(s) most favorable to the Customer or Subscriber shall control.

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

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

"Customer" means a purchaser of electricity with a Delmarva account number for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, who purchases and supplies electricity to the occupants of such building or facility.

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

1. Satisfy all of the applicable requirements of Section 15.0 Net Metering of these Regulations;

2. Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters

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

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

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

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

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

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Door-to-Door Sale" means a sale, or offer of Contracts for sale, in which the Electric Supplier or its Agent, or a Community Energy Facility or its Agent, personally solicits a Residential or Small Commercial Customer to sell Electric Supply Service or Community Energy Facility subscriptions. This term includes sales made at a place other than the Electric Supplier's or Community Energy Facility's place of business. This term does not include:

1. Sales made at Public Events;
2. For Small Commercial Customers, sales in response to or following a pre-scheduled appointment between the Small Commercial Customer and the Electric Supplier or Community Energy Facility; and
3. Any sale which is conducted entirely by mail, telephone or other Electronic means.

"DPA" means the Delaware Division of the Public Advocate.

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

"Electric Supplier" means an entity or Person certified by the Commission that sells electricity to Customers utilizing the Transmission and/or Distribution Facilities of a nonaffiliated EDC, as defined in 26 Del.C. §1001(14), including:

1. Affiliates of an EDC;
2. Municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999);
3. Electric cooperatives which, having exempted themselves from the Commission's jurisdiction pursuant to 26 Del.C. §§202(g) and 223, choose to provide electricity outside their assigned service territories; and
4. Any Broker, Marketer or other entity (including public utilities and their Affiliates).

"Electric Supplier Certificate" or **"ESC"** means a certificate granted by the Commission to Electric Suppliers that have fulfilled the Commission's certification requirements. The Commission order approving an Applicant's application for certification as an Electric Supplier, Marketer, or Broker shall serve as the Electric Supplier Certificate.

"Electric Supply Service" means the provision of electricity and related services to Customers, as defined in 26 Del.C. §1001(15).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, as defined in 6 Del.C. 12A-§102(5).

"Electronic mail" or **"e-mail"** means any message transmitted through the internet including, but not limited to, messages transmitted to or from any address affiliated with an internet site.

"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, as defined in 6 Del.C. §12A-102(9).

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

1. Solar energy technologies that employ solar radiation to produce electricity;
2. Electricity derived from wind energy;
3. Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
4. Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth’s crust;
5. Electricity generated by a fuel cell powered by Renewable Fuels;
6. Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
7. Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
8. Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
9. Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:
 - a. Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;
 - b. Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility’s average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and
 - c. Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

“FERC” means the Federal Energy Regulatory Commission.

“Final Certificate to Operate” means a certificate granted by the Commission to a Community Energy Facility that has fulfilled the Commission’s final certification requirements under subsection 16.2.4 of these Regulations. The Commission order approving an Applicant’s application for a Final Certificate to Operate as a Community Energy Facility shall serve as the Final Certificate to Operate.

“Fixed Price” means a Price that will remain the same for at least three billing cycles or the term of the Contract, whichever is longer.

“Fuel Cell” 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.

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

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

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

“Grid-Integrated Electric Vehicle” 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 a Price offered by an Electric Supplier 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 Price that will be in effect for the remaining billing cycles of the Contract term, consistent with terms and conditions in the Contract.

“Low-income Customer” means a customer whose gross annual income, by family size, is at or below 200% of the U.S. Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater. Owners or operators of master-metered buildings whose tenants meet the income eligibility requirements for Low-income Customers may also qualify as a “Low-income Customer.”

“Marketer” means an entity or Person that purchases and takes title to electricity for sale to Customers in this State, as defined in 26 Del.C. §1001(19).

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

“Permission to Operate” means Delmarva’s approval for a Community Energy Facility to commence operation pursuant to subsection 16.3 of these Regulations.

“Person” means a natural person; a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent or employee of such agency.

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

“Preliminary Certificate to Operate” means a certificate granted by the Commission to a Community Energy Facility that has fulfilled the Commission’s preliminary certification requirements under subsection 16.2.3 of these Regulations, which establishes project viability. The Commission order approving an Applicant’s application for a Preliminary Certificate to Operate as a Community Energy Facility shall serve as the Preliminary Certificate to Operate.

“Price” or **“Rate”** means all charges (excluding taxes), including Fixed or Variable, to be charged by the Electric Supplier for Electric Supply Service or by the Community Energy Facility for subscription credits pursuant to the Contract.

“Public Event” means an event in a public location at which an Electric Supplier or Community Energy Facility may market and solicit Residential and Small Commercial Customers to enroll.

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"Regulations" means the Commission's Regulations for Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities (26 DE Admin. Code 3001 *et seq.*).

"Renewable Energy Credit" or **"REC"** means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of the Renewable Energy Portfolio Standards Act, 26 Del.C. §351 *et seq.* A REC does not include emission reduction credits 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"** means the percentage of retail electricity sales in the State that is to be derived from Eligible Energy Resources.

"Rescission Period" means the time period within which a Residential or Small Commercial Customer may choose to cancel, without penalty, a Contract for Electric Supply Service with an Electric Supplier or a Contract for subscription credits with a Community Energy Facility.

"Residential Customer" means a retail electric Customer eligible to take service classified as Residential under the tariff of the Customer's Electric Distribution Company currently on file with the Commission.

"Residential Subscriber" means a Residential Customer who has subscribed to a Community Energy Facility.

"Secretary" means the Secretary of the Commission, or any employee of the Commission designated by the Secretary and authorized by the Executive Director.

"Slamming" means the prohibited unauthorized enrollment of a Customer without the Customer's permission or the unauthorized transfer of a Customer to another Electric Supplier or Community Energy Facility.

"Small Commercial Customer" means a Customer taking service under a current Electric Distribution Company tariff governing Service Classification "Small General Service-Non Demand Rate" or the current Cooperative tariff governing Service Classification "General Service." However, for the purposes of these Regulations, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for Electric Supply Service shall be exempt from the definition of a Small Commercial Customer.

"Small Commercial Subscriber" means a Small Commercial Customer who has subscribed to a Community Energy Facility.

"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" means full-time professional employees of, and outside counsel and consultants retained by, the Commission who render advice to the Commission.

"Standard Offer Service" or **"SOS"** means the provision of Electric Supply Service by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier, as defined in 26 Del.C. §1001(23).

"Standard Offer Service Supplier" or **"SOSS"** means an EDC serving within its certificated territory, as defined in 26 Del.C. §1001(24).

"State" means the State of Delaware.

"Telemarketing" means any unsolicited telephone calls initiated by, or on behalf of, an Electric Supplier or a Community Energy Facility to a Residential or Small Commercial Customer in order to market Electric Supply Service or Community Energy Facility subscriptions.

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“Third Party Verification” or **“TPV”** means a method to record consent from a Residential or Small Commercial Customer agreeing to each of the below-listed material Contract terms that is recorded by an independent person not party to the agreement or that may be performed by an automated, computerized system. To be valid, the TPV must occur without the presence of the sales agent, and at the outset must describe how the Residential or Small Commercial Customer can cancel the TPV and the enrollment at any time prior to completion without penalty. The consent from the Residential or Small Commercial Customer must be given without unreasonable assistance from the individual conducting the TPV and must include an acknowledgement from the Residential or Small Commercial Customer:

1. That he or she is voluntarily choosing to enroll with an Electric Supplier or a Community Energy Facility;
2. Of the type of product offered (introductory, variable, fixed, or some combination);
3. Of the Price that will be charged for the first month’s service and when or if the Price may change;
4. Of the duration of the Contract;
5. Of the amount of an early termination fee (if applicable);
6. If a Residential Customer, that he or she is the account holder or authorized to make the switch;
7. If a Small Commercial Customer, that he or she is authorized to make the switch;
8. That the Residential or Small Commercial Customer has been provided with information on how the Contract can be renewed and, if applicable, what the Supplier or the Community Energy Facility can do if the Customer fails to respond to the renewal notice;
9. That the Residential or Small Commercial Customer has been provided information on how to access the Electric Supplier’s or the Community Energy Facility’s historical pricing information;
10. That the Residential or Small Commercial Customer has been provided information on how to access future pricing information; and
11. That the Residential or Small Commercial Customer has received the Electric Supplier’s or the Community Energy Facility’s customer support contact information.

“Transmission Facilities” means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to Customers (including any Customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the Customer, as defined in 26 Del.C. §1001(26).

“Transmission Services” means the delivery of electricity from supply sources through Transmission Facilities, as defined in 26 Del.C. §1001(27).

“Unsubscribed Energy” means any community-owned energy generating facility percentage of output that is not allocated to any Subscriber.

“Variable Price” means a Price that can change from month to month (but not more frequently) on a Residential or Small Commercial Customer’s bill according to the terms and conditions in the Contract.

“VREC” or **“Voluntary Renewable Energy Credit”** means a tradable instrument comprised of all the generation attributes equal to 1 megawatt-hour of electricity derived from the types of renewable energy sources listed in 26 Del.C. §352(6)(a)-(i) and that is generated via PJM-EIS GATS, its successor, another regional renewable energy certificate tracking system, or Green e-Energy and used to track and verify compliance with the provisions of these Regulations.

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“Written Notice” means notice in writing, mailed by First Class mail to the Person who is being given notice, sent to the current billing address as shown on the records of the Electric Distribution Company, Electric Supplier, or Community Energy Facility, or via Electronic mail to a valid e-mail address if the Customer authorizes the receipt of the applicable communication via electronic means and provides a valid e-mail address.

2.0 Certification of Electric Suppliers.

- 2.1 Before a Person may offer a Contract or commence service to a Customer, such Person or entity must obtain an Electric Supplier Certificate from the Commission to sell Electric Supply Service to, or arrange the purchase on behalf of, Customers.
- 2.2 Certification Requirement. All Applicants shall file with the Commission an original and five (5) copies of an application for an Electric Supplier Certificate or comply with the electronic filing requirements of 26 **DE Admin. Code** 1001 Rules of Practice and Procedure of the 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 consistent with applicable State laws. Applications shall contain at least the following information:
 - 2.2.1 Name, Etc. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name(s) under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant, its Affiliated Interests, or any current or previous officer, director, or manager has previously done business in Delaware;
 - 2.2.2 Certifications. Certification(s) issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
 - 2.2.3 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;
 - 2.2.4 Registered Agent. The name and post office address of a Registered Agent, pursuant to 26 **Del.C.** §401, within the State upon whom service of any notice, order or process may be made;
 - 2.2.5 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
 - 2.2.6 Corporate Structure. A description of the Applicant's corporate structure, including all parent, affiliated, and subsidiary companies. Include a graphical depiction of such structure;
 - 2.2.7 Contact Information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicant's:
 - 2.2.7.1 Regulatory contact person responsible for the Electric Supplier's Delaware operations; and
 - 2.2.7.2 Customer complaint contact person, if different from the regulatory contact person;
 - 2.2.8 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
 - 2.2.9 Toll Free Number. A toll-free telephone number to the Applicant's customer service center where Customers may call with questions about the Electric Supplier's services, including the Contract and Contract Summary. Brokers proposing to serve non-residential Customers may provide a Delaware telephone number;
 - 2.2.10 Website. The Electric Supplier's website address, accessible to prospective and current Customers;

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- 2.2.11 Consent to Jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Electric Supplier's and its Agent's activities in the State;
- 2.2.12 Criminal Activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution;
- 2.2.13 Marketing Plans and Materials. If the Applicant intends to serve Residential or Small Commercial Customers, the Applicant shall provide, to the extent then known or in existence:
- 2.2.13.1 A description of the marketing plan(s) and/or method(s) it plans to use in Delaware. This description shall identify whether Door-to-Door, Telemarketing, direct mail, or other marketing channels will be used and, where applicable, the identification of third party vendors that the Applicant will utilize to implement one or more marketing methods. The application shall include the manner in which the Applicant will ensure oversight, training, and compliance with the specific provisions of these Regulations with regard to Telemarketing, Door to Door, and in-person sales;
- 2.2.13.2 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 the Applicant will use to market and promote its products to Delaware Residential and Small Commercial Customers;
- 2.2.14 Contracts and Contract Summaries. A copy of the Applicant's standard Contract(s) form that it intends to offer to Residential and Small Commercial Customers, and the standard Contract Summary form it intends to include with its Contracts for Residential and Small Commercial Customers. A Contract or Contract Summary that does not comply with the requirements of these Regulations or other applicable Delaware laws and regulations may be grounds for rejection of the application;
- 2.2.15 Performance Bonds. Each Applicant, except Brokers, shall submit a copy of its performance bond or guarantee that it has obtained as security to the Electric Distribution Company if required in the service agreement between the Applicant and the Electric Distribution Company. The copy of the performance bond may be provided after the Electric Supplier Certificate is granted, but must be provided to the Commission prior to marketing or offering Electric Supply Service to Customers;
- 2.2.16 Financial Information.
- 2.2.16.1 If publicly traded, the Applicant's: (1) certified financial statements current within twelve (12) months of the filing, and (2) its most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website);
- 2.2.16.2 If not publicly traded, the Applicant's 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 publicly traded parent;
- 2.2.16.3 Applicants submitting European-style financial statements shall include a statement of similarity;
- 2.2.16.4 Staff may request other indicia of financial capability.

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- 2.2.17 Bankruptcy. The Applicant shall disclose whether it, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months;
- 2.2.18 Regional and Wholesale Experience.
 - 2.2.18.1 If the Applicant is a Marketer:
 - 2.2.18.1.1 A description of the Applicant's experience in the PJM regulated wholesale energy market or other regional energy markets; and
 - 2.2.18.1.2 A statement detailing that the Applicant has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM.
 - 2.2.18.2 If the Applicant is a Broker:
 - 2.2.18.2.1 Evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service must demonstrate, through an affirmative statement, that it will only arrange electricity sales from an entity that complies with PJM's requirements and is a Certified Electric Supplier in the State, and must provide a list of Electric Suppliers through which the Applicant intends to arrange for the sale of electricity. Any change in the identity of the Electric Suppliers on this list shall be provided to the Commission within five (5) Business Days of the effective date of the change.
- 2.2.19 Retail Experience. A description of the Applicant's experience in retail electricity markets, including:
 - 2.2.19.1 A description of the services it plans to offer in the State, including types of Customers to be served and services provided;
 - 2.2.19.2 A description of the operational experience in retail energy markets of each principal officer, director, or individual responsible for Delaware operations. If no such experience is applicable, the Applicant shall identify the means by which the Applicant proposes to support its managerial, technical, and financial capabilities for the retail sale of Electric Supply Service in the State;
 - 2.2.19.3 For each entity identified below, a list of states in which:
 - 2.2.19.3.1 The Applicant or any of its Affiliated Interests is presently selling or brokering Electric Supply Service to Customers;
 - 2.2.19.3.2 The Applicant or any of its Affiliated Interests has received authority to sell or broker Electric Supply Service to Customers but is currently not providing services;
 - 2.2.19.3.3 The Applicant or any of its Affiliated Interests has pending applications to sell or broker Electric Supply Service to Customers. For each state listed include license, order, or certificate numbers; and
 - 2.2.19.3.4 For each entity in each state listed above, provide the license or certification number, the applicable docket number, if any, and the date the license or certification was granted. Applicant shall provide copies of the order or decision, if any, from the state's public utility commission regarding the Applicant's applications identified in subsections 2.2.19.3.1 and 2.2.19.3.2.
 - 2.2.19.4 The Electric Supplier shall ensure that it can accept, investigate, and resolve Customer complaints in a prompt and responsive manner;
- 2.2.20 Other Proceedings.
 - 2.2.20.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:

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- 2.2.20.1.1 Customers; Been denied approval to sell or broker electricity to
- 2.2.20.1.2 or regulations; Been found to be in violation of a state's laws, rules,
- 2.2.20.1.3 Had its authority revoked, modified, or suspended; or
- 2.2.20.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of retail energy services, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv) any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
- 2.2.20.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its retail energy services in which the Electric Supplier agreed to pay a civil penalty, provide customer restitution, or make changes to its marketing and sales;
- 2.2.20.2 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.20.1;
- 2.2.20.3 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in retail and federal electricity, natural gas, or telecommunications markets;
- 2.2.21 Pending Proceedings. A list of proceedings in which a revocation or suspension of authority to sell or broker electricity is pending or has been adjudicated, and the name, case number, venue, final orders, and settlement agreements for each case identified. Applicant shall provide copies of each order and settlement agreement. If no such actions have been taken against Applicant, explicitly state that fact; and
- 2.2.22 FERC Approvals. A copy of any FERC approval as a Marketer, or the date and docket number of the Applicant's application to FERC for such approval. If the date and docket number are provided, a copy of the Applicant's FERC approval must be provided within 30 calendar days of issuance.
- 2.3 Financial Security.
- 2.3.1 Applicability. The financial security requirements of this Section apply only to Applicants that seek an Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers. The requirements of this paragraph do not apply to Standard Offer Service.
- 2.3.2 Requirements. An Applicant must submit financial security that complies with this subsection prior to the issuance of an Electric Supplier Certificate. The Applicant must maintain financial security that complies with this subsection as long as its Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers and must submit replacement security at least seven days prior to the expiration or cancellation of a previously submitted financial security instrument. Upon termination of an Electric Supplier Certificate, the financial security instrument shall remain in force until the Commission determines that all obligations of the Electric Supplier have been satisfied.
- 2.3.3 Amount.
- 2.3.3.1 The initial security amount shall be \$100,000. The Commission may grant modifications of this amount commensurate with the nature and scope of the business the Applicant anticipates conducting in the State upon submission of information in support of the modification. A request for modification of the initial security amount may be made in conjunction with the filing of the application.

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- 2.3.3.2 After the initial year, the required security amount shall equal \$100,000 or five percent (5%) of the Electric Supplier's annual revenues from sales of Electric Supply Service to Residential and Small Commercial Customers in Delaware over the prior calendar year, whichever is greater.
- 2.3.3.3 The Commission may determine that an Applicant requesting to be a Broker is required to post security to ensure that the Applicant has sufficient financial ability to operate as a Broker in the State. The Commission shall determine the bonding requirement on a case-by-case basis. A bond, if required, shall be in the amount of \$10,000.
- 2.3.4 Use of Security Amounts. Upon a finding that an Electric Supplier has violated a statute or regulation regarding the provision of service to Residential or Small Commercial Customers, the Commission may direct that amounts from the financial security be distributed consistent with State law.
- 2.3.5 Types of Security. An Applicant may satisfy the financial security requirements of this subsection through an irrevocable letter of credit, cash, cash equivalents, financial instruments that are easily liquidated and readily available to meet their costs of providing Electric Supply Service to Customers, or any combination thereof. Financial security documents must be in a form and contain language that is acceptable to the Commission.
- 2.3.5.1 Letter of Credit. An irrevocable letter of credit must unconditionally obligate the issuing financial institution to honor drafts drawn on such letters for the purpose of paying the obligations of the Electric Supplier pursuant to Delaware law and regulations and must specify that the issuing financial institution will notify the Commission 30 days in advance of the expiration or cancellation of the letter of credit. The letter of credit must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the letter of credit; and that any draft presented by the Commission will be honored by the issuer upon presentation. The letter of credit must be issued by a financial institution with a minimum corporate credit rating of "BBB+" by Standard & Poor's or Fitch or "Baa1" by Moody's Investors Service, or an equivalent short term credit rating by one of these agencies. If, at any time, the corporate debt rating of an issuing financial institution drops below the above specified levels, the Electric Supplier shall notify the Commission in writing and provide replacement security that satisfies the requirements of these Regulations.
- 2.3.5.2 Cash and Cash Equivalent. Cash or cash equivalents, including cashier's checks, sight drafts, performance bond proceeds, or traveler's checks, and applicable interest shall be returned to the Electric Supplier after all obligations are satisfied.
- 2.3.5.3 Certificate of Deposit. Certificate of deposit or other liquid deposit with a reputable bank or other financial institution.
- 2.3.5.4 Preferred stock proceeds. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the Applicant by the Commission.
- 2.3.5.5 Line of Credit. Line of credit issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission.
- 2.3.5.6 Loan. Loan, issued by a qualified subsidiary, affiliate or 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.

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- 2.3.5.7 Assets. Identifiable physical assets set forth in a balance sheet or similar statement.
- 2.3.5.8 Other Liability. Liability of Electric Suppliers for violation of law, Commission orders or Commission regulations is not limited by the security requirements of this Section.
- 2.3.5.9 Staff may request other indicia of financial capability.
- 2.4 Other Information. The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- 2.5 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.6 Notice. Each Applicant, except Brokers, shall publish notice of the filing of its application in two (2) newspapers of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application.
- 2.7 Application Fee. An Applicant for an Electric Supplier Certificate shall submit a non-refundable application fee of \$750 with the application.
- 2.8 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.9 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 Del.C. §1001 *et seq.*
- 2.10 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny an Electric Supplier Certificate to an Applicant where it finds that doing so is in the public interest.
- 2.11 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within ten (10) Business Days after the change may be grounds for rejection of the application.
- 2.12 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of an application or a recommendation that an application be denied.
- 2.13 Term of ESC. Electric Supplier Certificates are valid until revoked by the Commission or relinquished by the Electric Supplier after the requisite notice to the Commission and to its Customers.
- 2.14 Transfer or Relinquishing of ESC.
 - 2.14.1 The transfer of an ESC is prohibited without notice and approval of the Commission.
 - 2.14.2 No Electric Supplier shall cease doing business within the State unless it has provided at least sixty (60) days Written Notice to the Commission, the DPA, the affected EDC(s), and its Customers.
 - 2.14.3 The Commission will consider an ESC to be relinquished if the Electric Supplier does not provide the required yearly compliance filing in subsection 12.3 of these

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Regulations within ninety (90) days of the required date. An Electric Supplier shall be allowed 30 days' notice to cure a late annual filing.

3.0 Pre-enrollment Information and Customer Lists.

- 3.1 Notice and Consent for Pre-Enrollment Customer Information.
 - 3.1.1 Before requesting pre-contracting Customer information described in subsection 3.2 from the EDC, an Electric Supplier shall:
 - 3.1.1.1 Notify the Customer of its intention to request Customer information from the EDC; and
 - 3.1.1.2 Obtain the Customer's consent for release of the Customer's information from the EDC.
 - 3.1.2 Notice. The Electric Supplier notice required under subsection 3.1.1.1 of this regulation shall specify the Customer information listed in subsection 3.2 to be requested from the EDC.
 - 3.1.3 Customer Consent Records.
 - 3.1.3.1 A Customer's consent under subsection 3.1.1.2 is valid for a time mutually agreed to by the Customer and the Electric Supplier.
 - 3.1.3.2 An Electric Supplier shall maintain a record of a Customer's consent under subsection 3.1.1.2 of this regulation for a period of not less than 180 days from the expiration of the Customer's consent.
 - 3.1.3.3 An Electric Supplier's Customer consent records are subject to audit by the Commission.
 - 3.1.4 A Customer's consent under this regulation is not a Contract or enrollment for Electric Supplier services.
- 3.2 Pre-Enrollment Information. On request of an Electric Supplier, the EDC shall provide the following applicable Customer information:
 - 3.2.1 Account name;
 - 3.2.2 Billing address;
 - 3.2.3 Service address;
 - 3.2.4 EDC account number and any other number designated by the EDC as necessary to process an enrollment;
 - 3.2.5 Bill cycle;
 - 3.2.6 Voltage level;
 - 3.2.7 EDC rate class or code;
 - 3.2.8 Load profile;
 - 3.2.9 Meter number;
 - 3.2.10 Meter type;
 - 3.2.11 Multiple meter indicator;
 - 3.2.12 Peak load contribution;
 - 3.2.13 Metered demand;
 - 3.2.14 Billed demand;
 - 3.2.15 Monthly historical demand for the previous 12 months;
 - 3.2.16 Monthly historical consumption for the previous 12 months;
 - 3.2.17 Monthly time-of-use data for the previous 12 months;
 - 3.2.18 Interval meter data for the previous 12 months; and
 - 3.2.19 Dynamic pricing election, if any.

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- 3.3 Customer Lists. An EDC shall make a customer list available to Electric Suppliers on a secure password-protected web portal. An EDC shall update the names and information included on the customer list semi-annually. A Customer may elect to opt out of the list.
- 3.3.1 An EDC shall refresh its customer list every three years. Prior to refreshing the customer list, an EDC shall notify customers that the customer list is being refreshed. A Customer's election to opt out shall be valid for a period of three years.
- 3.3.1.1 The notice from the EDC pursuant to subsection 3.3.1 shall communicate to Customers the following information:
- 3.3.1.1.1 What the customer list is;
 - 3.3.1.1.2 What information is to be included on the customer list;
 - 3.3.1.1.3 What the more detailed information represents;
 - 3.3.1.1.4 How this information is to be used by Electric Suppliers;
 - 3.3.1.1.5 How the information is to be safeguarded by Electric Suppliers;
 - 3.3.1.1.6 How widely the information will be disseminated;
 - 3.3.1.1.7 The potential benefits to the Customer of having its information included on the customer list; and
 - 3.3.1.1.8 How the Customer may opt out of the customer list.
- 3.3.1.2 An EDC's annual communication to Customers shall be served electronically to those Customers who have opted to receive their bills via electronic means.
- 3.3.2 An EDC's customer list shall contain the Customers':
- 3.3.2.1 Name;
 - 3.3.2.2 Service Address(es);
 - 3.3.2.3 Billing Address(es);
 - 3.3.2.4 Billing Country Code (if available);
 - 3.3.2.5 Tariff Rate Class and Schedule;
 - 3.3.2.6 Rate Subclass/Rate Subcode (if available);
 - 3.3.2.7 Meter Read Cycle;
 - 3.3.2.8 Load Profile Group per Tariff;
 - 3.3.2.9 Whether the customer is an SOS customer; and
 - 3.3.2.10 Net Metering (Y or N).
- 3.3.3 An Electric Supplier shall put into place safeguards to prevent the disclosure of information contained in the customer list provided by the EDC. As such, the information contained in the customer list is to be used by the Electric Supplier only for the purpose of marketing and providing electricity supply services directly to Customers. An Electric Supplier shall keep the customer list in a secure and protected location. An Electric Supplier may provide access to the information in the customer list to those authorized by the Electric Supplier who require such information to market and provide electricity supply services to Customers. Otherwise, an Electric Supplier shall not disclose information contained in the customer list except upon authorization of the Customer.
- 3.3.4 An Electric Supplier may disclose a Customer's billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.
- 3.4 The provisions in this Section 3.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for a period of time deemed reasonable by the Commission.

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4.0 Enrollments and Drops. Accelerated Switching

- 4.1 An Electric Supplier may enroll or drop a Customer by sending the appropriate electronic enrollment or drop transaction to the EDC upon the expiration of the rescission period.
- 4.2 An EDC shall send a Written Notice to a Customer enrolling with an Electric Supplier or dropping an Electric Supplier. The EDC shall send the Written Notice by the end of the next Business Day following receipt of the electronic transaction. The Written Notice shall include the date the service with the Electric Supplier or SOSS shall begin.
- 4.3 An EDC shall process an electronic enrollment or drop from an Electric Supplier to be effective within three (3) Business Days after receipt of the electronic transaction.
- 4.4 The EDC shall drop a Customer from its current Electric Supplier when another Electric Supplier enrolls the Customer. An EDC shall assign a Customer who has been dropped by an Electric Supplier and not enrolled by another Electric Supplier to SOS.
- 4.5 An EDC shall not be required to process more than two enrollments and two drops per Customer per bill cycle.
- 4.6 An Electric Supplier may not require that a Customer provide it with advance notice, written or otherwise, before the Customer switches to another supplier or to SOS.
- 4.7 Customer-Initiated Drops
- 4.7.1 A Customer that wants to cancel a Contract shall first attempt to cancel the Contract according to the terms of the Contract.
- 4.7.2 If a Customer attempts to cancel a Contract by contacting the EDC first, the EDC shall direct the Customer to contact the Electric Supplier through the means detailed in the Contract.
- 4.7.3 If a Customer's cancellation request has not been received by the EDC from the Customer's Electric Supplier, and the Customer confirms that more than three (3) Business Days have passed since the Customer cancelled the Contract with the Electric Supplier, the EDC shall process a cancellation after notifying the Customer that there may be a cancellation penalty to cancel service with the current Electric Supplier.
- 4.7.4 A Customer's request to cancel service with the current Electric Supplier under this subsection 4.7 does not limit cancellation provisions contained in the Customer's Contract with the Electric Supplier.
- 4.7.5 No Electric Supplier shall include provisions in its Contract that would limit or waive this subsection 4.7.
- 4.8 The provisions in this Section 4.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for an amount of time deemed reasonable by the Commission.
- 4.9 Customers Returning to EDC or SOS Supplier for Electric Supply Service. The procedures for a Retail Electric Customer's return to an EDC during the Transition Period and to an EDC if it is the SOS Supplier after the Transition Period for Electric Supply Service shall be in accordance with the Commission's order for each EDC's individual electric restructuring plan.

5.0 Billing and Metering.

- 5.1 Billing Options.
- 5.1.1 Each Customer in Delmarva's service territory has the right to choose to receive separate bills from Delmarva 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 Regulations. If the Customer does not elect a billing option, Delmarva will be responsible for billing the

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Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Electric Supplier.

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

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

5.2.1 The name, address, and toll-free telephone number of the Electric Supplier;

5.2.2 If different from the Electric Supplier, the name, address and toll-free telephone number of the EDC;

5.2.3 The due date for payment;

5.2.4 If applicable, an itemized list of each service or product billed for the current billing period including charges for the public purpose programs and a competitive transition charge (if applicable) or other agreed to charges;

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

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

5.2.7 The total charge for each service or product;

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

5.2.9 The amount still owed by the Customer from the previous billing period;

5.2.10 Appropriate taxes and fees;

5.2.11 Definitions of material terms used in the bill; and

5.2.12 If applicable, late fees as defined in the Contract. Late fees must be clearly identified as such; and

5.2.13 The Commission shall have the authority to determine whether the Price to Compare shall appear on Customers' bills and, if so, which Customers and the manner in which the Price to Compare is calculated. Until such a determination is rendered in a subsequent proceeding, the Price to Compare shall continue to appear on bills as it does at the time of the effective date of these Regulations.

5.3 Metering.

5.3.1 Delmarva will continue to own all meters and perform all meter reading functions. The Commission can permit others to provide some or all of the metering functions on a competitive basis.

5.3.2 The Cooperative will continue to own and operate all meters and perform meter reading functions.

6.0 Electric Supplier Contracts and Contract Summaries.

6.1 An Electric Supplier shall provide a Contract and Contract Summary in the same language used by the Electric Supplier or its Agent to market, sell, or describe the Contract terms to prospective Residential and Small Commercial Customers.

