

**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 49  
(OPENED APRIL 27, 1999; REOPENED )  
JANUARY 7, 2003; REOPENED SEPTEMBER )  
22, 2009; REOPENED SEPTEMBER 7, 2010; )  
REOPENED JULY 17, 2012; REOPENED )  
APRIL 15, 2014) )**

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**IN THE MATTER OF THE REVIEW OF )  
CUSTOMER CHOICE IN THE STATE OF ) PSC DOCKET NO. 15-1693  
DELAWARE (Opened January 19, 2016) )**

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**JOINT SUBMISSION OF THE DIVISION OF THE PUBLIC ADVOCATE AND THE  
RETAIL ENERGY SUPPLY ASSOCIATION TO REVISE 26 DEL. C. §3001: RULES  
FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS; AND,  
ALTERNATIVELY, MOTION FOR A CONTINUANCE OF THE DEADLINE FOR  
TESTIMONY AND THE DATE OF THE EVIDENTIARY HEARING IN  
DOCKET NO. 15-1693**

The Delaware Division of the Public Advocate (“DPA”) and the Retail Energy Supply Association<sup>1</sup> (“RESA”) jointly submit the following proposed revised Rules for Certification and Regulation of Electric Suppliers (“Electric Supplier Rules”) and request that the Delaware Public Service Commission (“Commission”) hear them at its September 6, 2016 meeting. As explained below, proposed revisions to the Electric Supplier Rules have been published in the Delaware Register no fewer than three times, including most recently in January 2016, with additional

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

versions being produced by the Commission Staff. Parties have participated in workshops and submitted written comments on multiple occasions over the past four years regarding revisions to the rules.

Frustrated by the slow process of revising the Electric Supplier Rules, the DPA and RESA in March 2016 began a series of meetings to agree upon a revised set of rules, to be shared with Commission Staff and Delmarva Power & Light Company (“Delmarva”) for their proposed comments. DPA and RESA, working cooperatively, agreed upon a new set of Electric Supplier Rules and forwarded their version to Commission Staff and Delmarva in July 2016.<sup>2</sup> A copy of the DPA-RESA version of the revised rules is attached as **Attachment 1**, and is submitted for the Commission’s consideration on September 6, 2016. No further publication of the rules is necessary because the rules were published on January 2016, and Attachment 1 is submitted as comments on those proposed revised rules.

Alternatively, if the Commission is not inclined to consider Attachment 1 at its September 6 meeting, the DPA and RESA request the Commission to postpone the deadline for prefiled testimony and the evidentiary hearing in Docket No. 15-1693 until the Electric Supplier Rules are finalized.

## **BACKGROUND**

1. In Order No. 8187 dated July 17, 2012, the Delaware Public Service Commission (“Commission”) reopened Regulation Docket No. 49 to consider revising the Electric Supplier Rules, in line with the settlement agreement in Docket No. 10-2 which called for the parties to “consider rule changes to ensure electric choice for Customers is more competitive and . . . to

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<sup>2</sup>The DPA and RESA have been unable to reach agreement on only one issue in the rules: whether the price to compare should be published on customers’ bills. The DPA and RESA intend to present their positions to the Commission at the hearing.

provide additional protections for Customers,” among other considerations.<sup>3</sup> Three workshops were held to discuss revisions to the rules.

2. In Order No. 8424 dated July 30, 2013, the Commission proposed to modify the Electric Supplier Rules to reflect revisions from the workshop process, and the revised rules were published in the September 2013 Register of Regulations (17 DE Reg. 310 (9/1/13)). In October 2013, several entities, including the DPA, RESA, and Delmarva, filed comments on the proposed revised Electric Supplier Rules. However, no Commission action was taken with respect to the revised rules.

3. In Order No. 8545 dated April 15, 2014, the Commission again proposed to revise the Electric Supplier Rules. Proposed revised rules were published in the May 2014 Register of Regulations (17 DE Reg. 1052 (5/1/14)). In June 2014, several parties submitted comments in response to the revised rules published in May 2014.

4. Although several entities, including the DPA<sup>4</sup>, filed comments on the proposed revised Electric Supplier Rules in June 2014, the docket lay dormant until December 2014, when the Commission Staff sent an email to the service list stating as follows: “Attached please find Staffs [sic] proposed changes to Regulation Docket No. 49 and response to comments received from the last publication of the proposed changes. Please respond with any comments by **Monday, January 5, 2015.**” (Emphasis in original). Staff subsequently extended the deadline for comments to January 15, 2015. These proposed regulations do not appear to have been published in the Register of Regulations. Nevertheless, among others, the DPA, RESA and

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<sup>3</sup> Order No. 8187 at ¶ 2.

