Legislative Council,
General Assembly
State of Delaware

Title 26

Public Utilities

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Chapter 1
Public Service Commission
Subchapter I
General Provisions

§ 101. Short title.

This chapter shall be known and referred to as the "Public Utilities Act of 1974."
(59 Del. Laws, c. 397, § 1.)

§ 102. Definitions.

As used in this title, unless the context otherwise requires:

(1) "Commission" means the Public Service Commission.

(2) "Public utility" includes every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this State, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in § 1001 of this title), electric transmission by other than a public utility over which the Commission has no supervisory or regulatory jurisdiction pursuant to § 202(a) or (g) of this title, water, wastewater (which shall include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

(3) "Rate base" means:

a. The original cost of all used and useful utility plant and intangible assets either to the first person who committed said plant or assets to public use or, at the option of the Commission, the first recorded book cost of said plant or assets; less

b. Related accumulated depreciation and amortization; less

c. The actual amount received and unrefunded as customer advances or contributions in aid of construction of utility plant, and less

d. Any accumulated deferred and unamortized income tax liabilities and investment credits, adjusted to reflect any accumulated deferred income tax assets including, but not limited to, those arising from the payment of alternative minimum tax, related to plant included in paragraph a. above, plus

e. Accumulated depreciation of customer advances and contributions in aid of construction related to plant included in paragraph a. above, and plus

f. Materials and supplies necessary to the conduct of the business and investor supplied cash working capital, and plus

g. Any other element of property which, in the judgment of the Commission, is necessary to the effective operation of the utility.

(4) "Cable television system," "community antenna television," "cable system" or "system" shall mean a facility within this State which is constructed in whole or in part in, on, under or over any highway, road, street, alley, or other public place and which is operated to perform the service of receiving and amplifying the signals of 1 or more radio and/or television broadcasting stations and distributing such signals by cable, wire or other means to members of the public who subscribe to such service; provided that nothing herein is intended to prohibit any system from engaging in any other activity not expressly prohibited by law; except that such definition shall not include (i) any system which serves fewer than 50 subscribers; or (ii) any system which serves only the residents of 1 or more apartment dwellings or mobile home or trailer parks under common ownership, control or management, and commercial establishments located on the premises of such dwellings; or (iii) telephone, telegraph or electric utilities in those cases where the activity of such utility in connection with a cable system is limited to leasing or renting to cable systems, cables, wires, poles, towers or other electronic equipment or rights to use real property as part of, or for use in connection with, the operation of a cable system.

(5) The term "franchise" shall mean authorization lawfully adopted or agreed to by the Commission pursuant to this chapter to construct or operate a cable television system or systems in whole or in part within a county of this State.

(6) The term "franchisee" shall mean the person, persons or entity holding a franchise.

(7) The term "written notice" shall mean notice in writing which is hand-delivered or mailed by certified mail, to the person who is to be given notice.

(8) "Water utility" shall mean any person or entity operating within this State any water service, system, plant or equipment for public use.

(9) The terms "ancillary services," "distribution facilities," "distribution services," "electric distribution company," "electric supplier," "retail competition," "retail electric customer," "transmission facilities," and "transmission services," as used in Chapters 1, 2 [repealed] and 3 [repealed] of this title, shall have the same definitions as set forth in § 1001 of this title.

(10) "Call center" means a facility or other operation whereby a public utility receives incoming telephone calls, emails, or other electronic communication for the purpose of providing customer assistance or other service.

(11) "Disaster" means as defined in § 3102 of Title 20.

(12) "Contract capacity" means the amount of monthly peak load requirements that is mutually agreed to by a Commission-regulated electric utility and a large energy use facility for each month remaining in a contract term after the load ramp period has ended and for which both of the following apply:

a. The Commission-regulated electric utility agrees to provide retail electric service subject to the terms and conditions in its tariffs.

b. The large load customer agrees to purchase service at that load level for the stated term of the contract under the same terms and conditions as those stated in the contract.

(13) a. "Large energy use facility" means a facility that does any of the following:

1. Uses or is projected to use a monthly maximum demand of 75 megawatts or greater at a load factor of 85% or greater.

2. Uses a monthly maximum instantaneous demand of 100 megawatts or greater.

3. Uses or is able to use a monthly maximum demand of 30 megawatts or greater and is primarily engaged in providing a service described under code 518210 of the 2022 North American Industry Classification System.

b. Multiple facilities may be aggregated and treated as a large energy use facility for the purposes of this definition if the electric utility or the electric utility's regulatory body determines they would pose reliability risks to the electric system because of their electricity use, proximity, and operational characteristics. Factors that may be considered include close physical proximity, common ownership or control, or ownership or control through an affiliated company, and sharing of local electrical infrastructure.

c. "Large energy use facility" does not include a facility that stores, processes, refines, or transfers crude petroleum or petroleum products in bulk quantities, including refineries, and such uses shall not count toward aggregation. This exemption does not apply to a new facility that, after August 26, 2026, adds uses unrelated to the storage, processing, refining, or transfer of crude petroleum, petroleum products in bulk quantities, or other energy storage materials, if the energy use of the new facility meets the thresholds in paragraph (13)a. of this section.

(14) "Load ramp period" means the period of time from commencement of service until a large energy use facility's demand reaches the full contract capacity.

(47 Del. Laws, c. 254, § 2; 48 Del. Laws, c. 371, § 4; 26 Del. C. 1953, § 101; 54 Del. Laws, c. 38, § 2; 57 Del. Laws, c. 665, § 1; 59 Del. Laws, c. 397, § 1; 62 Del. Laws, c. 125, § 6; 64 Del. Laws, c. 342, § 1; 65 Del. Laws, c. 484, § 1; 68 Del. Laws, c. 124, § 1; 70 Del. Laws, c. 585, §§ 1, 2; 72 Del. Laws, c. 10, §§ 4, 5; 73 Del. Laws, c. 157, § 5; 74 Del. Laws, c. 317, § 1; 75 Del. Laws, c. 73, § 1; 81 Del. Laws, c. 205, § 4; 85 Del. Laws, c. 315, § 1; 85 Del. Laws, c. 440, § 1; 85 Del. Laws, c. 442, § 1.)

§ 102A. Public notice.

In any matter or proceeding before the Commission, the Commission may decide the manner and method of giving notice to those persons affected by, likely to be affected by or likely to be interested in the matter or proceeding. In making this determination, the Commission shall not be governed by the provisions for notice by publication set out in §§ 10115(b) and 10124(1) of Title 29. Instead, such notice may be made by:

(1) Publication in 1 or more newspapers of general circulation;

(2) Delivery, by mail or other means, of a written notice to those directly affected, such as ratepayers or subscribers;

(3) Notice on the Commission's website or other digital media platforms;

(4) A combination of the above procedures; or

(5) Any other means which is reasonably likely to afford the affected and interested persons notice of the pendency of the matter so that they have the opportunity to present their views, such as the placement of a notice in a customer's bill.

In making its determination, the Commission may consider the nature of the proceedings, the number of persons affected or interested, the ability of alternative means to reach those affected and interested and the comparative costs of the alternative methods. When, under this chapter, a public utility is required to give notice to the public, the Commission shall set the form and manner of such notice.

(70 Del. Laws, c. 585, § 3; 84 Del. Laws, c. 61, § 1.)

§ 103. Composition; appointment; term; qualifications; vacancies; Chairman.

(a) The Public Service Commission is continued except that it shall consist of only 5 members, each of whom shall have been or shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate. The terms of office of the members of the Commission serving as of June 28, 1974, shall not be affected. Subject to the provisions of subsection (d) of this section, each member shall continue to serve out the term for which each such member was originally appointed, and until each such member's successor shall have been appointed and qualified. Each member of the Commission appointed after June 28, 1974, except a member appointed pursuant to subsection (d) of this section to fill an unexpired term, shall be appointed for a term of 5 years from May 1 in the year of that member's appointment, and until that member's successor shall have been appointed and qualified.

(b) Not more than 3 of the members of the Commission shall be members of the same political party. One of the members shall be a resident of the City of Wilmington, 2 shall be residents of New Castle County outside of Wilmington, 1 shall be a resident of Kent County and 1 shall be a resident of Sussex County; provided, however, that beginning with the appointment of the member for a term of 5 years beginning as of May 1, 1976, and continuously thereafter, 1 of the members shall be a resident of the City of Wilmington, 1 shall be a resident of New Castle County outside of Wilmington, 1 shall be a resident of Kent County, 1 shall be a resident of Sussex County and 1 shall be a member at large who shall be a resident of this State.

(c) A Commissioner shall continue to reside in the political subdivision of which that Commissioner was a resident at the time of the Commissioner's appointment.

(d) In case of a vacancy on the Commission for any reason other than expiration of the term of office, the Governor shall fill such vacancy for the unexpired term by and with the consent of a majority of the members elected to the Senate.

(e) The Governor shall designate 1 of the Commissioners as Chairman of the Commission who shall serve as Chairman at the pleasure of the Governor.

(47 Del. Laws, c. 254, § 1; 26 Del. C. 1953, § 102; 57 Del. Laws, c. 139, § 1; 57 Del. Laws, c. 182, § 1; 57 Del. Laws, c. 740, § 12A; 58 Del. Laws, c. 511, § 61; 59 Del. Laws, c. 397, § 1; 61 Del. Laws, c. 1, § 1; 70 Del. Laws, c. 186, § 1.)

§ 104. Removal of Commissioner.

The Governor, with the advice and consent of the Senate, may remove any member of the Commission for neglect of duty or misconduct in office, giving to the member a copy of the charges against such person and affording an opportunity of being publicly heard in person or by counsel, upon 10 days' notice.

(47 Del. Laws, c. 254, § 1; 26 Del. C. 1953, § 103; 59 Del. Laws, c. 397, § 1.)

§ 105. Compensation of Commissioners.

The members of the Commission shall each receive a salary as appropriated in the current fiscal year State of Delaware Operating Budget, to be paid in equal monthly payments by the Treasurer of the State.

(47 Del. Laws, c. 254, § 1; 26 Del. C. 1953, § 104; 59 Del. Laws, c. 397, § 1; 60 Del. Laws, c. 383, § 1; 84 Del. Laws, c. 61, § 1.)

§ 106. Office; seal; rules; meetings.

(a) The Commission shall have such office or offices as may be necessary and shall be provided with all necessary furniture, stationery and supplies, and office appliances. It shall provide itself with a seal for the authentication of its proceedings and orders. It may make all needful rules for its government and other proceedings not inconsistent with this title. It shall meet at such times and places within this State as it may provide by rule or by special order.

(b) Meetings of the Commission must be available over the internet by livestream broadcast that meets all of the following:

(1) Streams audio and video of the meeting.

(2) Permits the public to hear all participants contemporaneously.

(c) Meetings of the Commission must allow for virtual public comment.

(d) Subsections (b) and (c) of this section do not apply in the event of unavoidable technical difficulties, such as internet connectivity issues, or if the Commission enters into an executive session. If there are technical difficulties, good-faith efforts must be made to restore virtual capabilities.

(47 Del. Laws, c. 254, § 1; 26 Del. C. 1953, § 105; 59 Del. Laws, c. 397, § 1; 85 Del. Laws, c. 443, § 1.)

§ 107. Quorum.

A majority of the members of the Commission shall constitute a quorum and shall be sufficient for any action by the Commission; provided, however, that a single Commissioner may sit for the purpose of hearing testimony in any matter provided:

(1) The parties consent; and

(2) Any final decision in the matter must be approved by a majority of the members of the Commission.

(47 Del. Laws, c. 254, § 1; 48 Del. Laws, c. 371, § 3; 26 Del. C. 1953, § 106; 57 Del. Laws, c. 139, § 2; 57 Del. Laws, c. 182, § 2; 59 Del. Laws, c. 397, § 1.)

§ 108. Personnel.

Subject to the provision of Title 29, Chapters 25 (Department of Justice) and 59 (Merit System of Personnel Administration), the Commission may appoint, fix the compensation and terms of service, and prescribe the duties and powers of an executive director, a secretary and such officers, accountants, attorneys, experts, engineers, inspectors, clerks and other persons, as it deems necessary for the proper conduct of the work of the Commission.

(47 Del. Laws, c. 254, § 1; 48 Del. Laws, c. 371, § 1; 26 Del. C. 1953, § 107; 57 Del. Laws, c. 740, § 12B; 59 Del. Laws, c. 397, § 1.)

§ 109. Disqualification for serving as member or employee of Commission.

(a) No person shall be eligible for appointment to or shall hold the office of Commissioner, or be appointed by the Commission to hold any office or position under it, who is a director, officer or employee of any public utility or owns or directly or indirectly controls any stock of any public utility entitled to vote for election of directors.

(b) No Commissioner, and no employee, appointee or official engaged in the service of, or in any manner connected with the Commission shall hold any office or position, or be engaged in any business, employment or vocation, the duties of which are incompatible with the duties of the Commissioner's office as Commissioner, or the Commissioner's employment in the service or in connection with the work of the Commission.

(47 Del. Laws, c. 254, § 1; 48 Del. Laws, c. 371, § 2; 26 Del. C. 1953, § 108; 59 Del. Laws, c. 397, § 1; 61 Del. Laws, c. 419, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 110. Travel expense.

The Commissioners, executive director, secretary and other persons engaged in the service of the Commission shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the Commission.

(47 Del. Laws, c. 254, § 1; 26 Del. C. 1953, § 109; 59 Del. Laws, c. 397, § 1.)

§ 111. Expenditures.

All expenditures of the Commission, within the limits of its appropriations, including the necessary traveling expenses of the Commissioners, executive director, secretary and other persons engaged in the service of the Commission shall, prior to April 1, 1975, be paid by the State Treasurer out of the general funds of the State on proper voucher therefor approved by the Chairman of the Commission or, at the direction of the Chairman, by the executive director. On and after April 1, 1975, said expenditures of the Commission, within the limits of its appropriations, shall be paid by the State Treasurer out of the Delaware Public Utility Regulatory Revolving Fund on proper voucher therefor approved by the Chairman of the Commission or, at the direction of the Chairman, by the executive director.

(47 Del. Laws, c. 254, §§ 1, 20; 26 Del. C. 1953, § 110; 59 Del. Laws, c. 397, § 1; 77 Del. Laws, c. 151, § 1.)

§ 112. Copies of official documents and orders.

Copies of all official documents and orders filed or deposited in the office of the Commission, certified by the Chairman or the secretary to be true copies of the original and given under the official seal of the Commission, shall be evidence in like manner as the original in all courts of this State. Such charges may be taxed and collected for such copies as are taxed and collected for like services in the Superior Court of this State.

(47 Del. Laws, c. 254, § 17; 26 Del. C. 1953, § 111; 59 Del. Laws, c. 397, § 1.)

§ 113. Testimony by member, employee or investigator of Commission.

No member, employee or investigator of the Commission shall be required to give testimony in any court suit to which the Commission is not a party with regard to information obtained by such member or employee in the discharge of official duty.

(47 Del. Laws, c. 254, § 10; 48 Del. Laws, c. 371, § 15; 26 Del. C. 1953, § 112; 59 Del. Laws, c. 397, § 1.)

§ 114. Charges and fees; costs and expenses of proceedings.

(a) The Commission may impose charges and fees for filing and for other services rendered by it in accordance with the following schedule of fees:

SCHEDULE OF FEES

1.	For filing the annual financial statement of any public utility	$25
2.	Certificates of public convenience and necessity:	
	(a) For filing each original application for a certificate of public convenience and necessity (except for telecommunications local exchange service or application for approval of a transfer of such certificate)	750
	(b) For filing each extension to a certificate of public convenience and necessity (except for telecommunications local exchange service)	300
	(c) For filing each application for a certificate of public convenience and necessity (for original or for extension) to provide telecommunications local exchange service or application for approval of a transfer of such certificate	3000
3.	For filing each application for approval or authority to discontinue or abandon all or any part of any public utility operation or service	150
4.	(a) For each filing of rate or tariff schedules, or any amendment thereto or notice of changes therein	50
	(b) For each filing of petition or application to increase rates	100
5.	For filing each petition or application under § 215(a)(1) of this title	100
6.	For filing each petition or application under § 215(a)(2) of this title in accordance with the following schedule based upon the aggregate amount of the stocks (by par value or by stated value if no par), notes, bonds, or other evidence of indebtedness. The fee so established is to be used to evaluate such petition or application in lieu of any other assessment	
	AGGREGATE AMOUNT	
	Under $1,000,001	150
	$1,000,001 - $10,000,000	250
	$10,000,001 and above	350
7.	For preparing and certifying to the Superior Court any record in appeal	400
8.	For certifying a copy of each paper, order, record, transcript or any other official document other than to the Superior Court	10
9.	Upon request therefor by either a consumer or a utility for testing each water meter having an outlet not exceeding 1 inch	10
10.	Upon request therefor by either a consumer or a utility for testing each water meter having an outlet of more than 1 inch but not exceeding 2 inches	15
11.	Upon request therefor by either a consumer or a utility for testing each electric meter	10
12.	The charge or fee for any services rendered by the Commission in filing papers, documents, records or other items not expressly provided for in this subsection shall be a reasonable charge or fee in relation to the service rendered, not to exceed the highest fee or charge permitted on this schedule of fees fixed by the Commission from time to time.	

(b) (1) Whenever the Commission, in a proceeding upon its own initiative or upon complaint or upon written application to it, shall deem it necessary in order to carry out its statutory duties, to investigate the operations, services, practices, accounting records and/or procedures, rates, charges, rules and regulations, of any public utility, and/or to make valuations or revaluations of the property of any public utility, and/or to enter into and hold a hearing or hearings in connection therewith, such public utility shall be charged with and pay such portion of the expenses of the Commission, and the compensation and expenses of its agents, representatives, consultants and employees, including, but not limited to those temporarily employed or retained, as is reasonably attributable to such investigation, valuation and revaluation, hearing or hearings. In addition, if the Division of the Public Advocate elects to intervene or participate in a natural gas, electric, water or wastewater rate proceeding under subchapter III of this chapter including fuel adjustments pursuant to § 303(b) of this title and water utility distribution system improvement charges pursuant to § 314 of this title. The public utility involved shall also be charged with and pay such portion of the expenses of the Division of the Public Advocate, and the compensation and expenses of its agents, representatives, consultants and employees, including but not limited to those temporarily employed or retained, as is reasonably attributable to such proceeding. At the time the Commission or the Division of the Public Advocate determines that such charges will be required, the Commission or Division shall provide notice to the public utility, or its counsel of record at such time, of its intent to impose and collect any charges. No charges shall be made for the compensation of Commissioners or the Public Advocate.

a. If the Commission or an appellate court determines by order that the Commission or the Public Advocate brought or defended all or a portion of a proceeding

1. For an improper purpose;

2. Without any basis in existing law;

3. Without a justifiable basis for seeking the extension, modification or reversal of existing law; or

4. Without evidentiary support after reasonable opportunity for investigation and discovery,

then to such extent the public utility shall not be charged with or required to pay such expenses.

b. If the Commission or an appellate court determines by order that a utility brought or defended all or a portion of a proceeding

1. For an improper purpose;

2. Without any basis in existing law;

3. Without a justifiable basis for seeking the extension, modification or reversal of existing law; or

4. Without evidentiary support after reasonable opportunity for investigation and discovery,

then to such extent the utility shall not be permitted to include the costs associated with that proceeding in its rates.

(2) From time to time as the investigation, valuation, revaluation, hearing or hearings progress, or upon completion thereof, the Commission and the Division of the Public Advocate shall ascertain each agency's costs incurred in connection therewith, including, but not limited to the expenses of the Commission and the Division of the Public Advocate and the compensation and expenses of each agency's respective agents, representatives, consultants and employees, including those temporarily employed or retained, and shall determine the amount thereof to be paid by the public utility and shall render separate bills therefor to the public utility. The Commission and the Division of the Public Advocate shall furnish the public utility such itemization of each said bill as may be requested by said public utility. The public utility shall have the right to audit said bill within a reasonable period after its rendition by the Commission or the Division of Public Advocate and shall have the opportunity to be heard before the Commission as to any or all of the items included in the bill. The amount of such bill as finally determined by the Commission following such hearing and any appeal therefrom shall be paid into the Delaware Public Utility Regulatory Revolving Fund within 30 days from the date of its determination. If any amount so assessed against a public utility is not paid within 30 days after the date of rendition of the bill with respect thereto, the utility shall pay a penalty of 1% of the amount due for each month or fraction thereof that such amount is unpaid. The charges imposed for the costs of the Division of the Public Advocate shall be paid to the Commission and shall be deposited to the credit of the Delaware Public Utility Regulatory Revolving Fund.

(3) The expenses of the Commission and the Division of the Public Advocate and the compensation and expenses of each agency's respective agents, representatives, consultants and employees, including but not limited to those temporarily employed or retained, reasonably attributable to any appellate court proceedings in either or both the Superior or Supreme Court of the State growing out of any order, opinion, decision or findings of the Commission shall also be ascertained, charged, billed to and paid for by the public utility in accordance with the foregoing conditions and procedures.

(4) Whenever the investigation, valuation, revaluation, hearing, hearings or appellate court proceedings involve the affairs and operations of 2 or more public utilities jointly, the charges made under this section for such investigation, valuation, revaluation, hearing, hearings, or appellate court proceedings shall be prorated among such public utilities upon the basis of their gross intrastate operating revenues for the last preceding calendar year.

(5) The total aggregate amount to be charged by both the Commission and the Division of the Public Advocate to any public utility under authority of this subsection (b) in any calendar year shall not exceed 1 percent of such public utility's gross operating revenues derived from intrastate utility operations in the last preceding calendar year.

(c) In connection with any Commission proceedings under §§ 203A and 203B of this title the Commission and the Division of the Public Advocate shall charge the public utilities involved therein, including any electric utility that is municipally owned or a municipal

electric company formed pursuant to Chapter 13 of Title 22, the expenses of the Commission and the Division of the Public Advocate related to such proceedings as is reasonably attributable thereto prorated among such public utilities upon the basis of their gross intrastate electric revenues for the last preceding calendar year.

(26 Del. C. 1953, § 113; 50 Del. Laws, c. 552, § 1; 52 Del. Laws, c. 155; 53 Del. Laws, c. 389; 57 Del. Laws, c. 667, §§ 1, 2; 59 Del. Laws, c. 397, § 1; 68 Del. Laws, c. 299, § 2; 71 Del. Laws, c. 22, § 1; 71 Del. Laws, c. 405, § 1; 77 Del. Laws, c. 151, §§ 2-7.)

§ 115. Public policy; regulatory assessment; definition of revenue; returns; collection of assessment.

(a) It is declared to be the public policy of this State that in order to maintain and foster the effective regulation of public utilities under this title, in the interests of the people of this State and the public utilities as well, the public utilities subject to regulation of the Public Service Commission which enjoy the privilege of operating as public utilities in this State shall bear the expense of regulation by means of an assessment on such privilege measured by the annual gross revenue of such public utilities in the manner hereinafter provided. This assessment shall be in addition to all other fees and charges imposed by the Public Service Commission and the Division of the Public Advocate pursuant to this title.

(b) As used in subsection (c) of this section, the term "intrastate public utility business" includes all that portion of the business of the public utilities designated in § 102 of this title and over which the Commission has jurisdiction under the provisions of this title.

(c) As used in this section, the term "gross revenue" includes all revenue which:

(1) Is collected by a public utility subject to regulation by the Public Service Commission, and

(2) Is derived from the intrastate public utility business of such a utility.

Such term does not include revenue derived by such a public utility from the sale of public utility services, products or commodities to another public utility or to an electric cooperative or municipality for resale by such public utility or electric cooperative or municipality.

(d) (1) An assessment is imposed upon each public utility subject to regulation by the Public Service Commission in an amount equal to the product of .003 (3 mills) multiplied by its gross operating revenue for each calendar year, commencing with the calendar year beginning January 1, 1974 and ending with the calendar year beginning January 1, 2023.

(2) An assessment is imposed upon each public utility subject to regulation by the Public Service Commission in an amount equal to the product of .004 (4 mills) multiplied by its gross operating revenue for each calendar year, commencing with the calendar year beginning January 1, 2024.

(3) No assessment shall be imposed upon a public utility having a gross operating revenue of less than $10,000 in any calendar year.

(e) On or before March 31 of each year, each public utility subject to the provisions of this title shall file with the Commission an annual gross revenue return containing a statement of the amount of its gross revenue for the immediately preceding calendar year, and a statement of the amount of assessment due for such calendar year accompanied by a check in payment thereof. A copy of such return shall also be delivered to the Division of the Public Advocate. A utility subject to this section which paid an annual assessment greater than $10,000 in the preceding year shall make an estimated payment of at least 40% of the expected assessment no later than 6 months prior to the March 31 due date for the return and final payment. Forms for such returns and amended returns shall be devised and supplied by the Commission.

(f) All returns submitted to the Commission by a public utility, as provided in this section, shall be sworn to by an appropriate officer of the public utility. The Commission may audit each such return submitted and may take such measures as are necessary to ascertain the correctness of the returns submitted. The Commission has the power to direct the filing of an amended return by any utility which has filed an incorrect return and to direct the filing of a return by any utility which has failed to submit a return.

(g) Each payment of the assessment imposed by subsection (d) of this section becomes delinquent at midnight of the date that it is due. If upon filing a return or an amended return it shall appear that a public utility has failed to pay, or has underpaid, the proper amount, it shall pay a penalty to the Commission of 2% of the amount due for each month or fraction thereof that such amount is unpaid. The Commission may enforce the collection of any delinquent installment or payment, or portion thereof, by legal action or in any other manner by which the collection of debts due the State may be enforced under the laws of this State.

(h) In lieu of the regulatory assessment imposed under this section, a telecommunications service provider shall pay an assessment into the Delaware Broadband Fund. On August 1, 2013, the telecommunications service provider shall pay into the fund $^1/_2$ of the amount of its 2011 regulatory assessment in lieu of the amounts due under this section for the period January 1, 2013, through June 2013 and shall continue making payments into the Fund in lieu of any amounts due under this section for an additional 3 years beginning on January 30, 2014, and ending on January 30, 2016, in an amount equal to the regulatory assessment for the year 2011, after which time the obligation under subsections (a)-(g) of this section or to make payments under this subsection shall cease.

(26 Del. C. 1953, § 114; 57 Del. Laws, c. 667, § 3; 59 Del. Laws, c. 397, § 1; 67 Del. Laws, c. 260, § 1; 75 Del. Laws, c. 142, §§ 1, 2; 77 Del. Laws, c. 151, §§ 8, 9; 79 Del. Laws, c. 53, § 8; 79 Del. Laws, c. 309, § 1; 84 Del. Laws, c. 61, § 1.)

§ 116. Delaware Public Utility Regulatory Revolving Fund; deposit of moneys collected.

(a) There is hereby created within the State Treasury a special fund to be designated as the Delaware Public Utility Regulatory Revolving Fund which shall be used in the operations of the Commission and the Division of the Public Advocate in the performance of the various functions and duties required by law.

(b) (1) All fees, licenses, assessments and other charges, collected by the Commission pursuant to this title shall be deposited in the State Treasury to the credit of said Delaware Public Utility Regulatory Revolving Fund to be used in the operation of the Commission as authorized by the General Assembly in its annual operating budget. However, if the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties of the Commission and the Division of the Public Advocate, and which exceed the Commission's annual operating budget, shall be officially submitted for approval or disapproval to the Controller General of the State and the Director of the Office of Management and Budget of the State.

(2) All penalties or fines assessed and collected by the Commission shall not be deposited in said fund but shall be deposited in the General Fund of the State.

(c) All payments to the Commission under §§ 114 and 115 of this title shall be deposited in the State Treasury to the credit of the Delaware Public Utility Regulatory Revolving Fund to be used in the operations of the Commission and the Division of the Public Advocate, as authorized by the General Assembly. However, if the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties, of the Commission and the Division of the Public Advocate, and which exceed the Commission's or Division's annual operating budget, shall be officially submitted for approval or disapproval to the Controller General of the State and the Director of the Office of Management and Budget of the State.

(d) Money reposing in the Delaware Public Utility Regulatory Revolving Fund shall be used by the Commission and the Division of the Public Advocate in the performance of each agency's various functions and duties as provided by law; subject always to annual appropriations by the General Assembly for salaries and other routine operating expenses of the Commission and the Division of the Public Advocate. If the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties of the Commission and the Division of the Public Advocate, and which exceed the Commission's or Division's annual operating budget, shall be officially submitted for approval or disapproval to the Controller General of the State and the Director of the Office of Management and Budget of the State.

(e) Annual appropriations from the General Fund of the State for the operation of the Commission and the Division of the Public Advocate shall be credited to the Delaware Public Utility Regulatory Revolving Fund in appropriated monthly amounts and all expenditures authorized by the General Assembly for the operation of the Commission and the Division of the Public Advocate shall be made from said revolving fund. If the General Assembly is not in session, any funds requested by the Department for the performance of the various functions and duties required of the Commission and the Division of the Public Advocate by law and which exceed their respective operating budgets shall be officially submitted for approval or disapproval to the Controller General of the State and the Direction of the Office of Management and Budget of the State.

(f) The maximum balance which shall remain in the Delaware Public Utility Regulatory Revolving Fund at the end of any fiscal year shall not exceed $750,000 in addition to the annual appropriation for the next fiscal year as authorized by the General Assembly for the operation of the Commission. Any amount in excess thereof shall be reverted to each public utility in an amount proportionate to the sum paid by that public utility in the previous calendar year pursuant to subsection (b) of this section.

(59 Del. Laws, c. 397, § 1; 65 Del. Laws, c. 348, § 125; 75 Del. Laws, c. 88, § 21(12); 77 Del. Laws, c. 151, §§ 1, 10-16.)

§ 117. Termination of service or sale to a dwelling unit [For application of this section, see 85 Del. Laws, c. 253, § 23].

(a) For purposes of this section:

(1) "Cooling season" means that portion of the calendar year extending from June 1 through September 30.

(2) "Employee" includes:

a. Any person who is an employee of such utility authorized to accept payment for sales and services.

b. The individual who is to terminate such sale or service.

(3) "Heating season" means that portion of the calendar year extending from November 1 to March 31.

(4) "Person" includes any individual, corporation, partnership, association, or joint-stock company.

(b) (1) No person who engages in the distribution and sale of gas, water, wastewater, or electricity for use or consumption in any dwelling unit may discontinue service or sale thereof due to nonpayment of past charges for such service or sale to the occupants of that dwelling unit and owed by the occupants thereof without at least 72 hours' notice to said occupants of intention to so terminate, except as otherwise provided by this section.

(2) Each gas or electricity utility shall maintain a voluntary third-party notification program whereby a customer may designate, in writing, a third party to also receive the notice of termination of service required by paragraph (b)(1) of this section. The third party so designated must indicate, in writing, willingness to receive such notice on behalf of the customer and may not be held, in any way, liable to the utility by reason of acceptance of third-party status.

(c) (1) Unless there is a safety-related emergency, a utility company may not suspend or turn off utility services to a dwelling unit outside the hours of 8:00 a.m. and 4:00 p.m., Monday through Thursday, unless such utility provides facilities for payment and restoration of services at all times during such period. Should Thursday or Friday be a legal, state or national holiday, Wednesday must be substituted for Thursday. Should Monday be a state or national, legal holiday, the next succeeding business day must be substituted for Monday.

(2) Unless there is a safety-related emergency, a utility company may not suspend or turn off utility services to a dwelling unit from December 21 of each year to January 1 of the following year.

(d) In no event may such termination occur if an occupant of a dwelling unit is so ill that the termination of such sale or service will adversely affect the occupant's health or recovery, which has been so certified by a signed statement from a licensed physician, physician associate, or advanced nurse practitioner, of this State or of a state with similar accreditation and received by any employee or officer of such person engaging in the distribution or sale of gas, water, or electricity. Signed statements from a licensed physician, physician associate, or advanced nurse practitioner, obtained pursuant to this section are effective for 120 days. Signed statements may be renewed by means of a new signed statement to prevent termination only if a customer makes a good faith effort to make payments towards the utility service being provided. The Delaware Public Service Commission may promulgate regulations defining "good faith effort to make payments." If a utility is subject to the jurisdiction of the Delaware Public Service Commission, that utility or a customer of the utility may petition the Delaware Public Service Commission for review of any dispute under this section. While such dispute is pending, a utility must continue to provide utility service to the customer until a final Commission adjudication on the petition is issued. When possible, no termination under this section may occur without advance notice to any known case manager or coordinator of an occupant in an affected dwelling unit.

(e) (1) A gas or electric utility may not terminate service to a dwelling unit for nonpayment of past charges on a day when the National Weather Service reports that the 8:00 a.m. temperature measured at an airport in the same county as the subject dwelling unit is 35 degrees Fahrenheit or below on the morning of the date when the service is scheduled for termination.

(2) An electric utility may not terminate service to a dwelling unit for nonpayment of past charges on a day when the 8:00 a.m. National Weather Service forecast contains a special weather statement or other information predicting that the heat index measured at an airport in the same county as the subject dwelling unit may equal or exceed 95 degrees Fahrenheit on the date when service is scheduled for termination.

(3) When termination of service, otherwise authorized, has been deferred under paragraph (e)(1) or (e)(2) of this section, notice of deferral must be given to the account holder on the date on which termination was to be effected, notifying the occupant that unless proper payment arrangements are made, service will be terminated on a day where paragraph (e)(1) or (e)(2) of this section does not apply. If termination of service involves an apartment complex, trailer park, or other grouping of individual residential dwellings units to which service is provided directly or indirectly through a master meter without individual meters, the notice must be given to all occupants of each dwelling unit in the building complex in which service is proposed to be terminated.

(f) (1) No gas or electric utility may terminate service to a dwelling unit during the heating or cooling season for nonpayment of a past due bill unless at least 14 calendar days prior to such termination, written notice is given to the utility account holder. Where the billing address is different than the location of the dwelling unit, written notice must be sent to the billing address and to the address of the dwelling unit. During the heating season, the gas or electric utility must make at least 2 documented attempts on separate days to contact the account holder by telephone, text message, or email prior to actual termination of service. One attempt must be after 5:00 p.m. During the cooling season, the gas or electric utility must make at least 1 documented attempt to contact the account holder by telephone, text message, or email prior to actual termination of service.

(2) Written notice required by paragraph (f)(1) of this section must include the following information:

a. The date on or after which termination of services will occur unless some satisfactory arrangement is made for the payment of the undisputed delinquent bills, which date may be no less than 14 calendar days from the mailing of written notice.

b. That if there is a good faith dispute concerning the unpaid bills, termination of service will not take place pending determination of the dispute, provided the utility is notified of the existence of the dispute prior to actual termination.

c. That if the occupant or other payor is unable to pay the full amount of the undisputed bill, termination of service may be avoided by entering into an initial payment installment agreement with the utility in accordance with the utility's tariff.

d. A referral to charitable or governmental assistance programs, including the Low-Income Home Energy Assistance Program.

e. That if any occupant is ill and the termination of services would adversely affect the occupant's health or recovery, the occupant or other payor may defer termination of services under subsection (d) of this section.

(g) In addition to any other administrative penalty, the Commission may assess a civil penalty of up to $1,000 for each violation of this section. Each day of continued violation is considered a separate violation.

(h) Notwithstanding any other provision of this section, a utility may discontinue service to a dwelling unit if the utility account holder requests that utility services be discontinued and the request is voluntary.

(60 Del. Laws, c. 452, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 317, § 2; 74 Del. Laws, c. 374, §§ 1, 2; 78 Del. Laws, c. 337, § 1; 80 Del. Laws, c. 185, § 2; 84 Del. Laws, c. 42, § 1; 85 Del. Laws, c. 24, § 1; 85 Del. Laws, c. 253, § 21.)

§ 118. Continuation of service for activated Reserve and National Guard military personnel.

(a) Except as otherwise provided by this section, a person who engages in the distribution and sale of electric, gas, water, sewer service, telecommunications, cable, or satellite television for use or consumption, including municipalities, (a "Service Provider") shall not discontinue such service to the residence of a Qualifying Customer, as defined in subsection (g) of this section. With respect to telecommunications services, this section shall apply only to the provisioning of dial tone line, touchtone and local usage services. With respect to cable service, this section shall apply only to the provisioning of the most basic tier of television service.

(b) A Qualifying Customer may apply for protection from disconnection of such service by notifying the Service Provider that the Qualifying Customer is in need of assistance caused by a reduction in household income as a result of a household member's call to active duty status in the military reserves or National Guard.

(c) A Service Provider may request periodic verification of the call to active duty status from the Qualifying Customer. A Service Provider may also request periodic verification of the Qualified Customer's reduction in household income.

(d) A Qualifying Customer may receive protection from disconnection under this section for as long as the emergency active duty status continues and for 30 days after that status has ended.

(e) A Qualifying Customer receiving assistance under this section shall notify the Service Provider no later than 10 days after the return from active duty status.

(f) The protection from disconnection provided under this section does not void or limit the obligation of the Qualifying Customer to pay for such services received.

(g) As used in this section, "Qualifying Customer" means:

(1) A residential household where the income is reduced because the customer of record, or the spouse of the customer of record, is a member of the National Guard or the military reserve and is called to active military service by the President of the United States or the Governor of this State during a time of declared national or state emergency of war.

(2) Assistance is needed by the residential household to maintain 1 or more of the services subject to this section; and

(3) The residential household notifies the Service Provider of the need for assistance and, if requested by the Service Provider, provides verification of the call to active duty status and the reduction in household income.

(74 Del. Laws, c. 294, § 1.)

Subchapter II
Jurisdiction and Powers

§ 201. General jurisdiction and powers.

(a) The Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title. Such regulation shall include the regulation of the rates, terms and conditions for any attachment (except by a governmental agency insofar as it is acting on behalf of the public health, safety or welfare) to any pole, duct, conduit, right-of-way or other facility of any public utility, and, in so regulating, the Commission shall consider the interests of subscribers, if any, of the entity attaching to the public utility's facility, as well as the interests of the consumer of the public utility service.

(b) Further, the Commission shall have exclusive original jurisdiction and regulation of every cable television system outside the boundaries of incorporated municipalities which on June 28, 1974, have the power either express or implied under their charters to grant franchises for a cable system, and the Commission shall have supervision and review jurisdiction and regulation over any action taken by incorporated municipalities, which on June 28, 1974, have the power either express or implied under their charters to grant franchises for a cable system, with respect to the regulation of cable television systems, including the grant of or failure to grant franchises for a cable system by such municipality or the terms of any franchise now or hereafter granted for a cable system by such a municipality or the conduct of any franchisee holding a franchise from such a municipality, provided that the Commission's original and review jurisdiction and regulation shall be conducted solely in accordance with the provisions of subchapter VI of this chapter.

(c) Notwithstanding any other provision of law, in the exercise of supervision and regulation over public utilities that provide telecommunications services, the Commission:

(1) Shall forbear from regulating the rates, terms, and conditions of competitive retail communications services; and

(2) Shall not investigate or adjudicate retail customer complaints for services except complaints related to the adequate provisioning of basic services.

(d) (1) In the exercise of supervision and regulation over public utilities other than those that provide telecommunications services, the Commission may, upon application or on its own motion, after notice and hearing, forbear from ("deregulate") in whole or in part, its supervision and regulation over some or all public utility products or services and over some or all public utilities where the Commission determines that a competitive market exists for such products and services and where the Commission finds that such deregulation will be in the public interest.

(2) Any application under this subsection shall, at a minimum, include specific proposal or proposals, supporting statements or testimony, an analysis of the effects on the utility's regulated customers and an implementation plan. The application shall affirmatively establish that the deregulation being considered will not adversely affect the availability, cost or quality of utility services provided to the utility's regulated customers.

(3) The Commission shall approve or disapprove any such deregulation applications within 180 days after submission thereof, except that, for good cause found, the Commission may enter an order extending this period for an additional 90 days.

(4) The Commission shall determine how a public utility shall account for such deregulated products or services (including cost allocations where found to be appropriate) so as to ensure that the utility's regulated customers neither benefit unduly from nor unduly

provide a subsidy to the deregulated products or services; provided, that such accounting determination shall not thereafter be changed by the Commission except for good cause shown.

(5) In connection with any application under this subsection for forbearance from Commission supervision and regulation, the Commission shall find, among other relevant things, the following:

a. Whether a competitive market exists for the particular utility product or service being requested to be wholly or partly deregulated. Conditions and factors to be considered may include, but are not limited to, the following:

1. The existing or prospective market power of the utility with respect to its products or services for which deregulation is sought; and

2. If there are significant entry or exit costs or other barriers to potential competitors; and

3. If there is a reasonable basis to expect that prices of wholly or partly deregulated products or services will reflect the incremental costs of supply;

b. Whether any safeguards are necessary to prevent a material adverse effect on utility service quality or rate levels;

c. Whether or not an option to remain under the Commission's supervision and regulation should be made available for customers whose utility products and services would be deregulated by the proposal;

d. Whether or not the public utility shall unbundle each service or function on which a service depends to its fundamental elements and shall make those elements separately available to any customer whose utility service is being deregulated by the proposal under terms and conditions, including price, that are the same or comparable to those used by the public utility in providing its own service. The public utility shall not unreasonably discriminate between affiliated and unaffiliated providers of services in offering unbundled features, functions and capabilities; and

e. Whether the Commission should forbear from regulating competing providers of such products or services.

(6) Where the Commission has made a determination to forbear from its supervision and regulation under this section, the Commission shall have the ongoing right to review, examine and audit the books and records of the applicable utility, and the relevant books and records of any relevant nonregulated affiliate. This right shall be the same as the Commission's right of access to inspection and examination of the utility's regulated books, accounts and records and appropriate safeguards regarding disclosure of confidential information shall be provided.

(7) Thirty months after any approval of forbearance from regulation hereunder, the utility shall file a report with the Commission summarizing its activities for that wholly or partly deregulated activity during its first 24 months of operation. Such report shall, at a minimum, address the criteria that the Commission deemed relevant in approving the request to deregulate such product or service. The report shall also describe the service provider's investment during the previous 24 months. Such report shall also describe the level of planned investment over the next 5 years. The Commission may require that similar reports be submitted biannually thereafter.

(8) The Commission, after notice and hearing, may prospectively revoke or reverse any forbearance of regulation granted hereunder where it finds that doing so is in the public interest. Where the Commission revokes or reverses a prior decision made under paragraph (d)(1) of this section, the Commission shall determine that the current rates for the related products or services are just and reasonable or shall establish new rates that are just and reasonable.

(9) This subsection shall not apply to a telecommunications service provider for so long as such provider is governed under the provisions of subchapter VII-A, Chapter 1 of this title.

(e) (1) In the exercise of supervision and regulation over public utilities, the Commission may, upon application or on its own motion, after notice and hearing, alter, in whole or in part, its supervision and regulation over some or all public utility products or services and over some or all public utilities to the extent necessary to promote and sustain adequate service at just and reasonable, and prudent rates, where the Commission determines that alternatives to supervision and regulation including the competitive provision of such products and services are in the public interest. Alternatives include, but are not limited to, incentive regulation, earnings sharing, categorization of services for the purposes of pricing, price caps, price indexing, ranges of authorized returns and different returns for different services. The Commission is specifically authorized to depart from rate base, rate of return regulation when it is in the public interest and when such departure is found to promote just and reasonable, and prudent rates.

(2) Any application under this subsection shall, at a minimum, include specific proposal or proposals, supporting statements or testimony, an analysis of the effects on the utility's regulated services provided to its customers and an implementation plan. The application shall affirmatively establish that the alteration of regulation will not adversely affect the availability, cost or quality of the regulated utility services provided to the utility's customers.

(3) The Commission shall approve or disapprove any such requests for alternative supervision and regulation within 180 days after submission thereof, except that, for good cause found, the Commission may enter an order extending this period for an additional 90 days.

(4) The Commission shall determine how a public utility shall account for such alternatives (including cost allocations where found to be appropriate) so as to ensure that public utility customers to which such alternatives are not made available neither benefit unduly from nor unduly provide a subsidy to public utility customers to whom such alternatives are made available; provided, that such accounting determination shall not thereafter be changed by the Commission except for good cause shown.

(5) The Commission, after notice and hearing, may prospectively revoke or reverse any alternative form of regulation granted hereunder where it finds that doing so is in the public interest. Where the Commission revokes or reverses a prior decision made under paragraph (e)(1) of this section, the Commission shall determine that the current rates for the related products or services are just and reasonable or shall establish new rates that are just and reasonable.

(6) This subsection shall not apply to a telecommunications service provider for so long as such provider is governed by the provisions of subchapter VII-A, Chapter 1 of this title.

(f) In the exercise of supervision and regulation over public utilities, the Commission may, upon application or on its own motion, after notice and hearing, alter a regulated utility's billing statements in the interest of increasing transparency and understanding. Alternatives include changes to fairly reflect costs associated with legislatively-mandated public policy initiatives, such as compliance costs in greenhouse gas reduction programs and any increase in costs associated with state-sponsored renewable energy projects.

(47 Del. Laws, c. 254, § 2; 26 Del. C. 1953, § 121; 59 Del. Laws, c. 397, § 1; 65 Del. Laws, c. 227, § 1; 66 Del. Laws, c. 50, § 2; 68 Del. Laws, c. 61, § 1; 70 Del. Laws, c. 48, §§ 1, 2; 79 Del. Laws, c. 53, § 2; 80 Del. Laws, c. 214, § 1; 84 Del. Laws, c. 401, § 4; 85 Del. Laws, c. 78, § 2.)

§ 202. Limitations on jurisdiction of Commission [For application of this section, see 85 Del. Laws, c. 445, § 2].

(a) Except insofar as may be necessary to implement §§ 203A and 203B of this title regarding the establishment and administration of retail electric service territories, and except as may be necessary to implement § 203C and § 203D of this title regarding the issuance of certificates of public convenience and necessity for water and wastewater utilities, and the review authorized under § 122 of Title 16, and except insofar as any entity agrees to participate in a proceeding before the Commission relating to an offshore wind contract under § 365 of Title 26, the Commission shall not have any supervision or regulation over any public utility, or over the rates, property, property rights, equipment, facilities or franchises of any public utility that is municipally-owned or over any municipal electric company formed pursuant to Chapter 13 of Title 22.

(b) Except as may be necessary to implement §§ 203C and 203D of this title regarding the issuance of certificates of public convenience and necessity for water and wastewater utilities, and the review authorized under § 122 of Title 16, the Commission shall not have any jurisdiction over any public utility, water or wastewater district or water or wastewater authority created and operated pursuant to Title 9 and Title 16.

(c) (1) The Commission shall have no jurisdiction over the operation of telephone service provided by cellular technology or by domestic public land mobile radio service or over the rates to be charged for such service or over property, property rights, equipment or facilities employed in such service.

(2) Notwithstanding paragraph (c)(1) of this section, the Commission may, upon application, designate any provider or reseller of cellular or wireless telecommunications services as an eligible telecommunications carrier under 47 C.F.R. § 54.201 for the purpose of providing federal Lifeline services. The Commission may promulgate regulations as necessary to implement this paragraph (c)(2).

(d) [Repealed.]

(e) Any building owner, engaged in a principal business which does not involve the provision of utility services, providing steam heat or refrigeration chilled water to a nonprofit entity occupying a building located in close proximity to the owner's building, shall not be considered a public utility.

(f) Except insofar as may be necessary to implement Chapter 10 of this title regarding the establishment of retail competition and as may be necessary to ensure large energy use facilities do not negatively affect the reliability and affordability of the electric distribution and transmission system, the Commission shall have no supervision or regulation over any electric supplier.

(g) Except as provided in § 224 of this title, the Commission shall have no supervision or regulation over any electric cooperative the membership of which has voted to be exempt from regulation by the Commission in accordance with § 223 of this title.

(h) Notwithstanding any other provisions of this title, the Commission shall not have any supervisory or regulatory authority over wastewater utilities serving fewer than 50 customers in the aggregate.

(i) (1) Notwithstanding any other provision of law to the contrary, the Commission shall have no jurisdiction or regulatory authority over Voice over Internet Protocol ("VoIP") service, as defined in paragraph (i)(2) of this section, or IP-enabled service, as defined in paragraph (i)(3) of this section, including but not limited to, the imposition of regulatory fees, certification requirements, rates, terms or other conditions of service.

(2) "Voice over Internet Protocol service" or "VoIP service" means any service that:

a. Enables real-time 2-way voice communications that originate or terminate from the user's location in Internet protocol or any successor protocol; and

b. Utilizes a broadband connection from the user's location.

(3) "Internet protocol-enabled service" or "IP-enabled service" means a service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format or any successor format, regardless of whether the communication is voice, data or video.

(4) Nothing herein shall be construed to either mandate or prohibit the assessment of 911 fees pursuant to Chapter 101 of Title 16 on VoIP service, or to mandate or prohibit the payment of any switched network access rates or other intercarrier compensation rates that may be determined to apply.

(47 Del. Laws, c. 254, § 2; 26 Del. C. 1953, § 122; 57 Del. Laws, c. 735; 59 Del. Laws, c. 397, § 1; 61 Del. Laws, c. 469, § 1; 61 Del. Laws, c. 496, § 2; 62 Del. Laws, c. 419, § 1; 63 Del. Laws, c. 5, § 1; 64 Del. Laws, c. 342, §§ 2, 3; 66 Del. Laws, c. 50, § 3; 68 Del. Laws, c. 124, § 2; 68 Del. Laws, c. 299, § 3; 70 Del. Laws, c. 133, § 1; 72 Del. Laws, c. 10, § 6; 72 Del. Laws, c. 163, § 1; 72 Del. Laws, c. 402, § 5; 73 Del. Laws, c. 157, § 1; 74 Del. Laws, c. 317, §§ 3-5; 76 Del. Laws, c. 29, § 1; 79 Del. Laws, c. 53, § 3; 84 Del. Laws, c. 401, § 5; 85 Del. Laws, c. 331, § 2; 85 Del. Laws, c. 442, § 2; 85 Del. Laws, c. 445, § 1.)

§ 203.

Transferred.

§ 203A. Certificate of public convenience and necessity; abandonment or discontinuance of business, operations or service.

(a) (1) Subject to the provisions of subsection (b) of this section and §§ 102, 201, 202 and Chapter 10 of this title, and excluding electric suppliers, no individual, copartnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof, shall begin the business of a public utility nor shall any public utility begin any extension of its regulated public utility business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require the operation of such regulated public utility business or extension.

(2) Notwithstanding any other provision of law, no Commission approval shall be required for any transfer of a certificate of public convenience between public utility companies providing telecommunications services that operate under common ownership.

(3) This section shall not be construed to require any public utility to secure such a certificate for any construction, modifications, upgrades or extensions within the perimeter of any territory already served by it.

(4) The Commission, after hearing, on the complaint of any public utility claiming to be adversely affected by any proposed extension, may make such order and prescribe such terms and conditions with respect to the proposed extension as may be required by the public convenience and necessity.

(b) (1) If any individual, copartnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof (or the predecessor in interest of any such person, party or legal entity), was in bona fide operation within this State on June 28, 1974, of any electronic communication in whole or in part by wire (other than telephone, including domestic public land mobile radio or telegraph service, system, plant or equipment) including, but not limited to, cable television service, system, plant or equipment, for public use, the Commission shall issue a certificate of public convenience and necessity authorizing such person, party or legal entity without further proceedings to continue operating the said service, system, plant or equipment, to the same extent as said operations were being operated on June 28, 1974, such certificate to identify by number and date of issuance the certificate under which the applicant is carrying on such operation, if the application for such certificate of public convenience and necessity is filed with the Commission on a form approved by the Commission within 120 days after June 28, 1974. Pending the determination of any such application the continuance of such operation without a certificate of public convenience and necessity shall be lawful.

(2) Interruptions of service in such operations over which such person, party or legal entity, or the predecessor in interest thereof, had no control, shall not be considered in determining whether or not there has been an abandonment of any such operations.

(3) In issuing any certificate of public convenience and necessity under this subsection, the Commission, in its discretion, may define or limit the territory or territories in this State within which the activities authorized by the certificate may be conducted, but in no case shall such territory or territories be smaller than the territory or territories in this State in which the applicant was in actual bona fide operation on June 28, 1974.

(4) The application for a certificate of public convenience and necessity under this subsection shall be verified and shall contain such information as the Commission deems necessary to show that the applicant was not engaged merely in isolated, incidental, intermittent, sporadic and infrequent operations.

(5) The Commission may adopt and approve such forms as it deems necessary for this purpose.

(c) A public utility that provides telecommunications services may abandon or discontinue, in whole or in part, the provision of any competitive retail telecommunications services; provided, however, that such utility shall provide the Commission with contemporaneous notice of abandonment or discontinuance of all of its competitive retail telecommunications services in the State.

(d) (1) Subject to the provisions of Chapter 10 and § 706(c) of this title and excluding electric suppliers, no public utility shall abandon or discontinue, in whole or in part, any regulated public utility business, operations or services provided under a certificate of public convenience and necessity or otherwise which are subject to jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance.