6.2 Contract Requirements.

6.2.1 Only a licensed Electric Supplier may execute a Contract for Electricity Supply Service with a Customer.

6.2.2 A Contract for Residential and Small Commercial Customers shall be written in clear and plain language and contain all material terms and conditions, including:

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- 6.2.2.1 A list and description of the Contract services;
- 6.2.2.2 The Contract duration, expressed in months or years, or the disclosure that the Contract is month-to-month;
- 6.2.2.3 A description of the Price of each service, including:
 - 6.2.2.3.1 The Price and the duration of the Introductory Price, if applicable. If the Price to be charged upon the expiration of the Introductory Price is a Fixed Price, the Fixed Price that will be charged upon the expiration of the Introductory Price;
 - 6.2.2.3.2 For Variable Price Contracts:
 - 6.2.2.3.2.1 The Price to be charged, per kilowatt-hour, for the first billing cycle of the Contract;
 - 6.2.2.3.2.2 An explanation of the basis(es) on which the Price will vary and any limits on Price variability;
 - 6.2.2.3.2.2.1 If there is a limit on price variability, 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 Electric Supplier shall clearly explain applicable limits;
 - 6.2.2.3.2.2.2 If there is not a limit on Price variability, the Electric Supplier shall clearly and conspicuously state that there is not a limit on how much the Price may change from one billing cycle to the next;
 - 6.2.2.3.2.3 A telephone number and Internet address at which a Residential or Small Commercial Customer may obtain the previous 24 months' average monthly billed prices for that customer's rate class and EDC service territory. If an Electric Supplier has not been providing service in a rate class and EDC service territory for 24 months, the Electric Supplier shall provide the average monthly billed prices for the months available to date;
 - 6.2.2.3.2.4 In plain language, a statement that historical pricing is not indicative of present or future pricing; and
 - 6.2.2.3.2.5 A statement describing how the Residential or Small Commercial Customer may access future pricing information in accordance with Section 7.0 of these Regulations;
- 6.2.2.4 A description of any other fee(s) or charge(s), including but not limited to early termination penalties, late fees, fees to access the Electric Supplier's services, minimum monthly charges, enrollment fees, and interest charges; a description of the specific condition under which such fees or charges can be imposed; and the amount of such fee(s) or charge(s);
- 6.2.2.5 A description of any other non-commodity products or services provided to the Residential or Small Commercial Customer as part of the Contract;
- 6.2.2.6 If the Electric Supplier claims that Residential or Small Commercial Customers will save money by entering into the Contract as opposed to staying with SOS, the Electric Supplier shall include in the Contract a description of any inducement, if applicable, on which it relies to make this claim;
- 6.2.2.7 A statement that:
 - 6.2.2.7.1 The Residential or Small Commercial Customer may Rescind the Contract within three (3) Business Days from the start of the Rescission Period; and
 - 6.2.2.7.2 The Rescission Period begins on one of the following dates, as applicable;

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- 6.2.2.7.2.1 When the Residential or Small Commercial Customer signs the Contract;
- 6.2.2.7.2.2 When the Residential or Small Commercial Customer transmits the electronic acceptance of the Contract electronically; or
- 6.2.2.7.2.3 When the Residential or Small Commercial Customer receives the Contract and Contract Summary, if received by mail. There shall be a rebuttable presumption that a Contract and Contract Summary correctly addressed to a Residential or Small Commercial Customer with sufficient first class postage attached shall be received three (3) days after it has been properly deposited in the United States mail;
- 6.2.2.8 A statement of the Electric Supplier's termination rights, which shall explain the specific conditions under which the Electric Supplier may terminate service. At a minimum, the Electric Supplier shall provide the Residential or Small Commercial Customer with at least 30 days' Written Notice of termination of the Contract and procedures to maintain ongoing service;
- 6.2.2.9 The Electric Supplier's local or toll-free telephone number to obtain information and handle complaints; mailing address and website address; the Commission's address, website address, Delaware toll-free telephone number; and the DPA's address, website address, and telephone ~~number~~; number;
- 6.2.2.10 A statement informing the Residential or Small Commercial Customer that, because of relocation outside of their current EDC's service territory, they he/she may terminate his/her Contract with no termination fee;
- 6.2.2.11 A statement that the Electric Supplier may terminate the Contract prior to the stated term of the Contract, including:
 - 6.2.2.11.1 The circumstances under which early cancellation by the Electric Supplier may occur;
 - 6.2.2.11.2 The manner in which the Electric Supplier shall notify the Residential or Small Commercial Customer of the early cancellation of the Contract;
 - 6.2.2.11.3 The duration of the notice period before early cancellation by the Electric Supplier; and
 - 6.2.2.11.4 The remedies available to the Residential or Small Commercial Customer if early cancellation occurs;
- 6.2.2.12 A statement that the Residential or Small Commercial Customer may terminate the Contract prior to the stated term of the Contract, including:
 - 6.2.2.12.1 The manner in which the Residential or Small Commercial Customer shall notify the Electric Supplier of the early cancellation of the Contract;
 - 6.2.2.12.2 The duration of the notice period before early cancellation;
 - 6.2.2.12.3 The remedies available to the Electric Supplier if early cancellation occurs; and
 - 6.2.2.12.4 The amount of any early cancellation fee, except that an Electric Supplier shall not charge an early cancellation for the commodity portion of a Variable Price Contract;
- 6.2.2.13 A statement describing Contract renewal procedures, if any, including the timing of the notices that the Residential or Small Commercial Customer will receive prior to the renewal date;

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- 6.2.2.14 A dispute procedure, including that the Electric Supplier must adhere to the provision in 26 **DE Admin. Code** 3002-3.2.2 regarding good faith disputes; and
- 6.2.2.15 All disclosures required by applicable laws and regulations that govern marketing, consumer protection, and door-to-door sales, including the Delaware Home Solicitation Sales Act, 6 **Del.C.** §4401 *et seq.*
- 6.3 **Contract Summary Requirements.**
 - 6.3.1 At the time of completion of the contracting process, an Electric Supplier shall provide Residential and Small Commercial Customers with a copy of the executed Contract and completed Contract Summary.
 - 6.3.2 If the Contract is completed through a telephone solicitation, the Electric Supplier shall send the Contract Summary with the Contract to the Residential or Small Commercial Customer.
 - 6.3.3 If the Contract is completed through the internet, the Contract Summary shall be:
 - 6.3.3.1 Made available for download by the Residential or Small Commercial Customer at the time of contracting; and
 - 6.3.3.2 Transmitted to the Residential or Small Commercial Customer by the Electric Supplier by mail or by email if the customer consents to receipt of email disclosures.
 - 6.3.4 If the Contract is completed in person, the Contract and the Contract Summary shall be reviewed with and provided to the Residential or Small Commercial Customer by the Electric Supplier in hard copy or electronically, and the executed Contract and Contract Summary provided to the Residential or Small Commercial Customer at the time of contracting in hard copy or electronically if the customer consents to electronic disclosures.
 - 6.3.5 An Electric Supplier offering a Variable Price Contract to Residential or Small Commercial Customers shall include in its Contract Summary:
 - 6.3.5.1 The disclosures required by subsection 6.2.2.3.2.2;
 - 6.3.5.2 A toll free telephone number or website link where the Residential or Small Commercial Customer may access historical pricing information as described in subsection 6.2.2.3.2.3, along with the disclaimer in subsection 6.2.2.3.2.4; and
 - 6.3.5.3 The disclosures required by subsection 7.1.3.
- 7.0 **Notice of Change in Variable Price.**
 - 7.1 When a Residential or Small Commercial Customer's Variable Price changes, an Electric Supplier shall make available to the Residential or Small Commercial Customers the Variable Price for the next billing period:
 - 7.1.1 The Variable Price shall be made available at least 12 days prior to close of the customer's billing period;
 - 7.1.2 The Variable Price shall be made available in a clear, easy to access format prescribed by the Electric Supplier;
 - 7.1.3 The Electric Supplier shall promptly provide the Residential or Small Commercial Customer written directions on how to access the Variable Price:
 - 7.1.3.1 At the time of contracting;
 - 7.1.3.2 In the Contract Summary;
 - 7.1.3.3 When sending any notice as required in these Regulations;
 - 7.1.3.4 Upon request; or

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7.1.3.5 If the Electric Supplier changes the directions for accessing the Variable Price.

7.2 For the purposes of the disclosure mandated in subsection 7.1, an Electric Supplier may provide an estimated Variable Price for the Residential or Small Commercial Customer's next billing period, provided the estimated Variable Price is made available at least twelve (12) days prior to the close of the customer's billing period. If the Electric Supplier provides an estimated Variable Price, the Electric Supplier shall not use a rate for billing purposes that is higher than the estimate.

8.0 Contract Renewal for Residential and Small Commercial Customers.

8.1 An Electric Supplier shall provide Residential and Small Commercial Customers with Written Notice of the pending renewal of a Contract forty-five (45) days before the end of the Contract Term is scheduled to occur.

8.2 The Written Notice required under subsection 8.1 shall:

8.2.1 Inform the Residential or Small Commercial Customer that the failure to respond to the Written Notice will result in the automatic renewal of the Contract;

8.2.2 Inform the Residential or Small Commercial Customer of any changes in the material terms and conditions of the expiring Contract upon renewal, and include a copy of the Contract and Contract Summary;

8.2.3 Inform the Residential or Small Commercial Customer how to terminate the Contract without penalty;

8.2.4 Inform the Residential or Small Commercial Customer that terminating the Contract without selecting another Electric Supplier will return the Residential or Small Commercial Customer to SOS; and

8.2.5 For a Fixed Price Contract that renews to a Variable Price Contract, the Electric Supplier's Written Notice to Residential or Small Commercial Customers must:

8.2.5.1 Inform the Residential or Small Commercial Customer how to access the Variable Price for the next billing cycle in accordance with Section 7.0;

8.2.5.2 Explain the basis(es) on which the Variable Price will vary and any limits on Price variability;

8.2.5.2.1 If there is a limit on Price variability, such as a specific Price cap, a maximum percentage increase in Variable Price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the term of the Contract, the Electric Supplier shall clearly explain applicable limits.

8.2.5.2.2 If there is not a limit on Price variability, the Electric Supplier shall clearly and conspicuously state that there is not a limit on how much the Variable Price may change from one billing cycle to the next.

8.2.6 If the Supplier proposes to renew a Fixed Price Contract with a Variable Price Contract and the change to the Variable Price will be equal to or exceed 30 percent of the Residential or Small Commercial Customer's Fixed Price, the Electric Supplier shall provide Written Notice of the new Variable Price to the customer at least 12 days prior to the close of the customer's billing period.

8.2.7 An Electric Supplier shall maintain records that the Written Notices provided under this Section 8.0 were provided to its Residential or Small Commercial Customers.

9.0 Notice of Change in Fixed Price or Material Terms; Expiration; and Cancellation.

9.1 Changes in Fixed Price or Material Terms. An Electric Supplier shall provide Written Notice to its Residential or Small Commercial Customers of any change in the Fixed Price or other

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material terms of service. The Written Notice must precede the effective date of the proposed changes by at least thirty (30) days and no more than sixty (60) days. Customers shall have at least thirty (30) days to respond to the Electric Supplier's Written Notice before the changes become effective.

9.2 Expiration or Cancellation of Contracts That Will Not Be Renewed. An Electric Supplier shall provide Written Notice to its Residential or Small Commercial Customer(s) at least thirty (30) days before expiration or cancellation of a Contract that will not be renewed. The Written Notice shall include:

9.2.1 Final bill payment instructions;

9.2.2 A statement informing the Residential or Small Commercial Customer that, unless the customer selects a new service provider, cancellation of the Contract shall return the customer to SOS; and

9.2.3 The toll free telephone number and the website address of the Commission.

10.0 Customer Protection.

10.1 General Customer Protections. No Electric Supplier or Broker shall engage in fraudulent or improper activities, nor shall it disseminate any Customer information obtained pursuant to subsection 3.1. Electric Suppliers or Brokers found to have violated these provisions may be subject to certificate revocation and/or penalties as described in subsection 2.1.3 and 26 Del.C. §1019.

10.2 Electric Suppliers and Agents shall not:

10.2.1 Engage in false, misleading, or deceptive conduct or make false, misleading or deceptive statements or representations in any dealings with Customers;

10.2.2 Say or suggest to a prospective Customer that the prospective Customer is required to choose an Electric Supplier;

10.2.3 Say or suggest to a prospective Customer that the prospective Customer's service will suffer degradation or risk if the prospective Customer does not choose an Electric Supplier; or

10.2.4 Suggest a relationship that does not exist with the Customer's SOSS, EDC, government agency or another Electric Supplier.

10.3 Electric Suppliers and Brokers are responsible for any false, fraudulent, deceptive or unlawful marketing or billing acts performed by their Agents in the conduct of marketing or sales activities on behalf of the Electric Supplier or Broker.

10.4 Agent Training.

10.4.1 An Electric Supplier shall ensure the training of its Agents on the following subjects:

10.4.1.1 State and Federal laws and regulations that govern marketing, Telemarketing, consumer protection and door-to-door sales, including consumer protection regulations required by Delaware law and regulations;

10.4.1.2 Responsible and ethical sales practices as described in this regulation;

10.4.1.3 The Electric Supplier's products and services;

10.4.1.4 The Electric Supplier's Prices, Price structures and payment options;

10.4.1.5 The Customer's right to rescind and cancel Contracts;

10.4.1.6 The applicability of an early termination fee for Contract cancellation when the Electric Supplier has one;

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- 10.4.1.7 The necessity of correctly and fully explaining the Contract, Contract Summary, relying on approved sales script and knowledge of the contents of the script if one is used;
- 10.4.1.8 The proper completion of transaction documents;
- 10.4.1.9 The Electric Supplier's Contract and Contract Summary;
- 10.4.1.10 Information about how Customers may contact the Electric Supplier to obtain information about billing, disputes and complaints; and
- 10.4.1.11 The confidentiality and protection of Customer information.
- 10.4.2 An Electric Supplier shall document the training of an Agent and maintain a record of the training for 3 years from the date the training was completed.
- 10.4.3 An Electric Supplier shall make training materials and training records available to the Commission and/or the DPA upon request.
- 10.4.4 When an Electric Supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the Electric Supplier's behalf, the Electric Supplier shall confirm that the contractor or vendor has provided Electric Supplier-approved training to Agents in accordance with this section.
- 10.4.5 The Electric Supplier shall routinely monitor Telemarketing calls and Door-to-Door sales calls to:
 - 10.4.5.1 Evaluate the Electric Supplier's training program; and
 - 10.4.5.2 Ensure that Agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to Customers.
 - 10.4.5.3 The Supplier shall maintain records of such monitoring activities, results, and actions taken in response to the results of the monitoring activities and make such records available to the Commission and/or the DPA upon request.
- 10.5 Slamming. An Electric Supplier shall not engage in Slamming. If a Customer believes that their Electric Supply Service has been switched without authorization, the Customer may request that the Electric Supplier provide evidence of the authorization and verification. The Electric Supplier must provide this to the Customer within five (5) Business Days if feasible, but no longer than fifteen (15) Business Days of the request. If the Customer is not satisfied with this response, the Customer may file a complaint with the Commission pursuant to 26 **DE Admin. Code** 1001 *et seq.*
- 10.6 Cramming. An Electric Supplier shall not engage in Cramming. If the Commission determines that an Electric Supplier may have engaged in Cramming, the Electric Supplier may be subject to investigation and, after a hearing, the Commission may impose penalties or require the Electric Supplier to void and/or refund all of the charges in question.
- 10.7 Complaint Procedures to be followed by the Customer (or a Broker acting on behalf of a Customer).
 - 10.7.1 A Customer (or a Broker acting on behalf of a Customer) should first notify the Electric Supplier of its complaint.
 - 10.7.2 If the Customer (or a Broker acting on behalf of a Customer) and Electric Supplier are not able to come to a resolution, the Customer or Broker may contact the DPA with its complaint. If the DPA is unable to effect a satisfactory resolution, the Customer or Broker may file a formal complaint with the Commission as described in 26 **DE Admin. Code** 1001-2.2.1 "Rules of Practice and Procedure of the Delaware Public Service Commission."
 - 10.7.3 A Broker acting on behalf of a Customer must provide written proof to the Commission and the DPA, 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.

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- 10.8 Complaint Procedures to be Followed by the Electric Supplier.
 - 10.8.1 The Electric Supplier shall use good faith efforts to respond to and resolve complaints.
 - 10.8.2 An Electric Supplier shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices. The Electric Supplier shall cooperate with the Commission and other government agencies that are investigating complaints about marketing or sales practices prohibited by State and Federal laws and with local law enforcement officials that are investigating complaints about violations of local municipal law.
 - 10.8.3 An Electric Supplier shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints. The process shall document as a record the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint. An Electric Supplier shall retain the record for three years in a system capable of retrieving that record by customer name and account number or by other effective means to obtain access to the information.
 - 10.8.4 If the Customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will inform the Customer that it may contact the DPA.
 - 10.8.5 In any complaint proceeding before the DPA or the Commission, the burden of proof shall be on the Marketer or Broker to establish, if applicable, that its Agents were adequately trained and that the Customer was enrolled in accordance with these Regulations.
- 10.9 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.
- 10.10 Assignment of Contracts.
 - 10.10.1 At least thirty (30) days prior to the effective date of any assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another, the Electric Suppliers shall jointly:
 - 10.10.1.1 Provide Written Notice of the assignment or transfer to the Customers of the Electric Supplier, with a copy to the Commission, the EDC, and the DPA; and
 - 10.10.1.2 Coordinate with the EDC to effectuate the transfers of service.
 - 10.10.1.3 Notice to Customer. The Electric Suppliers shall jointly send a letter to the Customers informing them of the assignment or transfer. The letter shall include:
 - 10.10.1.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;
 - 10.10.1.3.2 Customer service contact information for the assignee; and
 - 10.10.1.3.3 A statement that the terms and conditions of the Customer's Contract at the time of assignment shall remain the same for the remainder of the Contract term.
 - 10.10.1.4 The Electric Suppliers shall file a notice with the Commission, the DPA, and the EDC, of the assignment or transfer of the Customer Contracts and include a copy of the letter sent to Customers.
 - 10.10.2 Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. Records shall be maintained for a period of three (3) years or until the Contracts are expired, whichever is longer.

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- 10.10.3 An assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another is not an enrollment or drop.
- 10.11 Record Retention. All Electric Suppliers shall retain a copy of the Customer's Contract, Contract Summary, billing and payment history, and verification of enrollment for a period of three years after enrollment or termination of the Contract, whichever is later.

11.0 Enrollment, Marketing, and Advertising.

- 11.1 An Electric Supplier shall comply with all federal, State and local laws applicable to the advertising or marketing of Electric Supply Service, and it shall be a violation of these Regulations to fail to comply with such laws.
- 11.2 No Electric Supplier shall make misrepresentations or use deceptive practices relating to its own services or the services provided by the Customer's EDC in its solicitations, advertising or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and person-to person contacts.
- 11.3 An Electric Supplier's solicitation, advertising and marketing materials must include the name, toll-free telephone number, and address of the Electric Supplier.
- 11.4 If an Electric Supplier makes changes to its Contract for Electric Supply Service to Residential or Small Commercial Customers that substantively modifies the terms and conditions of service, including changes to the Electric Supplier's name and changes in product offerings, then the Electric Supplier shall provide copies of the modified Contract and Contract Summary to Staff and DPA at least three (3) Business Days before offering the revised terms and conditions in Delaware. For purposes of this requirement, a change to the Contract Price shall not be considered a change in a term or condition of service.
- 11.5 Marketing/Sales Activities.
 - 11.5.1 Marketing materials that offer terms of service for acceptance by Residential and Small Commercial Customers shall include Prices, as follows:
 - 11.5.1.1 If using a Fixed Price, the Electric Supplier shall factor in the Fixed Price and any other monthly fees and charges charged to the Residential or Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customers using 500, 1,000 or 2,000 kWh of electricity;
 - 11.5.1.2 If using a Variable Price, the Electric Supplier shall factor in the Variable Price and any other monthly fees and charges charged to the Residential or Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customer using 500, 1,000 and 2,000 kWh of electricity; and
 - 11.5.1.3 The Electric Supplier shall note the effective date of the Prices shown in the table provided under subsections 11.5.1.1 and 11.5.1.2.
 - 11.5.2 Advertising materials targeted for Residential or Small Commercial Customers shall be made available upon request of the Commission or DPA in the event of a formal or informal complaint or investigation.
- 11.6 Enrollment Authorization. An Electric Supplier must obtain authorization from the Customer before switching a Customer's provider of Electric Supply Service.
 - 11.6.1 There are three (3) principal ways in which an Electric Supplier may obtain a Residential or Small Commercial Customer's authorization to enter into a Contract for Electric Supply Service:
 - 11.6.1.1 Recorded verbal consent via the telephone;
 - 11.6.1.2 Electronic contract; or
 - 11.6.1.3 Written contract.

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11.6.2 If an Electric Supplier offers a Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the Contract signature.

11.7 Telephone Solicitations and Enrollments.

11.7.1 When a Residential or Small Commercial Customer enrolls with an Electric Supplier during a Telemarketing call, the Electric Supplier shall record the entire telephone call between the Residential or Small Commercial Customer and the Electric Supplier or its Agent, and also record a TPV.

11.7.2 The Electric Supplier shall maintain a copy of the recorded sales call and TPV, if applicable, for the duration of the Residential or Small Commercial Customer's Contract.

11.7.3 During the sales portion of a Telemarketing call, the Electric Supplier or its Agent shall:

11.7.3.1 Begin the conversation by stating the following:

11.7.3.1.1 His or her name and, upon request, his or her Agent identification number;

11.7.3.1.2 The name of the Electric Supplier that the Agent is representing;

11.7.3.1.3 The purpose of the telephone call is to sell Electric Supply Service; and

11.7.3.1.4 That he or she is not working for and is independent of the Residential or Small Commercial Customer's Electric Distribution Company or another Electric Supplier.

11.7.3.2 Disclose all material Contract terms and conditions; including:

11.7.3.2.1 If a Variable Price, the information in subsection 6.2.2.3.2.2 and the first month's Variable Price;

11.7.3.2.2 The duration of any Introductory Price and a description of the Price after the Introductory Price ends;

11.7.3.2.3 How the Residential or Small Commercial Customer may access future Price information;

11.7.3.2.4 The Residential or Small Commercial Customer's right to rescind the Contract within three (3) Business Days from receipt of the Contract; and

11.7.3.2.5 The amount of any early cancellation fees and/or any other charges;

11.7.3.3 Explain that the Residential or Small Commercial Customer must be the account holder or authorized to make the switch;

11.7.3.4 Ensure that the Residential or Small Commercial Customer understands that he or she is voluntarily choosing to switch Electric Suppliers;

11.7.3.5 State that the Contract will be provided to the Residential or Small Commercial Customer by U.S. mail, or by email with the Residential or Small Commercial Customer's consent, within three (3) Business Days of the contracting conversation, and that the Residential or Small Customer will not be switched from the current Electric Supplier or SOSS until the Rescission Period has expired;

11.7.3.6 Explain the Electric Supplier's TPV process, if applicable; and

11.7.3.7 Provide the toll-free number of the Electric Supplier.

11.7.4 No Electric Supplier shall request a potential Residential or Small Commercial Customer's Electric Supplier or EDC account number until the Electric Supplier has provided to the potential Residential or Small Commercial Customer the information required in subsections 11.7.3.1.1. through 11.7.3.1.4.

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- 11.7.5 The Electric Supplier shall immediately halt any Telemarketing call upon the request of the prospective Residential or Small Commercial Customer.
- 11.7.6 Pursuant to 26 **Del.C.** §1012(b) and as further defined in Section 1.0, no Electric Supplier shall solicit Residential or Small Commercial Customers by means of Telemarketing where such Telemarketing is prohibited by applicable laws and regulations. An Electric Supplier soliciting customers by telephone shall comply with all applicable Delaware and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. §§6151 *et seq.*) and the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C. §§6101 *et seq.*).
- 11.8 Door-to-Door Solicitations and Enrollments.
 - 11.8.1 For Door-to-Door Contracts, the Electric Supplier must obtain:
 - 11.8.1.1 Written or Electronic authorization; and
 - 11.8.1.2 A completed TPV or other process established by the Electric Supplier to verify the transaction. A process other than a TPV shall:
 - 11.8.1.2.1 Be separate from the sales transaction process and initiated only after the sales transaction has been finalized; and
 - 11.8.1.2.2 Be initiated only after the Agent has physically exited the Residential or Small Commercial Customer's premises;
 - 11.8.2 Door-to-Door Sales at a residential dwelling shall be conducted by an Electric Supplier's Agent between the hours of 9 a.m. to 8 p.m. EST. When a local ordinance has stricter limitations, an Electric Supplier shall comply with the local ordinance.
 - 11.8.3 When conducting Door-to-Door Sales or appearing at a Public Event, an Agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with an SOSS, EDC, government agency, or another Electric Supplier.
 - 11.8.4 An Electric Supplier or its marketing Agent engaging in Door-to-Door Sales or appearing at Public Events shall:
 - 11.8.4.1 Display a photo identification badge that contains the following information:
 - 11.8.4.1.1 The Agent's full legal name;
 - 11.8.4.1.2 The Electric Supplier's business name, business address, and toll-free telephone number; and
 - 11.8.4.1.3 The order number of the proceeding in which the Commission granted the Electric Supplier's ESC.
 - 11.8.5 If a Door-to-Door Sale, the Agent shall promptly:
 - 11.8.5.1 Identify the Electric Supplier he/she is representing;
 - 11.8.5.2 State that the individual and the Electric Supplier do not represent the Customer's EDC or any governmental agency;
 - 11.8.5.3 State that the purpose of the visit is to sell Electric Supply Service.
 - 11.8.5.4 Prominently display an identification badge; and
 - 11.8.5.5 Offer a business card or other material that lists:
 - 11.8.5.5.1 The Electric Supplier's name and contact information, including telephone number;
 - 11.8.5.5.2 The docket number of the proceeding in which the Commission granted the Electric Supplier's ESC; and
 - 11.8.5.5.3 The Agent's name and any other identification numbers provided to the sales Agent by the Electric Supplier or Agent.

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- 11.8.6 An Agent performing a Door-to-Door Sale may not request a potential Residential or Small Commercial Customer's (1) Electric Supplier or EDC account number or (2) electric bill until he or she has provided the information required in subsections 11.8.5.1 through 11.8.5.5.
- 11.8.7 In connection with any Door-to-Door Sale, it is a violation of these Regulations for any Electric Supplier or Agent to:
- 11.8.7.1 Fail to leave the Residential or Small Commercial Customer's premises upon request in a prompt and courteous manner;
 - 11.8.7.2 Leave the Residential or Small Commercial Customer's premises after completing a sale without furnishing the Residential or Small Commercial Customer with a completed Contract signed by the Residential or Small Commercial Customer that includes all required disclosures and a Contract Summary. The completed Contract and Contract Summary may be provided electronically if the Residential or Small Commercial Customer consents to electronic receipt;
 - 11.8.7.3 Fail to inform each Residential or Small Commercial Customer orally, at the time the Residential or Small Commercial Customer signs the Contract, of the right to rescind without penalty or fee within three (3) Business Days from the date of the transaction;
 - 11.8.7.4 Misrepresent in any manner the Residential or Small Commercial Customer's right to rescind without penalty or fee within three (3) Business Days from the date of the transaction; and
 - 11.8.7.5 Fail or refuse to honor a valid notice of cancellation received during the Rescission Period within three (3) Business Days after the receipt of such notice from the Residential or Small Commercial Customer.
- 11.8.8 Background Checks for Door-to-Door Agents. An Electric Supplier shall not permit an Agent to conduct Door-to-Door Sales to Residential or Small Commercial Customers until it has completed a criminal background investigation on the Agent. The criminal background investigation shall include:
- 11.8.8.1 The Electric Supplier, or the independent contractor or vendor it utilizes, obtaining and reviewing the criminal history results from the following searches:
 - 11.8.8.1.1 Delaware state and county courts;
 - 11.8.8.1.2 A nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System;
 - 11.8.8.1.3 The U.S. Department of Justice National Sex Offender Public Registry; and
 - 11.8.8.1.4 Every other state in which the Agent resided during the last twelve (12) months.
 - 11.8.8.2 For a current Agent who conducts Door-to-Door Sales, an Electric Supplier must obtain a criminal history record for such individual not later than ninety (90) days after the effective date of these Regulations.
- 11.8.9 Notification Regarding Door-to-Door Sales Activities.
- 11.8.9.1 When an Electric Supplier engages in Door-to-Door Sales, the Electric Supplier shall notify Staff and DPA no later than the morning of the day that the activity begins. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.
 - 11.8.9.2 An Electric Supplier shall provide the EDC with general, nonproprietary information about the Door-to-Door activity that caused the Electric

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Supplier to provide notice to Staff and DPA. The Electric Supplier shall provide this general information to the EDC no later than the morning of the day that the sales and marketing activities begin. The EDC shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may address customer inquiries knowledgeable. An EDC may not use the information for other purposes.

11.9 Internet Enrollments.

11.9.1 For electronic contracting on the internet, the Electric Supplier's website must be configured to prompt the Residential or Small Commercial Customer to review and agree to the Contract and Contract Summary before the Contract is final, and to print or save the Contract and Contract Summary.

12.0 Reports to be Provided by Electric Suppliers to the Commission and DPA. DPA

12.1 Electric Suppliers shall provide such information concerning their State operations to the Commission and the DPA as the Commission may from time to time request, including any reporting requirements contained herein.

12.2 Required 10-Day Notifications. Electric Suppliers shall notify the Commission and the DPA within ten (10) Business Days of any of the following actions:

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

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

12.2.3 A change in the principal officers responsible for Delaware operations previously provided pursuant to these Regulations; or

12.2.4 A change in ownership of any Person having 10% ownership of the Electric Supplier or the ability to control more than 10% of the Electric Supplier's voting securities.

12.3 Required 30-Day Notifications and Annual Reports. An Electric Supplier shall provide the following information to the Commission and the DPA within thirty (30) calendar days of occurrence and annually by April 30th of each year:

12.3.1 Any changes in the Electric Supplier's name or tax identification number or employer identification number previously provided pursuant to these Regulations;

12.3.2 Any changes in the Electric Supplier's business address previously provided pursuant to these Regulations;

12.3.3 Any changes to the regulatory contact and/or Customer complaint person previously identified pursuant to these Regulations;

12.3.4 The identify of any state in which the Electric Supplier has had its authority to sell electricity to or broker the sale of electricity to Customers revoked, modified or suspended since the filing of the last annual report;

12.3.5 Any changes to the organizational structure previously provided pursuant to these Regulations;

12.3.6 A statement detailing any criminal activities, except for misdemeanors or lesser, of which the Electric Supplier or any of its Affiliated Interests has been convicted, or which the principal or corporate officers have been convicted, since the filing of the last annual report;

12.3.7 A copy of any stipulation, order, or decree concerning a formal, docketed complaint or investigation of the Electric Supplier's marketing and sales activities in other jurisdictions;

12.3.8 A list of any states in which any formal complaint investigations have been initiated since the filing of the last annual report; and

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12.3.9 A list of any states in which disciplinary actions have been taken since the filing of the last annual report.