<sup>4</sup> RESA did not file comments in June 2014 because Staff advised counsel for RESA that the rules would be pulled from consideration after Staff received verbal input from various parties. Rather than continue to expend resources on preparing voluminous comments, RESA opted to discontinue work on the comments and focus on what it thought would be a prompt next round of proposed revisions.

Delmarva filed comments and/or proposed revisions to Staff's proposed revisions to the Electric Supplier Rules.

5. Once again, the docket lay dormant until December 2015, when Commission Staff once again published revisions to the Electric Supplier Rules, and the Commission entered Order No. 8830 dated December 15, 2015. The proposed revisions were published in the January 2016 Register of Regulations. (19 DE Reg. 595 (1/1/16)). Once again, this time in February 2016, the DPA, RESA and Delmarva submitted comments and/or proposed revisions to Staff's proposed Electric Supplier Rules.

6. Meanwhile, on January 16, 2016, the Commission issued Order No. 8845 opening Docket No. 15-1693 in response to a petition filed by the Electricity Affordability Committee identifying eight specific proposals to increase customer choice in Delaware. One of those proposals was to "[f]inalize Regulation Docket No. 49 ... by incorporating recommended changes and simplifying supplier requirements where possible." Order No. 8845 at p. 3, ¶g. The Commission appointed Mark Lawrence as Hearing Examiner. The parties subsequently developed a procedural schedule that provided for an evidentiary hearing in that docket on July 26, 2016.

7. During the months of March through June, 2016, the DPA and RESA worked diligently (taking into account already-scheduled commitments of counsel and consultants) to draft revised Electric Supplier Rules that would incorporate important consumer protections that are absent from the current regulations, while at the same time make it more attractive for retail energy suppliers to market their products in Delaware. The DPA-RESA proposed Electric Supplier Rules completely overhauled the current rules, and as such it was not possible to redline the changes over Staff's proposed revisions from January 2016. On July 7, 2016, counsel for

RESA, acting on behalf of RESA and the DPA, sent the revised Electric Supplier Rules to counsel for the Commission Staff and Delmarva.

8. On July 7, 2016, RESA's counsel (with the support of the DPA) also filed a motion in Docket No. 15-1693 to postpone the procedural schedule in that docket pending a Commission decision on the Electric Supplier Rules ("Motion"). RESA explained that the DPA has consistently expressed a desire to finalize the Electric Supplier Rules before the enhancements proposed in Docket No. 15-1693 (particularly before a Purchase of Receivables program is implemented), and that the DPA-RESA version of the Electric Supplier Rules, if approved, would eliminate the need for RESA and other parties to address certain issues in Docket No. 15-1693. RESA provided two examples of issues in Docket No. 15-1693 that are addressed in the proposed DPA-RESA Electric Supplier Rules and would thus be eliminated as an issue in Docket No. 15-1693 if the Commission approves the DPA-RESA proposed Electric Supplier Rules: the "enroll with your wallet" proposal and the three-day switching proposal. (Motion at 3-4).

9. The Hearing Examiner postponed the July 11, 2016 deadline for prefiled testimony in Docket No. 15-1693. On July 13, 2016, he held a teleconference on RESA's Motion. During that teleconference, the DPA and RESA explained the interaction between Docket No. 15-1693 and the Electric Supplier Rules, and how it was important for revised rules to be in place (or at least approved) before the evidentiary hearing in Docket No. 15-1693. The Commission Staff and Delmarva neither specifically opposed nor supported the Motion. The Hearing Examiner established an amended schedule for Docket No. 15-1693 and scheduled the evidentiary hearing for October 18, 2016. Similarly, the parties agreed to schedule the hearing on the proposed revised Electric Supplier Rules on September 6, 2016.

10. Neither the DPA nor RESA has received any comments from the Commission Staff or Delmarva on their substantive revision(s) of the Electric Supplier Rules since they were sent to those parties on July 7, 2016. The Commission Staff has, however, raised the issue that the proposed DPA-RESA Electric Supplier Rules might need to be republished before any evidentiary hearing may be held. As explained below, the DPA and RESA do not believe re-publication is necessary.