(2) Applications for such approval shall be made to the Commission in writing, verified by oath or affirmation and be in such form and contain such information as the Commission may from time to time require.

(3) The Commission shall approve any such application when it finds that the utility has met its burden of proving that the abandonment or discontinuance is reasonable, necessary and not unduly disruptive to the present or future public convenience and necessity.

(4) The Commission may make such investigation and hold such hearings in the matter as it deems necessary or appropriate, and may attach reasonable terms and conditions to the granting of such approval.

(5) If, within 60 days after the filing of such application, the Commission has not acted concerning the application, it shall be deemed to have been approved. The Commission may, within such 60-day period, set the matter for hearing, in which event the Commission shall render a decision concerning said application within 7 months from the date such application was filed or the application shall be deemed in fact and law to be approved, unless within said 7-month period the Commission for good cause shown shall enter an order extending the period for decision for a further reasonable time not to exceed 120 days.

(6) Nothing contained in this section shall be construed to require formal application for approval of abandonment or discontinuance of service to any individual customer or customer class where the basis for such abandonment or discontinuance is nonpayment of bills or other violation of the utility's rules, regulations and tariffs.

(7) The Commission may seek injunctive relief in the Court of Chancery to prevent any abandonment in violation of this subsection and in such proceeding shall not be required to post security for any temporary or preliminary injunction.

(e) As of the implementation dates specified in § 1003(b)(1) and (2) of this title (repealed), nothing contained in this section shall be construed to require application for approval of the abandonment or discontinuance of service by an electric supplier.

(47 Del. Laws, c. 254, § 8; 48 Del. Laws, c. 371, § 13; 26 Del. C. 1953, § 162; 53 Del. Laws, c. 364, §§ 1-4; 54 Del. Laws, c. 38, § 1; 57 Del. Laws, c. 665, §§ 2, 3; 59 Del. Laws, c. 397, § 1; 64 Del. Laws, c. 150, § 1; 66 Del. Laws, c. 50, § 1; 72 Del. Laws, c. 10, §§ 7-9; 79 Del. Laws, c. 53, § 4; 81 Del. Laws, c. 205, § 2; 82 Del. Laws, c. 11, § 2.)

§ 203B. Service territories for electric utilities.

(a) Subject to the provisions of § 202 of this title, the Commission shall, upon notice and after hearing, establish boundaries throughout the State within which public utilities providing retail electric service shall have the obligation and authority to provide retail electric service. All certificates of public convenience and necessity granted by the Commission shall be issued or amended to reflect such boundaries. Upon establishment, reestablishment or adjustment of any such boundaries the Commission shall cause maps to be issued designating and certifying the territorial boundaries within which such public utilities shall be authorized and obligated to provide service. In acting hereunder, except with respect to customers residing within the boundaries of a municipality which owns an electric utility or a municipal electric company formed pursuant to Chapter 13 of Title 22 and who, as of July 2, 1992, are served by another public utility, the Commission shall not authorize or obligate any public utility to provide retail electric service to any customer within the boundaries of a municipality which owns an electric utility or municipal electric company formed pursuant to Chapter 13 of Title 22 without its consent. Notwithstanding the provisions of this subsection or subsection (d) of this section, if such a municipality shall annex adjacent or adjoining territory, any retail electric customer of another public utility within such territory may be acquired by such municipality pursuant to Chapter 61 of Title 10. Nothing contained herein shall invalidate or otherwise affect any contract entered into on or before June 30, 1992, between any municipality and a public utility relating to the acquisition of retail electric customers within the boundaries of the municipality listing as of such date. In the event a municipality which owns an electric utility or a municipal electric company formed pursuant to Chapter 13 of Title 22 shall annex adjacent or adjoining territory whether or not such territory contains retail electric customers, upon notice to the Commission by such municipality, the Commission shall issue or revise maps previously issued to reflect such acquisition.

(b) In acting under this section, the Commission shall consider and account for as the primary factor, currently existing territories within which utility electric customers are being served at retail including the boundaries of municipalities which serve such customers. In acting further under this section, the Commission shall consider among other pertinent factors, which of 2 or more public utilities:

(1) Had distribution facilities in nearest proximity to a designated area as of July 1, 1992;

(2) Was the first to furnish retail service to, or in close proximity to, a designated area;

(3) Can install and/or upgrade its facilities to furnish service to a designated area with the smaller amount of additional investment; and

(4) Is demonstrably capable of providing adequate and reliable service to a designated area within a reasonable period of time and in a feasible manner.

In connection with any proceedings undertaken by the Commission pursuant to subsection (a) of this section and this subsection the Commission shall approve and implement agreements between 2 or more public utilities if such agreements are consistent with the public interest.

(c) In acting under subsection (b) of this section, the Commission shall give no consideration to the location or existence of transmission facilities.

(d) In establishing service territory boundaries under this section, the Commission shall provide that any customer which, as of the date such boundaries are set, was receiving retail electric service from a public utility other than the public utility within whose service territory such customer is located, shall continue to receive such service from the same public utility unless both public utilities agree that service shall be provided by the public utility to whom that service territory has been allocated; and further provided that the Commission may prohibit such a change whenever it determines, after notice and hearing, that such change will not be in the public interest.

(e) If the Commission, after notice and hearing, shall determine that service being furnished or proposed to be furnished by a public utility subject to its jurisdiction to a customer or prospective customer within its service territory is substantially inadequate and is not

likely to be made adequate, or otherwise exceeds the capacity of that public utility to provide adequate service within a reasonable time, the Commission may authorize another public utility to provide service to such customer.

(f) After the establishment of retail electric service territories under this section, 2 or more public utilities subject to Commission jurisdiction may from time to time hereafter apply to the Commission for adjustment of their adjoining retail electric service territories, and, if the Commission determines, after notice and hearing, that such adjustment is in the public interest, it shall approve such adjustment and, to the extent required, cause revised maps to reflect such adjustment to be prepared.

(g) The exclusive retail electric service territories heretofore established by the Commission pursuant to this section shall continue as exclusive service territories for the transmission and distribution of electricity. Except as otherwise provided herein, each electric distribution company shall have the exclusive right to furnish transmission and distribution services to all electricity-consuming facilities located within its service territory and shall not furnish, make available, render or extend its transmission and distribution services to a consumer located within the service territory of another electric distribution company; provided that any electric distribution company may extend or construct its facilities in or through the service territory of another electric distribution company, if such extension or construction is necessary for such company to connect any of its facilities or to serve its customers within its own service territory. As of the implementation dates as set forth in § 1003(b)(1) and (2) of this title [repealed], there shall be no exclusive service territories for the supply of electricity, except as otherwise herein provided.

(h) Notwithstanding any other provision of this title:

(1) A retail electric customer has the right to lease or own (satisfied by partial ownership) facilities on its own property to transmit or distribute electricity to itself.

(2) Where retail electric customer-owned transmission and/or distribution facilities that, at any time prior to February 1, 1999, were located on property owned by such customer, and were used to transmit or distribute electricity to buildings, facilities or equipment on such property, and that retail electric customer sold or leased a portion of such property and/or buildings, facilities or equipment thereon to third parties, then that customer shall have the right to continue to own such facilities and to transmit or distribute electricity to both itself and to any such third parties, with separate metering for each third party. Furthermore, if such customer desires to expand such facilities to serve additional buildings, facilities or equipment or additions thereto on such property used by such third party, then that customer and the electric distribution company shall jointly determine the terms and conditions of the ownership, installation, operation and maintenance of the expanded facilities. Any disagreement in this regard shall be presented to the Commission for resolution. If the customer utilizes its own facilities to transmit or deliver electricity to any such third party, the customer shall not charge the third party any amount that exceeds its actual costs of providing such services.

(3) Any person shall have the right to lease or own transmission and/or distribution facilities to transmit or deliver electricity from an electric generation facility, which qualifies under the Public Utilities Regulatory Policy Act of 1978 [P.L. 95-617] or its successor, to its host customer on the same or on any immediately adjacent property. Should such person desire to have electricity transmitted or delivered to not more than 5 other nearby customers who are new customers or who have been receiving electricity through the then-existing facilities of an electric distribution company, such person must first contact the electric distribution company to jointly determine how such service shall be provided. Should agreement not be jointly reached, the matter shall be presented to Commission for resolution. The options that may be considered include the following:

a. The electric distribution company may continue to provide such service over its then-existing facilities at Commission-approved rates; or

b. New facilities may be installed by the electric distribution company to provide such service, in which case the customers shall reimburse the electric distribution company for the depreciated book value, plus removal costs less salvage value, of any then-existing facilities that will no longer be used by the electric distribution company. In this case, the regular Commission-approved rates shall not be applicable for such new facilities. Instead, a separate facilities charge rate will be developed and billed monthly to such customers, based upon the actual installed cost of such new facilities, including normal levels of operating expenses, taxes and return.

(i) For purposes of this section only, effective on the implementation dates set forth in § 1003(b)(1) and (2) of this title [repealed], the term “retail electric service” shall be construed to be synonymous with the term “electric transmission and distribution” and shall not include the generation, supply or sale of electricity itself.

(66 Del. Laws, c. 50, § 1; 68 Del. Laws, c. 299, § 4; 72 Del. Laws, c. 10, § 10.)

§ 203C. Certificates of public convenience and necessity for water utilities.

(a) No person or entity (including municipalities, governmental agencies, and water authorities and districts created under Title 9 or Title 16) shall begin the business of a water utility nor shall any existing water utility begin any extension or expansion of its business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires, or will be served by, the operation of such business or the proposed extension or expansion. The provisions of this section shall not apply to any municipality that has extended its boundaries by annexation as provided for in Chapter 1 of Title 22 provided the municipality operates a water utility that will be expanded or extended into the annexed territory and no certificate of public convenience and necessity shall exist for the annexed territory. The municipality shall promptly give notice to the Public Service Commission of the completion of such annexation.

(b) This section shall not be construed to require any water utility holding an existing certificate of public convenience and necessity to secure an additional certificate from the Commission for existing operations nor shall this section be construed to require an additional certificate for the extension or expansion of operations within a service territory for which a certificate has previously been granted.

(c) An application for a certificate of public convenience and necessity to begin, extend or expand the business of a water utility beyond the territory covered by any existing certificate shall be in writing, shall be in such form as determined by the Commission and shall contain the information specified in subsection (d) or (e) of this section.

(d) The Commission shall issue a certificate of public convenience and necessity if the applicant therefore has submitted, together with the application, the following:

(1) Evidence that all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application, such evidence consisting of:

a. A list provided by the United States Postal Service, or the alternate delivery service, of those to whom notice was sent and

b. Copies of materials returned to sender; and

(2) One of the following:

a. Evidence that the water in the proposed service area does not meet the regulations governing drinking water standards of the Department of Health and Social Services for human consumption; or

b. Evidence that the supply is insufficient to meet the projected demand.

(e) The Commission shall issue a certificate of public convenience and necessity if the applicant therefore has submitted, together with the application, the following:

(1) Evidence that all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application, such evidence consisting of:

a. A list provided by the United States Postal Service, or the alternate delivery service, of those to whom notice was sent and

b. Copies of all materials returned to sender; and 1 of the following:

1. A signed service agreement with the developer of a proposed subdivision or development, which subdivision or development has been duly approved by the respective county government;

2. One or more petitions requesting water service from the applicant executed by the landowners of record of each parcel or property to be encompassed within the proposed territory to be served;

3. In the case of an existing development, subdivision, or generally recognized unincorporated community, 1 or more petitions requesting water service from the applicant executed by the landowners of record of parcels and properties that constitute a majority of the parcels or properties in the existing development, subdivision, or unincorporated community; or

4. A certified copy of a resolution or ordinance from the governing body of a county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the proposed territory to be served, which must be located within the boundary of such county or municipality.

(2) In the case of a new water utility, evidence that it possesses the financial, operational and managerial capacity to comply with all state and federal safe drinking water requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak monthly demands;

(3) Certification by the applicant that any proposed extension of service will satisfy the provisions of § 403 of this title; and

(4) If the Town Council of the Town of Ocean View adopts a resolution providing for water utility service to its residents and undertakes the construction of such service, the provisions contained in paragraph (e)(1) of this section shall not apply to or be required for the Town of Ocean View's application for a certificate of public convenience and necessity under this section.

(f) Notwithstanding any other provision of this section, a certificate of public convenience and necessity to begin, extend or expand the business or operations of a water utility will not be granted if the Commission finds that the applying water utility is unwilling or unable to provide safe, adequate and reliable water service to existing customers, or is currently subject to a Commission finding that the utility is unwilling or unable to provide safe, adequate and reliable water service to existing customers.

(g) (1) An applicant for a certificate of public convenience and necessity shall be deemed in compliance with the notification requirement set forth in paragraphs (d)(1) and (e)(1) of this section with respect to condominium units, as defined in the Delaware Unit Property Act, Chapter 22 of Title 25, upon providing certification signed by an authorized officer of the condominium association that:

a. The officer of the condominium association is properly authorized to sign the petition for water service, and

b. All unit owners have been provided notice of the application. A copy of the notice provided to unit owners shall accompany the certification.

(2) The Commission may establish alternative means of demonstrating compliance with the notification requirement set forth in this section, including verification that notification has been delivered to the land owners of the proposed territory to be served, subject to a finding that the appropriate internet accessible technology creating a record that the notification has been sent and the status of its receipt is employed by the United States Postal Service, and after soliciting input on the use of such technology from water utilities.

(h) (1) The Commission shall act on an application for a certificate of public convenience and necessity within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 30 days.

(2) Any proceedings involving certificates of public convenience and necessity shall be conducted in accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

(i) For applications submitted pursuant to paragraphs (e)(1)b.2. and (e)(1)b.3. of this section, any landowner of record whose parcel or property (or any part thereof) is located within the proposed territory to be served shall be entitled to opt out and have the landowner's parcel or property excluded from the proposed territory to be served. A request to opt out shall be submitted by any landowner of record prior to the issuance of a certificate of public convenience and necessity. In the case of a parcel with multiple landowners of record, a request to opt out may be rescinded or countermanded by the landowners of record holding, or vested with, a controlling interest in the parcel or property. Notwithstanding the opt-out provision in the preceding sentences, no such opt-out right shall apply to the Town of Dagsboro to implement the results of a special election held on April 27, 2002; that election voted to establish water services by contract with a neighboring municipality that has an established water utility service. Notwithstanding the objection and opt-out provisions contained in this subsection, if the Town Council of the Town of Ocean View adopts a resolution providing for water utility service to its residents and undertakes the construction of such service, the objection and opt-out provisions shall not be available to the residents of the Town of Ocean View.

(j) For purposes of this section, the phrase "landowner of record" shall mean each person or entity holding a fee ownership interest in a parcel of real property that would be encompassed within the proposed territory to be served. A landowner of record shall be determined as of the time of the filing of the application for a certificate of public convenience and necessity and may be identified by reference to public tax and public land records or relevant land conveyances. The phrase "landowners of the proposed territory" shall mean the landowners of record of the parcel or parcels to be encompassed within the proposed territory to be served. However, with respect to condominium units, as defined in the Delaware Unit Property Act, Chapter 22 of Title 25, the phrase "landowner of record" and "landowners of the proposed territory" shall be deemed to mean the governing body or authorized officers of any condominium association with authority to act on behalf of unit owners, unless the underlying real property on which such condominium units have been built has been leased, directly or indirectly, to unit owners and the underlying real property owner retains the power to bind the unit owners. A petition from a governing body or authorized officers of a condominium association shall comply with paragraph (g)(1) of this section.

(k) The Commission may undertake to suspend or revoke for good cause a certificate of public convenience and necessity held by a water utility. Good cause shall consist of:

(1) A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Title 7, 16 or 26 dealing with obtaining water or providing water and water services to customers, or any order or rule of the Commission relating to the same; and

(2) The presence of such additional factors as deemed necessary by the Commission as outlined in subsection (l) of this section.

(*l*) Prior to July 1, 2001, the Commission shall establish rules for the revocation of a certificate of public convenience and necessity held by a water utility. Such regulations shall outline the factors, in addition to those outlined in subsection (k) of this section, which must be present for a finding of good cause for revocation of a certificate. Such additional factors shall include, but not be limited to, the following:

(1) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service; and,

(2) To the extent practicable, the Commission should attempt to identify methods to mitigate any financial consequences to customers served by the utility subject to a revocation.

(m) The power to revoke a certificate of public convenience and necessity granted by this section shall not apply to a certificate held by a municipally-owned water utility or by a water district or water authority created and operated under Titles 9 and 16. In the case of water utilities that are public utilities subject to the jurisdiction of the Commission, the Commission shall have the authority to assess penalties under § 217 of this title.

(n) Notwithstanding anything in this section to the contrary, the power to grant a certificate of public convenience and necessity pursuant to this section to a water authority created under Title 16 shall be limited to the boundaries of the municipality or municipalities which created it unless the Commission is provided with a resolution passed by the governing body of that municipality or municipalities which requests that the certificate be granted.

(72 Del. Laws, c. 402, § 6; 73 Del. Laws, c. 264, § 1; 74 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 351, §§ 1, 2; 76 Del. Laws, c. 55, §§ 1-3, 6.)

§ 203D. Certificates of public convenience and necessity for wastewater utilities.

(a) (1) Except for municipalities, governmental agencies and wastewater authorities and districts, which are governed under subsection (b) of this section and wastewater utilities serving or to serve fewer than 50 customers in the aggregate, no person or entity shall begin the business of a wastewater utility nor shall any existing wastewater utility begin any extension or expansion of its business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires, or will be served by, the operation of such business or the proposed extension or expansion.

(2) Except for municipalities, governmental agencies and wastewater authorities and districts, which are governed under subsection (b) of this section and wastewater utilities serving fewer than 50 customers in the aggregate, any person or entity already in the business of a wastewater utility as of June 7, 2004, shall by December 3, 2004, obtain from the Commission a certificate of public convenience

and necessity for its existing service area. Such person or entity shall provide the Commission a description of its facilities and the area it serves and a schedule of rates currently charged its customers, in such form as the Commission may require. Such person or entity need not provide the information required by subsection (d) of the section, nor any other tariff information required by § 300 of this title or any other provision of this title at the time of their submission. A certificate shall be granted by the Commission to such persons or entities which provide the required information to the Commission, unless the Commission has actual knowledge at the time of the application for a certificate that the applicant is in material violation of any provisions of Title 7, 16 or 26 dealing with the provisions of wastewater services or there is a bona fide dispute as to the actual service territory served by such person or entity. The Commission shall attempt to expeditiously resolve any such dispute.

(b) Although municipalities, governmental agencies, and wastewater authorities or districts engaging in or desiring to engage in the business of a wastewater utility are not required to obtain a certificate of public convenience and necessity from the Commission for any existing or new service territory, these entities shall supply to the Commission a description of any existing service territory for wastewater service no later than October 4, 2004, and shall promptly give notice and a description of any extension of wastewater territory or new wastewater service territory to the Commission. Such entity shall not extend service in areas, which the Commission has granted a certificate of public convenience and necessity to another wastewater utility without receiving the approval of the Commission. Any wastewater utility shall not extend its territory into a service territory of a municipality, government agency or wastewater authority or district without the approval of such entity and then obtaining approval of a certificate of public convenience and necessity from the Commission under this section. A municipality desiring to provide wastewater service to any property outside its municipal boundary must file with the Commission a petition requesting wastewater service from the municipality executed by the landowner of record of such property.

(c) An application for a certificate of public convenience and necessity to begin, extend or expand the business of a wastewater utility shall be in writing, shall be in such form as determined by the Commission and shall contain the information specified in subsection (d) of this section.

(d) Except as provided for below, the Commission shall issue a certificate of public convenience and necessity if the applicant therefore has submitted, together with the application, the following:

(1) A signed service agreement with the developer of a proposed subdivision or development, which subdivision or development has been duly approved by the respective county government; or

(2) One or more petitions requesting wastewater service from the applicant executed by the landowners of record of each parcel or property to be encompassed within the proposed territory to be served; or

(3) In the case of an existing development, subdivision, or generally recognized unincorporated community, 1 or more petitions requesting wastewater service from the applicant executed by the landowners of record of parcels and properties that constitute a majority of the parcels or properties in the existing development, subdivision or unincorporated community; or

(4) A certified copy of a resolution or ordinance from the governing body of a county or municipality that requests, directs or authorizes the applicant to provide wastewater utility services to the proposed territory to be served, which must be located within the boundary of such county or municipality; and

(5) In the case of a new wastewater utility, evidence that it possesses the financial, operational and managerial capacity to serve the public convenience and necessity and to comply with all state and federal regulations.

In addition, in an application premised on paragraph (d)(3) of this section, the applicant shall submit evidence that the applicant sent or delivered notice of its application to the landowner of record of each parcel in the existing development, subdivision or unincorporated community that will be encompassed in the proposed territory to be served. The Commission shall prescribe the form of such notice and the manner for so notifying such landowners. In addition, in the case of an application premised on paragraph (d)(3) of this section, the Commission may deny the application if the Commission determines that the grant of a certificate would not serve the public convenience and necessity.

(e) Notwithstanding any other provision of this section, a certificate of public convenience and necessity to begin, extend or expand the business or operations of a wastewater utility will not be granted if the Commission finds that the applying wastewater utility is unwilling or unable to provide safe, adequate and reliable service to existing customers, or is currently subject to a Commission finding that the utility is unwilling or unable to provide safe, adequate and reliable service to existing customers.

(f) An applicant for a certificate of public convenience and necessity shall be deemed in compliance with the notification requirement set forth in subsection (c) of this section with respect to condominium units, as defined in the Delaware Unit Property Act, Chapter 22 of Title 25, upon providing certification signed by an authorized officer of the condominium association that:

(1) The officer of the condominium association is properly authorized to sign the petition for wastewater service; and

(2) All unit owners have been provided notice of the application.

A copy of the notice provided to unit owners shall accompany the certification.

(g) (1) The Commission shall act on an application for a certificate of public convenience and necessity within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 30 days. However, if an application for a certificate of public

convenience and necessity is filed prior to July 1, 2005, the Commission may extend the date of its action on such application for an additional period, not to exceed 90 days.

(2) Any proceedings involving certificates of public convenience and necessity shall be conducted in accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

(h) For applications submitted pursuant to subsection (d) of this section, no certificate of public convenience and necessity shall be issued where a majority of the landowners of the proposed territory to be served object to the issuance thereof.

(i) For purposes of this section, the phrase "land owners of the proposed territory to be served" shall refer solely to those persons having fee ownership of the affected parcel of real property within the proposed territory to be served (as reflected by appropriate tax or land record documents) at the time that the application for a certificate of public convenience and necessity is submitted by the applicant to the Commission for consideration; provided, however, that with respect to condominium units, as defined in the Delaware Unit Property Act, Chapter 22 of Title 25, this phrase shall mean the governing body or authorized officers of any condominium association with authority to act on behalf of unit owners, unless the underlying real property on which such condominium units have been built has been leased, directly or indirectly, to unit owners and the underlying real property owner retains the power to bind the unit owners.

(j) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by a wastewater utility. Good cause shall consist of:

(1) A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Title 7, 16 or 26 dealing with the provision of wastewater services to customers, or any order or rule of the Commission relating to the same; or

(2) A finding by the Commission that the wastewater utility has failed in a material manner to provide adequate or safe wastewater service to customers as evidenced by inadequate customer service, insufficient investment in, or inadequate operation of, the system or otherwise; and

(3) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative wastewater utility or a designated third party capable of providing adequate wastewater service; and,

(4) A finding by the Commission that to the extent practicable, any financial consequences to customers served by the utility subject to a revocation are appropriately mitigated.

(74 Del. Laws, c. 317, § 6; 76 Del. Laws, c. 57, §§ 1-3; 76 Del. Laws, c. 162, § 1; 85 Del. Laws, c. 342, § 2.)

§ 203E. Certificate of public convenience and necessity for new electric transmission utilities.

(a) Except as provided in § 203A(a)(3) of this title, no person or entity shall begin the business of an electric transmission utility providing transmission facilities, as defined in § 1001(26) of this title, without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires, or will be served by, the operation of such business.

(b) A person or entity seeking to begin the business of an electric transmission utility in this State shall first make application to the Commission for a certificate of public convenience and necessity approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The application for a certificate of public convenience and necessity shall be in writing, shall be in such form as determined by the Commission, and shall contain such information as the Commission may prescribe. In determining whether to grant the certificate, the Commission shall consider:

(1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred:

a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company;

b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services; and

c. The engineering and technical design of any transmission facilities proposed by the applicant.

(2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers;

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public; and

(4) Whether granting the certificate of public convenience and necessity application is consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

(c) The Commission shall act on an application for a certificate of public convenience and necessity within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days.

(d) Notwithstanding any other provision of this section, a certificate of public convenience and necessity for an electric transmission utility will not be granted if the Commission finds that the applicant is unwilling or unable to provide safe, adequate and reliable transmission services, or is currently subject to a Commission finding that the applicant is unwilling or unable to provide safe, adequate and reliable transmission services.

(e) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by an electric transmission utility. Good cause shall consist of:

(1) A finding by the Commission of material noncompliance by the holder of the certificate with any conditions imposed in the certificate by the Commission, or with any order or rule of the Commission related to the same; or

(2) A finding by the Commission that the holder of the certificate has failed in a material manner to provide safe, adequate, and reliable transmission services.

(f) Any proceedings under this section involving a certificate of public convenience and necessity shall be conducted in accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

(81 Del. Laws, c. 205, § 1; 84 Del. Laws, c. 401, § 10.)

§ 203F. Certificate of public convenience and necessity for renewable energy interconnection facilities.

(a) Except as provided in § 203A(a)(3) of this title, no person or entity shall begin the business of a "transmission facility" as defined in § 1001 of this title, without having first obtained from the Commission a certificate that the present and future public convenience and necessity requires, or will be served by, the operation of such a business.

(b) The term "renewable energy interconnection facilities" means any transmission facilities which include transmission lines, conduits, or any other equipment necessary to connect any solar, wind, or other renewable energy project with 30 MW of capacity or higher to the PJM transmission grid. The term includes all "offshore wind interconnection facilities" as defined in this section.

(c) The term "offshore wind interconnection facilities" means all transmission lines, conduits and any other equipment that serve to connect an offshore wind power generation project or projects to the PJM transmission grid through any part of the State or its territorial waters, whether those facilities are part of the PJM network or serving individual generation owners. All equipment located within the State, including within 3 miles of the Delaware coast, through to the substation that connects the offshore wind power project to the PJM transmission grid, shall be included as a part of the "offshore wind interconnection facilities" for a particular offshore wind power generation project or networked offshore wind transmission facility.

(d) No individual, co-partnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof, shall commence the operation of renewable energy interconnection facilities without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require the operation of such facilities.

(e) Specifically for offshore wind interconnection facilities, prior to any person or entity submitting an application for a certificate of public convenience and necessity for such facilities, such person or entity shall first obtain written approval from the State Energy Office confirming that such proposed offshore wind interconnection facilities are:

(1) Consistent with the State Energy Plan;

(2) Do not detrimentally impact the ability of the State to procure and transmit renewable energy resources to the citizens of Delaware;

(3) Consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7; and

(4) Do not adversely impact the future construction of additional offshore wind interconnection facilities, including those proposed by other developers.

(f) A person or entity seeking to commence operation of renewable energy interconnection facilities in this State shall make application to the Commission for a certificate of public convenience and necessity approving the person or entity as authorized to construct and operate such facilities. The application for a certificate of public convenience and necessity shall be:

(1) In writing;

(2) In such form as determined by the Commission; and

(3) Contains such information as the Commission may prescribe.

(g) In determining whether to grant the certificate, the Commission shall consider:

(1) The need for and impact of any renewable energy interconnection facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services.

(2) Where such facilities are operating in a Delaware Department of Transportation right of way, the extent to which the renewable energy interconnection facilities impact the safe and effective operation of other utility facilities, or any other facilities, already in such right of way.

(3) The impact of granting the certificate of public convenience and necessity application on the State's economy, the impacts to the State's ratepayers, and whether the application is consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

(4) The extent to which the renewable energy interconnection facilities preclude or limit the ability of future renewable energy projects to use the same or nearby access locations or rights of way.

(5) The extent to which the project proponent is proposing to develop the renewable energy interconnection facilities in a manner that allows for or otherwise facilitates the future construction of additional renewable energy interconnection facilities, including those proposed by other developers, so as to minimize the environmental impacts of multiple entry points along the Delaware shore or through Delaware rights of way.

(6) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

(7) The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company.

(8) The engineering and technical design of any transmission facilities proposed by the applicant.

(h) For all renewable energy interconnection facilities, the Commission shall allow the intervention of the State Energy Office to address the impact of the proposed facilities on:

(1) The State Energy Plan;

(2) The achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

(i) For all renewable energy interconnection facilities that are in whole or in part located in the jurisdiction of a local government, the Commission shall allow the intervention of such local government to address any public safety, environmental, or public interest considerations that such local government raises.

(j) Where such facilities are operating in a Delaware Department of Transportation right of way, the Commission shall allow the intervention of the Delaware Department of Transportation to address the impact of the proposed facilities on traffic safety and management. The Commission shall work with the Delaware Department of Transportation to ensure that the route of the interconnection facilities have the lowest possible impact on traffic safety and management considerations. Where the Delaware Department of Transportation establishes that alternate routes would have lower impact on traffic management, such routes shall be selected unless the costs associated with such route are, in the determination of the Commission, unreasonable.

(k) The Commission shall act on an application for a certificate of public convenience and necessity within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days. With the consent of the applicant, the Commission can extend the date of its action on an application beyond this second 90-day extension.

(*l*) Notwithstanding any other provision of this section, a certificate of public convenience and necessity for renewable energy interconnection facilities will not be granted if the Commission finds that the applicant is unwilling or unable to provide safe, adequate, and reliable transmission services, or is currently subject to a Commission finding that the applicant is unwilling or unable to provide safe, adequate, and reliable transmission services.

(m) No person or entity shall abandon or discontinue any renewable energy interconnection facility without first having received Commission approval for such abandonment or discontinuance. The Commission may require financial assurance, including a bonding requirement, as a part of any certificate of public convenience and necessity to ensure appropriate decommissioning of such facilities.

(n) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by any applicant. "Good cause" shall consist of:

(1) A finding by the Commission of material noncompliance by the holder of the certificate with any conditions imposed in the certificate by the Commission, or with any order or rule of the Commission related to the same.

(2) A finding by the Commission that the holder of the certificate has failed in a material manner to provide safe, adequate, and reliable transmission services.

(o) The Commission shall have the authority to promulgate regulations to fully define the requirements necessary for the implementation of this section. Any proceedings under this section involving a certificate of public convenience and necessity shall be resolved within 6 months of initial application, and shall be conducted in accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

(p) The provisions of this section shall not apply to any offshore wind interconnection facilities, including any future modifications to such offshore wind interconnection facilities, associated with an offshore wind generation project which has submitted a request for a Federal Consistency Determination from the State's Coastal Management Program as of April 18, 2024, and which does not travel horizontally along a Delaware-owned right of way. If, however, any proposed future modifications to the offshore wind interconnection facilities for such an offshore wind generation project include a proposal to travel horizontally along a Delaware-owned right of way, this section shall apply.

(84 Del. Laws, c. 401, § 11.)

§ 203G. Approval of electric service agreements for large energy use facilities.

(a) No person or entity may begin operations as a large energy use facility served by a Commission-regulated electric utility without first obtaining from the Commission the approval of an electric service agreement ("ESA") and entering into a transmission security agreement ("TSA") with the Commission-regulated electric utility.

(b) As a condition of receiving retail electric service by a Commission-regulated electric utility in this State, a large energy use facility must negotiate the terms of an ESA with a Commission-regulated electric utility and thereafter the Commission-regulated electric utility must submit the ESA for review and approval by the Commission. As a further condition of receiving electric service in this State, there must be a transmission rate on file with the Federal Energy Regulatory Commission that, as to transmission costs, meets the objectives of subsection (c) of this section. Notwithstanding any other provision of this title, Commission approval is required prior to

any interconnection under a large energy user tariff promulgated by a Commission-regulated electric utility under the provisions of § 317 of this title.

(c) It is the intent of the General Assembly that residential retail electric customers and all other industrial and commercial customers, other than large energy use facilities, should not bear the financial costs or risks associated with large energy use facilities interconnecting to the electric system serving this State and that a regulatory framework be established to ensure large energy use facilities enter into agreements to directly assign these costs. Towards that end, the Commission shall promulgate regulations to govern tariffs subject to the review and approval of the Commission that are applicable to large energy use facilities under the Commission's jurisdiction, and to set forth the minimum protective features required to be included in an ESA and that must be included in the applicable transmission rate if a large energy use facility is entitled to take retail service in this State. The Commission regulations will identify specific form language to be incorporated into all ESAs, and such language shall ensure the protections set forth in § 317 of this title. At minimum, the ESA shall govern the terms and conditions under which the Commission-regulated electric utility will provide distribution service, interconnection, cost allocation, and risk mitigation associated with serving the large energy use facility. The ESA may not require the procurement of electric supply service from the Commission-regulated electric utility and nothing in the ESA may restrict a large energy use facility from procuring electric supply service from a certified electric supplier. The ESA must include all of the following provisions:

(1) Specify the duration of the contract, which must be a minimum of 10 years commencing after load ramp and a minimum of 15 years total including the load ramp period.

(2) Specify the date or estimated date that the Commission-regulated electric utility will begin to provide electricity service.

(3) Obligate the large energy use facility to pay a minimum amount or percentage of distribution charges, which cannot be less than 90% of contract capacity, based on the large energy use facility's projected electricity usage for the electricity services the Commission-regulated electric utility is contracted to provide for the duration of the contract.

(4) For large energy use facilities that procure electricity from the Commission-regulated electric utility, obligate the large energy use facility to pay a minimum amount or percentage of supply costs, which cannot be less than 90% of contract capacity, based on the large energy use facility's projected electricity usage for the electricity services the Commission-regulated electric utility is contracted to provide for the duration of the contract. This paragraph (c)(4) does not apply to a large energy use facility that procures electric supply service from a certified electric supplier.

(5) Specify that, for purposes of calculating its retail service charges and for allocating among the retail customers of the utility those transmission charges paid by the utility in accordance with federal law and tariffs on file with the Federal Energy Regulatory Commission, the large energy use facility's annual capacity peak load contribution will be deemed to have been at least 90% of the contract capacity as adjusted by the applicable line loss factor and the large energy use facility's annual network peak load contribution will be deemed to have been at least 90% of the contract capacity as adjusted by the applicable line loss factor.

(6) Specify the duration of the load ramp period during which a large energy use facility must reach full forecasted load and specify interim load levels the facility must meet at designated points during this period.

(7) Outline exit procedures that will apply to large energy use facility customers in the event of contract termination. Such procedures must include at least a 5-year advance notice of termination.

(8) Set exit fees that ensure the large energy use facility makes adequate contributions to offset all unrecovered costs in the event of contract termination.

(9) Require physical and operational readiness measures that facilitate targeted curtailment, including dedicated or otherwise segregable feeders where practicable; separation of any "critical" load segments behind the meter; and telemetry and communications capability sufficient for the Commission-regulated electric utility to execute and confirm curtailment actions during emergency operations.

(10) Establish enforceable curtailment and interruptibility obligations during emergencies and other circumstances determined by the Commission, Commission-regulated electric utility, or directed by the federal regional transmission system operator.

(11) Require bonding or letters of credit backed by an investment-grade entity, or other cash-equivalent financial guarantees to ensure protection of other customers in the event of bankruptcy, liquidation, or other circumstances that would prevent the large energy use facility from meeting its obligations under the ESA.

(12) Meet any other conditions the Commission may require in the public interest, including the extent to which the large energy use facility uses local labor that is paid a prevailing wage.

(d) In determining whether to approve an ESA, the Commission shall consider all of the following:

(1) Whether the ESA is consistent with regulations promulgated by the Commission governing ESAs.

(2) Whether the ESA, in combination with the underlying tariff, ensures that all applicable costs attributable to the large energy use facility are directly assigned to the large energy use facility. In making this determination, the Commission shall consider the results of any applicable incremental cost test, as provided for in § 317 of this title.

(3) Whether the ESA, in combination with the underlying tariff, provides protections necessary to ensure that other customers of the Commission-regulated electric utility are not placed at risk for paying stranded costs associated with the Commission-regulated electric utility serving the large energy use facility.

(4) The need for and impact of the project proposed by the large energy use facility on the safe, adequate, and reliable operation or delivery of electric supply services. The following shall be considered positive factors, but not requirements, in evaluating an ESA, if a large energy use facility constructs or causes the construction of new generation, where such new generation: (i)

a. Is located within Delaware or within the PJM Interconnection, L.L.C. ("PJM") Delmarva Power and Light ("DPL") transmission zone or within a transmission zone contiguous by land to the DPL transmission zone, with sufficient existing transmission infrastructure to deliver this additional electricity to Delaware;

b. Includes newly constructed generation at an existing facility, uprates, or repowering of deactivated or retired generating units as of June 12, 2026; provided that capacity that previously participated in the PJM base residual auction qualifies only to the extent attributable to such uprate or repowering;

c. Matches the megawatt demand of the large energy use facility;

d. Repurposes existing transmission interconnection infrastructure, land, or other generation-related assets associated with a prior in-state facility;

e. Is determined by this State Energy Office to be consistent with the achievement of this State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7; or

f. Is determined by the State Energy Office to be consistent with this State's renewable portfolio standards, as specified in § 354 of this title.

It shall further be considered a positive factor in evaluating an ESA if a large energy use facility agrees to demand flexibility terms to assist with energy affordability, including demand flexibility during periods of dramatically increased wholesale electricity costs.

(5) The extent to which the large energy use facility will use a local labor force for construction and ongoing operation, and the extent to which the project will pay such labor force a prevailing wage.

(6) The impact of the large energy use facility on the area in which it is to be located, including the possibility that the large energy use facility provides a community benefits agreement to ameliorate any negative impacts.

(7) The impact of approving the ESA on this State's economy, the impacts to this State's ratepayers, and whether the application is consistent with the achievement of this State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7, and whether the application is consistent with this State's renewable portfolio standards, as specified in § 354 this title.

(8) The impact of approving an ESA on the health, safety, and welfare of the general public.

(9) The demonstrated experience, operating expertise, and long-term viability of the large energy use facility or its affiliates, partners, or parent company.

(e) The Commission must act on an application to approve an ESA within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days. The application for approval of an ESA must be in writing, in such form as determined by the Commission, and contain such data, studies, documentation, or other information as the Commission shall prescribe. The application must include all of the following:

(1) The impact of the plan on transmission capacity.

(2) Upgrades, if any, to transmission or distribution infrastructure associated with the plan.

(3) The amount of electricity utilized by generation type and whether it is sourced from new or existing generation.

(4) How electricity use will be curtailed during high demand periods.

(5) The quantity and type of on-site back-up power, if any.

(6) The anticipated lifespan of the facility.

(7) Whether the business will trigger supplemental transmission projects.

(8) A study of the impact of the plan on electricity costs in Delaware.

(9) A study of the impact of the plan on grid reliability in Delaware.

(f) The Commission may revise and adjust its regulations in response to federal or PJM laws, rules, regulations, or tariffs regarding the introduction of large energy use facilities throughout the PJM region. The Commission may work to ensure that changes in capacity market operation, transmission cost allocation, or other processes at the PJM level will not, to the maximum extent possible, result in higher costs for Delaware ratepayers not included in the large energy use facility classification. Any adjustments to the tariff specified in § 317 of this title, or in the regulations governing ESAs, must aim to assure that any new obligations fall upon the class of energy users causing such obligations.

(g) A facility in operation as of August 26, 2026, may not be considered a large energy use facility. However, a change to an existing facility that increases the usage above the thresholds defined for a large energy use facility will trigger the provisions of this chapter requiring the approval of an ESA.

(h) An ESA may not be transferred from the applicant to another person or entity without the written approval of the Commission.

(i) Commission-regulated electric utilities shall be required to provide to the Commission annually detailed, project-specific information for each anticipated large energy use facility, including development status, evidence of financial commitment, ramp schedules, and any duplicative interconnection requests. The Commission shall submit a report listing the ESA applications received and their disposition

for the prior year to the Governor, the Director and Librarian of the Division of Legislative Services, and the Secretary of the Senate and the Chief Clerk of the House for distribution to members of the General Assembly not later than December 31st of each year.

(j) ESAs and TSAs must be interpreted and administered in a manner consistent with Chapter 10 of this title, including the State policy of retail competition and direct access. Nothing in this section, § 317 of this title, or any regulation promulgated hereunder shall be construed to do any of the following:

(1) Limit or impair the right of any retail electric customer, including a large energy use facility, to purchase electric supply service from a certified electric supplier.

(2) Require a large energy use facility to procure electric supply service from a Commission-regulated electric utility.

(3) Condition interconnection, distribution service, or transmission service upon the customer's agreement to take electric supply service from a Commission-regulated electric utility.

(85 Del. Laws, c. 440, § 2.)

§ 204. Extension of utilities' facilities.

(a) The Commission may, after hearing, upon notice, by order in writing, require every public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where, in the judgment of the Commission, such extension is reasonable and practicable and will furnish sufficient revenue to justify the construction and maintenance of the same, and when the financial condition of the public utility reasonably warrants the original expenditures required in order to make and operate such extension; provided, however, the Commission shall consider, among other things, the size and amount of additional and potential customers to be served, whether the new customers will contribute to any capital expenditures required by the extension and whether the public utility must borrow funds to provide the extension of service.

(b) Notwithstanding any other provision of law, a telecommunications service provider is not required to establish, construct, maintain, operate or extend its existing facilities where the potential customers to be served have service available from 1 or more alternative providers of wireline or wireless communications. Further, notwithstanding any other provision of law, if the Commission makes a determination under subsection (a) of this section requiring such extension, a telecommunications service provider may fulfill such obligation through the use of any and all available wireline, wireless or other technologies. The use of wireline, wireless or other technologies may not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

(47 Del. Laws, c. 254, § 4; 26 Del. C. 1953, § 136; 59 Del. Laws, c. 397, § 1; 79 Del. Laws, c. 53, § 5.)

§ 205. Reports by public utilities.

(a) The Commission may require every public utility to file with the Commission such annual and other periodic or special reports, at such times, in such form and of such content, and covering such period or periods of time, as the Commission may by rules and regulations or by order prescribe.

(b) (1) The Commission may require any public utility to file with it a copy of any report filed by such public utility with any state or federal department or regulatory body, including, but not limited to, copies of its Delaware and federal income tax returns.

(2) A public utility that is a subsidiary of a corporation that files consolidated state or federal income tax returns shall file with the Commission, when so requested by the Commission, pro forma Delaware and federal income tax returns based solely upon said public utility's operations in Delaware.

(c) All reports shall be made under oath or affirmation unless the Commission otherwise specifies.

(47 Del. Laws, c. 254, § 3; 48 Del. Laws, c. 371, § 6; 26 Del. C. 1953, § 123; 59 Del. Laws, c. 397, § 1.)

§ 206. Investigations.

The Commission may investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility.

(47 Del. Laws, c. 254, § 3; 26 Del. C. 1953, § 124; 59 Del. Laws, c. 397, § 1.)

§ 207. Audits and access to, inspection and examination of utility's property, records, etc.

(a) The Commission, by or through its members or duly authorized representatives, shall at all times have access to and the right to inspect and examine any and all books, accounts, records, memoranda, property, plant, facilities and equipment of public utilities. Every public utility shall furnish to the Commission, within such reasonable time as the Commission may order, any information with respect to its books, accounts, records, memoranda, property, plant, facilities, equipment, service, and operations, which the Commission may require in aid of any inspection, examination, inquiry, investigation, or hearing, or in aid of any determination of the value of its property, or any portion thereof, including copies of accounts, records, books, maps, inventories, appraisals, valuations, contracts, reports of engineers, and other data, records and papers; and shall grant to all authorized agents of the Commission access to its premises, property, plant, facilities and equipment and its books, accounts, records and memoranda when requested to.

(b) Management audits of public utilities under the jurisdiction of the Commission.

(1) The Commission shall provide for management audits of any Commission-regulated electric distribution company. The management audits shall include an examination of management effectiveness and operating efficiency. Management audits shall be conducted at least once every 5 years unless the Commission finds that a specific management audit is unnecessary. A summary of all management audits prepared pursuant to this subsection shall be made public and a complete copy of the audit shall be provided to Commission Staff and the Division of the Public Advocate.

(2) The Commission may require a management audit under this subsection to be performed by 1 or more independent audit or consulting firms (“contracting firm”). In such case, the Commission, after consultation with the public utility and the Division of the Public Advocate, shall select the contracting firm and require the public utility to enter into a contract with the contracting firm. The terms of the contract shall include payment of the contracting firm by the public utility of all reasonable expenses directly related to the performance of the contract, as well as their preparation and presentation of reports and testimony in any contested litigation which may be undertaken as a result of the audit. The contract shall require the contracting firm to work under the direction of the Commission. Neither the public utility, Commission staff, the Division of the Public Advocate, nor any entity other than the contracting firm shall have editorial control over or input into the contracting firm’s findings and recommendations, provided, however, that the public utility shall be provided reasonable opportunity to review the findings and recommendations prior to the findings and recommendations becoming final and to comment on any material misstatements the public utility believes exist in the findings and recommendations, and shall be entitled to request that any trade secret, commercial or financial information, or other privileged or confidential information that would be excluded from disclosure under Delaware law or regulations, including the Delaware Freedom of Information Act, 29 Del. C. 10001, et seq., be redacted from any public version of the findings and recommendations. Costs for management audits shall not be recoverable in customer rates.

(47 Del. Laws, c. 254, § 4A; 48 Del. Laws, c. 371, § 9; 26 Del. C. 1953, § 125; 59 Del. Laws, c. 397, § 1; 85 Del. Laws, c. 342, § 1.)

§ 208. Books, records, accounts, systems of accounts, etc. of utility.

(a) (1) The Commission may, after hearing, upon notice, by order in writing, require every public utility to make, keep, and preserve for such periods of time, such accounts, records of cost accounting procedures, correspondence, memoranda, papers, books and other records as the Commission may by rules and regulations or order prescribe as necessary or appropriate for purposes of the administration of this chapter. The Commission may prescribe systems of accounts and records to be kept by public utilities, or may classify public utilities and prescribe a system of accounts and records for each class, and the manner and form in which such accounts and records shall be kept.

(2) The accounting system of any public utility also subject to the jurisdiction of a federal regulatory body shall correspond, as far as practicable, to the system prescribed by such federal regulatory body. The Commission may require any such public utility to keep and maintain supplemental or additional accounts to those required by any such regulatory body.

(3) The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular expenditures and receipts shall be entered, charged or credited.

(b) Every public utility shall keep such books, accounts, papers, records and memoranda, as are required by the Commission, in an office within this State, and shall not remove the same, or any of them, from this State, except upon such terms and conditions as may be prescribed by the Commission. Such public utility, when required by the Commission, shall furnish to the Commission, within such reasonable time as it shall fix, certified copies of its books, accounts, papers, records and memoranda, relating to the business done by such public utility within this State.

(47 Del. Laws, c. 254, § 4; 48 Del. Laws, c. 371, § 7; 26 Del. C. 1953, § 129; 59 Del. Laws, c. 397, § 1.)

§ 209. Standards, classifications, regulations, practices, measurements, services, property and equipment of public utility.

(a) The Commission may, after hearing, by order in writing:

(1) Fix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed thereafter by any public utility;

(2) Require every public utility to furnish safe and adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so.

(b) Nothing contained in this section shall be construed to conflict with the power of the Commission to consider the efficiency, sufficiency, consistency and adequacy of the facilities provided and the services rendered by any public utility as a factor in rate determination.

(47 Del. Laws, c. 254, § 3; 26 Del. C. 1953, § 131; 59 Del. Laws, c. 397, § 1.)

§ 210. Standards for measurement of supply of product; examinations and tests of product.

The Commission may, after hearing, by order in writing, ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by any public utility, and may prescribe reasonable regulations for examinations and tests of such product or service and for the measurement thereof.

(47 Del. Laws, c. 254, § 3; 26 Del. C. 1953, § 132; 59 Del. Laws, c. 397, § 1.)

§ 211. Meters and measuring appliances.

(a) The Commission may, after hearing, by order in writing, establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements and may provide for the examination and test of all appliances used for the measuring of any products or service of a public utility.

(b) The Commission may enter, by and through its agents, experts or examiners, upon any premises occupied by any public utility for the purpose of making the examination and tests provided for in this section and may set up and use on such premises any apparatus and appliances necessary therefor.

(c) The Commission may fix the fees to be paid by any consumer or user of any products or services of a public utility, who may apply to the Commission for an examination or test to be made of the meters or other measuring appliances of the utility. If the meter or other measuring appliance so tested shall be found to be accurate within such commercially reasonable limits as the Commission may by general or special order fix for such meters or class of meters or other measuring appliances, the fee shall be paid by the consumer requiring such test, but if not so found then the cost thereof shall be borne by the public utility furnishing the meter or other measuring appliance.

(d) All measuring devices installed subsequent to June 28, 1974, for the purpose of ascertaining bills presented by and on behalf of public utilities providing steam, manufactured gas, natural gas, electric light, heat, power and water shall be installed in a manner permitting readings from the exterior of the customer's premises. All such public utilities having measuring devices that, as of June 28, 1974, permit only readings from the interior of the customer's premises shall, when so requested in writing by the owner of said premises, substitute measuring devices permitting exterior readings, said substitution to be effected at cost payable by the owner.

(47 Del. Laws, c. 254, § 3; 26 Del. C. 1953, § 133; 59 Del. Laws, c. 397, § 1.)

§ 212. Compliance with laws, ordinances and charter.

The Commission may, after hearing, upon notice, by order in writing, require every public utility to comply with the laws of this State and any ordinance of any political subdivision thereof relating thereto, and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of any state.

(47 Del. Laws, c. 254, § 4; 26 Del. C. 1953, § 134; 59 Del. Laws, c. 397, § 1.)

§ 213. Notice and report of accidents; disclosure; admissibility as evidence.

(a) The Commission may require every public utility to give immediate notice to the Commission of the happening of any accident in or about, or in connection with, the operation of its service and facilities, wherein any person has been killed or apparently injured, or where complaint of injuries has been made, and to furnish such full and detailed report of such accident within such time and in such manner as the Commission shall prescribe.

(b) The report required by subsection (a) of this section shall not be open for public inspection, except by order of the Commission, and shall not be admitted in evidence for any purpose in any suit or action for damages growing out of any matter or thing mentioned in such report.

(47 Del. Laws, c. 254, § 3; 48 Del. Laws, c. 371, § 6; 26 Del. C. 1953, § 139; 59 Del. Laws, c. 397, § 1.)

§ 214. Joint investigations, hearings and orders; cooperation with agencies of other states or of the United States.

The Commission may make joint investigations, hold joint hearings within or without this State, and issue joint or concurrent orders in conjunction with any official, board, commission or agency of any state or of the United States. Whether in the holding of such investigations or hearings, or in the making of such orders, the Commission shall function under agreements or compacts between states or under the concurrent powers of states to regulate the interstate commerce, or as an agency of the federal government, or otherwise.

(47 Del. Laws, c. 254, § 1; 48 Del. Laws, c. 371, § 3; 26 Del. C. 1953, § 140; 59 Del. Laws, c. 397, § 1.)

§ 215. Merger, mortgage or transfer of property; issuance of securities; assumption of obligation of another; transfer of control; exceptions.

(a) No public utility, without having first obtained the approval of the Commission, shall:

(1) Directly or indirectly merge or consolidate with any other person or company, or sell, lease, assign, or mortgage except by supplemental indenture in accordance with the terms of a mortgage outstanding September 1, 1949, or otherwise dispose of or encumber any essential part of its franchises, plant, equipment or other property, necessary or useful in the performance of its duty to the public; or

(2) Issue any stocks, stock certificates, or notes, bonds or other evidences of indebtedness payable in more than 1 year from the date thereof; or

(3) Assume any obligation or liability as guarantor, endorser, surety or otherwise in respect of any security of any other person or corporation, payable or maturing more than 1 year after the date of such issue or assumption of liability.

(b) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust or other entity, whether or not organized under the laws of this State, shall acquire control, either directly or indirectly, of any public utility doing business in this State, without having first obtained the approval of the Commission. Any such acquisition of control without such prior authorization shall be void and of no effect. As used herein the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a public utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any such individual or entity, directly or indirectly, owns 10% or more of the voting securities of the public utility. This presumption may be rebutted by a showing that such ownership does not in fact confer control.

(c) Application for any such approval or authorization shall be made to the Commission in writing, verified by oath or affirmation, and be in such form and contain such information as the Commission requires.