12.4 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). All Electric Suppliers, except Brokers, must also pay the Public Utilities Tax pursuant to 30 **Del.C.** §5501 *et seq.*

13.0 Green Power Products.

13.1 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 generation attributes consisting of the types of renewable energy sources listed in 26 **Del.C.** §352(6)(a)-(i). The Electric Supplier shall identify the percentage of renewable resources in the Contract. Commission-regulated electric companies are responsible for complying with the Renewable Energy Portfolio Standards Act's requirements as per 26 **Del.C.** §354(e).

13.2 Electric Suppliers offering a Green Power Option shall register with either: (a) the PJM-EIS GATS, (b) its successor, (c) another applicable regional renewable energy certificate tracking system, or (d) Green-e Energy. Electric Suppliers shall keep their account(s) in good standing and shall be subject to the applicable rules of PJM-EIS GATS, its successor, another applicable regional renewable energy certificate tracking system, or Green-e Energy as applicable.

13.3 Electric Suppliers offering a Green Power Option shall retire VRECs equal to the marketed or otherwise advertised generation.

13.4 Within 120 days of the end of each Compliance Year, as defined in 26 **Del.C.** §352(3), each Electric Supplier that offers a Green Power Product Option shall file a report detailing its compliance with its marketed or otherwise advertised generation, including, but not limited to, evidence of the specified number of VRECs retired.

13.5 Any unused VRECs retired for compliance with this Regulation may be dated no earlier than three (3) years prior to the beginning of the current compliance year.

13.6 When requested by a Customer or providing information regarding Green Power Products Options 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.

13.7 An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless its generation attributes include one or more of the renewable energy sources listed in 26 **Del.C.** §352(6)(a)-(i).

13.8 Electric Suppliers offering Green Power Options shall meet the disclosure of the fuel resource mix requirements stated in Section 14.0 of these Regulations.

14.0 Disclosure of Fuel Resource Mix.

14.1 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 not later than sixty (60) calendar days following the end of each quarter. The reports shall include, but are not limited to:

14.1.1 The total number of Customers by each Customer class served during that quarter;

14.1.2 The total amount of electricity (kWh or MWh) supplied to each Customer class;
and

14.1.3 The fuel resource mix by percentage for each resource.

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- 14.2 Each Electric Supplier and SOSS shall also disclose the information under subsection 14.1.3 to its 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 Customer's bill for that quarter directing the 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 subsection 14.1.3 as required by 26 Del.C. §1012. Information reported under subsection 14.1.3 may be utilized in any consumer education program developed in accordance with 26 Del.C. §1014(c).

15.0 Net Metering

15.1 General Provisions

15.1.1 Net Metering can occur in two 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; and
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.

See Section 16.0 of these Regulations for the rules governing Community Energy Facilities.

15.1.2 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:

15.1.2.1 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:

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

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

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

15.1.2.1.4 For Condition 2, the sum of electric generation capacity will not exceed the applicable limits per meter specified in subsections 15.1.2.1.1 through 15.1.2.1.3 above;

15.1.2.1.5 Uses as its primary source of fuel: solar, wind, hydro, a fuel cell or gas from the anaerobic digestion of organic material;

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

15.1.2.1.7 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 subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations. 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

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subject to the capacity limits specified in subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations.

15.2 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.

15.2.1 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 subsection 15.3 of these Regulations, or to collect system performance information on the eligible technology for research purposes.

15.2.2 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.

15.2.3 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.

15.3 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 generating facility that exceeds the Customer's on-site, or aggregate total, consumption of kWh in a 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.

15.3.1 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.

15.3.2 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.

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- 15.3.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.
- 15.3.4 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.
- 15.3.5 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.
- 15.3.6 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.
- 15.3.7 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.
- 15.3.8 Where applicable, the requirements established in subsection 15.6 of these Regulations shall apply to this subsection 15.3.
- 15.4 RESERVED.
- 15.5 RESERVED.
- 15.6 Subject to the applicable Net Metering provisions of Section 15.0 of these Regulations, 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:
- 15.6.1 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and
- 15.6.2 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 subsection 15.6 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
- 15.6.3 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 subsections 15.1.1.1 through 15.1.1.3 of these Regulations; and
- 15.6.4 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:
- 15.6.4.1 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

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- 15.6.4.2 a description of the Customer-Generator Facility, including the facility's location, capacity, and fuel type or generating technology; and
- 15.6.4.3 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.
- 15.6.5 The Customer may change its list of aggregated meters specified in subsection 15.6.4.1 no more than once annually by providing ninety days' written notice; and
- 15.6.6 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 subsection 15.6.4.1 above; and
- 15.6.7 Credit in kilowatt-hours (kWh) shall be valued according to subsection 15.3 of these Regulations and each account's rate schedule as specified in subsection 15.6.4.1 above; and
- 15.6.8 DP&L may require that a Customer's aggregated meters as specified in subsection 15.6.4.1 above be read on the same billing cycle.
- 15.7 RESERVED.
- 15.8 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
- 15.9 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.
- 15.10 Any requirements necessary to permit interconnected operations between the Customer-Generator Facility and the Electric Supplier, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's 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.
- 15.11 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:
 - 15.11.1 The total number of Customer-Generator Facilities;
 - 15.11.2 The total estimated rated generating capacity of its net-metered Customer-Generator Facilities;
 - 15.11.3 The total estimated net kilowatt-hours received from Customer-Generator Facilities; and
 - 15.11.4 The total estimated amount of energy produced by Customer-Generator Facilities, using a methodology approved by the Commission.

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- 15.11.5 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 Commission.
- 15.12 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.
- 15.13 A retail electric 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 subsection 15.3 of these Regulations. Excess kWh credits shall be handled in the same manner as Net Metering as described in subsection 15.3 of these Regulations. To qualify under this section of the Rule, the Grid-Integrated Electric Vehicle must meet the requirements in subsections 15.1.1.1., 15.1.1.2, and 15.1.1.5 of these Regulations. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in subsections 15.3, 15.10, and 15.11 of these Regulations.
- 15.14 The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with subsection 15.13 of these Regulations. Such tariffs may include rate and credit structures that vary from those set forth in subsection 15.13 of these Regulations, as long as alternative rate and credit structures are not inconsistent with the development of Grid-Integrated Electric Vehicles.

16.0 Community Energy Facilities

- 16.1 Project eligibility: To be eligible for certification as a Community Energy Facility, a generating facility must:
- 16.1.1 Have multiple owners or Subscribers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or Subscriber;
- 16.1.2 Include a technology defined as an "eligible energy resource" under 26 Del.C. §352(6)a-h;
- 16.1.3 Not exceed a capacity of four (4) megawatts as measured by the alternating current (AC) rating. Co-location of Community Energy Facilities, which together have a capacity greater than four (4) megawatts, shall not be permitted;
- 16.1.4 Be located in Delmarva's service territory, in Delaware;
- 16.1.5 Interconnect to the Distribution Facilities and operate in parallel with Delmarva's Transmission and Distribution Facilities;
- 16.1.6 Comply with Delmarva's interconnection tariffs and operating guidelines; and
- 16.1.7 Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that the generating facility meets applicable safety and performance standards.
- 16.2 Application to the Commission for Preliminary and Final Certificates to Operate:
- 16.2.1 Before a Community Energy Facility may offer a Contract or commence service to a Subscriber, and before Delmarva provides the Community Energy Facility with a Permission to Operate under subsection 16.3 of these Regulations, the Community Energy Facility must apply for and obtain from the Commission both a Preliminary Certificate to Operate, which establishes project viability, and a Final Certificate to Operate, which establishes compliance with all application requirements.
- 16.2.2 Applicants must comply with the electronic filing requirements of 26 **DE Admin. Code** 1001, "Rules of Practice and Procedure of the Commission".

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- 16.2.3 Preliminary Certificate to Operate. Applications for a Preliminary Certificate to Operate must contain all required information and exhibits and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the managerial and operational ability to adequately serve the public consistent with applicable State laws.
- 16.2.3.1 Applications for a Preliminary Certificate to Operate must contain at least the following:
- 16.2.3.1.1 Application fee. An Applicant for a Preliminary Certificate to Operate shall submit a non-refundable application fee of \$750 with the application;
 - 16.2.3.1.2 Identity of the Applicant. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name or trade names under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant, its Affiliated Interests, or any current or previous officer, director, or manager has previously done business in Delaware;
 - 16.2.3.1.3 Certifications. Certification or certifications issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
 - 16.2.3.1.4 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;
 - 16.2.3.1.5 Registered Agent. The name and post office address of a Registered Agent within the State upon whom service of any notice, order or process may be made;
 - 16.2.3.1.6 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
 - 16.2.3.1.7 Corporate structure. A description of the Applicant's corporate structure, including any Affiliated Interests engaged in operations in the United States related to energy. Include a graphical depiction of such structure;
 - 16.2.3.1.8 Contact information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicant;
 - 16.2.3.1.9 Website. The Community Energy Facility's website address (if any), accessible to prospective and current Subscribers;
 - 16.2.3.1.10 Consent to jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Community Energy Facility's and its Agent's activities in the State;
 - 16.2.3.1.11 Proof of site control. The Applicant shall provide a fully executed lease agreement, a deed of sale, a property deed, or a binding option agreement with defined lease or purchase terms for the parcel where the Community Energy Facility is, or will be, located;
 - 16.2.3.1.12 Interconnection feasibility. A completed interconnection study or signed interconnection agreement with Delmarva. If Delmarva determines that an interconnection study is unnecessary, then a written statement from Delmarva to that effect, which includes the facility's capacity and generating technology, may substitute for a completed interconnection study; and
 - 16.2.3.1.13 Verification of application for a Preliminary Certificate to Operate. A signed, notarized verification of a principal or officer of the Applicant stating

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that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.

- 16.2.3.2 Review of the application for a Preliminary Certificate to Operate. Staff shall make a recommendation to the Commission to approve, conditionally approve, or deny the application within 45 days from the date of the completed application. The Commission may choose to approve, approve with conditions, modify, or deny a Preliminary Certificate to Operate to an Applicant where it finds that doing so is in the public interest.
- 16.2.3.3 Expiration of Preliminary Certificate to Operate. A Community Energy Facility's Preliminary Certificate to Operate shall expire upon the Commission's granting of a Final Certificate to Operate or twenty-four (24) months from the issuance of the Preliminary Certificate to Operate, whichever is earlier. Upon the request of an Applicant, the Commission may extend the 24-month period by twelve (12) months, for good cause shown.
- 16.2.4 Final Certificate to Operate. Applications for a Final Certificate to Operate must contain all required information and exhibits and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws.
 - 16.2.4.1 Applications for a Final Certificate to Operate must contain at least the following:
 - 16.2.4.1.1 Changes. Any changes to the information provided with the application for a Preliminary Certificate to Operate, submitted under subsection 16.2.3 of these Regulations;
 - 16.2.4.1.2 Regulatory contact person. The contact information for a regulatory contact person (if applicable) responsible for the Community Energy Facility's Delaware operations;
 - 16.2.4.1.3 Subscriber complaint contact person. The contact information for a Subscriber complaint contact person, if different from the regulatory contact person;
 - 16.2.4.1.4 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
 - 16.2.4.1.5 Customer Service number. A telephone number to the Applicant's Subscriber service center where Subscribers may call with questions about the Community Energy Facility's services, including the Contract and Contract Summary;
 - 16.2.4.1.6 Consent to jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Community Energy Facility's and its Agent's activities in the State;
 - 16.2.4.1.7 Criminal activities:
 - 16.2.4.1.7.1 A statement detailing any criminal activities relating to fraud or financial misconduct, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution;
 - 16.2.4.1.7.2 A statement by the Community Energy Facility that it (or its Agent) will run criminal background checks on any person engaged to

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conduct Door-to-Door Sales on its behalf, obtaining and reviewing the criminal history results for crimes committed against a person, from the following searches:

- 16.2.4.1.7.2.1 Delaware state and county courts for crimes committed within the past five (5) years;
 - 16.2.4.1.7.2.2 A nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System for crimes committed within the past five (5) years;
 - 16.2.4.1.7.2.3 The U.S. Department of Justice National Sex Offender Public Registry for crimes committed within the past ten (10) years; and
 - 16.2.4.1.7.2.4 Every other state in which the Agent resided during the last twelve (12) months, for crimes committed within the past five (5) years.
- 16.2.4.1.7.3 Nothing in these Regulations shall prohibit a Community Energy Facility from conducting background checks on its Agents that are more extensive than the requirements in subsection 16.2.4.1.7.2, in accordance with applicable law.
- 16.2.4.1.8 Contract and Contract Summaries. A copy of the Applicant's standard Contract form that it intends to offer to Residential Subscribers, and the standard Contract Summary form it intends to include with its Contract for Residential Subscribers. A Contract or Contract Summary that does not comply with the requirements of Section 16.5 of these Regulations or other applicable Delaware laws and regulations may be grounds for rejection of the application. Staff may develop a standard Contract Summary Form that it requires from all Applicants;
- 16.2.4.1.9 Marketing materials. A statement by the Community Energy Facility that it (or its Agent) will retain copies of all print, broadcast, electronic media, telecommunication, direct mail or in-person written marketing materials, including but not limited to scripts for Telemarketing, advertisements, website presentations, social media posts or advertisements, and any other material of a similar nature, that the Applicant (or its Agent) will use to market and promote its products to Delaware Residential and Small Commercial Customers, and will furnish them to the Commission, DPA, and Consumer Protection Unit upon request. Marketing conducted by a lead generation firm is not exempt from this subsection;
- 16.2.4.1.10 Surety bonds and financial information. A Community Energy Facility bond executed by a company authorized to transact surety business in the State of Delaware by the Department of Insurance. Such bond will permit the Commission to direct that the proceeds of this bond be paid or disbursed to satisfy the Applicant's financial obligations to the Commission or other Delaware government entity. The bond will permit a Delaware court to direct proceeds of the bond be paid to a person that has obtained a judgment against an Applicant and has previously attempted to collect the judgment through all other means available through the court. The amount of the bond shall be \$10,000 plus \$25,000 per each megawatt of capacity in excess of 1 megawatt;
- 16.2.4.1.11 Bankruptcy. A disclosure as to whether the Applicant, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past sixty (60) months;

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- 16.2.4.1.12 Staff request. Other commercially reasonable indicia of financial capability, upon a request from Staff;
 - 16.2.4.1.13 Services. A description of the services it plans to offer in the State, including the types of Subscribers to be served and services provided;
 - 16.2.4.1.14 Experience. A description of the operational experience in Community Energy Facilities of each principal officer, director, or individual responsible for Delaware operations. If no such experience is applicable, the Applicant shall identify the means by which the Applicant proposes to support its managerial, operational, and financial capabilities for the sale of subscriptions in the State;
 - 16.2.4.1.15 Other states. A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
 - 16.2.4.1.15.1 Been granted approval to sell subscriptions or act as a Community Energy Facility or similar structure, including license or certificate numbers (including those states where a license or approval is not required but where the Applicant has sold subscriptions or acted as a Community Energy Facility);
 - 16.2.4.1.15.2 Been denied approval to sell subscriptions or act as a Community Energy Facility;
 - 16.2.4.1.15.3 Had its authority revoked, modified, or suspended or been found to be in violation of, or is the subject of a pending investigation regarding, a state's laws, rules, or regulations relating to Community Energy Facilities or similar structures;
 - 16.2.4.1.15.4 Had any other adverse judicial or regulatory action pertaining to the provision of Community Energy Facility services or the violation of state or federal consumer protection laws, including any formal docketed complaints filed against:
 - 16.2.4.1.15.4.1 The Applicant;
 - 16.2.4.1.15.4.2 Any of the Applicant's Affiliated Interests;
 - 16.2.4.1.15.4.3 Any officer, principal or director of the Applicant;or
 - 16.2.4.1.15.4.4 Any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
 - 16.2.4.1.15.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its provision of Community Energy Facility services or the alleged violation of state or federal consumer protection laws in which the Community Energy Facility agreed to pay a civil penalty provide customer restitution, or make changes to its marketing, sales, billing, or collections practices;
- 16.2.4.1.16 Copies of orders. A copy of any document, order, or decree identified in response to subsection 16.2.4.1.15, as well as a copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in retail or wholesale energy markets; and
- 16.2.4.1.17 Verification of application for a Final Certificate to Operate. A signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.

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- 16.2.4.2 Review of the application for Final Certificate to Operate. Staff shall make a recommendation to the Commission to approve or deny the application within sixty (60) days from the date of the completed application. The Commission may choose to approve, approve with conditions, modify, or deny a Final Certificate to Operate to an Applicant where it finds that doing so is in the public interest.
- 16.2.4.3 Terms of Final Certificate to Operate. Final Certificates to Operate are valid until revoked by the Commission pursuant to subsection 16.11.5 or relinquished by the Community Energy Facility after the requisite notice to the Commission and to its Subscribers.
- 16.2.5 Incomplete or abandoned applications for Preliminary or Final Certificates to Operate. The Commission may reject an application for a Preliminary or Final Certificate to Operate that is not complete or that does not contain subsequent information requested by Staff within four (4) months of a failure by the Applicant to respond to such requests.
- 16.2.6 Waiver of certification requirements for Preliminary or Final Certificates to Operate. Upon the request of an Applicant, the Commission may, upon notice and opportunity for comment, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations, 26 Del.C. §1001 *et seq.*, or state or federal consumer protection laws.
- 16.2.7 Changes in application information. Applicants shall inform Staff of any changes to the information submitted in the application for a Preliminary or Final Certificate to Operate that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within fifteen (15) Business Days after the change may be grounds for rejection of the application.
- 16.2.8 Accuracy of information. Failure to provide accurate and factual information, the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission may be grounds for rejection of an application for a Preliminary or Final Certificate to Operate.
- 16.3 Permission to Operate from Delmarva:
 - 16.3.1 A Community Energy Facility shall provide the following information to Delmarva prior to receiving a Permission to Operate from Delmarva, pursuant to its interconnection process:
 - 16.3.1.1 A description of the energy generating facility, including the facility's host location, capacity, and fuel type or generating technology; and
 - 16.3.1.2 A complete interconnection application to facilitate a transmission and distribution analysis, including an evaluation of potential reliability, safety and stability impacts and determination of whether infrastructure upgrades are necessary and appropriate allocation of applicable interconnection costs.
 - 16.3.2 After the Community Energy Facility complies with subsections 16.3.1.1 and 16.3.1.2, it may then seek a Final Certificate to Operate from the Commission as set forth in subsection 16.2.4 of these Regulations.
 - 16.3.3 After receiving a Final Certificate to Operate from the Commission, the Community Energy Facility shall submit to Delmarva:
 - 16.3.3.1 A list of individual Delmarva account numbers the Community Energy Facility desires to aggregate including the name and address associated with the account number, including which accounts serve Low-income Customers;
 - 16.3.3.2 The subscribed percentage of generation attributed to each Subscriber;
 - 16.3.3.3 Certification that the subscription level of each Subscriber does not exceed 110% of that Subscriber's expected aggregate electrical consumption calculated, for existing buildings, on the average of the two previous 12-month periods of actual electrical usage at the time of subscription with the Community Energy

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- Facility and estimated, for new building construction, at 110% of the consumption of units with similar size and characteristics; and
- 16.3.3.4 Certification that Subscribers in the Community Energy Facility include at least 15% Low-income Customers. The requirement of "at least 15% Low-income Customers" will be measured by the number of Low-income Customers as a percentage of the total number of Subscribers of the Community Energy Facility.
- 16.3.4 Delmarva will consider a request to convert an existing Net Metering interconnection application under Section 15.0 of these Regulations to a Community Energy Facility interconnection application under Section 16.0 to be a new application, which would create a new interconnection position.
- 16.4 Low-income Customer verification:
- 16.4.1 The Community Energy Facility shall require income data verification to determine eligibility for Low-income Customers. Proof of eligibility required for Low-income Customers shall include:
- 16.4.1.1 Proof of income of the account holder (e.g., pay stub or W2), proof of participation in a low income discount program including Medicaid, SSI, TANF, GA, WIC, LIHEAP, SNAP or food stamps, or proof that the Low-income Customer lives in a census block where the median household income is at or below 200% of the U.S. Federal Poverty Guidelines or 60% of the state median household income published by the United States Census Bureau, whichever is greater, or by living in a low-income master-metered building; or
- 16.4.1.2 A written attestation by the Low-income Customer that their total household income is at or below 200% of the Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater.
- 16.4.1.3 For owners or operators of master-metered buildings, a written attestation that their tenants meet the income eligibility requirements for Low-income Customers.
- 16.4.2 When the Community Energy Facility provides Delmarva with its Low-income Customer certification under subsection 16.3.3.4, it must also provide such certification to the Commission. The Commission may audit the Community Energy Facility to ensure compliance with the low-income requirements.
- 16.4.3 A Community Energy Facility's failure to satisfy the low-income requirements may result in a penalty, including monetary assessment, or revocation of its Final Certificate to Operate.
- 16.4.4 Every three (3) years, the Community Energy Facility shall certify to the Commission in writing that it meets the low-income requirements as set forth in subsections 16.3.3.4 and 16.4 of these Regulations.
- 16.5 Community Energy Facility Contracts and Contract Summaries:
- 16.5.1 Only a Community Energy Facility with a Final Certificate to Operate may execute a Contract for Community Energy Facility credits with a Subscriber.
- 16.5.2 Community Energy Facilities shall provide to prospective Residential and Small Commercial Subscribers a Contract and Contract Summary in the same language used by the Community Energy Facility or its Agent to market, sell, or describe the Contract terms. Residential and Small Commercial Contracts and Contract Summaries must:
- 16.5.2.1 Be printed in Times New Roman 12-point font; and
- 16.5.2.2 Have one-inch margins on all sides and utilize reasonable numbering, lettering, line, and paragraph spacing.
- 16.5.3 A Contract for Residential or Small Commercial Subscribers shall be written in clear and plain language, and shall contain all material terms and conditions, including:

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- 16.5.3.1 A list and description of the Contract services;
- 16.5.3.2 The Contract duration, expressed in months or years, or the disclosure that the Contract is month-to-month;
- 16.5.3.3 A description of the Price of each service, including the Price of the subscription and the duration of the Introductory Price, if applicable, and whether the price is subject to change over time;
- 16.5.3.4 A description of any other fees or charges, including but not limited to early termination penalties, late fees, fees to access the Community Energy Facility's services, minimum monthly charges, enrollment fees, and interest charges; a description of the specific condition under which such fees or charges can be imposed; and the amount of such fees or charges or the method by which such fees or charges shall be computed;
- 16.5.3.5 A description of any other services provided to the Subscribers as part of the Contract;
- 16.5.3.6 If the Community Energy Facility claims that Subscribers will save money by entering into the Contract, a description of any calculations and assumptions on which it relies to make this claim;
- 16.5.3.7 A statement regarding the Rescission Period that:
 - 16.5.3.7.1 The Subscriber may rescind the Contract within three (3) Business Days from the start of the Rescission Period; and
 - 16.5.3.7.2 The Rescission Period begins on one of the following dates, as applicable:
 - 16.5.3.7.2.1 When the Subscriber signs the Contract;
 - 16.5.3.7.2.2 When the Subscriber transmits the acceptance of the Contract electronically; or
 - 16.5.3.7.2.3 When the Subscriber receives the Contract and Contract Summary, if received by mail. There shall be a rebuttable presumption that a Contract and Contract Summary correctly addressed to a Subscriber with sufficient first-class postage attached shall be received three (3) Business Days after it has been properly deposited in the United States mail; and
- 16.5.3.8 A statement that the actual number of credits could vary monthly and is dependent on the generation output of the Community Energy Facility, if applicable;
- 16.5.3.9 A statement of the Community Energy Facility's termination rights, which shall explain the specific conditions under which the Community Energy Facility may terminate service. At a minimum, the Community Energy Facility shall provide the Subscriber at least thirty (30) days' Written Notice of termination of the Contract;
- 16.5.3.10 The Community Energy Facility's local or toll-free telephone number to obtain information and handle complaints; its mailing address and website address; the Commission's address, website address, and Delaware toll-free telephone number; and the DPA's address, website address, and telephone number;
- 16.5.3.11 A statement informing the Subscriber that, in the event of a relocation outside of Delmarva's service territory, they shall terminate their Contract with no termination fee;
- 16.5.3.12 A statement that the Community Energy Facility may terminate the Contract prior to the stated term of the Contract, including:
 - 16.5.3.12.1 The circumstances under which early cancellation by the Community Energy Facility may occur;

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- 16.5.3.12.2 The manner in which the Community Energy Facility shall notify the Residential or Small Commercial Subscriber of the early cancellation of the Contract;
- 16.5.3.12.3 The duration of the notice period before early cancellation by the Community Energy Facility; and
- 16.5.3.12.4 The remedies available to the Residential or Small Commercial Subscriber if early cancellation occurs;
- 16.5.3.13 A statement that the Subscriber may terminate the Contract prior to the stated term of the Contract, including:
 - 16.5.3.13.1 The manner in which the Subscriber shall notify the Community Energy Facility of the early cancellation of the Contract;
 - 16.5.3.13.2 The duration of the notice period before early cancellation;
 - 16.5.3.13.3 The remedies available to the Community Energy Facility if early cancellation occurs; and
 - 16.5.3.13.4 The amount of any early cancellation fee;
- 16.5.3.14 A statement describing Contract renewal procedures, if any, including the timing of the notices that the Subscriber will receive prior to the renewal date;
- 16.5.3.15 All disclosures required by applicable laws and regulations that govern marketing, consumer protection, and door-to-door sales, including the Delaware Home Solicitation Sales Act, 6 Del.C. §4401 *et seq*;
- 16.5.3.16 If a Community Energy Facility requires a security deposit from a Subscriber,
 - 16.5.3.16.1 The amount of the security deposit;
 - 16.5.3.16.2 A description of when and under what circumstances the security deposit will be returned;
 - 16.5.3.16.3 A description of how the security deposit may be used; and
 - 16.5.3.16.4 A description of how the security deposit will be protected;
- 16.5.3.17 The data privacy policies of the Community Energy Facility;
- 16.5.3.18 A statement that the Community Energy Facility does not make representations or warranties concerning the tax implications of any bill credits provided to Subscriber; and
- 16.5.3.19 The method of providing notice to the Subscribers when the Community Energy Facility is out of service for more than three (3) Business Days, including notice of the estimated duration of the outage and the estimated production that will be lost due to the outage.
- 16.5.4 A Contract for Residential Subscribers or Small Commercial may not:
 - 16.5.4.1 Provide the application of the law of any jurisdiction other than the United States and Delaware;
 - 16.5.4.2 Except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, as amended, or the Delaware Uniform Arbitration Act, Chapter 57 of Title 10, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under applicable law;
 - 16.5.4.3 Provide for a location of arbitration outside of the county of the Residential Subscriber's residence or the Small Commercial Subscriber's location; or
 - 16.5.4.4 Contain a provision that limits or releases the liability of the Community Energy Facility for not performing the Contract.

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- 16.5.5 At the time of completion of the contracting process, a Community Energy Facility shall provide the Residential or Small Commercial Subscriber with a copy of the executed Contract and completed Contract Summary.
- 16.5.6 If a Residential or Small Commercial Contract is completed through the Internet, the executed Contract and completed Contract Summary shall be:
- 16.5.6.1 Made available for download by the Subscriber at the time of contracting;
- and
- 16.5.6.2 Transmitted to the Subscriber by the Community Energy Facility by mail or by email if the Subscriber consents to receipt of email disclosures.
- 16.5.7 If a Residential or Small Commercial Contract is completed in person, the executed Contract and the completed Contract Summary shall be reviewed with the Subscriber and provided to the Subscriber in hard copy at the time of contracting, or electronically at the time of contracting if the Subscriber consents to electronic disclosures.
- 16.5.8 A Subscriber that wants to cancel a Contract shall first attempt to cancel the Contract according to the terms of the Contract.
- 16.5.9 If a Subscriber attempts to cancel a Contract by contacting Delmarva first, Delmarva shall direct the Subscriber to contact the Community Energy Facility through the means detailed in the Contract.
- 16.5.10 For Residential and Small Commercial Contracts with automatic renewal provisions, the Community Energy Facility must provide Subscribers with Written Notice of the pending renewal of a Contract at least thirty (30) days and no more than sixty (60) days before the cancellation deadline pursuant to the automatic renewal provision and must otherwise comply with the requirements of 6 Del.C. §2734. The Community Energy Facility must retain records showing that the Written Notice was provided, including copies of the Written Notices, for at least five (5) years.
- 16.5.11 The Written Notice to Residential and Small Commercial Subscribers required under subsection 16.5.10 shall:
- 16.5.11.1 Be printed in Times New Roman 12-point typeface or larger with one-inch margins on all sides, and reasonable numbering, lettering, line and paragraph spacing;
- 16.5.11.2 In bold style font, inform the Subscriber that the failure to respond to the Written Notice will result in the automatic renewal of the Contract;
- 16.5.11.3 Inform the Subscriber of any changes in the material terms and conditions of the expiring Contract upon renewal, and include a copy of the proposed Contract and Contract Summary; and
- 16.5.11.4 Inform the Subscriber how to terminate the Contract without penalty.
- 16.5.12 Record Retention. All Community Energy Facilities shall retain a copy of the Residential or Small Commercial Subscriber's Contract, Contract Summary, verification of enrollment, and the Community Energy Facility's billing and payment history, for a period of five (5) years after enrollment or termination of the Contract, whichever is later.
- 16.6 Subscription requirements:
- 16.6.1 A Subscriber shall not receive credit for more than 110% of the Subscriber's expected aggregate electrical consumption, calculated on the average of the two (2) previous 12-month periods of actual electrical usage at the time of subscription with the Community Energy Facility. For new building construction, electrical consumption shall be estimated at 110% of the consumption of units with similar size and characteristics.
- 16.6.2 A Community Energy Facility shall not have subscriptions larger than 200 kilowatts constituting more than 60% of its capacity, not including the host's self-consumption.