### **ARGUMENT**

#### **A. No Publication Is Necessary for the Commission to Consider the DPA-RESA Draft Electric Supplier Rules at its Meeting on September 6.**

11. The DPA and RESA do not believe republication of the Electric Supplier Rules is necessary before an evidentiary hearing may be held. The Commission already published its proposed revision of the Electric Supplier Rules in January 2016, and the DPA-RESA proposed Electric Supplier Rules are comments on that proposed revision. The parties that appear at the hearing on September 6 can make their arguments in favor of or in opposition to the DPA-RESA proposal at that time. If the Commission should approve the DPA-RESA proposed Electric Supplier Rules, they will then require publication (the September 6 hearing would provide sufficient time to transmit the proposed rules to the registrar in time for publication in the October 2016 Register of Regulations), and the 30-day comment period mandated by the Administrative Procedures Act (“APA”) will begin to run. After the comment period has expired, the Commission can then approve the Electric Supplier Rules as final and publish them as such, or make changes to them based on comments received (if those changes are substantive, that will trigger another republication under the APA). But there is no need to publish the DPA-RESA proposed revised Electric Supplier Rules before the hearing scheduled for September 6.

The point is, however, that revised rules have already been published, and the Commission can consider the DPA-RESA version of the rules without another publication.

**B. If the Commission Concludes that Publication of the DPA-RESA Draft Electric Supplier Rules Is Necessary, the Deadline for Prefiled Testimony and the Date of the Evidentiary Hearing in Docket No. 15-1693 Should Be Postponed Until the Commission Has Finalized the Electric Supplier Rules.**

12. The DPA and RESA are well aware of the Chair's desire that Docket No. 15-1693 be concluded quickly. Indeed, months ago, RESA unsuccessfully supported expedited consideration of the enhancement programs in that docket. But RESA in July 2016 filed its own motion to continue the procedural dates in Docket No. 15-1693 to allow for finalization of the Electric Supplier Rules, and RESA supports this motion for the same reason. It is important that all retail suppliers doing business in Delaware, and all Delaware mass market customers to whom suppliers will be marketing, have finalized rules. From RESA's perspective, its members must know what they can and cannot do, and be able to make business-related decisions on key issues such as marketing channels, enrollment processes, and so forth that are covered in the DPA-RESA version of the revised rules. And from the DPA's perspective, it is important that the rules be finalized to ensure that customer protections are in place sooner rather than later, and especially before any of the market-enhancement programs in Docket No. 15-1693 are adopted which are being considered with an eye towards increasing retail supplier activity and shopping in Delaware.

13. Moreover, some of the same issues that are part of Docket No. 15-1693 are addressed in the DPA-RESA draft Electric Supplier Rules (enroll with your wallet, three-day switching). Litigating the issue in both cases is duplicative, increasing costs not only for RESA but the DPA, the Commission Staff, and Delmarva (and Delmarva's costs get charged to

customers in rates). Finalizing the Electric Supplier Rules first will also reduce the time necessary to conduct the evidentiary hearing in Docket No. 15-1693.

**CONCLUSION**

The DPA and RESA respectfully request the Commission to find that it does not need to publish the proposed DPA-RESA draft Electric Supplier Rules before considering them at its September 6 meeting. Alternatively, if the Commission does find that the DPA-RESA Electric Supplier Rules should be published before an evidentiary hearing is held on them, then the DPA and RESA respectfully request the Commission to postpone the deadline for prefiled testimony and the date of the evidentiary hearing in Docket No. 15-1693 until the Commission has finalized the Electric Supplier Rules.

Respectfully submitted,

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Dated: August 15, 2016

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**TITLE 26 PUBLIC UTILITIES  
DELAWARE ADMINISTRATIVE CODE**

**Public Service Commission**

**3001 Rules for Certification and Regulation of Electric Suppliers**

Effective: \_\_\_\_\_, 2016

**1. 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. “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. 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 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.

**“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.

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

“**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 who share the energy production of the Community Energy Facility, which may be located either as a stand-alone facility or behind the meter of a Subscriber. The Community-Owned Energy Generating Facility shall be interconnected to the distribution system and operated in parallel with an EDC transmission and distribution facilities. The Community Energy Facility shall:

1. Satisfy all applicable requirements of Section 15 Net Metering of these Rules;
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.

“**Contract**” means the total legal obligation resulting from the parties' agreement as effected by these Rules and other applicable law. A Contract for Electric Supply Service 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. If the terms of the Contract Summary differ from the terms of the Contract, then the provision(s) most favorable to the Customer shall control.

“**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 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 Net Metering of these Rules;
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.