(d) The Commission shall approve any such proposed merger, mortgage, transfer, issue, assumption or acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The Commission may make such investigation and hold such hearings in the matter as it deems necessary, and thereafter may grant any application under this section in whole or in part and with such modification and upon such terms and conditions as it deems necessary or appropriate. The Commission shall grant, modify, refuse or prescribe appropriate terms and conditions with respect to every such application within 30 days after the filing of the application therefor, except that with respect to any application filed under subsection (b) hereof, if the Commission gives notice to the parties of a hearing to be held by the Commission with respect to the application and the hearing is commenced within such 30 days or on a date mutually acceptable to the Commission and the parties, the Commission shall have 30 days after the submission of the hearing examiner's report or recommended decision within which to render its decision. In the absence of any such action within such period of time, any such proposed merger, mortgage, transfer, issue, assumption or acquisition shall be deemed to be approved.

(e) (1) Any public utility may satisfy the requirements of paragraphs (a)(2) and (3) of this section by filing with the Commission a statement of a financing plan stating in detail:

a. Those issuances or assumptions described in paragraphs (a)(2) and (3) of this section that it intends to make within 3 years following the filing; and

b. The anticipated times thereof; and

c. The anticipated costs thereof; and

d. The anticipated capitalization ratios for the public utility during that period; and

e. Such other information as the Commission may require.

(2) The Commission shall review the plan for consistency with efficient and reasonable financing principles. The Commission may make such investigation and hold such hearings in the matter as it deems necessary, and thereafter may approve the plan in whole or in part with such modification and upon such terms and conditions as it deems appropriate. The Commission shall approve any financing plan when the proposed financings are to be made in accordance with law, for proper purposes and are consistent with the public interest. The Commission may require the filing of periodic reports as to the action taken pursuant to the plan. The Commission shall approve, modify, refuse or prescribe appropriate terms and conditions with respect to any such plan within 60 days of its filing. In the absence of such action within such period of time, the proposed plan shall be deemed to be approved as filed as if the Commission itself had acted favorably thereon. The public utility may then, without further application to the Commission, make any issuance or assumption approved by the Commission.

(3) Thereafter, the public utility may file an application for approval of an amendment to an approved plan or for approval of a substitute for an approved plan, which application will be reviewed under the criteria and by the procedures provided therein for review of and action on a filing of a financing plan except that the period of review shall be 30 days. In the absence of action by the Commission within such period of time, the amendment or substitute shall be deemed to be approved.

(f) Subsection (b) of this section shall not apply to any acquisition of control of any public utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this State if the Commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this State substantially equal to that afforded such ratepayers by this section. For purposes of this subsection, the term "gross revenue" is used as that term is used in § 115(c) of this title, except that in defining gross revenue derived from business in another jurisdiction, the name of the appropriate regulatory agency or agencies established by such other jurisdiction for the regulation of public utilities shall be substituted for "the Public Service Commission" in § 115(c)(1) of this title and for "the Commission" in § 115(b) of this title.

(g) Nothing contained in this section shall be construed in any way to prevent the sale or lease or other disposition of any public utility of any of its property in the ordinary course of its business.

(h) Notwithstanding any other provision of law, Commission approval is not required for any reorganization or merger of public utility companies providing telecommunications services, including a mortgage or transfer of property, issuance of securities, assumption of obligation of another, or transfer of control of a service provider governed under this subchapter.

(47 Del. Laws, c. 254, § 6; 48 Del. Laws, c. 371, § 12; 26 Del. C. 1953, § 165; 59 Del. Laws, c. 397, § 1; 65 Del. Laws, c. 146, § 1; 70 Del. Laws, c. 48, §§ 3, 4; 79 Del. Laws, c. 53, § 6; 82 Del. Laws, c. 11, § 3.)

§ 216. Free passes, franks, products or services.

This chapter shall in nowise be construed to prevent the issuance by any public utility of free passes or franks, products or services to its employees, officers, agents, and their families, subject to such conditions as the Commission may prescribe by rule or regulation.

(21 Del. Laws, c. 273, § 97; 22 Del. Laws, c. 166, § 17; Code 1935, § 2184; 47 Del. Laws, c. 254, § 18; 26 Del. C. 1953, § 166; 54 Del. Laws, c. 38, § 3; 59 Del. Laws, c. 397, § 1.)

§ 217. Compliance with Commission's orders; penalty.

In default of compliance with any order of the Commission when the same becomes effective, the public utility affected thereby shall be subject to a penalty of up to $1,000 per day for every day during which such default continues, to be recovered in an action in the name

of the State. Observance of the orders of the Commission may be compelled by mandamus or injunction in appropriate cases, or by an action to compel the specific performance of the orders so made or of the duties imposed by law upon such public utility.

(47 Del. Laws, c. 254, § 13; 26 Del. C. 1953, § 191; 57 Del. Laws, c. 643, § 2; 59 Del. Laws, c. 397, § 1.)

§ 218. Violations and penalties.

(a) Whoever knowingly performs, commits, or does, or participates in performing, committing or doing, or knowingly causes, participates or joins with others in causing any public utility to do, perform or commit, or advises, solicits, persuades, or knowingly instructs, directs or orders any officer, agent or employee of any public utility to perform, commit or do any act or thing forbidden or prohibited by this chapter, shall be fined not more than $1,000 or imprisoned not more than 6 months or both.

(b) This section shall not apply to violations for which another specific penalty is provided in this chapter.

(47 Del. Laws, c. 254, § 14; 26 Del. C. 1953, § 169; 56 Del. Laws, c. 258; 59 Del. Laws, c. 397, § 1.)

§ 219. Powers of Commission over public water suppliers.

Repealed by 70 Del. Laws, c. 49, § 1, effective June 12, 1995.

§ 220. Telecommunications service for persons who have deafness, hearing loss, or speech disabilities for wireline communications service and devices.

(a) All telephone corporations or any corporation supplying wireline communications service within this State shall participate in a program to provide telecommunications service for communication devices, a telecommunications relay service, and assistive devices for persons who have deafness, hearing loss, or speech disabilities related to or resulting from an individual being deaf or hard of hearing.

(b) Telephone corporations or corporations supplying wireline telephone service within this State shall impose a surcharge as set forth in this section to recover the cost of providing said service through a separately identified charge on subscribers' bills as further outlined in subsection (e) of this section below. The surcharge shall be subject to adjustment annually with notification to providers required at least 90 days in advance of the effective date of such adjustment. The moneys recovered shall be deposited in a special fund ("Fund") created by the State for the purpose designated as the telecommunications service and devices for persons who have deafness, hearing loss, or speech disabilities.

(c) (1) The Office of the Deaf and Hard of Hearing of the Department of Labor is hereby directed to administer the program to provide access to public telecommunications service by residents of Delaware who have deafness, hearing loss, or speech disabilities using devices for communications, and to provide devices to facilitate communication or provide information pertaining to emergency services to residents of Delaware who have deafness, hearing loss, or speech disabilities. The Office shall develop, accept, process, and approve applications for such service.

(2) The Department of Technology and Information is hereby directed to provide a statewide telecommunications relay service that will allow persons who have deafness, hearing loss, or speech disabilities to communicate by telephone through attendants or equipment at a service answering facility with persons having normal hearing and speech. The Department may enter into contractual agreements with 1 or more other persons or entities requiring such other persons or entities to perform all or any part of the service. The cost of providing the telecommunications relay service shall be paid out of the Fund.

(3) The Office of the Deaf and Hard of Hearing is authorized to create a list of devices eligible for the Fund, which may include devices that both directly and indirectly facilitate communication or provide users with information pertaining to emergency situations, and publish the list online. The cost of providing such devices to residents of Delaware with deafness, hearing loss, or speech disabilities shall be paid out of the Fund. Eligible items may include the following:

a. Everyday items such as alarm clocks, baby monitors, doorbells, and smoke detectors.

b. Assistive devices to facilitate communication for people with deafness, hearing loss, or speech disabilities.

c. Hearing-related emergency response kits.

d. Specialized telecommunication equipment such as hearing-aid compatible cell phones, computer conversion packages, large visual displays, pagers, phones with amplifiers, and devices to alert people to audible warnings.

(4) The Office of the Deaf and Hard of Hearing is authorized to employ individuals as may be necessary to administer the program, provide education to the public about the program, and manage program resources.

(5) The Office of the Deaf and Hard of Hearing is authorized to promulgate procedures, regulations, rules, and criteria necessary to implement and administer this statewide program.

(d) In order for a person to be eligible for the program, the person shall be certified as having deafness, hearing loss, or a speech disability by a licensed physician, audiologist, or by any other method recognized by the Office of the Deaf and Hard of Hearing. Persons applying for the program must supply their own analog communication device.

(e) The Fund shall be funded by means of a monthly surcharge of up to $0.04 per month billed by providers to subscribers of communications services in this State as follows:

(1) *Residential telephone service.* — The surcharge shall be billed by each provider providing such service to all Delaware residential subscribers per residence exchange access line or per Basic Rate Interface ("BRI") ISDN arrangement, where the residence exchange

access service is provided via a BRI ISDN arrangement. The surcharge shall not be applied to residence exchange access lines provided to Lifeline subscribers.

(2) *Business telephone service.* — The surcharge shall be billed by each provider providing such service to all Delaware business subscribers per business exchange access line and trunk or per BRI ISDN arrangement where the business exchange access service is provided via a BRI ISDN arrangement. Each Centrex access line shall be charged the equivalent of $^1/_9$ of the surcharge; provided, however, that where a Centrex customer has fewer than 9 lines, the maximum monthly charge for those lines will be the surcharge imposed on each business exchange access line or trunk divided by the customer's Centrex lines. Each Primary Rate Interface ISDN system shall be charged a rate equal to 5 times the surcharge. The surcharge shall not be applied to lines provided under wholesale arrangements.

(3) *Wireless service.* — The surcharge shall be billed by each wireless provider on all wireless service customers for each wireless telephone number for which they are billed by such provider.

(4) *Nontraditional communication services.* — The surcharge shall be billed by each provider of nontraditional communications service to subscribers based on an exchange access line equivalent that provides capacity to simultaneous access to 911 service where such provider is required to or opts to provide 911 service.

(f) The surcharge amounts shall be deposited into the Fund, along with any other state funds the General Assembly may from time to time appropriate.

(g) The provider shall bill the surcharge to the person purchasing the service but shall collect it on behalf of the State. The surcharges collected by a provider shall not be subject to taxes or charges levied by the State or any political subdivision thereof, nor shall they be considered revenue of the provider for any purpose.

(h) The surcharge shall not apply to wholesale services.

(i) All surcharges imposed by this section shall be collected by providers from subscribers to communications service with each invoice for service and shall be paid by providers on a monthly basis to the Department of Finance no later than the fifteenth day of the month following its collection and shall be deposited into the fund on a monthly basis.

(j) Each provider collecting such surcharges shall be entitled to recover the actual incremental costs of billing, collecting and remitting such surcharges, as well as the costs of compliance with any memorandum of understanding as described in this section, that will be taken monthly as a credit against the total amount to be remitted to the Department of Finance. This cost is defined as the incremental expense incurred by the provider that is in addition to the normal expense of billing and collecting the charges for the provision of the provider's normal telephone service. Where moneys collected by the provider are equal to or less than the total charge for the telephone service provided to subscribers or customers by that provider, not including the surcharge, all moneys collected will be applied to the charges for the actual telephone service provided. As an alternative to recovery of the actual incremental costs described above, providers collecting the surcharge may elect to receive a collection allowance of 1% of the total amount collected from subscribers taken monthly as a credit against the total amount to be remitted to the Department of Finance.

(k) Each provider collecting such surcharges shall not be responsible for uncollectable surcharges. The State may also enter into a memorandum of understanding with each provider which shall include, but need not be limited to, the terms related to the collection and distribution of funds pursuant to this section and provide for reporting to the State the names and addresses of subscribers that fail to pay the surcharge. However, nothing in this section shall be construed to prevent the State from taking appropriate action to collect such surcharges designated by a provider as uncollectable.

(*l*) Each provider collecting such surcharge is fulfilling a governmental function and in so doing, is immune from suit for damages of any kind and is not liable for refunds except to the extent that the provider has failed to collect or remit surcharges to the Fund in accordance with the requirements of this section.

(m) Money in the Fund may only be used to fund the costs of providing the services specified in subsection (a) of this section above, telecommunications relay service costs specified in paragraph (c)(2) of this section, costs related to the purchase of devices as specified in paragraph (c)(3) of this section, costs related to the administration and management of the program as specified in paragraph (c)(4) of this section, and administrative costs as specified in subsection (j) of this section, subject to the following restrictions:

(1) No more than 15% of the money in the Fund revenue received during the fiscal year may be allocated or used to employ individuals as may be necessary to administer and manage the programs as specified in paragraph (c)(2) of this section.

(2) No more than 15% of the money in the Fund may be allocated or used to pay for administrative costs.

(3) The Fund must always retain a sufficient reserve to cover the following expenses for at least 3 months, as estimated based on the average actual expenses in the prior year:

a. The telecommunications relay service costs under paragraph (c)(2) of this section.

b. The costs associated with providing the devices under paragraph (c)(1) of this section to residents of Delaware with deafness, hearing loss, or speech disabilities.

c. Any administrative costs associated with employing individuals to administer and manage the program as specified in paragraph (c)(2) of this section and the administrative costs under subsection (j) of this section.

(n) The Fund is created as a nonappropriated special fund. Balances in the Fund on June 30 of each year shall carry forward and shall not revert to the General Fund.

(o) The Office of the Deaf and Hard of Hearing must submit an annual report by September 30 concerning the previous fiscal year to the Governor, the Secretary of the Senate, the Chief Clerk of the House, and the Director and Librarian of the Division of Legislative Services. The annual report must be posted on the website of the Office of the Deaf and Hard of Hearing and include the following:

(1) The total number of applications submitted to the Office.

(2) The total number of applicants approved for assistance.

(3) The total number of applicants denied assistance.

(4) The total amount of funds spent during the fiscal year, including administrative costs and any costs associated with employing individuals to administer and manage the program as specified in paragraph (c)(2) of this section.

(5) A breakdown of funds spent on allowable expenditures within paragraphs (c)(2) and (c)(3) of this section, including how many of each allowable item is distributed to applicants.

(6) The total amount remaining in the Fund at the end of the fiscal year.

(67 Del. Laws, c. 67, § 1; 78 Del. Laws, c. 388, § 1; 85 Del. Laws, c. 101, § 1.)

§ 221. Telecommunications Relay Service Advisory Committee.

(a) The purpose of the Telecommunications Relay Service Advisory Committee is to oversee the relay services contract, the Delaware relay web site, new product announcements and all associated outreach programs. The Telecommunications Relay Service Advisory Committee shall advise any public utility which is authorized by the Commission to provide a statewide telecommunications relay service (TRS), and to also advise any contractor, designee, agent or assign of such public utility on matters related to the use of the TRS.

(b) The Telecommunications Relay Service Advisory Committee is composed of the following 11 members:

(1) A representative from a public utility, authorized by the Commission to provide a statewide TRS utility.

(2) A person designated by the TRS utility that is under contract with such utility to provide all or part of a statewide TRS.

(3) The 911 Administrator for the State, or a designee of the 911 Administrator for the State.

(4) A representative from the Division for the Visually Impaired.

(5) A representative from the Department of Technology and Information.

(6) A representative from the Delaware Association of the Deaf.

(7) A representative from the Delaware Assistive Technology Initiative.

(8) A representative from the Hearing Loss Association of Delaware.

(9) A representative from the Delaware Office for the Deaf and Hard of Hearing.

(10) A representative from the Delaware School for the Deaf.

(11) A representative from Independent Resources, Inc.

(c) A public utility acting as a member of the Telecommunications Relay Service Advisory Committee shall be obligated to reimburse such Committee for the reasonable expenses incurred by such Committee for interpreter services. The Telecommunications Relay Service Advisory Committee shall submit invoices for such reasonable expenses to a public utility obligated to reimburse the Committee for the same. These expenses shall be recovered by a reimbursing public utility in the manner authorized by the Commission for recovery of any other costs associated with the implementation and operation of a TRS.

(68 Del. Laws, c. 145, § 1; 77 Del. Laws, c. 308, § 1; 82 Del. Laws, c. 53, § 1; 84 Del. Laws, c. 514, § 48.)

§ 222. Exemption from criminal and civil liability.

The following parties shall not be liable for criminal prosecution or subject to a civil action arising from the relay of any message in the course of providing, or operating, a statewide dual party relay service:

(1) A public utility providing a statewide dual party relay service (DPRS utility);

(2) Any person or entity with whom the DPRS utility has contracted for the operation of all or a part of such relay service; or

(3) Any employee or agent of a DPRS utility, and any employee of any person or entity with whom such utility has contracted.

(68 Del. Laws, c. 145, § 1.)

§ 223. Electric cooperative's election to be exempt from regulation.

(a) To be exempt under § 202(g) of this title, an electric cooperative shall conduct an election of all its members as follows:

(1) An election under this section may be called by the cooperative's board of directors or shall be called not less than 100 days after receipt by the board of a valid petition signed by not less than 1,000 members of the cooperative.

(2) The proposition to exempt the cooperative from regulation by the Commission shall be voted upon by the cooperative's members and presented to a meeting of the members. The board of directors of the cooperative shall provide notice of the election and such meeting to the members of the cooperative. Such notice shall set forth the proposition to exempt the cooperative from regulation by

the Commission and the time, date and place of the meeting. Notice shall be given in writing to the members and to the Commission by mail or by hand delivery not less than 40 days nor more than 90 days before the date of the meeting. Such notice shall also include directions for voting on the proposal, a form of written ballot, and the time, date and place of the forums required by paragraph (a)(3) of this section.

(3) With the call for an election under paragraph (a)(1) of this section, the board of directors of the cooperative shall schedule, and shall thereafter convene, at least 2 open forum sessions to allow members of the cooperative to discuss or make inquiries concerning the proposal and the election. Such forums shall be held on separate dates at differing locations within the cooperative's service territory at times convenient for members to attend. Such forums shall be held no sooner than 10 days after delivery of the notice described in paragraph (a)(2) of this section and no later than 20 days prior to the date of the meeting for presenting the proposition. The time, date and location of each such forum shall be included in the notice required by paragraph (a)(2) of this section. At such forum, a member of the cooperative shall have the opportunity to make inquiries about the proposition and shall have a reasonable, equal opportunity to present the member's views concerning the proposition, including a view in opposition to the proposition.

(4) If the cooperative mails information to its members regarding the proposition to exempt the cooperative from regulation by the Commission, other than the information required by paragraph (a)(2) of this section, the cooperative shall also include in the same mailing any materials provided in opposition to the proposition which are submitted by a petition signed by not less than 100 members of the cooperative. The cooperative shall pay the incremental cost of mailing such materials up to an amount equal to the cost of mailing the cooperative's information regarding the proposition. Any cost in excess of that amount shall be paid pro rata by the petitioners submitting materials in opposition, which payment shall be secured by an advance deposit reasonably estimated to cover such excess costs.

(5) An independent auditor selected by the board of directors voting shall control and supervise the procedures for voting on the proposition. Each member of the cooperative shall be entitled to 1 vote on the proposition, regardless of the manner utilized to cast such vote. A member may vote by use of a written ballot prescribed for the election. Such form of written ballot shall be included with the notice required under paragraph (a)(2) of this section. Such written ballot shall be cast if received by the time of the close of the voting at the meeting described in paragraph (a)(2) of this section. In addition, a member may vote at the meeting required by paragraph (a)(2) of this section by means of such written ballot or by use of a voting machine. After the close of the voting, the independent auditor shall tally the votes validly cast both by written ballot and by use of a voting machine. The cooperative, by its charter or bylaws, may also authorize members to cast ballots by means of an electronic format and electronic transmission. The procedures adopted for the use and transmittal of such electronic ballots shall ensure that each electronic ballot was sent by a member entitled to vote. An electronic ballot shall be cast if received by the close of voting at the meeting described in paragraph (a)(2) of this section.

(6) An election under this section shall require the affirmative vote of a majority of those members voting, in an election at which at least 15 percent of the cooperative's members cast votes, to carry the proposition.

(7) The independent auditor shall certify to the Commission, in writing, the results of any such election within 5 business days after the date of such election. Subject to § 224 of this title, the action voted by the members shall become effective at the expiration of 15 days from the date the election certificate is filed with the Commission.

(b) In the event the members of the cooperative have voted, pursuant to subsection (a) of this section, to exempt the cooperative from regulation by the Commission, any such cooperative may vote no more than once every 12 months to return said cooperative under the regulation of the Commission. Such proposition may be submitted to the members of the cooperative by the cooperative's board of directors, or shall be submitted to the members of the cooperative if at least 1,000 of the members of the cooperative sign a petition requesting such an election. Such proposition shall be submitted to the members of the cooperative and voted upon in the same manner as provided for in subsection (a) of this section.

(73 Del. Laws, c. 157, § 2.)

§ 224. Regulations governing exempt electric cooperatives.

Notwithstanding any electric cooperative's election to exempt itself from the regulatory authority of the Commission under § 223 of this title, during any such period of exemption:

(1) Such cooperative shall remain subject to the Restructuring Plan approved by the Commission pursuant to § 1005(b) of this title until April 1, 2005, except as provided in paragraph (9)e. of this section, and subject to modification by the Commission upon application by the cooperative. Effective April 1, 2005, the governing body of the cooperative shall have full power and authority to revise such Restructuring Plan, subject only to the provisions of paragraphs (2) through (10) of this section.

(2) Such cooperative shall remain subject to the Commission's jurisdiction and regulatory authority as necessary to implement §§ 203A, 203B and 204 of this title.

(3) Whenever such cooperative is a subject of or participant in any investigation or proceeding which the Commission is authorized to conduct under this section, the cooperative shall be charged with and pay such portion of the expenses of the Commission as is reasonably attributable to such investigation or proceeding in accordance with § 114 of this title.

(4) Such cooperative shall make available to its members the following reports:

a. Rate schedules, tariffs, and terms and conditions of service, and all amendments thereto;

b. Financial and statistical information regarding gross intrastate operating revenues, revenues per rate class, number of members and number of meters per rate class;

c. Data and information concerning load management, energy conservation, and similar programs;

d. Information concerning ongoing consumer education programs; and

e. Information concerning the cooperative's performance (income statements, balance sheets, reliability data, etc.).

(5) Such cooperative shall remain subject to § 117 of this title and shall continue to abide by § 303(a) of this title.

(6) No such cooperative shall increase or decrease any of its rates or charges for electric distribution service or electric supply service for "default" customers under paragraph (9)f. of this section unless:

a. It provides notice of such proposed action to the members as provided in paragraph (7) of this section;

b. It allows the members to attend those portions of the meeting of the governing body during which such proposed action is to be publicly voted upon; provided, however, that nothing herein shall be deemed to limit the governing body's right to go into executive session, closed to members, to discuss pending or potential litigation, confidential proprietary information the disclosure of which could be detrimental to the cooperative's financial interests or which could negatively impact on its ability to conduct business in a competitive environment, or to consult with legal counsel;

c. It allows the members a reasonable opportunity to address the governing body at such meeting prior to a final decision being made on such proposed action.

d. The applicable rates and charges for electric distribution service are, within each service classification, the same without regard to the customer's electric supply service provider.

(7) Such cooperative shall provide notice of all regular meetings of its governing body in its newsletters or as part of the monthly billing statement, and by posting on its website, if any. Notice of special meetings shall be posted on the cooperative's website, if any, or published (double-column, bordered in black) in 2 newspapers of general circulation in the cooperative's service territory at least 24 hours in advance of such meeting. Such notice shall include a statement that copies of the updated agenda for such meetings will be posted on the cooperative's website, if any, and available at the offices of the cooperative during normal business hours until the time of the meeting; provided, however, anything herein to the contrary notwithstanding, failure to provide notice or an updated agenda as required herein due to impossibility, impracticality or inadvertence shall not invalidate the meeting or any action taken thereat.

(8) Unless such cooperative has implemented a restructuring plan that provides for retail competition in its Delaware service territory, such electric cooperative may not use the transmission or distribution facilities of a nonaffiliated electric utility to make sales to customers in such nonaffiliated electrical utility's Delaware service territory; nor shall such electric cooperative own or receive, directly or indirectly, any economic interest in any entity which uses the transmission or distribution facilities of a nonaffiliated electric utility to make sales to customers in such non-affiliated electrical utility's Delaware service territory.

(9) In the event such cooperative has implemented a restructuring plan that provides for retail competition in its Delaware service territory, such electric cooperative:

a. Shall remain subject to the Commission's jurisdiction and regulatory authority as necessary to implement § 1012 of this title (certification of "electric suppliers").

b. Shall implement procedures to require all electric suppliers to deliver energy to the cooperative at locations and in amounts which are adequate to meet each electric supplier's obligations to its customers.

c. Shall be governed by § 1011(b) of this title with regard to metering and billing for customers in the cooperative's service territory.

d. Shall implement and maintain such procedures, processes and protocols (including all personnel, facilities and equipment) as reasonable and necessary to provide direct access (as defined in § 1001 of this title) to electric suppliers and their customers.

e. Shall, until March 31, 2005, maintain rates and charges that do not exceed those rates and charges previously established by the Commission pursuant to § 1006(b)(1) of this title, subject to the cooperative's right to petition the Commission for authority to change those rates in order to recover extraordinary costs pursuant to § 1006(b)(1) and (b)(2) of this title, and subject also to the right of such cooperative, without Commission approval: (i) to revise any individual rate(s) or charge(s) at any time provided that such rate(s) or charge(s) does/do not exceed those established by the Commission pursuant to § 1006(b)(1) of this title; and/or (ii) to increase rates and charges above those previously established by the Commission, if (and only if) necessary, because of increases in the cooperative's wholesale power cost, for the cooperative to maintain the minimum 1.5 TIER ("Times Interest Earned Ratio") and Debt Service Coverage lending requirements established by the Rural Utility Service of the United States Department of Agriculture.

f. 1. Except as provided in paragraph (2) hereof, shall have the obligation to provide electric supply service, in accordance with the cooperative's published rate schedules, terms and conditions of service to all customers within its Commission-designated territory who:

A. Have no choice regarding electric suppliers;

B. Do not choose another electric supplier; or

C. Have contracted for electric supply service that is not delivered

2. A cooperative shall have the right, but not the obligation, to provide electric supply service to any customer who will have a projected monthly demand of more than 50MW at any time during a 10-year load-ramp period. Two or more customers under common ownership of a single entity or affiliated entities and located on 1 parcel of land or contiguous parcels may be treated as a single customer for purposes of this paragraph.

(10) Such cooperative may adopt procedures to hear, decide and address, in a prompt and fair manner, complaints from its members, electric suppliers or suppliers of other competitive services. For purposes of this subsection, "other competitive services" shall mean any service or product provided for a fee by the cooperative to members or customers other than electric supply service, electric distribution service, metering and billing, or "ancillary services," as defined in § 1001 of this title. Such procedures may provide for both informal and formal complaint proceedings. A formal complaint proceeding shall include, at a minimum, the right to present a complaint in writing, the right to have such complaint heard by the chief executive officer of the cooperative (or the chief executive officer's designee), the right to a written response setting forth the reasons for any decision, and the right to have the complaint and response reviewed by the board of directors of the cooperative. A member, electric supplier or other supplier of competitive services may, but is not required to, utilize such informal or formal complaint procedures adopted by the cooperative and may, at any time, pursue any other remedy available under law. A determination made in the informal or formal complaint process shall be binding on the cooperative. A member, electric supplier, or supplier of other competitive services may agree to accept a determination made in the informal or formal complaint process but may reject such determination and pursue any other remedy available under law.

(73 Del. Laws, c. 157, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 200, § 1; 85 Del. Laws, c. 290, § 1.)

§ 225. Lead paint on outdoor structures.

All provisions of this title must comply with Chapter 30M of Title 16.

(81 Del. Laws, c. 396, § 7.)

§ 226. Call centers

(a) Not fewer than 120 days before relocating a call center outside of the service territory of the public utility or contracting call center work outside of the service territory of the public utility, a public utility must, in the manner and form determined by the Commission, do all of the following:

(1) Notify the Commission of the public utility's intent to relocate the call center or contracting call center work outside of the service territory of the public utility.

(2) Notify all current and prospective employees of the call center of the public utility's intent to relocate the call center or contracting call center work outside of the service territory of the public utility.

(3) Notify the leadership of any of labor unions in which a current or prospective employee is a member of the public utility's intent to relocate the call center or contracting call center work outside of the service territory of the public utility.

(b) A public utility is exempt from the notification requirements described in this section if the public utility contracts call center work outside of the service territory of the public utility due to a disaster.

(85 Del. Laws, c. 315, § 2.)

Subchapter III

Rates

§ 300. Rate schedule and rate classifications.

(a) The Commission may require every public utility to file with the Commission complete schedules of every classification employed and of every individual or joint rate, fare or charge made, charged or executed by the public utility for any regulated product or service supplied or rendered within this State. Every application for a certificate of public convenience and necessity shall include a proposed tariff for approval by the Commission. A copy of all regulated tariffs then in effect shall be available for inspection by customers at each public office of the utility where applications for service are received.

(b) This section shall not apply to charges made for electric supply service or for transmission or ancillary services on and after October 1, 1999, for Delmarva Power & Light Company and April 1, 2000, for Delaware Electric Cooperative.

(c) Any person or entity in the business of a wastewater utility as of June 7, 2004, and subject to the supervision and regulation of the Commission under this chapter shall file a schedule of its rates in effect as of June 7, 2004, by November 3, 2004, in such form as the Commission may require. On July 6, 2004, such wastewater utility's rates will be deemed in effect pending the outcome of an initial rate change request application filed in accordance with this title. Such application must be filed by January 2, 2005. A wastewater utility required to make such a rate filing may seek the assistance of the Commission in preparing its rate filing. Rates in effect on July 6, 2004, shall be deemed temporary and not subject to change, unless ordered by the Commission. Section 306 of this title shall not apply pending the outcome of this initial rate setting case. The Commission shall have 9 months to complete its review following the filing of the rate change application. However, to the extent possible, the Commission shall attempt to expedite such application. For good cause shown, the Commission may waive any provision of this subsection.

(d) Notwithstanding any other law, no public utility may assess switched access rates pursuant to tariff that are higher than the switched access rates set forth in the tariffs of the incumbent local exchange provider in the same service territory.

(e) Notwithstanding any other law, a public utility that provides telecommunications services shall not be subject to mandatory tariff or other filing requirements except with respect to switched access service.

(f) *Rate transparency.* —

(1) Each public utility shall prepare, maintain, and file with the Commission for approval, for each customer class it serves, a rate summary table for each rate class showing the total effective rate and itemizing each rate element including each base rate element; each transmission and supply element; and each rider, surcharge, and adjustment mechanism, including, statutory charges, distribution system improvement charge, and any other Commission approved rider or surcharge.

(2) Each component in the rate summary table shall be displayed numerically, using the same units in which the customer is billed. Beginning September 1, 2027, Commission regulated electric utilities shall bill standard offer service customers transmission charges in the same monthly billing determinants as distribution rates.

(3) The rate summary table shall include a schedule that identifies the components of rates that change on a predictable schedule (for example, rates that change annually) and the cadence of such change during the calendar year.

(4) The Commission may reject or require revisions to any rate summary table that it deems incomplete, inaccurate, or inconsistent with approved rates.

(5) The public utility shall include the rate summary table in the public utility's tariff as a separate, clearly labeled section, post the rate summary table for each customer class in an easily accessible location on its website, include the rate summary table for that customer class in its customer bills, and file with the Commission and update in each of the foregoing locations an updated rate summary table at least 30 days after the effective date of any change to any component of its rates.

(47 Del. Laws, c. 254, § 3; 26 Del. C. 1953, § 128; 59 Del. Laws, c. 397, § 1; 72 Del. Laws, c. 10, § 11; 74 Del. Laws, c. 317, § 7; 78 Del. Laws, c. 174; 79 Del. Laws, c. 53, § 7; 85 Del. Laws, c. 342, § 2.)

§ 301. Plain language standard.

In all public facing and customer communications and any submissions to the Commission, public utilities, commission staff, and the Division of the Public Advocate should use clear and plain language to the maximum extent possible. Technical terms, abbreviations, and other technical nomenclature should be avoided wherever possible. Where technical language is necessary for specificity, it should be used only to the minimum degree necessary and shall be explained in the simplest form possible.

(85 Del. Laws, c. 342, § 2.)

§ 302. Determination of rate base.

(a) The Commission may, from time to time, ascertain and determine the rate base of any public utility whenever, in the judgment of the Commission, it is necessary so to do for the purpose of carrying out this chapter, and in making such determination the Commission may have access to and use any books, documents, or records in the possession of any department, board, commission or agency of this State or any political subdivision thereof. In ascertaining and determining the rate base, the Commission may determine every fact, matter, or thing which, in its judgment, does or may have any bearing thereon. For electric and natural gas distribution companies the Commission shall use the average year rate base method.

(b) If a water utility is not, pursuant to § 122(3)c. of Title 16, under review concerning its water system's ability to provide adequate service to its customers under its present certificates of public convenience and necessity or subject to a review by the Commission of the appropriate rates to be charged by the water utility in light of the quality of service being provided to its customers, the Commission will include in the utility's rate base, treat as used and useful utility plant, and, accordingly, allow to be fully recovered in the utility's rates without imputation of revenues, all just and reasonable, and prudent costs which are incurred by the water utility in constructing facilities (including without limitation supply, treatment and transmission facilities) to serve the needs of existing customers or of persons who are reasonably anticipated by the water utility to be its customers within 3 years from the date used by the Commission to recognize rate base in the rate proceeding. The number of customers reasonably anticipated to be added within that 3-year period will consist of customer projections which are relied on by the utility and are generated by professional engineers or planners, governmental or regulatory agencies, officials or authorities, or the water utility itself, and which are not arbitrary and capricious. If the water utility does not, by the end of the 3-year period after the date used by the Commission to recognize rate base in the rate proceeding, reach at least 75% of the total number of customers originally anticipated to be served by the facilities, the Commission may only then require the water utility to impute revenues and then only to the extent of the number of customers it originally anticipated to be served by the facilities but who have not, as of the end of the 3-year period, been added.

(59 Del. Laws, c. 397, § 1; 72 Del. Laws, c. 402, § 7; 85 Del. Laws, c. 78, § 1; 85 Del. Laws, c. 342, § 2.)

§ 303. Unjust or unreasonable rates and preferences; change in fuel adjustment rate; economic development credit for qualifying corporations.

(a) Except as set forth in subsection (e) of this section, a public utility may not make, impose, or exact any unjust or unreasonable or unduly preferential or unjustly discriminatory individual or joint rate for any product or service supplied or rendered by it within the

State, or adopt, maintain or enforce any regulation, practice or measurement which is unjust, unreasonable, unduly preferential or unjustly discriminatory or otherwise in violation of law, or make, or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any particular description of traffic, in any respect whatsoever.

(b) The Commission shall require all utilities operating within its jurisdiction to produce evidence at a public hearing of the need for a change in the fuel adjustment as a part of the rate-making procedure. Notwithstanding any other provisions of this chapter, such fuel adjustment may include a separate component to adjust for or correct for any difference between actual allowable fuel costs incurred by the utility and fuel costs recovered through base rates and the fuel adjustment. Notice of such hearing shall be advertised in at least 1 newspaper in each of the 3 counties. As in other applications before the Commission, the burden of proof that the fuel adjustment change is required shall be upon the utility. No change in the fuel adjustment shall be authorized by the Commission except by affirmative vote of the majority of all members appointed to the Commission. The Commission shall consider the evidence for and against the proposed change as it would all evidence in any other ratemaking procedure. Consistent with the introduction of customer choice in the supply of electricity pursuant to Chapter 10 of this title, and subject to subsection (c) of this section below, this section shall have no application to rates in effect on and after October 1, 1999, for Delmarva Power & Light Company and April 1, 2000, for Delaware Electric Cooperative.

(c) Notwithstanding subsection (b) of this section, the Commission shall determine the actual overrecovered or underrecovered deferred fuel balance for each electric distribution company as of September 30, 1999, for Delmarva Power & Light Company and March 31, 2000, for Delaware Electric Cooperative. Such overrecovery or underrecovery shall be either returned to or collected from that electric distribution company's retail electric customers by a mechanism that is designed to provide a full credit or charge of the actual deferred fuel balance and that the Commission shall adopt and order to be effective no later than 90 days after such dates. The Commission shall adopt either a single bill credit or charge mechanism or an alternative per kilowatt-hour credit or charge mechanism to be in effect for up to a period of 12 months, depending upon the relative size of the actual amount to be credited or charged to retail electric customers. No further adjustments of such amounts shall be required.

(d) (1) The Commission shall authorize a public utility to establish an individual or joint rate for any product supplied or service rendered within the State for the purposes of ensuring the State's current and future economic well-being and growth where prior to authorizing such individual or joint rate the Commission finds:

a. That such rate is in the public interest;

b. That such rate prevents the loss of customers, encourages customers to expand present facilities and operations in Delaware and/or attracts new customers where necessary or appropriate to promote economic development in Delaware. This finding shall include, but is not limited to, a determination that the new or existing customer or the growth in an existing customer represents at least 25 jobs and/or at least $2 million in capital expenditures;

c. That such rate shall provide recovery of at least the incremental cost (including capital cost) of providing the relevant utility services;

d. If, how, and to what extent any discount being authorized below a relevant standard tariff rate shall be recovered; and

e. The period of time during which such rate shall remain in effect, normally up to 5 years.

(2) In addition to the above specific findings, the Commission shall also consider, among other things, the following items:

a. The utility's load and capacity situation;

b. The portion that the relevant utility service makes up of the customer's total operating expenses;

c. Viable economic alternatives to the utility service available to the customer;

d. The customer's ability to relocate, if relevant;

e. Reasonable efforts that the customer has made to secure government grants and/or other concessions; and

f. The effect, if any, on competitors located in Delaware of the customer or customers to which such rate may apply.

(e) (1) The Commission may authorize an electric or natural gas public utility to establish an individual or joint rate for any product supplied or service rendered within the State for the purpose of ensuring basic utility service for the State's low-income residential customers where prior to authorizing such individual or joint rate, the Commission finds all of the following:

a. That such rate is in the public interest.

b. That such rate provides a 20% discount from standard residential distribution costs.

(2) Cost of credits and incremental administrative costs shall be deferred and recoverable through the Low-Income Program Fund described in § 1014(b) of this title or other means if a utility does not participate in a Low-Income Program Fund, subject to commission review and reconciliation on an annual basis. Commission-regulated utilities must petition the Commission to open a regulatory asset to track deferred costs associated with implementing the low-income rate. Commission-regulated utilities may not request nor receive a return on the regulatory asset. Commission-regulated utilities may recover incremental administrative costs through the deferral process.

(3) An electric or natural gas public utility approved for a low-income rate under this subsection must include information about the rate in a bill insert.

(4) Eligibility for a low-income rate under this section will be determined annually as follows:

a. A participating electric or natural gas public utility may submit the names and other required personal identifying information of applicants for the low-income residential rate to the Department of Health and Social Services (DHSS), but only if the applicant

has provided written or electronic consent for the sharing of the applicant's information between the participating electric or natural gas public utility and DHSS; or

b. Upon receipt of an applicant's consent and information, DHSS will notify the participating electric or natural gas utility if the applicant is eligible for the low-income rate, based on participation in, or eligibility to participate in, a means-tested program administered by the Division of Social Services.

c. Written or electronic consent for information to be shared must be obtained annually upon redetermination of eligibility for the low-income residential rate.

d. For purposes of this section, the term "low-income residential customer" means a residential utility customer who is eligible for a means-tested program administered by the Division of Social Services.

(5) An electric or natural gas utility that offers a low-income residential rate must provide customers approved for that rate with information and referrals to available energy efficiency programs such as those offered through Energize Delaware.

(6) The Commission must review a discount rate authorized under paragraph (e)(1) of this section every 5 years and determine whether such rate should be re-authorized.

(47 Del. Laws, c. 254, § 7; 26 Del. C. 1953, § 161; 59 Del. Laws, c. 397, § 1; 60 Del. Laws, c. 431, § 1; 65 Del. Laws, c. 17, § 1; 65 Del. Laws, c. 240, § 1; 70 Del. Laws, c. 48, § 5; 72 Del. Laws, c. 10, §§ 12, 13; 85 Del. Laws, c. 82, § 1.)

§ 304. Rate changes; notice.

(a) Unless the Commission otherwise orders, no public utility shall make any change in any existing rate except after 60 days notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changes will go into effect, and for changes to base rates, shall include the test period and test year applicable for the request. All proposed changes shall be shown by filing new schedules or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. Public notice of all proposed changes shall be given in a form and manner set by the Public Utilities Commission. The Commission, for good cause shown, may allow changes in rates without requiring the 60-days' notice and/or public notice under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

(b) In prescribing conditions for rate changes, the Commission is specifically authorized and empowered to conduct proceedings in which it limits the number or type of issues it will consider in determining whether or not to permit or allow such changes. The Commission may adopt or change regulations to govern such limited issue rate proceedings.

(c) As part of any base rate change filing, a public utility may be subject to a regulatory accounting review of transactions included on the public utility's books and records for ratemaking purposes, including transactions to and from affiliated companies to ensure transactions and other accounting entries are required only for the provision of regulated utility service. The regulatory accounting review may be conducted by staff for the Commission or such expert as selected by staff for the Commission. The regulatory accounting review may begin immediately upon the filing of the notice required by this section. The results of the regulatory accounting review shall be provided to all parties in the proceeding. A public utility shall not be subject to an accounting review as described in this section if there was a previous regulatory accounting review covering the same test year as proposed in the rate change filing.

(47 Del. Laws, c. 254, § 5; 48 Del. Laws, c. 371, § 10; 26 Del. C. 1953, § 151; 59 Del. Laws, c. 397, § 1; 70 Del. Laws, c. 48, § 6; 70 Del. Laws, c. 585, § 4; 85 Del. Laws, c. 342, § 2.)

§ 305. Hearing on rate change.

Whenever there is filed with the Commission by any public utility any schedule stating a new rate, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate.

(47 Del. Laws, c. 254, § 5; 48 Del. Laws, c. 371, § 10; 26 Del. C. 1953, § 152; 59 Del. Laws, c. 397, § 1.)

§ 306. Effective date of rate change; refund bond.

(a) The Commission, upon the filing of a petition for a proposed change to any rate, may within 60 days after said filing:

(1) Suspend the operation of such rate change for a period not to exceed 7 months after said filing; provided, however, that if the Commission has not reached its decision within said 7 months after filing, the public utility may place 50% of the increase in proposed new rate as compared to the existing rate into effect, and 75% after 12 months, under bond in accordance with subsection (b) of this section.

(2) Determine that a portion of such change shall become effective not later than 90 days after the filing of the petition on a temporary basis pending the final decision of the Commission.

(b) On or after the termination of the 7 months as set forth in paragraph (a)(1) of this section 50% of the proposed rate change, and 75% after 12 months, shall automatically become effective if the public utility files with the Commission a bond in a reasonable amount approved by the Commission with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess, if the rate so put into effect is finally determined to be excessive; or there may be substituted for such bond other arrangements satisfactory to the Commission for the protection of the

parties interested. In no event shall a public utility put a rate into effect under bond as authorized in this subsection that would constitute an increase in excess of 15% of the public utility's gross intrastate operating revenues.

(c) Notwithstanding subsections (a) and (b) of this section, 90 days after said filing, a public utility may put a rate into effect under bond as authorized in subsection (b) of this section, provided that the increase does not constitute an increase in excess of 15% of the public utility's annual gross intrastate operating revenues or $2,500,000 annually, whichever is less. This subsection shall not apply to any proposed rate change sought by a public utility under regulations adopted pursuant to § 304(b) of this title.

(47 Del. Laws, c. 254, § 5; 48 Del. Laws, c. 371, § 10; 26 Del. C. 1953, § 153; 59 Del. Laws, c. 397, § 1; 61 Del. Laws, c. 254, §§ 1-3; 70 Del. Laws, c. 48, § 7; 85 Del. Laws, c. 342, § 2.)

§ 307. Burden of proof; speedy determination.

(a) In any proceeding upon the motion of the Commission, or upon complaint, or upon application of a public utility, involving any proposed or existing rate of any public utility, or any proposed change in rates, the burden of proof to show that the rate involved is just and reasonable, and prudent, which requires a showing that the rate involved allows for recovery of only those costs or expenses prudently incurred, is upon the public utility. In making the determination of whether a cost or expense was prudently incurred, the Commission must consider the objective reasonableness of the cost or expense incurred, based on what the public utility knew or reasonably should have known at the time the cost or expense was incurred. The Commission may determine that the cost or expense incurred is only partially prudent, and may adjust the elements of rate base, operating expenses, or fuel costs accordingly to reflect that determination.

(b) The public utility shall have the burden of proof in justifying every accounting entry of record questioned by the Commission which may suspend any charge or credit pending submission of satisfactory and sufficient proof in support thereof by the public utility.

(c) The Commission shall give preference to the hearing and decision of any rate proceeding over all other proceedings and decide the same as speedily as possible.

(47 Del. Laws, c. 254, § 5A; 48 Del. Laws, c. 371, § 11; 26 Del. C. 1953, § 157; 59 Del. Laws, c. 397, § 1; 85 Del. Laws, c. 78, § 1.)

§ 308. Service as a factor in the Commission's regulation of a public utility.

(a) (1) In exercising the jurisdiction and power conferred upon the Commission by § 201 of this title, the Commission, upon its own motion at any time it deems such action to be in the public interest or upon complaint duly filed with it, may take into consideration, among other things, the efficiency, sufficiency and adequacy of the facilities and products provided and services rendered by the public utility, the value of such services, products and facilities to the public, and the ability of the public utility to improve such services, products and facilities. During such proceeding, the Commission may consider any service complaints by subscribers and the public.

(2) If the Commission finds that the public utility's facilities, products or services are inefficient, insufficient or inadequate, it may impose such penalty upon the public utility as may be necessary to restore such facilities, products or services to a state of efficiency, sufficiency or adequacy. Upon significant improvement in such services, products or facilities, the Commission may, after hearing, remove or reduce the penalty imposed.

(b) The power and authority herein conferred upon the Commission shall not be construed in any way to limit the general jurisdiction and power conferred upon the Commission by § 201 of this title, it being the legislative intent that efficient, sufficient and adequate services, products and facilities shall be provided by public utilities.

(59 Del. Laws, c. 397, § 1.)

§ 309. Rate change by Commission initiative.

(a) The Commission may, after hearing, upon notice, by order in writing, fix just and reasonable individual rates, joint rates, charges or schedules thereof, as well as commutation, mileage and other special rates, which shall be imposed, observed and followed thereafter by any public utility whenever the Commission determines any existing individual rate, joint rate, toll, charge or schedule thereof, or commutation, mileage, or other special rate to be unjust, unreasonable, imprudent, insufficient, or unjustly discriminatory or preferential.

(b) No order of the Commission requiring a change in rates shall become operative until at least 30 days after service thereof except upon the written consent of the public utility affected.

(59 Del. Laws, c. 397, § 1; 85 Del. Laws, c. 78, § 1.)

§ 310. Temporary rate reduction on order of Commission.

(a) Whenever the Commission, after due consideration of pertinent facts and information, is of the opinion that any rates of any public utility are producing a return in excess of a reasonable rate of return upon its rate base, or when appropriate, its operating ratio, and that a proceeding to determine all of the issues involved in a final determination of such rates will require more than 90 days, the Commission may, after reasonable notice to the public utility and opportunity to be heard thereon, if the public interest so requires, immediately enter a temporary order fixing a temporary schedule of rates to be charged by such public utility pending the final determination of such rate proceeding, which order shall become operative and binding upon such public utility at the time prescribed by the Commission.

(b) The power of the Commission to order reductions in rates and charges of any public utility by means of such temporary order shall be limited to reductions which will absorb not more than the amount found to be in excess of the amount of operating income, as

determined by the Commission, necessary to provide a reasonable rate of return on the rate base of the public utility or when appropriate, its operating ratio.

(c) The temporary rate so prescribed shall be effective until the final determination of the rate proceeding, unless sooner terminated or changed by the Commission.

(d) If, upon final disposition of the issues involved in such proceeding, the rates as finally determined are in excess of the rates prescribed in such temporary order, then such public utility may amortize and recover by means of a temporary increase over and above the rates finally determined such sum as represents the difference between the operating revenues obtained from the rates prescribed in such temporary order and the operating revenues which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.

(47 Del. Laws, c. 254, § 5A; 48 Del. Laws, c. 371, § 311; 26 Del. C. 1953, § 156; 59 Del. Laws, c. 397, § 1.)

§ 311. Determination of rate by Commission.

If, after hearing, the Commission finds any existing or proposed rate unjust, unreasonable, imprudent, or unjustly discriminatory, or in any wise in violation of law, the Commission shall determine the just and reasonable rate to be charged or applied by the utility for the service in question, and shall fix the same by order to be served upon the utility; and such rate shall thereafter be observed until changed, as provided in this chapter. In determining the just and reasonable rate to be charged, the Commission shall consider the revenue needs of the utility, its past and projected rates of return on its rate base, or, when appropriate, its operating ratio.

(47 Del. Laws, c. 254, § 5; 48 Del. Laws, c. 371, § 10; 26 Del. C. 1953, § 155; 59 Del. Laws, c. 397, § 1; 85 Del. Laws, c. 78, § 1.)

§ 312. Action for refund of unauthorized rate increase.

If the public utility fails to make refund within 90 days after the final determination by the Commission or by the court on appeal from the Commission's order that the rate is excessive, any person entitled to such refund may sue therefor in any court of this State of competent jurisdiction and shall be entitled to recover, in addition to the amount of the refund due, all court costs and reasonable attorneys' fees, but no action may be maintained for that purpose unless instituted within 2 years after such final determination. Any number of persons entitled to such refund may join as plaintiffs and recover their several claims in a single action, and in such action the court shall render a judgment severally for each plaintiff as each plaintiff's interest may appear.

(47 Del. Laws, c. 254, § 5; 48 Del. Laws, c. 371, § 10; 26 Del. C. 1953, § 154; 59 Del. Laws, c. 397, § 1; 84 Del. Laws, c. 42, § 127.)

§ 313. Depreciation account.

The Commission may, after hearing, by order in writing, require every public utility to carry a reasonable and adequate depreciation account in accordance with such rules, regulations, orders and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine, and by order fix, the proper and adequate rates of depreciation of the several classes of property of each public utility or class of public utilities. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed.

(47 Del. Laws, c. 254, § 4; 48 Del. Laws, c. 371, § 8; 26 Del. C. 1953, § 130; 59 Del. Laws, c. 397, § 1.)

§ 314. Water Utility Distribution System Improvement Charge.

(a) The following definitions shall apply in this section:

(1) As used in this section, "DSIC rate" refers to distribution system improvement charge.

(2) As used in this section, "DSIC costs" means depreciation expenses and pretax return associated with eligible distribution system improvements.

(3) As used in this section, "DSIC revenues" means revenues produced through a DSIC exclusive of revenues from all other rates and charges.

(4) As used in this section, "eligible distribution system improvements" means new, used and useful water utility plant projects that:

a. Do not increase revenues by connecting the distribution system to new customers; and

b. Are in service; and

c. Were not included in the public utility's rate base in its most recent general rate case; and which

d. Replace or renew water mains, valves, services, meters and hydrants serving existing customers that have reached their useful service life, are worn out, are in deteriorated condition, or which negatively impact the quality and reliability of service to the customer if not replaced or renewed; or

e. Extend mains to eliminate dead ends which negatively impact the quality and reliability of service to the customer; or

f. Relocate existing facilities as a result of governmental actions that are not reimbursed, including but not limited to relocations of mains located in highway rights of way as required by the Department of Transportation; or

g. Place in service, for the benefit of the customers of the water utility applying for the DSIC rate, water supply sources identified as "A list projects" in the Governor's Task Force Report dated December 2, 1999, to resolve the regional water supply concerns or

subsequently added to the "A list projects" by the [former] Delaware Water Supply Coordinating Council, all such added projects to have been so identified by the [former] Delaware Water Supply Coordinating Counsel by December 31, 2002; or

h. Place in service new or additional water treatment facilities, plant or equipment required to meet changes in state or federal water quality standards, rules or regulations.

(5) As used in this section, "pretax return" means the revenues necessary to:

a. Produce net operating income equal to the public water utility's weighted cost of capital as established in the most recent general rate proceeding for the public water utility multiplied by the net original cost of eligible distribution system improvements. At any time the Commission, by its own motion, or by motion of the water utility, Commission staff or the Public Advocate, may determine to revisit and, after hearing without the necessity of a general rate filing, reset a water utility's cost of capital to reflect its current cost of capital. The DSIC rate shall be adjusted back to the date of the motion to reflect any change in the cost of capital determined by the Commission through this process;

b. Provide for the tax deductibility of the debt interest component of the weighted cost of capital; and

c. Pay state and federal income taxes applicable to such income.

(b) Notwithstanding other sections of this subchapter, a public utility providing water service may file with the Commission rate schedules establishing a DSIC rate that will allow for the automatic adjustment of the public water utility's basic rates and charges to provide recovery of DSIC costs on a semiannual basis.

