HEARING OFFICER'S REPORT

TO: The Honorable Gregory Patterson
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Proposed New Regulation: 7 DE Admin. Code 2106 – *Waivers of Net Metering Limits for Agricultural Use Customers* (Hearing Docket No. 2025-R-CCE-0001)

DATE: October 29, 2026

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Wednesday, September 23, 2026, at 6:00 p.m. via the State of Delaware Zoom Platform by the Department of Natural Resources and Environmental Control ("DNREC" or "Department") to receive comment on a proposed new regulation: 7 DE Admin. Code 2106, *Waivers of Net Metering Limits for Agricultural Use Customers* ("Regulation"). The purpose of this proposed Regulation is to provide guidance to Delaware agricultural use customers of Delmarva Power and Light ("DP&L") who wish to install a customer-sited electric generation facility greater than 150 kilowatts (kW) under Delaware's net metering statute, as set forth in 26 *Del.C.* §1014(d)(1).

The above-referenced statute requires the Department to promulgate regulations for waiver requests of the statutory 150-kW limit for agricultural use customers that receive electric distribution service under a residential electric service tariff. The proposed Regulation provides the process for such impacted customers to submit a waiver request to DNREC and also provides the path for appeal if the customer does not agree with the initial decision issued on that request.

At the present time, an agricultural use customer, as defined in 3 *Del.C.* §902(2), cannot have a customer-sited electric generation facility that is greater than 150 kW. Specifically, 26 *Del.C.* §1014(d)(1) provides as follows:

> *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.*

It should be noted that the Department's proposed new Regulation (and the process for waiver requests set forth therein) is applicable only to energy customers of DP&L. Pursuant to 26 *Del.C.* §1014(d)(1), waiver request applications for agricultural use customers of the Delaware Electric Cooperative ("DEC") or municipal electric company customers "…shall be approved by DEC or the municipal electric company serving said customer."

To serve as background on this proposed new Regulation, the term "Net Metering," also known as Net Energy Metering, or "NEM," is an energy billing mechanism that allows customers who generate their own electricity (usually through solar panels) to measure how much energy they generate versus how much they use. When generation exceeds usage, the customer is "credited" the amount of the excess by the electric company. When conditions do not let the customer generate all of the energy that they need (such as a cloudy day), the customer can then receive energy from the regional grid equal to their credit and, if necessary, pay for any excess energy utilized. In recent years, this process became popular as a way for many customers to enjoy an affordable rooftop solar energy system.

Under the above-described system, a customer may elect to have solar panels on their home. The solar panels convert energy from the sun into direct current ("DC"), which will be utilized to power the home. Any power above what the home needs is then sent to the distribution grid. At the grid, inverters convert the DC received into alternating current electricity ("AC"), which is what the distribution system of the utility company utilizes. There is a monitoring device to measure how much electricity the customer has used, and how much excess generation has been sent to the grid. Net Metering allows the excess solar energy to be exported back to the grid on a one-to-one offset, meaning every 1 kW hour sent to the grid will be offset against 1 kW hour used from the grid.

As noted above, the proposed new Regulation sets forth the process by which an agricultural use DP&L customer may apply to DNREC for a waiver of a customer-sited electric generation facility greater than 150 kW. The customer would obtain the waiver request form from the DNREC website, and then complete and submit the same to the Department for review. The Department will review the waiver request by comparing the output of the system to the energy requirements of the farm and then determine whether to grant the waiver to increase the size of the system above the 150-kW limit. In the event the waiver request is denied and the agricultural use customer wishes to challenge that decision, an appeal to the DNREC Secretary may be made. Should the Secretary affirm the Department's denial, further appeal may be made to the Environmental Appeals Board, in accordance with the provisions of 7 *Del.C.* §6008.

Upon initiating DNREC's Regulatory Development Process, staff in the Department's Division of Climate, Coastal and Energy ("CCE") finalized the proposed new Regulation and published same in the *Delaware Register of Regulations* on September 1, 2026. Public notice of the proposed new Regulation and public hearing to be held on September 23, 2026, was also published in both the *News Journal* (August 31, 2026) and the *Delaware State News* (September 2, 2026) and posted on the *State of Delaware Public Meeting Calendar* (September 1, 2026) as well.

The Department has the statutory basis and legal authority to promulgate the above proposed Amendments, pursuant to 26 *Del.C.* §1014(d)(1), and the general authority provided to the Department under 7 *Del.C.* Ch. 60.