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

“**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 Agent personally solicits a Residential or Small Commercial Customer to sell Electric Supply Service. This term includes sales made at a place other than the Electric Supplier’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; 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).

**"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.

“**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.

“**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, may be used to offset electric energy provided by the Electric Supplier to the Customer.

**"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.

**"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.

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

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

**"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.

**"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.

**"Rules"** means the Commission's Rules for Certification and Regulation of Electric Suppliers (26 *Del. Admin. C.* §3001 *et seq.*).

**"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.

**“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 Rules, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for Electric Supply Service shall be exempt from the definition of a Small Commercial Customer.

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

**“Staff”** 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 to a Residential or Small Commercial Customer in order to market Electric Supply Service.

**“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).

**“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.

**“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;
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 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 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 customer support contact information.

**“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 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. 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 *Del. Admin. C.* §1001 Rules of Practice and Procedure of the Commission. A copy of the application shall be served upon DPA within three (3) Business Days of its filing with 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 or 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.

**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; and

**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 Rules 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 Rules and 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.

**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.

**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 Rule 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;

**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 paragraph prior to the issuance of an Electric Supplier Certificate. The Applicant must maintain financial security that complies with this paragraph 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.

**2.3.4. 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 paragraph 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 Rules.

**2.3.5.2. Cash.** Cash and applicable interest shall be returned to the Electric Supplier after all obligations are satisfied.

**2.3.5.3. Other Liability.** Liability of Electric Suppliers for violation of law, Commission orders or Commission rules is not limited by the security requirements of this Section.

**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 Rules that are not required by statute. The waiver may not be inconsistent with the purpose of these Rules 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 Rule 12.3 of these Rules within ninety (90) days of the required date. An Electric Supplier shall be allowed 30 days' notice to cure a late annual filing.

**3. 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 Rule 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 Rule 3.1.1.1 of this regulation shall specify the Customer information listed in Rule 3.2 to be requested from the EDC.

**3.1.3. Customer Consent Records.**

**3.1.3.1.** A Customer's consent under Rule 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 Rule 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 Rule 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.

**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 list on a monthly basis. A Customer may elect to opt out of the list.

3.3.1. An EDC shall refresh its customer list on an annual basis.

3.3.1.1. Prior to refreshing the customer list, an EDC 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. Customer Account Number and any other number designated by the EDC as necessary to process an enrollment;
- 3.3.2.2. Customer Name;
- 3.3.2.3. Service Address(es);
- 3.3.2.4. Billing Address(es);
- 3.3.2.5. Billing Country Code (if available);
- 3.3.2.6. Tariff Rate Class and Schedule;
- 3.3.2.7. Rate Subclass/Rate Subcode (if available);
- 3.3.2.8. Meter Read Cycle;
- 3.3.2.9. Load Profile Group per Tariff;
- 3.3.2.10. Transmission/Capacity Obligation (PJM) (Current/Future);
- 3.3.2.11. Whether the customer is an SOS customer;
- 3.3.2.12. Historical usage for prior 12 months (consumption/demand);
- 3.3.2.13. On Peak/Off Peak Consumption (each of 12 months) (KWH) (if available);
- 3.3.2.14. Monthly Peak Demand (each of 12 months) (KW) (if available);

- 3.3.2.15. Dynamic pricing election, if any;
- 3.3.2.16. Net Metering (Y or N); and
- 3.3.2.17. Sales Tax Status (Y or N).

#### **4. Enrollments and Drops.**

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

4.2. 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.

4.3. 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.

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

4.5. 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.

4.6. The provisions in this Rule 4 shall be implemented on or before the date that the Commission orders.

#### **5. 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 Rules. 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.

### **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. 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.

**Comment [BG1]:**

**NOTE TO READERS:** DPA wants language here requiring Delmarva to include the Price to Compare on Customers' bills. RESA opposes this. This is the only remaining "open issue" between DPA and RESA.

**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

**6.2.2.3.2.5** A statement describing how the Residential or Small Commercial Customer may access future pricing information in accordance with Rule 7;

**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.

**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;

**6.2.2.14** A dispute procedure, including that the Electric Supplier must adhere to the provision in 26 *Del Admin. C.* §3002-3.2.2 regarding good faith disputes.

**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 Rule 6.6.2.3.2.2;

**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 Rule 6.6.2.3.2.3, along with the disclaimer in Rule 6.6.2.3.2.4; and

**6.3.5.3** The disclosures required by Rule 7.1.3.

**7. 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 Rule 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. 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 Rule 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 Rule 7;

**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 Rule 8 were provided to its Residential or Small Commercial Customers.

