2106 Issuance of Waivers of Net Metering Limits for Agricultural Use Customers

1.0 Statutory Authority

This regulation is promulgated pursuant to 26 **Del.C.** §1014(d)(1)(b).

2.0 Purpose

The purpose of this regulation is to direct the Department of Natural Resources and Environmental Control (DNREC) on how to grant waivers to "agricultural use" customers (as described in 3 **Del.C.** §902(2) and defined below) who receive energy distribution from Delmarva Power and Light, or any other Public Service Commission regulated electric utility, under a residential tariff or service offering, and are requesting to install a net metering system larger than 150 kilowatts (kW).

Deleted: §902(3)

3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"**Agricultural use**" means all forms of farming, including agriculture, horticulture, aquaculture, silviculture and activities devoted to the production for sale of food and other products useful to humans which are grown, raised or harvested on lands and waters.

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

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

1. Satisfy all of the applicable requirements of 26 **DE Admin. Code** 3012 Rules for Regulation of Net Metering;
2. Meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories to ensure that net metering customers meet applicable safety and performance standards; and
3. Comply with the electric supplier's interconnection tariffs and operating guidelines.

"**Delmarva Power and Light**" **or** "**DP&L**" means Delmarva Power & Light Company, the regulated utility company in the state of Delaware, or its successor.

"**Department of Natural Resources and Environmental Control**" or "**DNREC**" means the entity established by 29 **Del.C.** §8001.

"**Environmental Appeals Board**" means the Environmental Appeals Board established by 7 Del.C. §6007.

"**Kilowatt**" or "**kW**" means the basic unit of electric power equal to 1,000 watts.

"Net metering" means a service to a customer whereby electric energy generated by the customer, through a customer-generator facility and delivered to the local distribution facilities of DPL, may be used to offset electric energy provided by DP&L to the customer.

"**Secretary**" means the Secretary of the Department of Natural Resources and Environmental Control.

4.0 Waiver process for a DP&L agricultural use customer seeking a customer-generator facility greater than 150 kW

4.1 Agricultural use customers who receive energy from DP&L under a residential tariff or service offering may contact DNREC's State Energy Office requesting a waiver of the 150 kW limit on net metering systems.

4.2 On a case-by-case basis, the DNREC State Energy Office may grant a waiver for a customer-generator facility greater than 150 kW if the agricultural use customer can demonstrate to the State Energy Office in a standard form of waiver request that the historic annual consumption on the farm supports a larger system by comparing the output of the proposed customer-generator facility to the energy requirements of the farm. The energy requirements of the farm shall be determined by looking at the agricultural use customer's expected aggregate electrical consumption, calculated on the average of the 2 previous 12-month periods of actual electrical usage of the agricultural use area.

4.3 The agricultural use customer requesting a waiver shall complete and submit a standard form of waiver request supplied by the DNREC State Energy Office, which will be posted to its website.

4.4 The agricultural use customer must demonstrate compliance with the requirement that no more than 110% of the host agricultural use 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, is exceeded.

4.5 The average meter capacity for all of the agricultural use customer's meters shall not exceed 150 kW.

5.0 Procedures to appeal a denial of a net metering limits waiver request

5.1 Any agricultural use customer whose request for a waiver has been denied by the State Energy Office may appeal to the Secretary by giving written notice of appeal to the Secretary. Notice shall be by certified or registered mail within 20 calendar days of the State Energy Office's decision, and shall specify:

5.1.1 The interest of the appellant;

5.1.2 The basis of the appeal; and

5.1.3 The specific laws, regulations or other legal authorities alleged to have been violated by the State Energy Office's decision.

5.2 A public hearing may be held on any appeal, upon request, whenever the Secretary deems the hearing request meritorious. A request for a public hearing shall be deemed meritorious when the appeal is not frivolous and the notice of appeal exhibits a reasonable familiarity with the State Energy Office's decision. The public hearing shall be conducted as follows:

5.2.1 For any hearing on an appeal, notification shall be served upon the appellant as summonses are served or by registered or certified mail not less than 20 calendar days before the time of the hearing. Notice shall also be published in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State not less than 20 calendar days before the time of the hearing.

5.2.2 The appellant may appear personally or be represented by counsel at the hearing and produce any competent evidence on the appellant's behalf. The Secretary or the Secretary's authorized designee may administer oaths, examine witnesses, and issue, in the name of the Department, notices of hearings or subpoenas requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in the hearing.

5.2.3 A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other parties, constitute the record. The Secretary or the Secretary's authorized designee shall make findings of fact based on the record. The Secretary shall then enter an order that will best further the purposes of the Act and this regulation, and the order shall include reasons. The Secretary shall promptly give written notice of the order to parties who participated in the hearing.

5.2.4 Any person whose interest is substantially affected by the Secretary's Order taken pursuant to subsection 5.2.3 of this regulation may appeal to the Environmental Appeals Board in accordance with the provisions of 7 **Del.C.** §6008. Appeals of decisions by the Environmental Appeals Board shall be conducted pursuant to 7 **Del.C.** §6009.