Department staff, as well as members of the public, attended the public hearing held on September 23, 2026. Pursuant to 29 *Del.C.* §10118(a), the Record remained open subsequent to the date of the public hearing for receipt of public comment through October 8, 2026. It should be noted that the Department received no comments from the public at any time during the course of this promulgation. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents:

(1) A verbatim transcript of the public hearing held on September 23, 2026, as provided by Veritext Legal Solutions;
(2) Twelve (12) documents introduced by Department staff at the public hearing held on September 23, 2026, and marked by this Hearing Officer at the time of the hearing accordingly as "Department Exhibits 1-12"; and
(3) *Revised* proposed new Regulation 7 DE Admin. Code 2106, *Issuance of Waivers of Net Metering Limits for Agricultural Use Customers*, to be submitted to the Register as the Department's final Regulation in this matter, attached hereto as Appendix "A" and expressly incorporated herein;

The Department's person in the Division of CCE primarily responsible for the drafting and overall promulgation of the proposed Regulation, Janet Redman, Planner III, developed the Record with the relevant documents in the Department's files.

It should be noted that clerical error to the Department's original proposed Regulation was discovered during the post-hearing phase of this promulgation. That error has now been corrected by Department staff, and thus the *revised* proposed Regulation has been readied for submission to the *Delaware Register of Regulations* as the Department's final proposed Regulation in this matter. Due to the fact that the Department's revision was non-substantive in nature, no further publication or hearing is necessary.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the adoption of the *revised* proposed Regulation, 7 DE Admin. Code 2106, *Issuance of Waivers of Net Metering Limits for Agricultural Use Customers*. As noted previously, the purpose of this regulatory promulgation is to provide guidance to Delaware agricultural use customers of DP&L who wish to install a customer-sited electric generation facility greater than 150 kW under Delaware's net metering statute, as set forth in 26 *Del.C.* §1014(d)(1). The Department's *revised* proposed Regulation is attached hereto as Appendix "A" and is expressly incorporated herein.

Based on the Record developed in this matter, I find and conclude that the Department has provided appropriate reasoning regarding the need for the *revised* proposed Regulation, as set forth above. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, the Department concludes and specifically directs the following:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed Regulation, pursuant to 26 *Del.C.* §1014(d)(1), and the general authority provided to the Department under 7 *Del.C.* Ch. 60;

2. The Department has jurisdiction under its statutory authority, as noted above, to issue an Order adopting the *revised* proposed Regulation as final;

3. The Department provided proper public notice of the original proposed Regulation and all proceedings in a manner required by law and regulations, and provided the public with an adequate opportunity to comment on the proposed Regulation, including at the time of the public hearing held on September 23, 2026, and during the days subsequent to the public hearing through October 8, 2026, in order to consider all public comment on the same before making any final decision;

4. As a direct result of the review performed by Department staff during the post-hearing phase of this promulgation, clerical error was discovered. That error has now been corrected, and the Department's *revised* proposed Regulation has been readied for submission to the *Delaware Register of Regulations* as a final Regulation. Given that the corrected error was non-substantive in nature, no further publication or hearing is necessary in this matter;

5. Promulgation of the *revised* proposed Regulation will enable DNREC to provide guidance to Delaware agricultural use customers of DP&L who wish to install a customer-sited electric generation facility greater than 150 kW under Delaware's net metering statute, as set forth in 26 *Del.C.* §1014(d)(1);

6. The Department has reviewed the *revised* proposed Regulation in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish substantive additional costs for individuals or small businesses and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

7. Further, the Department has reviewed the *revised* proposed Regulation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that conducting such an assessment regarding the impact of this Regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets is not practical;

8. The Department's proposed Regulation, as published in the September 1, 2026, *Delaware Register of Regulations*, fully vetted at the public hearing held on September 23, 2026, and then *revised* to correct non-substantive error, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final Regulation, to go into effect ten (10) days after its publication in the next available issue of the *Delaware Register of Regulations*;

9. The Department shall submit the *revised* proposed Regulation as a final Regulation to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and as the Department determines is appropriate; and

9. The Department shall serve and publish its Order on its internet site.

LISA A. VEST
Public Hearing Officer

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Attachments:
Appendix A: *Revised* proposed Regulation 7 DE Admin. Code 2106