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- 16.6.3 Subscriptions shall be portable, provided that the Subscriber remains within Delmarva's service territory. The Community Energy Facility must notify Delmarva of a Subscriber's change in address, and any change in subscription size, within thirty (30) days of the change. In cases of relocation, Subscribers are entitled to at least one revision to their subscription size per move.
- 16.6.4 Subscribers shall not sell or transfer a Community Energy Facility subscription to another party other than the Community Energy Facility owner.
- 16.6.5 The Community Energy Facility shall provide updated individual Subscriber's subscribed percentage to Delmarva if there are any changes to Subscriber's subscribed percentage.
- 16.6.6 On an annual basis, Delmarva may audit an individual Subscriber's subscribed amounts to ensure the amount does not exceed 110% of the Subscriber's annual usage, calculated on the average of the two previous 12-month periods of actual electrical usage, utilized at the time of the reassessment. If Delmarva determines that a Subscriber's subscribed amount exceeds the 110% cap, Delmarva shall notify the Community Energy Facility.
- 16.6.6.1 Upon such notification, the Subscriber's Community Energy Facility must resize the Subscriber's subscription size to ensure it does not exceed 110% of the historic annual usage, calculated on the average of the two previous 12-month periods of actual electrical usage, utilized at the time of the reassessment.
- 16.6.6.2 In cases where the Community Energy Facility fails to provide a Subscriber's updated subscribed percentage within thirty (30) days after notification by Delmarva, Delmarva shall be permitted to set the Subscriber's percentage of credits to zero.
- 16.6.6.3 Community Energy Facilities may not charge a Subscriber an amount greater than the dollar value of the credits received by the Subscriber from Delmarva for each billing period.
- 16.6.7 The Community Energy Facility shall ensure that the net-metered generation output from the facility is accurate. The amount of electricity generated each month available for allocation as subscribed or unsubscribed energy shall be determined by a production meter that meets or exceeds the ANSI C12.1-2008 accuracy standards installed, maintained, and owned by Delmarva, and paid for by the owner of the Community Energy Facility.
- 16.6.8 The Community Energy Facility shall retain ownership of all RECs and SRECs associated with the electric energy it produces unless it has relinquished such ownership by contractual agreement with a third party or its Subscribers.
- 16.6.9 The Community Energy Facility may change its list of Subscribers no more than once per month. The Community Energy Facility shall provide a written request to Delmarva for any such changes no less than thirty (30) days prior to the requested change.
- 16.6.10 The Community Energy Facility may update its Subscribers' percentage of generation allocation no more than once per month. The Community Energy Facility shall provide thirty (30) days' written notice to Delmarva before any such changes.
- 16.6.11 Delmarva shall only allow meter aggregation for Subscriber accounts for which Delmarva provides electric distribution services.
- 16.6.12 Delmarva may require all Subscribers of a Community Energy Facility to have their meters read on the same billing cycle.
- 16.6.13 A Subscriber may subscribe to more than one Community Energy Facility but not more than four, and no Subscriber may subscribe for greater than 110% of their aggregate electrical consumption as defined in 26 Del. C. §1014(f)(2).
- 16.7 Community Energy Facility Bills to its Subscribers:

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16.7.1 The Community Energy Facility alone is responsible for the billing and collection of any subscription fees directly to Subscribers.

16.7.2 The Community Energy Facility's bill to its Subscribers shall be easy to understand, be in clear and plain language, and must contain the following information in at least 12-point font:

16.7.2.1 The name, address, website (if any), and customer service telephone number of the Community Energy Facility;

16.7.2.2 The due date for payment;

16.7.2.3 If applicable, an itemized list of each service or product billed for the current billing period including other agreed to charges;

16.7.2.4 The number of credits (kWh) generated by the Community Energy Facility for the Subscriber;

16.7.2.5 The actual price per credit (kWh) charged to the Subscriber;

16.7.2.6 The total charge for each service or product;

16.7.2.7 The amount of payment or other credit applied to Subscriber's outstanding balance during the billing period;

16.7.2.8 The amount still owed by the Subscriber from the previous billing period;

16.7.2.9 Appropriate taxes and fees;

16.7.2.10 Definitions of material terms used in the bill; and

16.7.2.11 If applicable, late fees as defined in the Contract. Late fees must be clearly identified as such.

16.7.3 A Community Energy Facility without a valid Final Certificate to Operate shall not bill its Subscribers.

16.8 Change in ownership and assignment of Contracts:

16.8.1 Prior to the effective date of any assignment or transfer of the ownership of a Community Energy Facility to a person or company who is not an existing Community Energy Facility, the new owner must obtain a Final Certificate to Operate under subsection 16.2.4 of these Regulations

16.8.2 At least thirty (30) days prior to the effective date of any assignment or transfer of the Contracts of a Community Energy Facility to another existing Community Energy Facility, the Community Energy Facilities shall jointly:

16.8.2.1 Provide Written Notice of the assignment or transfer to the Subscribers of the Community Energy Facility, with a copy to the Commission, Delmarva and the DPA;

16.8.2.2 Coordinate with Delmarva the transfer of ownership;

16.8.2.3 Send a letter to the Subscribers informing them of the assignment or transfer. The letter shall include:

16.8.2.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;

16.8.2.3.2 Customer service contact information for the assignee; and

16.8.2.3.3 A statement that the terms and conditions of the Subscriber's Contract at the time of assignment shall remain the same for the remainder of the Contract term.

16.8.3 Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. The Community Energy Facility must maintain such records for a period of five (5) years or until the Contracts expire, whichever is longer.

16.9 Delmarva's billing of Community Energy Facility credits to Subscribers:

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- 16.9.1 Bill credits. Delmarva shall calculate the amount of the bill credit for a Community Energy Facility Subscriber as the Subscriber's subscribed percentage of generation valued at the sum of the volumetric (kWh) components of the distribution service charges and tariff supply service charges according to each Subscriber's customer account rate schedule. For Subscribers under hourly priced service, the applicable rate shall be the average hourly price from the previous calendar year. For Subscribers being served by other than the Standard Offer Service Supplier, the applicable rate for supply service shall be the Standard Offer Service rate for the Subscriber's rate classification.
- 16.9.1.1 Delmarva shall display the monthly bill credit amount on the Subscriber's monthly Delmarva bill as a discrete monetary line item, showing the kWh credit multiplied by the applicable rate. For Subscribers who subscribe to multiple Community Energy Facilities, the bill must show separate credit amounts for each Community Energy Facility, identifying which Community Energy Facility produced the credit. Delmarva shall subtract the bill credit amount from the full amount due on the Subscriber's monthly electricity bill.
- 16.9.1.2 Any excess net bill credit that rolls over from previous months shall be displayed as a dollar amount on the Subscriber's monthly bill as a negative "Balance Forward." For Subscribers who subscribe to multiple Community Energy Facilities, the bill will aggregate the excess net bill credits and display the excess credits on the Subscriber's monthly bill as a negative "Balance Forward."
- 16.9.2 Annualized billing period. Delmarva shall establish an annualized billing period for each Subscriber.
- 16.9.2.1 The annualized billing period shall begin on the day a Subscriber first earns a Community Energy Facility bill credit based on the delivery of energy.
- 16.9.2.2 The annualized billing period shall continue for a period of 12 months, until the subscription ends, or until the Subscriber's Delmarva account is closed, whichever occurs earlier.
- 16.9.2.3 A Subscriber may request a refund from Delmarva if a credit balance remains on their account at the end of the annualized billing period.
- 16.9.3 Unsubscribed Energy:
- 16.9.3.1 Delmarva shall compensate Community Energy Facilities for any Unsubscribed Energy that constitutes 10% or less of the Community Energy Facility's generation output using the average annual locational marginal price of energy in the DPL Zone based on the prior calendar year.
- 16.9.3.2 Delmarva shall not compensate Community Energy Facilities for any Unsubscribed Energy that is greater than 10% of the Community Energy Facility's generation output.
- 16.10 Delmarva's recovery of costs:
- 16.10.1 Interconnection costs. The Community Energy Facility shall be responsible for all costs associated with its interconnection to Delmarva's distribution system. Any requirements necessary to permit interconnected operations between the Community Energy Facility and Delmarva, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by Delmarva.
- 16.10.2 Additional costs. The Community Energy Facility shall be responsible for any additional costs incurred by Delmarva, including billing-related costs associated with the Community Energy Facility Subscribers.
- 16.10.2.1 Within 30 days of the effective date of these Regulations, Delmarva shall present a report to the Commission that provides such costs incurred by Delmarva and a calculation of the associated charges to

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- Community Energy Facilities. The costs and recovery thereof shall be set forth through a rider on Community Energy Facilities.
- 16.10.2.2 Reporting on the cost recovery mechanism shall be presented in semi-annual reports which shall be filed by Delmarva with the Commission.
- 16.10.2.3 If a Community Energy Facility disputes the charges or the cost recovery mechanism, the Community Energy Facility may file a complaint in accordance with the Commission's Rules of Practice and Procedure, codified at 26 *Del. Admin. Code* 1001-2.2, *et. seq.*
- 16.10.3 Energy offset. Delmarva shall use the energy generated from a Community Energy Facility to offset purchases from wholesale electricity suppliers for Standard Offer Service.
- 16.10.4 Credits. Delmarva shall recover the credited supply and distribution costs provided to Subscribers and the Community Energy Facility in accordance with its tariff.
- 16.11 Regulation, fees, penalties:
- 16.11.1 Neither Subscribers nor owners of Community Energy Facilities shall be subject to regulation as either public utilities or Electric Suppliers, except as set forth in 26 *Del. C.* §1014(f)(15).
- 16.11.2 Community Energy Facilities must pay applicable fees and assessments under 26 *Del. C.* §1014(f)(13) and (15), which include the fees set forth in 26 *Del. C.* §114 and the annual gross revenue assessment in 26 *Del. C.* §115. Under §115, the "gross operating revenue" shall equal the sum of the net-metering credits produced by the Community Energy Facility and the revenue derived from unsubscribed energy.
- 16.11.3 Community Energy Facilities shall adhere to State and the Federal Energy Regulatory Commission rules and regulations.
- 16.11.4 Community Energy Facilities shall comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other state and federal laws, rules, or regulations that apply to such a facility.
- 16.11.5 If a Community Energy Facility fails to comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other laws, rules, or regulations that apply to such a facility, the Commission may impose penalties, including monetary assessments, and may suspend or revoke the Final Certificate to Operate, and impose other sanctions permitted by law.
- 16.11.6 If the Commission revokes the Final Certificate to Operate, Delmarva shall cease providing credits to Subscribers of that Community Energy Facility and shall not provide any further credits unless and until the Community Energy Facility provides Delmarva with proof of a valid Final Certificate to Operate.
- 16.12 Consumer protection:
- 16.12.1 Enforcement. In addition to the penalties described in subsection 16.11.5 of these Regulations, any violation of the consumer protection rules set forth in this subsection shall be deemed an unlawful practice in violation of 6 *Del.C.* §2513 and may be investigated and prosecuted by the Consumer Protection Unit, in accordance with 6 *Del.C.* §§1203C, 2513(b)(3), and 29 *Del.C.* § 2520(b). No action or inaction by the Commission under these Regulations shall affect the right of the Consumer Protection Unit to enforce State consumer protection laws.
- 16.12.2 General consumer protections:
- 16.12.2.1 The Community Energy Facility is responsible for any discriminatory, false, fraudulent, deceptive or unlawful marketing, sales, billing, or collections acts performed by its Agents, including lead generation firms, in the conduct of marketing, sales, billing, or collections activities on behalf of the Community Energy Facility.

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- 16.12.2.2 No Community Energy Facility shall:
- 16.12.2.2.1 Engage in illegal, fraudulent, false, misleading, or deceptive conduct or make false, misleading, or deceptive statements or representations in any dealings with Subscribers or prospective Subscribers;
 - 16.12.2.2.2 Discriminate against any Subscriber or prospective Subscriber, based wholly or partly, on race, color, creed, national origin, or gender of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason;
 - 16.12.2.2.3 Refuse to provide service to a Subscriber except by the application of standards that are reasonably related to the Community Energy Facility's economic and business purposes; or
 - 16.12.2.2.4 Engage in Slamming or Cramming. If it is reported that the Community Energy Facility has engaged in Slamming or Cramming, or both, the Community Energy Facility may be subject to investigation and, after a hearing, the Commission may impose penalties or require the Community Energy Facility to void or refund all of the charges in question.
- 16.12.2.3 Customer information. The Community Energy Facility shall put into place safeguards to prevent the disclosure of Subscribers' Customer information and shall provide Subscribers with a copy of its Customer information privacy policy. A Community Energy Facility shall keep the Subscriber's Customer information in a secure and protected location and shall treat information received from prospective Subscribers, including those who do not subscribe, in accordance with this subsection. The Community Energy Facility shall not disclose Customer information except:
- 16.12.2.3.1 Upon authorization by the Subscriber;
 - 16.12.2.3.2 To a state or federal authority;
 - 16.12.2.3.3 To Delmarva; or
 - 16.12.2.3.4 As otherwise authorized by law.
- 16.12.3 Consumer protection relating to enrollment, marketing, and advertising:
- 16.12.3.1 A Community Energy Facility shall comply with all federal, State and local laws applicable to the advertising or marketing of its services, and it shall be a violation of these Regulations to fail to comply with such laws.
 - 16.12.3.2 No Community Energy Facility shall make misrepresentations or use deceptive practices relating to its own services, the services of another Community Energy Facility, or the services provided by Delmarva in its solicitations, advertising, or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and person-to person contacts, including Door-to-Door Sales. Deceptive practices include, but are not limited to:
 - 16.12.3.2.1 Saying or suggesting to a prospective Subscriber that they are required to choose a Community Energy Facility;
 - 16.12.3.2.2 Saying or suggesting to a prospective Subscriber that their service will suffer degradation or risk if they do not choose a Community Energy Facility; and
 - 16.12.3.2.3 Suggesting a relationship that does not exist with the Subscriber's SOSS, Delmarva, any government agency, or another Community Energy Facility.
 - 16.12.3.3 Telephone Solicitations and Enrollments:
 - 16.12.3.3.1 A Community Energy Facility soliciting Subscribers by telephone shall comply with all applicable Delaware and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. §§6151 *et seq.*), the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C.

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§§6101 *et seq.*), and the Delaware Telemarketing Fraud Act (6 Del. C. §§ 2501A *et seq.*).

- 16.12.3.3.2 When a Residential or Small Commercial Subscriber enrolls with a Community Energy Facility during a Telemarketing call, the Community Energy Facility shall record the entire telephone call between the Subscriber and the Community Energy Facility or its Agent.
- 16.12.3.3.3 The Community Energy Facility shall maintain a copy of the recorded sales call and TPV, if applicable, for a period of five years after the expiration of the Residential or Small Commercial Subscriber's Contract.
- 16.12.3.3.4 The Community Energy Facility shall immediately halt any Telemarketing call upon the request of the prospective Residential or Small Commercial Subscriber.
- 16.12.3.4 Door-to-Door Solicitations and Enrollments:
 - 16.12.3.4.1 Door-to-Door Sales at a residential dwelling shall be conducted by a Community Energy Facility's Agent between the hours of 9:00 a.m. to 8:00 p.m. prevailing Delaware time. When a local ordinance has stricter limitations, the Agent shall comply with the local ordinance.
 - 16.12.3.4.2 For Door-to-Door Sales, the Agent shall promptly:
 - 16.12.3.4.2.1 Identify the Community Energy Facility they are representing;
 - 16.12.3.4.2.2 State that the individual and the Community Energy Facility do not represent Delmarva or any governmental agency;
 - 16.12.3.4.2.3 State that the purpose of the visit is to sell a Community Energy Facility subscription;
 - 16.12.3.4.2.4 Prominently display an identification badge; and
 - 16.12.3.4.2.5 Offer a business card or other material that lists:
 - 16.12.3.4.2.5.1 The Community Energy Facility's name and contact information, including telephone number; and
 - 16.12.3.4.2.5.2 The Agent's name and any other identification numbers provided to the sales Agent by the Community Energy Facility or Agent.
 - 16.12.3.4.3 Until the Agent has provided the information required in subsection 16.12.3.4.2 of these Regulations, an Agent performing a Door-to-Door Sale may not request a potential Residential or Small Commercial Subscriber's:
 - 16.12.3.4.3.1 Community Energy Facility account number;
 - 16.12.3.4.3.2 Delmarva account number; or
 - 16.12.3.4.3.3 Electric bill.
 - 16.12.3.4.4 In connection with any Door-to-Door Sale, it is a violation of these Regulations for any Community Energy Facility or Agent to:
 - 16.12.3.4.4.1 Fail to leave the prospective Subscriber's premises upon request in a prompt and courteous manner; or
 - 16.12.3.4.4.2 Fail to inform each Residential or Small Commercial Subscriber orally, at the time the Residential or Small Commercial Subscriber signs the Contract, of the right to rescind without penalty or fee within three (3) Business Days from the date of the transaction.
- 16.12.3.5 Internet enrollments. For electronic contracting on the Internet, the Community Energy Facility's website must be configured to prompt the Residential or Small Commercial Subscribers to review and agree to the Contract and Contract

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Summary before the Contract is final, and to print or save the Contract and Contract Summary.

16.12.3.6 The Community Energy Facilities shall not be entitled to the Customer List described in subsection 3.3 of these Regulations.

16.12.3.7 Agent Training:

16.12.3.7.1 A Community Energy Facility shall ensure the training of its Agents on the following subjects:

16.12.3.7.1.1 State and Federal laws and regulations that govern marketing, Telemarketing, and Door-to-Door Sales (for those Agents engaging in Telemarketing or Door-to-Door Sales), including consumer protection regulations required by Delaware law and regulations;

16.12.3.7.1.2 The Community Energy Facility's products and services;

16.12.3.7.1.3 The Community Energy Facility's Prices, Price structures and payment options;

16.12.3.7.1.4 The Subscriber's right to rescind and cancel Contracts;

16.12.3.7.1.5 The applicability of an early termination fee for Contract cancellation when the Community Energy Facility has one;

16.12.3.7.1.6 The Community Energy Facility's Contract and Contract Summary;

16.12.3.7.1.7 The necessity of correctly and fully explaining the Contract and Contract Summary, while relying on a standard sales script and knowledge of the contents of the sales script, if one is used;

16.12.3.7.1.8 The proper completion of transaction documents;

16.12.3.7.1.9 Information about how Subscribers may contact the Community Energy Facility to obtain information about billing, disputes, and complaints; and

16.12.3.7.1.10 The confidentiality and protection of Subscribers' Customer information.

16.12.3.7.2 A Community Energy Facility shall document the training of an Agent and maintain a record of the training for three (3) years from the date the training was completed.

16.12.3.7.3 A Community Energy Facility shall make training materials and training records available to the Commission, DPA, and the Consumer Protection Unit upon request.

16.12.3.7.4 When a Community Energy Facility contracts with an independent contractor or vendor to perform marketing or sales activities on the Community Energy Facility's behalf or purchases leads from an independent contractor or vendor, the Community Energy Facility shall confirm that the contractor or vendor has provided Community Energy Facility-approved training to its Agents in accordance with this subsection.

16.12.3.7.5 The Community Energy Facility shall routinely monitor Telemarketing calls and Door-to-Door sales calls to:

16.12.3.7.5.1 Evaluate the Community Energy Facility's training program; and

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- 16.12.3.7.5.2 Ensure that Agents are providing accurate and complete information, complying with applicable regulations and providing courteous service to Subscribers.
- 16.12.3.7.6 The Community Energy Facility shall maintain records of such monitoring activities, results, and actions taken in response to the results of the monitoring activities and make such records available to the Commission, DPA, and the Consumer Protection Unit upon request.
- 16.13 Complaint procedures:
 - 16.13.1 Complaint procedures to be followed by the Subscriber (or a Broker acting on behalf of a Subscriber):
 - 16.13.1.1 A Subscriber (or a Broker acting on behalf of a Subscriber) should first notify the Community Energy Facility of their complaint.
 - 16.13.1.2 If the Community Energy Facility does not resolve the complaint, the Subscriber (or a Broker acting on behalf of a Subscriber) may file an informal or formal complaint with the Commission pursuant to 26 **DE Admin. Code** 1001, subsections 2.2 and 2.3.
 - 16.13.1.3 A Broker acting on behalf of a Subscriber must provide written proof to the Commission and the DPA, with a copy to the Community Energy Facility, that it is authorized to act on the Subscriber's behalf in order to file a complaint.
 - 16.13.2 Complaint Procedures to be Followed by the Community Energy Facility:
 - 16.13.2.1 The Community Energy Facility shall use good faith efforts to respond to and resolve complaints.
 - 16.13.2.2 The Community Energy Facility shall investigate Subscriber inquiries, disputes, and complaints concerning marketing, sales, billing, and collections practices. The Community Energy Facility shall cooperate with the Commission, DPA, the Consumer Protection Unit, and other government agencies that are investigating complaints about marketing, sales, billing, or collections practices prohibited by State and Federal laws, and with local law enforcement officials that are investigating complaints about violations of local municipal law.
 - 16.13.2.3 The Community Energy Facility shall implement an internal process for responding to and resolving Subscriber inquiries, disputes, and complaints. The process shall document as a record the Subscriber inquiry, dispute, or complaint, subsequent communications between the Community Energy Facility and the Subscriber, and the resolution of the inquiry, dispute or complaint. The Community Energy Facility shall retain the record for five (5) years from the later of the date of resolution of the complaint or the date of last contact with the Subscriber in a system capable of retrieving that record by Subscriber name and account number or by other effective means to obtain access to the information.
 - 16.13.2.4 If the Subscriber and the Community Energy Facility are not able to come to a resolution, the Community Energy Facility will inform the Subscriber that the Subscriber may contact the DPA or the Consumer Protection Unit, or both.
 - 16.13.2.5 In any complaint proceeding, the burden of proof shall be on the Community Energy Facility to establish, if applicable, that its Agents were adequately trained, and that the Subscriber was enrolled in accordance with these Regulations.
- 16.14 Reports to be Provided to the Commission and DPA:
 - 16.14.1 Community Energy Facilities shall provide such information concerning their State operations to the Commission and the DPA as the Commission may from time-to-time request, including any reporting requirements contained herein. Reports shall be filed electronically in

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DelaFile under the docket number for the matter by which the Commission granted the Community Energy Facility its Final Certificate to Operate.

- 16.14.2 Required 10-Day Notifications. Community Energy Facilities shall notify the Commission and the DPA within ten (10) Business Days of any of the following actions:
 - 16.14.2.1 Revocation of authority to sell subscriptions in any jurisdiction;
 - 16.14.2.2 Revocation of an Affiliated Interest's authority to sell subscriptions in any jurisdiction; or
 - 16.14.2.3 A change in the principal officers responsible for Delaware operations previously provided pursuant to these Regulations.
- 16.14.3 Required 30-Day Notifications and Annual Reports. A Community Energy Facility shall provide the following information to the Commission and the DPA within thirty (30) calendar days of occurrence and annually by April 30th of each year:
 - 16.14.3.1 Any changes in the Community Energy Facility's name or tax identification number or employer identification number previously provided pursuant to these Regulations;
 - 16.14.3.2 Any changes in the Community Energy Facility's business address previously provided pursuant to these Regulations;
 - 16.14.3.3 Any changes to the regulatory contact or Customer complaint person previously identified pursuant to these Regulations;
 - 16.14.3.4 The identify of any state in which the Community Energy Facility has had its authority to sell subscriptions to Customers revoked, modified or suspended since the filing of the last annual report;
 - 16.14.3.5 Any changes to the organizational structure previously provided pursuant to these Regulations;
 - 16.14.3.6 A statement detailing any criminal activities relating to fraud or financial misconduct of which the Community Energy Facility or any of its Affiliated Interests has been arrested, indicted or convicted, or which the principal or corporate officers have been arrested, indicted or convicted, since the filing of the last annual report;
 - 16.14.3.7 A copy of any stipulation, order, or decree concerning a formal, docketed complaint or investigation of the Community Energy Facility's marketing and sales activities in other jurisdictions;
 - 16.14.3.8 A list of any states in which any formal complaint investigations have been initiated against the Community Energy Facility or any of its Affiliated Interests since the filing of the last annual report; and
 - 16.14.3.9 A list of any states in which disciplinary actions have been taken against the Community Energy Facility or any of its Affiliated Interests since the filing of the last annual report.
- 16.14.4 As required by subsection 16.4.5 of these Regulations, every three (3) years, Community Energy Facilities shall provide a certification to the Commission in writing that it meets the low-income provisions as set forth in subsection 16.4.
- 16.15 Delmarva reporting requirements:
 - 16.15.1 Delmarva shall submit an annual Community Energy Facility report to the Commission, ninety (90) days after the end of the calendar year. Such report shall include the following information from the previous calendar year:
 - 16.15.1.1 The total number of Community Energy Facilities;
 - 16.15.1.2 The total rated generating capacity of its Community Energy Facilities;

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- 16.15.1.3 The total net kilowatt-hours received by Subscribers from Community Energy Facilities; and
- 16.15.1.4 The total amount of energy produced by Community Energy Facilities.
- 16.15.2 The annual Community Energy Facilities report may be revised as necessary to reflect changes in information available from Community Energy Facilities upon consultation and agreement between Delmarva and Staff.
- 16.15.3 Delmarva shall provide to the Community Energy Facilities an informational report including, but not limited to, the allocation of credits to Subscribers in the corresponding billing period.
 - 16.15.3.1 The report shall be provided no later than the last day of each calendar month following the month of the Community Energy Facilities meter reading by Delmarva.
 - 16.15.3.2 Within 30 days of the effective date of these Regulations, Delmarva shall present a proposed form of the monthly report to the Commission for its review and approval.

17.0 Other General Rules.

- 17.1 Proprietary Information. Under Delaware's Freedom of Information Act, 29 **Del.C.** ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 **Del.C.** §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.
- 17.2 Failure to Comply with these Rules.
 - 17.2.1 The failure by any Electric Supplier or a Community Energy Facility to comply with these requirements and the requirements in other Sections of these Regulations may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, suspension or revocation of the Community Energy Facility's Final Certificate to Operate, or other sanction as determined by the Commission.
 - 17.2.2 If an Electric Supplier or Community Energy Facility has a similar license issued by another state, the federal government, or PJM or similar entity suspended or revoked, the Commission may suspend or revoke the Electric Supplier's ESC or the Community Energy Facility's Final Certificate to Operate after notice and an evidentiary hearing.

3 DE Reg. 538 (10/01/99)

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

12 DE Reg. 518 (10/01/08)

13 DE Reg. 150 (01/01/10)

15 DE Reg. 102 (07/01/11)

20 DE Reg. 827 (04/01/17)

EXHIBIT B

**TITLE 26 PUBLIC UTILITIES
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PSC Order No. 9965; Exhibit "B"

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
3000 Energy Regulations**

**3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering,
and Community Energy Facilities**

1.0 Definitions.

"Affiliated Interest" means:

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

"Agent" means a Person who conducts marketing or sales activities, or both, interacting directly with Customers based on a contractual arrangement with and on behalf of an Electric Supplier or a Community Energy Facility. "Agent" does not include Brokers or Aggregators.

"Aggregator" 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" means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

"Annualized Billing Period" means a period of 12 consecutive monthly billing periods. **[For Net Metering Customers, the]** ~~[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 Electric Distribution Company and is generating electricity. A **[Net Metering]** Customer may elect to change the end of the Annualized Billing Period one time in order to better utilize excess generation.

"Applicant" means:

1. A Person seeking to obtain an Electric Supplier Certificate; or
2. An Electric Supplier seeking to amend its Electric Supplier Certificate. Certificate;
or
3. A Community Energy Facility seeking to obtain a Preliminary Certificate to Operate or a Final Certificate to Operate.

"Broker" means an entity or Person that acts as an agent or intermediary on behalf of the Customer in the sale or purchase of, but that does not take title to, electricity for sale to retail electric Customers or an entity or Person that acts as an agent or intermediary on behalf of the Customer in the purchase of a subscription to a Community Energy Facility but does not take title to the subscription.

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

"Co-location" means the siting of two or more [projects] [Community Energy Facilities] owned or developed by a single entity (or its [Affiliated Interests] [affiliates]) located on one parcel of land, or on contiguous parcels of land. For purposes of this definition:

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~~1. "Affiliate" means, with respect to any entity, any other entity that, directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with each other or a third entity;~~

~~2. "Control" means the possession, directly or indirectly, of the power to direct the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise. Affiliates may not have shared sales or revenue sharing arrangements, or common debt and equity financing arrangements;~~

~~1. "Contiguous" means touching along a boundary or a point. For example, parcels touching along a boundary are contiguous, as are parcels that meet only at a corner. Parcels, however near to each other, that are separated by a third parcel and do not touch along a boundary or a point are not contiguous. Additionally, parcels that are separated by a public road, railroad, or other right of way accessible at all times to the general public are not considered contiguous;~~

~~2. Parcels that are subdivided after July 1, 2021 shall be considered as a single parcel;~~

~~3. Projects owned or developed by separate entities (meaning that they are not affiliates) are not considered co-located; and~~

~~4. Projects need not be developed contemporaneously to be considered co-located. If a single project is developed and then a second, co-located project is developed on the same or a contiguous parcel at a later date [by a single entity or its Affiliated Interests], these two projects will be considered co-located.~~

"Commission" means the Delaware Public Service Commission.

"Community-owned energy generating facility" or "Community Energy Facility" means a renewable energy generating facility that has Subscribers multiple owners or customers who share the energy production of the Community Energy Facility output of the generator, which may be located either as a stand-alone facility or behind the meter of a Subscriber participating owner or customer and that meets all applicable requirements of Section 16.0 of these Regulations. The Community-Owned Energy Generating Facility shall be interconnected to the distribution system and operated in parallel with an EDC transmission and distribution facilities. The Community Energy Facility shall:

~~1. Satisfy all applicable requirements of Section 15.0 Net Metering of these regulations;~~

~~2. Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and~~

~~3. Comply with the Electric Supplier's interconnection tariffs and operating guidelines.~~

"Community Energy Facility Subscriber" or "Subscriber" means any [Customer] [person or entity] who participates in a Community Energy Facility project by means of having an active subscription to a Community Energy Facility or owning a portion of the Community Energy Facility. Subscribers are defined by the meter associated with their Delmarva bill.

"Consumer Protection Unit" means the Delaware Department of Justice Consumer Protection Unit or the Director of the Consumer Protection Unit, as applicable.

"Contract" means the total legal obligation resulting from the parties' agreement as effected by these Regulations and other applicable law. A Contract Contracts for Electric Supply Service and Community Energy Facility Subscriptions must be accompanied by a Contract Summary.

"Contract Summary" means a written summary of the material terms and conditions of service between an Electric Supplier and a Residential or Small Commercial Customer, or between a Community Energy Facility and a Subscriber. If the terms of the Contract Summary differ from

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the terms of the Contract, then the provision(s) most favorable to the Customer or Subscriber shall control.

“**Cooperative**” or “**DEC**” means Delaware Electric Cooperative, Inc. or its successor(s).

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

“**Customer**” means a purchaser of electricity **[with a Delmarva account number]** for ultimate consumption and not for resale in Delaware, including the owner/operator of any building or facility, but not the occupants thereof, who purchases and supplies electricity to the occupants of such building or facility.

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

1. Satisfy all of the applicable requirements of Section 15.0 Net Metering of these Regulations;
2. Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
3. Comply with the Electric Supplier's interconnection tariffs and operating guidelines.

“**Delmarva**” or “**DP&L**” means Delmarva Power & Light Company or its successor(s).

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

“**Distribution Services**” means those services, including metering, relating to the delivery of electricity to a Customer through Distribution Facilities.

“**DNREC**” means Delaware Department of Natural Resources and Environmental Control.

“**Door-to-Door Sale**” means a sale, or offer of Contracts for sale, in which the Electric Supplier or Electric Supplier's its Agent, or a Community Energy Facility or its Agent, personally solicits a Residential or Small Commercial Customer to sell Electric Supply Service or Community Energy Facility subscriptions. This term includes sales made at a place other than the Electric Supplier's or Community Energy Facility's place of business. This term does not include:

1. Sales made at Public Events;
2. For Small Commercial Customers, sales in response to or following a pre-scheduled appointment between the Small Commercial Customer and the Electric Supplier or Community Energy Facility; and
3. Any sale which is conducted entirely by mail, telephone or other Electronic means.