(1) The public water utility shall serve the Division of the Public Advocate's office a copy of its filing at the time of its filing with the Commission. Customers of the public water utility shall be notified of changes in the DSIC rate by including appropriate information with the first bill they receive following any change in the rate.

(2) Publication of notice of the filing is not required.

(3) The effective date of changes in the DSIC rate shall be January 1 and July 1 every year.

(4) The public water utility shall file any request for a change in the DSIC rate and supporting data with the Commission at least 30 days prior to its effective date.

(5) The DSIC rate shall be adjusted semiannually for eligible distribution system improvements placed in service during the 6-month period ending 2 months prior to the effective date of changes in the DSIC rate.

(6) The DSIC rate shall be expressed as a percentage carried to 2 decimal places and applied to the total amount billed to each customer under the public water utility's otherwise applicable rates and charges.

(7) The DSIC rate applied between base rate filings shall be capped at 7.5% of the amount billed to customers under otherwise applicable rates and charges, but the DSIC rate increase applied shall not exceed 5% within any 12-month period.

(8) The DSIC Rate shall be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a period consisting of the 12 months ending December 31 of each year. The revenue received under the DSIC Rate for the reconciliation period shall be compared to the public water utility's eligible costs for that period with the difference between revenue received and eligible costs for the period recouped or refunded, as appropriate, over a 1-year period commencing July 1 of each year. If the DSIC Revenues exceeded the DSIC eligible costs, such over-collections shall be refunded with interest.

(9) The DSIC Rate shall be reset to zero as of the effective date of new base rates that provide for the prospective recovery of the annual costs theretofore recovered under the DSIC rate.

(10) The DSIC Rate shall also be reset to zero if, in any quarter, data filed with the Commission by the public water utility show that the public water utility will earn a rate of return that exceeds the rate of return established in its last general rate filing or by Commission order pursuant to paragraph (a)(5)a. of this section, if such was determined subsequent to the final order in the water utility's last general rate filing. Further, the DSIC rate shall be reinstated when such data show that the established rate of return is not exceeded and will not be exceeded if the DSIC rate is reinstated and reset.

(11) Any water utility filing for interim rate relief under this section must comply with all reasonable information requests related to its filing, or any other audits or proceedings conducted pursuant to this section and must do so on an expedited basis.

(c) The provisions of this section shall not be available to a water utility subject to a finding of the Commission that the water utility is unable or unwilling to provide safe, adequate and reliable water service to its existing customers.

(d) The Commission may adopt rules and regulations, not inconsistent with this title, that the Commission finds reasonable or necessary to administer a DSIC.

(73 Del. Laws, c. 138, § 2; 84 Del. Laws, c. 61, § 1.)

§ 315. Electric and natural gas utility distribution system improvement charge.

(a) The following definitions shall apply in this section:

(1) As used in this section, "DSIC costs" means depreciation expenses, and pretax return associated with eligible distribution system improvements.

(2) As used in this section, "DSIC rate" refers to a distribution system improvement charge.

(3) As used in this section, "DSIC revenues" means revenues produced through a DSIC exclusive of revenues from all other rates and charges.

(4) As used in this section, "eligible distribution system improvements" means new, used and useful electric or natural gas utility plant projects that:

a. Do not increase revenues by connecting the distribution system to new customers; and

b. Are in service; and

c. Were not included in the public utility's rate base in its most recent general rate case filing; and which, in addition to meeting the 3 foregoing requirements, also satisfy at least 1 of the following criteria:

1. Replace or renew electric and natural gas distribution facilities serving existing customers that have reached their useful service life, are worn out, are in deteriorated condition, or which negatively impact the quality and reliability of service to the customer if not replaced or renewed; or

2. Extend or modify distribution facilities to eliminate conditions which negatively impact the quality and reliability of service to the customer; or

3. Relocate existing distribution facilities as a result of governmental actions that are not reimbursed, including but not limited to relocations of mains, lines and services, located in highway rights of way as required by the Department of Transportation; or

4. Place in service new or additional distribution facilities, plant or equipment required to meet changes in state or federal service quality standards, rules or regulations.

(5) As used in this section, "pretax return" means the revenues necessary to:

a. Produce net operating income equal to the public utility's weighted cost of capital as established in the most recent general rate proceeding for the public utility multiplied by the net original cost of eligible distribution system improvements. At any time the Commission, by its own motion, or by motion of the utility, Commission staff or the Public Advocate, may determine to revisit and, after hearing without the necessity of a general rate filing, reset a utility's cost of capital to reflect its current cost of capital. The DSIC rate shall be adjusted back to the date of the motion to reflect any change in the cost of capital determined by the Commission through this process;

b. Provide for the tax deductibility of the debt interest component of the weighted cost of capital; and

c. Pay state and federal income taxes applicable to such income.

(b) Notwithstanding other sections of this subchapter, a public utility providing electric and/or natural gas service may file with the Commission proposed rate schedules establishing a DSIC rate that will allow for the adjustment of the public utility's basic rates and charges to provide recovery of DSIC costs on a semiannual basis.

(1) The public utility shall serve the Division of the Public Advocate's office a copy of its filing at the time of its filing with the Commission. Customers not principally represented by the Public Advocate pursuant to § 8716(e)(2) of Title 29 and who inform the Commission in writing of their desire to be served shall also be served with a copy of the public utility filing at the time of its filing. All customers of the public utility shall be notified of changes in the DSIC rate by including appropriate information with the first bill they receive following any change in the rate.

(2) Publication of notice of the filing is not required.

(3) The effective date of changes in the DSIC rate shall be January 1 and July 1 every year. Proposed changes will become effective on those dates unless adjusted or rejected by the Commission for failure to comply with this section.

(4) The public utility shall file any request for a change in the DSIC rate and supporting data with the Commission at least 30 days prior to its effective date.

(5) The DSIC rate shall be adjusted semiannually for eligible distribution system improvements placed in service during the 6-month period ending 2 months prior to the effective date of changes in the DSIC rate.

(6) The DSIC rate shall be expressed as a percentage carried to 2 decimal places and applied to the total distribution base rate amount billed to each customer under the public utility's otherwise applicable rates and charges established in the most recent general distribution rate case at the Commission.

(7) The DSIC rate applied between base rate filings shall be capped at 7.5% of the distribution base rate amount billed to customers under otherwise applicable rates and charges, but the DSIC rate increase applied shall not exceed 5% within any 12-month period.

(8) The DSIC Rate shall be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a period consisting of the 12 months ending December 31 of each year. The revenue received under the DSIC Rate for the reconciliation period shall be compared to the public utility's eligible costs for that period with the difference between revenue received and eligible costs for the period recouped or refunded, as appropriate, over a 1-year period commencing July 1 of each year. If the DSIC Revenues exceeded the DSIC eligible costs, such over-collections shall be refunded with interest.

(9) The DSIC Rate shall be reset to zero as of the effective date of new base rates that provide for the prospective recovery of the annual costs theretofore recovered under the DSIC rate.

(10) The DSIC Rate shall also be reset to zero if, in any quarter, data filed with the Commission by the public utility show that the public utility will earn a rate of return that exceeds the rate of return established in its last general rate filing or by Commission

order pursuant to paragraph (a)(5)a. of this section, if such was determined subsequent to the final order in the utility's last general rate filing. Further, the DSIC rate shall be reinstated when such data show that the established rate of return is not exceeded and will not be exceeded if the DSIC rate is reinstated and reset.

(11) Any public utility filing for interim rate relief under this section must comply with all reasonable information requests related to its filing, or any other audits or proceedings conducted pursuant to this section and must do so on an expedited basis.

(c) The provisions of this section shall not be available to a public utility subject to a finding of the Commission that the public utility is unable or unwilling to provide safe, adequate and reliable service to its existing customers.

(d) The Commission may adopt rules and regulations, not inconsistent with this title, that the Commission finds reasonable or necessary to administer a DSIC. In the event an electric and/or natural gas utility applies for a DSIC before DSIC regulations specific to the particular utility are in place, then existing water DSIC regulations shall be applied to implement the utility's DSIC without delay.

(e) In the event a DSIC rate is implemented under this section for any electric or natural gas utility serving over 100,000 customers in the State, such utility shall be precluded from filing an application with the Commission to increase its distribution base rates until January 1, 2020, at the earliest. In the event any electric or natural gas utility serving over 100,000 customers in the State files for an increase in its distribution base rates before January 1, 2020, such utility shall be precluded from filing for a DSIC rate.

(f) This section is not intended to preempt the Commission's requirements under 26 DE Admin. Code 3007 with respect to annual reporting, annual planning or related stakeholder outreach.

(g) [Repealed.]

(75 Del. Laws, c. 170, § 2; 81 Del. Laws, c. 268, § 1; 82 Del. Laws, c. 11, § 8; 83 Del. Laws, c. 37, § 27; 84 Del. Laws, c. 271, § 1.)

§ 316. Cost recovery prohibitions.

(a) The Commission shall ensure that all regulated utilities do not use customer funds to subsidize nonregulated activities.

(b) A public utility shall not recover the following costs from its customers, whether as part of proposed base rate costs, a rider, or other charges:

(1) Expenses for lobbying or other activities meant to influence the outcome of any local, state, or federal legislation, ordinance, resolution, or ballot measure.

(2) Organizational or membership dues, or other contributions, to any organization, association, institution, corporation, or other entity to the extent that the dues or contributions are used for lobbying or other similar activities intended to influence the outcome of any local, state, or federal legislation, ordinance, resolution, rule, ballot measure, or regulatory decision.

(3) Contributions to political candidates, campaign committees, issue committees, or independent expenditure committees or similar political expenses.

(4) Charitable giving expenses, including contributions to organizations qualified under § 501 (c)(3) or (c)(4) of the federal Internal Revenue Code of 1986, 26 U.S.C. § 501, as amended.

(5) Advertising and public relations expenses that do not directly relate to a purpose or program that is required or authorized under statute or commission rule or order.

a. Advertising and public relations expenses for which cost recovery is prohibited include:

1. Communications to promote or improve the utility's brand.

2. Expenses for the purpose of influencing public opinion about the utility.

3. Expenses intended to create good will toward the utility from the general public.

b. For purposes of this section, "advertising" means the act of publishing, disseminating, soliciting, or circulating written, online, video, or audio communication intended to induce a person to patronize a product, service, business, or industry; promote a business's brand; otherwise emphasize desirable qualities about a product, service, business, or industry; or influence public opinion with respect to legislative, administrative, or electoral matters.

c. "Advertising" does not include:

1. Advertising required or authorized by law, regulation, or order.

2. Advertising directly related to a purpose or program regarding income-based service, special rates, pilot programs, energy conservation, energy efficiency, beneficial electrification, renewable energy, transportation electrification, or other consumer education information.

3. Advertising regarding service interruptions, safety measures, or emergency conditions.

4. Advertising concerning employment opportunities with the utility.

(6) For any public utility with more than 25,000 customers, expenses related to distribution rate case proceedings for attorneys' fees and fees to engage external expert witnesses or consultants incurred after the filing date that exceed the combined amount spent by commission staff and the Division of the Public Advocate on attorneys' fees and fees to engage external expert witnesses or consultants.

(85 Del. Laws, c. 79, § 1; 85 Del. Laws, c. 342, § 2.)

§ 317. Rates for large energy use facilities.

(a) Commission-regulated electric utilities must, within 180 days after finalization of the regulations under § 203G of this title, establish a classification of service for retail electricity consumers that are large energy use facilities. The classification of service must be separate and distinct from classifications of service for other commercial or industrial retail electricity consumers and have its own tariff schedule.

(b) All Commission-regulated electric utilities shall develop a load shed protocol to allow large energy use facilities to be curtailed in anticipation of or during emergency conditions, including the installation of any necessary equipment or technology before a customer is interconnected. This subsection applies only to a load interconnected after December 31, 2026.

(1) The load shed protocol, to the extent feasible and consistent with reliability and safety, shall do all of the following:

a. Require the pre-emergency curtailment of large energy use facilities subject to directives from the PJM Interconnection, L.L.C. ("PJM") to the Commission-regulated electric utility in accordance with applicable PJM requirements.

b. Require the curtailment of noncritical large energy use facilities prior to the curtailment of other non-critical loads during a pre-emergency or emergency reliability event.

c. Require the curtailment of critical large energy use facilities prior to the curtailment of other critical loads during an emergency reliability event.

d. Include clear performance expectations and consequences for noncompliance.

e. Require a large energy use facility to inform potential customers that the facility is subject to curtailment under certain conditions and that, therefore, it may not be suitable for serving critical loads.

f. Exempt large energy facilities from the curtailment requirements of paragraphs (b)(1)b. through e. of this section if such large energy use facilities construct or cause the construction of new generation, where such new generation:

1. Is located within Delaware or within PJM's Delmarva Power and Light ("DPL") transmission zone or within a transmission zone contiguous by land to the DPL transmission zone, with sufficient existing transmission infrastructure to deliver this additional electricity to Delaware;

2. Has not previously participated in the PJM base residual auction;

3. Matches the megawatt demand of the large energy use facility; and

4. Is determined by the State Energy Office to be consistent the achievement of this State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7, and this State's renewable portfolio standards, as specified in § 354 of this title.

(2) The load shed protocol must require that all large energy use facilities comply with all of the following, as a condition of interconnection:

a. Install the necessary equipment or technology to differentiate critical and noncritical loads, such as the use of dedicated or segregable feeders or allow the large energy use facility to certify that it is not hosting critical loads. Examples of critical load include essential health and public safety facilities, such as hospitals, police, military, fire facilities, 911 facilities, wastewater treatment facilities; facilities providing electric service to the bulk electric system, including off-site power to generating stations, substation light and power; critical gas infrastructure used to supply gas pipeline pumping plants, processing, and production facilities; and telecommunication facilities.

b. Maintain physical and operational readiness measures that facilitate both targeted curtailment of non-critical loads and whole facility curtailment.

c. Maintain telemetry and communications capability sufficient for the Commission-regulated electric utility to execute and confirm curtailment actions during pre-emergency or emergency operations.

(3) Prior to curtailment, the Commission-regulated electric utility shall confer with the customer to the extent feasible to shed load in a coordinated manner.

(c) For purposes of receiving distribution and transmission service, the tariff shall require each large energy use facility to enter into an electric service agreement ("ESA") that is reviewed and approved by the Commission under the provisions of § 203G of this title. The tariff shall further require, as a condition of receiving retail electric service in this State, that a large energy use facility is subject to a transmission rate on file with the Federal Energy Regulatory Commission that, as to transmission costs, meets the objectives of this section. Commission-regulated electric utilities may not submit a tariff for approval until the Commission finalizes the regulations to establish the terms of an ESA under § 203G of this title. No large energy use facility may receive service from a Commission-regulated electric utility until such tariff schedule has been reviewed and approved by the Commission. The ESA may not restrict the procurement of electric supply service from a certified electric supplier.

(d) All ESAs submitted to the Commission for review and approval in connection with this classification of service must contain all protective provisions required under § 203G of this title.

(e) The ESAs and any tariff required by this section shall collectively:

(1) Directly assign the costs of providing to a large energy use facility the electric services identified in paragraphs (e)(1)a. through (e)(1)e. of this section that are provided under a rate subject to the jurisdiction of the Commission and ensure that no such costs are borne by any other class of customer, including:

a. Directly assign all costs related to distribution infrastructure investments required to interconnect a large energy use facility incurred by the Commission-regulated electric utility directly to the large energy use facility; any costs that cannot be directly assigned must be assigned to the class of customers for large energy use facilities and not to any other class of customers.

b. Directly assign all costs of electric capacity procurement incurred by the Commission-regulated electric utility on a total system basis as a result of electric capacity procurement requirements imposed by PJM Interconnection due to large energy use facilities; any costs that cannot be directly assigned must, to the maximum extent possible, be assigned to the class of customers for large energy use facilities and not to any other class of customers.

c. Directly assign all increased costs for transmission infrastructure resulting from any large energy use facility to the large energy use facility; any costs that cannot be directly assigned must be assigned to the class of customers for large energy use facilities and not to any other class of customers.

d. Directly assign all costs related to interconnection, impact, engineering, and related studies undertaken by the Commission-regulated electric utility to initiate, modify, or provide service to the large energy use facility; any costs that cannot be directly assigned must be assigned to the class of customers for large energy use facilities and not to any other class of customers.

e. Allocate any financial or other obligation assigned to a Delaware Commission-regulated electric utility associated with PJM's reliability backstop procurement of new capacity undertaken for large energy use facilities directly to the large energy use facility that gave rise to the financial or other obligation; any costs that cannot be directly assigned must, to the maximum extent possible, be assigned to the class of customers for large energy use facilities and not to any other class of customers.

(2) Require that each large energy use facility seeking new or modified service shall, as a condition of taking service from a Delaware Commission-regulated electric utility, provide appropriate financial security to the electric utility to ensure that the Commission-regulated electric utility's existing customers are held harmless for any of the costs in paragraphs (e)(1)a. through (e)(1)e. of this section for the entire term of the ESA. Such financial security such as bonding or letters of credit backed by an investment-grade entity, or other cash-equivalent financial guarantees, must remain in effect for the period necessary to ensure recovery of the full amount of such assigned investments.

(3) Require that the large energy use facility accept interruptible service for curtailment obligations assigned to the DPL zone by PJM, and establish a process that ensures that large energy users are curtailed in a manner prescribed by the Commission.

(4) Establish procedures for an incremental cost test ("ICT") that will measure revenues from a large load customer and compare those to the incremental costs that serving that customer imposes on the system. Incremental costs to be studied shall include increases in capacity costs, locational marginal prices, transmission and distribution system infrastructure costs, including any differential in PJM network integration transmission service rates, and any other systems costs reasonably attributable to the large energy use facility. The ICT shall be performed by an independent consultant retained by the Commission on a 3-year cycle, or at such other time as the Commission determines is necessary to evaluate material changes in the customer's load, operations, or system impacts, and the ESA will provide for adjustments to the service if the ICT reveals that the large load energy user is imposing costs upon other classes of service. Such independent consultant will perform an ICT to confirm that the revenues from a new large energy use facility are larger than the incremental costs associated with the customer. If the ICT shows that revenues are projected to be lower than incremental costs, then the Commission-regulated electric utility, in consultation with the large energy use facility, shall develop a proposal in the ESA to bring additional revenues such that incremental costs are paid for and a benefit is shown for system customers. ICT study costs incurred by the Commission-regulated electric utility, the Commission, including the independent consultant, and the Division of the Public Advocate must also be recovered through the ESA or other appropriate means. Such proposal may include, without limitation, a class- or customer-specific consumer protection and infrastructure fee designed to recover the incremental costs, infrastructure impacts, or cost shifts identified through the ICT. After recovery of costs incurred by the Commission-regulated electric utility, the Commission, and the Division of the Public Advocate, the Commission-regulated electric utility shall apply all such funds received as a direct bill credit to residential and small commercial customers to offset the impacts of large energy use facilities that cannot otherwise be addressed through a large load tariff. All costs related to ESA and ICT review shall be born by the class of large energy use facilities and may not be allocated to any other customer class.

(5) To the extent a large energy use facility procures electric supply service from a certified electric supplier, any costs allocated under this section that are associated with capacity, energy, or ancillary service obligations shall be structured in a manner compatible with the obligations of such supplier as the load-serving entity in regional wholesale markets, including PJM interconnection.

(f) In addition to an ESA, all large energy use facilities operating under the classification of service created by this section must as a condition of receiving retail electric service, have on file with the Federal Energy Regulatory Commission a transmission security agreement TSA that constains at least the following minimum terms:

(1) Financial security sufficient to ensure that the large load energy user can provide guarantees that its annual payments for transmission service will align with the annual payment that would be allocated to the large load energy user.

(2) Require bonding or letters of credit backed by an investment-grade entity, or other cash-equivalent financial guarantees, to ensure protection of other customers in the event of bankruptcy, liquidation, or other circumstances that would prevent the large energy use facility from meeting its obligations under the TSA.

(3) A 15-year contract period for the security that commences after load ramp.

(4) A load ramp period limited to 10 years.

(5) A 5-year period of advance notice of termination.

(6) A demand floor set at 90% of contract capacity.

(g) Both ESAs and TSAs must contain provisions that allow for amendments, if required by the Commission, to adjust to changes in the financial condition of the large energy use facility or guarantor changes, or market conditions change, over the term of the contract. The Commission and the Commission-regulated electric utility have the authority to require updated information to reevaluate the customer and its collateral requirements, which may be adjusted accordingly.

(h) ESAs must contain provisions that allow for amendments, if required by the Commission, to adjust to changes based on Federal Energy Regulatory Commission Orders or PJM governing documents, tariffs, or manual changes that relate to the operation of large energy use facilities. Commission-regulated electric utilities, if directed by the Commission, must seek or support any necessary Federal Energy Regulatory Commission filing to amend the TSA to address changes in the ESA. Any such amendment is subject to Federal Energy Regulatory Commission acceptance or approval.

(i) The Commission may require large energy use facilities to participate in a registry for the purpose of tracking load forecasting, compliance with bring your own new capacity or curtailment requirements, whether administered by PJM, the Commission-regulated electric utility, or a regulatory body.

(j) The following requirements apply to all large energy use facilities and must be reflected in any applicable tariff, which values may be increased by the Commission, to be applicable to future large energy use facilities:

(1) Large energy use facilities shall contribute to the low-income charge established under § 1014(b) of this title at a rate of $0.000190 per kWh.

(2) Large energy use facilities shall contribute to the Green Energy Fund established under § 1014(a) of this title at a rate of $0.000712 per kWh.

(3) Large energy use facilities are “end-use customers” for purposes of § 354 of this title and are not entitled to the exemption under § 353(b) of this title.

(4) The tariff must include a proportional allocation of the nonbypassable charge for funds distributed to a qualified fuel cell provider under § 364(b) of this title.

(85 Del. Laws, c. 440, § 3.)

Subchapter III-A

Renewable Energy Portfolio Standards

§ 351. Short title; declaration of policy.

(a) This subchapter shall be known and may be cited as the “Renewable Energy Portfolio Standards Act.”

(b) The General Assembly finds and declares that the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state. These benefits include improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities.

(c) It is therefore the purpose and intent of the General Assembly in enacting the Renewable Energy Portfolio Standards Act to establish a market for electricity from these resources in Delaware, and to lower the cost to consumers of electricity from these resources.

(75 Del. Laws, c. 205, § 1.)

§ 352. Definitions.

As used in this subchapter:

(1) “Alternative compliance payment” means a payment of a certain dollar amount per megawatt hour, which a retail electricity supplier or municipal electric company may submit in lieu of supplying the minimum percentage from Eligible Energy Resources required under Schedule I in § 354 of this title.

(2) “Commission” means the Delaware Public Service Commission.

(3) “Community-owned energy generating facility” has the meaning given in § 1001 of this title.

(4) “Compliance year” means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a retail electricity supplier or municipal electric company must demonstrate that it has met the requirements of this subchapter.

(5) “Customer-sited generation” means a generation unit that is interconnected on the end-use customer’s side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.

(6) “Delaware benchmark price” means the sum of:

a. The weighted average cost per megawatt-hour of compliance, through REC procurement, net energy costs of renewable energy contracts, and alternative compliance payments, with the Renewable Energy Portfolio Standards Act [subchapter III-A of Chapter 3 of Title 26] for Commission-regulated public utilities during the 3 immediately preceding years; and

b. The 3 year average, of the 3 immediately preceding years, of the average of the winning bid prices in dollars per megawatt-hour that a Commission-regulated public utility has secured electric energy through its most recent competitive request for proposals for each of the following customer classes:

1. Residential and small commercial industrial;

2. Medium general service - secondary;

3. Large general service - secondary; and

4. General service - primary.

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

(8) "Eligible energy resources" include the following energy sources located within or imported into the PJM region:

a. Solar photovoltaic or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

b. Electricity derived from wind energy;

c. Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

d. 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;

e. Electricity generated by a fuel cell powered by renewable fuels;

f. Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

g. 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;

h. 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, as that term is defined in Title 7;

i. Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided however, that:

1. 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;

2. Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004;

A. Is used to offset the consumption of coal, oil, or natural gas at those facilities;

B. 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

C. Causes no net increase in air emissions from the facility; and

3. 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.

(9) "End-use customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a retail electricity supplier or municipal electric company.

(10) "Fund" means the Delaware Green Energy Fund.

(11) "GATS" means the generation attribute tracking system developed by PJM.

(12) "Generation attribute" means a nonprice 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.

(13) "Generation unit" means a facility that converts a fuel or an energy resource into electrical energy.

(14) "Municipal electric company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Chapter 13 of Title 22 and the electric utilities that are municipally owned within the State of Delaware.

(15) "New renewable generation resources" means eligible energy resources first going into commercial operation after December 31, 1997.

(16) "Offshore wind contract" shall mean an agreement under which the state or 1 or more Commission-regulated public utilities, municipal electric companies, rural electric cooperatives, or other qualified purchasers, individually or collectively, either directly or through an intermediary, purchase or transfer any attributes of electric energy generated from 1 or more qualified offshore wind projects. The agreement may include purchases or transfers of energy-related products such as energy, capacity, RECs, or ancillary services, or any combination of these.

(17) "OSW solicitation requirements" shall have the meaning set forth in § 8052 of Title 29.

(18) "PJM" or "PJM interconnection" means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

(19) "PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

(20) “Qualified fuel cell provider” means an entity that:

a. By no later than the commencement date of commercial operation of the full nameplate capacity of a fuel cell project, manufactures fuel cells in Delaware that are capable of being powered by renewable fuels; and

b. Prior to approval of required tariff provisions, is designated by the Director of the Division of Small Business and the Secretary of DNREC as an economic development opportunity.

(21) “Qualified fuel cell provider project” means a fuel cell power generation project located in Delaware owned and/or operated by a qualified fuel cell provider under a tariff approved by the Commission pursuant to § 364(d) of this title.

(22) “Qualified offshore wind project” shall mean a wind turbine electric generation facility located in the Atlantic Ocean and connected to the electric transmission system in the PJM region, and shall include the appurtenant transmission-related facilities and equipment that interconnects such project to the PJM region electric transmission system.

(23) “Qualified purchasers” shall mean any entities interested in joining as a party to a qualified offshore wind contract who can demonstrate sufficient capital, history, or other necessary assurances as determined by the State Energy Office, after consultation with the Commission, of its ability to maintain its participation as an off-taker through the life of the contract.

(24) “Renewable energy credit” (“REC”) means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from eligible energy resources and that is used to track and verify compliance with the provisions of this subchapter.

(25) “Renewable energy portfolio standard” and “RPS” means the percentage of electricity sales at retail in the state that is to be derived from eligible energy resources.

(26) “Renewable fuel” means a fuel that is derived from eligible energy resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

(27) “Retail electricity product” means an electrical energy offering that is distinguished by its generation attributes and that is offered for sale by a retail electricity supplier or municipal electric company to end-use customers.

(28) “Retail electricity supplier” means a person or entity that sells electrical energy to end-use customers in Delaware, including but not limited to nonregulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to end-use customers. A retail electricity supplier does not include a municipal electric company for the purposes of this subchapter.

(29) “Rural electric cooperative” means a nonstock, nonprofit, membership corporation organized pursuant to the federal Rural Electrification Act of 1936 [7 U.S.C § 901 et seq.] and operated under the cooperative form of ownership.

(30) “Solar Alternative Compliance Payment” means a payment of a certain dollar amount per megawatt-hour, which a retail electricity supplier or municipal electric supplier may submit in lieu of supplying the minimum percentage from solar photovoltaics required under Schedule I in § 354 of this title.

(31) “Solar Renewable Energy Credit” (“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 this subchapter.

(32) “Total retail sales” means retail sales of electricity within the State of Delaware exclusive of sales to any industrial customer with a peak demand in excess of 1,500 kilowatts.

(33) “Unsubscribed energy” means any community-owned energy generating facility percentage of output that is not allocated to any customer.

(75 Del. Laws, c. 205, § 1; 76 Del. Laws, c. 165, §§ 1-3; 78 Del. Laws, c. 99, § 1; 81 Del. Laws, c. 49, § 18; 81 Del. Laws, c. 374, § 47; 83 Del. Laws, c. 178, § 1; 84 Del. Laws, c. 401, § 6.)

§ 353. Renewable energy portfolio standards administration.

(a) The Delaware Public Service Commission shall determine, verify, and assure compliance with renewable energy portfolio standards established pursuant to this subchapter that apply to all retail electricity sales in the State, except retail electricity sales of municipal electric companies. Any rural electric cooperative that is opted-out of Commission regulation by its membership pursuant to § 223 of this title shall, for all purposes of administering and applying the provisions of this subchapter, be treated as a municipal electric company during any period of time that the rural electric cooperative is exempt from Commission regulation.

(b) The Commission shall implement renewable energy portfolio standards pursuant to this subchapter that apply to all retail electricity sales in the state except sales to any industrial customer with a peak demand in excess of 1,500 kilowatts.

(c) The Commission shall develop rules to transition the REC and SREC procurement responsibility set forth in § 354(e) of this title. The purpose of such rules shall be:

(1) To adequately protect electric suppliers that entered into contracts to provide RECs and SRECs to retail electric customers prior to the transition of REC and SREC procurement responsibility under § 354(e) of this title;

(2) To adequately protect against overpayment of the cost of RPS obligations for customers of electric suppliers who are parties to supply contracts that were entered into prior to the transition of REC and SREC procurement responsibility under § 354(e) of this title; and

(3) To adequately protect commission-regulated electric suppliers and customers thereof from having to incur alternative compliance payments or other costs that would have been avoided but for the failure of an electric supplier to continue retiring RECs or SRECs associated with its retail supply contracts existing at the time of the transition of REC and SREC procurement responsibility under § 354(e) of this title. To the extent such protection involves a temporary reduction to the RPS obligation or to the price of an alternative compliance payment required of a commission-regulated electric supplier made necessary by the failure described above, the Commission is authorized to make the necessary temporary reductions notwithstanding the RPS obligations otherwise required by this chapter.

(d) The Commission shall develop procedures for tracking the generation output of qualified fuel cell provider projects such that energy produced by such projects shall fulfill the commission-regulated electric company's state- mandated REC and SREC requirements set forth in § 354 of this title as follows:

(1) Fulfillment of the equivalent of 1 REC for each megawatt-hour of energy produced by a qualified fuel cell provider project.

a. The commission-regulated electric company can use energy output produced by a qualified fuel cell provider project to fulfill a portion of SREC requirements at a ratio of 6MWH of RECs per 1MWH of SRECs. The commission-regulated electric company may utilize a portion of energy output from a qualified fuel cell provider project in any given year to fulfill no more than 30% of the SREC requirements unless:

1. Due to lack of SREC availability in the market, the alternative would be to incur alternative compliance payments; or

2. The SREC obligations set forth in Schedule I of § 354 of this title are increased, and then only to the extent necessary to fulfill the increased SREC obligations.

b. The Secretary of DNREC may, after coordination with the Commission and a commission-regulated electric company, adjust the requirements of this section including permitting a commission-regulated electric company participating in a commission-approved project to exceed the percentages set forth in this section.

c. The right of a commission-regulated electric company to use energy output produced by a qualified fuel cell provider project to fulfill its REC and SREC requirements in accordance with this section shall not expire until actually applied to fulfill such requirements.

(2) The commission-regulated electric company has the ability to apply the REC and SREC equivalent fulfillment benefits described in this section for 20MW in addition to the 30MW set forth in § 364 of this title for future customer sited applications of qualified fuel cell provider fuel cells. Separate tariff provisions must first be approved by the Commission for such installations above the original 30MW.

(75 Del. Laws, c. 205, § 1; 78 Del. Laws, c. 99, § 2.)

§ 354. Renewable energy portfolio standards, eligible energy resources and industrial exemption.

(a) The total retail sales of each Retail Electricity Product delivered to Delaware end-use customers by a commission-regulated utility or municipal electric company during any given compliance year shall include a minimum percentage of electrical energy sales with eligible energy resources and solar photovoltaics as follows:

SCHEDULE I

Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Eligible Energy Resources	Minimum Cumulative Percentage from Solar Photovoltaics*
2018	17.50%	1.75%
2019	19.00%	2.00%
2020	20.00%	2.25%
2021	21.00%	2.50%
2022	22.00%	2.75%
2023	23.00%	3.00%
2024	24.00%	3.25%
2025	25.00%	3.50%
2026	25.50%	3.75%
2027	26.00%	4.00%
2028	26.50%	4.25%
2029	27.00%	4.50%
2030	28.00%	5.00%
2031	30.00%	5.80%
2032	32.00%	6.60%
2033	34.00%	7.40%
2034	37.00%	8.40%
2035	40.00%	10.00%

* Minimum Percentage from Eligible Energy Resources Includes the Minimum Percentage from Solar Photovoltaics.

(b) Cumulative minimum percentage requirements of eligible energy resources and solar photovoltaics shall be established by Commission rules for compliance year 2036 and each subsequent year. The minimum percentages established by Commission rules may not be lower than those required for compliance year 2035 in Schedule I, subsection (a) of this section. Each of the rules setting such minimum percentage must be adopted at least 2 years before the minimum percentage being required.

(c), (d) [Repealed.]

(e) Beginning with compliance year 2012, commission-regulated electric companies shall be responsible for procuring RECs, SRECs and any other attributes needed to comply with subsection (a) of this section with respect to all energy delivered to such companies' end use customers.

(f) For each commission-regulated electric company, retail electricity supplier with existing contractual electric supply obligation or municipal electric company, no more than 1% of each year's total retail sales may be met from eligible energy resources that are not new renewable generation resources. In compliance year 2026, and for each compliance year thereafter, all eligible energy resources used to meet cumulative minimum percentage requirements set by the Commission rules shall be new renewable generation resources.

(g) A retail electricity supplier or municipal electric company shall not use energy used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule I of subsection (a) of this section.

(h) An applicant's compliance with Schedule I of subsection (a) of this section shall be based on historical data, collected in a manner consistent with industry standard and, with respect to retail electricity suppliers, Commission regulations. A retail electricity supplier or municipal electric company shall meet the renewable energy portfolio standards by accumulating the equivalent amount of renewable energy credits and solar renewable energy credits that equal the percentage required under this section.

(i), (j) [Repealed.]

(75 Del. Laws, c. 205, § 1; 76 Del. Laws, c. 165, §§ 4(a), (b), 5; 77 Del. Laws, c. 451, §§ 1, 2, 4-11; 78 Del. Laws, c. 99, §§ 3-6; 83 Del. Laws, c. 3, § 1.)

§ 355. Renewable energy credits.

(a) Energy sold or displaced by customer-sited generation on or after June 1, 2006, may be used to create and accumulate renewable energy credits for the purposes of calculating compliance with the renewable energy portfolio standards established pursuant to this subchapter.

(b) Energy production from customer-sited eligible energy resource may also be used to demonstrate compliance, provided that the facilities are physically located in Delaware.

(c) Aggregate generation from small eligible energy sources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule I of § 354(a) of this title, provided that the generators or their agents document the level of generation, as recorded by appropriate metering and power sales, on an annual basis.

(75 Del. Laws, c. 205, § 1.)

§ 356. Multiple credits for specific energy sources.

(a) A retail electricity supplier or municipal electric company shall receive 300% credit toward meeting the minimum percentage from Eligible Energy Resources of Schedule I of the renewable energy portfolio standards established pursuant to this subchapter for energy derived from the following sources installed on or before December 31, 2014:

(1) Customer-sited solar photovoltaic physically located in Delaware; or

(2) A fuel cell powered by renewable fuels.

(b) A retail electricity supplier or municipal electric company shall receive 150% credit toward meeting the renewable energy portfolio standards established pursuant to this subchapter for wind energy installations sited in Delaware on or before December 31, 2012.

(c) A Commission-regulated electric company shall receive 350% credit toward meeting the renewable energy portfolio standards established pursuant to this subchapter for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017.

(1) To be entitled to 350% credit, contracts for energy and renewable energy credits from such off-shore wind energy installations must be executed by Commission-regulated electric companies prior to commencement of construction of such installations.

(2) Commission-regulated electric companies shall be entitled to such multiple credits for the life of contracts for renewable energy credits from off-shore wind installations executed pursuant to this subsection.

(d) A retail electricity supplier shall receive an additional 10% credit toward meeting the renewable energy portfolio standards established pursuant to this subchapter for solar or wind energy installations sited in Delaware provided that a minimum of 50% of the cost of renewable energy equipment, inclusive of mounting components, are manufactured in Delaware.

(e) A retail electricity supplier shall receive an additional 10% credit toward meeting the renewable energy portfolio standards established pursuant to this subchapter for solar or wind energy installations sited in Delaware provided that the facility is constructed and/or installed with a minimum of 75% in-state workforce.

(75 Del. Laws, c. 205, § 1; 76 Del. Laws, c. 165, § 6; 76 Del. Laws, c. 248, § 1; 77 Del. Laws, c. 451, § 12.)

§ 357. Proportional credit for eligible landfill gas and biogas.

A retail electricity supplier or municipal electric company shall receive credit toward meeting renewable energy portfolio standards established pursuant to this subchapter for electricity derived from the fraction of eligible landfill gas or biogas combined with other fuels.

(75 Del. Laws, c. 205, § 1.)

§ 358. Issuance of renewable energy credits; reporting requirement; alternative compliance payment.

(a) The Commission shall establish by regulation the mechanisms under which a REC and SREC shall be created and recorded with respect to the entity generating electricity using eligible energy resources for use in complying with the renewable energy portfolio standards of this subchapter. Once the GATS system is operational and the PJM Interconnection, or a related organization currently known as PJM Environmental Services, Inc. (PJM-ESI), begins issuing RECs and SRECs, the Commission may issue an order approving the use of RECs and SRECs issued by the PJM Interconnection or PJM-ESI for compliance with the renewable energy portfolio Standards of this subchapter.

(b) Beginning June 1, 2007, each retail electricity supplier shall submit an annual report to the Commission, on a form and by a date specified by the Commission, that:

(1) Demonstrates that the retail electricity supplier has complied with the renewable energy portfolio standards established pursuant to this subchapter and includes the submission of the required amount of renewable energy credits; or

(2) Demonstrates the amount of electricity sales for the compliance year by which the retail electricity supplier failed to meet the renewable energy portfolio standard.

(c) Beginning June 1, 2007, each municipal electric company shall submit an annual report to the Delaware Energy Office and the Controller General that:

(1) Demonstrates that the municipal electric company has complied with the RPS established pursuant to this subchapter and includes the submission of the required amount of renewable energy credits; or

(2) Demonstrates the amount of electricity sales for the compliance year by which the municipal electric company failed to meet the RPS.

(d) In lieu of standard means of compliance with this subchapter, any commission-regulated utility may pay into the Fund an alternative compliance payment of $25 for each megawatt-hour deficiency between the credits available and used by a commission-regulated utility in a given compliance year for eligible nonsolar renewable energy resources and the credits necessary for such commission-regulated utility to meet the year's renewable energy portfolio standard. A municipal electric company may pay the alternative compliance payment into a fund established by its municipal members. If alternative compliance payments representing 15% or more of the total number of RECs for eligible nonsolar renewable energy resources are paid into the Fund for each of 2 consecutive compliance years, the minimum cumulative percentage from eligible energy resources specified in Schedule I of § 354(a) of this title remains at the percentage specified for the immediately preceding year and does not increase from that percentage until a year passes during which less than 15% of the REC obligation is satisfied by alternative compliance payments. After the year in which less than 15% of the REC obligation is satisfied by alternative compliance payments, the annual increases in Schedule I of § 354(a) of this title resume, starting from the percentage specified for the year immediately before the current compliance year. A freeze of the minimum cumulative percentage from eligible nonsolar technology does not permit a freeze of the minimum cumulative percentage from eligible solar energy resources.

(1)-(4) [Repealed.]

(e) In lieu of standard means of compliance with this subchapter, a commission-regulated utility may pay into the Fund a Solar Alternative Compliance Payment of $150 for each megawatt-hour deficiency between the credits available and used by a commission-regulated utility in a given compliance year and the credits necessary for such commission-regulated utility to meet the year's Renewable Energy Portfolio Standard. A municipal electric company may pay the solar alternative compliance payment into a fund established by its municipal members. If solar alternative compliance payments representing 15% or more of the total number of SRECs are paid into the Fund for each of 2 consecutive compliance years, the minimum cumulative percentage from solar technology specified in Schedule I of § 354(a) of this title remains at the percentage specified for the immediately preceding year and does not increase from that percentage until a year passes during which less than 15% of the SREC obligation is satisfied by solar alternative compliance payments. After the year in which less than 15% of the total SREC obligation is satisfied by solar alternative compliance payments, the annual increases set forth in Schedule I of § 354(a) of this title resume, starting from the percentage specified for the year immediately before the current compliance year. A freeze of the minimum cumulative percentage from solar technology does not freeze the minimum cumulative percentage from eligible energy resources.

(1)-(3) [Repealed.]

(f) (1) *Recovery of costs.* — A retail electricity supplier or municipal electric company may recover, through a nonbypassable surcharge, actual dollar for dollar costs incurred in complying with a state mandated renewable energy portfolio standard, except that any compliance fee assessed pursuant to subsection (d) of this section shall be recoverable only to the extent authorized by paragraph (f)(2) of this section.

(2) A retail electricity supplier or municipal electric company may recover any alternative compliance payment if:

a. The payment of an alternative compliance payment is the least cost measure to ratepayers as compared to the purchase of eligible energy resources to comply with a renewable energy portfolio standard; or

b. There are insufficient eligible energy resources available for the electric supplier to comply with a renewable energy portfolio standard.

(3) Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

(75 Del. Laws, c. 205, § 1; 76 Del. Laws, c. 165, §§ 7-9; 77 Del. Laws, c. 451, §§ 3, 13-19; 83 Del. Laws, c. 3, § 2.)

§ 359. Renewable energy tracking system.

(a) The Commission shall establish, maintain or participate in a market-based renewable energy tracking system to facilitate the creation, and transfer of renewable energy credits among retail electricity suppliers. A municipal electric company may elect to participate in the tracking system established by the Commission and may elect to participate in the GATS system once it is operational.

(b) The Commission may contract with a for-profit or a nonprofit entity to administer, or assist in the administration of, the renewable energy tracking system required pursuant to this section.

(c) The renewable energy tracking system shall include a registry of information regarding all:

(1) Available renewable energy credits; and

(2) Renewable energy credit transactions among electric suppliers in the State, including:

a. The creation and application of renewable energy credits; and

b. The number of renewable energy credits sold or transferred.

(d) The renewable energy tracking system registry shall provide current aggregated information to retail electricity suppliers and the public on the status of renewable energy credits created, sold, or transferred in the State. Information contained in the renewable energy tracking system registry shall be available by computer network access through the Internet; provided, however, that the Commission may establish reasonable limitation on the disclosure of commercially-sensitive information.

(75 Del. Laws, c. 205, § 1.)

§ 360. Renewable energy trading.

(a) A retail electricity supplier or municipal electric company may use accumulated renewable energy credits or solar renewable energy credits to meet the renewable energy portfolio standard established pursuant to this subchapter, and may sell or transfer any renewable energy credit or solar renewable energy credit not needed to meet said standards.

(b) An unused renewable energy credit or solar renewable energy credit shall exist for 3 years from the date created.

(c) The 3-year period referred in subsection (b) of this section above shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in § 8059 of Title 29.

(d) The Renewable Energy Taskforce shall be formed for the purpose of making recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware.

(1) The Taskforce shall comprise the following appointments:

a. Four appointments by the Secretary of DNREC, which shall include 1 representative from the renewable energy research and development industry, 1 representative from the local renewable energy manufacturing industry, and 1 representative from an environmental advocacy organization;

b. One appointment by the Commission;

c. One appointment by Delmarva Power & Light;

d. One appointment by the Delaware Electric Cooperative;

e. One appointment by municipal electric companies;

f. One appointment by the Sustainable Energy Utility;

g. One appointment by the Delaware Public Advocate; and

h. One appointment by the Delaware Solar Energy Coalition.

(2) The Taskforce shall be charged with making recommendations about and reporting on the following and matters related thereto:

a. Establishing balanced markets mechanisms for REC and SREC trading;

b. Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of renewable, distributed renewable, and solar energy technologies, including community-owned energy generating facilities, in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;

c. After an analysis by the Taskforce, the annual progress towards achieving the minimum cumulative percentages for all renewable energy resources including, but not limited to, solar and other eligible energy resources and making appropriate recommendations based upon deliberate and factual analysis and study;

d. Minimizing the cost for complying with any portion of this subchapter based upon deliberate and factual analysis and study;

e. Establishing revenue certainty for appropriate investment in renewable energy technologies, including, but not limited to, consideration of long-term contracts and auction mechanisms;

f. Establishing mechanisms to maximize in-state renewable energy generation and local manufacturing;

g. Ensuring that residential, commercial, and utility scale photovoltaic and solar thermal systems of various sizes, including community-owned energy generating facilities, are financially viable and cost-effective investments in Delaware; and

h. Evaluating offshore wind contract solicitations, as set forth in paragraph (d)(4) of this section.

(3) The Taskforce shall be formed by October 26, 2010, and be staffed by the Delaware Energy Office. The Taskforce shall make recommendations to the Commission, the Secretary of DNREC, the Board of Directors for rural electric cooperatives, and the pertinent local regulatory authorities on the abovementioned subjects for their consideration. Upon making these recommendations, the Commission, DNREC, the Board of Directors for rural electric cooperatives, or the pertinent local regulatory authorities, as appropriate, shall promulgate rules and regulations, or adopt policies, based on the Taskforce findings.

(4) The Renewable Energy Taskforce shall evaluate offshore wind contract solicitations received from the State Energy Office pursuant to § 8056(d)(4) of Title 29 for consistency with the OSW solicitation requirements. The Renewable Energy Taskforce shall, within 60 days, provide to the State Energy Office:

a. A recommendation to proceed with the solicitation as presented; or

b. Recommendations on improvements to the solicitation.

The State Energy Office shall have sole discretion on whether to incorporate such recommendations into the offshore wind contract solicitation. If the State Energy Office has not received recommendations from the Renewable Energy Taskforce within 60 days, the State Energy Office may proceed with issuing the solicitation.

(75 Del. Laws, c. 205, § 1; 77 Del. Laws, c. 131, §§ 6-8; 77 Del. Laws, c. 451, § 22; 83 Del. Laws, c. 178, § 2; 84 Del. Laws, c. 401, § 7.)

§ 361. Renewable energy credit transaction fee.

The Commission may impose an administrative fee on a retail electricity supplier with respect to a renewable energy credit transaction, but the amount of the fee may not exceed the Commission's actual direct cost of processing the transaction. If a municipal electric company opt to use the Commission's renewable energy credit tracking system, it shall be assessed the same transaction fees that the Commission assesses other retail electricity suppliers.

(75 Del. Laws, c. 205, § 1.)

§ 362. Rules and regulations.

(a) The Commission shall adopt rules and regulations necessary to implement the provisions of this subchapter as it applies to retail electricity suppliers. The Commission shall make its regulations as consistent as possible with those of other states in the region with similar requirements in order to minimize the compliance burdens imposed by this subchapter and in order to avoid duplication of effort.

(b) [Repealed.]

(75 Del. Laws, c. 205, § 1; 77 Del. Laws, c. 451, § 20; 83 Del. Laws, c. 3, § 3.)

§ 363. Special provisions for municipal electric companies and rural electric cooperatives.

(a) Any municipal electric company and any rural electric cooperative may elect to exempt itself from the requirements of this subchapter, if it develops and implements a comparable program to the renewable energy portfolio standards for its ratepayers beginning in 2022.

(b) In the event that a municipal electric company or rural electric cooperative elects to exempt itself from the requirements of this subchapter, it shall submit a plan at the beginning of 2025 to its local regulatory authority, the Delaware General Assembly, and the Department of Natural Resources and Environmental Control detailing its approach to transitioning to increased renewable energy purchases, including an evaluation of offshore wind resources and solar resources available in its service territory, and shall set forth a long-term plan detailing how the entity will contribute to helping the State achieve the carbon reduction goals set forth in Chapter 100 of Title 7. The entity shall submit an annual compliance report to its local regulatory authority, the Delaware General Assembly, and the Department of Natural Resources and Environmental Control detailing its progress toward yearly targets. If the State Energy Office has approved an offshore wind contract, the annual compliance report shall detail the reporting entity's status of adoption of the offshore wind contract. If the reporting entity declined to participate in a solicitation by the State Energy Office for an offshore wind contract in the reporting period, the reporting entity shall detail in the report the reasons for its failure to participate, identify changes to the solicitation that would have resulted in its participation, and detail its plans to purchase offshore wind energy through other means, or its plans to otherwise increase its level of purchases of renewable energy resources.

(c) The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal electric company shall base renewable energy portfolio standard decisions on the need, value and feasibility of the renewable energy resources pertaining to the economic and environmental well being of their members. The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal electric company shall continue to evaluate all renewable energy resources including but not limited to: wind, including offshore wind, biomass, hydroelectric and solar and submit an annual report to the General Assembly and their membership as to their determination.

(d) In the event that a municipal electric company or rural electric cooperative elects to exempt itself, it shall either contribute to the Green Energy Fund at levels commensurate with other retail electricity suppliers or create an independent, self-administered fund separate

from the Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which it shall make payments of at least $0.178 for each megawatt-hour it sells, transmits, or distributes in this State.

(e)-(i) [Repealed.]

(j) In pursuit of their renewable energy goals, a municipal electric company or rural electric cooperative shall receive all appropriate multiple credits for specific energy sources, as established under §§ 356 and 357 of this title and sited in Delaware for the life of contracts for renewable energy credits.

(75 Del. Laws, c. 205, § 1; 77 Del. Laws, c. 451, § 21; 83 Del. Laws, c. 3, § 4; 84 Del. Laws, c. 401, § 8; 85 Del. Laws, c. 68, § 39.)

§ 364. Special provisions for Public Service Commission-regulated electric companies.

(a) All costs arising out of contracts entered into by a commission-regulated electric company pursuant to § 1007(d) of this title shall be distributed among the entire Delaware customer base of such companies through an adjustable nonbypassable charge which shall be established by the Commission. Such costs shall be recovered if incurred as a result of such contracts unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

(b) All funds disbursed to a qualified fuel cell provider project by a commission-regulated electric company, including incremental site preparation costs incurred by qualified fuel cell provider project, shall be collected from the entire Delaware customer base of such company through adjustable nonbypassable charges which shall be established by the Commission. A commission-regulated electric company participating in a qualified fuel cell provider project shall collect and disburse funds solely as the agent for the collection and disbursement of funds for the project and shall have no liability except to comply with the tariff provisions to be established as set forth in subsection (d) of this section.

(c) All miscellaneous costs arising out of qualified fuel cell provider projects incurred by a commission-regulated electric company, including, but not limited to, filing costs, administrative costs and incremental site preparation costs, shall be distributed among the entire Delaware customer base of such company through adjustable nonbypassable charges which shall be established by the Commission. Such costs shall be recovered unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

(d) Before a commission-regulated electric company may collect any charges on behalf of a qualified fuel cell provider project that would entitle the commission-regulated electric company to reduce its REC and SREC requirements as provided for in § 353(d) of this title, the Commission must adopt tariff provisions applicable to such project.

