

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Sections 203F and 209 (26 **Del.C.** §§203F & 209)

PROPOSED

PUBLIC NOTICE

3014 Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities

PSC REGULATION DOCKET NO. 67
Opened: January 29, 2025 (Order No. 10643)

The Delaware Public Service Commission ("Commission" or "PSC"), pursuant to 26 **Del.C.** § 203F, proposes to issue regulations governing certificates of public convenience and necessity for the siting of renewable energy interconnection facilities. The proposed regulations, Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities are proposed to be codified at 26 DE Admin. Code § 3014.

A copy of the proposed regulations is being published in the April 2025 issue of the *Delaware Register of Regulations*, and is also available in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (Docket No. "Reg. 67"). If you wish to obtain written copies of the implementing Order and proposed regulations, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

In accordance with 29 **Del.C.** §10116, written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should be submitted via e-mail to PSC@delaware.gov with the subject line "Regulation 3014 - PSC Docket No. 67" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904.

The Commission will hold a public hearing on the proposed regulations on April 23, 2025, at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the April 23, 2025 hearing, written comments must be submitted on or before April 16, 2025. Pursuant to 29 **Del.C.** §10118(a), written comments will be accepted after the hearing until May 13, 2025.

On or after May 13, 2025, following review of any public comments, the Commission will determine whether to amend its regulations by adopting the proposed amendments or make additional changes.

If adopted by the Commission, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

IN THE MATTER OF THE ADOPTION OF
RULES AND REGULATIONS TO
IMPLEMENT THE PROVISIONS OF TITLE
26 §203F DELAWARE CODE
RELATING TO RENEWABLE ENERGY
INTERCONNECTION FACILITIES
(OPENED JANUARY 14, 2025)

PSC REGULATION DOCKET
NO. 67

ORDER NO. 10643

AND NOW, this 29th day of January 2025, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on September 5, 2024, the Governor of the State of Delaware signed into law Senate Bill 265, which amended Title 26 of the Delaware Code by adding section 203F relating to the siting of Renewable Energy Interconnection Facilities; and

WHEREAS, Commission Staff ("Staff") has drafted proposed regulations governing certificates of public convenience and necessity for the siting of renewable energy interconnection facilities; and

WHEREAS, Staff asks the Commission to open PSC Regulation Docket No. 67, allowing Staff to coordinate publication of the proposed regulations to become 26 *DE Admin. Code* § 3014; and

WHEREAS, Staff now recommends that the Commission issue the proposed *Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities* for publication in the *Delaware Register of Regulations* (the "Regulations");

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE
OF NOT FEWER THAN THREE COMMISSIONERS THAT:**

1. The Commission determines good cause exists to promulgate the Regulations.
2. Pursuant to 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10111 *et seq.*, the Commission proposes to promulgate the Regulations as Staff has recommended in the attached Exhibit A.
3. Staff shall work with its Deputy Attorney General and submit the appropriate documents required by 29 *Del. C.* § 10111 *et seq.* and 29 *Del. C.* § 10401 *et seq.* to the Delaware Office of the Registrar of Regulations (the "Registrar") for publication of the proposed Regulations in the *Delaware Register of Regulations*. Staff shall also work with its Deputy Attorney General to revise the proposed Regulations as recommended by the Registrar.
4. Pursuant to 26 *Del. C.* § 102A, the Secretary of the Commission shall publish the proposed Regulations, attached as Exhibit B, and a Public Notice, on the Commission's website located at <https://dep.sc.delaware.gov> as required.
5. Once the proposed Regulations are published in the *Delaware Register of Regulations*, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the amendments may do so as provided by the published Public Notice, located on the Commission's website and in the *Delaware Register of Regulations*.
6. The Commission will hold a public hearing on the proposed Regulations as provided by the published Public Notice.
7. Following review of any public comments, the Commission will determine whether to amend its Regulations by adopting the proposed amendments or make additional changes.
8. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

Dated: _____ BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman

Manubhai "Mike" Karia, Commissioner

**Voted via Teleconference pursuant to 29 Del. C. §
10006(A)(d)**

Joann Conaway, Commissioner

Kim F. Drexler, Commissioner

(ABSENT) Harold Gray, Commissioner

ATTEST: Crystal Beenick, Commission Secretary

**3014 Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy
Interconnection Facilities**

1.0 General

This regulation is adopted pursuant to the authority granted to the Public Service Commission under 26 Del.C. §209 and 26 Del.C. §203F and shall govern the process for a person or entity to obtain a Certificate of Public Convenience and Necessity to begin the business of a renewable energy interconnection facility.