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

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

“**Electric Supplier**” means an entity or Person certified by the Commission that sells electricity to Customers utilizing the Transmission and/or Distribution Facilities of a nonaffiliated EDC, as defined in 26 **Del.C.** §1001(14), including:

1. Affiliates of an EDC;
2. Municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999);

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3. Electric cooperatives which, having exempted themselves from the Commission's jurisdiction pursuant to 26 Del.C. §§202(g) and 223, choose to provide electricity outside their assigned service territories; and

4. Any Broker, Marketer or other entity (including public utilities and their Affiliates).

"Electric Supplier Certificate" or "ESC" means a certificate granted by the Commission to Electric Suppliers that have fulfilled the Commission's certification requirements. The Commission order approving an Applicant's application for certification as an Electric Supplier, Marketer, or Broker shall serve as the Electric Supplier Certificate.

"Electric Supply Service" means the provision of electricity and related services to Customers, as defined in 26 Del.C. §1001(15).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, as defined in 6 Del.C. 12A-§102(5).

"Electronic mail" or "e-mail" means any message transmitted through the internet including, but not limited to, messages transmitted to or from any address affiliated with an internet site.

"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, as defined in 6 Del.C. §12A-102(9).

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

1. Solar energy technologies that employ solar radiation to produce electricity;
2. Electricity derived from wind energy;
3. Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
4. Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;
5. Electricity generated by a fuel cell powered by Renewable Fuels;
6. Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
7. Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
8. Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation 7 **DE Admin. Code** 106, Environmental Standards for Eligible Energy Resources);
9. Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:
 - a. Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;
 - b. Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

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

"FERC" means the Federal Energy Regulatory Commission.

"Final Certificate to Operate" means a certificate granted by the Commission to a Community Energy Facility that has fulfilled the Commission's final certification requirements under subsection 16.2.4 of these Regulations. The Commission order approving an Applicant's application for a Final Certificate to Operate as a Community Energy Facility shall serve as the Final Certificate to Operate.

"Fixed Price" means a Price that will remain the same for at least three billing cycles or the term of the Contract, whichever is longer.

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

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

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

"Grid-Integrated Electric Vehicle" 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 a Price offered by an Electric Supplier 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 Price that will be in effect for the remaining billing cycles of the Contract term, consistent with terms and conditions in the Contract.

"Low-income Customer" means a customer whose gross annual income, by family size, is at or below 200% of the U.S. Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater. **[Owners or operators of master-metered buildings whose tenants meet the income eligibility requirements for Low-income Customers may also qualify as a "Low-income Customer."]**

"Marketer" means an entity or Person that purchases and takes title to electricity for sale to Customers in this State, as defined in 26 Del.C. §1001(19).

"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 EDC, may be used to offset electric energy provided by the Electric Supplier EDC to the Customer.

"Permission to Operate" means Delmarva's approval for a Community Energy Facility to commence operation pursuant to subsection 16.3 of these Regulations.

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"Person" means a natural person; a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent or employee of such agency.

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

"Preliminary Certificate to Operate" means a certificate granted by the Commission to a Community Energy Facility that has fulfilled the Commission's preliminary certification requirements under subsection 16.2.3 of these Regulations, which establishes project viability. The Commission order approving an Applicant's application for a Preliminary Certificate to Operate as a Community Energy Facility shall serve as the Preliminary Certificate to Operate.

"Price" or **"Rate"** means all charges (excluding taxes), including Fixed or Variable, to be charged by the Electric Supplier for Electric Supply Service or by the Community Energy Facility for subscription credits pursuant to the Contract.

"Public Event" means an event in a public location at which an Electric Supplier or Community Energy Facility may market and solicit Residential and Small Commercial Customers to enroll.

"Regulations" means the Commission's Regulations for Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities (26 DE Admin. Code §3004 3001 *et seq.*).

"Renewable Energy Credit" or **"REC"** means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of the Renewable Energy Portfolio Standards Act, 26 Del.C. §351 *et. seq.* A REC does not include emission reduction credits 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"** means the percentage of retail electricity sales in the State that is to be derived from Eligible Energy Resources.

"Rescission Period" means the time period within which a Residential or Small Commercial Customer may choose to cancel, without penalty, a Contract for Electric Supply Service with an Electric Supplier or a Contract for subscription credits with a Community Energy Facility.

"Residential Customer" [or] means a retail electric Customer eligible to take service classified as Residential under the tariff of the Customer's Electric Distribution Company currently on file with the Commission.

"Residential Subscriber" means a Residential Customer who has subscribed to a Community Energy Facility.

"Secretary" means the Secretary of the Commission, or any employee of the Commission designated by the Secretary and authorized by the Executive Director.

"Slamming" means the prohibited unauthorized enrollment of a Customer without the Customer's permission or the unauthorized transfer of a Customer to another Electric Supplier or Community Energy Facility.

"Small Commercial Customer" means a Customer taking service under a current Electric Distribution Company tariff governing Service Classification "Small General Service-Non Demand Rate" or the current Cooperative tariff governing Service Classification "General Service." However, for the purposes of these Regulations, 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.

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"Small Commercial Subscriber" means a Small Commercial Customer who has subscribed to a Community Energy Facility.

"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" means full-time professional employees of, and outside counsel and consultants retained by, the Commission who render advice to the Commission.

"Standard Offer Service" or "**SOS**" means the provision of Electric Supply Service by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier, as defined in 26 **Del.C.** §1001(23).

"Standard Offer Service Supplier" or "**SOSS**" means an EDC serving within its certificated territory, as defined in 26 **Del.C.** §1001(24).

"State" means the State of Delaware.

~~**"Subscriber(s)"** means those persons who are otherwise 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 or a Community Energy Facility to a Residential or Small Commercial Customer in order to market Electric Supply Service or Community Energy Facility subscriptions.

"Third Party Verification" or "**TPV**" means a method to record consent from a Residential or Small Commercial Customer agreeing to each of the below-listed material Contract terms that is recorded by an independent person not party to the agreement or that may be performed by an automated, computerized system. To be valid, the TPV must occur without the presence of the sales agent, and at the outset must describe how the Residential or Small Commercial Customer can cancel the TPV and the enrollment at any time prior to completion without penalty. The consent from the Residential or Small Commercial Customer must be given without unreasonable assistance from the individual conducting the TPV and must include an acknowledgement from the Residential or Small Commercial Customer:

1. That he or she is voluntarily choosing to enroll with an Electric Supplier or a Community Energy Facility;
2. Of the type of product offered (introductory, variable, fixed, or some combination);
3. Of the Price that will be charged for the first month's service and when or if the Price may change;
4. Of the duration of the Contract;
5. Of the amount of an early termination fee (if applicable);
6. If a Residential Customer, that he or she is the account holder or authorized to make the switch;
7. If a Small Commercial Customer, that he or she is authorized to make the switch;
8. That the Residential or Small Commercial Customer has been provided with information on how the Contract can be renewed and, if applicable, what the Supplier or the Community Energy Facility can do if the Customer fails to respond to the renewal notice;
9. That the Residential or Small Commercial Customer has been provided information on how to access the Electric Supplier's or the Community Energy Facility's historical pricing information;
10. That the Residential or Small Commercial Customer has been provided information on how to access future pricing information; and

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11. That the Residential or Small Commercial Customer has received the Electric Supplier's or the Community Energy Facility's customer support contact information.

"Transmission Facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to Customers (including any Customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the Customer, as defined in 26 Del.C. §1001(26).

"Transmission Services" means the delivery of electricity from supply sources through Transmission Facilities, as defined in 26 Del.C. §1001(27).

"Unsubscribed Energy" means any community-owned energy generating facility percentage of output that is not allocated to any Subscriber.

"Variable Price" means a Price that can change from month to month (but not more frequently) on a Residential or Small Commercial Customer's bill according to the terms and conditions in the Contract.

"VREC" or "Voluntary Renewable Energy Credit" means a tradable instrument comprised of all the generation attributes equal to 1 megawatt-hour of electricity derived from the types of renewable energy sources listed in 26 Del.C. §352(6)(a)-(i) and that is generated via PJM-EIS GATS, its successor, another regional renewable energy certificate tracking system, or Green e-Energy and used to track and verify compliance with the provisions of these Regulations.

"Written Notice" means notice in writing, mailed by First Class mail to the Person who is being given notice, sent to the current billing address as shown on the records of the Electric Distribution Company, or Electric Supplier, or Community Energy Facility, or via Electronic mail to a valid e-mail address if the Customer authorizes the receipt of the applicable communication via electronic means and provides a valid e-mail address.

2.0 Certification of Electric Suppliers.

2.1 Before a Person may offer a Contract or commence service to a Customer, such Person or entity must obtain an Electric Supplier Certificate from the Commission to sell Electric Supply Service to, or arrange the purchase on behalf of, Customers.

2.2 Certification Requirement. All Applicants shall file with the Commission an original and five (5) copies of an application for an Electric Supplier Certificate or comply with the electronic filing requirements of 26 DE Admin. Code 1001 Rules of Practice and Procedure of the 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 consistent with applicable State laws. Applications shall contain at least the following information:

2.2.1 Name, Etc. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name(s) under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant, its Affiliated Interests, or any current or previous officer, director, or manager has previously done business in Delaware;

2.2.2 Certifications. Certification(s) issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;

2.2.3 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;

2.2.4 Registered Agent. The name and post office address of a Registered Agent, pursuant to 26 Del.C. §401, within the State upon whom service of any notice, order or process may be made;

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- 2.2.5 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
- 2.2.6 Corporate Structure. A description of the Applicant's corporate structure, including all parent, affiliated, and subsidiary companies. Include a graphical depiction of such structure;
- 2.2.7 Contact Information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicant's:
 - 2.2.7.1 Regulatory contact person responsible for the Electric Supplier's Delaware operations; and
 - 2.2.7.2 Customer complaint contact person, if different from the regulatory contact person;
- 2.2.8 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
- 2.2.9 Toll Free Number. A toll-free telephone number to the Applicant's customer service center where Customers may call with questions about the Electric Supplier's services, including the Contract and Contract Summary. Brokers proposing to serve non-residential Customers may provide a Delaware telephone number;
- 2.2.10 Website. The Electric Supplier's website address, accessible to prospective and current Customers;
- 2.2.11 Consent to Jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Electric Supplier's and its Agent's activities in the State;
- 2.2.12 Criminal Activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution;
- 2.2.13 Marketing Plans and Materials. If the Applicant intends to serve Residential or Small Commercial Customers, the Applicant shall provide, to the extent then known or in existence:
 - 2.2.13.1 A description of the marketing plan(s) and/or method(s) it plans to use in Delaware. This description shall identify whether Door-to-Door, Telemarketing, direct mail, or other marketing channels will be used and, where applicable, the identification of third party vendors that the Applicant will utilize to implement one or more marketing methods. The application shall include the manner in which the Applicant will ensure oversight, training, and compliance with the specific provisions of these Regulations with regard to Telemarketing, Door to Door, and in-person sales;
 - 2.2.13.2 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 the Applicant will use to market and promote its products to Delaware Residential and Small Commercial Customers;
- 2.2.14 Contracts and Contract Summaries. A copy of the Applicant's standard Contract(s) form that it intends to offer to Residential and Small Commercial Customers, and the standard Contract Summary form it intends to include with its Contracts for Residential and Small Commercial Customers. A Contract or Contract Summary that does not comply with the requirements of these Regulations or other applicable Delaware laws and regulations may be grounds for rejection of the application;

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- 2.2.15 Performance Bonds. Each Applicant, except Brokers, shall submit a copy of its performance bond or guarantee that it has obtained as security to the Electric Distribution Company if required in the service agreement between the Applicant and the Electric Distribution Company. The copy of the performance bond may be provided after the Electric Supplier Certificate is granted, but must be provided to the Commission prior to marketing or offering Electric Supply Service to Customers;
- 2.2.16 Financial Information.
 - 2.2.16.1 If publicly traded, the Applicant's: (1) certified financial statements current within twelve (12) months of the filing, and (2) its most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website);
 - 2.2.16.2 If not publicly traded, the Applicant's 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 publicly traded parent;
 - 2.2.16.3 Applicants submitting European-style financial statements shall include a statement of similarity;
 - 2.2.16.4 Staff may request other indicia of financial capability.
- 2.2.17 Bankruptcy. The Applicant shall disclose whether it, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months;
- 2.2.18 Regional and Wholesale Experience.
 - 2.2.18.1 If the Applicant is a Marketer:
 - 2.2.18.1.1 A description of the Applicant's experience in the PJM regulated wholesale energy market or other regional energy markets; and
 - 2.2.18.1.2 A statement detailing that the Applicant has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM.
 - 2.2.18.2 If the Applicant is a Broker:
 - 2.2.18.2.1 Evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service must demonstrate, through an affirmative statement, that it will only arrange electricity sales from an entity that complies with PJM's requirements and is a Certified Electric Supplier in the State, and must provide a list of Electric Suppliers through which the Applicant intends to arrange for the sale of electricity. Any change in the identity of the Electric Suppliers on this list shall be provided to the Commission within five (5) Business Days of the effective date of the change.
- 2.2.19 Retail Experience. A description of the Applicant's experience in retail electricity markets, including:
 - 2.2.19.1 A description of the services it plans to offer in the State, including types of Customers to be served and services provided;
 - 2.2.19.2 A description of the operational experience in retail energy markets of each principal officer, director, or individual responsible for Delaware operations. If no such experience is applicable, the Applicant shall identify the means by which the Applicant proposes to support its managerial, technical, and financial capabilities for the retail sale of Electric Supply Service in the State;
 - 2.2.19.3 For each entity identified below, a list of states in which:
 - 2.2.19.3.1 The Applicant or any of its Affiliated Interests is presently selling or brokering Electric Supply Service to Customers;

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- 2.2.19.3.2 The Applicant or any of its Affiliated Interests has received authority to sell or broker Electric Supply Service to Customers but is currently not providing services;
 - 2.2.19.3.3 The Applicant or any of its Affiliated Interests has pending applications to sell or broker Electric Supply Service to Customers. For each state listed include license, order, or certificate numbers; and
 - 2.2.19.3.4 For each entity in each state listed above, provide the license or certification number, the applicable docket number, if any, and the date the license or certification was granted. Applicant shall provide copies of the order or decision, if any, from the state's public utility commission regarding the Applicant's applications identified in subsections 2.2.19.3.1 and 2.2.19.3.2.
 - 2.2.19.4 The Electric Supplier shall ensure that it can accept, investigate, and resolve Customer complaints in a prompt and responsive manner;
 - 2.2.20 Other Proceedings.
 - 2.2.20.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
 - 2.2.20.1.1 Been denied approval to sell or broker electricity to Customers;
 - 2.2.20.1.2 Been found to be in violation of a state's laws, rules, or regulations;
 - 2.2.20.1.3 Had its authority revoked, modified, or suspended; or
 - 2.2.20.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of retail energy services, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv) any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
 - 2.2.20.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its retail energy services in which the Electric Supplier agreed to pay a civil penalty, provide customer restitution, or make changes to its marketing and sales;
 - 2.2.20.2 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.20.1;
 - 2.2.20.3 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in retail and federal electricity, natural gas, or telecommunications markets;
 - 2.2.21 Pending Proceedings. A list of proceedings in which a revocation or suspension of authority to sell or broker electricity is pending or has been adjudicated, and the name, case number, venue, final orders, and settlement agreements for each case identified. Applicant shall provide copies of each order and settlement agreement. If no such actions have been taken against Applicant, explicitly state that fact; and
 - 2.2.22 FERC Approvals. A copy of any FERC approval as a Marketer, or the date and docket number of the Applicant's application to FERC for such approval. If the date and docket number are provided, a copy of the Applicant's FERC approval must be provided within 30 calendar days of issuance.
- 2.3 Financial Security.
- 2.3.1 Applicability. The financial security requirements of this Section apply only to Applicants that seek an Electric Supplier Certificate to provide Electric Supply Service to

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Residential and Small Commercial Customers. The requirements of this paragraph do not apply to Standard Offer Service.

- 2.3.2 Requirements. An Applicant must submit financial security that complies with this subsection prior to the issuance of an Electric Supplier Certificate. The Applicant must maintain financial security that complies with this subsection as long as its Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers and must submit replacement security at least seven days prior to the expiration or cancellation of a previously submitted financial security instrument. Upon termination of an Electric Supplier Certificate, the financial security instrument shall remain in force until the Commission determines that all obligations of the Electric Supplier have been satisfied.
- 2.3.3 Amount.
- 2.3.3.1 The initial security amount shall be \$100,000. The Commission may grant modifications of this amount commensurate with the nature and scope of the business the Applicant anticipates conducting in the State upon submission of information in support of the modification. A request for modification of the initial security amount may be made in conjunction with the filing of the application.
- 2.3.3.2 After the initial year, the required security amount shall equal \$100,000 or five percent (5%) of the Electric Supplier's annual revenues from sales of Electric Supply Service to Residential and Small Commercial Customers in Delaware over the prior calendar year, whichever is greater.
- 2.3.3.3 The Commission may determine that an Applicant requesting to be a Broker is required to post security to ensure that the Applicant has sufficient financial ability to operate as a Broker in the State. The Commission shall determine the bonding requirement on a case-by-case basis. A bond, if required, shall be in the amount of \$10,000.
- 2.3.4 Use of Security Amounts. Upon a finding that an Electric Supplier has violated a statute or regulation regarding the provision of service to Residential or Small Commercial Customers, the Commission may direct that amounts from the financial security be distributed consistent with State law.
- 2.3.5 Types of Security. An Applicant may satisfy the financial security requirements of this subsection through an irrevocable letter of credit, cash, cash equivalents, financial instruments that are easily liquidated and readily available to meet their costs of providing Electric Supply Service to Customers, or any combination thereof. Financial security documents must be in a form and contain language that is acceptable to the Commission.
- 2.3.5.1 Letter of Credit. An irrevocable letter of credit must unconditionally obligate the issuing financial institution to honor drafts drawn on such letters for the purpose of paying the obligations of the Electric Supplier pursuant to Delaware law and regulations and must specify that the issuing financial institution will notify the Commission 30 days in advance of the expiration or cancellation of the letter of credit. The letter of credit must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the letter of credit; and that any draft presented by the Commission will be honored by the issuer upon presentation. The letter of credit must be issued by a financial institution with a minimum corporate credit rating of "BBB+" by Standard & Poor's or Fitch or "Baa1" by Moody's Investors Service, or an equivalent short term credit rating by one of these agencies. If, at any time, the corporate debt rating of an issuing financial institution drops below the above specified levels, the Electric Supplier shall notify the Commission in writing and provide replacement security that satisfies the requirements of these Regulations.

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- 2.3.5.2 Cash and Cash Equivalent. Cash or cash equivalents, including cashier's checks, sight drafts, performance bond proceeds, or traveler's checks, and applicable interest shall be returned to the Electric Supplier after all obligations are satisfied.
- 2.3.5.3 Certificate of Deposit. Certificate of deposit or other liquid deposit with a reputable bank or other financial institution.
- 2.3.5.4 Preferred stock proceeds. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the Applicant by the Commission.
- 2.3.5.5 Line of Credit. Line of credit issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission.
- 2.3.5.6 Loan. Loan, issued by a qualified subsidiary, affiliate or 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.
- 2.3.5.7 Assets. Identifiable physical assets set forth in a balance sheet or similar statement.
- 2.3.5.8 Other Liability. Liability of Electric Suppliers for violation of law, Commission orders or Commission regulations is not limited by the security requirements of this Section.
- 2.3.5.9 Staff may request other indicia of financial capability.
- 2.4 Other Information. The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- 2.5 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.6 Notice. Each Applicant, except Brokers, shall publish notice of the filing of its application in two (2) newspapers of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application.
- 2.7 Application Fee. An Applicant for an Electric Supplier Certificate shall submit a non-refundable application fee of \$750 with the application.
- 2.8 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.9 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 Del.C. §1001 *et seq.*
- 2.10 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny an Electric Supplier Certificate to an Applicant where it finds that doing so is in the public interest.
- 2.11 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to

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provide such notice within ten (10) Business Days after the change may be grounds for rejection of the application.

- 2.12 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of an application or a recommendation that an application be denied.
- 2.13 Term of ESC. Electric Supplier Certificates are valid until revoked by the Commission or relinquished by the Electric Supplier after the requisite notice to the Commission and to its Customers.
- 2.14 Transfer or Relinquishing of ESC.
 - 2.14.1 The transfer of an ESC is prohibited without notice and approval of the Commission.
 - 2.14.2 No Electric Supplier shall cease doing business within the State unless it has provided at least sixty (60) days Written Notice to the Commission, the DPA, the affected EDC(s), and its Customers.
 - 2.14.3 The Commission will consider an ESC to be relinquished if the Electric Supplier does not provide the required yearly compliance filing in subsection 12.3 of these Regulations within ninety (90) days of the required date. An Electric Supplier shall be allowed 30 days' notice to cure a late annual filing.

3.0 Pre-enrollment Information and Customer Lists.

- 3.1 Notice and Consent for Pre-Enrollment Customer Information.
 - 3.1.1 Before requesting pre-contracting Customer information described in subsection 3.2 from the EDC, an Electric Supplier shall:
 - 3.1.1.1 Notify the Customer of its intention to request Customer information from the EDC; and
 - 3.1.1.2 Obtain the Customer's consent for release of the Customer's information from the EDC.
 - 3.1.2 Notice. The Electric Supplier notice required under subsection 3.1.1.1 of this regulation shall specify the Customer information listed in subsection 3.2 to be requested from the EDC.
 - 3.1.3 Customer Consent Records.
 - 3.1.3.1 A Customer's consent under subsection 3.1.1.2 is valid for a time mutually agreed to by the Customer and the Electric Supplier.
 - 3.1.3.2 An Electric Supplier shall maintain a record of a Customer's consent under subsection 3.1.1.2 of this regulation for a period of not less than 180 days from the expiration of the Customer's consent.
 - 3.1.3.3 An Electric Supplier's Customer consent records are subject to audit by the Commission.
 - 3.1.4 A Customer's consent under this regulation is not a Contract or enrollment for Electric Supplier services.
- 3.2 Pre-Enrollment Information. On request of an Electric Supplier, the EDC shall provide the following applicable Customer information:
 - 3.2.1 Account name;
 - 3.2.2 Billing address;
 - 3.2.3 Service address;
 - 3.2.4 EDC account number and any other number designated by the EDC as necessary to process an enrollment;

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- 3.2.5 Bill cycle;
 - 3.2.6 Voltage level;
 - 3.2.7 EDC rate class or code;
 - 3.2.8 Load profile;
 - 3.2.9 Meter number;
 - 3.2.10 Meter type;
 - 3.2.11 Multiple meter indicator;
 - 3.2.12 Peak load contribution;
 - 3.2.13 Metered demand;
 - 3.2.14 Billed demand;
 - 3.2.15 Monthly historical demand for the previous 12 months;
 - 3.2.16 Monthly historical consumption for the previous 12 months;
 - 3.2.17 Monthly time-of-use data for the previous 12 months;
 - 3.2.18 Interval meter data for the previous 12 months; and
 - 3.2.19 Dynamic pricing election, if any.
- 3.3 Customer Lists. An EDC shall make a customer list available to Electric Suppliers on a secure password-protected web portal. An EDC shall update the names and information included on the customer list semi-annually. A Customer may elect to opt out of the list.
- 3.3.1 An EDC shall refresh its customer list every three years. Prior to refreshing the customer list, an EDC shall notify customers that the customer list is being refreshed. A Customer's election to opt out shall be valid for a period of three years.
 - 3.3.1.1 The notice from the EDC pursuant to subsection 3.3.1 shall communicate to Customers the following information:
 - 3.3.1.1.1 What the customer list is;
 - 3.3.1.1.2 What information is to be included on the customer list;
 - 3.3.1.1.3 What the more detailed information represents;
 - 3.3.1.1.4 How this information is to be used by Electric Suppliers;
 - 3.3.1.1.5 How the information is to be safeguarded by Electric Suppliers;
 - 3.3.1.1.6 How widely the information will be disseminated;
 - 3.3.1.1.7 The potential benefits to the Customer of having its information included on the customer list; and
 - 3.3.1.1.8 How the Customer may opt out of the customer list.
 - 3.3.1.2 An EDC's annual communication to Customers shall be served electronically to those Customers who have opted to receive their bills via electronic means.
 - 3.3.2 An EDC's customer list shall contain the Customers':
 - 3.3.2.1 Name;
 - 3.3.2.2 Service Address(es);
 - 3.3.2.3 Billing Address(es);
 - 3.3.2.4 Billing Country Code (if available);
 - 3.3.2.5 Tariff Rate Class and Schedule;
 - 3.3.2.6 Rate Subclass/Rate Subcode (if available);
 - 3.3.2.7 Meter Read Cycle;

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- 3.3.2.8 Load Profile Group per Tariff;
- 3.3.2.9 Whether the customer is an SOS customer; and
- 3.3.2.10 Net Metering (Y or N).

3.3.3 An Electric Supplier shall put into place safeguards to prevent the disclosure of information contained in the customer list provided by the EDC. As such, the information contained in the customer list is to be used by the Electric Supplier only for the purpose of marketing and providing electricity supply services directly to Customers. An Electric Supplier shall keep the customer list in a secure and protected location. An Electric Supplier may provide access to the information in the customer list to those authorized by the Electric Supplier who require such information to market and provide electricity supply services to Customers. Otherwise, an Electric Supplier shall not disclose information contained in the customer list except upon authorization of the Customer.

3.3.4 An Electric Supplier may disclose a Customer's billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.]

3.4 The provisions in this Section 3.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for a period of time deemed reasonable by the Commission.

4.0 Enrollments and Drops. Accelerated Switching

4.1 An Electric Supplier may enroll or drop a Customer by sending the appropriate electronic enrollment or drop transaction to the EDC upon the expiration of the rescission period.

4.2 An EDC shall send a Written Notice to a Customer enrolling with an Electric Supplier or dropping an Electric Supplier. The EDC shall send the Written Notice by the end of the next Business Day following receipt of the electronic transaction. The Written Notice shall include the date the service with the Electric Supplier or SOSS shall begin.

4.3 An EDC shall process an electronic enrollment or drop from an Electric Supplier to be effective within three (3) Business Days after receipt of the electronic transaction.

4.4 The EDC shall drop a Customer from its current Electric Supplier when another Electric Supplier enrolls the Customer. An EDC shall assign a Customer who has been dropped by an Electric Supplier and not enrolled by another Electric Supplier to SOS.

4.5 An EDC shall not be required to process more than two enrollments and two drops per Customer per bill cycle.

4.6 An Electric Supplier may not require that a Customer provide it with advance notice, written or otherwise, before the Customer switches to another supplier or to SOS.

4.7 Customer-Initiated Drops

4.7.1 A Customer that wants to cancel a Contract shall first attempt to cancel the Contract according to the terms of the Contract.

4.7.2 If a Customer attempts to cancel a Contract by contacting the EDC first, the EDC shall direct the Customer to contact the Electric Supplier through the means detailed in the Contract.

4.7.3 If a Customer's cancellation request has not been received by the EDC from the Customer's Electric Supplier, and the Customer confirms that more than three (3) Business Days have passed since the Customer cancelled the Contract with the Electric Supplier, the EDC shall process a cancellation after notifying the Customer that there may be a cancellation penalty to cancel service with the current Electric Supplier.

4.7.4 A Customer's request to cancel service with the current Electric Supplier under this subsection 4.7 does not limit cancellation provisions contained in the Customer's Contract with the Electric Supplier.

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4.7.5 No Electric Supplier shall include provisions in its Contract that would limit or waive this subsection 4.7.

4.8 The provisions in this Section 4.0 shall be implemented on or before September 30, 2017. An EDC may request a waiver to extend that date for an amount of time deemed reasonable by the Commission.

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

5.0 Billing and Metering.

5.1 Billing Options.

5.1.1 Each Customer in Delmarva's service territory has the right to choose to receive separate bills from Delmarva 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 Regulations. If the Customer does not elect a billing option, Delmarva will be responsible for billing the Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Electric Supplier.

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

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

5.2.1 The name, address, and toll-free telephone number of the Electric Supplier;

5.2.2 If different from the Electric Supplier, the name, address and toll-free telephone number of the EDC;

5.2.3 The due date for payment;

5.2.4 If applicable, an itemized list of each service or product billed for the current billing period including charges for the public purpose programs and a competitive transition charge (if applicable) or other agreed to charges;

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

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

5.2.7 The total charge for each service or product;

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

5.2.9 The amount still owed by the Customer from the previous billing period;

5.2.10 Appropriate taxes and fees;

5.2.11 Definitions of material terms used in the bill; and

5.2.12 If applicable, late fees as defined in the Contract. Late fees must be clearly identified as such; and

5.2.13 The Commission shall have the authority to determine whether the Price to Compare shall appear on Customers' bills and, if so, which Customers and the manner in which the Price to Compare is calculated. Until such a determination is rendered in a

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subsequent proceeding, the Price to Compare shall continue to appear on bills as it does at the time of the effective date of these Regulations.

5.3 Metering.

5.3.1 Delmarva will continue to own all meters and perform all meter reading functions. The Commission can permit others to provide some or all of the metering functions on a competitive basis.

5.3.2 The Cooperative will continue to own and operate all meters and perform meter reading functions.

6.0 Electric Supplier Contracts and Contract Summaries.

6.1 An Electric Supplier shall provide a Contract and Contract Summary in the same language used by the Electric Supplier or its Agent to market, sell, or describe the Contract terms to prospective Residential and Small Commercial Customers.