**9. 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. 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 Rule 3.1. Electric Suppliers or Brokers found to have violated these provisions may be subject to certificate revocation and/or penalties as described in Rule 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;
- 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 *Del. Admin. C. §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 *Del. Admin. C. §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 Rules.

**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 provide Written Notice to the Customers of the Electric Supplier, the Commission, the EDC, and the DPA the assignment or transfer.

**10.10.1.1** 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:

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

or

**10.10.1.1.2** Customer service contact information for the assignee; and

**10.10.1.1.3** 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.

**10.10.1.2** 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. 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 Rules 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;
- 11.5.1.3** The Electric Supplier shall note the effective date of the Prices shown in the table provided under Rules 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 Rule 6.2.2.3.2.2 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;

may **11.7.3.2.3** How the Residential or Small Commercial Customer 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 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 Rules 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 Rule 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;

**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.

**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 Rules 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 Rules 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 Rules.

**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 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 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. Reports to be Provided to the Commission and 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 Rules; 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 Rules;

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

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

**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 Rules;

**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. 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 a generation resource mix consisting of Eligible Energy Resources above the current minimum cumulative percentage of electrical energy sales from Eligible Energy Resources, as found in Schedule 1 of 26 *Del. C.* § 354(a). The Electric Supplier shall identify the percentage of renewable resources in the Contract and disclose to Customers the current minimum cumulative percentage of electrical energy sales from Eligible Energy Resources.

**13.2** Electric Suppliers offering a Green Power Product shall register with either: (a) the PJM-EIS GATS, (b) its successor, or (c) other applicable regional renewable energy certificate tracking systems, 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 or other applicable regional renewable energy certificate tracking systems, or Green-e Energy, and shall pay applicable fees.

**13.3** Electric Suppliers offering a Green Power Product shall retire RECs and/or SRECs equal to the marketed or otherwise advertised generation resource mix with PJM-EIS GATS or other applicable regional renewable energy certificate tracking systems or Green-e Energy.

**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 shall file a report detailing its compliance with its marketed or otherwise advertised generation resource mix, including, but not limited to, evidence of the specified number of SRECs and/or RECS retired in PJM-EIS's GATS or other applicable regional renewable energy certificate tracking systems, or Green-e Energy.

**13.5** Any unused Delaware SRECs or RECs retired for compliance with this Regulation may be dated no earlier than three (3) years prior to the beginning of the current compliance year. This 3-year period is tolled during any period that the SREC or REC is held by the Delaware Sustainable Energy Utility as defined in 29 *Del. C.* § 8059.

**13.6** When requested by a Customer or providing information regarding Green Power Products 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 it exceeds current minimum cumulative percentage of electrical energy sales from Eligible Energy Resources, as found in Schedule 1 of 26 *Del. C.* § 354(a).

**13.8** Electric Suppliers offering Green Power Products shall meet the disclosure of the fuel resource mix requirements stated in Section 13.0 of these Rules.

**14. 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 paragraph 13.0.3 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 paragraph 13.0.3 as required by 26 *Del. C.* § 1012. Information reported under paragraph 13.0.3 may be utilized in any consumer education program developed in accordance with 26 *Del. C.* § 1014 (c).

**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 49  
(OPENED APRIL 27, 1999; REOPENED )  
JANUARY 7, 2003; REOPENED SEPTEMBER )  
22, 2009; REOPENED SEPTEMBER 7, 2010; )  
REOPENED JULY 17, 2012; REOPENED )  
APRIL 15, 2014) )**

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**IN THE MATTER OF THE REVIEW OF )  
CUSTOMER CHOICE IN THE STATE OF ) PSC DOCKET NO. 15-1693  
DELAWARE (Opened January 19, 2016) )**

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2016, I caused a copy of the attached **JOINT SUBMISSION OF THE DIVISION OF THE PUBLIC ADVOCATE AND THE RETAIL ENERGY SUPPLY ASSOCIATION TO REVISE 26 DEL. C. §3001: RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS; AND, ALTERNATIVELY, MOTION FOR A CONTINUANCE OF THE DEADLINE FOR TESTIMONY AND THE DATE OF THE EVIDENTIARY HEARING IN DOCKET NO. 15-1693** to be filed with the Delaware Public Service Commission using Delafile and to be served on the following persons identified on the Delafile service lists for these dockets via electronic mail.

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Dated: August 15, 2016