2.0 Definitions

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

"Applicant" means any person or entity seeking a certificate of public convenience and necessity for a renewable energy interconnection facility.

"Certificate" means a certificate of public convenience and necessity required by the provisions of 26 Del.C. §203F.

"Commission" means the Delaware Public Service Commission.

"DOT" means the Delaware Department of Transportation

"Offshore wind interconnection facility" 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 of Delaware or its territorial waters, whether those facilities are part of the PJM network or serving individual generation owners. This includes all equipment located within the State of Delaware, including within 3 miles of the Delaware coast, through to the substation that connects the offshore wind power project to the PJM transmission grid.

"PJM" means the Regional Transmission Organization ("RTO") that is responsible for wholesale energy markets and the interstate transmission of energy throughout a multi-state area including Delaware, or its successor organizations.

"Renewable energy interconnection facility" 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. This includes all offshore wind interconnection facilities as defined in this regulation.

"Staff" means the Staff of the Public Service Commission.

"Transmission facility" 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 owner by the customer. This includes offshore wind interconnection facilities and renewable energy interconnection facilities.

3.0 Application for a Certificate of Public Convenience and Necessity for a Renewable Energy Interconnection Facility

- 3.1 Before an applicant may begin the business of constructing and operating a renewable energy interconnection facility, the applicant must obtain a certificate from the Commission.
- 3.2 Certification requirements. All applicants shall file with the Commission an original and 5 copies of an application for a certificate or comply with the electronic filing requirements of 26 DE Admin. Code 1001. The application shall contain all the information and exhibits hereinafter required and may contain additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws. An application shall not be considered complete and filed until all required information and supporting documentation has been submitted to the Commission. Applications shall contain at least the following information:
 - 3.2.1 Identifying information. The legal name and, if applicable, tax identification number or employer identification number of the applicant, as well as the trade names under which the applicant proposes to do business in Delaware. List any other names under which the applicant or its affiliated interests have previously done business in Delaware.
 - 3.2.2 Certifications. Certifications issued by the state of formation or incorporation certifying that the applicant is in good standing and qualified to do business in that state.
 - 3.2.3 Authorization. Documentation from the Delaware Secretary of State issued within 90 days of filing, that the applicant is legally authorized and qualified to do business in the State of Delaware.
 - 3.2.4 Registered agent. The name, phone number, email address, and post office address of a registered agent, under 26 Del.C. §401, within the State upon whom service of any notice, order or process may be made.
 - 3.2.5 Leadership. The names, titles, addresses, email addresses, and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.
 - 3.2.6 Corporate structure. A description of the applicant's corporate structure, including all parent, affiliated, and subsidiary companies. A graphical depiction of the applicant's corporate structure shall be included.
 - 3.2.7 Contact information. The name, title, email address, mailing address, and telephone number of the applicant and the applicant's regulatory contact person responsible for the applicant's operations.
 - 3.2.8 Attorney. The name, address, email address, and telephone number of the applicant's attorney.
 - 3.2.9 Consent to jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the applicant's or its agent's activities in the State.
 - 3.2.10 Criminal activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the applicant or any of its affiliated interests, officers, and directors (and prior officers and directors who left the applicant's employ less than 3 months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution.