(1) Tariff provisions enabling and obligating commission-regulated electric companies, acting in the role of an agent for collection and disbursement, to collect charges on behalf of a qualified fuel cell provider project shall be proposed jointly by the electric company and the qualified fuel cell provider and shall, at a minimum, provide for the following.

a. A project of 30MW nominal nameplate, and future potential additions of up to an additional 20MW nominal nameplate, not to exceed a total of 50MW nominal nameplate or 1,152 megawatt hours per day averaged on an annual basis. The total allowable 50MW of nominal nameplate shall be reduced by any customer sited installations referred to in § 353(d)(2) of this title or additional installations of qualified fuel cell provider fuel cells. Any additional MW beyond the 30MW project made pursuant to this section and § 353(d)(2) of this title must be reviewed and approved by the Commission.

b. A term of service of at least 20 years from commercial operation of the completed qualified fuel cell provider project.

c. The cost to customers of the commission-regulated electric company for each MWH of output produced by the project which, on a levelized basis at the time of Commission approval, does not exceed the highest cost source for combined energy, capacity and environmental attributes approved by the Commission for inclusion in the renewable portfolio of the commission-regulated electric company as of January 1, 2011.

d. Adjustments to funds to be collected from customers and distributed to the qualified fuel cell provider project that will also compensate the qualified fuel cell provider project for its costs of fuel to produce such output and that will reduce compensation to the qualified fuel cell provider project for any revenues received by the qualified fuel cell provider project for such output sold in the PJM or any successor market.

e. The requirement that the qualified fuel cell provider project must sell all energy, capacity, and ancillary services, produced by the project and any other output available or that becomes reasonably available to the qualified fuel cell provider project during the term of the project into the PJM or any PJM successor market. To the extent any additional output produced by the project, including but not limited to any product or environmental attribute from the project becomes available for sale in the PJM market, PJM successor market, or a market other than PJM or a PJM successor market, the qualified fuel cell provider project and commission-regulated electric company shall jointly propose additional provisions to the tariff designed to reduce the cost of the qualified fuel cell provider project to customers of the commission-regulated electric company.

f. The commission-regulated electric company shall, on behalf of a qualified fuel cell provider project, collect from its customers, through a nonbypassable charge provided for in subsections (b) and (c) of this section, any positive difference between the sum of:

1. The price for each MWH of output produced by the project plus

2. The cost of fuel to produce such output plus

3. Any costs incurred by the commission-regulated electric company arising out of the qualified fuel cell provider project minus the amount received by the qualified fuel cell provider project for the market sale of its output, and shall distribute such amount to the qualified fuel cell provider project.

g. That the commission-regulated electric company shall, on behalf of a qualified fuel cell provider project, distribute to its customers from the qualified fuel cell provider project, through a distribution mechanism to be established in a tariff, any positive difference between the amount received by the qualified fuel cell provider project for the market sale of its output minus the sum of:

1. The price established for each MWH of output from the project plus

2. The cost of fuel to produce such output plus

3. Any costs incurred by the commission-regulated electric company arising out of the qualified fuel cell provider project.

h. An average efficiency level that the fuel cells in a project must maintain.

i. A definition of the role of the commission-regulated electric company solely as the agent of a qualified fuel cell provider project, for the collection of funds and disbursement of such collected funds to qualified fuel cell provider project and to its customers.

j. The mechanism through which the commission-regulated electric company, on behalf of a qualified fuel cell provider project, shall collect from its customers, through a nonbypassable charge provided for in subsections (b) and (c) of this section, any difference between the sum of:

1. The price for each MWH of output produced by the project plus

2. The cost of fuel to produce such output plus

3. Any costs incurred by the commission-regulated electric company arising out of the qualified fuel cell provider project minus the amount received by the qualified fuel cell provider project for the market sale of its output.

k. The mechanism through which the commission-regulated electric company, on behalf of a qualified fuel cell provider project, shall distribute to its customers, through bill credits, any positive difference between the amount received by the qualified fuel cell provider project for the market sale of its output minus the sum of:

1. The price established for each MWH of output from the project plus

2. The cost of fuel to produce such output plus

3. Any costs incurred by the commission-regulated electric company arising out of the qualified fuel cell provider project.

l. A provision that protects a qualified fuel cell provider project from any future changes to this subchapter that would prevent a qualified fuel cell provider project that provides service under approved tariff provisions from recovering all amounts approved in such tariff. Such provision shall also include the obligation of the commission-regulated electric company, in the event of any such change to this subchapter, to collect from its customers amounts necessary to disburse, and to disburse to the qualified fuel cell provider project the full amount approved by the Commission in such preexisting tariff for each MWH of output produced by the qualified fuel cell provider project.

m. In the event of an event of force majeure that prevents the qualified fuel cell provider project from supplying output from at least 80% of the capacity of the qualified fuel cell provider project, or an interruption in fuel supply, in whole or in part, to the project, a mechanism through which,

1. During the event of force majeure, the commission-regulated electric company shall, on behalf of a qualified fuel cell provider project, collect from its customers and transfer to the qualified fuel cell provider project, a maximum of 70% of the price per MWH of output affected by the event of force majeure, and during an interruption in fuel supply, the commission-regulated electric company shall, on behalf of a qualified fuel cell provider project, collect from its customers and transfer to the qualified fuel cell provider project 100% of the price per MWH of output affected by the interruption.

2. During the event of force majeure or interruption in fuel supply, the commission-regulated electric company will continue to receive the full reduction in renewable portfolio standards that would have been provided by the output but for the event of force majeure or interruption in fuel supply.

(2) All tariff filings must be approved or denied by the Commission in whole, as proposed, without alteration or the imposition of any condition or conditions with respect thereto by the Commission. In determining whether to approve or deny the tariff, the Commission shall first ensure that the provisions of paragraphs (d)(1)a.-m. of this section have been satisfied. In addition, the Commission shall consider the incremental cost of the qualified fuel cell provider project to customers, applying at least the following factors:

a. Whether the qualified fuel cell provider project utilizes innovative baseload technologies,

b. Whether the qualified fuel cell provider project offers environmental benefits to the State relative to conventional baseload generation technologies,

c. Whether the qualified fuel cell provider project promotes economic development in the State, and

d. Whether the tariff as filed promotes price stability over the project term.

(3) A commission-regulated electric company and qualified fuel cell provider project may jointly modify proposed tariff provisions prior to any final ruling by the Commission.

(4) Notwithstanding § 306 of this title or any other provision of the Delaware Code to the contrary, any changes in rates or charges necessary to collect funds for disbursements or costs addressed in subsections (a)-(c) of this section through adjustable nonbypassable charges shall become effective 30 days after filing, absent a determination of manifest error by the Public Service Commission. The Commission may allow changes in rates or charges related to such adjustable nonbypassable charges to become effective less than 30 days after filing under such conditions as it may prescribe.

(5) Once approved by the Commission, such tariff provisions cannot be altered, nor may approval be repealed or modified, without the agreement of both the commission-regulated electric company and the qualified fuel cell provider project except that revisions to tariffs may be proposed by the commission-regulated electric company alone where:

a. Such revisions have no adverse effect on the qualified fuel cell provider project, and

b. Such revisions are for the purpose of complying with subsection (c) of this section.

(e) For purposes of this subchapter, all fuel cell units of a qualified fuel cell provider project under tariff with a commission-regulated electric company shall be considered to have been manufactured in Delaware as long as:

(1) By no later than the second anniversary of commercial operation of the full nameplate capacity of a fuel cell project, or December 31, 2016, whichever is earlier, either:

a. At least 80% of the installed nameplate capacity shall have been sourced from fuel cell units manufactured in a permanent manufacturing facility located in the State; or

b. No more than 10 megawatts of nameplate capacity from a fuel cell project shall be manufactured outside of the State; and

(2) Fuel cell manufacturer has executed an agreement with the Delaware Economic Development Office that a termination payment shall be made by the fuel cell manufacturer in the event that it ceases manufacturing operations in the State.

(f) Notwithstanding any other provision of the Delaware Code to the contrary, amounts due to the qualified fuel cell provider project and amounts collected by the commission-regulated electric company on behalf a qualified fuel cell provider project as a result of a qualified fuel cell provider project, and any other costs incurred by a commission-regulated electric company addressed in subsections (a) through (c) of this section shall constitute revenue property when, and to the extent that, a tariff authorizing the revenue charges have become effective in accordance with this section, and the revenue property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this section for the period and to the extent provided in the tariff, but in any event until the end of the term of service of the qualified fuel cell provider project.

(g) Notwithstanding any other provision of the Delaware Code to the contrary, any requirement under this section or a tariff under this section requiring that the Commission take action with respect to the subject matter of a project under this section shall be binding upon the Commission, as it may be constituted from time to time, and any successor agency exercising functions similar to the Commission and the Commission shall have no authority to rescind, alter, or amend that requirement in a subsequent order except as provided in this chapter.

(h) Notwithstanding any other provision of the Delaware Code to the contrary except as otherwise provided in this chapter, with respect to revenue property, the tariffs with respect to disbursements and costs arising out of the qualified fuel cell provider project and recovery of costs addressed in subsections (a) through (c) of this section shall be irrevocable and the Commission shall not have authority either by rescinding, altering, or amending the tariff provisions or otherwise, to revalue or revise for ratemaking purposes the disbursements and costs arising out of the qualified fuel cell provider project, or the costs of recovering such costs, determine that the disbursements and costs of the qualified fuel cell provider project are unjust or unreasonable, or in any way reduce or impair the value of revenue property either directly or indirectly by taking project revenue amounts, disbursements or costs arising out of the qualified fuel cell provider project into account when setting other rates for the commission-regulated electric company; nor shall the disbursements, amount of revenues or costs arising with respect thereto be subject to reduction, impairment, postponement, or termination. Except as otherwise provided in this section, the State of Delaware does hereby pledge and agree with the owners of revenue property and the commission-regulated electric company as the agent for collecting and disbursement on behalf of a qualified fuel cell provider project and in collecting costs incurred by the electric company addressed in subsections (a) through (c) of this section that the State shall neither limit nor alter the revenue property and all rights thereunder until the obligations, are fully met and discharged, provided nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the full recovery by the qualified fuel cell provider project and the commission-regulated electric company.

(i) Notwithstanding § 201 of this title or any other provision of the Delaware Code to the contrary, the courts of this State shall have exclusive original jurisdiction over any dispute between a qualified fuel cell provider project and a commission-regulated electric company involving the interpretation of the obligations between them as contained in Commission approved tariffs required by subsection (d) of this section.

(76 Del. Laws, c. 248, § 2; 78 Del. Laws, c. 99, §§ 7, 8.)

§ 365. Offshore wind contracts.

(a) Upon the development of a solicitation for an offshore wind contract, the State Energy Office shall submit a petition (the "petition") to the Commission in accordance with § 8056(d)(8) of Title 29. Any Commission-regulated electric public utility shall be identified as parties to such petition, and shall have the opportunity to participate in the proceeding before the Commission considering such petition. All municipal electric companies and all rural electric cooperatives shall be served by mail with such petition.

(b) Within 90 days of submission of such petition, any municipal electric companies or rural electric cooperatives electing to participate in the solicitation shall submit such election in writing to the Commission, and shall indicate the amount of energy, in megawatts, that such entity would accept under an offshore wind contract negotiated pursuant to the solicitation. Any entity that potentially qualifies as a qualified purchaser may also submit, in writing, a request to be considered a qualified purchaser, and shall indicate the amount of energy, in megawatts, that such entity would accept under an offshore wind contract negotiated pursuant to the solicitation. Submission of such election or request binds such entity to the jurisdiction of the Commission for the limited purpose of approval and enforcement of any eventual offshore wind contract.

(c) The State Energy Office and the Commission shall confer regarding which proposed qualified purchasers should be included in any solicitation. The State Energy Office shall have sole discretion regarding which proposed qualified purchasers shall be included in the solicitation.

(d) The Commission shall, after opportunity for public comment, determine whether proceeding with the solicitation is in the public interest. This determination shall be based upon the following factors:

(1) Whether the State Energy Office has complied with the technical requirements and analyses contemplated in the OSW solicitation requirements.

(2) Whether the solicitation is consistent with the greenhouse gas emission reduction targets as outlined by § 10003 of Title 7, in light of the price and availability of all other new renewable or carbon-free alternative energy sources at a similar scale and production profile interconnecting to the PJM grid in Delaware, or states bordering Delaware.

(3) Whether proceeding with the solicitation is consistent with goals of the current Climate Action Plan.

(4) Whether proceeding with the solicitation is consistent with meeting the minimum percentage of electric energy sales with eligible energy resources as required by § 354(a) of this title.

(5) That proceeding with the solicitation will not adversely affect system reliability on the Delmarva Peninsula.

(6) That proceeding with the solicitation will likely result in submitted bids in a range that would ultimately lead to rates that are just and reasonable. Any rate change arising from a project which conforms with the Delaware benchmark price shall be presumed to be just and reasonable. Participation in the solicitation by municipal electric companies, rural electric cooperatives, or qualified purchasers, or the lack of such participation, shall not be a factor in whether the rates are just and reasonable.

Upon evaluation of the factors above, the Commission shall, if appropriate, issue an order confirming such findings (the “preliminary order”) within 180 days of submission of the petition. No extension of this period shall be granted by PSC absent good cause.

(e) After issuance of the preliminary order, the State Energy Office shall issue the solicitation. The docket shall remain open during the pendency of negotiations of any offshore wind contract, and the State Energy Office shall confer with the staff of the Commission, and any parties to the petition, in the development of terms of such offshore wind contract. The State Energy Office shall have sole discretion over final contract terms.

(f) Any offshore wind contract negotiated by the State Energy Office pursuant to § 8056(d)(10) of Title 29 shall be submitted to the Commission for final review and approval. The Commission’s review shall be to determine whether proceeding with the final offshore wind contract remains in the public interest, as defined by the factors set forth in subsection (d) of this section, and in light of the findings previously made by the Commission. Additionally, the Commission shall confirm, in light of its previous analysis, and in light of the actual winning bid, that proceeding with the offshore wind contract would result in rates that are just and reasonable. Consistent with the initial analysis prior to a preliminary order, any rate change arising from a project which conforms with the Delaware benchmark price shall be presumed to be just and reasonable. Participation in the solicitation by municipal electric companies, rural electric cooperatives, or qualified purchasers, or the lack of such participation, shall not be a factor in whether the rates are just and reasonable.

Upon confirming the findings required in this section, with no further testimony or intervenors allowed, the Commission shall issue an order (the “final order”) approving the offshore wind contract, and the costs of such contract shall be passed on to the customers of all utilities which are parties to the solicitation. The Commission shall issue a final order within 90 days of submission of the offshore wind contract. No extension of this period shall be granted by PSC absent extraordinary circumstances.

(g) Upon a showing of necessity by the State Energy Office, and upon a finding of good cause by the Commission, any solicitation can be considered on an adjusted schedule, either accelerated or extended, including when required to facilitate a coordinated solicitation with another state.

(84 Del. Laws, c. 401, § 9.)

Subchapter IV
Regulatory Provisions

§ 401. Resident agent.

Every public utility shall file with the Commission a designation in writing of the name and post-office address of a person resident within this State upon whom service of any notice, order or process may be made under this chapter. Such designation may, from time to time, be changed by like writing similarly filed.

(47 Del. Laws, c. 254, § 11A; 48 Del. Laws, c. 371, § 17; 26 Del. C. 1953, § 164; 59 Del. Laws, c. 397, § 1.)

§ 402. Previous and current meter readings.

All bills presented by and on behalf of all public utilities providing steam, manufactured gas, natural gas, electric light, heat, power or water based on meter readings shall, before being honored, show the previous and current meter readings.

(38 Del. Laws, c. 89; Code 1935, § 4273; 26 Del. C. 1953, § 168; 59 Del. Laws, c. 397, § 1.)

§ 403. Expansion of facilities and services of water companies in State.

(a) No water company doing business in this State shall expand its facilities within this State in order to service new customers or subscribers in this State, nor shall any such company supply water to any new or additional customers or subscribers in this State until the company is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection.

(b) No water company doing business in this State shall expand its facilities in order to service new customers or subscribers unless it shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection. Notwithstanding the above or any law or regulation to the contrary, no such restriction shall apply to a water company expanding its facilities to a new customer or subscriber seeking or providing services on the property having the tax parcel number 07-043.40-055 or any successor parcel thereof; provided, however, that the primary use of such property remains as a wildlife refuge.

(c) No water company, which either alone or together with other water company affiliates or subsidiaries under common control or ownership serves more than 5,000 customers in this State, shall, unless it has cured any material failure found pursuant to paragraph (c)(1) or (2) of this section below within 30 days of any such finding, expand its facilities within this State in order to service new customers or subscribers or supply water to any new or additional customers or subscribers in this State for so long as that company:

(1) Is subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; or

(2) Is subject to any order issued by the Commission pursuant to this title finding that the company has materially failed to provide adequate or proper safe water services to existing customers.

(d) The appropriate agency shall report any such finding that a water company has failed to materially meet the water pressure standards of subsection (a) or (b) of this section or any order issued pursuant to subsection (c) of this section to the Public Service Commission in accordance with the Commission's authority to grant a water utility a certificate of public convenience and necessity to expand or extend its service territory.

(59 Del. Laws, c. 397, § 1; 72 Del. Laws, c. 161, § 1; 72 Del. Laws, c. 402, § 8; 76 Del. Laws, c. 381, § 1.)

§ 404. Relocation of residential gas meters and other equipment [For application of this section, see 80 Del. Laws, c. 309, § 2].

(a) Prior to the relocation of any inside residential gas meter, the public utility shall consult with each owner of the property as to the owner's preference for retaining the gas meter inside or relocating it to an outside location. If the gas meter remains inside, no person shall conceal the meter by plaster, sheathing, or any other materials or means, and the meter must be located in a ventilated area, not less than 3 feet away from any source of ignition and any sources of heat. If the public utility determines that it is feasible for the other residential gas equipment, such as the regulator and valve and accessories thereto, to be located outside, such equipment shall be relocated outside.

(b) If the gas meter is relocated to an outside location, the public utility shall determine a feasible location that is least visibly prominent and considers the preference of each owner of the property. If requested by a property owner, the public utility will provide initial landscaping or other screening to camouflage the gas meter.

(c) In the event that a gas meter remains inside, each owner of the residential property shall grant reasonable access to the public utility to maintain, repair, replace, or inspect the gas meter, consistent with the provisions of the public utility's tariff provisions. If any property owner denies the public utility reasonable access to the gas meter, the property's gas service shall be subject to termination, in which event, upon reconnection of service, the public utility may, in its sole discretion, move the gas meter outside consistent with the provisions of subsection (b) of this section.

(d) Notwithstanding any provision of the Delaware Code or any law, ordinance, rule, or regulation of any county or municipality to the contrary, the public utility may relocate the gas meter outside, with the property owner's approval, where a property is located in a historic district, neighborhood conservation district, or other designated district subject to design standards or guidelines involving review and approval by applicable governmental boards or agencies, or is eligible for listing or is listed on the National Register of Historic Places. The public utility shall relocate the other gas equipment for the property, such as the regulator and valve and accessories thereto, outside. If the gas meter and other equipment are moved outside, the public utility shall provide initial landscaping or other screening to camouflage the gas meter and other gas equipment.

(e) As used in this section, the term "feasible" means that which is consistent with gas industry safety standards and in compliance with the public utility's design and engineering requirements.

(80 Del. Laws, c. 309, § 1.)

Subchapter V
Hearings and Appeals

§ 501. Investigations, inquiries or hearings by Commission, its members or representatives.

(a) Any investigation, inquiry or hearing which the Commission has power to undertake or hold may be undertaken or held by or before the Commission, or any member or representative of the Commission designated by it.

(b) All investigations, inquiries, or hearings before a Commissioner shall be and are deemed to be the investigations, inquiries and hearings of the Commission.

(c) Any determination or order of a Commissioner upon any such investigation, inquiry or hearing undertaken or held by the Commissioner shall not become and be effective until approved and confirmed by at least a quorum of the Commission; and upon such confirmation, such determination or order shall be the determination or order of the Commission.

(47 Del. Laws, c. 254, § 1; 48 Del. Laws, c. 371, § 3; 26 Del. C. 1953, § 181; 59 Del. Laws, c. 397, § 1; 84 Del. Laws, c. 42, § 128.)

§ 502. Investigation, inquiry or hearing conducted by examiner.

In any investigation, inquiry or hearing, the Commission may designate any qualified officer or employee of the Commission as an examiner who may administer oaths, examine witnesses and receive evidence in any locality which the Commission, having regard to the public convenience and the proper discharge of its functions and duties, may designate. The testimony or evidence so taken or received shall have the same force and effect as if taken or received by the Commission, or by any 1 of the members thereof. Upon completion of such hearing or the taking of such testimony and evidence, the examiner shall submit to the Commission the examiner's findings and recommendations thereon, which findings and recommendations shall be considered by the Commission and such action taken with respect thereto by the Commission as it decides to be proper.

(47 Del. Laws, c. 254, § 1; 48 Del. Laws, c. 371, § 3; 26 Del. C. 1953, § 182; 59 Del. Laws, c. 397, § 1; 84 Del. Laws, c. 42, § 129.)

§ 503. Rules governing conduct of hearings; findings and order.

(a) All hearings before the Commission, or its designated representative, shall be public, and shall be conducted in accordance with the rules of practice and procedure prescribed by the Commission. In the conduct of such hearings, the Commission shall not be bound by the technical rules of evidence. A full and complete record shall be kept of all proceedings had before the Commission, or its representative, in any formal hearing, and all testimony shall be either recorded or taken down by a reporter designated by the Commission, and a verbatim transcript prepared and the parties shall be entitled to be heard in person or by attorney, and to introduce evidence.

(b) After the conclusion of the hearing, the Commission shall make and file its findings with its opinion, if any, and its order thereon. Its findings shall be in sufficient detail to enable the court on appeal to determine the controverted question presented by the proceeding, and whether proper weight was given to the evidence.

(47 Del. Laws, c. 254, § 1; 48 Del. Laws, c. 371, § 3; 26 Del. C. 1953, § 183; 59 Del. Laws, c. 397, § 1.)

§ 504. Compelling attendance of witnesses and production of documents; oaths; subpoenas.

(a) The Commission may compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and all other documents.

(b) Any member of the Commission, or any examiner or employee designated by it, may administer oaths to all witnesses who may be called before the Commission, any member thereof, or any examiner, as the case may be.

(c) Subpoenas issued by the Commission shall be signed by a member thereof or an examiner designated by it and attested by the secretary, and may be served by any sheriff, deputy sheriff, constable, or any employee of the Commission and return thereof made to the Commission.

(47 Del. Laws, c. 254, § 9; 48 Del. Laws, c. 371, § 14; 26 Del. C. 1953, § 184; 59 Del. Laws, c. 397, § 1.)

§ 505. Witness fees and mileage.

The fees and mileage of witnesses required to attend before the Commission shall be computed at the rate allowed to witnesses in the Superior Court, such fees to be paid when the witness is excused from further attendance. The disbursement made in payment of such fees shall be audited and paid in the same manner provided for the payment of expenses of the Commission. No witness subpoenaed at the instance of parties other than the Commission shall be entitled to compensation from the State for attendance or travel unless the Commission certifies that the testimony was material to the matter investigated.

(47 Del. Laws, c. 254, § 9; 48 Del. Laws, c. 371, § 14; 26 Del. C. 1953, § 185; 59 Del. Laws, c. 397, § 1.)

§ 506. Refusal to obey subpoena, answer question or produce documents; contempt.

If a person subpoenaed to attend before the Commission, any member or examiner thereof, fails to obey the command of such subpoena without reasonable cause, or if a person in attendance before the Commission, any member or examiner thereof, refuses without lawful

cause to be examined or to answer a legal or pertinent question, or to produce a book or paper when ordered to do so by the Commission, any member or examiner thereof, the Commission or any member thereof may apply to the Superior Court in and for the county where such hearing or investigation is being held or any Judge thereof in vacation, who shall have the power of the Court for such purpose, for an order returnable in not less than 2 nor more than 10 days, directing such person to show cause before the Court, or any Judge thereof in vacation, why such person should not comply with the subpoena or order of the Commission. Upon the return of such order, the Court or Judge before whom the matter comes on for hearing, shall examine under oath the persons whose testimony may be relevant, and such person shall be given an opportunity to be heard, and if the Court or Judge determines that the person refused without legal excuse to obey the command of such subpoena or to be examined, or to answer a legal or pertinent question, or to produce a book or paper which such person was ordered to produce, the Court or Judge may order such person to comply forthwith with the subpoena or order of the Commission, and any failure to obey such order of the Court or Judge may be punished by the Court or Judge as a contempt of the Superior Court.

(47 Del. Laws, c. 254, § 9; 48 Del. Laws, c. 371, § 14; 26 Del. C. 1953, § 186; 59 Del. Laws, c. 397, § 1; 84 Del. Laws, c. 42, § 130.)

§ 507. Privilege against self-incrimination.

No person shall be excused from testifying or producing any book, document or paper in any investigation or inquiry by or upon hearing before the Commission, or any member or examiner thereof, upon the ground that the testimony, evidence, book, document or paper required of such person may tend to incriminate such person or subject such person to penalty, or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which such person shall, under oath, have testified or produced incriminating evidence. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by such person in such person's testimony. Nothing contained in this section is intended to give, or shall be construed in any manner to give any corporation immunity of any kind.

(47 Del. Laws, c. 254, § 10; 48 Del. Laws, c. 371, § 15; 26 Del. C. 1953, § 187; 59 Del. Laws, c. 397, § 1; 84 Del. Laws, c. 42, § 131.)

§ 508. Depositions of witnesses.

The Commission, or any party to proceedings before the Commission, may cause the deposition of witnesses residing within or without this State to be taken in the same manner as prescribed by law or by rules of the Superior Court for taking depositions in civil actions.

(47 Del. Laws, c. 254, § 11; 48 Del. Laws, c. 371, § 16; 26 Del. C. 1953, § 188; 59 Del. Laws, c. 397, § 1.)

§ 509. Effective date and service of orders.

(a) Every order made by the Commission shall be served upon the person or public utility affected thereby, within 10 days from the time the order is filed, by personally delivering or sending by certified mail a certified copy thereof to the person to be affected thereby, or in case of a public utility to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the law of this State, or to the person designated by such public utility to accept service as provided in this chapter. In any proceeding in which such person or public utility shall be represented by an attorney, service may be made upon such attorney of record.

(b) All orders of the Commission shall become effective within such reasonable time as it prescribes.

(47 Del. Laws, c. 254, § 12; 48 Del. Laws, c. 371, § 18; 26 Del. C. 1953, §§ 189, 190; 59 Del. Laws, c. 397, § 1.)

§ 510. Appeal from Commission's order.

(a) Any public utility affected by any final order made by the Commission, or any other original party to or any intervenor in the proceedings before the Commission in which such order was entered and affected thereby, may appeal from such order to the Superior Court within 30 days from the date upon which such order is served. The appeal shall be filed with the Prothonotary of the Court and summons in the appeal shall be served upon the secretary of the Commission either personally or sent by certified mail to the office at Dover, Delaware, and shall be served upon all other parties to the proceeding below, other than the appellant.

(b) The appeal shall not be a trial de novo but shall be based upon the record before the Commission.

(c) The scope of review before the Court shall be that the Commission's findings shall be upheld if they are supported by sufficient evidence, free of error of law and not arbitrary or capricious. When factual issues are reviewed the Court shall take due account of the presumption of official regularity and the quasi-legislative function and specialized competence of the Commission.

(47 Del. Laws, c. 254, § 15; 48 Del. Laws, c. 371, § 19; 26 Del. C. 1953, § 192; 59 Del. Laws, c. 397, § 1.)

§ 511. Stay pending appeal.

The filing of an appeal from any order of the Commission shall in no case supersede or stay the order of the Commission, unless the Superior Court so directs, and the appellant may be required by the Court to give bond in such form and of such amount as the Court, allowing the stay, requires.

(47 Del. Laws, c. 254, § 16; 26 Del. C. 1953, § 193; 59 Del. Laws, c. 397, § 1.)

§ 512. Settlements are to be encouraged.

(a) Insofar as practicable, the Commission shall encourage the resolution of matters brought before it through the use of stipulations and settlements.

(b) The Commission's staff may be an active participant in the resolution of such matters.

(c) The Commission may upon hearing approve the resolution of matters brought before it by stipulations or settlements whether or not such stipulations or settlements are agreed to or approved by all parties where the Commission finds such resolutions to be in the public interest.

(d) All Orders issued by the Commission shall contain adequate support and rationale for any conclusions made by the Commission, including specific facts and factors on which the conclusions are based. This includes an explanation and a discussion of major elements of the settlement when issuing an order accepting or denying certain settlement agreements.

(70 Del. Laws, c. 48, § 8; 85 Del. Laws, c. 342, § 3.)

Subchapter VI

Regulation of Cable Television Systems

§ 601. Cable television franchise; requirement therefor; authority to issue; application, notice and hearing requirements.

(a) No person or entity shall hereafter commence the construction of, or operate a cable television system, in whole or in part within this State outside the boundaries of incorporated municipalities which on June 28, 1974, have the power either express or implied under their charters to grant franchises for a system, without first obtaining a franchise under this subchapter for such construction and operation.

(b) The Commission is hereby authorized to grant franchises for cable television systems to be constructed or operated in whole or in part within the State outside the boundaries of incorporated municipalities which on June 28, 1974, have the power either express or implied under their charters to grant franchises for a system. The procedure prescribed by this subchapter for granting franchises shall be followed by the Commission and all franchises shall comply with the requirements hereof.

(c) The Commission may not grant a franchise to a system without first giving at least 90 days' public notice of its intention to receive and consider applications for a franchise, and written notice to any person constructing or operating a system in any county in which the franchise is to be granted. The public and written notice shall specify the date and procedures for filing applications, and in general terms the geographic area and conditions of the proposed franchise.

(d) The Commission may not grant a franchise except upon written application therefor filed on or before the date specified in the public notice. All applications shall be accompanied by a certified check in the amount of the filing fee, if any, specified in the public notice. All applications shall be made available by the Commission for public inspection promptly following the filing thereof and no application once filed may be amended to make substantive changes in the proposals or qualifications of the applicant if more than 1 application has been filed for the same franchise territory.

(59 Del. Laws, c. 397, § 1.)

§ 602. Contents of application.

All franchise applications shall consist only of the following:

(1) A description of the territory proposed to be served by the applicant;

(2) A description of station signals as required to be carried by the Federal Communications Commission;

(3) A description of locally originated program service required by the Federal Communications Commission and of the applicant's plans, time schedules and facilities for providing such service;

(4) A schedule of presently proposed maximum rates and charges for each subscriber classification, and each classification of service;

(5) A description of facilities and service not described in paragraphs (2) and (3) of this section which at the time of the application the applicant desires to offer to the community, its governmental, educational or service agencies, including complete information concerning any applicable charges for such facilities and services;

(6) A copy of the proposed standard subscriber contract, if any;

(7) A statement demonstrating the applicant's financial qualifications including:

a. Balance sheet and profit and loss statements of the applicant current within 90 days of the filing of the application;

b. Estimated total cost of construction of the proposed cable system when completed to serve the entire proposed franchised area;

c. A complete financial plan for construction and operation of the proposed cable system demonstrating the applicant's financial ability to construct the system within the time specified by the applicant and in accordance with any Federal Communications Commission schedule of construction and to operate at the rates and charges proposed in the application during the first 5 franchise years commencing on the date service is first furnished to any subscriber.

If the applicant relies on others for loans, credit, advances or other means of financial assistance, the applicant must demonstrate the actual availability of such sources of financial assistance;

(8) A plat or plats showing proposed location or existing location of the receiving antennas, head-end equipment, studio, office, maintenance and construction facilities and proposed trunk routes for cable;

(9) A statement by the applicant that the cable system described in its application is and will be in full compliance with all technical rules, regulations, standards and operating policies for facilities and service of the Federal Communications Commission for community antenna television systems or cable television systems in effect at the time the proposed system is placed in operation;

(10) Full ownership identification of the applicant including:

a. Name and business address and, if other than a natural person, a description of the legal nature of the applicant stating the jurisdiction and laws under which it was formed;

b. The name, address and position held in the applicant of all officers, directors, trustees, general or limited partners, or persons having an ownership or beneficial interest of 5% or more in the applicant or in the application;

c. Identification of all other cable television interests including franchises, and the extent thereof, held by the applicant or any officer, director, trustee, or general partner of the applicant, and by any person having a 5% or greater ownership or beneficial interest in the applicant or in the application; and

d. Copies of the most recent Report of Cable Television Systems and Cable Television Annual Financial Statement filed with the Federal Communications Commission by the applicant and/or any parent, subsidiary, officer, director, trustee or other person having an ownership or beneficial interest of 5% or greater in the applicant.

(11) If the system is not fully constructed, a schedule, in phases, for construction of the system in the franchise area and for extending service throughout the franchise area.

(12) A statement by the applicant that the applicant has read and is familiar with this chapter.

(13) At the option of the applicant, a precise statement of each term of the franchise as specified in § 604 of this title as proposed by the applicant.

(59 Del. Laws, c. 397, § 1; 84 Del. Laws, c. 42, § 132.)

§ 603. Hearing and franchising procedures.

(a) Upon the filing of an application or applications as provided in this subchapter, the Commission shall fix the time and place for a public hearing thereon, and give at least 14 days' public notice of such hearing and written notice thereof to each applicant and to any person constructing or operating a system in any county in which a franchise is to be granted. At such hearing, any applicant or any member of the public desiring to be heard shall be heard.

(b) After such hearing the Commission may grant a franchise which shall state in writing its terms as specified in § 604 of this title; provided that, if such terms differ from those set forth in the successful applicant's application for a franchise, then that applicant must consent in writing to such terms before the franchise is effective. In determining whether and to whom to issue a franchise, the Commission may base its decision only on the application filed; the presentations made at public hearings by the applicant, by members of the public or by the staff of the Commission; the public need for the proposed franchise; and the likelihood that the applicant will fulfill the terms of the franchise giving consideration to the financial qualifications of the applicant, and the character of the applicant.

(c) The Commission simultaneously with the grant or denial of a franchise pursuant to this subchapter shall issue a written report setting forth the criteria upon which it based its selection or denial of the applicants for a franchise. The votes on the grant or denial of a franchise of each member of the Commission shall be recorded and made public.

(59 Del. Laws, c. 397, § 1.)

§ 604. Franchise terms.

The terms of any franchise issued under this subchapter shall be only the following:

(1) A requirement that station signals carried, local origination, services and facilities will comply with all lawful rules, regulations and laws of the federal government then applicable to the franchisee's construction and operation of a system;

(2) Designation of the area franchised;

(3) Except where construction has commenced, dates for the commencement of initial construction, and initial service to subscribers, and, except where construction is complete, fixing the dates for the several reasonable phases whereby construction and service will be extended when and to the extent required by the Federal Communications Commission to the entire franchised area;

(4) The duration of the franchise which shall be 15 years or such other maximum term as the Federal Communications Commission will allow with rights of renewal in the franchisee for the maximum term allowed by the Federal Communications Commission upon application to the Commission not later than 6 months prior to the expiration of the current term of the franchise and upon a public hearing for the sole purpose of reviewing the franchisee's performance and current qualifications;

(5) A requirement for the maintenance by the franchisee of adequate liability insurance in such amount as the Commission deems adequate, insuring the franchisee with regard to all liability for bodily injury, death and property damage. Copies of such insurance policies shall be filed and maintained with the Commission during the term of the franchise, together with written evidence of payment of required premiums;

(6) A requirement that the franchisee interrupt service only for a good cause and make repairs promptly;

(7) A requirement that the franchisee shall maintain an office open during all regular business hours, and which shall have a listed telephone toll free in the franchised area, and operated so that complaints and requests for repairs may be received at any time that television or other communications services are being furnished;

(8) A requirement that the franchisee promptly attempt to resolve service complaints and to maintain records with respect thereto for a period of 1 year. Such records should include the original complaint if in writing or a brief description if made orally, the date filed, the corrective action taken and the date thereof;

(9) A requirement that the franchisee furnish 1 standard cable television reception service outlet to each public school within reasonable proximity of existing cable lines for educational purposes upon request by but without cost to the public school system, to designated public buildings such as police and fire stations, and to a reasonable number of designated locations for the monitoring of performance of the system; provided, however, that nothing in this chapter shall prevent the franchisee from voluntarily providing service without cost to other educational, public or charitable institutions, and for reasonable promotional undertakings;

(10) A requirement that, in the case of any emergency or disaster, the franchisee shall, upon request of the Commission, make available its facilities to the federal, state, county or local governmental units for emergency use;

(11) A requirement that the franchisee install and maintain all cables, wires, fixtures and other equipment or facilities in accordance with the National Electrical Safety Code promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters, and that all structures, lines, equipment and connections in, on, under or over the highways, roads, streets, alleys or other public or private rights-of-way at all times be kept and maintained in a safe condition and in good order and repair;

(12) Designation of the site or sites for head-end, studio, office, maintenance, and construction facilities which designation shall supersede any requirements of laws or ordinances pertaining to land use;

(13) A schedule of present maximum rates and charges for all services and facilities provided by the franchisee and a requirement that the franchisee shall not discriminate or give any undue preferences or advantage to similarly situated persons in respect to such rates and charges;

(14) A requirement that the franchisee obtain approval from the Commission, after a public hearing of which public notice shall be given at least 14 days in advance, for any increase, other than one resulting from an increase in taxes or license charges imposed on cable television facilities, operations or income, in the maximum rates and charges in excess of 5% in any one 12-month period;

(15) A requirement that the franchisee file with the Commission maps or plats showing all existing streets or subdivisions served by the system within a reasonable time after construction, and that such be kept current;

(16) At the option of the Commission, any additional terms expressly proposed by the franchisee in its application;

(17) A provision that each term of the franchise is separate and severable and in the event that any term of the franchise is held to be unconstitutional or invalid, the franchise and its remaining terms shall remain in full force and effect.

(59 Del. Laws, c. 397, § 1.)

§ 605. Additional powers of the Commission.

In addition to its powers to issue franchises, the Commission has the power and jurisdiction to do all of the following:

(1) Conduct such investigations as may be necessary to determine compliance by a franchisee with this subchapter and the terms of any franchise granted;

(2) Prescribe a nonrefundable application fee in sufficient amount, but no more, to meet the costs necessary for processing the franchise applications;

(3) Examine, upon reasonable written notice and during regular business hours, subscriber lists, repair records, service complaints, and facilities and interview management personnel of all franchisees or applicants for franchises for the purpose of verifying applications or compliance with the terms of a franchise and of this subchapter;

(4) Intervene as a party in any action, in any court of competent jurisdiction, relating to the grant or performance of any franchise;

(5) Modify the terms of any franchise upon good cause shown by the franchisee;

(6) Adopt such regulations as the Commission may find are necessary or appropriate to implement any federal regulations or legislation governing the provision of cable television service. Regulations adopted pursuant to this authority shall supersede any inconsistent:

a. Franchise provisions, or

b. Sections of this subchapter.

(59 Del. Laws, c. 397, § 1; 69 Del. Laws, c. 141, § 1; 82 Del. Laws, c. 11, § 4.)

§ 606. Termination of franchise for failing to comply with its terms.

A franchise granted pursuant to the terms of this subchapter may be revoked or terminated in whole or in part but only for failure of the franchisee to comply with the terms of the franchise, and only if the following procedure is observed:

(1) The Commission shall hold a public hearing upon 15 days' public notice and written notice to the franchisee, which notice shall specify precisely the manner or way in which the franchisee is failing to comply with the terms of the franchise.

(2) Following the public hearing, the Commission by a majority vote of its members, by order, a copy of which shall be mailed by certified mail to the franchisee, may direct the franchisee to perform specific acts to bring itself into compliance with the terms of its franchise and may fix a reasonable time in which the franchisee may perform such acts. The franchisee either may comply with the foregoing compliance order or, within 30 days from the date of mailing of the order to it, may institute proceedings to review the compliance order by the filing of a complaint in the Court of Chancery for any county in which the franchise is located. Such proceedings shall be in accordance with the rules of procedure of the Court of Chancery. The Commission shall be the defendant in such proceedings. The filing of the complaint shall not act as a stay of the compliance order, but the Court of Chancery may, on application with notice to the Commission, and on due cause shown, grant such a stay. If, upon a hearing, it shall appear to the Court of Chancery that testimony is necessary for the proper disposition of the proceedings, it may take evidence or appoint a Magistrate to take such evidence as it may direct and report the same to the Court of Chancery, together with findings of fact and conclusions of law which shall constitute a part of the proceedings upon which the determination of the Court of Chancery shall be made. The Court of Chancery may reverse or affirm, wholly or in part, or may modify the order brought up for review.

(3) If the franchisee fails to comply with the compliance order as entered by the Commission, or in the event of review proceedings, as affirmed or modified by the Court of Chancery, then the Commission by a majority vote of its members, by order, a copy of which shall be mailed by certified mail to the franchisee, may direct that the franchise is terminated in whole or in part and shall specify a reasonable time by which the franchisee shall remove its facilities from any public property. There shall be no review by any court in any proceedings of such a termination order, except that by the filing of a complaint, within 30 days of the date of the mailing of the termination order, in the Court of Chancery for any county in which the franchise is located, the franchisee may obtain a review of such order limited to the issue of whether or not the franchisee, at the date of the resolution terminating the franchise, had complied with the terms of the compliance order.

(59 Del. Laws, c. 397, § 1; 84 Del. Laws, c. 101, § 15.)

§ 607. Franchising of existing unfranchised cable television systems.

(a) Notwithstanding any other provisions of this chapter, the Commission shall issue a franchise to any person or entity operating or constructing prior to June 28, 1974, a system within this State outside of the boundaries of incorporated municipalities which on June 28, 1974, have the power either express or implied under their charters to grant franchises for a system. An application for such a franchise shall be filed within 90 days of June 28, 1974. The application shall be in the form prescribed in § 602 of this title.

(b) A franchise granted hereunder may be conditioned upon compliance by the franchisee with such requirements of the Federal Communications Commission as may be applicable to such an existing cable system within the time specified by the Federal Communications Commission for compliance by such an existing system.

(c) The terms of a franchise under this section shall be only the designation of the area franchised which shall be at least coextensive with any portion of the State in which the system is operating or under construction and the terms specified in paragraphs (3)-(17) of § 604 of this title provided that such terms do not require the franchisee to perform any act which would conflict in any way with any contract it may have on June 28, 1974, or to charge rates for services different than any rates now being charged for services or to diminish or increase any services provided or any areas served on the effective date hereof.

(d) Construction and operation of such systems may lawfully be continued pending the filing of such application, the issuance of a franchise, and the acceptance thereof by the applicant.

(e) If the franchise issued under this section is not accepted by the applicant within 60 days from the date of issuance, all construction and operating authority shall terminate, unless the Commission shall otherwise order.

(59 Del. Laws, c. 397, § 1.)

§ 608. Municipal franchises.

The Commission may review any franchise now or hereafter granted by incorporated municipalities of this State which, on June 28, 1974, have the power either express or implied under their charters to grant franchises for a system for the construction or operation of cable television systems within their boundaries, and whenever the public interest requires, change or modify such franchise or the conduct of the franchisee thereunder so that such franchise or such conduct complies with the provisions of this subchapter governing franchises granted by the Commission. If such a municipality refuses to grant a franchise and the Commission finds that such refusal is not in the public interest, the Commission may award a franchise under this subchapter.

(59 Del. Laws, c. 397, § 1.)

§ 609. Transfer of franchise or control of franchise.

(a) No franchise shall be transferred, otherwise than by operation of law, or assigned to a person or entity without prior approval of the Commission.

(b) No transfer of legal control of a franchise to a person or entity not a party to the original franchise application shall be made without prior approval of the Commission.

(c) Applications for approval of transfer or assignments must be made in writing and shall contain such information about the transferee or assignee as would be required about an applicant in an application for a franchise under § 602 of this title.

(d) Approval of applications for transfers and assignments shall be granted, unless after hearing, which shall not otherwise be required, the Commission shall find that service to subscribers of the franchise would be affected adversely. Any denials under this section shall be accompanied by a report of the Commission in writing setting forth in detail the facts upon which the denial is based.

(e) This section shall not apply to or restrict transfers or assignments between parent and subsidiary corporations or between entities of which at least 50% of the beneficial ownership is held by the same persons or entities.

(59 Del. Laws, c. 397, § 1.)

§ 610. Payments to Commission.

(a) The Commission is authorized to bill to and collect the cost of regulation of Cable Television Systems, as a franchise fee from every Commission regulated franchisee. Such billing and collection shall be accomplished in the following manner:

(1) On or before March 31 of each year, each franchisee subject to the provisions of this subchapter shall file with the Commission a report of Total Annual Basic Service Regulated Revenue containing a statement of its total annual basic service regulated revenues for the immediately preceding calendar year, and a check in payment of the annual assessment which shall be an amount equal to the product of 3 mills multiplied by the total annual basic service regulated revenue of such franchisee. A cable television system subject to this section which paid an annual assessment greater than $10,000 in the preceding year shall make an estimated payment of at least 40% of the expected assessment no later than 6 months prior to the March 31 due date for the return and final payment.

(2) Whenever the Commission, in a proceeding upon its own initiative or upon complaint or upon written application to it, shall deem it necessary in order to carry out its statutory duties, to investigate the operations, services, practices, accounting records and/or procedures, rates, charges, rules and regulations of any franchisee and/or to enter into and hold a hearing or hearings in connection therewith, such franchisee shall be charged with and pay such portions of the expenses of the Commission, and the compensation and expenses of its agents, representatives, consultants, and employees, including but not limited to those temporarily employed or retained, as is reasonably attributable to such investigation, hearing or hearings or any appeal from a Commission order. No charge shall be made for the compensation of Commissioners and all such bills shall be due and payable within 30 days of rendition by the Commission. If more than 1 franchisee is involved in such proceedings, each shall pay its pro rata share of such expenses as determined by the Commission.

(3) If the annual assessment or any amount billed by the Commission is not paid within 30 days from the due date the franchisee shall pay in addition a penalty to the Commission of 1% of the amount due for each month or fraction thereof that such amount is unpaid.

(4) The total aggregate amount to be charged by the Commission to any franchisee under authority of this section in any calendar year shall not exceed 2% of such franchisee's total annual basic service regulated revenue in the last preceding calendar year. This limitation shall not include amounts payable as a penalty. For purposes of this section, the term "Total Annual Basic Service Regulated Revenue" shall only include the revenue received by the franchisee from equipment and services which would be subject to Basic Service Rate Regulation by the Commission in the absence of effective competition including the basic monthly service charges for cable television reception service outside the boundaries of incorporated municipalities which on June 28, 1974, have the power either express or implied to grant franchises for a system and shall include moneys received as installation charges, charges for reconnection, inspection, repairs or modifications of any installation. It shall not include local, state or federal taxes or money received from:

a. Sale of advertising time on cable channels;

b. The furnishing of special programming not covered by the basic monthly service charge;

c. The furnishing of other communications services either by private contract or as a carrier, including by way of example but not limited to leasing of channels, burglar alarm, AM or FM radio broadcast, data transmission information storage and retrieval, the facsimile reproduction services; and

d. Any source other than directly from the installation and carriage of television signals and such other basic cable television services as are subject to regulation by the Commission.

(b) No fees or payments other than those specifically provided in this subchapter may be levied by or collected on behalf of the Commission.

(59 Del. Laws, c. 397, § 1; 70 Del. Laws, c. 47, § 1; 75 Del. Laws, c. 142, §§ 3, 4.)

§ 611. Certificate of compliance.

(a) Upon substantial completion of construction and when service is available in a substantial portion of the franchised territory, the franchisee shall certify to the Commission that:

(1) The cable television system has been constructed and is operating in full compliance with technical performance standards as prescribed by the Federal Communications Commission;

(2) That all services required to be furnished under the rules and regulations of that Commission are being furnished, or, if not, the date upon which such services will be available, and that all services comply with all applicable rules and regulations of the Commission; and

(3) That the system and services comply in all respects with the provisions of the franchise and this subchapter.

(b) In the event such certification cannot be made, temporary waiver of the requirements of any provision of the franchise or of this subchapter shall be granted by the Commission to a date specified on a showing of good cause.

(59 Del. Laws, c. 397, § 1.)

§ 612. Occupancy of public ways.

All cable systems holding a franchise granted under this chapter or by a municipality having the power either express or implied under its charter to grant a franchise to a system shall have the right to occupy the public highways, streets, roads, alleys, turnpikes and waterways within this State, provided that within incorporated municipalities, they shall have received permission to do so from the municipality, and without incorporated municipalities, they shall have complied with such written regulations established by the Department of Transportation for the occupancy and use of such public ways by telephone corporations and such occupancy and use will not unduly interfere with preexisting use of such public ways by any public utility.

(59 Del. Laws, c. 397, § 1.)

§ 613. Acquisition by franchisees of easements.

Any franchisee may acquire an easement across, in or on public or private lands or waterways in this State which already have thereon or therein poles, wires, conduits, pipes, cables or other such facilities owned or maintained by a public utility, for the purpose of erecting, constructing, maintaining or operating any facilities to provide cable television or communications service to the public, including poles, wires, cables, guides, conduits and apparatus, which can be installed in the same manner, above or below ground, as the public utility facilities already on or in the property, by a taking in accordance with Chapter 61 of Title 10 which provides a method of fixing fair compensation if the easement should impose any additional burden on the property interest of the utilities or any other concern or person.

(59 Del. Laws, c. 397, § 1.)

§ 614. Criminal penalties.

(a) Any applicant for a cable television franchise, or any franchisee who knowingly makes any false statement in any application, or in support thereof, or who knowingly falsifies any records required by this subchapter to be kept, shall be deemed to have committed a misdemeanor.

(b) Any person who knowingly attaches or causes to be attached to any cable system television receiving devices without the consent in writing of the cable system shall be deemed to have committed a misdemeanor.

(c) The Superior Court may impose a fine not to exceed $2,000 for each act which constitutes a misdemeanor under this section.

(59 Del. Laws, c. 397, § 1.)

§ 615. Judicial review and enforcement of acts by a Commission.

(a) Except where judicial review is otherwise expressly provided for herein, in the event that the Commission, by action or inaction, shall fail to comply with this subchapter, the exclusive remedy for any aggrieved person shall be to file, within 30 days of the act or failure to act complained of, a complaint in the Court of Chancery. In such proceedings, the jurisdiction of the Court of Chancery shall be limited to determining whether or not the Commission has complied with this subchapter, and, upon a finding that the Commission has not complied with the subchapter, to entering such order, including one for the payment of damages, as it deems appropriate.

(b) Except where a franchise is to be terminated, where the procedures of § 606 of this title apply, whenever any person shall fail to comply with this subchapter, or with any order or directive of the Commission made in compliance with this subchapter, the Commission may file a complaint in the Court of Chancery seeking such relief as is appropriate to compel compliance.

(59 Del. Laws, c. 397, § 1.)

§ 616. Preemption.

Any provision of this chapter, or of any franchise issued pursuant thereto, or any rule, regulation or practice, adopted or imposed by the Commission, which is inconsistent with the Communications Act of 1934 [P.L. 73-416], as amended, or any final rule or regulation now or hereafter adopted by the Federal Communications Commission shall be null and void. This chapter is intended to preempt any county franchising or regulation of cable television or communication systems.

(59 Del. Laws, c. 397, § 1.)

Subchapter VII

Telecommunications Regulation Modernization

§ 701. Short title.

This subchapter shall be known and referred to as the “Telecommunications Regulatory Authorization Act of 1992.”

(68 Del. Laws, c. 258, § 1.)

§ 702. Findings of public policy.

With respect to the provision of telecommunications services in Delaware, it is the policy of this State that:

(1) Basic telecommunications services shall be universally available at affordable prices.

(2) To foster economic development in this State, responsible and reasonable investment in and development of telecommunications systems employing advanced technology shall be encouraged as an integral part of the State's infrastructure.

(3) The availability of customer choices among a continuously developing variety of telecommunications services shall be encouraged.

(4) The growth of competitive markets for the provision of telecommunications services shall be encouraged and, where they exist or develop in the future, the availability, price, terms of service and quality should be determined by such competitive markets.

(68 Del. Laws, c. 258, § 1.)

§ 703. Commission authority.

To create an environment which permits the pursuit of the policy declared herein, the General Assembly finds and declares that:

(1) In a competitive marketplace, some utility regulation may be necessary in protecting the public interest. However, where competition helps promote efficiency in the use of resources, deployment of technology or fosters productivity and innovation, such competition shall be authorized and encouraged by the Commission.

(2) Where competitive market pressures are inadequate for regulation of price, as well as availability and terms of service for particular telecommunications services, the Commission is authorized and encouraged to develop and implement alternate methods of regulation which will encourage the providers of such services to take advantage of technological advances and efficiencies.

(3) The Commission is authorized and encouraged to respond to the changing technology and structure of the telecommunications industry by modifying its regulation of telecommunications services where such modifications will foster the universal availability of basic telecommunications services; protect the public interest; promote efficiency in public and private resource allocation or encourage economic development. Such authorized modifications include, but are not limited to, such regulatory features as: Incentive regulation, earnings sharing, categorization of services for the purposes of pricing, price caps, price indexing, ranges of authorized returns, detariffing and deregulation. In conjunction with alternative methods of regulation, the Commission is encouraged to consider appropriate safeguards to:

a. Protect customers of service which the Commission has not found to be competitive; and

b. Protect the further development of competition in the State.

The Commission is specifically authorized to depart from rate base, rate of return regulation.

(4) The Commission is authorized and empowered to take such actions, conduct such proceedings (including mediation, arbitration and review of agreements and statements of terms and conditions) and enter such orders as permitted or required by a "state commission" under the Telecommunications Act of 1996, Pub. L. 104-104. In exercising such authority and in the conduct of such proceedings, the Commission shall act in accord with the applicable provisions of the Telecommunications Act of 1996 and need not comply with the specific notice, hearing and other procedural requirements set forth in this chapter or in Chapter 101 of Title 29 or regulations heretofore promulgated by the Commission thereunder. The Commission may promulgate rules to govern the conduct of actions and proceedings undertaken to implement the federal law. Such promulgation shall occur pursuant to, and subject to the limitation of, § 10113(b)(2) of Title 29 and shall be exempt from the requirements of subchapter III of Chapter 11 of Title 29. The foregoing actions and proceedings may be conducted by the Commission or by a subordinate designated for such purpose.

(68 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 556, § 1.)

Subchapter VII-A

Telecommunications Technology Investment Act

§ 704. Election of a telecommunications service provider to be governed by this subchapter.