6.2 Contract Requirements.

6.2.1 Only a licensed Electric Supplier may execute a Contract for Electricity Supply Service with a Customer.

6.2.2 A Contract for Residential and Small Commercial Customers shall be written in clear and plain language and contain all material terms and conditions, including:

6.2.2.1 A list and description of the Contract services;

6.2.2.2 The Contract duration, expressed in months or years, or the disclosure that the Contract is month-to-month;

6.2.2.3 A description of the Price of each service, including:

6.2.2.3.1 The Price and the duration of the Introductory Price, if applicable. If the Price to be charged upon the expiration of the Introductory Price is a Fixed Price, the Fixed Price that will be charged upon the expiration of the Introductory Price;

6.2.2.3.2 For Variable Price Contracts:

6.2.2.3.2.1 The Price to be charged, per kilowatt-hour, for the first billing cycle of the Contract;

6.2.2.3.2.2 An explanation of the basis(es) on which the Price will vary and any limits on Price variability;

6.2.2.3.2.2.1 If there is a limit on price variability, 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 Electric Supplier shall clearly explain applicable limits;

6.2.2.3.2.2.2 If there is not a limit on Price variability, the Electric Supplier shall clearly and conspicuously state that there is not a limit on how much the Price may change from one billing cycle to the next;

6.2.2.3.2.3 A telephone number and Internet address at which a Residential or Small Commercial Customer may obtain the previous 24 months' average monthly billed prices for that customer's rate class and EDC service territory. If an Electric Supplier has not been providing service in a rate class and EDC service territory for 24 months, the Electric Supplier shall provide the average monthly billed prices for the months available to date;

6.2.2.3.2.4 In plain language, a statement that historical pricing is not indicative of present or future pricing; and

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- 6.2.2.3.2.5 A statement describing how the Residential or Small Commercial Customer may access future pricing information in accordance with Section 7.0 of these Regulations;
- 6.2.2.4 A description of any other fee(s) or charge(s), including but not limited to early termination penalties, late fees, fees to access the Electric Supplier's services, minimum monthly charges, enrollment fees, and interest charges; a description of the specific condition under which such fees or charges can be imposed; and the amount of such fee(s) or charge(s);
- 6.2.2.5 A description of any other non-commodity products or services provided to the Residential or Small Commercial Customer as part of the Contract;
- 6.2.2.6 If the Electric Supplier claims that Residential or Small Commercial Customers will save money by entering into the Contract as opposed to staying with SOS, the Electric Supplier shall include in the Contract a description of any inducement, if applicable, on which it relies to make this claim;
- 6.2.2.7 A statement that:
 - 6.2.2.7.1 The Residential or Small Commercial Customer may Rescind the Contract within three (3) Business Days from the start of the Rescission Period; and
 - 6.2.2.7.2 The Rescission Period begins on one of the following dates, as applicable:
 - 6.2.2.7.2.1 When the Residential or Small Commercial Customer signs the Contract;
 - 6.2.2.7.2.2 When the Residential or Small Commercial Customer transmits the electronic acceptance of the Contract electronically; or
 - 6.2.2.7.2.3 When the Residential or Small Commercial Customer receives the Contract and Contract Summary, if received by mail. There shall be a rebuttable presumption that a Contract and Contract Summary correctly addressed to a Residential or Small Commercial Customer with sufficient first class postage attached shall be received three (3) days after it has been properly deposited in the United States mail;
- 6.2.2.8 A statement of the Electric Supplier's termination rights, which shall explain the specific conditions under which the Electric Supplier may terminate service. At a minimum, the Electric Supplier shall provide the Residential or Small Commercial Customer with at least 30 days' Written Notice of termination of the Contract and procedures to maintain ongoing service;
- 6.2.2.9 The Electric Supplier's local or toll-free telephone number to obtain information and handle complaints; mailing address and website address; the Commission's address, website address, Delaware toll-free telephone number; and the DPA's address, website address, and telephone ~~number.~~ number;
- 6.2.2.10 A statement informing the Residential or Small Commercial Customer that, because of relocation outside of their current EDC's service territory, they he/she may terminate his/her Contract with no termination fee;
- 6.2.2.11 A statement that the Electric Supplier may terminate the Contract prior to the stated term of the Contract, including:
 - 6.2.2.11.1 The circumstances under which early cancellation by the Electric Supplier may occur;
 - 6.2.2.11.2 The manner in which the Electric Supplier shall notify the Residential or Small Commercial Customer of the early cancellation of the Contract;

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- 6.2.2.11.3 The duration of the notice period before early cancellation by the Electric Supplier; and
 - 6.2.2.11.4 The remedies available to the Residential or Small Commercial Customer if early cancellation occurs;
 - 6.2.2.12 A statement that the Residential or Small Commercial Customer may terminate the Contract prior to the stated term of the Contract, including:
 - 6.2.2.12.1 The manner in which the Residential or Small Commercial Customer shall notify the Electric Supplier of the early cancellation of the Contract;
 - 6.2.2.12.2 The duration of the notice period before early cancellation;
 - 6.2.2.12.3 The remedies available to the Electric Supplier if early cancellation occurs; and
 - 6.2.2.12.4 The amount of any early cancellation fee, except that an Electric Supplier shall not charge an early cancellation for the commodity portion of a Variable Price Contract;
 - 6.2.2.13 A statement describing Contract renewal procedures, if any, including the timing of the notices that the Residential or Small Commercial Customer will receive prior to the renewal date;
 - 6.2.2.14 A dispute procedure, including that the Electric Supplier must adhere to the provision in 26 **DE Admin. Code** 3002-3.2.2 regarding good faith disputes; and
 - 6.2.2.15 All disclosures required by applicable laws and regulations that govern marketing, consumer protection, and door-to-door sales, including the Delaware Home Solicitation Sales Act, 6 **Del.C.** §4401 *et seq.*
- 6.3 Contract Summary Requirements.
- 6.3.1 At the time of completion of the contracting process, an Electric Supplier shall provide Residential and Small Commercial Customers with a copy of the executed Contract and completed Contract Summary.
 - 6.3.2 If the Contract is completed through a telephone solicitation, the Electric Supplier shall send the Contract Summary with the Contract to the Residential or Small Commercial Customer.
 - 6.3.3 If the Contract is completed through the internet, the Contract Summary shall be:
 - 6.3.3.1 Made available for download by the Residential or Small Commercial Customer at the time of contracting; and
 - 6.3.3.2 Transmitted to the Residential or Small Commercial Customer by the Electric Supplier by mail or by email if the customer consents to receipt of email disclosures.
 - 6.3.4 If the Contract is completed in person, the Contract and the Contract Summary shall be reviewed with and provided to the Residential or Small Commercial Customer by the Electric Supplier in hard copy or electronically, and the executed Contract and Contract Summary provided to the Residential or Small Commercial Customer at the time of contracting in hard copy or electronically if the customer consents to electronic disclosures.
 - 6.3.5 An Electric Supplier offering a Variable Price Contract to Residential or Small Commercial Customers shall include in its Contract Summary:
 - 6.3.5.1 The disclosures required by subsection 6.2.2.3.2.2;

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6.3.5.2 A toll free telephone number or website link where the Residential or Small Commercial Customer may access historical pricing information as described in subsection 6.2.2.3.2.3, along with the disclaimer in subsection 6.2.2.3.2.4; and

6.3.5.3 The disclosures required by subsection 7.1.3.

7.0 Notice of Change in Variable Price.

7.1 When a Residential or Small Commercial Customer's Variable Price changes, an Electric Supplier shall make available to the Residential or Small Commercial Customers the Variable Price for the next billing period:

7.1.1 The Variable Price shall be made available at least 12 days prior to close of the customer's billing period;

7.1.2 The Variable Price shall be made available in a clear, easy to access format prescribed by the Electric Supplier;

7.1.3 The Electric Supplier shall promptly provide the Residential or Small Commercial Customer written directions on how to access the Variable Price:

7.1.3.1 At the time of contracting;

7.1.3.2 In the Contract Summary;

7.1.3.3 When sending any notice as required in these Regulations;

7.1.3.4 Upon request; or

7.1.3.5 If the Electric Supplier changes the directions for accessing the Variable Price.

7.2 For the purposes of the disclosure mandated in subsection 7.1, an Electric Supplier may provide an estimated Variable Price for the Residential or Small Commercial Customer's next billing period, provided the estimated Variable Price is made available at least twelve (12) days prior to the close of the customer's billing period. If the Electric Supplier provides an estimated Variable Price, the Electric Supplier shall not use a rate for billing purposes that is higher than the estimate.

8.0 Contract Renewal for Residential and Small Commercial Customers.

8.1 An Electric Supplier shall provide Residential and Small Commercial Customers with Written Notice of the pending renewal of a Contract forty-five (45) days before the end of the Contract Term is scheduled to occur.

8.2 The Written Notice required under subsection 8.1 shall:

8.2.1 Inform the Residential or Small Commercial Customer that the failure to respond to the Written Notice will result in the automatic renewal of the Contract;

8.2.2 Inform the Residential or Small Commercial Customer of any changes in the material terms and conditions of the expiring Contract upon renewal, and include a copy of the Contract and Contract Summary;

8.2.3 Inform the Residential or Small Commercial Customer how to terminate the Contract without penalty;

8.2.4 Inform the Residential or Small Commercial Customer that terminating the Contract without selecting another Electric Supplier will return the Residential or Small Commercial Customer to SOS; and

8.2.5 For a Fixed Price Contract that renews to a Variable Price Contract, the Electric Supplier's Written Notice to Residential or Small Commercial Customers must:

8.2.5.1 Inform the Residential or Small Commercial Customer how to access the Variable Price for the next billing cycle in accordance with Section 7.0;

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8.2.5.2 Explain the basis(es) on which the Variable Price will vary and any limits on Price variability;

8.2.5.2.1 If there is a limit on Price variability, such as a specific Price cap, a maximum percentage increase in Variable Price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the term of the Contract, the Electric Supplier shall clearly explain applicable limits.

8.2.5.2.2 If there is not a limit on Price variability, the Electric Supplier shall clearly and conspicuously state that there is not a limit on how much the Variable Price may change from one billing cycle to the next.

8.2.6 If the Supplier proposes to renew a Fixed Price Contract with a Variable Price Contract and the change to the Variable Price will be equal to or exceed 30 percent of the Residential or Small Commercial Customer's Fixed Price, the Electric Supplier shall provide Written Notice of the new Variable Price to the customer at least 12 days prior to the close of the customer's billing period.

8.2.7 An Electric Supplier shall maintain records that the Written Notices provided under this Section 8.0 were provided to its Residential or Small Commercial Customers.

9.0 Notice of Change in Fixed Price or Material Terms; Expiration; and Cancellation.

9.1 Changes in Fixed Price or Material Terms. An Electric Supplier shall provide Written Notice to its Residential or Small Commercial Customers of any change in the Fixed Price or other material terms of service. The Written Notice must precede the effective date of the proposed changes by at least thirty (30) days and no more than sixty (60) days. Customers shall have at least thirty (30) days to respond to the Electric Supplier's Written Notice before the changes become effective.

9.2 Expiration or Cancellation of Contracts That Will Not Be Renewed. An Electric Supplier shall provide Written Notice to its Residential or Small Commercial Customer(s) at least thirty (30) days before expiration or cancellation of a Contract that will not be renewed. The Written Notice shall include:

9.2.1 Final bill payment instructions;

9.2.2 A statement informing the Residential or Small Commercial Customer that, unless the customer selects a new service provider, cancellation of the Contract shall return the customer to SOS; and

9.2.3 The toll free telephone number and the website address of the Commission.

10.0 Customer Protection.

10.1 General Customer Protections. No Electric Supplier or Broker shall engage in fraudulent or improper activities, nor shall it disseminate any Customer information obtained pursuant to subsection 3.1. Electric Suppliers or Brokers found to have violated these provisions may be subject to certificate revocation and/or penalties as described in subsection 2.1.3 and 26 Del.C. §1019.

10.2 Electric Suppliers and Agents shall not:

10.2.1 Engage in false, misleading, or deceptive conduct or make false, misleading or deceptive statements or representations in any dealings with Customers;

10.2.2 Say or suggest to a prospective Customer that the prospective Customer is required to choose an Electric Supplier;

10.2.3 Say or suggest to a prospective Customer that the prospective Customer's service will suffer degradation or risk if the prospective Customer does not choose an Electric Supplier; or

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- 10.2.4 Suggest a relationship that does not exist with the Customer's SOSS, EDC, government agency or another Electric Supplier.
- 10.3 Electric Suppliers and Brokers are responsible for any false, fraudulent, deceptive or unlawful marketing or billing acts performed by their Agents in the conduct of marketing or sales activities on behalf of the Electric Supplier or Broker.
- 10.4 Agent Training.
 - 10.4.1 An Electric Supplier shall ensure the training of its Agents on the following subjects:
 - 10.4.1.1 State and Federal laws and regulations that govern marketing, Telemarketing, consumer protection and door-to-door sales, including consumer protection regulations required by Delaware law and regulations;
 - 10.4.1.2 Responsible and ethical sales practices as described in this regulation;
 - 10.4.1.3 The Electric Supplier's products and services;
 - 10.4.1.4 The Electric Supplier's Prices, Price structures and payment options;
 - 10.4.1.5 The Customer's right to rescind and cancel Contracts;
 - 10.4.1.6 The applicability of an early termination fee for Contract cancellation when the Electric Supplier has one;
 - 10.4.1.7 The necessity of correctly and fully explaining the Contract, Contract Summary, relying on approved sales script and knowledge of the contents of the script if one is used;
 - 10.4.1.8 The proper completion of transaction documents;
 - 10.4.1.9 The Electric Supplier's Contract and Contract Summary;
 - 10.4.1.10 Information about how Customers may contact the Electric Supplier to obtain information about billing, disputes and complaints; and
 - 10.4.1.11 The confidentiality and protection of Customer information.
 - 10.4.2 An Electric Supplier shall document the training of an Agent and maintain a record of the training for 3 years from the date the training was completed.
 - 10.4.3 An Electric Supplier shall make training materials and training records available to the Commission and/or the DPA upon request.
 - 10.4.4 When an Electric Supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the Electric Supplier's behalf, the Electric Supplier shall confirm that the contractor or vendor has provided Electric Supplier-approved training to Agents in accordance with this section.
 - 10.4.5 The Electric Supplier shall routinely monitor Telemarketing calls and Door-to-Door sales calls to:
 - 10.4.5.1 Evaluate the Electric Supplier's training program; and
 - 10.4.5.2 Ensure that Agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to Customers.
 - 10.4.5.3 The Supplier shall maintain records of such monitoring activities, results, and actions taken in response to the results of the monitoring activities and make such records available to the Commission and/or the DPA upon request.
- 10.5 Slamming. An Electric Supplier shall not engage in Slamming. If a Customer believes that their Electric Supply Service has been switched without authorization, the Customer may request that the Electric Supplier provide evidence of the authorization and verification. The Electric Supplier must provide this to the Customer within five (5) Business Days if feasible, but

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no longer than fifteen (15) Business Days of the request. If the Customer is not satisfied with this response, the Customer may file a complaint with the Commission pursuant to 26 **DE Admin. Code** 1001 *et seq.*

- 10.6 Cramming. An Electric Supplier shall not engage in Cramming. If the Commission determines that an Electric Supplier may have engaged in Cramming, the Electric Supplier may be subject to investigation and, after a hearing, the Commission may impose penalties or require the Electric Supplier to void and/or refund all of the charges in question.
- 10.7 Complaint Procedures to be followed by the Customer (or a Broker acting on behalf of a Customer).
 - 10.7.1 A Customer (or a Broker acting on behalf of a Customer) should first notify the Electric Supplier of its complaint.
 - 10.7.2 If the Customer (or a Broker acting on behalf of a Customer) and Electric Supplier are not able to come to a resolution, the Customer or Broker may contact the DPA with its complaint. If the DPA is unable to effect a satisfactory resolution, the Customer or Broker may file a formal complaint with the Commission as described in 26 **DE Admin. Code** 1001-2.2.1 "Rules of Practice and Procedure of the Delaware Public Service Commission."
 - 10.7.3 A Broker acting on behalf of a Customer must provide written proof to the Commission and the DPA, 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.
- 10.8 Complaint Procedures to be Followed by the Electric Supplier.
 - 10.8.1 The Electric Supplier shall use good faith efforts to respond to and resolve complaints.
 - 10.8.2 An Electric Supplier shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices. The Electric Supplier shall cooperate with the Commission and other government agencies that are investigating complaints about marketing or sales practices prohibited by State and Federal laws and with local law enforcement officials that are investigating complaints about violations of local municipal law.
 - 10.8.3 An Electric Supplier shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints. The process shall document as a record the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint. An Electric Supplier shall retain the record for three years in a system capable of retrieving that record by customer name and account number or by other effective means to obtain access to the information.
 - 10.8.4 If the Customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will inform the Customer that it may contact the DPA.
 - 10.8.5 In any complaint proceeding before the DPA or the Commission, the burden of proof shall be on the Marketer or Broker to establish, if applicable, that its Agents were adequately trained and that the Customer was enrolled in accordance with these Regulations.
- 10.9 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.
- 10.10 Assignment of Contracts.
 - 10.10.1 At least thirty (30) days prior to the effective date of any assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another, the Electric Suppliers shall jointly:

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- 10.10.1.1 Provide Written Notice of the assignment or transfer to the Customers of the Electric Supplier, with a copy to the Commission, the EDC, and the DPA; and
- 10.10.1.2 Coordinate with the EDC to effectuate the transfers of service.
- 10.10.1.3 Notice to Customer. The Electric Suppliers shall jointly send a letter to the Customers informing them of the assignment or transfer. The letter shall include:
 - 10.10.1.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;
 - 10.10.1.3.2 Customer service contact information for the assignee; and
 - 10.10.1.3.3 A statement that the terms and conditions of the Customer's Contract at the time of assignment shall remain the same for the remainder of the Contract term.
- 10.10.1.4 The Electric Suppliers shall file a notice with the Commission, the DPA, and the EDC, of the assignment or transfer of the Customer Contracts and include a copy of the letter sent to Customers.
- 10.10.2 Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. Records shall be maintained for a period of three (3) years or until the Contracts are expired, whichever is longer.
- 10.10.3 An assignment or transfer of an Electric Supplier Contract from one Electric Supplier to another is not an enrollment or drop.
- 10.11 Record Retention. All Electric Suppliers shall retain a copy of the Customer's Contract, Contract Summary, billing and payment history, and verification of enrollment for a period of three years after enrollment or termination of the Contract, whichever is later.

11.0 Enrollment, Marketing, and Advertising.

- 11.1 An Electric Supplier shall comply with all federal, State and local laws applicable to the advertising or marketing of Electric Supply Service, and it shall be a violation of these Regulations to fail to comply with such laws.
- 11.2 No Electric Supplier shall make misrepresentations or use deceptive practices relating to its own services or the services provided by the Customer's EDC in its solicitations, advertising or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and person-to person contacts.
- 11.3 An Electric Supplier's solicitation, advertising and marketing materials must include the name, toll-free telephone number, and address of the Electric Supplier.
- 11.4 If an Electric Supplier makes changes to its Contract for Electric Supply Service to Residential or Small Commercial Customers that substantively modifies the terms and conditions of service, including changes to the Electric Supplier's name and changes in product offerings, then the Electric Supplier shall provide copies of the modified Contract and Contract Summary to Staff and DPA at least three (3) Business Days before offering the revised terms and conditions in Delaware. For purposes of this requirement, a change to the Contract Price shall not be considered a change in a term or condition of service.
- 11.5 Marketing/Sales Activities.
 - 11.5.1 Marketing materials that offer terms of service for acceptance by Residential and Small Commercial Customers shall include Prices, as follows:
 - 11.5.1.1 If using a Fixed Price, the Electric Supplier shall factor in the Fixed Price and any other monthly fees and charges charged to the Residential or

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Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customers using 500, 1,000 or 2,000 kWh of electricity;

- 11.5.1.2 If using a Variable Price, the Electric Supplier shall factor in the Variable Price and any other monthly fees and charges charged to the Residential or Small Commercial Customer, and show in a table the Price per kWh for an average Residential or Small Commercial Customer using 500, 1,000 and 2,000 kWh of electricity; and
- 11.5.1.3 The Electric Supplier shall note the effective date of the Prices shown in the table provided under subsections 11.5.1.1 and 11.5.1.2.
- 11.5.2 Advertising materials targeted for Residential or Small Commercial Customers shall be made available upon request of the Commission or DPA in the event of a formal or informal complaint or investigation.
- 11.6 Enrollment Authorization. An Electric Supplier must obtain authorization from the Customer before switching a Customer's provider of Electric Supply Service.
- 11.6.1 There are three (3) principal ways in which an Electric Supplier may obtain a Residential or Small Commercial Customer's authorization to enter into a Contract for Electric Supply Service:
 - 11.6.1.1 Recorded verbal consent via the telephone;
 - 11.6.1.2 Electronic contract; or
 - 11.6.1.3 Written contract.
- 11.6.2 If an Electric Supplier offers a Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the Contract signature.
- 11.7 Telephone Solicitations and Enrollments.
 - 11.7.1 When a Residential or Small Commercial Customer enrolls with an Electric Supplier during a Telemarketing call, the Electric Supplier shall record the entire telephone call between the Residential or Small Commercial Customer and the Electric Supplier or its Agent, and also record a TPV.
 - 11.7.2 The Electric Supplier shall maintain a copy of the recorded sales call and TPV, if applicable, for the duration of the Residential or Small Commercial Customer's Contract.
 - 11.7.3 During the sales portion of a Telemarketing call, the Electric Supplier or its Agent shall:
 - 11.7.3.1 Begin the conversation by stating the following:
 - 11.7.3.1.1 His or her name and, upon request, his or her Agent identification number;
 - 11.7.3.1.2 The name of the Electric Supplier that the Agent is representing;
 - 11.7.3.1.3 The purpose of the telephone call is to sell Electric Supply Service; and
 - 11.7.3.1.4 That he or she is not working for and is independent of the Residential or Small Commercial Customer's Electric Distribution Company or another Electric Supplier.
 - 11.7.3.2 Disclose all material Contract terms and conditions; including:
 - 11.7.3.2.1 If a Variable Price, the information in subsection 6.2.2.3.2.2 and the first month's Variable Price;
 - 11.7.3.2.2 The duration of any Introductory Price and a description of the Price after the Introductory Price ends;
 - 11.7.3.2.3 How the Residential or Small Commercial Customer may access future Price information;

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- 11.7.3.2.4 The Residential or Small Commercial Customer's right to rescind the Contract within three (3) Business Days from receipt of the Contract; and
- 11.7.3.2.5 The amount of any early cancellation fees and/or any other charges;
- 11.7.3.3 Explain that the Residential or Small Commercial Customer must be the account holder or authorized to make the switch;
- 11.7.3.4 Ensure that the Residential or Small Commercial Customer understands that he or she is voluntarily choosing to switch Electric Suppliers;
- 11.7.3.5 State that the Contract will be provided to the Residential or Small Commercial Customer by U.S. mail, or by email with the Residential or Small Commercial Customer's consent, within three (3) Business Days of the contracting conversation, and that the Residential or Small Customer will not be switched from the current Electric Supplier or SOSS until the Rescission Period has expired;
- 11.7.3.6 Explain the Electric Supplier's TPV process, if applicable; and
- 11.7.3.7 Provide the toll-free number of the Electric Supplier.
- 11.7.4 No Electric Supplier shall request a potential Residential or Small Commercial Customer's Electric Supplier or EDC account number until the Electric Supplier has provided to the potential Residential or Small Commercial Customer the information required in subsections 11.7.3.1.1. through 11.7.3.1.4.
- 11.7.5 The Electric Supplier shall immediately halt any Telemarketing call upon the request of the prospective Residential or Small Commercial Customer.
- 11.7.6 Pursuant to 26 **Del.C.** §1012(b) and as further defined in Section 1.0, no Electric Supplier shall solicit Residential or Small Commercial Customers by means of Telemarketing where such Telemarketing is prohibited by applicable laws and regulations. An Electric Supplier soliciting customers by telephone shall comply with all applicable Delaware and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. §§6151 *et seq.*) and the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C. §§6101 *et seq.*).
- 11.8 Door-to-Door Solicitations and Enrollments.
 - 11.8.1 For Door-to-Door Contracts, the Electric Supplier must obtain:
 - 11.8.1.1 Written or Electronic authorization; and
 - 11.8.1.2 A completed TPV or other process established by the Electric Supplier to verify the transaction. A process other than a TPV shall:
 - 11.8.1.2.1 Be separate from the sales transaction process and initiated only after the sales transaction has been finalized; and
 - 11.8.1.2.2 Be initiated only after the Agent has physically exited the Residential or Small Commercial Customer's premises;
 - 11.8.2 Door-to-Door Sales at a residential dwelling shall be conducted by an Electric Supplier's Agent between the hours of 9 a.m. to 8 p.m. EST. When a local ordinance has stricter limitations, an Electric Supplier shall comply with the local ordinance.
 - 11.8.3 When conducting Door-to-Door Sales or appearing at a Public Event, an Agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with an SOSS, EDC, government agency, or another Electric Supplier.
 - 11.8.4 An Electric Supplier or its marketing Agent engaging in Door-to-Door Sales or appearing at Public Events shall:
 - 11.8.4.1 Display a photo identification badge that contains the following information:

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- 11.8.4.1.1 The Agent's full legal name;
- 11.8.4.1.2 The Electric Supplier's business name, business address, and toll-free telephone number; and
- 11.8.4.1.3 The order number of the proceeding in which the Commission granted the Electric Supplier's ESC.
- 11.8.5 If a Door-to-Door Sale, the Agent shall promptly:
 - 11.8.5.1 Identify the Electric Supplier he/she is representing;
 - 11.8.5.2 State that the individual and the Electric Supplier do not represent the Customer's EDC or any governmental agency;
 - 11.8.5.3 State that the purpose of the visit is to sell Electric Supply Service.
 - 11.8.5.4 Prominently display an identification badge; and
 - 11.8.5.5 Offer a business card or other material that lists:
 - 11.8.5.5.1 The Electric Supplier's name and contact information, including telephone number;
 - 11.8.5.5.2 The docket number of the proceeding in which the Commission granted the Electric Supplier's ESC; and
 - 11.8.5.5.3 The Agent's name and any other identification numbers provided to the sales Agent by the Electric Supplier or Agent.
- 11.8.6 An Agent performing a Door-to-Door Sale may not request a potential Residential or Small Commercial Customer's (1) Electric Supplier or EDC account number or (2) electric bill until he or she has provided the information required in subsections 11.8.5.1 through 11.8.5.5.
- 11.8.7 In connection with any Door-to-Door Sale, it is a violation of these Regulations for any Electric Supplier or Agent to:
 - 11.8.7.1 Fail to leave the Residential or Small Commercial Customer's premises upon request in a prompt and courteous manner;
 - 11.8.7.2 Leave the Residential or Small Commercial Customer's premises after completing a sale without furnishing the Residential or Small Commercial Customer with a completed Contract signed by the Residential or Small Commercial Customer that includes all required disclosures and a Contract Summary. The completed Contract and Contract Summary may be provided electronically if the Residential or Small Commercial Customer consents to electronic receipt;
 - 11.8.7.3 Fail to inform each Residential or Small Commercial Customer orally, at the time the Residential or Small Commercial Customer signs the Contract, of the right to rescind without penalty or fee within three (3) Business Days from the date of the transaction;
 - 11.8.7.4 Misrepresent in any manner the Residential or Small Commercial Customer's right to rescind without penalty or fee within three (3) Business Days from the date of the transaction; and
 - 11.8.7.5 Fail or refuse to honor a valid notice of cancellation received during the Rescission Period within three (3) Business Days after the receipt of such notice from the Residential or Small Commercial Customer.
- 11.8.8 Background Checks for Door-to-Door Agents. An Electric Supplier shall not permit an Agent to conduct Door-to-Door Sales to Residential or Small Commercial Customers until it has completed a criminal background investigation on the Agent. The criminal background investigation shall include:

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- 11.8.8.1 The Electric Supplier, or the independent contractor or vendor it utilizes, obtaining and reviewing the criminal history results from the following searches:
 - 11.8.8.1.1 Delaware state and county courts;
 - 11.8.8.1.2 A nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System;
 - 11.8.8.1.3 The U.S. Department of Justice National Sex Offender Public Registry; and
 - 11.8.8.1.4 Every other state in which the Agent resided during the last twelve (12) months.
- 11.8.8.2 For a current Agent who conducts Door-to-Door Sales, an Electric Supplier must obtain a criminal history record for such individual not later than ninety (90) days after the effective date of these Regulations.
- 11.8.9 Notification Regarding Door-to-Door Sales Activities.
 - 11.8.9.1 When an Electric Supplier engages in Door-to-Door Sales, the Electric Supplier shall notify Staff and DPA no later than the morning of the day that the activity begins. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.
 - 11.8.9.2 An Electric Supplier shall provide the EDC with general, nonproprietary information about the Door-to-Door activity that caused the Electric Supplier to provide notice to Staff and DPA. The Electric Supplier shall provide this general information to the EDC no later than the morning of the day that the sales and marketing activities begin. The EDC shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may address customer inquiries knowledgeably. An EDC may not use the information for other purposes.
- 11.9 Internet Enrollments.
 - 11.9.1 For electronic contracting on the internet, the Electric Supplier's website must be configured to prompt the Residential or Small Commercial Customer to review and agree to the Contract and Contract Summary before the Contract is final, and to print or save the Contract and Contract Summary.

12.0 Reports to be Provided by Electric Suppliers to the Commission and ~~DPA~~. DPA

- 12.1 Electric Suppliers shall provide such information concerning their State operations to the Commission and the DPA as the Commission may from time to time request, including any reporting requirements contained herein.
- 12.2 Required 10-Day Notifications. Electric Suppliers shall notify the Commission and the DPA within ten (10) Business Days of any of the following actions:
 - 12.2.1 Revocation of authority to sell electricity or to broker the sale of electricity in any jurisdiction;
 - 12.2.2 Revocation of an Affiliated Interest's authority to sell electricity or to broker the sale of electricity in any jurisdiction;
 - 12.2.3 A change in the principal officers responsible for Delaware operations previously provided pursuant to these Regulations; or
 - 12.2.4 A change in ownership of any Person having 10% ownership of the Electric Supplier or the ability to control more than 10% of the Electric Supplier's voting securities.

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- 12.3 Required 30-Day Notifications and Annual Reports. An Electric Supplier shall provide the following information to the Commission and the DPA within thirty (30) calendar days of occurrence and annually by April 30th of each year:
- 12.3.1 Any changes in the Electric Supplier's name or tax identification number or employer identification number previously provided pursuant to these Regulations;
 - 12.3.2 Any changes in the Electric Supplier's business address previously provided pursuant to these Regulations;
 - 12.3.3 Any changes to the regulatory contact and/or Customer complaint person previously identified pursuant to these Regulations;
 - 12.3.4 The identify of any state in which the Electric Supplier has had its authority to sell electricity to or broker the sale of electricity to Customers revoked, modified or suspended since the filing of the last annual report;
 - 12.3.5 Any changes to the organizational structure previously provided pursuant to these Regulations;
 - 12.3.6 A statement detailing any criminal activities, except for misdemeanors or lesser, of which the Electric Supplier or any of its Affiliated Interests has been convicted, or which the principal or corporate officers have been convicted, since the filing of the last annual report;
 - 12.3.7 A copy of any stipulation, order, or decree concerning a formal, docketed complaint or investigation of the Electric Supplier's marketing and sales activities in other jurisdictions;
 - 12.3.8 A list of any states in which any formal complaint investigations have been initiated since the filing of the last annual report; and
 - 12.3.9 A list of any states in which disciplinary actions have been taken since the filing of the last annual report.
- 12.4 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). All Electric Suppliers, except Brokers, must also pay the Public Utilities Tax pursuant to 30 **Del.C.** §5501 *et seq.*

13.0 Green Power Products.

- 13.1 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 generation attributes consisting of the types of renewable energy sources listed in 26 **Del.C.** §352(6)(a)-(i). The Electric Supplier shall identify the percentage of renewable resources in the Contract. Commission-regulated electric companies are responsible for complying with the Renewable Energy Portfolio Standards Act's requirements as per 26 **Del.C.** §354(e).
- 13.2 Electric Suppliers offering a Green Power Option shall register with either: (a) the PJM-EIS GATS, (b) its successor, (c) another applicable regional renewable energy certificate tracking system, or (d) Green-e Energy. Electric Suppliers shall keep their account(s) in good standing and shall be subject to the applicable rules of PJM-EIS GATS, its successor, another applicable regional renewable energy certificate tracking system, or Green-e Energy as applicable.
- 13.3 Electric Suppliers offering a Green Power Option shall retire VRECs equal to the marketed or otherwise advertised generation.
- 13.4 Within 120 days of the end of each Compliance Year, as defined in 26 **Del.C.** §352(3), each Electric Supplier that offers a Green Power Product Option shall file a report detailing its compliance with its marketed or otherwise advertised generation, including, but not limited to, evidence of the specified number of VRECs retired.

