



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION
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December 31, 2025

MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Brian Geller, Public Utility Analyst *BG*

SUBJECT: IN THE MATTER OF THE ADOPTION OF REGULATIONS FOR COMMUNITY ENERGY FACILITIES TO IMPLEMENT THE PROVISIONS OF 26 DE CODE §§ 352 AND 360 AND 26 DE CODE §§ 1001 AND 1014 AS AMENDED (OPENED SEPTEMBER 7, 2010; REOPENED APRIL 19, 2011; REOPENED JULY 14, 2021; REOPENED OCTOBER 25, 2023; REOPENED JUNE 4, 2025)- PSC DOCKET NO. REG. 3013

Background

On May 28, 2025, Commission Staff (“Staff”) filed a petition to reopen the Commission’s *Rules for and Regulation of Community Energy Facilities*, codified at 26 *Del. Admin. C.* § 3013 (the “Rules” or the “Regulations”). The Commission issued Order No. 10723 on June 4, 2025 which reopened the Rules.

Staff made various amendments to the Rules to increase efficiencies, make improvements to the customer solicitation process, make revisions to comply with Delaware Registrar of Regulation style manual, and other revisions based on feedback from interested stakeholders.

Staff held a public workshop on August 7, 2025 to review the amendments with interested stakeholders and solicit feedback. A total of 33 participants registered for the workshop and there were 29 participants that attended the workshop on August 7, 2025. Participants included members of Commission Staff, the Division of the Public Advocate, Delmarva Power, Wilmington City Council, DNREC Division of Climate, Coastal and Energy, the Sierra Club, Nexamp, Affinity Energy Management, LLC, ECA Solar, and Ameresco. Based

on the participants in attendance, Staff believes that there was ample representation from various stakeholders and interested parties.

The workshop included robust discussion around the Rules and Staff's proposed amendments. As a result of discussions during the workshop, Staff made additional amendments to the Rules. The updated Rules were published in the docket on August 11, 2025 for the parties to review. Staff requested that any additional comments or feedback be provided by September 5, 2025. Staff received no additional comments or feedback.

On October 15, 2025, the Commission issued Order No. 10828, which approved publication of the proposed Regulations in the Delaware Register of Regulations. The Order also included the approved form of public notice.

On November 1, 2025, the proposed Regulations were published in the Delaware Register of Regulations (<https://regulations.delaware.gov/register/november2025/proposed/29%20DE%20Reg%20382%2011-01-25>). The publication included the public notice, which set the public hearing on the proposed Regulations for December 3, 2025. To be considered at the public hearing, written comments were to be received by November 26, 2025. The public notice was also posted on the Commission website on November 4, 2025.

On November 26, 2025, Turning Point Energy (TPE) filed written comments. These comments were provided to the Commission as part of the December 3, 2025 public hearing. At the December 3, 2025 public hearing, no public comments were received. In accordance with 29 *Del. C.* § 10118(a), written comments were accepted until December 18, 2025.

On December 18, 2025, Soltage filed written comments regarding the proposed regulations.

On December 18, 2025, Perch Energy filed written comments regarding the proposed regulations.

Public Comments

The comments received from parties are outlined here centered around the specific section of the proposed Regulations:

1. CEF Location- Section 2.1.4:

TPE and Soltage request that the amendment to this section be removed.

In the proposed Regulations, amendments were included which provided clarity regarding Staff's and the Commission's understanding of the definition of Community-Owned Energy Generating Facility ("CEF") located in 26 *Del. C.* §1001. The proposed

amendment included language which indicates that the entire parcel of land containing a community energy facility and all related equipment must be within Delmarva's service territory.

Staff's basis for the change is related to the statutory definition of CEF. The definition dictates that the facility is in the service area of a utility under the regulation of the Public Service Commission. As Delmarva Power is the only electric utility under the regulation of the Commission, the facility must be located in Delmarva's service territory. Electric boundary maps are maintained by the Commission.

The original electric boundaries were made in such a way that the boundary cuts through large open parcels of land. As these parcels of land become developed, the electric utilities work together to determine who will service the developments. The utilities then make a petition to the Commission to move the electric boundary accordingly. As the CEFs are being developed on large open parcels of land, Staff instituted the same logic, whereas the parcel would need to be within the electric service territory of Delmarva Power (as a CEF can only be within Delmarva Power service territory). Staff contends that the modification of the electric boundary is a fairly routine filing and process and does not cause undue burden on the parties.

TPE and Soltage propose that the Regulation be amended to interpret the meaning of 'facility located in Delmarva service territory' to mean the physical location of the electric meter to be in Delmarva service territory. Soltage states in its comments that "[t]he Delmarva service territory does not cover clean blocks of land but is instead relatively patchworked." *Soltage Comments*, pg. 2. But given the current statutory definition that the "facility" must be in Delmarva service territory, this creates a problematic approach. Where a parcel is split between Delmarva's service territory and another electric utility, to ensure the facility is on the Delmarva piece of the parcel would require detailed survey work, creating undue burden on Delmarva, the developers, and Commission Staff to determine compliance. This further supports Staff's contention that an electric boundary modification, locating the entire parcel in Delmarva service territory, is the best option and follows precedent set for other land development under similar circumstances.

Staff contends that the Commission does not have the authority to "interpret" the statutory definition in the way that TPE and Soltage proposes. This requires the Delaware Legislature to make a change to the definition of CEF in 26 *Del. C.* § 1001. It is the understanding of Staff, as of the date of this memorandum, that the legislature is working on making these changes to the Delaware Code in the upcoming legislative session. If that change is made, Staff would then reopen the Regulation and make the necessary changes to comply with the updated law.

Based on the foregoing, Staff does not propose to amend this section of the Regulation at this time.

2. PCTO Change in Ownership- Section 12.4.1

TPE proposes that new subsection 12.4.1 be reworded so that the 30-day notice of a change in ownership for projects that have a preliminary certificate to operate (but not yet a final certificate to operate) is required within 30 days after the change in ownership rather than 30 days before.

TPE contends that the complexity of some of the transactions for purchase and sale of projects make it difficult to determine a specific transaction date 30 days prior. Additionally, the language as written may create unnecessary risk since it could be interpreted differently by different persons or entities.

Comments filed by Soltage further support the change requested by TPE to this section.

Staff believes that TPE's request is reasonable and that the grounds it has laid out provide a basis to make the requested change to the proposed Regulation. As such, Staff has amended subsection 12.4.1 to now read "Notice must be provided to the Commission within 30 days after the change in ownership." Staff does not believe this amendment is substantive in nature.

3. Subscription Coordinators- Section 8.0

The comments received from Perch Energy supported the Commission efforts in the proposed Regulations to define the role of the Subscription Coordinators and creating a process whereby customers will be able to confirm that the Subscription Coordinators are legitimate companies. Their comments further state they believe the proposed application process is reasonable and straightforward.

Staff Recommendation

Staff appreciates all the stakeholder engagement in this process. Based on the foregoing, Staff recommends that the Commission approve publication of the Regulations as Final with the amendment to Section 12.4.1 noted above.