(a) A telecommunications service provider offering services under a certificate granted under § 203A of this title may elect or any telecommunication service provider that has previously elected may reelect, upon or after July 15, 2013, to determine its rates and prices for its telecommunications services pursuant to this subchapter. Upon the filing of written notice to the Commission of such an election or reelection, subchapters II and III of this chapter shall no longer apply except as specifically provided hereinafter and, in lieu thereof, this subchapter shall govern.

(b) An election by a service provider to be governed by this subchapter shall be effective for a term of not less than 3 years and shall automatically be extended for additional 3-year terms except as described below. Not less than 1 year prior to the expiration of any term, the service provider shall notify the Commission if it no longer wishes to be governed by this subchapter. Upon receipt of such notification, the Commission shall commence an open and public proceeding to determine what appropriate form of regulation should be applied to such provider under § 703 of this title. The Commission shall conclude any such proceeding by final order within 12 months from the filing of such notification and, in making its determination, the Commission shall give appropriate consideration to the form of regulation, if any, then applicable to competitors of such service provider.

(c) (1) Nothing in this subchapter shall be construed to affect the rights, duties or obligations of telecommunications carriers, including those carriers who are parties to interconnection agreements approved by the Commission on or before January 1, 2008, set forth in §§

251-252 of the federal Telecommunications Act, 47 U.S.C. § 251-252, including but not limited to, the duty to negotiate interconnection agreements, to provide interconnection, to provide access to unbundled network elements, and to provide resale, nor shall anything in this subchapter affect the exercise of authority assigned to the Commission by §§ 251-252 of the federal Telecommunications Act, 47 U.S.C. 251-252, including but not limited to the authority to arbitrate and approve interconnection agreements.

(2) Nothing in this subchapter shall be construed to affect the applicability or enforcement of the provisions of Chapter 100 of Title 16 ("911—Enhanced Emergency Number Service") or the applicability or enforcement of the provisions of Chapter 101 of Title 16 ("Enhanced 911 Emergency Reporting System Fund").

(69 Del. Laws, c. 99, § 2; 76 Del. Laws, c. 272, §§ 1-7; 79 Del. Laws, c. 53, § 1; 82 Del. Laws, c. 11, § 5.)

§ 705. Definitions.

(a) "Basic services" means switched access services.

(b) "Competitive services" means either of the following:

(1) All services which are not classified as "basic" in subsection (a) of this section.

(2) Any new service other than switched access service.

(69 Del. Laws, c. 99, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 272, §§ 8, 9; 79 Del. Laws, c. 53, § 1; 82 Del. Laws, c. 11, § 6.)

§ 706. Offering, classification and abandonment of service.

(a) A service provider is not required to provide notice to the Commission for any new service.

(b) Competitive services, including new services, and basic services, other than switched access, are not subject to mandatory tariff or other filing requirements except as specifically provided in this subchapter.

(c) Notwithstanding the provisions of § 203A(d) of this title, a service provider may abandon a competitive service at any time.

(d) Notwithstanding any other provision of law, Commission approval may not be required for any reorganization or merger, mortgage or transfer of property, issuance of securities, assumption of obligation of another, or transfer of control of a service provider governed under this subchapter.

(e) [Repealed.]

(f) A service provider offering competitive services under this subchapter shall be subject to the provisions of §§ 202 and 216-222 of this title.

(g) Notwithstanding any order or regulation of the Commission or law to the contrary, the Commission may not investigate or adjudicate retail customer complaints for services governed by this subchapter except complaints related to the adequate provisioning of basic services.

(h) A service provider offering services under this subchapter shall comply with the certificate of public convenience and necessity requirements as set forth in § 203A(a) and (b) of this title.

(69 Del. Laws, c. 99, § 2; 76 Del. Laws, c. 272, § 10; 79 Del. Laws, c. 53, § 1; 80 Del. Laws, c. 214, § 2; 82 Del. Laws, c. 11, § 7.)

§ 707. Provision of basic services.

(a) An offering of basic services in this State, that is not a determination of rate change, is subject to the provisions of subchapters I and V of this chapter, §§ 201, 202, 203A(c), 204, 206, 212, 217, 218, and 222 of this title, and all Commission procedures, rules, and regulations except to the extent inconsistent with this subchapter.

(b) Beginning January 1, 2020, after January 1 of the year immediately following the initial election or reelection made pursuant to § 704 of this title, Commission approval may not be required to change tariff rates and rates for basic services must be established according to prevailing federal jurisdiction.

(c) No service provider may assess switched access rates pursuant to tariff that are higher than the switched access rates set forth in the tariffs of the incumbent local exchange carrier in the same service territory.

(69 Del. Laws, c. 99, § 2; 76 Del. Laws, c. 272, §§ 11-17; 79 Del. Laws, c. 53, § 1; 82 Del. Laws, c. 11, § 8.)

§ 708. Provision of competitive services.

(a) Any provider of a competitive service may determine its price and other terms and conditions under which such competitive service will be offered, and subchapter II of this chapter shall not apply to the provision of such services except as provided in § 706(f) of this title herein.

(b) The Commission may, upon the filing of a written complaint, investigate claims related to predatory pricing of competitive services consistent with principals of federal and state antitrust law. If the Commission opens a proceeding to investigate such claims, the burden of proof shall be on the complainant. If the Commission finds that predatory pricing has occurred, the Commission may enjoin the conduct, but may not otherwise determine the price or other terms and conditions under which a competitive service will be offered.

(69 Del. Laws, c. 99, § 2; 76 Del. Laws, c. 272, §§ 18-21; 79 Del. Laws, c. 53, § 1.)

§ 709. Delaware Broadband Fund.

(a) The State shall create a fund designated as the "Delaware Broadband Fund" (the "Fund") to be used to support and enhance broadband services in the State's public schools and public libraries and for rural broadband initiatives in unserved areas of the State.

(b) The Fund shall be administered by the Secretary of the Department of Technology and Information. The Secretary shall develop a plan to carry out the purposes of subsection (a) of this section and, after concurrence of the Controller General and Director of the Office of Management and Budget, may distribute moneys from the Fund to implement such plan.

(c) All moneys in the Fund shall be distributed by July 1, 2018, and the Fund shall terminate at that time.

(79 Del. Laws, c. 53, § 1.)

§ 710. Regulatory assessment.

In lieu of the regulatory assessment imposed under § 115 of this title, a service provider shall pay an assessment into the Delaware Broadband Fund. On August 1, 2013, the service provider shall pay into the fund $^1/_2$ of the amount of its 2011 regulatory assessment in lieu of the amounts due under § 115 of this title for the period January 1, 2013, through June 2013 and shall continue making payments into the Fund in lieu of any amounts due under § 115 of this title for an additional 3 years beginning on January 30, 2014, and ending on January 30, 2016, in an amount equal to the regulatory assessment for the year 2011, after which time the obligation under § 115 of this title or to make payments under this section shall cease.

(79 Del. Laws, c. 53, § 1.)

§ 711. Plan for technological investment and deployment.

Repealed by 76 Del. Laws, c. 272, § 23, eff. June 30, 2008.

Subchapter VII-B

Load Forecast Accountability Act [Expires Dec. 31, 2035, pursuant to 85 Del. Laws, c. 363, § 2]

(85 Del. Laws, c. 363, § 1.)

§ 715. Short title [Expires Dec. 31, 2035, pursuant to 85 Del. Laws, c. 363, § 2].

This subchapter shall be known and may be cited as the "Load Forecast Accountability Act."

(85 Del. Laws, c. 363, § 1.)

§ 716. Legislative findings and purpose [Expires Dec. 31, 2035, pursuant to 85 Del. Laws, c. 363, § 2].

(a) The General Assembly finds and declares as follows:

(1) Recent reports by PJM Interconnection, L.L.C. (PJM), have highlighted that electricity demand across the PJM footprint, including Delaware, is projected to grow due to data centers, electrification of vehicles and buildings, and other large load additions. PJM recently projected that by 2030, PJM expects to add 32 GW of load to the grid, 30 GW of which is attributable to data centers.

(2) PJM relies upon load forecasts submitted by electric distribution companies in Delaware to establish system planning needs and capacity requirements which ultimately have costs associated with both.

(3) Accurate load forecasting is essential to ensure the adequacy of electric supply, maintain system reliability, and protect Delaware consumers from unnecessary costs caused by overbuilding or underbuilding system resources.

(4) Currently, the process by which utilities and load-serving entities submit information to PJM is very opaque, requires revision to ensure confidence and transparency so that policymakers, regulators, and stakeholders can rely upon the results.

(5) There is a critical need for the Delaware Public Service Commission (Commission) to provide oversight of load forecasting inputs from Commission-regulated electric distribution companies, to ensure accuracy and transparency, and to coordinate with PJM and neighboring state regulators to prevent duplicative counting of projects and customer contracts.

(b) The purpose of this subchapter is to provide the Commission with authority and responsibility to:

(1) Review and evaluate load forecasts submitted by Commission-regulated electric distribution companies to PJM.

(2) Coordinate with PJM and other states to support system-wide planning.

(3) Access all relevant materials, including confidential agreements, necessary to review and evaluate load forecasts.

(85 Del. Laws, c. 363, § 1.)

§ 717. Oversight of load forecasting [Expires Dec. 31, 2035, pursuant to 85 Del. Laws, c. 363, § 2].

(a) The Delaware Public Service Commission (Commission) shall initiate a proceeding to investigate the methodologies, data, and assumptions used by Commission-regulated electric distribution companies in developing load forecasts submitted to PJM Interconnection, L.L.C. (PJM).

(b) As part of this investigation, the Commission shall:

(1) Review all materials, data sets, and filings provided by Commission-regulated electric distribution companies to PJM related to load forecasting.

(2) Review the accuracy, consistency, and transparency of forecasting methods and assumptions.

(3) Review specific load interconnection requests to ensure that only those projects that have a high likelihood of being developed are included in the load forecast. As part of this evaluation, the Commission should consider:

a. The stage of development and project development status, including whether the customer has executed relevant service agreements, demonstrated site control, and met permitting milestones.

b. Expected ramping schedules, including the anticipated in-service date, interim load levels, and full build-out timing.

c. Whether the customer has filed duplicative interconnection requests within or outside of PJM, and the number and associated megawatts of such requests.

d. The status and amount of customer financial commitments, including deposits, construction obligations, or other sureties.

(4) Coordinate directly with Commission-regulated electric distribution companies and PJM to ensure that Delaware's electric utility forecasts are incorporated into PJM's regional planning on a fair, accurate, and nonduplicative basis.

(5) Work jointly with PJM and other state utility commissions within the PJM footprint to ensure that new large loads and customer contracts are not double counted across jurisdictions and to evaluate whether other state load forecasting policies can improve Delaware's efforts.

(c) The Commission shall have the authority to promulgate regulations to more fully define the requirements necessary for the implementation of this section.

(85 Del. Laws, c. 363, § 1.)

§ 718. Access to confidential contracts [Expires Dec. 31, 2035, pursuant to 85 Del. Laws, c. 363, § 2].

(a) In carrying out its responsibilities under this subchapter, the Delaware Public Service Commission (Commission) shall have authority to review and access any contracts, agreements, or commitments between interconnecting customers and Commission-regulated electric distribution companies within this State that impact load forecasting assumptions.

(b) Commission-regulated electric distribution companies shall provide such contracts to the Commission upon request, subject to the confidentiality provisions of § 10002(o)(2) and (6) of Title 29 and any other provisions of Delaware law. The Commission shall put in place appropriate safeguards to protect against disclosure of confidential information.

(85 Del. Laws, c. 363, § 1.)

§ 719. Annual reporting [Expires Dec. 31, 2035, pursuant to 85 Del. Laws, c. 363, § 2].

(a) The Delaware Public Service Commission (Commission) shall submit a written report to the General Assembly no later than May 1 of each year on its progress in implementing this subchapter. This report shall be posted on the Commission's website.

(b) The report shall describe:

(1) The Commission's efforts to implement this subchapter during the prior year.

(2) Findings from its review of load forecasting processes and materials submitted by Commission-regulated electric distribution companies to PJM Interconnection, L.L.C. (PJM).

(3) Any coordination undertaken with PJM and other states to prevent duplicative counting of projects and customer contracts.

(4) Recommendations for legislative or regulatory changes to further improve load forecasting oversight and reliability.

(85 Del. Laws, c. 363, § 1.)

Chapter 3
Corporation Law for Railroads [Repealed].

§§ 301-320. Formation of railroad corporation; articles of association; approval of articles; filing and recording; powers of railroad corporations; preliminary requisites to incorporation; capital stock; deposit with State Treasurer; affidavit of payment; fees and taxes; presumptive evidence of incorporation; borrowing money; usury as defense; subscriptions to capital stock; election and qualifications of board of directors; organization and bylaws; stock as personal estate; transfers; annual report to stockholders; consolidation of railroads; leases and mergers; stock appraisement proceedings; eminent domain; width of railroads; procedure for construction or widening; construction and maintenance of bridges and passages; enforcement of duties; crossings over canals, streams, railroads and railways; regulation of grade crossings; time for commencement and completion of railroad construction; limitations upon powers, authority and rights conferred [Repealed].

Repealed by 59 Del. Laws, c. 393, § 19, effective June 28, 1974; 59 Del. Laws, c. 397, § 1, effective June 28, 1974.

Chapter 5
Corporation Law for Railways [Repealed].

§§ 501-520. Definitions; formation of railroad corporation; articles of association; approval of articles; filing and recording; powers of railroad corporations; preliminary requisites to incorporation; capital stock; deposit with State Treasurer; affidavit of payment; fees and taxes; presumptive evidence of incorporation; borrowing money; usury as defense; subscriptions to capital stock; election and qualifications of board of directors; organization and bylaws; stock as personal estate; transfers; annual report to stockholders; consolidation of railways; leases and mergers; stock appraisement proceedings; eminent domain; width of railways; procedure for construction or widening; construction and maintenance of bridges and passages; enforcement of duties; crossings over canals, streams, railroads and railways; regulation of grade crossings; time for commencement and completion of railway construction; limitations upon powers, authority and rights conferred by this chapter [Repealed].

Repealed by 59 Del. Laws, c. 393, § 20, effective June 28, 1974; 59 Del. Laws, c. 397, § 1, effective June 28, 1974.

Chapter 7
Railroads, Railways and Other Public Conveyances [Repealed].

§§ 701-709. Regulation of ticket agents; penalties; redemption of unused tickets; assigning places to customers; equal accommodations; erection and maintenance of telegraph and telephone lines by railroad or railway; fences and cattle guards; liability for damages; trespass with animals; walking on tracks; penalties; liability of those damaging railroad or railway property; badges of railroad conductors, baggage master and brakeman; railroad car brakes; penalties for violations of §§ 707 and 708 [Repealed].

Repealed by 59 Del. Laws, c. 393, §§ 6-14, effective June 28, 1974; 59 Del. Laws, c. 397, § 1, effective June 28, 1974.

Chapter 8
Underground Utility Damage Prevention and Safety

Subchapter I
Underground Utility Damage Prevention and Safety Act

§ 801. Purpose; citation; construction.

(a) For the purposes of providing for the protection of the public health and safety, certain procedures are necessary to assure that persons performing excavation or demolition operations know, prior to commencing such operations, of the presence or location of underground utilities in the excavation or demolition area. Certain precautions must be taken to avoid injuries and damage to life, limb, and property, to avoid disruption and discontinuation of utility services to members of the public and to promote safe operations during excavation and demolition.

(b) This subchapter shall be known and may be cited as the "Underground Utility Damage Prevention and Safety Act." This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 85 Del. Laws, c. 345, § 1.)

§ 802. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Abandoned" means no longer in service or use and physically disconnected from a facility.

(2) "Approved notification center" means the communication system established within this State pursuant to § 807 of this title to:

a. Provide a toll-free number, 811 access, or internet access for excavators or designers or any other person covered by this act to contact facility owner/operators and notify them of their intent to perform excavation.

b. Maintain an owner/operator/excavator information exchange system.

(3) "Backfill" means to fill the void created by excavating.

(4) "Business day" means any day except a Saturday, Sunday, or legal holiday prescribed by § 501 of Title 1, beginning at 12:01am and ending at 11:59pm.

(5) "Cathodic protection" means the process of arresting corrosion on a buried or submerged structure by electrically reversing the natural chemical reaction. This includes installation of a sacrificial anode bed, use of a rectifier-based system, or any combination of these or similar systems. Wiring is installed between the buried or submerged structure and all anodes and rectifiers; wiring is also installed to test stations that are used to measure the effectiveness of the cathodic protection system.

(6) "Commission" means the Public Service Commission of Delaware.

(7) "Complex project" means a single project, or series of repetitive, small, short-term projects that are related in scope, that impact facilities over a long period of time or a large area.

(8) "Compliance" means adherence to the statute and its regulations.

(9) "Damage" means any impact or exposure that may result in the need to repair an underground facility due to a weakening or the partial or complete destruction of the facility, including the protective coating, tracer wire, lateral support, cathodic protection, or the housing for the facility, device, or facility.

(10) "Demolish or demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment or discharge of explosives capable of damaging underground or submarine facilities.

(11) "Designer" means any architect, engineer or other person, acting either as an employer or employee, who prepares or issues a drawing for a construction or other project which requires excavation or demolition work.

(12) "Design ticket" means a request for facility information as an aid to design a project that may impact utility facilities when initiated. No excavation can be performed under this ticket.

(13) "Discrepancy" means a lack of compatibility between the facility marks and the physical environment.

(14) "DNREC Regulated Site" means any parcel of land or portion thereof for which a final permit, remediation plan, institutional or administrative control, use restriction or similar limitation is imposed under the authority granted to the Department of Natural Resources and Environmental Control under Title 7 and for which due process opportunities have been provided.

(15) "Emergency" means a sudden or unforeseen occurrence involving a clear or imminent danger to life, health, or property; the interruption of essential utility services; or the blockage of transportation facilities that requires immediate action.

(16) "Emergency notice" means a communication to the approved notification center to alert the involved underground facility owners or facility operators of the need to excavate as a result of a sudden or unforeseen occurrence, or national emergency, involving a clear and imminent danger to life, health, environment, or property (including the interruption of essential utility services or the blockage of transportation facilities) that requires immediate excavation.

(17) “Engineering control” means man-made controls designed to isolate or contain in the ground waste or materials hazardous to human health and the environment. The term includes all of the following:

a. Hazardous, municipal, residual and radioactive waste landfills.

b. Vaults, repositories, and in-situ stabilization.

c. Caps on residual contamination.

d. Groundwater pump and treatment systems, leachate collection systems and monitoring and containment systems.

(18) “Excavate” or “excavation” means any operation using nonmechanized or mechanized equipment, demolition, or explosives in the movement of earth, rock, or other material below existing grade. It includes augering, blasting, boring, digging, ditching, dredging, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling. It does not include the surface cultivation of the soil for agricultural purposes, such as tilling, or patch-type paving where the same, including cutback, does not exceed 12 inches in depth measured from the surface of the pavement being patched. Unless visible and obvious evidence of the presence of an unmarked facility exists, driving nonmetallic stakes by use of hand tools to a depth of 6 inches or less below existing grade does not constitute excavation.

(19) “Excavation ticket” means a document developed by the approved notification center pursuant to an excavator’s request for underground facilities to be marked. A ticket is valid for 12 business days after the day on which the ticket is transmitted by the approved notification center to a member. On the thirteenth day, the ticket will expire, and an update, remark, or new excavation ticket shall be required.

(20) “Excavator” means any person proposing to engage in or engaging in excavation or demolition work for that person or for another person.

(21) “Facility” means an underground or submerged conductor, pipe, or structure used to provide electric or communications service (including traffic control loops and similar underground or submerged devices); or an underground or submerged pipe used in carrying, providing, or gathering (typically between the wellhead and transmission line) gas, oil or oil product, sewage, water, or other liquid service (including irrigation systems), and appurtenances thereto.

(22) “Facility owner” or “facility operator” means the public utility or agency, political subdivision, municipality, authority, independent homeowner’s association, mobile home park, rural electric cooperative, or other person or entity who owns, operates, or controls the operation of an underground facility. The term does not include the following:

a. A person serving the person’s own property through the person’s own facility if the person does not provide service to any other person.

b. A person using a facility which the person does not own or operate if the facility serves only that person’s property.

(23) “Final design” means the engineering and construction drawings that are provided to a bidder or other person who is asked to initiate construction on the bid date or the date the project is set for construction in the absence of a bid.

(24) “Grade” means the surface of the earth (i.e. ground level) upon which a structure is built or prepared.

(25) “Locate” means to indicate the existence of a line or facility by establishing a mark through the use of stakes, paint, flagging, whiskers, or some other customary manner that approximately determines the location of that facility.

(26) “Locate request” means a communication between an excavator or designer and the approved notification center in which a request for locating underground facilities is processed.

(27) “Locator” means a person whose job is to locate facilities.

(28) “Meeting ticket” means a request for any combination of locators, excavators, designers, or facility owners or facility operators, to assemble on the site and discuss the project or proposed work. Such assembly and discussion must occur on all complex projects. Excavation may not be performed on a meeting ticket. Excavation tickets may not be submitted for the project until after the meeting ticket.

(29) “Notice” means the timely communication by the excavator or designer to the approved notification center that alerts the involved underground facility owner or facility operator of the intent to excavate.

(30) “Owner/operator/excavator information exchange system” means an interactive communication process or processes whereby all facility owners or facility operators that received an excavation notice from the approved notification center respond back to the approved notification center regarding the status or response that the facility owners or facility operators have made to the excavation notice; and whereby the approved notification center may post such notices for use by the excavator making the excavation notice.

(31) “Person” means any individual or public or private legal entity.

(32) “Positive response” means communication with the excavator prior to excavation to ensure that all contacted facility owners or facility operators have located their underground facilities and have appropriately marked any potential conflicts within the areas of planned excavation.

(33) “Private service” means a buried facility wholly owned and operated, on private property, by an entity or individual that is not in the business of providing a product or service via that buried facility.

(34) “Project owner” means any person who or which engages an excavator for any project which requires excavation work.

(35) “Public” means the general population or community at large.

(36) “Site” means the specific place denoted on the locate request when excavation or demolition work is being or is planned to be performed. A site should be denoted as a clearly defined bounded area, including relevant identifiable points of reference such as a specific address with a specific description as to the portion of the property, including descriptions such as front, back, left side as facing, right side as facing and directions such as north, south, east, west, or variants thereof. Where possible, the points should also reference the size and radius or circumference of the excavation, utility pad or pedestal numbers, utility pole numbers, markers, landmarks and the like, and latitude and longitude.

(37) “Staff” means full-time professional employees of, and outside counsel and consultants retained by, the Public Service Commission, who render advice to the Commission. The staff may participate in any Commission proceeding and may advocate particular positions concerning the issues raised in such proceeding and file supporting material and testimony for the Commission’s consideration.

(38) “Test Holes” means the exposure of a facility by safe excavation practices to ascertain the precise horizontal and vertical position of underground facilities. Accepted safe excavation practices vary by local jurisdiction, but the preferred techniques include hand digging with extreme caution and vacuum excavation.

(39) “Ticket” means a numbered document issued by the approved notification center to notify facility owners or facility operators that a person intends to perform excavation or demolition, or a designer has requested information on the location of underground facilities.

(40) “Tolerance zone” means the horizontal space within 24 inches of the outside wall or edge of a facility where special care is to be taken, when located by the facility owner or facility operator. No mechanized equipment will be allowed within the tolerance zone, except to remove the pavement or other manmade hard surface if used during the initial penetration only to the depth necessary and if an individual other than the equipment operator visually monitors the excavation activity. Vacuum excavation will be permitted within the tolerance zone.

(41) “Trenchless technology” means a family of methods, materials, and equipment capable of being used for the installation of new or replacement, or rehabilitation of existing, underground infrastructure that requires excavation with minimal disruption to surface traffic business and other activities. “Trenchless technology” includes:

a. Tunnelling.

b. Microtunnelling,

c. Horizontal directional drilling or directional boring.

d. Pipe ramming.

e. Pipe jacking.

f. Moling.

g. Horizontal auger boring.

h. Any other method for the installation of pipelines and cables below ground with minimal excavation.

(42) “Underground pipeline facility operator” means an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts.

(43) “Vacuum excavation” means a means of soil extraction through vacuum. Water or air jet devices are commonly used for breaking the ground.

(44) “White lining” means the process by which an excavator identifies where proposed excavation will occur by marking extents of the excavation area or by drawing a polygon shape on a GIS map. That shape is delivered electronically by the approved notification center to its member facility operators

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 72 Del. Laws, c. 323, §§ 1, 2; 85 Del. Laws, c. 345, § 1.)

§ 803. Duties of facility owners and facility operators.

It shall be the duty of each facility owner or facility operator:

(1) To participate in the approved notification center.

(2) To give written notice to such approved notification center which shall state all of the following:

a. The name of the facility owner or facility operator.

b. The location of the facility owner’s or facility operator’s lines.

c. The facility owner’s or facility operator’s office address (street, number and political subdivision) and the telephone numbers, email addresses, and points of contact to which inquiries may be directed as to the location of such facilities.

(3) To give like written notice within 5 business days after any of the matters stated in the last previous notice shall have changed.

(4) To provide positive response to requests from an excavator or facility owner or facility operator who identifies the site of excavation or demolition, or proposed excavation or demolition, for information as to the approximate location and type of the facility owner's or facility operator's facilities in the area, not more than 3 business days after receipt of such requests.

(5) To inform excavators or facility owners or facility operators who identify the site of excavation or demolition, or proposed excavation or demolition, not more than 3 business days after receipt of a request therefore, of the following:

a. If it is determined by a facility owner or facility operator that a proposed excavation or demolition is planned within 5 feet of a facility as measured in the horizontal plane and that the facility may be damaged, the facility owner or facility operator shall notify the person who proposes to excavate or demolish and shall physically mark the horizontal location of the facility within 24 inches of the facility on the ground by means of stakes, paint, or other suitable means. A facility owner or facility operator shall provide a positive response via the owner/operator/excavator information exchange system upon receipt from the system of a notice of excavation, even if it has no affected facilities at the site. This response shall be made in a manner consistent with the procedures established by the approved notification system.

b. When marking the location of an underground facility, an owner - member shall use the current color codes established by the American Public Works Association (APWA) for marking underground facilities.

(6) To respond to requests from designers who identify the site of excavation or demolition for information as to the approximate location and type of the facility owner's or facility operator's facilities in the area within 15 business days of receipt of a request. Information that may be provided includes, maps, digital files, GIS data, and plans. Physical markings are at the discretion of the facility owner.

(7) Upon receipt of a request pursuant to paragraphs (4), (5), or (6) of this section to assign such request an identifying number (which may be the same as the number assigned by the approved notification center in accordance with § 807(b)(5) of this title), inform the requestor of such number and maintain a record showing the name, address and telephone number of the requestor, the site to which the request pertains and the identifying number assigned to the request.

(8) To, where contained on its continuing property records, identify the location of a known facility's point of connection to its facilities, where the point of connection is not owned or operated by the facility owner or facility operator; however, such identification shall not impose any liability upon the facility owner or facility operator for the accuracy of the other facility's identification. The facility owner or facility operator shall locate all underground facilities within the State highway rights of way unless maintained by another facility owner or facility operator that is franchised by the Delaware Department of Transportation.

(9) To participate in preconstruction meetings for a complex project, if requested.

(10) If a facility owner or facility operator fails to become a member of the approved notification center in violation of this act and a facility or facilities of such nonmember facility owner or facility operator are damaged by an excavator by reason of such excavator's failure to notify the facility owner or facility operator because the facility owner or facility operator was not a member of the approved notification center, such facility owner or facility operator shall have no right of recovery from the excavator of any costs associated with the damage to its facilities. This provision shall not be in limitation of any other rights of the excavator.

(11) To assure that persons employed by it (or by contractors doing business for it) to perform facility location shall be trained in applicable locating industry standards and practices.

(12) To follow all applicable laws and regulations for installing, maintaining, locating, and recording facilities. This includes the installation of tracer wire or some other means of detection, and an access point within a protective enclosure in the public right-of-way for any newly installed or fully replaced nonmetallic pipes, including gas, water, and wastewater pipes.

(13) Except as provided in paragraph (14) of this section, all operators shall provide notification to the Public Service Commission within 15 working days, or as soon as practicable thereafter if notification cannot be provided within 15 days, of any facilities damage caused by excavation which results in "damage" as defined in § 802 of this title exceeding $3,000. Notification shall not be required for facilities damage to abandoned lines. The Public Service Commission may notify the Attorney General's office of such damage.

(14) All underground pipeline facility operators shall provide notification to the Public Service Commission as soon as practicable of any facilities damage caused by excavation which results in "damage" as defined in § 802 of this title to gas distribution and transmission lines, oil and petroleum products distribution and transmission lines, or dangerous materials, product lines or steam lines.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 405, § 1; 85 Del. Laws, c. 345, § 1.)

§ 804. Additional duties of facility owners and facility operators who are also underground pipeline facility operators.

It shall be the duty of each underground pipeline facility owner or facility operator to:

(1) Participate in the approved notification center.

(2) Provide as follows for inspection of pipelines that such operator has reason to believe could be damaged by excavation activities:

a. The inspection must be done as frequently as necessary during and after the excavation activities to verify the integrity of the pipeline; and

b. In case of blasting, any inspection must include leakage surveys.

(69 Del. Laws, c. 455, § 1; 85 Del. Laws, c. 345, § 1.)

§ 805. Duties of designers.

It shall be the duty of each designer:

(1) To contact the approved notification center and obtain the identity of facility owners or facility operators whose facilities are listed, as required by § 803 of this title, in the area of the proposed excavation or demolition.

(2) To obtain the information prescribed in § 803(6) of this title from each facility owner or operator identified as required by § 803(2) of this title.

(3) To show upon the drawing the type of each facility, derived pursuant to the request made as required in paragraph (2) of this section, the name of the facility owner or facility operator and telephone number of the approved notification center, and instructions to "notify the approved notification center not less than 3 business days, but no more than 12 business days, prior to the excavation or demolition activities.

(4) To meet with each facility owner or facility operator who requests more information on the scope of the project.

(5) To make reasonable efforts to prepare the construction drawings to avoid damage and minimize interference with a facility owner's or facility operator's facilities in the construction area consistent with existing easements or otherwise consistent with this statute where no easement exists.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 85 Del. Laws, c. 345, § 1.)

§ 806. Duties of excavators.

(a) Prior to undertaking any excavation or demolition activities, it shall be the duty of each excavator to:

(1) Ascertain the contact information of the approved notification center.

(2) Notify the approved notification center not less than 3 business days, but no more than 12 business days, prior to the day of the commencement of such work of the following:

a. The name of the person notifying the approved notification center.

b. The name, address, email address, and telephone number of the excavator.

c. The specific location, starting date and description of the intended excavation or demolition activity. If exact location cannot be determined, white line marking is highly recommended.

d. All tickets shall conform to the following:

1. The location of excavation or demolition is limited to a maximum length of 1,320 continuous feet.

2. If a proposed excavation is of such size or length that the facility owner cannot mark it within 2 days, then an excavator shall notify the owner where excavation will first be made and the remainder shall be marked by the owner within a reasonable time thereafter.

3. On extensive or contiguous construction, an excavator and a facility owner may enter into working agreements regarding the time periods for marking the excavation.

4. Individual tickets are required for any lot or parcel that is noncontiguous.

(3) Ascertain the location and type of facilities, and information prescribed by § 803(5) of this title and the identifying number or numbers assigned (pursuant to § 807 of this title) by the approved notification center in response to the notice prescribed in paragraph (a)(2) of this section by contacting the owner/operator/excavator information exchange system.

(4) Inform each person employed by the excavator at the site of such work of the information obtained pursuant to paragraph (a) (3) of this section. No excavation may begin until a positive response code of clear or no conflict or marked is received through the positive response system from each facility owner or facility operator through the Owner/Operator/Excavator Information Exchange System.

(5) Maintain in a prudent and careful manner all markings provided by facility owners or facility operators in accordance with the provisions of § 803 of this title and, in the event of the obliteration, destruction or removal of the markings, the excavator shall notify the approved notification center of the need for remarking of utility line by the operators. In the event of the obliteration, destruction, or removal of the markings, the excavator shall notify the approved notification center and follow § 806(a)(2) of this title.

(6) If visible and obvious evidence of the presence of an unmarked facility exists, the excavator shall attempt to designate the location of the facility prior to excavating through the means of a second request notification through the approved notification center positive response information system. The facility owner or facility operator, or facility owner's or facility operator's subsequent agents designated for facility locations, will have a maximum of 2 hours to respond to this request and designate the location of the unmarked facility.

(7) Excavate prudently and carefully and to take all reasonable steps necessary to properly protect, support and backfill underground facilities. This protection shall include but may not be limited to hand digging, within the limits of the planned excavation or demolition, starting 2 feet of either side of the extremities of the underground facility line for other than parallel type excavations and at reasonable distances along the line of excavation for parallel type excavations.

(8) Report immediately to the facility owner or facility operator any break in, or leak on, its facilities, any dent, gouge, groove, or other damage to such facilities or to the coating or cathodic protection made or discovered in the course of the excavation or demolition work.

(9) Alert immediately the occupants of any premise as to any emergency that the excavator may create or discover at or near such premises. Immediately notify 911 and the facility owner or facility operator if damage to a facility by the excavator results in the escape of any flammable, toxic or corrosive gas or liquid, or other event that endangers life, health, or property. The excavator shall take reasonable measures, based upon the excavator's knowledge, training, resources, experience, and understanding of the situation to protect the excavator, the excavator's employees, and those in immediate danger, and the environment, until the facility owner or facility operator or emergency responders have arrived, and shall remain on site to convey pertinent information to responders until directed to leave.

(10) No excavation may begin until a positive response code of clear or no conflict or marked is received through the positive response system from each facility owner or facility operator through the owner/operator/excavator information exchange system. The scheduled notification date shall exclude the date upon which notification was received by the approved notification center and shall exclude notification received on a Saturday, a Sunday, or a holiday, and such notifications shall be processed by the approved notification center as of the first business day following receipt.

(11) In the case of complex project, a preconstruction meeting shall take place at any time prior to the commencement of excavation, and the excavator, facility owner or facility operator, designer, or the facility owner's or facility operator's agents, shall attend the meeting. Notice of the meeting shall be given sufficiently in advance so as to permit attendance, either in person or otherwise, by the parties above, and shall include information sufficient to identify the scope of the work. Any facility owner or facility operator with facilities at the site may request a meeting with the excavator and such a meeting shall be held between the excavator and the facility owner or facility operator requesting the meeting.

(12) To exercise due care; and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all facilities where positions have been provided to the excavator by the facility owners or facility operators pursuant to this act. The excavator shall employ prudent techniques, which may include test holes, to ascertain the precise location of such facilities.

(13) An excavator shall assist a facility owner or facility operator in determining the involvement of the facility owner's or facility operator's facilities by disclosing additional available information requested by the facility owner or facility operator, including dimensions and the direction of the proposed excavation.

(14) If using horizontal directional drilling (HDD), the excavator shall use the best practices published by the current best practices.

(15) If, after receiving information from the approved notification center or directly from a facility owner or facility operator, the excavator decides to change the location, scope or duration of a proposed excavation, the excavator shall notify the approved notification center of the change.

(16) Excavators are encouraged to use test holes to ascertain the precise location of all facilities within 5 feet of the excavation and shall take extra precautions within the tolerance zone, as outlined in § 802 of this title. Excavators shall use test holes to ascertain the precise location of all facilities that contain hazardous or flammable substances within 5 feet of marked facilities such as natural gas or petroleum pipelines. If a test hole is dug and the facility is not found, the excavator shall cease excavation and notify the facility owner or facility operator of this fact immediately.

(b) The requirements of paragraphs (a)(1) through (6), (10), (11), (13), and (15) of this section shall not apply to an excavator performing excavation or demolition work in any emergency. However, excavators performing excavation or demolition activities in an emergency shall notify the approved notification center at the earliest practicable moment of the information prescribed in paragraph (a)(2) of this section.

(69 Del. Laws, c. 455, § 1; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 345, § 1.)

§ 807. Approved notification center.

(a) Utilities Service Protection Center of Delmarva, Inc. (USPCD) shall provide for the approved notification center.

(b) The approved notification center shall:

(1) Receive and record information prescribed by § 803 of this title regarding the location of facility owners' or facility operators' facilities within this State.

(2) Receive and record information prescribed by § 805 and § 806 of this title regarding notice by excavators or designers of intended excavation or demolition activity.

(3) Promptly transmit to the facility owners or facility operators identified in accordance with § 803 of this title, the information received as prescribed by paragraph (b)(2) of this section.

(4) Maintain records of each notice received in accordance with paragraph (b)(2) of this section for a period of not less than 6 years.

(5) Assign an identifying number to the notice prescribed in paragraph (b)(2) of this section.

(6) Notify those persons giving notice as prescribed by § 806 of this title, of the names of participating facility owners or facility operators to whom the notice will be transmitted as prescribed by paragraph (b)(3) of this section and approved notification center's identifying number assigned (pursuant to paragraph (b)(5) of this section) to the notice prescribed in paragraph (b)(2) of this section.

(7) Provide a toll-free telephone number for use by any person providing notice as prescribed by §§ 803, 805, and 806 of this title.

(8) Identify persons who normally engage in excavation activities in this State.

(9) Notify the persons identified in paragraphs (b)(7) and (8) of this section and the general public as often as necessary to make them aware of:

a. The existence of the approved notification center.

b. The purpose and general requirements of this chapter.

c. How to learn the location of facilities before excavation or demolition activities are begun.

d. The toll-free telephone number provided as required by paragraph (b)(7) of this section.

(10) Promptly transmit to the appropriate contact of DNREC the information contained in the notice by excavators or designers of intended excavation or demolition activity as to any DNREC regulated site.

(11) Determine the maximum geographic area that shall constitute a valid single notification and to determine when multiple notifications shall be required of any person, including the method, type, and number of notifications in a complex project.

(12) The duties of the approved notification system are the duties set forth in this section, and the duties assigned to other parties in this act are the duties of those parties and are not imputed to the approved notification center. The approved notification center is not responsible for the accuracy of the information provided to it by a third-party concerning excavation notification, nor is it responsible for what is done with that information when it is provided to facility owners or facility operators. The approved notification center is not liable to any person for damages arising out of its nonnegligent actions in furtherance of the duties imposed under this act, and then is liable only if its negligence was the proximate cause of the damages claimed.

(13) All requests for information shall be reviewed and provided in accordance with the procedures established by the approved notification center's board of directors or approved by them.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 72 Del. Laws, c. 323, § 3; 81 Del. Laws, c. 405, § 2; 85 Del. Laws, c. 345, § 1.)

§ 808. Exemptions.

(a) No penalties provided for in § 810 of this title shall apply to any excavation or demolition done by the owner of a private residence when such excavation or demolition is made entirely on the land on which the private residence is situated and provided there is no encroachment on any facility owner's or facility operator's rights-of-way or easement. However, this exemption shall have no effect on the civil liability of such private residence owner pursuant to § 811 of this title.

(b) No penalties provided for in § 810 of this title apply to any surface cultivation of the soil for agricultural purposes such as tilling, plowing, disking, etc. provided that it does not infringe on public rights of way or easements.

(69 Del. Laws, c. 455, § 1; 85 Del. Laws, c. 345, § 1.)

§ 809. Injunction; mandamus.

Whenever it appears that any person has engaged in, is engaging in, or is about to engage in excavation or demolition in a manner contrary to safe practices, thereby posing a threat or potential threat, of injury or damage to life, limb, or property, not necessarily limited to facilities, or has otherwise violated, is about to violate, or is violating any provision of this chapter, the Attorney General or any facility owner or facility operator or owner of an affected facility may institute an action for the purpose of having such excavation or demolition stopped or prevented, either by mandatory or prohibitive injunction, mandamus, or for other relief including interim equitable relief and punitive damages, in a court of competent jurisdiction in the county in which the excavation or demolition has occurred, is occurring, or is about to occur, or in which the defendant's or respondent's principal place of business is located. The procedure for all such proceedings shall be as provided in the rules of procedure in the court where said action is commenced or as established by the usual practice and procedure in said court. The court may join as parties any and all persons necessary to make its judgment or processes effective.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 85 Del. Laws, c. 345, § 1.)

§ 810. Penalties.

It is unlawful and a misdemeanor for any person to do any act forbidden, or fail to perform an act required by this chapter.

(1) Except as provided in paragraph (2) of this section, whoever, by action or inaction, violates a provision of this chapter may, for the first offense, be assessed a civil penalty not less than $100 nor more than $1000. For each subsequent like offense, such person may be assessed a civil penalty not less than $200 nor more than $5,000 for each violation.

(2) Facility owners and facility operators, excavators with a business license, and the approved notification center shall, upon violation of this subchapter, be subject to the following maximum civil penalties:

a. $1,000,000 for violations that result in a death.

b. $500,000 for violations causing damage to a structure.

c. $100,000 for all other violations.

In determining the amount of the civil penalty, consideration shall be given to the nature, circumstances and gravity of the violation, degree of culpability, history of prior violations, effect on ability to continue to do business, any good faith in attempting to achieve compliance, and other relevant factors.

(3) Any civil penalty imposed pursuant to this subchapter does not prevent any party from obtaining civil damages for personal injury or property damage in private actions.

(4) In all violations, except those resulting in death or damage to a structure, the Commission may determine that training provided by the approved notification center may be substituted in lieu of a civil penalty. For all violations resulting in civil penalties, training provided by the approved notification center shall also be required.

(5) Except in so far as may be necessary to implement § 116 of this title, all civil penalties related to this section shall be used by the Commission for 1 or more of the following purposes:

a. Public awareness programs.

b. Training and education programs for members and violators of this subchapter.

c. Improvements to the approved notification center.

d. Reduce the cost to members of the approved notification center.

(6) Any cost associated with a civil penalty to a facility owner or facility operator may not be collected by that facility owner or facility operator through rates to its customers.

(7) For violations that result in death or damage to a structure, the Attorney General may take enforcement authority pursuant to this subchapter. For all other violations involving civil penalties and violations where the Attorney General provides an affirmative waiver of enforcement authority, the Commission shall be the enforcement authority pursuant to this subchapter. The Commission has the authority to determine if any actions shall be taken as a result of violations of this subchapter, except in the event of death or damage to a structure, and to determine if training and education can be substituted in lieu of civil penalties.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 81 Del. Laws, c. 405, § 3; 85 Del. Laws, c. 345, § 1.)

§ 811. Civil liability.

(a) Obtaining information as required by this chapter does not excuse any person making any excavation or demolition from doing so in a careful and prudent manner, nor shall it excuse any person from liability for any damage or injury resulting from the excavation or demolition.

(b) If the information required to be provided by facility owners or facility operators pursuant to § 803 of this title is not provided in accordance with the terms thereof, any person damaging or injuring underground facilities of such facility owner or facility operator shall not be liable for such damage or injury except on proof of negligence.

(c) Failure by DNREC to notify or otherwise contact an excavator or designer prior to a properly noticed excavation or demolition at any DNREC Regulated Site shall not relieve such excavator or designer from complying with all applicable federal, state, county, or municipal laws or regulations, nor shall it create any liability in DNREC for any damage or injury resulting from any such excavation or demolition.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 72 Del. Laws, c. 323, § 4; 85 Del. Laws, c. 345, § 1.)

§ 812. Conviction not admissible.

A conviction under this chapter, even when obtained pursuant to a guilty plea, shall not be admissible in any civil proceedings involving personal injury, wrongful death or property damage.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1.)

§ 813. Effective date.

The effective date of this chapter shall be January 1, 1995.

(69 Del. Laws, c. 455, § 1; 26 Del. C. § 813; 85 Del. Laws, c. 345, § 1.)

Subchapter II

Pipeline Safety Compliance Programs

§ 821. Intrastate pipelines.

The Public Service Commission shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a), relating to the regulation of intrastate gas pipeline transportation. Such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under § 802 of this title.

(76 Del. Laws, c. 393, § 1; 85 Del. Laws, c. 345, § 1.)

§ 822. Interstate pipelines.

The Public Service Commission shall have the authority to enter into agreements with the Secretary of the United States Department of Transportation, pursuant to 49 U.S.C. § 60106(b), to participate in the oversight of interstate pipeline transportation. Such participation may include inspection and investigatory duties but shall not include the enforcement of safety standards for interstate pipeline facilities.

(76 Del. Laws, c. 393, § 1.)

Chapter 9
Telegraph, Telephone and Electric Utility Corporations
Subchapter I
General Provisions

§ 901. Location of lines; eminent domain.

(a) Any telegraph corporation, any telephone corporation or any corporation using lines or wires for the transmitting of electrical current, whether created by prior special act or organized under Chapter 1 of Title 8, may erect, construct and maintain its telegraph or telephone lines or its wires for transmitting electrical current and the necessary fixtures for the same through and across or under any of the canals and canal lands, rivers or other waters and also along any highways within the limits of this State, outside of highways within the limits of and maintained by incorporated cities and towns, subject to the approval or authority of the public authority having charge or control of such highways and also subject to the right of the owners of the fee on such highways and to the owners abutting upon such highways to full compensation to the extent that their property is taken or burdened.

(b) Whenever any such corporation cannot agree with any such owner as to purchase or damages, the corporation may proceed for the condemnation of any such franchises, easements, canals, canal lands, rivers or other waters or highways or burdens imposed upon landowners abutting upon any highways whether owners of the fee in the bed of such highways or not in manner prescribed by Chapter 61 of Title 10.

(c) All new extensions within a subdivision of electric distribution, telephone, and telegraph lines applied for after July 7, 1970 and necessary to furnish permanent service to new residential buildings in a subdivision having 5 or more building lots or to new multi-occupancy buildings, shall be placed underground, except in situations where the Public Service Commission of Delaware determines that the placing of such utility lines underground is not feasible from an economic, engineering or physical standpoint. Such extension of service shall be made by the utility in accordance with its rules and regulations which must be approved by the Delaware Public Service Commission.

(22 Del. Laws, c. 394, § 105; 27 Del. Laws, c. 189; Code 1915, § 2049; 33 Del. Laws, c. 106; Code 1935, § 2193; 26 Del. C. 1953, § 901; 57 Del. Laws, c. 686.)

§ 902. Powers and duties of telegraph and telephone corporations; regulation of use of public roads, streets, etc.

(a) Any telegraph or telephone corporation organized under Chapter 1 of Title 8, in addition to the powers conferred upon corporations generally, may occupy and use the public streets, roads, lanes, alleys, avenues, turnpikes and waterways within this State, or elsewhere, if it extends its lines and business, for the erection of poles and wires or cable or underground conduits, portions of which they may lease, rent or hire to other like companies.

(b) Before entering upon any street, road, lane, alley, avenue, turnpike or waterway the consent of the authorities having jurisdiction thereof shall have first been obtained and the same shall be used and occupied under such rules and regulations as are prescribed by such authorities.

(c) (1) The portions of the surfaces of the streets, avenues or alleys disturbed in laying the wires, cables or underground conduits shall be immediately restored to their original condition and any pavements which are removed for the purpose of laying or repairing the wires, cables or underground conduits shall be restored to as good condition as they were previous thereto and so maintained for 6 months after the completion of the work.

(2) In case of failure on the part of the corporation to so restore and maintain the same, the proper authorities having supervision of the streets, avenues and alleys may properly restore and maintain the same and the cost thereof may be recovered by the city, town or district from the corporation in any court of competent jurisdiction.

(d) (1) All posts or poles which are erected by authority conferred by this section shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the roads and highways.

(2) All wires fastened upon posts or poles so erected shall be placed at a height of not less than 18 feet above all road crossings except that the owner of said wires shall be solely responsible for removing them to whatever height necessary to eliminate any visual obstruction or any other interference between said wires and their appurtenances, and any traffic control device.

(e) The work shall be done at no cost to the Department of Transportation.

(f) That Department shall be the sole judge of the need to move the wires or appurtenances.

(g) All wires shall be not less than 23 feet above railroad crossings.

(h) No posts or poles shall be erected upon the soil or property of any person without first obtaining the written consent of the owner thereof.

(21 Del. Laws, c. 273, § 105; 22 Del. Laws, c. 166, § 19; 22 Del. Laws, c. 394, § 105; Code 1915, § 2048; Code 1935, § 2192; 26 Del. C. 1953, § 902; 60 Del. Laws, c. 196, § 1.)

§ 903. Consolidation of telegraph or telephone corporations.

(a) Any telegraph or telephone corporation of this State, whether created by prior special act or under Chapter 1 of Title 8, may consolidate with any other telegraph or telephone company incorporated under the laws of this State, or any other state, or of the United States, whose telegraph or telephone lines, within or without this State, connect or form continuous lines with the telegraph or telephone lines of the company so consolidated, subject to the provisions of Chapter 1 of this title. Such consolidation shall be made in the manner and by the proceedings prescribed in Chapter 1 of Title 8.

(b) The corporation created thereby shall be possessed of, exercise and enjoy all the rights, powers and privileges which Chapter 1 of Title 8 confers upon consolidated companies. It shall likewise be possessed of and exercise and enjoy all the franchises, rights, powers, privileges, immunities and benefits which any corporation of this State, constituent thereof, was possessed of or entitled to exercise under its charter or any law of this State. It shall be subject within this State to the conditions and restrictions imposed by its charter on any corporation of this State, constituent thereof.

(21 Del. Laws, c. 273, § 105; 22 Del. Laws, c. 166, § 19; 23 Del. Laws, c. 155, § 2; Code 1915, § 2048; Code 1935, § 2192; 26 Del. C. 1953, § 903.)

§ 904. Number of telephones on 1 line; penalty.

(a) No person or corporation operating, controlling or owning any telephone lines within this State known as party lines and for which the regular charge for separate telephones is at the rate of $20 or more per year shall have more than 8 telephones upon any 1 line.

(b) Whoever violates subsection (a) of this section shall be fined not less than $25 nor more than $100 for each offense.

(27 Del. Laws, c. 289, §§ 1, 2; Code 1915, § 3596; 32 Del. Laws, c. 198; Code 1935, § 4105; 26 Del. C. 1953, § 904.)

§ 905. Placement of telegraph wires.

Telegraph wires shall be attached to the poles at least 12 feet above the ground except where they enter a house. If any agent of a telegraph company having supervision of the line suffers this provision to be violated for 10 days after notice by mail directed to the agent at the post office nearest the agent's residence, the agent shall forfeit and pay $20 to anyone who will sue for the same.

(Code 1852, §§ 2883, 2884; Code 1915, § 4766; Code 1935, § 5229; 26 Del. C. 1953, § 905; 84 Del. Laws, c. 42, § 133.)

§ 906. Powers and duties of electric utility corporations; regulation of use of public roads, streets, etc.

(a) Every corporation organized under Chapter 1 of Title 8 for the purpose of constructing, maintaining and operating works for the supply and distribution of electricity for electric lights, heat or power, in addition to the powers conferred upon corporations generally, may use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures. The consent of the council, town commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district in or upon which the posts or poles are to be erected shall first, and as a condition precedent, be obtained.

(b) No posts or poles shall be erected in any street of any city or incorporated town except in those streets which are designated by the authorities thereof and then only in such place and manner as is thus designated, and the same shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the streets, highways and roads. The use of the public streets in any of the cities and incorporated towns of this State shall be subject to such regulations and taxation as may be first imposed by the corporate authorities of such cities and towns.

(c) No posts or poles shall be erected upon the soil or property of any person without first obtaining the consent in writing of the owner of the soil or property.

(d) Any wire crossing a railroad shall not be at a less elevation than 23 feet.

(21 Del. Laws, c. 273, § 101; 22 Del. Laws, c. 166, § 17; Code 1915, § 2044; Code 1935, § 2188; 26 Del. C. 1953, § 906.)

§ 907. Laying pipes, conduits or wires by electric utility corporations.

Every corporation mentioned in § 906 of this title may lay pipes, conduits or wires beneath the public roads, highways, streets, avenues and alleys as it deems necessary. The pipes, conduits and wires shall be laid at least 2 feet below the surface of the same and shall not in any way unnecessarily obstruct or interfere with public travel or damage public or private property. No public streets shall be opened for such purpose without the consent of the counsel of any city, or the town commissioners of any incorporated town, or other persons having control over the public roads, highways, streets, avenues and alleys. Such use of the public streets in any of the cities and towns of this State shall be subject to such regulations, taxation and restrictions as may be first imposed by the corporate authorities of such cities and towns.

(21 Del. Laws, c. 273, § 102; 22 Del. Laws, c. 166, § 17; Code 1915, § 2045; Code 1935, § 2189; 26 Del. C. 1953, § 907; 57 Del. Laws, c. 446.)

§ 908. Easements for public utilities across railroad property, rights-of-way, or occupations.