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- 13.5 Any unused VRECs retired for compliance with this Regulation may be dated no earlier than three (3) years prior to the beginning of the current compliance year.
- 13.6 When requested by a Customer or providing information regarding Green Power Products Options 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.
- 13.7 An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless its generation attributes include one or more of the renewable energy sources listed in 26 **Del.C.** §352(6)(a)-(i).
- 13.8 Electric Suppliers offering Green Power Options shall meet the disclosure of the fuel resource mix requirements stated in Section 14.0 of these Regulations.

14.0 Disclosure of Fuel Resource Mix.

- 14.1 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 not later than sixty (60) calendar days following the end of each quarter. The reports shall include, but are not limited to:
- 14.1.1 The total number of Customers by each Customer class served during that quarter;
- 14.1.2 The total amount of electricity (kWh or MWh) supplied to each Customer class; and
- 14.1.3 The fuel resource mix by percentage for each resource.
- 14.2 Each Electric Supplier and SOSS shall also disclose the information under subsection 14.1.3 to its 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 Customer's bill for that quarter directing the 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 subsection 14.1.3 as required by 26 **Del.C.** §1012. Information reported under subsection 14.1.3 may be utilized in any consumer education program developed in accordance with 26 **Del.C.** §1014(c).

15.0 Net Metering

- 15.1 General Provisions
- 15.1.1 Net Metering can occur in ~~[three]~~ **[two]** 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; **[and]**
- 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 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.~~
- [See Section 16.0 of these Regulations for the rules governing Community Energy Facilities.]**
- ~~**[Condition 3 Community Energy Facilities - 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 share output of the generator for multiple Subscribers and multiple**~~

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premises. The Net Metering requirements under this Section 15.0 do not apply to Community Energy Facilities. See Section 16.0 of these Regulations for the rules governing Community Energy Facilities.]

- 15.1.2 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:
- 15.1.2.1 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:
- 15.1.2.1.1 Will not exceed 25 kW per DP&L meter for residential Customers;
- 15.1.2.1.2 Will not exceed 2 MW per DP&L meter for non residential Customers;
- 15.1.2.1.3 Will not exceed 100 kW per DP&L meter for farm customers, as those customers are described in 3 Del.C. §902(3); provided, however, that the Delaware Energy Office may grant exceptions to this limitation in accordance with 26 Del.C. §1014(d)(1)b;
- 15.1.2.1.4 For ~~Conditions 2 or 3~~ Condition 2, the sum of electric generation capacity will not exceed the applicable limits per meter specified in subsections 15.1.2.1.1 through 15.1.2.1.3 above;
- 15.1.2.1.5 Uses as its primary source of fuel: solar, wind, hydro, a fuel cell or gas from the anaerobic digestion of organic material;
- 15.1.2.1.6 Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and
- 15.1.2.1.7 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 subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations. 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 subsections 15.1.2.1.1 through 15.1.2.1.3 of these Regulations.
- 15.2 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.
- 15.2.1 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 ~~subsections~~ subsection 15.3 and 15.4 of these Regulations, or to collect system performance information on the eligible technology for research purposes.
- 15.2.2 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

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meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

- 15.2.3 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.
- ~~15.2.4 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.~~
- ~~15.2.5 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.~~
- 15.3 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 generating facility that exceeds the Customer's on-site, or aggregate total, consumption of kWh in a 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.
- 15.3.1 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.
- 15.3.2 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.
- 15.3.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.

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- 15.3.4 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.
- 15.3.5 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.
- 15.3.6 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.
- 15.3.7 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.
- 15.3.8 Where applicable, the requirements established in subsection 15.6 of these Regulations shall apply to this subsection 15.3.
- 15.4 ~~RESERVED. 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 subsection 15.7 of these Regulations:~~
- ~~15.4.1 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 subsection 15.3 of these Regulations. 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.~~
- ~~15.4.2 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 subsection 15.3 of these Regulations. 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.~~
- ~~15.4.3 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~~

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~~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 subsection 15.3 of these Regulations.~~

15.5 RESERVED. 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 subsection 15.7 of these Regulations:

~~15.5.1 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 subsection 15.3 of these Regulations. 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.~~

~~15.5.2 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.~~

~~15.5.3 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 subsection 15.3 of these Regulations, 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.~~

~~15.5.4 A Community Energy Facility shall not exceed the sum total of the capacity limits as defined under subsection 15.1.1.1 through subsection 15.1.1.3 of these Regulations among the Subscribers of a Community Energy Facility.~~

~~15.5.5 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 subsection 15.3 of these Regulations.~~

15.6 Subject to the applicable Net Metering provisions of Section 15.0 of these Regulations, 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

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meters for the purpose of net metering regardless of which individual meter receives energy from a Customer-Generator Facility, provided that:

- 15.6.1 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and
- 15.6.2 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 subsection 15.6 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
- 15.6.3 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 subsections 15.1.1.1 through 15.1.1.3 of these Regulations; and
- 15.6.4 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:
- 15.6.4.1 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
- 15.6.4.2 a description of the Customer-Generator Facility, including the facility's location, capacity, and fuel type or generating technology; and
- 15.6.4.3 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.
- 15.6.5 The Customer may change its list of aggregated meters specified in subsection 15.6.4.1 no more than once annually by providing ninety days' written notice; and
- 15.6.6 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 subsection 15.6.4.1 above; and
- 15.6.7 Credit in kilowatt-hours (kWh) shall be valued according to subsection 15.3 of these Regulations and each account's rate schedule as specified in subsection 15.6.4.1 above; and
- 15.6.8 DP&L may require that a Customer's aggregated meters as specified in subsection 15.6.4.1 above be read on the same billing cycle.
- 15.7 ~~RESERVED. Subscribers are eligible to participate in a Community Energy Facility, provided:~~
- ~~15.7.1 A community includes customers sharing a unique set of interests; and~~
- ~~15.7.2 DP&L shall only allow meter aggregation for customer accounts of which it provides electric supply service; and~~
- ~~15.7.3 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~~

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- ~~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~~
- ~~15.7.4 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 subsection 15.1.1.1 through 15.1.1.3 of these Regulations; and~~
- ~~15.7.5 A Community Energy Facility may include technologies defined under 26 Del.C. §352(6)(a-h); and~~
- ~~15.7.6 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:~~
- ~~15.7.6.1 a list of individual meters the community is entitled to aggregate identified by name, address, rate schedule, and account number; and~~
- ~~15.7.6.2 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~~
- ~~15.7.6.3 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.~~
- ~~15.7.7 A community proposing a Community Energy Facility may change its list of aggregated meters as specified in subsection 15.7.6.1 above no more than quarterly by providing ninety days' written notice to DP&L; and~~
- ~~15.7.8 If the community proposing a Community Energy Facility removes individual customers from the list of aggregated meters as specified in subsection 15.7.6.1 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 subsections 15.7.3 and 15.7.4 above, or negotiate with DP&L to establish a mutually acceptable agreement for any excess kWh credit; and~~
- ~~15.7.9 DP&L may require that customers participating in a Community Energy Facility have their meters read on the same billing cycle; and~~
- ~~15.7.10 Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation as either public utilities or an Electric Supplier.~~
- ~~15.7.11 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.~~
- 15.8 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
- 15.9 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.
- 15.10 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

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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.

- 15.11 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:
- 15.11.1 The total number of Customer-Generator Facilities ~~[and Community-owned energy generating facilities];~~
- 15.11.2 The total estimated rated generating capacity of its net-metered Customer-Generator Facilities ~~[and Community-owned energy generating facilities];~~
- 15.11.3 The total estimated net kilowatt-hours received from Customer-Generator Facilities ~~[and Community-owned energy generating facilities];~~ and
- 15.11.4 The total estimated amount of energy produced by Customer-Generator Facilities ~~[and Community-owned energy generating facilities]~~, using a methodology approved by the Commission.
- 15.11.5 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 Commission.
- 15.12 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.
- 15.13 A retail electric 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 subsection 15.3 of these Regulations. Excess kWh credits shall be handled in the same manner as Net Metering as described in subsection 15.3 of these Regulations. To qualify under this section of the Rule, the Grid-Integrated Electric Vehicle must meet the requirements in subsections 15.1.1.1., 15.1.1.2, and 15.1.1.5 of these Regulations. Connection and metering of Grid-Integrated Electric Vehicles shall be subject to the rules and regulations found in subsections 15.3, 15.10, and 15.11 of these Regulations.
- 15.14 The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with subsection 15.13 of these Regulations. Such tariffs may include rate and credit structures that vary from those set forth in subsection 15.13 of these Regulations, as long as alternative rate and credit structures are not inconsistent with the development of Grid-Integrated Electric Vehicles.

16.0 Community Energy Facilities

- 16.1 Project eligibility: To be eligible for certification as a Community Energy Facility, a generating facility must:
- 16.1.1 Have multiple owners or [customers] [Subscribers] who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or [customer] [Subscriber];
- 16.1.2 Include a technology defined as an "eligible energy resource" under 26 Del.C. §352(6)a-h;
- 16.1.3 Not exceed a capacity of four (4) megawatts as measured by the alternating current (AC) rating. Co-location of Community Energy Facilities, which together have a capacity greater than four (4) megawatts, shall not be permitted;

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- 16.1.4 Be located in Delmarva's service territory, in Delaware;
 - 16.1.5 Interconnect to the ~~[distribution system]~~ **[Distribution Facilities]** and operate in parallel with Delmarva's ~~[transmission and distribution facilities]~~ **[Transmission and Distribution Facilities]**;
 - 16.1.6 Comply with Delmarva's interconnection tariffs and operating guidelines; and
 - 16.1.7 Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that the generating facility meets applicable safety and performance standards.
- 16.2 Application to the Commission for Preliminary and Final Certificates to Operate:
- 16.2.1 Before a Community Energy Facility may offer a Contract or commence service to a Subscriber, and before Delmarva provides the Community Energy Facility with a Permission to Operate under subsection 16.3 of these Regulations, the Community Energy Facility must apply for and obtain from the Commission **[both]** a Preliminary Certificate to Operate, which establishes project viability, ~~[followed by]~~ **[and]** a Final Certificate to Operate, which establishes compliance with all application requirements.
 - 16.2.2 Applicants must comply with the electronic filing requirements of 26 **DE Admin. Code** 1001, "Rules of Practice and Procedure of the Commission".
 - 16.2.3 Preliminary Certificate to Operate. Applications for a Preliminary Certificate to Operate must contain all required information and exhibits and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the managerial and operational ability to adequately serve the public consistent with applicable State laws.
 - 16.2.3.1 Applications for a Preliminary Certificate to Operate must contain at least the following:
 - 16.2.3.1.1 Application fee. An Applicant for a Preliminary Certificate to Operate shall submit a non-refundable application fee of \$750 with the application;
 - 16.2.3.1.2 Identity of the Applicant. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name or trade names under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant, its Affiliated Interests, or any current or previous officer, director, or manager has previously done business in Delaware;
 - 16.2.3.1.3 Certifications. Certification or certifications issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
 - 16.2.3.1.4 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;
 - 16.2.3.1.5 Registered Agent. The name and post office address of a Registered Agent within the State upon whom service of any notice, order or process may be made;
 - 16.2.3.1.6 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
 - 16.2.3.1.7 Corporate structure. A description of the Applicant's corporate structure, including **[any Affiliated Interests]** ~~[all parent, affiliated, and~~

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- subsidiary companies] engaged in operations in the United States related to energy. Include a graphical depiction of such structure:
- 16.2.3.1.8 Contact information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicant;
- 16.2.3.1.9 Website. The Community Energy Facility's website address (if any), accessible to prospective and current Subscribers;
- 16.2.3.1.10 Consent to jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Community Energy Facility's and its Agent's activities in the State;
- 16.2.3.1.11 Proof of site control. The Applicant shall provide a fully executed lease agreement, a deed of sale, a property deed, or a binding option agreement with defined lease or purchase terms for the parcel where the Community Energy Facility is, or will be, located;
- 16.2.3.1.12 Interconnection feasibility. A completed interconnection study or signed interconnection agreement with Delmarva. If Delmarva determines that an interconnection study is unnecessary, then a written statement from Delmarva to that effect, which includes the facility's capacity and generating technology, may substitute for a completed interconnection study; and
- 16.2.3.1.13 Verification of application for a Preliminary Certificate to Operate. A signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 16.2.3.2 Review of the application for a Preliminary Certificate to Operate. Staff shall make a recommendation to the Commission to approve, conditionally approve, or deny the application within 45 days from the date of the [completed] application. The Commission may choose to approve, approve with conditions, modify, or deny a Preliminary Certificate to Operate to an Applicant where it finds that doing so is in the public interest.
- ~~16.2.3.3 Ownership change. If the ownership of the Applicant's Community Energy Facility project changes prior to obtaining a Final Certificate to Operate, the Applicant must notify the Commission of such change, including any relevant updated information. Ownership changes that take place after the Commission issues a Final Certificate to Operate are governed under Section 16.8 of these Regulations.~~
- ~~16.2.3.4] [16.2.3.3] Expiration of Preliminary Certificate to Operate. A Community Energy Facility's Preliminary Certificate to Operate shall expire upon the Commission's granting of a Final Certificate to Operate or twenty-four (24) months from the issuance of the Preliminary Certificate to Operate, whichever is earlier. Upon the request of an Applicant, the Commission may extend the 24-month period by [six (6)] [twelve (12) months], for good cause shown.~~
- 16.2.4 Final Certificate to Operate. Applications for a Final Certificate to Operate must contain all required information and exhibits and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws.
- 16.2.4.1 Applications for a Final Certificate to Operate must contain at least the following:

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- 16.2.4.1.1 Changes. Any changes to the information provided with the application for a Preliminary Certificate to Operate, submitted under subsection 16.2.3 of these Regulations;
- 16.2.4.1.2 Regulatory contact person. The contact information for a regulatory contact person (if applicable) responsible for the Community Energy Facility's Delaware operations;
- 16.2.4.1.3 Subscriber complaint contact person. The contact information for a Subscriber complaint contact person, if different from the regulatory contact person;
- 16.2.4.1.4 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
- 16.2.4.1.5 Customer Service number. A telephone number to the Applicant's Subscriber service center where Subscribers may call with questions about the Community Energy Facility's services, including the Contract and Contract Summary;
- 16.2.4.1.6 Consent to jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Community Energy Facility's and its Agent's activities in the State;
- 16.2.4.1.7 Criminal activities:
- 16.2.4.1.7.1 A statement detailing any criminal activities relating to fraud or financial misconduct, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution;
- 16.2.4.1.7.2 A statement by the Community Energy Facility that it (or its Agent) will run criminal background checks on any person engaged to conduct Door-to-Door Sales on its behalf, obtaining and reviewing the criminal history results for crimes committed against a person **[within the past ten (10) years]**, from the following searches:
- 16.2.4.1.7.2.1 Delaware state and county courts **[for crimes committed within the past five (5) years]**;
- 16.2.4.1.7.2.2 A nationwide federal criminal court search, such as the Federal Public Access to Court Electronic Records (PACER) System **[for crimes committed within the past five (5) years]**;
- 16.2.4.1.7.2.3 The U.S. Department of Justice National Sex Offender Public Registry **[for crimes committed within the past ten (10) years]**; and
- 16.2.4.1.7.2.4 Every other state in which the Agent resided during the last twelve (12) months, **[for crimes committed within the past five (5) years]**.
- [16.2.4.1.7.3** **Nothing in these Regulations shall prohibit a Community Energy Facility from conducting background checks on its Agents that are more extensive than the requirements in subsection 16.2.4.1.7.2, in accordance with applicable law.]**
- 16.2.4.1.8 Contract and Contract Summaries. A copy of the Applicant's standard Contract form that it intends to offer to Residential Subscribers, and the standard Contract Summary form it intends to include with its Contract for

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Residential Subscribers. A Contract or Contract Summary that does not comply with the requirements of Section 16.5 of these Regulations or other applicable Delaware laws and regulations may be grounds for rejection of the application. Staff may develop a standard Contract Summary Form that it requires from all Applicants;

- 16.2.4.1.9 Marketing materials. A statement by the Community Energy Facility that it (or its Agent) will retain copies of all print, broadcast, electronic media, telecommunication, direct mail or in-person written marketing materials, including but not limited to scripts for Telemarketing, advertisements, website presentations, social media posts or advertisements, and any other material of a similar nature, that the Applicant (or its Agent) will use to market and promote its products to Delaware Residential and Small Commercial Customers, and will furnish them to the Commission, DPA, and Consumer Protection Unit upon request. Marketing conducted by a lead generation firm is not exempt from this subsection;
- 16.2.4.1.10 Surety bonds and financial information. A Community Energy Facility bond executed by a company authorized to transact surety business in the State of Delaware by the Department of Insurance. Such bond will permit the Commission to direct that the proceeds of this bond be paid or disbursed to satisfy the Applicant's financial obligations to the Commission or other Delaware government entity. The bond will permit a Delaware court to direct proceeds of the bond be paid to a person that has obtained a judgment against an Applicant and has previously attempted to collect the judgment through all other means available through the court. The amount of the bond shall be \$10,000 plus \$25,000 per each megawatt of capacity in excess of 1 megawatt;
- 16.2.4.1.11 Bankruptcy. A disclosure as to whether the Applicant, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past sixty (60) months;
- 16.2.4.1.12 Staff request. Other [commercially reasonable] indicia of financial capability, upon a request from Staff;
- 16.2.4.1.13 Services. A description of the services it plans to offer in the State, including the types of Subscribers to be served and services provided;
- 16.2.4.1.14 Experience. A description of the operational experience in Community Energy Facilities of each principal officer, director, or individual responsible for Delaware operations. If no such experience is applicable, the Applicant shall identify the means by which the Applicant proposes to support its managerial, operational, and financial capabilities for the sale of subscriptions in the State;
- 16.2.4.1.15 Other states. A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
- 16.2.4.1.15.1 Been granted approval to sell subscriptions or act as a Community Energy Facility or similar structure, including license or certificate numbers (including those states where a license or approval is not required but where the Applicant has sold subscriptions or acted as a Community Energy Facility);
- 16.2.4.1.15.2 Been denied approval to sell subscriptions or act as a Community Energy Facility;
- 16.2.4.1.15.3 Had its authority revoked, modified, or suspended or been found to be in violation of, or is the subject of a pending investigation regarding, a state's laws, rules, or regulations relating to Community Energy Facilities or similar structures;

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- 16.2.4.1.15.4 Had any other adverse judicial or regulatory action pertaining to the provision of Community Energy Facility services or the violation of state or federal consumer protection laws, including any formal docketed complaints filed against:
- 16.2.4.1.15.4.1 The Applicant;
- 16.2.4.1.15.4.2 Any of the Applicant's Affiliated Interests;
- 16.2.4.1.15.4.3 Any officer, principal or director of the Applicant;
- or
- 16.2.4.1.15.4.4 Any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action;
- and
- 16.2.4.1.15.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its provision of Community Energy Facility services or the alleged violation of state or federal consumer protection laws in which the Community Energy Facility agreed to pay a civil penalty provide customer restitution, or make changes to its marketing, sales, billing, or collections practices;
- 16.2.4.1.16 Copies of orders. A copy of any document, order, or decree identified in response to subsection 16.2.4.1.15, as well as a copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in retail or wholesale energy markets; and
- 16.2.4.1.17 Verification of application for a Final Certificate to Operate. A signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 16.2.4.2 Review of the application for Final Certificate to Operate. Staff shall make a recommendation to the Commission to approve or deny the application within **[ninety (90)] [sixty (60)]** days from the date of the **[completed]** application. The Commission may choose to approve, approve with conditions, modify, or deny a Final Certificate to Operate to an Applicant where it finds that doing so is in the public interest.
- 16.2.4.3 Terms of Final Certificate to Operate. Final Certificates to Operate are valid until revoked by the Commission **[pursuant to subsection 16.11.5]** or relinquished by the Community Energy Facility after the requisite notice to the Commission and to its Subscribers.
- 16.2.5 Incomplete or abandoned applications for Preliminary or Final Certificates to Operate. The Commission may reject an application for a Preliminary or Final Certificate to Operate that is not complete or that does not contain subsequent information requested by Staff within four (4) months of a failure by the Applicant to respond to such requests.
- 16.2.6 Waiver of certification requirements for Preliminary or Final Certificates to Operate. Upon the request of an Applicant, the Commission may, upon notice and opportunity for comment, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations, **26 Del.C. §1001 et seq.**, or state or federal consumer protection laws.
- 16.2.7 Changes in application information. Applicants shall inform Staff of any changes to the information submitted in the application for a Preliminary or Final Certificate to Operate that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within **[ten (10)] [fifteen (15)]** Business Days after the change may be grounds for rejection of the application.

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16.2.8 Accuracy of information. Failure to provide accurate and factual information, the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission may be grounds for rejection of an application for a Preliminary or Final Certificate to Operate.

16.3 Permission to Operate from Delmarva:

16.3.1 A Community Energy Facility shall provide the following information to Delmarva prior to receiving a Permission to Operate from Delmarva, pursuant to its interconnection process:

16.3.1.1 A description of the energy generating facility, including the facility's host location, capacity, and fuel type or generating technology; and

16.3.1.2 A complete interconnection application to facilitate a transmission and distribution analysis, including an evaluation of potential reliability, safety and stability impacts and determination of whether infrastructure upgrades are necessary and appropriate allocation of applicable interconnection costs.

16.3.2 After the Community Energy Facility complies with subsections 16.3.1.1 and 16.3.1.2, it may then seek a Final Certificate to Operate from the Commission as set forth in subsection 16.2.4 of these Regulations.

16.3.3 After receiving a Final Certificate to Operate from the Commission, the Community Energy Facility shall submit to Delmarva:

16.3.3.1 A list of individual ~~[meters]~~ **[Delmarva account numbers]** the Community Energy Facility desires to aggregate **[identified by]** **[including the]** name **[and]** address **[associated with the account number]**, including which ~~[meters]~~ **[accounts]** serve Low-income Customers;

16.3.3.2 The subscribed percentage of generation attributed to each Subscriber;

16.3.3.3 Certification that the subscription level of each Subscriber does not exceed 110% of that Subscriber's expected aggregate electrical consumption calculated **[for existing buildings,]** on the average of the two previous 12-month periods of actual electrical usage at the time of subscription with the Community Energy Facility **[and estimated, for new building construction, at 110% of the consumption of units with similar size and characteristics;]** and

16.3.3.4 Certification that Subscribers in the Community Energy Facility include at least 15% Low-income Customers ~~[whose gross annual income, by family size, is at or below 200% of the Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater]~~. The requirement of "at least 15% Low-income Customers" will be measured by the number of Low-income Customers as a percentage of the total number of Subscribers of the Community Energy Facility.

16.3.4 Delmarva will consider a request to convert an existing Net Metering interconnection application under Section 15.0 of these Regulations to a Community Energy Facility interconnection application under Section 16.0 to be a new application, which would create a new interconnection position.

16.4 Low-income Customer verification:

16.4.1 The Community Energy Facility shall require income data verification to determine eligibility for Low-income Customers. Proof of eligibility required for Low-income Customers shall include:

~~16.4.1.1 Photo ID of the applicant;~~

~~16.4.1.2 At least one or more utility bills within the last year;~~

~~16.4.1.3~~

16.4.1.1 Proof of income **[of the account holder]** (e.g., pay stub or W2), proof of participation in a low income discount program including Medicaid, SSI, TANF, GA,

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WIC, LIHEAP, SNAP or food stamps ~~[award letter received within the last year]~~, or proof that the **[Low-income]** Customer lives in a census block where the median household income is at or below 200% of the U.S. Federal Poverty Guidelines or 60% of the state median household income published by the United States Census Bureau, whichever is greater, or by living in a low-income master-metered building; ~~[and] [or]~~

[16.4.1.2] [An] [A written] attestation by the Low-income Customer that ~~[all information provided is true and correct] [their total household income is at or below 200% of the Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater.~~

16.4.1.3 For owners or operators of master-metered buildings, a written attestation that their tenants meet the income eligibility requirements for Low-income Customers.]

16.4.2 When the Community Energy Facility provides Delmarva with its Low-income Customer certification under subsection 16.3.3.4, it must also provide such certification to the Commission. The Commission may audit the Community Energy Facility to ensure compliance with the low-income requirements.

16.4.3 A Community Energy Facility's failure to satisfy the low-income requirements may result in a penalty, including monetary assessment, or revocation of its Final Certificate to Operate.

16.4.4 Every three (3) years, the Community Energy Facility shall certify to the Commission in writing that it meets the low-income requirements as set forth in subsections 16.3.3.4 and 16.4 of these Regulations.

16.5 Community Energy Facility Contracts and Contract Summaries:

16.5.1 Only a Community Energy Facility with a Final Certificate to Operate may execute a Contract for Community Energy Facility credits with a Subscriber.

16.5.2 Community Energy Facilities shall provide to prospective Residential and Small Commercial Subscribers a Contract and Contract Summary in the same language used by the Community Energy Facility or its Agent to market, sell, or describe the Contract terms. Residential and Small Commercial Contracts and Contract Summaries must:

16.5.2.1 Be printed in Times New Roman 12-point font; and

16.5.2.2 Have one-inch margins on all sides and utilize reasonable numbering, lettering, line, and paragraph spacing.

16.5.3 A Contract for Residential or Small Commercial Subscribers shall be written in clear and plain language ~~[, shall be typewritten or printed in at least twelve-point typeface with one-inch margins around all sides]~~, and shall contain all material terms and conditions, including:

16.5.3.1 A list and description of the Contract services;

16.5.3.2 The Contract duration, expressed in months or years, or the disclosure that the Contract is month-to-month;

16.5.3.3 A description of the Price of each service, including the Price of the subscription and the duration of the Introductory Price, if applicable, and whether the price is subject to change over time;

16.5.3.4 A description of any other fees or charges, including but not limited to early termination penalties, late fees, fees to access the Community Energy Facility's services, minimum monthly charges, enrollment fees, and interest charges; a description of the specific condition under which such fees or charges can be imposed; and the amount of such fees or charges or the method by which such fees or charges shall be computed;

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- 16.5.3.5 A description of any other services provided to the Subscribers as part of the Contract;
- 16.5.3.6 If the Community Energy Facility claims that Subscribers will save money by entering into the Contract, a description of any calculations and assumptions on which it relies to make this claim;
- 16.5.3.7 A statement regarding the Rescission Period that:
 - 16.5.3.7.1 The Subscriber may rescind the Contract within three (3) Business Days from the start of the Rescission Period; and
 - 16.5.3.7.2 The Rescission Period begins on one of the following dates, as applicable:
 - 16.5.3.7.2.1 When the Subscriber signs the Contract;
 - 16.5.3.7.2.2 When the Subscriber transmits the acceptance of the Contract electronically; or
 - 16.5.3.7.2.3 When the Subscriber receives the Contract and Contract Summary, if received by mail. There shall be a rebuttable presumption that a Contract and Contract Summary correctly addressed to a Subscriber with sufficient first-class postage attached shall be received three (3) Business Days after it has been properly deposited in the United States mail; and
- 16.5.3.8 A statement that the actual number of credits could vary monthly and is dependent on the generation output of the Community Energy Facility, if applicable;
- 16.5.3.9 A statement of the Community Energy Facility's termination rights, which shall explain the specific conditions under which the Community Energy Facility may terminate service. At a minimum, the Community Energy Facility shall provide the Subscriber at least thirty (30) days' Written Notice of termination of the Contract;
- 16.5.3.10 The Community Energy Facility's local or toll-free telephone number to obtain information and handle complaints; its mailing address and website address; the Commission's address, website address, and Delaware toll-free telephone number; and the DPA's address, website address, and telephone number;
- 16.5.3.11 A statement informing the Subscriber that, in the event of a relocation outside of Delmarva's service territory, they **[may] [shall]** terminate their Contract with no termination fee;
- 16.5.3.12 A statement that the Community Energy Facility may terminate the Contract prior to the stated term of the Contract, including:
 - 16.5.3.12.1 The circumstances under which early cancellation by the Community Energy Facility may occur;
 - 16.5.3.12.2 The manner in which the Community Energy Facility shall notify the Residential or Small Commercial Subscriber of the early cancellation of the Contract;
 - 16.5.3.12.3 The duration of the notice period before early cancellation by the Community Energy Facility; and
 - 16.5.3.12.4 The remedies available to the Residential or Small Commercial Subscriber if early cancellation occurs;
- 16.5.3.13 A statement that the Subscriber may terminate the Contract prior to the stated term of the Contract, including:
 - 16.5.3.13.1 The manner in which the Subscriber shall notify the Community Energy Facility of the early cancellation of the Contract;
 - 16.5.3.13.2 The duration of the notice period before early cancellation;

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- 16.5.3.13.3 The remedies available to the Community Energy Facility if early cancellation occurs; and
- 16.5.3.13.4 The amount of any early cancellation fee;
- 16.5.3.14 A statement describing Contract renewal procedures, if any, including the timing of the notices that the Subscriber will receive prior to the renewal date;
- 16.5.3.15 All disclosures required by applicable laws and regulations that govern marketing, consumer protection, and door-to-door sales, including the Delaware Home Solicitation Sales Act, 6 Del.C. §4401 *et seq*;
- 16.5.3.16 If a Community Energy Facility requires a security deposit from a Subscriber,
 - 16.5.3.16.1 The amount of the security deposit;
 - 16.5.3.16.2 A description of when and under what circumstances the security deposit will be returned;
 - 16.5.3.16.3 A description of how the security deposit may be used; and
 - 16.5.3.16.4 A description of how the security deposit will be protected;
- 16.5.3.17 The data privacy policies of the Community Energy Facility;
- ~~16.5.3.18 A description of any compensation to be paid for underperformance;~~
- ~~16.5.3.19~~ [16.5.3.18] A statement that the Community Energy Facility ~~[and Delmarva do]~~ **[does]** not make representations or warranties concerning the tax implications of any bill credits provided to ~~[the]~~ **[the]** Subscriber; and
- ~~16.5.3.20~~ [16.5.3.19] The method of providing notice to the Subscribers when the Community Energy Facility is out of service for more than three (3) Business Days, including notice of the estimated duration of the outage and the estimated production that will be lost due to the outage.
- 16.5.4 A Contract for Residential Subscribers or Small Commercial may not:
 - 16.5.4.1 Provide the application of the law of any jurisdiction other than the United States and Delaware;
 - 16.5.4.2 Except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, as amended, or the Delaware Uniform Arbitration Act, Chapter 57 of Title 10, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under applicable law;
 - 16.5.4.3 Provide for a location of arbitration outside of the county of the Residential Subscriber's residence or the Small Commercial Subscriber's location; or
 - 16.5.4.4 Contain a provision that limits or releases the liability of the Community Energy Facility for not performing the Contract.
- 16.5.5 At the time of completion of the contracting process, a Community Energy Facility shall provide the Residential or Small Commercial Subscriber with a copy of the executed Contract and completed Contract Summary.
- 16.5.6 If a Residential or Small Commercial Contract is completed through the Internet, the executed Contract and completed Contract Summary shall be:
 - 16.5.6.1 Made available for download by the Subscriber at the time of contracting;
and
 - 16.5.6.2 Transmitted to the Subscriber by the Community Energy Facility by mail or by email if the Subscriber consents to receipt of email disclosures.
- 16.5.7 If a Residential or Small Commercial Contract is completed in person, the executed Contract and the completed Contract Summary shall be reviewed with the Subscriber and provided to the Subscriber in hard copy at the time of contracting, or electronically at the time of contracting if the Subscriber consents to electronic disclosures.