Any public utility operating within the State may acquire a utility easement for its public use in accordance with Chapter 61 of Title 10 whenever all the following conditions are met:

(1) The property on, over, under, along or across which the public utility easement is to be established:

a. Was previously owned by a railroad company, including a successor whose ownership interest derives, directly or indirectly, from the abandonment of the property use by a railroad company, or

b. Was subject to an easement, right-of-way or occupation for railroad purposes; and

(2) The railroad company's property interests have been extinguished by abandonment or otherwise; and

(3) Immediately prior to the time such railroad company's property interests were extinguished, a public utility held an easement, license, right-of-way, permission or occupation for public utility purposes that had been obtained from the railroad company; and

(4) The public utility and any owner or owners of the property cannot agree as to the terms and conditions of the acquisition by the public utility of a property interest for use for public utility purposes; and

(5) The property on which the utility easement to be acquired is not owned by the State or any of its agencies or political subdivisions; and

(6) The public utility exercises this authority in accordance with the provisions of Chapter 95 of Title 29.

(69 Del. Laws, c. 456, § 1.)

§ 909. Special duties of electric utility corporations organized as cooperatives.

(a) For the purposes of this section, the following definitions shall apply:

(1) "Cooperative electric utility" shall mean an entity incorporated in the State that is engaged primarily in providing electric service on a cooperative basis.

(2) "Member" shall mean any person currently or previously receiving electric service from a cooperative electric utility.

(3) "Nonescheat capital credits" means moneys due to any past member of a cooperative electric utility in retirement of capital allocated on a patronage basis to the account of such member for amounts received and receivable by the cooperative from the furnishing of electric energy to such member in excess of operating costs and expenses properly chargeable against the furnishing of electric energy, provided that a 5-year period has elapsed since such credits were retired and the members to which such amounts were allocated have not claimed them.

(b) A cooperative electric utility shall use all nonescheat capital credits, net of claims pursuant to subsection (g) of this section, to fund the following as authorized by the Board of Directors:

(1) Energy assistance and energy services for low income members.

(2) Energy efficiency, renewable energy, battery storage, electrification and emerging energy technology programs in its service area.

(3) Donations to such nonprofit charitable and community organizations.

(c) Nonescheat capital credits shall be expended within 3 calendar years after being deemed nonescheat capital credits. Nonescheat capital credits not expended within 3 calendar years shall be remitted to the State Escheator in the same manner as all other property subject to Chapter 11 of Title 12.

(d) Cooperative electric utilities shall publish an annual report to members no later than January 20 of each year. This report must be published on the cooperative electric utility's website and must specify the retired capital credits going unclaimed during the previous calendar year.

(e) Cooperative electric utilities shall make available the name, last known address and credit amount owed to past members requesting such information. In addition, the utility shall prominently display in all marketing materials directed at current and/or prospective members the name, office address and phone number of the individual or individuals within the corporation responsible for processing past member claims for the return of capital credits. Such information shall also be included in the annual report, the notice of the annual meeting and on any Internet site or sites maintained by the cooperative electric utility.

(f) In the event a cooperative electric utility ceases to do business in this State, or elects to recognize as a noncooperative business, all outstanding nonescheat capital credits shall be remitted to the State Escheator in the same manner as all other property subject to Chapter 11 of Title 12.

(g) Nothing in this section shall be construed to relieve a cooperative electric utility from refunding nonescheat capital credits on application by past members. Past members of a cooperative electric utility may file a claim for the return of funds deemed nonescheat capital credits, allocated to them at the time they were members. The cooperative electric utility shall provide standard claim forms with which all such members can file for a return of their nonescheat capital credits. No provision of a contract or agreement between the cooperative electric utility and a member or any statute of limitations shall limit the time period in which such a claim may be filed.

(71 Del. Laws, c. 448, § 3; 82 Del. Laws, c. 178, § 1.)

§ 910. Conditional use permit for electrical substations [For application of this section, see 85 Del. Laws, c. 44, § 2].

No county shall deny a conditional use permit to any electrical substation, along with any directly related project infrastructure, proposed to be located on unincorporated land within such county where the following conditions apply:

(1) The substation is being proposed to support the operation of a proposed renewable energy generation project of 250 MW or greater;

(2) The proposed substation would be located in a heavy industrial zone;

(3) An electrical substation is an allowed conditional use within the proposed zone; and

(4) The specific zoning district in which the proposed substation would be located already has an electric substation located in such zone with a rating of 230kv or greater as of August 3, 2023.

(85 Del. Laws, c. 44, § 1.)

Subchapter II

Caller Identification Service

§ 920. Definitions.

(a) The term "automatic number identification service" means an access signaling protocol in common use by common carriers that uses an identifying signal associated with the use of a subscriber's telephone to provide billing information or other information to the local exchange carrier or any other interconnecting carriers.

(b) The term "blocking" means a service that allows the originator of a call to prevent or control the transmission of information that identifies the originator to the recipient of the call.

(c) The term "caller identification" means the transmission of information that identifies the originator of a communication to the recipient of the communication via an electronic signal which is decoded by a customer provided display unit which displays, records or forwards the caller's telephone number or other identifying information. Such term shall not include:

(1) An internal office system, including but not limited to, a centrex or private branch exchange (PBX) system or virtual private network;

(2) An identification system used for emergencies, such as an emergency telephone line used by a public agency or a 911 emergency telephone service;

(3) Any identification service provided with legally sanctioned call tracing or tapping procedures; or

(4) Any automatic number identification service or technology.

(68 Del. Laws, c. 398, § 2.)

§ 921. Per line blocking.

Every provider of electronic or wire communication services that provides a caller identification service shall provide blocking on a per line basis without charge at the request of an originator that is a victim of domestic violence protected by a court order, a victim's service program or a battered women's shelter or other organization providing safe haven for victims of domestic violence.

(68 Del. Laws, c. 398, § 2; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Changes in Customer Selection of Telecommunications Service Providers

§ 922. Statement of purpose.

The General Assembly finds that competition in the telecommunications industry provides opportunities for initiating the unauthorized switching of a customer's telephone service provider without the customer's agreement or authorization, or the addition to a customer's bill of a product or service not authorized or requested by the customer. It is the purpose of this subchapter to protect telecommunications consumers from unauthorized changes in providers and unauthorized charges, and to protect ethical providers from unfair competition.

(72 Del. Laws, c. 487, § 1.)

§ 923. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Carrier" shall mean any person or entity offering to the public telecommunications service that originates or terminates within the State; provided, however, that the term "carrier" shall not include:

a. Any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivisions, public or private institutions of higher learning or municipal corporations;

b. A company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership, and does not offer such services to the available general public;

c. Providers of domestic public land mobile radio service provided by cellular technology; and

d. Payphone service providers.

(2) "Change order" shall mean any order changing a customer's designated carrier for local exchange service, intraLATA intrastate toll service or both.

(3) “Commission” shall mean the Delaware Public Service Commission.

(4) “Customer” shall mean a person who subscribes to local exchange services, intraLATA intrastate toll service or both.

(5) “Executing carrier” shall mean a carrier that effects a request that a customer’s carrier be changed.

(6) “Letter of agency” shall mean a separate document, or easily separable document, signed and dated by the customer or prospective customer, the sole purpose of which is to authorize a carrier to initiate a preferred carrier change.

(7) “Preferred carrier” shall mean any carrier providing service to a customer at the time this subchapter is enacted, or such carrier as the customer thereafter designates as the customer’s preferred carrier.

(8) “Submitting carrier” shall mean any carrier that requests on behalf of a customer that the customer’s carrier be changed, and seeks to provide retail services to an end user customer.

(72 Del. Laws, c. 487, § 1.)

§ 924. Prohibitions and changes in preferred carrier selection.

(a) No carrier shall bill for intrastate telecommunications services, nor solicit to provide intrastate telecommunication services, within the State, unless such carrier has received a certificate of public convenience and necessity from the Commission.

(b) No submitting carrier shall submit a change in the customer’s selection of a carrier prior to obtaining:

(1) Authorization from the customer; and

(2) Verification of that authorization in accordance with the procedures prescribed in this subchapter and implementing regulations of the Commission.

(c) No carrier shall bill or collect from any person a charge for any product or service to which such person has not agreed or subscribed, nor for any amount in excess of that specified in the tariff, price list or contract governing the charges for such services.

(72 Del. Laws, c. 487, § 1.)

§ 925. Verification of orders for telecommunications service.

(a) No carrier shall submit a preferred carrier change order unless and until the change order has first been confirmed in accordance with 1 of the following procedures:

(1) The carrier has obtained the customer’s written authorization;

(2) The carrier has obtained the customer’s electronic authorization; or

(3) An appropriately qualified independent third party has obtained the customer’s oral authorization to submit the change order.

(b) The Commission shall promulgate regulations governing the form and content of all authorizations permitted by this section.

(72 Del. Laws, c. 487, § 1.)

§ 926. Duty of executing carrier.

An executing carrier shall not verify the submission of a change in a customer’s selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this subchapter shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(72 Del. Laws, c. 487, § 1.)

§ 927. Letter of agency.

(a) A carrier may use a letter of agency to obtain written authorization and verification of a customer’s request to change that customer’s preferred carrier selection.

(b) The Commission shall promulgate regulations governing the form and content of letters of agency.

(72 Del. Laws, c. 487, § 1; 70 Del. Laws, c. 186, § 1.)

§ 928. Preferred carrier freezes.

(a) A customer may institute a preferred carrier freeze to prevent a change in such customer’s preferred carrier selection without that customer’s express consent.

(b) The Commission shall promulgate regulations governing the procedures for implementing and lifting preferred carrier freezes and the form and contents of solicitations or other materials provided to the customer regarding preferred carriers freezes.

(72 Del. Laws, c. 487, § 1; 70 Del. Laws, c. 186, § 1.)

§ 929. Customer protections.

The Commission shall promulgate regulations governing the procedures to be followed by the customer and carrier in the event that a customer believes that the customer’s carrier has been changed without the customer’s authorization or has caused or allowed the customer to be billed for unauthorized charges and remedies available for violations of the subchapter.

(72 Del. Laws, c. 487, § 1; 70 Del. Laws, c. 186, § 1.)

§ 930. Commission authority.

(a) The Commission is authorized to supplement the provisions hereof by promulgating such additional regulations that it deems necessary to achieve the purposes set forth in § 922 of this title.

(b) All Commission regulations promulgated pursuant to this subchapter shall be consistent with federal law.

(72 Del. Laws, c. 487, § 1.)

Chapter 10
Electric Utility Restructuring

§ 1001. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "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.

(2) "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.

(3) "Broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to retail electric customers.

(4) "Commission" means the Delaware Public Service Commission.

(5) "Community-owned energy generating facility" means a renewable energy generating facility, where the point of interconnection is located in the service area of a utility under the regulation of the Public Service Commission, that has multiple owners or customers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or customer. The facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities.

(6) "DEC" means the Delaware Electric Cooperative and its successors.

(7) "Demand-side management" means cost effective energy efficiency programs that are designed to reduce customers' electricity consumption, especially during peak periods.

(8) "Direct access" means the right of electric suppliers and their customers to use an electric distribution company's transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the electric distribution company's own use of the system to transmit or distribute electricity from any electric supplier to any customer.

(9) "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.

(10) "Distribution services" means those services, including metering, relating to the delivery of electricity to a customer through distribution facilities.

(11) "DP&L" means Delmarva Power & Light Company and its successors.

(12) "Electric distribution company" means a public utility owning and/or operating transmission and/or distribution facilities in this State.

(13) "Electricity demand response" has the same definition set forth in § 1501 of this title.

(14) "Electric supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, including:

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

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

c. Any broker, marketer or other entity (including public utilities and their affiliates).

(15) "Electric supply service" means the provision of electricity and related services to customers.

(16) "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.

(17) "Grid-integrated electric vehicle" means a battery-run motor vehicle that has the ability for 2-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.

(18) "Integrated resource planning" means the planning process of an electric distribution company that systematically evaluates all available supply options, including but not limited to: generation, transmission and demand-side management programs, during the planning period to ensure that the electric distribution company acquires sufficient and reliable resources over time that meet its customers' needs at a minimal cost.

(19) "Marketer" means a person or entity that purchases and takes title to electricity for sale to customers in this State.

(20) “Retail competition” means the right of a customer to purchase electricity from an electric supplier.

(21) “Retail electric customer” or “customer” means a purchaser of electricity for ultimate consumption and not for resale in this State, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

(22) “Returning customer service” means the electric supply service offered to customers with a peak monthly load of 1000 kW or more, which have left standard offer service as of April 30, 2007, and later decide to receive electric supply service from their electric distribution company. For purposes of determining customers eligible for returning customer service, peak monthly load shall be measured by the electric distribution company’s separate customer account, not by facility or service location or by customer, in aggregate or otherwise.

(23) “Standard offer service” means the provision of electric supply service after the transition period by a standard offer service supplier to customers who do not otherwise receive electric supply service from an electric supplier.

(24) “Standard offer service supplier” means the electric distribution company serving within its certificated service territory.

(25) “Transition period” means the period of time beginning with the implementation of retail competition and ending on the dates specified in § 1004 of this title.

(26) “Transmission facilities” means electric facilities located in Delaware, developed by public utilities or companies that are not public utilities, including those in offshore waters, and integrated with onshore electric facilities, 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. The term includes “offshore wind interconnection facilities” and “renewable energy interconnection facilities” as defined in § 203F of this title.

(27) “Transmission services” means the delivery of electricity from supply sources through transmission facilities.

(72 Del. Laws, c. 10, § 3; 73 Del. Laws, c. 157, § 4; 75 Del. Laws, c. 242, § 2; 77 Del. Laws, c. 188, § 3; 77 Del. Laws, c. 212, § 1; 77 Del. Laws, c. 453, § 1; 81 Del. Laws, c. 205, § 3; 83 Del. Laws, c. 178, § 3; 84 Del. Laws, c. 401, § 12; 85 Del. Laws, c. 241, § 1.)

§ 1002. Standards for electric utility restructuring.

The General Assembly declares that the following interdependent standards shall govern the Commission’s review and approval of each public utility’s restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry pursuant to this chapter.

(1) The reliability of electric service to all customers in this State shall be maintained.

(2) On and after the implementation dates set forth in § 1003 of this title, customers shall have the right to choose among electric suppliers.

(3) Nothing contained herein shall have the effect of abrogating or amending contracts between public utilities and any of their customers in place on February 1, 1999.

(4) On or after May 1, 2006, it is the policy of the State that electric distribution companies subject to the oversight of the Commission and as part of their obligation to be standard offer service suppliers shall engage in integrated resource planning for the purpose of evaluating and diversifying their electric supply options, efficiently and at the lowest cost to their customers.

(72 Del. Laws, c. 10, § 3; 75 Del. Laws, c. 242, § 3.)

§ 1003. Retail competition.

General rule. — Except as otherwise expressly provided for in this chapter, on and after May 1, 2006, the generation, supply and sale of electricity, including all related facilities and assets, used to serve standard offer service and returning customer service, shall be treated as a public utility service or function. Customers of electric distribution companies in this State shall continue to have the opportunity, but not the obligation, to purchase electricity from their choice of electric suppliers as expressly provided for in this chapter.

(72 Del. Laws, c. 10, § 3; 75 Del. Laws, c. 242, § 4.)

§ 1004. Transition period.

(a) The transition period for DP&L shall begin on October 1, 1999, and shall end on September 30, 2002, for nonresidential customers and shall begin on October 1, 1999, and end on September 30, 2003, for residential customers.

(b) The transition period for DEC shall begin on April 1, 2000, and shall end on March 31, 2005, for all customers.

(72 Del. Laws, c. 10, § 3.)

§ 1005. Restructuring plan.

(a) *Restructuring plan for DP&L.* — (1) *Filing and contents of plan.* — On or before April 15, 1999, DP&L shall file with the Commission a detailed plan for implementing retail competition in DP&L’s commission-designated service territory. Such plan shall include:

a. Separate prices or rates for electric supply, transmission, distribution and other services (which may later be combined for billing purposes);

b. Procedures for providing direct access for all electric suppliers;

c. Revised tariffs and rate schedules;

d. An optional residential time of use rate with three daily time of use periods to be available for any residential customer who elects such a rate structure; and

e. Standards for reliability sufficient to measure variations in service reliability after the implementation of retail competition.

(2) *Commission review of plan.* — The Commission shall review DP&L's restructuring plan and, after an evidentiary proceeding, issue an order by August 31, 1999, adopting the plan as filed or modifying the plan as appropriate.

(b) *Restructuring plan for DEC.* — (1) *Filing and contents of plan.* — On or before September 15, 1999, DEC shall file with the Commission a detailed plan for implementing retail competition in DEC's Commission-designated service territory. Such plan shall include:

a. Separate prices or rates for electric supply, transmission, distribution and other services (which may later be combined for billing purposes);

b. Procedures for providing direct access for all electric suppliers;

c. Revised tariffs and rate schedules;

d. DEC's proposed competitive transition charge, including the proposed method, recovery plan and determination of DEC's stranded and transition costs, as such terms are defined in [former] § 1007 of this title; and

e. Standards for reliability sufficient to measure variations in service reliability after implementation of retail competition.

(2) *Commission review of plan.* — The Commission shall review DEC's restructuring plan and, after an evidentiary proceeding, issue an order by February 28, 2000, adopting the plan as filed or modifying the plan as appropriate.

(72 Del. Laws, c. 10, § 3.)

§ 1006. Rates for customers.

(a) Rates for customers within DP&L's service territory.

(1) DP&L is required to offer both standard offer service and returning customer service, except that returning customer service shall only apply to customers meeting the definitional load characteristics for such service. Customers on returning customer service may return to standard offer service after receiving returning customer service for a minimum of 12 consecutive months.

(2) After May 1, 2006, rates for customers taking standard offer service shall be adjusted in accordance with subchapter III of Chapter 1 of this title. The Electric Utility Retail Customer Supply Act of 2006, 75 Del. Laws, c. 242, shall not have any effect on contractual arrangements between the standard offer service supplier and successful bidders entered into as a result of the recently conducted bidding process for standard offer service in Public Service Commission Docket No. 04-391. Any rates derived from that process shall be determined by the Commission pursuant to that docket, except as permitted in paragraph (a)(3) of this section.

(3) With respect to rate increases for standard offer service to be effective on May 1, 2006, residential and small commercial customers of DP&L, depending on rate classification, shall have the ability to opt out of the following rate deferral plan:

Date	Rate % Increase
5/1/2006	15%
1/1/2007	25%
6/1/2007	19%
1/1/2008	True-up/Balance

The limitations on rate increases specified in this section shall be accomplished by applying appropriate credits/charges per kilowatt hour to customer bills. The same credits/charges per kilowatt hour shall be applied regardless of whether the customer is receiving standard offer service or purchasing electricity from an electric supplier.

a. A customer not opting out of the deferral plan will be placed on a nonbypassable tariff, under which the customer will be responsible for all of that customer's incurred deferral amounts including carrying costs of the plan.

b. Customers will have from April 1, 2006, to April 28, 2006, to affirmatively opt out of this plan.

c. Upon completion of the deferral plan, customers on the plan will be returned to their original rate classification, subject to any past due amounts owed while on the plan. The "True-up/Balance" to be instituted on January 1, 2008, shall provide for equal monthly installment amounts designed to recover all deferral amounts by each customer by not later than June 1, 2009, as well as the full standard offer service charges and all other tariff charges then in effect.

d. Except as otherwise provided for in the Electric Utility Retail Customer Supply Act of 2006, 75 Del. Laws, c. 242, customers enrolled in the deferral plan will be able to purchase electricity from an electric supplier and will continue to receive the same credits/charges specified in this section.

e. If determined to be in the public interest, the Commission shall have the authority after January 1, 2007, to adjust the deferral plan to take advantage of any downward movement of standard offer service rates.

(4) Rates for customers on returning customer service shall be based on the regional spot market plus DP&L's reasonable costs of procuring such supply for this group of customers.

(5) In addition to the standard offer service price or the alternative electric supplier's supply price, each customer shall pay the separate applicable rates for transmission, ancillary, distribution, nuclear decommissioning and other services. Such rates shall not include any generation or electric supply costs.

(6) Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DP&L's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier.

(b) Rates for customers within the DEC service territory.

(1) DEC is required to offer both standard offer service and returning customer service, except that returning customer service shall only apply to customers meeting the definitional load characteristics for such service.

(2) After May 1, 2006, rates for customers taking standard offer service shall be adjusted in accordance with subchapter III of Chapter 1 of this title.

(3) Rates for customers on returning customer service shall be based on the regional spot market plus DEC's reasonable costs of procuring such supply for this group of customers.

(4) In addition to the standard offer service price or the alternative electric supplier's supply price, each customer shall pay the separate applicable rates for transmission, ancillary, distribution, nuclear decommissioning and other services. Such rates shall not include any generation or electric supply costs.

(5) Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DEC's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier.

(72 Del. Laws, c. 10, § 3; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 242, § 5.)

§ 1007. Standard offer service and returning customer service supplier obligation.

(a) All electric distribution companies subject to the jurisdiction of the Commission shall be the standard offer service supplier and returning customer service supplier in their distribution service territories. Customers on returning customer service may return to standard offer service after receiving returning customer service for a minimum of 12 consecutive months.

(b) Subject to the approval of the Commission, the standard offer service provider to meet its electric supply requirements shall have the ability to:

(1) Enter into short- and long-term contracts for the procurement of power necessary to serve its customers;

(2) Own and operate facilities for the generation of electric power;

(3) Build generation and transmission facilities (subject to any other requirements in any other section of the Delaware Code regarding siting, etc.);

(4) Make investments in demand-side resources; and

(5) Take any other Commission-approved action to diversify their retail load.

In order to take such action, DP&L as a standard offer service supplier must file an application with the Commission or have had such action approved as part of its integrated resource plan pursuant to subsection (c) of this section. If DP&L as a standard offer service supplier files an application under this subsection, then the Commission shall hold an evidentiary hearing on DP&L's request and shall approve the request if the Commission finds that such action is in the public interest. If the Commission approves such a request, the Commission shall review all reasonable incurred costs of the contracts, facilities or programs in accordance with subchapter III of Chapter 1 of this title. Costs from these projects which have been approved by the Commission shall be included in standard offer service rates.

(c) (1) DP&L is required to conduct integrated resource planning. On December 1, 2006, and on the anniversary date of the first filing date of every other year thereafter (i.e., 2008, 2010 et seq.), DP&L shall file with the Commission, the Controller General, the Director of the Office of Management and Budget and the Energy Office an integrated resource plan ("IRP"). After the filing of DP&L's December 2016 IRP, an IRP filing shall be made when DP&L elects to change its source of supply pursuant to paragraphs (b)(2)-(5) of this section or as the Commission may otherwise direct. In its IRP, DP&L shall systematically evaluate all available supply options during a 10-year planning period in order to acquire sufficient, efficient and reliable resources over time to meet its customers' needs at a minimal cost. The IRP shall set forth DP&L's supply and demand forecast for the next 10-year period, and shall set forth the resource mix with which DP&L proposes to meet its supply obligations for that 10-year period (i.e., demand-side management programs, long-term purchased power contracts, short-term purchased power contracts, self generation, procurement through wholesale market by RFP, spot market purchases, etc.).

a. As part of its IRP process, DP&L shall not rely exclusively on any particular resource or purchase procurement process. In its IRP, DP&L shall explore in detail all reasonable short- and long-term procurement or demand-side management strategies, even

if a particular strategy is ultimately not recommended by the company. At least 30 percent of the resource mix of DP&L shall be purchases made through the regional wholesale market via a bid procurement or auction process held by DP&L. Such process shall be overseen by the Commission subject to the procurement process approved in PSC Docket #04-391 as may be modified by future Commission action.

b. In developing the IRP, DP&L may consider the economic and environmental value of:

1. Resources that utilize new or innovative baseload technologies (such as coal gasification);

2. Resources that provide short- or long-term environmental benefits to the citizens of this State (such as renewable resources like wind and solar power);

3. Facilities that have existing fuel and transmission infrastructure;

4. Facilities that utilize existing brownfield or industrial sites;

5. Resources that promote fuel diversity;

6. Resources or facilities that support or improve reliability; or

7. Resources that encourage price stability.

The IRP must investigate all potential opportunities for a more diverse supply at the lowest reasonable cost.

c. The Commission shall have the authority to promulgate any rules and regulations it deems necessary to accomplish the development of IRPs by DP&L. Commencing in 2009, DP&L shall submit a report to the Commission, the Governor and the General Assembly detailing its progress in implementing its IRPs.

d. The costs that DP&L incurs in developing and submitting its IRPs shall be included and recovered in DP&L's distribution rates.

(2) The DEC shall annually prepare a 10-year plan detailing its energy supply requirements and planned procurement strategies to meet forecasted demand. Said plan shall be submitted to the Public Service Commission, Controller General's Office and Office of Management and Budget. Said plan shall be filed by January 31, 2007, and January 31 of each subsequent year thereafter.

(d) As part of the initial IRP process, to immediately attempt to stabilize the long-term outlook for standard offer supply in the DP&L service territory, DP&L shall file on or before August 1, 2006, a proposal to obtain long-term contracts. The application shall contain a proposed form of request for proposals ("RFP") for the construction of new generation resources within Delaware for the purpose of serving its customers taking standard offer service. Such proposed RFP shall include a proposed form of output contract which shall include capacity and energy and may include ancillary electric products and environmental attributes between the electric distribution company and developers of new generation facilities, which contract shall have a term of no less than 10 years and no more than 25 years. Such RFP shall also set forth proposed selection criteria based on the cost-effectiveness of the project in producing energy price stability, reductions in environmental impact, benefits of adopting new and emerging technology, siting feasibility and terms and conditions concerning the sale of energy output from such facilities.

(1) The Commission and Energy Office may approve or modify the elements of the RFP prior to its issuance. The Commission and Energy Office shall ensure that each RFP elicits and recognizes the value of:

a. Proposals that utilize new or innovative baseload technologies;

b. Proposals that provide long-term environmental benefits to the state;

c. Proposals that have existing fuel and transmission infrastructure;

d. Proposals that promote fuel diversity;

e. Proposals that support or improve reliability; and

f. Proposals that utilize existing brownfield or industrial sites.

Such RFP shall be issued no later than November 1, 2006. Proposals will be due no later than December 22, 2006.

(2) DP&L shall publish such request for proposals in 1 or more newspapers or periodicals with general circulation, as selected by the Commission, and shall post such request for proposals on its web site. The Commission, the Director of the Office of Management and Budget, the Controller General and the Energy Office shall retain the services of an independent third-party entity with expertise in the area of energy procurement at the expense of DP&L to oversee the development of the request for proposals and to assist them in their review of proposals pursuant to paragraph (d)(3) of this section. Public service companies shall be eligible to participate in such RFP process through unregulated affiliated companies that meet the Commission's criteria to ensure that such affiliates are sufficiently financially and functionally separate from the regulated utility operations to prevent subsidization of the generation project by the regulated operations and to eliminate any other advantages from the affiliation with regulated operations.

(3) The Commission, the Director of the Office of Management and Budget, the Controller General and the Energy Office shall, on or before February 28, 2007, evaluate such proposals and may determine to approve 1 or more of such proposals that result in the greatest long-term system benefits, including those identified in paragraph (1) of this subsection, in the most cost-effective manner. Once 1 or more of the contracts have been finalized and approved by the Commission, the Director of the Office of Management and Budget, the Controller General and the Energy Office, then DP&L shall enter into such contract or contracts.

(e) Electric distribution companies are required to provide returning customer service to qualifying returning customers.

(72 Del. Laws, c. 10, § 3; 75 Del. Laws, c. 242, § 6; 81 Del. Laws, c. 315, § 1.)

§ 1008. Duties of electric distribution companies.

(a) Each electric distribution company shall maintain its facilities and provide products and services which are safe, efficient, sufficient, adequate, and reliable. Each electric distribution company shall implement procedures to require all electric suppliers to deliver energy to the electric distribution company at locations and in amounts which are adequate to meet each supplier's obligations to its customers. Unless otherwise ordered by the Commission, each Commission-regulated electric distribution company shall not recover in rates annual nonmandatory capital spending in excess of: for years 2026 and 2027, $70,000,000.00; and for year 2028 and continuing thereafter, 5% of its rate base approved in its most recent base rate case. For purposes of this section, nonmandatory capital spending shall mean all capital spending by the electric distribution company, except spending:

(1) On its vegetation management program.

(2) On its inspection and maintenance program.

(3) Related to new business and new customer requirements.

(4) On facility relocations.

(5) On required statutory and regulatory requirements.

(6) On emergency failures.

(b) (1) The Commission is hereby granted the authority to require DP&L subject to its jurisdiction to develop and implement demand-side management programs designed to reduce overall electricity consumption by its customers and/or to reduce usage by customers during peak periods, such as time of use rates, advanced metering infrastructure, central air-conditioning and hot water heating cycling off and on programs, interruptible rates, etc. However, in no such instance shall electric distribution companies subject to the Commission's jurisdiction be authorized to implement peak time billing. Upon development of such demand-side management program or programs, DP&L shall file such program or programs with the Commission for the Commission's review and approval.

a. The costs that DP&L incurs in developing and implementing their demand-side management programs, as well as the costs incurred by DP&L in administering all demand-side management programs approved for implementation by the Commission, shall be included and recovered in DP&L's distribution rates.

b. By June 5, 2006, the Commission shall open a docket to evaluate the desirability, feasibility and cost effectiveness of requiring advanced metering technology, including time of use metering to be utilized throughout or selectively in the service territories of DP&L. The Commission may require that such a technology be deployed in a cost effective manner after such evaluation has been made and hearings have been held. As part of the evaluation, the Commission shall review all customer pricing implications of any particular metering technology investigated. The Commission shall not authorize such technology to be deployed in a manner that permits 30-day peak demand billing except as approved by the General Assembly.

c. The Commission shall have the authority to promulgate any rules and regulations it deems necessary to accomplish the development and implementation of demand-side management programs by DP&L.

(2) DEC shall, at a minimum, maintain its current efforts in providing demand-side management programs. DEC shall report on its demand-side management efforts to the Public Service Commission, Controller General and Director of the Office of Management and Budget by January 31, 2007, and January 31 of each subsequent year thereafter.

(c) A Commission-regulated electric utility has no obligation to provide distribution service to a large energy use facility unless the facility has entered into an electric service agreement approved by the Commission under § 203G of this title. Nothing in this subsection shall be construed to do either of the following:

(1) Require a large energy use facility to take electric supply service from the Commission-regulated electric utility.

(2) Limit the ability of a large energy use facility to take electric supply service from a certified electric supplier in accordance with Chapter 10 of this title.

(72 Del. Laws, c. 10, § 3; 74 Del. Laws, c. 73, § 3; 75 Del. Laws, c. 242, § 7; 85 Del. Laws, c. 342, § 4; 85 Del. Laws, c. 440, § 4.)

§ 1009. Reciprocity.

Notwithstanding any other provision of this chapter, unless an electric utility, including a municipally-owned electric utility or a municipal electric company, has implemented a restructuring plan that provides for retail competition in its Delaware service territory, such electric utility may not use the transmission or distribution facilities of a nonaffiliated electric utility to make sales to customers in such nonaffiliated electric utility's Delaware service territory; nor shall such electric utility own or receive, directly or indirectly, any economic interest in any entity which uses the transmission or distribution facilities of a nonaffiliated electric utility to make sales to customers in such nonaffiliated electric utility's Delaware service territory.

(72 Del. Laws, c. 10, § 3.)

§ 1010. Electric distribution companies' obligation to serve customers.

(a) The standard offer service supplier shall provide standard offer service which is safe, efficient, adequate and reliable. The Commission may take appropriate actions to ensure that the standard offer service supplier provides such safe, adequate, efficient and reliable standard offer service.

(b) The Commission shall promulgate rules and regulations governing the amount of notice that a customer who desires to return to the standard offer service supplier must provide, the minimum amount of time that a customer must take service from a standard offer service supplier, and the amount of charges that may be assessed against a customer who leaves the standard offer service supplier and later returns to the standard offer service supplier, including the appropriate retail market price, which may be higher than the standard offer service price.

(c) After hearing and a determination that it is in the public interest, the Commission is authorized to restrict retail competition and/or add a nonbypassable charge to protect the customers of the electric distribution company receiving standard offer service. The General Assembly recognizes that electric distribution companies are now required to provide standard offer service to many customers who may not have the opportunity to choose their own electric supplier. Consequently, it is necessary to protect these customers from substantial migration away from standard offer service, whereupon they may be forced to share too great a share of the cost of the fixed assets that are necessary to serve them as required by the Electric Utility Retail Customer Supply Act of 2006, 75 Del. Laws, c. 242.

(72 Del. Laws, c. 10, § 3; 74 Del. Laws, c. 73, §§ 4, 5; 75 Del. Laws, c. 242, § 8.)

§ 1011. Metering and billing.

(a) The following provisions shall govern metering and billing for customers in DP&L's service territory:

(1) Each customer shall have the right to choose to receive separate bills from DP&L and from its electric supplier, or to receive a combined bill from either DP&L or its electric supplier, for electric supply, transmission, distribution, ancillary and other services, consistent with the regulations of the Commission.

(2) If the customer does not elect a billing option, DP&L shall be responsible for billing customers for all electric supply, transmission, distribution, ancillary and other services, regardless of the identity of the provider of electric supply service.

(3) Customer bills shall contain sufficient detail to enable the customer to determine the basis for all charges.

(4) During the transition period, DP&L shall continue to own all meters and perform all meter-reading functions. After the transition period, or earlier if requested by DP&L, the Commission may permit others to provide some or all of such metering functions on a competitive basis.

(b) The following provisions shall govern metering and billing for customers in DEC's service territory:

(1) DEC shall continue to bill each Customer for:

a. That customer's electric supply service, regardless of the electric supplier, and

b. Transmission, distribution, ancillary and other services.

(2) All customers in DEC's service territory shall continue to be members of DEC and the revenues for DEC's services shall continue to be treated as member revenue to DEC.

(3) DEC shall continue to own and operate meters and perform meter reading functions in its Commission-designated service territory.

(72 Del. Laws, c. 10, § 3.)

§ 1012. Certification of electric suppliers.

(a) Certification requirements. —

Prior to doing business in Delaware, every electric supplier seeking to provide electric supply service to customers shall obtain a certificate from the Commission. The Commission shall promulgate rules and regulations governing the information that electric suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate. The failure by any electric supplier to comply with any of the requirements promulgated by the Commission shall result in penalties, including monetary assessments, suspension or revocation of the electric supplier's certificate, or other sanctions.

(b) Rules and regulations. —

The Commission may promulgate rules and regulations with respect to electric suppliers and electric supply service to protect customers after the implementation of retail competition, including those related to standardized customer information billing, service terms and conditions, dispute procedures, changing suppliers and standards for suppliers who offer environmentally-advantageous "Green Power" options, such as electricity generated from renewable resources, biomass, hydroelectric and other such generating sources. All electric suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State. Electric suppliers shall not solicit customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.

(c) Fees and assessments. —

(1) Electric suppliers required to obtain a certificate to provide retail electric supply service shall pay an application fee of $750.

(2) For purposes of §§ 114 (Charges and fees; costs and expenses of proceedings), 115 (Public policy; regulatory assessment; definition of revenue; returns; collection of assessment), and 116 (Delaware Public Service Commission Revolving Fund; deposit of moneys collected) of this title, an electric supplier shall be deemed to be a "public utility" as defined in § 102 of this title.

(72 Del. Laws, c. 10, § 3; 75 Del. Laws, c. 242, § 9; 82 Del. Laws, c. 11, § 9; 85 Del. Laws, c. 315, § 1.)

§ 1013. Market power remediation.

(a) On or after October 1, 1999, upon complaint or upon its own motion, for good cause shown, the Commission may conduct an investigation of the retail electric supply service market and whether the function of that market is being adversely affected by market power arising from the ownership or control of facilities and equipment used to provide electric supply service.

(b) If, as a result of an investigation conducted under this section, the Commission has reason to believe that market power in the relevant market under the Commission's jurisdiction is preventing retail electric customers in the State from obtaining the benefits of retail competition, the Commission may take remedial actions to mitigate the impact of such activities, including ordering divestiture. However, in the case of divestiture, the Commission may only order divestiture of generating assets of a public utility and only in an extreme situation and as a last resort measure.

(72 Del. Laws, c. 10, § 3.)

§ 1014. Public purpose programs and consumer education [For application of this section, see 85 Del. Laws, c. 83, § 2; c. 448, § 2].

(a) In separating the rates or prices for DP&L's services under § 1005(a) of this title, the Commission shall reassign to the separate transmission and distribution rates of each rate class from the total base rates $0.000356 per kilowatt-hour to be deposited each month by DP&L into an environmental incentive fund effective on October 1, 1999. Such fund shall be known as the "Green Energy Fund" and all moneys deposited into the Green Energy Fund shall be transferred in their entirety on the July 1 of each year to the State Energy Office to fund environmental incentive programs for conservation and energy efficiency in the State. The State Energy Office shall submit to the General Assembly by May 30 of each year a written accounting of moneys received from the fund during the previous year and how those moneys were used or disbursed during that year.

(b) The Commission shall further reassign to the separate transmission and distribution rates of each rate class from the total base rates $0.000095 per kilowatt-hour to be deposited each month by DP&L into a Low-Income Pogram Fund effective on October 1, 1999. Such fund shall be administered by the Department of Health and Social Services, Division of State Service Centers and shall be used to fund low-income fuel assistance and weatherization programs within DP&L's service territory.

(c) The Commission shall establish a working group by June 1, 1999, comprised of representatives of the Commission, electric utilities, electric suppliers, the Division of the Public Advocate, environmental community, consumers, a member of the House of Representatives appointed by the Speaker of the House, a member of the House of Representatives appointed by the Minority Leader of the House, a member of the Senate appointed by the President Pro Tempore of the Senate, a member of the Senate appointed by the Minority Leader of the Senate and other interested parties to design and implement a consumer education program, including "Green Power" options, to prepare the citizens of Delaware for retail competition. The Commission shall direct the payment of up to a total of $250,000 from DP&L and DEC (apportioned on the 1998 kw Delaware retail sales of each entity) for the purpose of providing customer education materials to citizens of Delaware in connection with retail competition.

(d) The Commission, municipal electric companies, and electric cooperatives during any period of exemption under § 223 of this title shall each promulgate rules and regulations that provide for net energy metering for customers who own and operate, lease and operate, or contract with a third party that owns and operates an electric generation facility that:

(1) Has a capacity that:

a. For residential customers of DP&L, DEC, and municipal electric companies, has a capacity of not more than 25 kW;

b. For farm customers as described in § 902(2) of Title 3 who are customers of DP&L, DEC, or municipal electric companies that receive distribution service under a residential tariff or service offering, does not exceed more than 150 kW. On a case by case basis the Delaware Department of Natural Resources and Environmental Control shall review a farm's application for a system above 150 kW by comparing the output of the system to the energy requirements of the farm and may grant a waiver to increase the size of the system above the 150 kW limit. The Delaware Department of Natural Resources and Environmental Control shall promulgate rules and regulations for such waivers in consultation with any commission-regulated electric utilities. Such waivers for DEC or municipal electric company customers shall be approved by DEC or the municipal electric company serving said customer;

c. For nonresidential customers, is not more than 2 megawatts per DP&L meter, and 500 kW per DEC or municipal electric company meter. DEC and municipal electric companies are encouraged to provide for net-metering up to a capacity of not more than 2 megawatts for nonresidential customers.

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

(3) Is located on the customer's premises;

(4) Is interconnected and operated in parallel with an electric distribution company's transmission and distribution facilities; and

(5) Is designed to produce no more than 110% of the host customer's expected aggregate electrical consumption, calculated on the average of the 2 previous 12-month periods of actual electrical usage at the time of installation of energy generating equipment. For new building construction, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment. Subject to the effective dates in subsection (e) of this section, commission-regulated electric utilities, municipal electric companies, and electric cooperatives during any period of exemption under § 223 of this

title, shall not, at the end of the annualized billing period, reimburse, credit, or otherwise remunerate the net energy metering customer for any Excess kWh Credits.

(e) The rules and regulations promulgated for net energy metering by the Commission, municipal electric companies, and electric cooperatives during any period of exemption under § 223 of this title must consider the reliability, safety, and capacity of the electric distribution system and:

(1) a. Provide for customers to be credited in kilowatt-hours (kWh) for any excess production of their generating facility that exceeds the customer's on-site consumption of kWh in a billing period (an "Excess kWh Credit"). Excess kWh Credits shall be credited to subsequent monthly billing periods to offset a customer's consumption in those billing periods. Excess kWh Credits at the end of an annualized billing period shall carry over to subsequent annualized billing periods. For nonresidential customers that are not a farm customer described in § 902(3) of Title 3, the Commission, municipal electric companies, and electric cooperatives during any period of exemption under § 223 of this title may impose a limit on the amount of Excess kWh Credits that may be carried forward at the end of an annualized billing period. Commission-regulated electric utilities shall be permitted to recover implementation costs including the billing system information technology costs incurred because of the carry over of Excess kWh Credits to subsequent annualized billing periods.

b. Effective January 1, 2024, for commission-regulated utilities for existing and future net energy metering customers, both residential and nonresidential, the monthly Excess kWh Credit shall be valued at the sum of the volumetric (kWh) components of the supply service charges and distribution service charges, not including the charges for societal benefits programs, according to each participating customer account's rate schedule. Any Excess kWh Credits shall not reduce any fixed monthly customer charges imposed by the electric distribution company. The customer-generator retains ownership of all renewable energy credits (RECs) associated with electric energy produced unless the customer has relinquished such ownership by contractual agreement with a third party or by other means. This paragraph (e)(1) does not apply to customers participating in a community-owned energy generating facility, as the provisions regarding community-owned energy generating facilities are addressed elsewhere in the Delaware Code. "Societal benefits program" means a program required by law in which a benefit to the public at large accrues as a result of its implementation. Societal benefits programs include:

1. Green Energy Fund under subsection (a) of this section.

2. Low-Income Program Fund under subsection (b) of this section.

3. Charges incurred by the utility in complying with the state mandated renewable energy portfolio standard under § 358(f)(1) of this title.

4. The charge imposed under § 364 of this title for qualified fuel cells.

5. Energy efficiency programs under § 8059(h)(1)e. of Title 29.

(2) Excess kWh Credits for supply service are the responsibility of the entity providing supply to the customer rather than solely the responsibility of the electric distribution company.

(3) In the event that a net-metering customer abandons the property where the energy generating equipment is located, the equipment may remain connected to the electric distribution system, unless the equipment presents a risk to the safety and reliability of the electric distribution system.

(4) Ensure that electric suppliers provide net-metered customers electric service at nondiscriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a customer who is not net-metering would be charged. electric suppliers shall not charge a net-metering customer any stand-by fees or similar charges, with the exception that the Delaware Energy Office shall promulgate rules that allow DEC and municipal electric companies to request to assess nonresidential net-metering customers a fee or charge if the electric utility's direct costs of interconnection and administration of net-metering for these customer classes outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric supplier's entire customer base.

(5) Require that all generating systems and grid-integrated electric vehicles used by eligible customers meet all applicable safety and performance standards established by the National Electrical Code, and those of the Institute of Electrical and Electronic Engineers, UL, or the Society of Automotive Engineers, to ensure that net metering customers meet applicable safety and performance standards and comply with the electric supplier's interconnection tariffs and operating guidelines. An electric supplier must adopt the Interstate Renewable Energy Council's Model Interconnection Procedures (Procedures) within 12 months of the Procedures' latest publishing date. Any deviation from the Procedures must be affirmatively approved by the utility's regulatory body in a formal proceeding. The utility regulating authority may establish, monitor, and enforce mandatory interconnection application processing timelines and project milestones within its interconnection rules, including commensurate consequences for failure by an electric supplier to meet such deadlines, unless delays are demonstrably attributable to the applicant. An electric supplier may not require eligible net-metering customers who meet all applicable safety and performance standards to install excessive controls, perform or pay for unnecessary tests, or purchase excessive liability insurance. Commission-regulated electric utilities may recover prudently incurred implementation costs including administrative fees, back-office technology upgrades, and customer system investments necessary to decrease overall project execution timelines and ensure projects are brought online within the prescribed timelines.

(6) Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in 2 directions. To maintain system safety and reliability, an additional meter or meters to monitor the flow of electricity in each direction may be installed

with the consent of the net-metering customer, which consent may be waived by the customer. The additional metering shall be used only to provide the information necessary to accurately bill or credit the customer pursuant to paragraph (e)(1) of this section, or to collect system performance information. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter. Nonresidential customers shall be responsible for paying the reasonable cost of any new, replacement, or modified meter or meters installed or caused to be installed for net-metering purposes. Residential customers shall not be responsible for paying more than $200 toward the reasonable cost of any new, replacement, or modified meter or meters installed or caused to be installed for net-metering purposes. Nonresidential customers and residential customers shall not own the meter or meters, which shall remain the property of the electric supplier.

(7) [Repealed.]

(f) Individual customers may aggregate their individual meters in conjunction with a community-owned energy generating facility provided that:

(1) The Commission promulgates rules and regulations that provide for customers participating in a community-owned energy generating facility to be credited for the customers' subscribed percentage of generation valued at the sum of the volumetric (kWh) components of the distribution service charges and supply service charges for residential customers and the sum of the volumetric energy (kWh) components of the distribution service charges and supply service charges for nonresidential customers according to each participating customer account's rate schedule. At the end of the annualized billing period, a customer may request a refund from the electric distribution company.

(2) A customer may not receive credit for more than 110% of the customer's expected aggregate electrical consumption, calculated on the average of the 2 previous 12-month periods of actual electrical usage at the time of subscription with the community-owned energy generating facility. For new building construction, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics. On an annual basis, an electric distribution company shall be permitted to audit individual customer's subscribed amounts to ensure the associated usage does not exceed 110% of the customer's annual usage. The community-owned energy generating facility shall provide updated individual customer's subscribed percentage as required. In the event the community-owned energy generating facility does not provide the required update within 30 days after notification by the electric distribution company, the electric distribution company shall be permitted to set the customer's percentage to zero. Customers of a community-owned energy generating facility shall only pay for credits received. A community-owned energy generating facility may update customer allocation percentages on a monthly basis.

(3) Any unsubscribed energy that constitutes 10% or less of the community-owned energy generating facility shall be compensated using the average annual locational marginal price of energy in the DPL Zone based on the prior calendar year. Any unsubscribed energy that is greater than 10% of the community-owned energy generating facility not allocated shall not be compensated by the electric distribution company.

(4) An electric distribution company shall use energy generated from a community-owned energy generating facility to offset purchases from wholesale electricity suppliers for standard offer service.

(5) Excess credits shall be credited to subsequent billing periods to offset the customers' charges in those billing periods.

(6) The community-owned energy generating facility shall ensure that the net-metering credits from the community-owned energy generating facility are accurate. The amount of electricity generated each month available for allocation as subscribed or unsubscribed energy shall be determined by a revenue quality production meter installed and paid for by the owner of the community-owned energy generating facility. Further, the community-owned energy generating facility shall be responsible for any additional costs incurred by the electric distribution company, including billing-related costs associated with community-owned energy generating facility customers.

(7) The community-owned energy generating facility will retain ownership of all RECs and SRECs associated with the electric energy it produces unless it has relinquished such ownership by contractual agreement with a third party or its customers.

(8) The community-owned energy generating facility shall not have subscriptions larger than 200 kilowatts constituting more than 60% of its capacity. The community-owned energy generating facility host's self-consumption is not included in this calculation.

(9) The electric distribution company shall only allow meter aggregation for customer accounts for which they provide electric distribution service.

(10) A community-owned energy generating facility shall not exceed a capacity of 4 megawatts and all costs associated with the interconnection are the responsibility of the community-owned energy generating facility.

(11) Community-owned energy generating facilities may include technologies defined under § 352(8)a.-h. of this title.

(12) A community-owned energy generating facility seeking to provide service to customers must apply for and obtain a certificate to operate from the Commission, and pay an application fee of $750. Community-owned energy generating facilities are not required to obtain a certificate of public convenience and necessity from the Commission. To obtain a certificate to operate, a community-owned energy generating facility must provide the following:

a. A completed interconnection study or signed interconnection agreement with the electric distribution company.

b. Proof of site control.

c. Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal regulations.

(13) If a community-owned energy generating facility fails to comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other laws, rules, or regulations that apply to such a facility, the Commission may impose penalties, including monetary assessments, and may suspend or revoke the certificate to operate, and impose other sanctions permitted by law.

(14) Every 3 years, the community-owned energy generating facility must certify to the Public Service Commission in writing that it meets the low- to moderate-income eligibility criteria provided in this chapter, provided that community-owned energy generating facilities with a final certificate to operate issued by the Commission on or before September 2, 2026 may elect to only include low income customers as set forth in paragraph (16)e. of this section.

(15) Community-owned energy generating facilities are subject to the fees and charges in § 114 of this title. In addition, community-owned energy generating facilities are required to pay the annual gross revenue assessment in § 115 of this title, and the "gross operating revenue" shall equal the sum of the net-metering credits produced by the community-owned energy generating facility and the revenue derived from unsubscribed energy.

(16) Before a community-owned energy generating facility receives permission to operate pursuant to the interconnection process from the electric distribution company, a community-owned energy generating facility shall provide the electric distribution company with the following information:

a. A list of individual meters the community-owned energy generating facility desires to aggregate identified by name, address, and account number.

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

c. The subscribed percentage of generation attributed to each customer, which the electric distribution company shall true-up at the end of the annualized billing period.

d. Certification that the subscription level of each customer does not exceed 110% of that customer's expected aggregate electrical consumption calculated on the average of the 2 previous 12-month periods of actual electrical usage at the time of subscription with the community-owned energy generating facility.

e. Before a community-owned energy generating facility with a final certificate to operate issued by the Commission on or before September 2, 2026, receives permission to interconnect with an electric distribution company, the community-owned energy generating facility must certify to the electric distribution company and the Commission that participants in the community-owned energy generating facility include at least 15% low income customers whose gross annual income, by family size, is at or below 200% of the federal poverty guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater.

f. Before a community-owned energy generating facility with a final certificate to operate issued by the Commission on or after September 3, 2026, receives permission to interconnect with an electric distribution company, the community-owned energy generating facility must certify to the electric distribution company and the Commission that at least 15% of its kilowatt - hour output is served to low- to moderate- income customers whose gross annual income, by family size, is at or below 350% of the federal poverty guidelines, or 80% of the state median household income published by the United States Census Bureau, whichever is greater. Provided however, that community-owned energy generating facilities with a final certificate to operate issued by the Commission on or before September 2, 2026, may elect to certify under the provisions of this section.

(17) A community-owned energy generating facility may change its list of aggregated meters no more than monthly by providing 30 days written notice to the electric distribution company.

(18) An electric distribution company may require that customers participating in a community-owned energy generating facility have their meters read on the same billing cycle.

(19) Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation as either public utilities or an electric supplier, except as set forth in this section.

(20) Community-owned energy generating facilities shall be subject to regulation under the purview of the Commission, and the Commission will engage in rule-making in consultation with the Consumer Protection Unit of the Delaware Department of Justice. In addition to the promulgation of rules and regulations pursuant to this section relating to net energy metering, the Commission may promulgate rules and regulations with respect to community-owned energy generating facilities and this section to protect customers, including provisions related to standardized customer information billing, service terms and conditions, dispute procedures, and portability and transferability of contracts. Community-owned energy generating facilities shall not solicit customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.

(21) All community-owned energy generating facilities shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.

(22) Community-owned energy generating facilities must adhere to state and the Federal Energy Regulatory Commission rules.

(23) The Commission shall open a rule-making docket to promulgate the rules and regulations for community-owned energy generating facilities called for in this section by August 1, 2021, and the rules and regulations must be promulgated no later than March 11, 2022, unless the deadline is extended by law.

(24) A violation of any provision of this chapter related to community-owned energy generating facilities, and any rules or regulations promulgated pursuant to this section shall be deemed an unlawful practice under § 2513 of Title 6 and a violation of subchapter II of Chapter 25 of Title 6.

(g) The Commission shall periodically review the impact of net-metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.

(h) A retail electric customer having on its premises 1 or more grid-integrated electric vehicles shall be credited in kilowatt-hours (kWh) for energy discharged to the grid from the vehicle's battery at the same kWh rate that customer pays to charge the battery from the grid, as defined in paragraph (e)(1) of this section. Excess kWh credits shall be handled in the same manner as net metering as described in paragraph (e)(1) of this section. To qualify under this subsection, the grid-integrated electric vehicle must meet the requirements in paragraphs (d)(1)a., (d)(1)b. and (d)(4) of this section. Connection and metering of grid integrated vehicles shall be subject to the rules and regulations found in paragraphs (e)(4), (5), and (6) of this section.

(i) The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with subsection (h) of this section. Such tariffs may include rate and credit structures that vary from those set forth in subsection (h) of this section, as long as alternative rate and credit structures are not inconsistent with the development of grid-integrated electric vehicles.