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16.5.8 A Subscriber that wants to cancel a Contract shall first attempt to cancel the Contract according to the terms of the Contract.

16.5.9 If a Subscriber attempts to cancel a Contract by contacting Delmarva first, Delmarva shall direct the Subscriber to contact the Community Energy Facility through the means detailed in the Contract.

16.5.10 For Residential and Small Commercial Contracts with automatic renewal provisions, the Community Energy Facility must provide Subscribers with Written Notice of the pending renewal of a Contract at least thirty (30) days and no more than sixty (60) days before the cancellation deadline pursuant to the automatic renewal provision and must otherwise comply with the requirements of 6 Del.C. §2734. The Community Energy Facility must retain records showing that the Written Notice was provided, including copies of the Written Notices, for at least five (5) years.

16.5.11 The Written Notice to Residential and Small Commercial Subscribers required under subsection 16.5.10 shall:

16.5.11.1 Be printed in Times New Roman 12-point typeface [ef] [or] larger with one-inch margins on all sides, and reasonable numbering, lettering, line and paragraph spacing;

16.5.11.2 In bold style font, inform the Subscriber that the failure to respond to the Written Notice will result in the automatic renewal of the Contract;

16.5.11.3 Inform the Subscriber of any changes in the material terms and conditions of the expiring Contract upon renewal, and include a copy of the proposed Contract and Contract Summary; and

16.5.11.4 Inform the Subscriber how to terminate the Contract without penalty.

16.5.12 Record Retention. All Community Energy Facilities shall retain a copy of the Residential or Small Commercial Subscriber's Contract, Contract Summary, verification of enrollment, and the Community Energy Facility's billing and payment history, for a period of five (5) years after enrollment or termination of the Contract, whichever is later.

16.6 Subscription requirements:

16.6.1 A Subscriber shall not receive credit for more than 110% of the Subscriber's expected aggregate electrical consumption, calculated on the average of the two (2) previous 12-month periods of actual electrical usage at the time of subscription with the Community Energy Facility. For new building construction, electrical consumption shall be estimated at 110% of the consumption of units with similar size and characteristics.

16.6.2 A Community Energy Facility shall not have subscriptions larger than 200 kilowatts constituting more than 60% of its capacity, not including the host's self-consumption. ~~[A Customer Subscriber may subscribe to more than one Community Energy Facility but not more than four, and no Customer Subscriber may subscribe for greater than 110% of their aggregate electrical consumption as defined in 26 Del.C. §1014(f)(2), which percentage includes net-metered generation, if applicable. A Customer Subscriber may only subscribe to a Community Energy Facility that is located in Delmarva's service territory.]~~

16.6.3 Subscriptions shall be portable, provided that the Subscriber remains within Delmarva's service territory. The Community Energy Facility must notify Delmarva of a Subscriber's change in address, and any change in subscription size, within thirty (30) days of the change. In cases of relocation, Subscribers are entitled to at least one revision to their subscription size per move. ~~[Subscribers shall not receive credit for more than 110% of their average consumption.]~~

16.6.4 Subscribers shall not sell or transfer a Community Energy Facility subscription to another party other than the Community Energy Facility owner.

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- 16.6.5 The Community Energy Facility shall provide updated individual Subscriber's subscribed percentage to Delmarva if there are any changes to Subscriber's subscribed percentage.
- 16.6.6 On an annual basis, Delmarva may audit an individual Subscriber's subscribed amounts to ensure the amount does not exceed 110% of the Subscriber's annual usage, **calculated on the average of the two previous 12-month periods of actual electrical usage, utilized at the time of the reassessment**. If Delmarva determines that a Subscriber's subscribed amount exceeds the 110% cap, Delmarva shall notify the Community Energy Facility.
- 16.6.6.1 Upon such notification, the Subscriber's Community Energy Facility must resize the Subscriber's subscription size to ensure it does not exceed 110% of the historic annual usage, calculated on the average of the two previous 12-month periods of actual electrical usage, utilized at the time of the reassessment.**
- 16.6.6.2 In cases where the Community Energy Facility fails to provide a Subscriber's updated subscribed percentage within thirty (30) days after notification by Delmarva, Delmarva shall be permitted to set the Subscriber's percentage of credits to zero.
- 16.6.6.3 Community Energy Facilities may not charge a Subscriber **[more than the] [an amount greater than the dollar value of]** the credits received by the Subscriber **[from Delmarva for each billing period]**.
- 16.6.7 The Community Energy Facility shall ensure that the net-metered generation output from the facility is accurate. The amount of electricity generated each month available for allocation as subscribed or unsubscribed energy shall be determined by a production meter that meets or exceeds the ANSI C12.1-2008 accuracy standards installed, **maintained, and owned by Delmarva,** and paid for by the owner of the Community Energy Facility.
- 16.6.8 The Community Energy Facility shall retain ownership of all RECs and SRECs associated with the electric energy it produces unless it has relinquished such ownership by contractual agreement with a third party or its Subscribers.
- 16.6.9 The Community Energy Facility may change its list of Subscribers no more than once per month. The Community Energy Facility shall provide a written request to Delmarva for any such changes no less than thirty (30) days prior to the requested change.
- 16.6.10 The Community Energy Facility may update its Subscribers' percentage of generation allocation no more than once per month. The Community Energy Facility shall provide thirty (30) days' written notice to Delmarva before any such changes.
- 16.6.11 Delmarva shall only allow meter aggregation for Subscriber accounts for which Delmarva provides electric distribution services.
- 16.6.12 Delmarva may require all Subscribers of a Community Energy Facility to have their meters read on the same billing cycle.
- 16.6.13 A Customer Subscriber may subscribe to more than one Community Energy Facility but not more than four, and no Subscriber may subscribe for greater than 110% of their aggregate electrical consumption as defined in 26 Del. C. §1014(f)(2), which percentage includes net-metered generation, if applicable.**
- 16.7 Community Energy Facility Bills to its Subscribers:
- 16.7.1 The Community Energy Facility alone is responsible for the billing **[and collection]** of any subscription fees directly to Subscribers.
- 16.7.2 The Community Energy Facility's bill to its Subscribers shall be easy to understand, be in clear and plain language, and must contain the following information in at least 12-point font:

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- 16.7.2.1 The name, address, website (if any), and customer service telephone number of the Community Energy Facility;
- 16.7.2.2 The due date for payment;
- 16.7.2.3 If applicable, an itemized list of each service or product billed for the current billing period including other agreed to charges;
- 16.7.2.4 The number of credits (kWh) generated by the Community Energy Facility for the Subscriber;
- 16.7.2.5 The actual price per credit (kWh) charged to the Subscriber;
- 16.7.2.6 The total charge for each service or product;
- 16.7.2.7 The amount of payment or other credit applied to Subscriber's outstanding balance during the billing period;
- 16.7.2.8 The amount still owed by the Subscriber from the previous billing period;
- 16.7.2.9 Appropriate taxes and fees;
- 16.7.2.10 Definitions of material terms used in the bill; and
- 16.7.2.11 If applicable, late fees as defined in the Contract. Late fees must be clearly identified as such.
- 16.7.3 A Community Energy Facility without a valid Final Certificate to Operate shall not bill its Subscribers.
- 16.8 Change in ownership and assignment of Contracts:
 - 16.8.1 Prior to the effective date of any assignment or transfer of the ownership of a Community Energy Facility to a person or company who is not an existing Community Energy Facility, the new owner must obtain a Final Certificate to Operate under subsection 16.2.4 of these Regulations
 - 16.8.2 At least thirty (30) days prior to the effective date of any assignment or transfer of the Contracts of a Community Energy Facility to another existing Community Energy Facility, the Community Energy Facilities shall jointly:
 - 16.8.2.1 Provide Written Notice of the assignment or transfer to the Subscribers of the Community Energy Facility, with a copy to the Commission, Delmarva and the DPA;
 - 16.8.2.2 Coordinate with Delmarva the transfer of ownership;
 - 16.8.2.3 Send a letter to the Subscribers informing them of the assignment or transfer. The letter shall include:
 - 16.8.2.3.1 A description of the transaction in clear and concise language including the effective date of the assignment or transfer;
 - 16.8.2.3.2 Customer service contact information for the assignee; and
 - 16.8.2.3.3 A statement that the terms and conditions of the Subscriber's Contract at the time of assignment shall remain the same for the remainder of the Contract term.
 - 16.8.3 Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. The Community Energy Facility must maintain such records for a period of five (5) years or until the Contracts expire, whichever is longer.
- 16.9 Delmarva's billing of Community Energy Facility credits to Subscribers:
 - 16.9.1 Bill credits. Delmarva shall calculate the amount of the bill credit for a Community Energy Facility Subscriber as the Subscriber's subscribed percentage of generation valued at the sum of the volumetric (kWh) components of the distribution service charges and tariff supply service charges according to each Subscriber's customer account rate schedule. For Subscribers under hourly priced service, the applicable rate

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shall be the average hourly price from the previous calendar year. For Subscribers being served by other than the Standard Offer Service Supplier, the applicable rate for supply service shall be the Standard Offer Service rate for the Subscriber's rate classification.

16.9.1.1 Delmarva shall display the monthly bill credit amount on the Subscriber's monthly Delmarva bill as a discrete monetary line item, showing the kWh credit multiplied by the applicable rate. For Subscribers who subscribe to multiple Community Energy Facilities, the bill must show separate credit amounts for each Community Energy Facility, identifying which Community Energy Facility produced the credit. **Delmarva shall subtract the bill credit amount from the full amount due on the Subscriber's monthly electricity bill.**

16.9.1.2 ~~[Excess] [Any excess] net bill [credits that roll] [credit that rolls]~~ over from previous months shall be displayed **[as a dollar amount]** on the Subscriber's monthly bill as a ~~[discrete monetary line item.] [negative "Balance Forward."]~~ For Subscribers who subscribe to multiple Community Energy Facilities, the bill ~~[must show separate roll over amounts for each Community Energy Facility, identifying which Community Energy Facility produced the roll over amount.] [will aggregate the excess net bill credits and display the excess credits on the Subscriber's monthly bill as a negative "Balance Forward."]~~

16.9.2 Annualized billing period. Delmarva shall establish an annualized billing period for each Subscriber.

16.9.2.1 The annualized billing period shall begin on the day a Subscriber first earns a Community Energy Facility bill credit based on the delivery of energy.

16.9.2.2 The annualized billing period shall continue for a period of 12 months, until the subscription ends, or until the Subscriber's Delmarva account is closed, whichever occurs earlier.

16.9.2.3 A Subscriber may request a refund from Delmarva if a credit balance remains on their account at the end of the annualized billing period.

~~**[16.9.3] Resizing subscription size. If a Subscriber receives net excess credits for each of the two previous annualized billing periods, the Subscriber's Community Energy Facility must resize the Subscriber's subscription size to ensure it does not exceed 110% of historic annual usage, calculated over the past 12 months, available at the time of the reassessment.**~~

~~**[16.9.4] [16.9.3]**~~ Unsubscribed Energy:

~~**[16.9.4.1] [16.9.3.1]**~~ Delmarva shall compensate Community Energy Facilities for any Unsubscribed Energy that constitutes 10% or less of the Community Energy Facility's generation output using the average annual locational marginal price of energy in the DPL Zone based on the prior calendar year.

~~**[16.9.4.2] [16.9.3.2]**~~ Delmarva shall not compensate Community Energy Facilities for any Unsubscribed Energy that is greater than 10% of the Community Energy Facility's generation output.

16.10 Delmarva's recovery of costs:

16.10.1 Interconnection costs. The Community Energy Facility shall be responsible for all costs associated with its interconnection to Delmarva's distribution system. Any requirements necessary to permit interconnected operations between the Community Energy Facility and Delmarva, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by Delmarva.

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- 16.10.2 Additional costs. The Community Energy Facility shall be responsible for any additional costs incurred by Delmarva, including billing-related costs associated with the Community Energy Facility Subscribers. ~~[The costs and recovery thereof shall be set forth in semi-annual reports which shall be filed by Delmarva with the Commission.]~~
- 16.10.2.1 Within 30 days of the effective date of these Regulations, Delmarva shall present a report to the Commission that provides such costs incurred by Delmarva and a calculation of the associated charges to Community Energy Facilities. The costs and recovery thereof shall be set forth through a rider on Community Energy Facilities.**
- 16.10.2.2 Reporting on the cost recovery mechanism shall be presented in semi-annual reports which shall be filed by Delmarva with the Commission. ~~[If a Community Energy Facility fails to comply with this subsection 16.10.2, Delmarva shall be permitted, upon 30 days' notification to the Community Energy Facility, and upon approval by the Commission, to suspend credits to Subscribers of the Community Energy Facility.]~~**
- 16.10.2.3 If a Community Energy Facility disputes the charges or the cost recovery mechanism, the Community Energy Facility may file a complaint in accordance with the Commission's Rules of Practice and Procedure, codified at 26 Del. Admin. Code 1001-2.2, et. seq.]**
- 16.10.3 Energy offset. Delmarva shall use the energy generated from a Community Energy Facility to offset purchases from wholesale electricity suppliers for Standard Offer Service.
- 16.10.4 Credits. Delmarva shall recover the credited supply and distribution costs provided to Subscribers and the Community Energy Facility in accordance with its tariff.
- 16.11 Regulation, fees, penalties:
- 16.11.1 Neither Subscribers nor owners of Community Energy Facilities shall be subject to regulation as either public utilities or Electric Suppliers, except as set forth in 26 Del. C. §1014(f)(15).
- 16.11.2 Community Energy Facilities must pay applicable fees and assessments under 26 Del. C. §1014(f)(13) and (15), which include the fees set forth in 26 Del. C. §114 and the annual gross revenue assessment in 26 Del. C. §115. Under §115, the "gross operating revenue" shall equal the sum of the net-metering credits produced by the Community Energy Facility and the revenue derived from unsubscribed energy.
- 16.11.3 Community Energy Facilities shall adhere to State and the Federal Energy Regulatory Commission rules and regulations.
- 16.11.4 Community Energy Facilities shall comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other state and federal laws, rules, or regulations that apply to such a facility.
- 16.11.5 If a Community Energy Facility fails to comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other laws, rules, or regulations that apply to such a facility, the Commission may impose penalties, including monetary assessments, and may suspend or revoke the Final Certificate to Operate, and impose other sanctions permitted by law.
- 16.11.6 If the Commission revokes the Final Certificate to Operate, Delmarva shall cease providing credits to Subscribers of that Community Energy Facility and shall not provide any further credits unless and until the Community Energy Facility provides Delmarva with proof of a valid Final Certificate to Operate.
- 16.12 Consumer protection:

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- 16.12.1 Enforcement. In addition to the penalties described in subsection 16.11.5 of these Regulations, any violation of the consumer protection rules set forth in this subsection shall be deemed an unlawful practice in violation of 6 Del.C. §2513 and may be investigated and prosecuted by the Consumer Protection Unit, in accordance with 6 Del.C. §§1203C, 2513(b)(3), and 29 Del.C. § 2520(b). No action or inaction by the Commission under these Regulations shall affect the right of the Consumer Protection Unit to enforce State consumer protection laws.
- 16.12.2 General consumer protections:
- 16.12.2.1 The Community Energy Facility is responsible for any discriminatory, false, fraudulent, deceptive or unlawful marketing, sales, billing, or collections acts performed by its Agents, including lead generation firms, in the conduct of marketing, sales, billing, or collections activities on behalf of the Community Energy Facility.
- 16.12.2.2 No Community Energy Facility shall:
- 16.12.2.2.1 Engage in illegal, fraudulent, false, misleading, or deceptive conduct or make false, misleading, or deceptive statements or representations in any dealings with Subscribers or prospective Subscribers;
- 16.12.2.2.2 Discriminate against any Subscriber or prospective Subscriber, based wholly or partly, on race, color, creed, national origin, or gender of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason;
- 16.12.2.2.3 Refuse to provide service to a Subscriber except by the application of standards that are reasonably related to the Community Energy Facility's economic and business purposes; or
- 16.12.2.2.4 Engage in Slamming or Cramming. If it is reported that the Community Energy Facility has engaged in Slamming or Cramming, or both, the Community Energy Facility may be subject to investigation and, after a hearing, the Commission may impose penalties or require the Community Energy Facility to void or refund all of the charges in question.
- 16.12.2.3 Customer information. The Community Energy Facility shall put into place safeguards to prevent the disclosure of Subscribers' Customer information and shall provide Subscribers with a copy of its Customer information privacy policy. A Community Energy Facility shall keep the Subscriber's Customer information in a secure and protected location and shall treat information received from prospective Subscribers, including those who do not subscribe, in accordance with this subsection. The Community Energy Facility shall not disclose Customer information except:
- 16.12.2.3.1 Upon authorization by the Subscriber;
- 16.12.2.3.2 To a state or federal authority;
- 16.12.2.3.3 To Delmarva; or
- 16.12.2.3.4 As otherwise authorized by law.
- 16.12.3 Consumer protection relating to enrollment, marketing, and advertising:
- 16.12.3.1 A Community Energy Facility shall comply with all federal, State and local laws applicable to the advertising or marketing of its services, and it shall be a violation of these Regulations to fail to comply with such laws.
- 16.12.3.2 No Community Energy Facility shall make misrepresentations or use deceptive practices relating to its own services, the services of another Community Energy Facility, or the services provided by Delmarva in its solicitations, advertising, or marketing materials. These materials include radio or television advertisements, mail, e-mail, website claims, social media, telephone, and person-to person contacts, including Door-to-Door Sales. Deceptive practices include, but are not limited to:

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- 16.12.3.2.1 Saying or suggesting to a prospective Subscriber that they are required to choose a Community Energy Facility;
- 16.12.3.2.2 Saying or suggesting to a prospective Subscriber that their service will suffer degradation or risk if they do not choose a Community Energy Facility;
and
- 16.12.3.2.3 Suggesting a relationship that does not exist with the Subscriber's SOSS, Delmarva, any government agency, or another Community Energy Facility.
- 16.12.3.3 Telephone Solicitations and Enrollments:
 - 16.12.3.3.1 A Community Energy Facility soliciting ~~[customers]~~ [Subscribers] by telephone shall comply with all applicable Delaware and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. §§6151 *et seq.*), the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C. §§6101 *et seq.*), and the Delaware Telemarketing Fraud Act (6 Del. C. §§ 2501A *et seq.*).
 - 16.12.3.3.2 When a Residential or Small Commercial Subscriber enrolls with a Community Energy Facility during a Telemarketing call, the Community Energy Facility shall record the entire telephone call between the Subscriber and the Community Energy Facility or its Agent.
 - 16.12.3.3.3 The Community Energy Facility shall maintain a copy of the recorded sales call and TPV, if applicable, for a period of five years after the expiration of the Residential or Small Commercial Subscriber's Contract.
 - 16.12.3.3.4 The Community Energy Facility shall immediately halt any Telemarketing call upon the request of the prospective Residential or Small Commercial Subscriber.
- 16.12.3.4 Door-to-Door Solicitations and Enrollments:
 - 16.12.3.4.1 Door-to-Door Sales at a residential dwelling shall be conducted by a Community Energy Facility's Agent between the hours of 9:00 a.m. to 8:00 p.m. prevailing Delaware time. When a local ordinance has stricter limitations, the Agent shall comply with the local ordinance.
 - 16.12.3.4.2 For Door-to-Door Sales, the Agent shall promptly:
 - 16.12.3.4.2.1 Identify the Community Energy Facility they are representing;
 - 16.12.3.4.2.2 State that the individual and the Community Energy Facility do not represent Delmarva or any governmental agency;
 - 16.12.3.4.2.3 State that the purpose of the visit is to sell a Community Energy Facility subscription;
 - 16.12.3.4.2.4 Prominently display an identification badge; and
 - 16.12.3.4.2.5 Offer a business card or other material that lists:
 - 16.12.3.4.2.5.1 The Community Energy Facility's name and contact information, including telephone number; and
 - 16.12.3.4.2.5.2 The Agent's name and any other identification numbers provided to the sales Agent by the Community Energy Facility or Agent.
 - 16.12.3.4.3 Until the Agent has provided the information required in subsection 16.12.3.4.2 of these Regulations, an Agent performing a Door-to-Door Sale may not request a potential Residential or Small Commercial Subscriber's:
 - 16.12.3.4.3.1 Community Energy Facility account number;
 - 16.12.3.4.3.2 Delmarva account number; or

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- 16.12.3.4.3.3 Electric bill.
- 16.12.3.4.4 In connection with any Door-to-Door Sale, it is a violation of these Regulations for any Community Energy Facility or Agent to:
- 16.12.3.4.4.1 Fail to leave the prospective Subscriber's premises upon request in a prompt and courteous manner; or
- 16.12.3.4.4.2 Fail to inform each Residential or Small Commercial Subscriber orally, at the time the Residential or Small Commercial Subscriber signs the Contract, of the right to rescind without penalty or fee within three (3) Business Days from the date of the transaction.
- 16.12.3.5 Internet enrollments. For electronic contracting on the Internet, the Community Energy Facility's website must be configured to prompt the Residential or Small Commercial Subscribers to review and agree to the Contract and Contract Summary before the Contract is final, and to print or save the Contract and Contract Summary.
- 16.12.3.6 The Community Energy Facilities shall not be entitled to the Customer List described in subsection 3.3 of these Regulations.
- 16.12.3.7 Agent Training:
- 16.12.3.7.1 A Community Energy Facility shall ensure the training of its Agents on the following subjects:
- 16.12.3.7.1.1 State and Federal laws and regulations that govern marketing, Telemarketing, and Door-to-Door Sales (for those Agents engaging in Telemarketing or Door-to-Door Sales), including consumer protection regulations required by Delaware law and regulations;
- 16.12.3.7.1.2 The Community Energy Facility's products and services;
- 16.12.3.7.1.3 The Community Energy Facility's Prices, Price structures and payment options;
- 16.12.3.7.1.4 The Subscriber's right to rescind and cancel Contracts;
- 16.12.3.7.1.5 The applicability of an early termination fee for Contract cancellation when the Community Energy Facility has one;
- 16.12.3.7.1.6 The Community Energy Facility's Contract and Contract Summary;
- 16.12.3.7.1.7 The necessity of correctly and fully explaining the Contract and Contract Summary, while relying on a standard sales script and knowledge of the contents of the sales script, if one is used;
- 16.12.3.7.1.8 The proper completion of transaction documents;
- 16.12.3.7.1.9 Information about how Subscribers may contact the Community Energy Facility to obtain information about billing, disputes, and complaints; and
- 16.12.3.7.1.10 The confidentiality and protection of Subscribers' Customer information.
- 16.12.3.7.2 A Community Energy Facility shall document the training of an Agent and maintain a record of the training for three (3) years from the date the training was completed.

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- 16.12.3.7.3 A Community Energy Facility shall make training materials and training records available to the Commission, DPA, and the Consumer Protection Unit upon request.
- 16.12.3.7.4 When a Community Energy Facility contracts with an independent contractor or vendor to perform marketing or sales activities on the Community Energy Facility's behalf or purchases leads from an independent contractor or vendor, the Community Energy Facility shall confirm that the contractor or vendor has provided Community Energy Facility-approved training to its Agents in accordance with this subsection.
- 16.12.3.7.5 The Community Energy Facility shall routinely monitor Telemarketing calls and Door-to-Door sales calls to:
- 16.12.3.7.5.1 Evaluate the Community Energy Facility's training program; and
- 16.12.3.7.5.2 Ensure that Agents are providing accurate and complete information, complying with applicable regulations and providing courteous service to Subscribers.
- 16.12.3.7.6 The Community Energy Facility shall maintain records of such monitoring activities, results, and actions taken in response to the results of the monitoring activities and make such records available to the Commission, DPA, and the Consumer Protection Unit upon request.
- 16.13 Complaint procedures:
- 16.13.1 Complaint procedures to be followed by the Subscriber (or a Broker acting on behalf of a Subscriber):
- 16.13.1.1 A Subscriber (or a Broker acting on behalf of a Subscriber) should first notify the Community Energy Facility of their complaint.
- 16.13.1.2 If the Community Energy Facility does not resolve the complaint, the Subscriber (or a Broker acting on behalf of a Subscriber) may file an informal or formal complaint with the Commission pursuant to 26 DE Admin. Code 1001, subsections 2.2 and 2.3.
- 16.13.1.3 A Broker acting on behalf of a Subscriber must provide written proof to the Commission and the DPA, with a copy to the Community Energy Facility, that it is authorized to act on the Subscriber's behalf in order to file a complaint.
- 16.13.2 Complaint Procedures to be Followed by the Community Energy Facility:
- 16.13.2.1 The Community Energy Facility shall use good faith efforts to respond to and resolve complaints.
- 16.13.2.2 The Community Energy Facility shall investigate Subscriber inquiries, disputes, and complaints concerning marketing, sales, billing, and collections practices. The Community Energy Facility shall cooperate with the Commission, DPA, the Consumer Protection Unit, and other government agencies that are investigating complaints about marketing, sales, billing, or collections practices prohibited by State and Federal laws, and with local law enforcement officials that are investigating complaints about violations of local municipal law.
- 16.13.2.3 The Community Energy Facility shall implement an internal process for responding to and resolving Subscriber inquiries, disputes, and complaints. The process shall document as a record the Subscriber inquiry, dispute, or complaint, subsequent communications between the Community Energy Facility and the Subscriber, and the resolution of the inquiry, dispute or complaint. The Community Energy Facility shall retain the record for five (5) years from the later of the date of resolution of the complaint or the date of last contact with the Subscriber in a

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system capable of retrieving that record by Subscriber name and account number or by other effective means to obtain access to the information.

16.13.2.4 If the Subscriber and the Community Energy Facility are not able to come to a resolution, the Community Energy Facility will inform the Subscriber that the Subscriber may contact the DPA or the Consumer Protection Unit, or both.

16.13.2.5 In any complaint proceeding, the burden of proof shall be on the Community Energy Facility to establish, if applicable, that its Agents were adequately trained, and that the Subscriber was enrolled in accordance with these Regulations.

16.14 Reports to be Provided to the Commission and DPA:

16.14.1 Community Energy Facilities shall provide such information concerning their State operations to the Commission and the DPA as the Commission may from time-to-time request, including any reporting requirements contained herein. Reports shall be filed electronically in DelaFile under the docket number for the matter by which the Commission granted the Community Energy Facility its Final Certificate to Operate.

16.14.2 Required 10-Day Notifications. Community Energy Facilities shall notify the Commission and the DPA within ten (10) Business Days of any of the following actions:

16.14.2.1 Revocation of authority to sell subscriptions in any jurisdiction;

16.14.2.2 Revocation of an Affiliated Interest's authority to sell subscriptions in any jurisdiction; or

16.14.2.3 A change in the principal officers responsible for Delaware operations previously provided pursuant to these Regulations.

16.14.3 Required 30-Day Notifications and Annual Reports. A Community Energy Facility shall provide the following information to the Commission and the DPA within thirty (30) calendar days of occurrence and annually by April 30th of each year:

16.14.3.1 Any changes in the Community Energy Facility's name or tax identification number or employer identification number previously provided pursuant to these Regulations;

16.14.3.2 Any changes in the Community Energy Facility's business address previously provided pursuant to these Regulations;

16.14.3.3 Any changes to the regulatory contact or Customer complaint person previously identified pursuant to these Regulations;

16.14.3.4 The identify of any state in which the Community Energy Facility has had its authority to sell subscriptions to Customers revoked, modified or suspended since the filing of the last annual report;

16.14.3.5 Any changes to the organizational structure previously provided pursuant to these Regulations;

16.14.3.6 A statement detailing any criminal activities relating to fraud or financial misconduct of which the Community Energy Facility or any of its Affiliated Interests has been arrested, indicted or convicted, or which the principal or corporate officers have been arrested, indicted or convicted, since the filing of the last annual report;

16.14.3.7 A copy of any stipulation, order, or decree concerning a formal, docketed complaint or investigation of the Community Energy Facility's marketing and sales activities in other jurisdictions;

16.14.3.8 A list of any states in which any formal complaint investigations have been initiated against the Community Energy Facility or any of its Affiliated Interests since the filing of the last annual report; and

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16.14.3.9 A list of any states in which disciplinary actions have been taken against the Community Energy Facility or any of its Affiliated Interests since the filing of the last annual report.

16.14.4 As required by subsection 16.4.5 of these Regulations, every three (3) years, Community Energy Facilities shall provide a certification to the Commission in writing that it meets the low-income provisions as set forth in subsection 16.4.

16.15 Delmarva reporting requirements:

16.15.1 Delmarva shall submit an annual Community Energy Facility report to the Commission, ninety (90) days after the end of the calendar year. Such report shall include the following information from the previous calendar year:

16.15.1.1 The total number of Community Energy Facilities;

16.15.1.2 The total rated generating capacity of its Community Energy Facilities;

16.15.1.3 The total net kilowatt-hours received by Subscribers from Community Energy Facilities; and

16.15.1.4 The total amount of energy produced by Community Energy Facilities.

16.15.2 The annual Community Energy Facilities report may be revised as necessary to reflect changes in information available from Community Energy Facilities upon consultation and agreement between Delmarva and Staff.

16.15.3 Delmarva shall provide to the Community Energy Facilities an informational report including, but not limited to, the allocation of credits to Subscribers in the corresponding billing period.

16.15.3.1 The report shall be provided no later than the last day of each calendar month following the month of the Community Energy Facilities meter reading by Delmarva.

16.15.3.2 Within 30 days of the effective date of these Regulations, Delmarva shall present a proposed form of the monthly report to the Commission for its review and approval.]

16.0 — Customers Returning to EDC or SOS Supplier for Electric Supply Service.

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

17.0 Other General Rules.

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

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17.2 Failure to Comply with these Rules.

17.2.1 The failure by any Electric Supplier or a Community Energy Facility to comply with these requirements and the requirements in other Sections of these Regulations may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, suspension or revocation of the Community Energy Facility's Final Certificate to Operate, or other sanction as determined by the Commission.

17.2.2 If an Electric Supplier or Community Energy Facility has a similar license issued by another state, the federal government, or PJM or similar entity suspended or revoked, the Commission may suspend or revoke the Electric Supplier's ESC [or the Community Energy Facility's Final Certificate to Operate] after notice and an evidentiary hearing.

3 DE Reg. 538 (10/01/99)

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

12 DE Reg. 518 (10/01/08)

13 DE Reg. 150 (01/01/10)

15 DE Reg. 102 (07/01/11)

20 DE Reg. 827 (04/01/17)