(j) Nothing in this section is intended in any way to limit eligibility for net energy metering services based upon direct ownership, joint ownership, or third-party ownership or financing agreement related to an electric generation facility, where net energy metering would otherwise be available.

(k) Disputes shall be resolved by the Commission or appropriate governing body.

(*l*) Rules, regulations and programs for paragraphs (e)(8) and (9) [repealed] of this section shall be promulgated by the Commission or the appropriate local regulatory authority not later than July 1, 2011.

(72 Del. Laws, c. 10, § 3; 74 Del. Laws, c. 38, § 2; 76 Del. Laws, c. 164, §§ 1-4; 76 Del. Laws, c. 166, § 1; 76 Del. Laws, c. 200, § 2; 77 Del. Laws, c. 146, §§ 1-3; 77 Del. Laws, c. 212, §§ 2, 3; 77 Del. Laws, c. 453, §§ 2-11; 82 Del. Laws, c. 24, § 1; 83 Del. Laws, c. 178, § 4; 83 Del. Laws, c. 355, §§ 1, 2; 84 Del. Laws, c. 7, § 1; 84 Del. Laws, c. 125, § 1; 84 Del. Laws, c. 401, § 6; 85 Del. Laws, c. 83, § 1; 85 Del. Laws, c. 262, § 1; 85 Del. Laws, c. 288, § 1; 85 Del. Laws, c. 448, § 1; 85 Del. Laws, c. 531, § 2.)

§ 1015. Procedures to govern commission proceedings.

(a) The Commission is authorized to enter such orders and adopt such regulations as may be needed to implement retail competition in accordance with this title. In order to allow the Commission to implement retail competition on the implementation dates set forth in [former] § 1003(b) of this title, the Commission may waive procedures required by §§ 1131-1136 and §§ 10111-10128 of Title 29 with respect to proceedings or rulemakings authorized by this chapter which must be completed prior to the implementation dates. In case of such waiver, the Commission shall provide notice in such a manner to allow all interested and affected persons an opportunity to comment upon and participate in the proposed action or rulemaking and shall conduct such proceedings or rulemakings in accordance with the principles of due process and fundamental fairness. All regulations shall be published in the Delaware Register of Regulations. Such orders and regulations shall become effective on a date designated by the Commission consistent with the requirements of this chapter. Judicial review of such final orders or regulations shall remain available under §§ 10141 and 10142 of Title 29.

(b) Matters relating to either DP&L's or DEC's restructuring plans may also be resolved by stipulation and settlement pursuant to § 512 of this title.

(72 Del. Laws, c. 10, § 3.)

§ 1016. Change of control.

(a) The Commission's regulatory authority over DP&L and DEC shall not be affected by a subsequent change in stock ownership of either utility. In approving any proposed merger, mortgage, transfer, issue, assumption or acquisition, the Commission shall, in addition to considering the factors set forth in § 215 of Title 26, take such steps or condition any transfer in such a manner as to insure that any successor will continue safe and reliable transmission and distribution services. Any proceeding reviewing a change of control or transfer shall conclude within 120 days from the date of filing, unless agreed to by the Commission and the applicant.

(b) Section 706 of Title 19 shall apply to any business combination, as defined therein, including without limitation, the sale, merger or acquisition of DP&L or of DP&L's generating plants or utility assets in this State. This shall mean, without limiting the provisions of § 706 of Title 19, that:

(1) No such transaction shall result in the termination or impairment of the provisions of any labor contract negotiated by a duly certified or recognized labor organization, collective bargaining agent or other representative of the DP&L employees affected by such a transaction.

(2) Any such labor contract shall continue in effect with respect to all DP&L employees covered thereby until its termination date, unless otherwise agreed by the parties thereto or their legal successors;

(3) The sale, merger or acquisition of DP&L's generation or other utility assets in this State shall include a provision that the purchasing, merging or new entity shall offer to hire its initial union-represented employee complement from among DP&L's union-represented employees at the facilities being sold, merged or acquired at the time of the sale, merger or acquisition;

(4) The other party to the transaction shall bargain in good faith with the duly certified or recognized labor organization, collective bargaining agent or other representative that is the signatory to the labor contract referred to in paragraph (b)(2) of this section above in advance of the termination date of that labor contract for the purpose of extending or modifying such contract, as the parties thereto may agree.

(5) DP&L and the existing collective bargaining agents shall bargain in good faith to assure that any adverse effects on union-represented employees affected by such transaction are reasonably and satisfactorily mitigated. Such mitigation measures may include, but are not limited to, benefits such as training or re-training, severance pay and continued health care coverage.

(72 Del. Laws, c. 10, § 3.)

§ 1017. Filing information with public advocate.

Nothing in this chapter shall be construed to limit or constrain in any way the right of the Division of the Public Advocate to receive information pursuant to § 8716(d)(5) of Title 29.

(72 Del. Laws, c. 10, § 3.)

§ 1018. Electric cooperatives exempt from Commission supervision and jurisdiction.

Notwithstanding any other provision of this chapter, any electric cooperative, while exempt from the supervision and jurisdiction of the Commission pursuant to §§ 202(g) and 223 of this title, shall be exempt from all provisions of this chapter except as specified in § 224 of this title.

(73 Del. Laws, c. 157, § 3.)

§ 1019. Enforcement, penalties, and sanctions.

(a) If after hearing, upon notice the Commission determines that any standard offer service supplier, electric supplier or electric distribution company has, as a matter of past or present fact arising after enactment of this section:

(1) Failed to comply with or violated any term or condition in any certificate, permit, or other instrument or authorization granted by the Commission;

(2) Failed to comply with or violated any of the provisions of this title or any rule, or regulation, promulgated by the Commission;

(3) Failed to comply with or violated any order entered by the Commission; or

(4) Materially failed to provide facilities, products or services which are safe, efficient, adequate or reliable.

Then such standard offer service supplier, electric supplier or electric distribution company shall be liable to the State for a civil penalty; provided however, that no penalty shall be assessed under paragraph (a)(4) of this section unless the material failure is of the type that the standard offer service supplier, the electric supplier or electric distribution company knew or should have known as a result of standards, policies or procedures previously articulated by the Commission or through generally accepted industry standards or practices that its action(s) or inaction(s) would have been reasonably likely to cause the material failure. Such penalty shall not exceed $5,000 for each violation, with the overall penalty not to exceed an amount reasonable and appropriate for the violation. Each day of noncompliance shall be treated as a separate violation.

(b) The Commission shall determine the amount of any penalty to be assessed under subsection (a) of this section. In making such determination, the Commission shall consider:

(1) The nature, circumstances, extent and gravity of the violation;

(2) The standard offer service supplier, electric supplier or electric distribution company's level of culpability, history of prior violations, and ability to pay;

(3) The good faith efforts of the standard offer service supplier, electric supplier or electric distribution company in attempting to resolve the violation after notification of noncompliance;

(4) In the case of an electric cooperative, the Commission shall not assess any monetary penalty that would adversely impact the financial stability of such an entity and any monetary penalty that is assessed against an electric cooperative shall not exceed $1,000 for each violation, which each day of noncompliance shall be treated as a separate violation.

(c) Any penalty imposed under this section may be recovered by an action instituted in the name of the State in the Superior Court. In such an action for recovery, the validity and amount of such penalty shall not be subject to review. In any such action, the State may recover the penalty, interest, costs and reasonable attorneys' fees.

(d) If the Commission determines that a standard offer service supplier, electric supplier or electric distribution company will, as a result of present conditions or future threatened or contemplated action:

(1) Fail to comply with or violate any term or condition in any certificate, permit, or other instrument or authorization granted by the Commission;

(2) Fail to comply with or violate any of the provisions in this Title or any rule or regulation, promulgated by the Commission;

(3) Fail to comply with or violate any order entered by the Commission; or

(4) Materially fail to provide facilities, products, or services, which are safe, efficient, adequate or reliable;

Then the Commission may after hearing, upon notice, enter such orders to ensure compliance by the standard offer service supplier, electric supplier or electric distribution company. In exercising this authority, the Commission may enter immediate or prompt preliminary orders, to ensure compliance pending a final determination and order, in those instances where the public interest requires immediate or prompt action or relief. In its process for considering whether to issue a preliminary order, the Commission shall conduct an appropriate proceeding, upon appropriate notice, given the relief sought. If such a preliminary order is issued, the Commission shall thereafter, promptly schedule and begin the process to consider a final determination and order, which proceeding for final determination and order shall be conducted with notice and hearings consistent with the requirement of § 101 of Title 29.

(e) If after hearing, upon notice, the Commission determines that any standard offer service supplier, electric supplier or electric distribution company has, as a matter of past or present fact occurring after June 30, 2003:

(1) Failed to comply with or violated any term or condition in any certificate, permit or other instrument or authorization granted by the Commission;

(2) Failed to comply with or violated any of the provisions of this title or any rule or regulation, promulgated by the Commission;

(3) Failed to comply with or violated any order entered by the Commission; or

(4) Materially failed to provide facilities, products or services, which are safe, efficient, adequate or reliable.

Then the Commission may enter an order modifying, suspending or revoking any certificate, permit or authorization previously granted by the Commission to such standard offer service supplier, electric supplier or electric distribution company. Such remedy shall only be applied when the gravity of the violation warrants such relief. Revocation of a certificate, permit or authorization shall only be permitted, when there is a finding of a gross violation or violations or a pervasive pattern of conduct in violation of this section. Additionally, such remedy shall only be applied with respect to paragraph (e)(4) of this section if the material failure is of the type that the standard offer service supplier, the electric supplier, or electric distribution company knew or should have known as a result of standards, policies or procedures previously articulated by the Commission or through generally accepted industry standards or practices that its action(s) or inaction(s) would have been reasonably likely to cause the material failure.

(f) In making the determination under subsection (e) of this section to modify, suspend or revoke any prior certificate, permit or authorization, the Commission shall consider:

(1) The factors listed in subsection (b) of this section;

(2) The ability of penalties and other sanctions to ensure compliance without the need to suspend or revoke; and

(3) The impact on the public interest by such modification, suspension or revocation.

(g) The penalty and other sanctions authorized by this section shall be in addition to any other penalties or sanctions authorized by law. The Commission may exercise the power granted in subsection (e) of this section in addition to the imposition of any penalty or other sanction imposed under this section or any other provision of the law. A final order with respect to any findings made or penalties or other sanctions imposed under this section shall be subject to the appeal procedures of § 510 of this title.

(h) The Commission may recover the costs of any proceeding instituted under this section in accordance with the provisions of §§ 114 and 1012(c)(2) of this title.

(i) This section shall apply to electric distribution companies, electric suppliers, DP&L and DEC, and any successors or assigns, except that this section shall not apply to electric distribution companies that are exempt from the jurisdiction of the Commission pursuant to § 202 of this title.

(74 Del. Laws, c. 73, § 6.)

§ 1020. Energy efficiency planning; loading order.

(a) Integrated resource plans (IRPs) filed with the Commission pursuant to § 1007 of this title shall include a detailed description of the energy efficiency activities of the utility. Electricity demand response programs shall be directly implemented by the utility. Demand-side management and other energy efficiency activities shall be implemented by the SEU (as defined in § 8059 of Title 29), in collaboration with the utility. The contributions of utility-implemented and SEU-implemented programs shall be considered in meeting the Energy Efficiency Resource Standards required under Chapter 15 of this title.

(b) In preparing the IRP, the utility shall first consider electricity demand response and demand-side management strategies for meeting base load and load growth needs and shall preferentially obtain electricity demand response resources through utility operated programs or demand-side management resources from the SEU or Weatherization Assistance Program, and cost-effective renewable energy resources before considering traditional fossil fuel-based electric supply services to meet their retail electricity supplier (as defined in § 352 of this title) obligations.

(77 Del. Laws, c. 188, § 4.)

§ 1021. Voting at the PJM Interconnection Regional Transmission Organization.

(a) For purposes of this section:

(1) “Meeting” means any committee, user group, task force, or other part of the regional transmission organization in which votes are taken.

(2) "Recorded vote" means a vote that is tabulated, either individually or as part of a sector, for any purpose at a meeting, regardless of:

a. Whether the vote represents a final position of any person casting the vote; or

b. The decision-making authority of those voting.

(b) (1) Each year, the Division of the Public Advocate and DP&L having voted at a meeting of, or on a matter before, the PJM Interconnection Regional Transmission Organization ("PJM") shall submit to the Commission, the Governor, the General Assembly, and the Director and Librarian of the Division of Legislative Services a report on each recorded vote cast during the immediately preceding calendar year. A utility may include the report with its annual report on its compliance with the renewable energy portfolio standards under subchapter III-A of Chapter 1 of this title.

(2) The report must include all reported votes cast, regardless of whether the vote is otherwise disclosed.

(85 Del. Laws, c. 80, § 1.)

§ 1022. Consolidated billing [For application of this section, see 85 Del. Laws, c. 448, § 2].

(a) *Definitions. —*

For purposes of this section:

(1) "Consolidated billing" means a mechanism that requires an electric utility under the regulation of the Delaware Public Service Commission to, at the request of a community-owned energy generating facility or subscription coordinator:

a. Include the monthly subscription charge of a community energy facility on the subscriber's utility bill.

b. Remit payment received for those charges to the community-owned energy generating facility or subscription coordinator.

(2) "Net crediting" means a process in which the commission-regulated electric public utility subtracts the community energy subscription charge from the monthly community energy credit, applies the savings value to the customer's bill, and remits the subscription charge directly to the community-owned energy generating facility or subscription coordinator.

(3) "Subscriber" means a retail customer of a commission-regulated electric public utility that holds a subscription to a community energy facility.

(4) "Subscription coordinator" means a person that has a contractual arrangement with a community energy facility, whether having received a final certificate to operate or not, to provide services such as:

a. Market community energy facility projects or otherwise provide community energy facility services under its own brand name.

b. Perform any administrative actions to connect or enroll customers with community energy facility projects or allocate subscriptions. This does not include vendors or subcontractors handling only back-office functions such as electronic data interchange between the community energy facility, subscription coordinator, and the utility company.

c. Manage interactions between a community energy facility and an electric distribution company related to subscribers. This does not include vendors or subcontractors handling only back-office functions such as electronic data interchange between the community energy facility, subscription coordinator, and the utility company.

(b) *Consolidated billing authorization. —*

(1) Commission-regulated electric public utilities must offer consolidated billing for all customer classes.

(2) Consolidated billing shall be the default billing method for all community energy facilities with a final certificate to operate issued by the Commission on or after September 3, 2026. Any community-owned energy generating facility participating in consolidated billing under this section must comply with § 1014(f)(16)f. and paragraph (c)(2) of this section. However, a community-owned energy generating facility with a final certificate to operate issued by the Commission on or before September 2, 2026 may elect not to participate in consolidated billing if the community-owned energy generating facility submits a formal request in writing to the Commission-regulated electric public utility by no later than October 1, 2028.

(3) The community-owned energy generating facility or the subscription coordinator is responsible for managing their customer subscriptions.

(4) Subscription coordinators may not impose subscription fees, early termination penalties, or charges unrelated to commodity service.

(c) *Consumer protections; credit. —*

(1) No community-owned energy generating facility or subscription coordinator may require residential subscribers to undergo a credit check or pay upfront enrollment fees.

(2) For projects with a final certificate to operate issued by the Commission on or after September 3, 2026, the savings rate for residential customers shall be at least 10%, the savings rate for any income qualified subscriber as defined by § 1014(f)(16)f. of this title shall be at least 20%, even when accounting for any subscription or other fees charged by the subscribing organization or community-owned energy generating facility.

(3) For projects with a final certificate to operate issued by the Commission on or before September 2, 2026, the subscription value for residential customers must provide for a net discount when applying the monetary value of the bill credit on a bill issued by the electric

company to the subscriber for electric service, even when accounting for any subscription or other fees charged by the subscribing organization or community-owned energy generating facility.

(4) Community energy facility owners are solely responsible for managing their customer subscriptions through the utility's community energy portal.

(d) *Utility obligations. —*

(1) Commission-regulated electric public utilities shall:

a. Apply community energy credits and subscription charges on a single consolidated bill.

b. Provide timely electronic remittance of collected subscription charges to community-owned energy generating facilities or subscription coordinators.

c. Payments to subscription coordinators (aggregate subscription charges credit less fees assessed pursuant to paragraphs (c)(2) and (c)(3) of this section) would be received by within 60 business days of their billing date.

(2) Utilities may recover reasonable administrative and information technology costs of consolidated billing through a tariffed fee approved by the Delaware Public Service Commission. Any such fee may not exceed 1% of the value of subscriber bill credits unless the Commission finds a higher fee just and reasonable.

(3) Utilities may assess a fee not to exceed 0.25% of the value of the subscriber bill credits, in addition to the commission-approved administrative fee, to hold accounts in escrow to cover instances of customer arrearage. Unused funds shall be refunded to community-owned energy generating facilities or subscription coordinators on an annual basis.

(4) Every 2 years, the Commission, in conjunction with the regulated utility, must perform a review of the fees outlined in this section and provide recommendations to the legislature, as needed, to ensure adequate recovery of costs associated with the implementation of consolidated billing outlined herein.

(e) *Implementation. —*

(1) The Commission shall adopt regulations establishing protocols for consolidated billing, including:

a. Data exchange standards for electric companies and community-owned energy generating facilities, and any approved subscription coordinators.

b. Require all electric companies to report billing and crediting errors to the Commission on a regular schedule.

c. Impose requirements for monthly application of bill credits to subscriber bills and application of rollover credits.

d. Require all electric companies to show applied and banked credits on each bill rendered to a subscriber.

e. Implement any additional changes the Commission determines will improve billing and crediting processes for subscribers.

(2) The Commission shall convene a stakeholder working group, including Delmarva Power and Light, subscription coordinators, the Division of the Public Advocate, representatives from the community solar industry with operations in Delaware, representatives from the residential and commercial solar industry with operations in Delaware, environmental interests, and low-income representatives, to provide recommendations to the Commission to improve the enrollment and operation of the community energy facility program outlined in this title. The Commission must deliver a final report detailing the results and recommendations of the stakeholder working group to the General Assembly no later than January 31, 2027. The report must include recommendations on:

a. Recommended changes to the community energy facilities program to improve low- to moderate- income customer enrollment, including how to expand elevated discount rates to cover moderate income families, adjusting how an expanded low- to moderate-income customer requirement shall be applied, and recommending alternative methods of satisfying an expanded minimum for low- to moderate- income customer enrollment, and alternative methods of enrolling customers.

b. Methods of strengthening consumer protections relating to participation in the community energy facilities program.

c. Any other topic the Commission or stakeholder working group deems necessary to achieve the outcomes of the community energy facilities program as outlined in this title.

(3) Consolidated billing shall be available to all community energy facilities no later than October 1, 2027.

(85 Del. Laws, c. 448, § 1.)

Chapter 11
Steam, Heat and Power Corporations

§ 1101. Powers and duties.

(a) (1) Every corporation organized under the provisions of Chapter 1 of Title 8 for the purpose of producing or distributing steam, heat and power, in addition to the powers conferred upon corporations generally, may lay the necessary pipes and conduits beneath the public roads, highways, streets, avenues and alleys in this State.

(2) Such pipes and conduits shall be laid at least 3 feet below the surface of the same and shall not in anywise unnecessarily obstruct or interfere with public travel or damage public or private property.

(3) The consent of the council, town commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district wherein or through which it is contemplated to lay such pipes and conduits beneath such public roads, highways, streets, avenues or alleys shall first, and as a condition precedent, be obtained before any such public roads, highways, streets, avenues or alleys are disturbed, opened or dug up. Such consent of the council or town commissioners shall be by ordinance of such council or commissioners duly adopted, or of such persons having control over the public roads or highways, by resolution adopted at a meeting to be held not less than 30 days after notice thereof has been given by notices posted up in 5 of the most public places on the public road or highway which is proposed to be used for such purposes.

(b) (1) Such use of public roads, highways or streets, avenues and alleys in any of the cities, towns or districts of this State shall be subject to such terms, regulations and restrictions as may be imposed by the council, town commissioners or other persons having control over the public roads and highways of the district, and the portions of the surface of the roads, highways, streets, avenues and alleys disturbed in laying the pipes shall be immediately restored to their original condition and any pavements which are removed for the purpose of laying or repairing the pipes shall be restored to as good condition as they were previously thereto and so maintain the same for 6 months after the completion of the work.

(2) In case of failure on the part of the corporation to so maintain and restore the pavements, the street commissioner or other officer having supervision of the streets may properly restore and maintain the same, and the costs thereof may be recovered by the city or town from the corporation in any court of competent jurisdiction.

(21 Del. Laws, c. 273, § 99; 22 Del. Laws, c. 166, § 17; Code 1915, § 2042; Code 1935, § 2186; 26 Del. C. 1953, § 1101.)

§ 1102. Laying pipes or conduits.

Every corporation organized under the provisions of Chapter 1 of Title 8, in laying any pipes or conduits in any of the public roads, highways, streets, avenues and alleys to be used for conveying steam, heat or power shall lay the same at a distance not less than 3 feet, if possible, from the outside of any water or gas pipe already laid, except in cases where it is necessary that the pipes or conduits cross any such water or gas pipe, and there such pipes or conduits shall be at least 12 inches distant from the outside of any water or gas pipe already laid.

(21 Del. Laws, c. 273, § 100; 22 Del. Laws, c. 166, § 17; Code 1915, § 2043; Code 1935, § 2187; 26 Del. C. 1953, § 1102.)

Chapter 13
Gas, Water and Oil Corporations

§ 1301. Powers and duties; regulation of use of public roads and streets.

(a) (1) Every corporation organized under the provisions of Chapter 1 of Title 8 for the purpose of the production, distribution and sale of gas and also every corporation organized for the supply and distribution of water, every corporation organized for the collection and treatment of wastewater and every corporation organized for the transportation and storage of oil, in addition to the powers conferred upon corporations generally, may lay down necessary pipes, mains and conduits beneath the public roads, highways, streets, avenues and alleys of any county, city, incorporated town or district of this State.

(2) Such pipes, mains and conduits shall be laid at least 18 inches below the surface of the same and shall not in anywise unnecessarily obstruct or interfere with public travel or damage public or private property.

(3) The consent of the council, town commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the county, city, town and district wherein or through which it is contemplated to lay such pipes, mains and conduits beneath such public roads, highways, streets, avenues or alleys shall first and as a condition precedent be obtained before any such public roads, highways, streets, avenues or alleys are disturbed, opened or dug up. Such consent of such council or town commissioners or other persons having control over such roads, highways, streets, avenues and alleys shall be by ordinance of such council or commissioners duly adopted or by resolution of such persons having control over the public roads or highways, adopted at a meeting to be held not less than 30 days after notice thereof has been given by notices posted up in 5 of the most public places on the road or highway which is proposed to be used for such purposes.

(b) (1) Such use of public roads, highways or streets, avenues and alleys in any of the counties, cities, towns or districts in this State shall be subject to such terms, regulations, taxation and restrictions as may be imposed by the council, town commissioners or other persons having control over the public roads and highways of the county, city, town or district.

(2) a. The portions of the surfaces of the roads, highways, streets, avenues and alleys disturbed in laying the pipes shall be immediately restored to their original condition. Any pavements which are removed for the purpose of laying or repairing the pipes, mains and conduits shall be restored to as good condition as they were previous thereto and shall be maintained the same for 6 months after the completion of the work.

b. In case of failure on the part of the corporation to so restore and maintain the same, the street commissioner or other officer having supervision of the streets may properly restore and maintain the same, and the costs thereof may be recovered by the city or town from the corporation in any court of competent jurisdiction.

(c) Any such corporation mentioned in this section may take lands, easements and rights-of-way for locating, constructing, maintaining and operating its pumps, pump houses and stations, tanks and reservoirs, hydrants and delivery stations and offices and for laying down its pipes, tubes, conduits, connections and branches from any points to any other points in the State and for all necessary purposes of the corporation, including the right to cross any railroad, and the right to appropriate a right-of-way and locate its pipes, tubes or conduits upon, over or under and across any lands, water, streams, rivulets, canals, roads, turnpike roads or other highways in such manner as shall not interfere with the ordinary use of the same. In crossing any rivulet or other stream the pipes, tubes and conduits shall be laid and securely suspended above flood lines or laid beneath the bed of any rivulet or other stream so crossed.

(21 Del. Laws, c. 273, § 104; 22 Del. Laws, c. 166, § 18; Code 1915, § 2047; 38 Del. Laws, c. 91, § 6; Code 1935, § 2191; 26 Del. C. 1953, § 1301; 51 Del. Laws, c. 305; 74 Del. Laws, c. 317, § 8.)

§ 1302. Eminent domain.

In case any corporation mentioned in this chapter desiring to acquire, occupy or use any lands in this State for its corporate use cannot agree with the owner thereof as to the terms and conditions of such acquisition, occupancy or use and the value, compensation or damages to be paid for such acquisition, occupancy or use, it may acquire, use and hold such lands by condemnation proceeding in the manner prescribed by Chapter 61 of Title 10.

(21 Del. Laws, c. 273, § 104; 22 Del. Laws, c. 166, § 18; Code 1915, § 2047; Code 1935, § 2191; 26 Del. C. 1953, § 1302.)

§ 1303. Crossing agricultural lands.

Any gas, oil or water company which lays pipes, tubes or conduits on any lands cleared and used for agricultural purposes shall bury the same at least 24 inches below the surface if so required by the owner of the land.

(21 Del. Laws, c. 273, § 104; 22 Del. Laws, c. 166, § 18; Code 1915, § 2047; Code 1935, § 2191; 26 Del. C. 1953, § 1303.)

§ 1304. Expansion of facilities and services of water companies in New Castle County.

Repealed by 59 Del. Laws, c. 397, § 1, eff. June 28, 1974.

§ 1305. Establishment of a State Water Supply Coordinating Council [Repealed].

(72 Del. Laws, c. 409, § 1; 74 Del. Laws, c. 184, § 1; 77 Del. Laws, c. 107, § 1; repealed by 84 Del. Laws, c. 61, § 2, effective June 29, 2023.)

§ 1306. Reports by the Water Supply Coordinating Council [Repealed].

(72 Del. Laws, c. 409, § 2; 74 Del. Laws, c. 184, § 1; 77 Del. Laws, c. 107, §§ 2-7; repealed by 84 Del. Laws, c. 61, § 2, effective June 29, 2023.)

§ 1307. Recovery of costs of water supply enhancement projects in rates of public utilities [Repealed].

(72 Del. Laws, c. 409, § 3; 74 Del. Laws, c. 184, § 1; repealed by 84 Del. Laws, c. 61, § 2, effective June 29, 2023.)

§ 1308. Length of service for the Water Supply Coordinating Council [Repealed].

(72 Del. Laws, c. 409, § 4; 74 Del. Laws, c. 184, § 1; 77 Del. Laws, c. 107, § 8; 80 Del. Laws, c. 108, § 1; repealed by 84 Del. Laws, c. 61, § 2, effective June 29, 2023.)

Chapter 14
Self-Sufficient Water Supply

§ 1401. State policy.

It is the declared policy of this State:

(1) That water utilities, both public and private, should have adequate supplies of water available, even in times of drought, to meet the present and future needs of this State on a continuing and sustainable basis;

(2) That, in order to ensure adequate water supply in northern New Castle County, water utilities in that area should implement rate and pricing structures which encourage the efficient use of water by informed residential customers; and

(3) That, in order to ensure that water utilities recognize the need to obtain a water supply adequate to serve customers in northern New Castle County, water utilities serving that area should periodically publicly certify that they have an adequate supply of water to meet future anticipated demand.

(74 Del. Laws, c. 179, § 2; 78 Del. Laws, c. 70, § 1.)

§ 1402. Definitions.

For purposes of this chapter, unless the context otherwise directs:

(1) “Adequate supply” means a volume of water supply from all sources which meets or exceeds the projected demand. The amount of adequate supply is calculated on the premise that, in the projected year, drought of record conditions exist.

(2) “Commission” means the Public Service Commission as established by the provisions of Chapter 1 of this title.

(3) “Drought of record” means a period of 75 days of climatological, streamflow and groundwater conditions similar to those that prevailed in northern New Castle County during the drought emergency of 2002, or as redefined by the Water Supply Coordinating Council if a more severe drought occurs in the future.

(4) “Drought sensitive area” means the portion of the State located north of the Chesapeake and Delaware Canal.

(5) “Jurisdictional water utility” means a water utility which is subject to the regulatory jurisdiction of the Public Service Commission under the provisions of § 201 of this title.

(6) “Nonjurisdictional water utility” means a water utility which is not subject to, or is excluded from, the jurisdiction of the Public Service Commission under the provisions of § 202 of this title.

(7) “Projected demand” means the anticipated demand for water supply in the drought sensitive area during a drought of record in the projected year as determined for each water utility by the Water Supply Coordinating Council. “Projected demand” may be expressed in terms of gallons per year, average daily demand on an annual basis, maximum daily demand, maximum monthly demand, or any other comparable reporting measure as determined by the Water Supply Coordinating Council.

(8) “Projected year” means the third calendar year following a reporting year.

(9) “Reporting year” means the year 2006 and every third year thereafter.

(10) “Water Supply Coordinating Council” or “Council” means the entity established by § 1305 of this title [repealed]. If the Water Supply Coordinating Council lapses or expires, a reference to the Water Supply Coordinating Council is deemed to refer to the Department of Natural Resources and Environmental Control acting in consultation with the University of Delaware Water Resources Agency (WRA), the Delaware Geological Survey and water utilities.

(11) “Water utility” means any person or entity, including a municipality, water district, cooperative or investor-owned company or corporation, that operates within the drought sensitive area a water service, system, plant or equipment for public use. The term “water utility” does not include a municipal entity or municipal water utility in the drought sensitive area which provides public water utility services to 5,000 or less customers.

(74 Del. Laws, c. 179, § 2; 78 Del. Laws, c. 70, § 2; 84 Del. Laws, c. 61, § 2.)

§ 1403. Projected demand determination for each water utility.

On or before March 1 of each reporting year, the Water Supply Coordinating Council shall determine and publish for the following projected year the projected demand for each water utility providing water utility services in the drought sensitive area.

(74 Del. Laws, c. 179, § 2; 78 Del. Laws, c. 70, § 3.)

§ 1404. Reporting requirements for water utilities: consumer water conservation plans and certifications of adequate supply.

(a) On or before July 1 of each reporting year, each water utility in the drought sensitive area shall submit to the Water Supply Coordinating Council:

(1) A consumer water conservation plan (Plan) for the following 3-year period; and

(2) A certification of adequate water supply (Certification) for the projected year.

The Plan and the Certification must be applicable to water utility services provided by the water utility in the drought sensitive area.

(b) *Consumer water conservation plan.* — Each plan submitted by a water utility must include:

(1) A description of the water utility's proposed methods of consumer education to:

a. Make consumers aware of the benefits arising from the efficient use of water supply;

b. Make consumers aware of and understand any water conservation rate that is in effect, or that will be implemented by the water utility during the following 3 years;

c. Make consumers aware of the existence of both new and retrofitted consumer equipment that improves the efficient use of water; and

d. Make consumers aware of the costs arising from the loss of water through leakage in consumer water systems.

(2) For each reporting year after 2006, an evaluation of the effectiveness of the water utility's preceding consumer water conservation plan in informing consumers of methods to improve the efficient use of the water supply.

(c) *Certification of adequate supply.* — With its consumer water conservation plan, each water utility shall submit to the Water Supply Coordinating Council a certification that the water utility has sufficient sources of water supply to provide adequate supply to meet the projected demand in the drought sensitive area for the following projected year. The certification must be executed by the governmental officer responsible for the operation of the water utility. With the certification, the water utility shall provide supporting materials and documents that identify each source of supply and the volume of water available from each source. The supporting materials and documents must demonstrate that, for the projected year, the volume of supply from the water utility's sources will be adequate to meet or exceed the projected demand.

(d) Beginning with the reporting year 2009, in addition to certifying adequate supply pursuant to subsection (c) of this section, each water utility shall also certify that none of its sources of supply for use during a drought of record are reliant on contracts with out-of-state water authorities or utilities, except for minimum purchase obligations under purchase-water contracts in existence on April 1, 2003, between Delaware water utilities and non-Delaware providers.

(e) The Water Supply Coordinating Council shall review the water utility's certification of adequate supply and the supporting materials and documents. If the Council believes that the supporting materials and documents do not support the certification, the Council shall notify the water utility of the deficiency. The water utility may then submit additional materials and documents to support its certification. If the Council ultimately determines that a jurisdiction or water utility's certification is deficient the council shall so report to the Commission.

(74 Del. Laws, c. 179, § 2; 78 Del. Laws, c. 70, §§ 4-6, 12.)

§ 1405. Water conservation rates.

(a) Prior to January 1, 2005, each water utility shall implement a water conservation rate structure for water utility services provided to its customers in the drought sensitive area.

(b) The water conservation rate structure must apply, at a minimum, to all residential customers subscribing to water services in the drought sensitive area and shall, initially, reflect either:

(1) An inclining block rate structure, under which the unit price for water supply increases as consumption, as measured by successive blocks, increases; or

(2) A seasonal rate structure, imposing an increased unit price for water supply consumed during specified months of the year.

(c) *Water utilities.* — Each water utility shall submit its proposed water conservation rate structure to the Water Supply Coordinating Council. The water utility shall include with its proposal a schedule for implementation of its water conservation rate structure and a specific plan for informing and educating its affected customers about the adoption of a water conservation rate structure.

(d) On or before April 1, 2014, each water utility shall submit to the Water Supply Coordinating Council an evaluation and analysis of the impact of its water conservation rate structure on its customers' demands for water supply in the drought sensitive area. With the evaluation and analysis, the utility shall submit any proposal to modify or change its water conservation rate structure and the date for implementing its modifications or changes. The modifications or changes may include water conservation rate methods beyond those identified in subsection (b) of this section. Each water utility shall submit a similar evaluation and analysis every 5 years thereafter, accompanied by further proposed modifications or changes.

(e) For good cause or in cases of hardship, a utility may modify or change its water conservation rate structure at any time. A water utility shall notify the Water Supply Coordinating Council in writing of any modifications or changes in the utility's water conservation rate structure at least 60 days prior to the implementation of the modifications or changes.

(f) Nothing in this chapter shall be construed to limit the jurisdiction of the Commission over the rates of jurisdictional water utilities including, without limitation, conservation rates.

(74 Del. Laws, c. 179, § 2; 78 Del. Laws, c. 70, §§ 7-12.)

§ 1406. Interconnections and wholesale bulk sales.

(a) In order to ensure adequate supply to all consumers within the drought sensitive area during periods of anticipated or actual drought, the Commission has the jurisdiction and authority to order and direct a jurisdictional water utility to interconnect its facilities with those

of other water utilities and to offer for sale to other utilities water supply at wholesale bulk rates previously approved by the Commission. The wholesale bulk rates must be based on the costs of service principles for the provision of the water supply. In making determinations concerning interconnection and wholesale sales, the Commission shall ensure that an interconnection or sale does not jeopardize the ability of the jurisdictional water utility to provide adequate supply to its own customers. For good cause, the Commission may order an interconnection on an expedited basis.

(b) In order to ensure adequate supply to all consumers within the drought sensitive area during periods of anticipated or actual drought, each nonjurisdictional utility shall, when reasonably necessary, interconnect its facilities with those of other water utilities and offer to sale to other water utilities water supply at just and reasonable wholesale bulk rates. The wholesale bulk rates must be based on the costs of providing the water supply. In interconnecting and offering for sale water supply, a nonjurisdictional water utility shall ensure that an interconnection or sale does not jeopardize the ability of the nonjurisdictional water utility to provide adequate supply to its own customers.

(c) The provisions of subsections (a) and (b) of this section do not preclude a water utility from otherwise contracting to provide water supply to other water utilities at just and reasonable wholesale bulk rates. However, in the case of a jurisdictional water utility, the wholesale bulk rates must be approved by the Commission.

(74 Del. Laws, c. 179, § 2; 78 Del. Laws, c. 70, § 12.)

§ 1407. Implementing regulations.

The Commission may adopt regulations to implement the provisions of this chapter as it applies to jurisdictional water utilities.

(74 Del. Laws, c. 179, § 2; 78 Del. Laws, c. 70, § 12.)

§ 1408. Implementing regulations [Transferred].

[Transferred to § 1407 of this title by 78 Del. Laws, c. 70, effective July 1, 2011.]

(74 Del. Laws, c. 179, § 2.)

Chapter 15
Energy Efficiency Resource Standards

§ 1500. Short title; declaration of policy.

(a) This chapter shall be known and may be cited as the "Energy Efficiency Resource Standards Act of 2009."

(b) The General Assembly finds and declares that:

(1) Cost effective energy efficiency shall be considered as an energy supply source before any increase or expansion of traditional energy supplies; and

(2) Energy efficiency is among the least expensive ways to meet the growing energy demands of the State; and

(3) Providing affordable, reliable, and clean energy for all consumers in Delaware is in the public interest and will yield social, economic, and welfare benefits for generations to come; and

(4) The benefits of a strong focus on cost effective energy efficiency accrue to the public at large, and all electric and natural gas suppliers and consumers in Delaware share an obligation to develop a minimum level of these resources in the energy supply portfolio of the State.

(5) The benefits of cost effective energy efficiency include lowered consumer spending on energy, improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities; and

(6) The Delaware Sustainable Energy Utility (SEU) combines public funding sources and consumer savings with private sector funds and management skills to provide all Delaware energy users with assistance for all their energy efficiency and renewable energy needs;

(7) The SEU is a critical mechanism for achieving energy conservation and energy efficiency in the State; and

(8) Delivery rate structures for regulated natural gas and electric utilities shall be designed to avoid unnecessary impediments to the Energy Efficiency Resource Standards under this chapter.

(77 Del. Laws, c. 188, § 2; 77 Del. Laws, c. 435, § 1.)

§ 1501. Definitions.

For purposes of this chapter:

(1) "Affected electric energy provider" means an electric distribution company, rural electric cooperative, or municipal electric company serving energy customers in Delaware.

(2) "Affected energy provider" means an affected electric energy provider or affected natural gas distribution company.

(3) "Affected natural gas distribution company" means a natural gas distribution company serving energy customers in Delaware.

(4) "Coincident peak demand" means for each affected electric energy provider the highest level of electricity demand for such affected electric energy provider.

(5) "Combined heat and power" means a system that uses the same energy source both for the generation of electrical or mechanical power and the production of steam or another form of useful thermal energy.

(6) "Combined heat and power system savings" means the electric output, and the electricity saved due to the mechanical output, of a combined heat and power system, adjusted to reflect any increase in fuel consumption by that system as compared to the fuel that would have been required to produce an equivalent useful thermal energy output in a separate thermal-only system, as determined in accordance with regulations promulgated by the Secretary.

(7) "DEC" has the same definition set forth in § 1001 of this title.

(8) "Demand-side management" has the same definition set forth in § 1001 of this title.

(9) "DEO" means the State Energy Office established in § 8053 of Title 29.

(10) "DNREC" has the same definition set forth in § 352 of this title.

(11) "DP&L" has the same definition set forth in § 1001 of this title.

(12) "EERS" means Energy Efficiency Resource Standards.

(13) "EERU" or "Energy Efficiency Resource Unit" means 1 kilowatt-hour of electricity demand reduction relating to demand side management programs, 1 kilowatt of electricity demand response, or 1 decatherm of reduced natural gas consumption, or an equivalent energy efficiency measure.

(14) "Electric distribution company" has the same definition set forth in § 1001 of this title.

(15) "Electricity consumption" and "electricity consumed" means, for any affected electric energy provider, the sum of retail electricity deliveries to all energy customers within the electric distribution system.

(16) "Electricity demand response" means a reduction in the use of electricity by electricity energy customers in response to power grid needs, economic signals from a competitive wholesale market or special retail rates.

(17) “Energy customer” means a natural person or public or private entity that receives electric distribution service from an affected energy provider.

(18) “Energy efficiency” means either a decrease in consumption of electric energy or natural gas or a decrease in consumption of electric energy or natural gas on a per unit of production basis or equivalent energy efficiency measures that do not cause a reduction in the quality or level of service provided to the energy customer achieved through measures or programs that target consumer behavior, or replace or improve the performance of equipment, processes, or devices. Energy efficiency can also mean the reduction in transmission and distribution losses associated with the design and operation of the electrical system.

(19) “Energy efficiency charge” has the meaning given in § 1505 of this title.

(20) “Energy savings” means:

a. Reduction in electricity consumption;

b. Reduction in natural gas consumption;

c. Electricity coincident peak demand response capability; or

d. Equivalent energy efficiency measures, in Delaware from a base year of 2007, calculated on a calendar year basis.

(21) “Equivalent energy efficiency measure” means reductions in the use of fossil fuel other than natural gas or use of other sources of energy not derived from fossil fuel equivalent to a reduction in natural gas consumption or electricity consumption, as defined by the Secretary by regulations pursuant to § 1504 of this title.

(22) “Municipal electric company” has the same definition set forth in § 352 of this title.

(23) “Natural gas consumption” and “natural gas consumed” means, for any affected natural gas provider, the sum of retail natural gas deliveries in Delaware.

(24) “Natural gas distribution company” means a public utility owning and/or operating natural gas distribution facilities in the State.

(25) “Recycled energy savings” means a reduction in electricity or natural gas consumption that results from a modification of an industrial or commercial system that commenced operation before July 29, 2009, in order to make productive use of electrical, mechanical, or thermal energy that would otherwise be wasted, as determined in accordance with regulations promulgated by the Secretary.

(26) “Rural electric cooperative” has the same definition set forth in § 352 of this title.

(27) “Secretary” means the Secretary of DNREC.

(28) “State Energy Coordinator” is the administrator and head of the State Energy Office as established in § 8053 of Title 29.

(29) “Sustainable Energy Utility” or “SEU” have the same meaning as set forth in § 8059 of Title 29.

(77 Del. Laws, c. 188, § 2.)

§ 1502. Energy Efficiency Resource Standards.

(a) It is the goal of this chapter that each affected energy provider shall achieve a minimum percentage of energy savings as follows:

(1) For each affected electric energy provider, energy savings that is equivalent to 2% of the provider’s 2007 electricity consumption, and coincident peak demand reduction that is equivalent to 2% of the provider’s 2007 peak demand by 2011, with both of the foregoing increasing from 2% to 15% by 2015;

(2) For each affected natural gas distribution company, energy savings that is equivalent to 1% of the company’s 2007 natural gas consumption by 2011, increasing to 10% by 2015.

(b) Not later than April 1 of the calendar year immediately following each reporting period:

(1) Each affected electric energy provider shall submit to the State Energy Coordinator a report, in accordance with regulations promulgated by the Secretary, demonstrating that the affected electric energy provider, in cooperation with the Sustainable Energy Utility and the Weatherization Assistance Program, has achieved cumulative energy savings (adjusted to account for any attrition of energy savings measures implemented in prior years) in the previous calendar year that are at least equal to the energy savings required by regulations adopted by the Secretary pursuant to § 1504(a) of this title.

(2) Each affected natural gas provider shall submit to the State Energy Coordinator a report, in accordance with regulations promulgated by the Secretary, demonstrating that the affected natural gas provider, in cooperation with the Sustainable Energy Utility and the Weatherization Assistance Program, has achieved cumulative energy savings (adjusted to account for any attrition of energy savings measures implemented in prior years) in the previous calendar year that are at least equal to the energy savings contained in regulations adopted by the Secretary pursuant to § 1504(a) of this title.

(c) A Workgroup shall be established to complete a study and provide recommendations during the planning and implementation of this policy.

(1) The Workgroup shall be composed of 11 members. It shall be chaired by the State Energy Coordinator and include 1 representative of each of DP&L, DEC, and Chesapeake Utilities, 1 representative appointed by the municipal electric companies, 1 representative of each of the Public Service Commission, the Public Advocate, and the SEU, and shall also include the Weatherization Assistance

Program Manager and 2 members of the public with experience representing, respectively, low- and moderate- income families and environmental concerns.

(2) The workgroup shall complete a study and submit its findings to the Secretary no later than December 31, 2010, to determine the feasibility and impact of pursuing EERS goals for the affected energy providers in Delaware. Such a study at minimum must address:

a. Supporting and confirming the energy savings percentages identified for 2011 and 2015 or recommending alternative energy savings percentages if warranted.

b. The impact of implementation and compliance on carbon dioxide and other greenhouse gas emissions;

c. The issue of "unintended consequences" of establishing goals for the affected energy providers, especially, for instance, where beneficial fuel switching might otherwise be penalized or compliance with the goal negatively impacts the ability of gas utilities to compete with higher carbon fuel alternatives;

d. Consideration of any EERS type goals and programs established for natural gas distribution utilities in nearby states and the measurable results of any ongoing programs in those states;

e. The evaluation of the results of any ongoing natural gas energy efficiency and conservation programs implemented and administered through the SEU or any individual natural gas distribution utility;

f. The impact of implementation and compliance on customer rates for affected energy providers;

g. The efficiency of the natural gas system relative to other energy alternatives on full-fuel-cycle measurement basis (from source to point-of-use);

h. The level of an energy efficiency charge, if any, needed to fund energy efficiency measures to meet compliance of the EERS pursuant to § 1505 of this title;

i. The step load increases or decreases caused by the connection of large, new energy consumers, such as data centers;

j. The impact of implementation and compliance on major farm, commercial, and industrial customers;

k. The appropriate level of equivalency for electricity demand response and energy efficiency measures in achieving compliance with the energy savings goals of this section;

l. The appropriate scope of equivalent energy efficiency measures; and

m. Whether the Secretary, by regulation, should permit trading of EERUs among affected energy providers;

n. Enforcement mechanism or mechanisms to be adopted by the Secretary which will ensure compliance with the EERS.

(3) The Workgroup shall create quantitative annual reduction targets in EERUs, which are consistent with the State's energy savings objectives.

(4) The Workgroup will meet at least once each year to review progress in meeting the goals and to recommend changes to the plan for meeting the quantitative reduction targets.

(5) The Secretary will reconvene the Workgroup in February 2013 to evaluate progress toward the EERS goals.

(77 Del. Laws, c. 188, § 2.)

§ 1503. Energy use reporting.

(a) The DEO shall annually publish a report on statewide electricity and natural gas consumption and electricity peak energy demand, submit this report to the Secretary, and make the report available to the general public by December 31 of each calendar year commencing in 2011.

(b) All affected energy providers shall provide electric and natural gas consumption and peak usage data to the State Energy Coordinator annually by April 1 as required in § 1502(b) of this title.

(77 Del. Laws, c. 188, § 2.)

§ 1504. Regulations; jurisdiction; administration.

(a) Not later than July 29, 2010, the Secretary, with the cooperation of affected energy providers, shall, by regulation, establish the requirements of this subsection, including, but not limited to:

(1) Measurement and verification procedures and standards;

(2) Requirements under which affected energy providers shall demonstrate, document, and report compliance with the energy savings goals established under § 1502(a) of this title:

(3) Procedures and standards for defining and measuring electricity savings and natural gas savings that can be counted towards the energy savings targets established under § 1502(a) of this title, which shall, at a minimum:

a. Specify the types of energy efficiency and energy conservation measures that can be counted;

b. Enable that energy consumption and peak estimates in the applicable base and current years be adjusted, as appropriate, to account for changes in weather, population previously enacted and deployed demand side management and energy efficient programs by an affected energy provider since the 2007 base year, or other variables;

c. Account for the useful life of measures;

d. Include deemed savings values for specific, commonly used measures;

e. Allow for savings from a program to be estimated based on extrapolation from a representative sample of participating customers;

f. Include procedures for counting combined heat and power savings and recycled energy savings;

g. Establish methods for calculating codes and standards savings, including the use of verified compliance rates;

h. Provide for standardized determination of baselines for energy efficiency projects; and

i. Procedures and standards for third-party verification of reported electricity savings or natural gas savings.

(b) Regulations promulgated pursuant to this chapter and case decisions issued under the auspices of this chapter by the Secretary or DNREC shall be subject to direct appeal to the Superior Court pursuant to the provisions of the Administrative Procedures Act, Chapter 101 of Title 29. The Environmental Appeals Board shall not have jurisdiction over any such appeal.

(c) Regulations promulgated by the Secretary shall not differ significantly among affected natural gas distribution companies or among affected electric energy providers.

(d) All regulations promulgated under this chapter shall be adopted under the Administrative Procedures Act [Chapter 101 of Title 29].

(e) Any costs incurred by the Secretary and DEO in developing and implementing the programs under this chapter shall be funded through a charge placed by the Public Service Commission on entities under its jurisdiction that have an obligation to comply with the provisions of this chapter and through compliance payments submitted by entities not regulated by the Public Service Commission. Any remaining funds shall be distributed as authorized in § 1505 of this title.

(f) If an energy efficiency charge greater than zero is established pursuant to § 1505 of this title, then subsection (e) of this section will no longer apply.

(77 Del. Laws, c. 188, § 2.)

§ 1505. Energy efficiency charge.

(a) There is hereby established the Sustainable Energy Trust Fund.

(b) Each individual affected energy provider may determine how best to fund activities necessary to achieve the energy savings goals within its service territory and implement programs as it sees fit. Should an affected energy provider determine that a charge is unnecessary, a plan shall be submitted that demonstrates how the goals will be achieved. Should an affected energy provider determine that an energy efficiency charge is necessary to achieve the goals, it may make such a recommendation in the Workgroup study that is consistent with this section.

(c) Based upon the recommendation or recommendations of the Workgroup, the Secretary may implement a charge to be collected from each energy customer by its affected energy provider (“energy efficiency charge”), which may not vary by customer class and is consistent with this section.

(d) Any energy efficiency charge for energy customers of affected electric energy providers shall be imposed on a per kilowatt-hour basis and may not exceed a level that would result in an average charge in excess of $0.58 per month per residential electric customer.

(e) Any energy efficiency charge for energy customers of affected natural gas energy providers shall be imposed on a therm basis and may not exceed a level that would result in an average charge in excess of $0.41 per month per residential natural gas customer.

(f) Each affected energy provider shall remit any energy efficiency charges collected pursuant to this chapter to the DEO to be deposited in the Sustainable Energy Trust Fund on a monthly basis. Funds shall be deposited in the Sustainable Energy Trust Fund by the DEO in separate accounts for each affected energy provider and shall, to the extent feasible, and except as otherwise provided in paragraph (j)(3) of this section below, be earmarked for use on behalf of energy customers of the affected energy provider from which they are collected in collaboration with the affected energy providers. Funds deposited in the Sustainable Energy Trust Fund shall not be funds of the State, shall not be available to meet the general obligations of the government, and shall not be included in the financial reports of the State. The DEO shall submit to the General Assembly and the Governor by May 30 of each year a written accounting of monies received from the fund during the previous year and how those moneys were used or disbursed during that year.

(g) Costs associated with achieving the energy savings goals are not recoverable through Public Service Commission proceedings.

(h) All revenue credited to the Sustainable Energy Trust Fund shall be used solely to fund the programs mandated by this chapter.

(i) All interest earned on moneys deposited in the Sustainable Energy Trust Fund shall be credited to the Sustainable Energy Trust Fund and shall be used solely for the purposes designated in this chapter.

(j) All moneys deposited into the Sustainable Energy Trust Fund shall be transferred in their entirety on July 1 of each year to the DEO to fund the programs mandated by this chapter. The DEO shall distribute the funds in each separate account established pursuant to subsection (f) of this section to the following uses:

(1) Seventy-five percent of the assessment is provided to the SEU and shall be used to further the goals and activities of the SEU including, but not limited to, the promotion of energy conservation, energy efficiency, renewable energy, and energy financing pursuant to § 8059(f)(3) of Title 29.

(2) Twenty percent of the assessment is provided to the Weatherization Assistance Program.

(3) Five percent of the assessment is provided to the Secretary and DEO to cover costs incurred in developing and implementing the EERS.

(77 Del. Laws, c. 188, § 2; 79 Del. Laws, c. 395, § 1.)

§ 1506. Verified savings.

(a) Subject to the other provisions of this subsection, affected energy providers will use EERUs obtained from the Sustainable Energy Utility or the Weatherization Assistance Program and approved by the State Energy Coordinator or created by an affected energy provider under a demand response program to meet the applicable energy savings requirements defined pursuant to § 1502(a) of this title.

(b) Energy savings achieved and used for compliance pursuant to this subsection shall be:

(1) Measured and verified in accordance with the procedures specified by regulations developed under § 1504(c) of this title;

(2) Reported in accordance with § 1502(b) of this title; and

(3) Located in the State.

(77 Del. Laws, c. 188, § 2.)

§ 1507. Review and enforcement.

(a) The Secretary shall review each report submitted by all affected energy providers under § 1502(b) of this title to verify that the applicable performance standards under that subsection have been met.

(b) In determining compliance with the applicable energy savings requirements, the Secretary shall exclude reported electricity savings or natural gas savings that are not adequately demonstrated and documented, in accordance with the regulations promulgated under § 1504 of this title.

(77 Del. Laws, c. 188, § 2.)