- 3.2.11 Project description. A complete description of the project that the applicant intends to develop in Delaware, to include:
- 3.2.11.1 A detailed description of the renewable energy interconnection facilities for which the applicant seeks a certificate, including its functions and operating characteristics.
 - 3.2.11.2 Complete plans as to all structures, including underground construction and transmission facilities associated with the proposed facility.
 - 3.2.11.3 One-line diagrams showing all transmission facilities to be constructed.
 - 3.2.11.4 A description of the construction design to include a pictorial representation of design type.
 - 3.2.11.5 An aerial map showing the proposed location and route of planned renewable energy interconnection facilities.
 - 3.2.11.6 A cost estimate for the project.
 - 3.2.11.7 Copies of any analysis undertaken by the applicant or of which applicant is aware that demonstrates the reliability-based or economics-based need for the renewable energy interconnection facility and any impacts on electricity costs, including transmission, energy, capacity, and ancillary services charges within Delaware.
 - 3.2.11.8 The engineering and technical design of the transmission facility proposed by the applicant.
- 3.2.12 DOT right of way. If a renewable energy interconnection facility will operate in a DOT right of way, the applicant must describe the extent to which the facilities impact the safe and effective operation of other utility facilities, or any other facilities, already in the right of way.
- 3.2.13 Offshore wind interconnection facilities. For offshore wind interconnection facilities, provide the written approval obtained from the State Energy Office confirming compliance with 26 Del.C. §203F(e).
- 3.2.14 Entity designation. A copy of documentation certifying the applicant as the PJM entity designated to contract new renewable energy transmission facilities. If the applicant is not a PJM designated entity, the applicant must submit additional information under subsections 3.2.15, 3.2.16, and 3.2.17.
- 3.2.15 Financial information. If the applicant is not a PJM designated entity, evidence of long-term financial viability of the applicant to provide service in the State, including:
- 3.2.15.1 If publicly traded, the applicant's:
 - 3.2.15.1.1 Certified financial statements current within 12 months of the filing; and
 - 3.2.15.1.2 Most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website).
 - 3.2.15.2 If not publicly traded, the applicant's accounting statements, including balance sheet and income statements, audited financial statements, bank account statements, tax returns, or other indicia of financial capability, or, if applicable, the certified financial statements of a publicly traded parent.
 - 3.2.15.3 Applicants submitting European-style financial statements shall include a statement of similarity.
 - 3.2.15.4 Staff may request other indicia of financial capability.
- 3.2.16 Bankruptcy. If the applicant is not a PJM designated entity, the applicant shall disclose whether it, or any of its affiliated interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months.
- 3.2.17 Operational experience. If the applicant is not a PJM designated entity, evidence of technical and operational fitness to construct and operate renewable energy interconnection facilities, including:
- 3.2.17.1 A description of the applicant's experience, including:
 - 3.2.17.1.1 A description of the applicant's experience in constructing and operating renewable energy interconnection facilities in other states and an assessment of its long-term viability as a renewable energy interconnection facility.
 - 3.2.17.1.2 A description of the applicant's experience with any transmission project in the PJM region.
 - 3.2.17.2 Documentation on the need for and the impact of the proposed renewable energy interconnection facilities on the safe, adequate and reliable operation of delivery of electric supply services.
 - 3.2.17.3 Detailed information on the engineering and technical design of the proposed facility.
 - 3.2.17.4 Staff may request other indicia of technical or operation fitness.
- 3.2.18 Economic impact. The applicant's assessment of the impact of granting the certificate on the State's economy and the benefits to the State's ratepayers. All studies and forecasts, complete with the information, data, methodology, and assumptions on which they are based, on which the applicant intends to rely in supporting this assessment of economic impact, shall be included.
- 3.2.19 Climate impact. The applicant's assessment of how the granting of the certificate will impact the State's greenhouse gas emission reduction targets as specified in 7 Del.C. §10003. All studies and forecasts,

complete with the information, data, methodology, and assumptions on which they are based, on which the applicant intends to rely in supporting this assessment of climate impact, shall be included.

3.2.20 The applicant's assessment of whether the proposed 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.

3.2.21 The applicant's assessment of whether the proposed renewable energy interconnection facilities allow for future construction by other developers so as to minimize the environmental impacts of multiple entry points along the Delaware shore or through Delaware rights of way.

3.2.22 The applicant's assessment of the impact of granting the certificate on the health, safety and welfare of the general public. All studies and forecasts, complete with the information, data, methodology, and assumptions on which they are based, on which the applicant intends to rely in supporting this assessment, shall be included.

3.2.23 Other proceedings. A list of states or federal jurisdictions in which the applicant or any of its affiliated interests has:

3.2.23.1 Been denied approval to construct or operate a transmission facility.

3.2.23.2 Been found to be in violation of a state's laws, rules, or regulations related to the provision of transmission facility construction.

3.2.23.3 Had its transmission authority revoked, modified or suspended.

3.2.23.4 Had any other adverse judicial or regulatory action pertaining to the provision of electric transmission, including any formal docketed complaints filed against:

3.2.23.4.1 The applicant;

3.2.23.4.2 Any of the applicant's affiliated interests;

3.2.23.4.3 Any officer, principal, or director of the applicant; or

3.2.23.4.4 Any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action.

3.2.23.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past 5 year concerning its transmission facilities construction or operation in which the applicant agreed to pay a civil penalty, provide any restitution, or make changes to its operations.

3.2.24 Other proceeding documents. The applicant shall provide a copy of any document, order or decree identified in response to subsection 3.2.23.

3.2.25 Copy of settlement, adjudication, or court order. A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or US Department of Justice concerning the applicant's participation in transmission facility projects.

3.2.26 Other information. The Commission or its staff may consider any other information submitted by the applicant if it can show the financial, operational, managerial and technical abilities of an applicant.

3.2.27 Verification of application. The application must be accompanied by a signed, notarized verification of a principal or officer of the applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the applicant is a corporation or an association, the verification shall be signed by an officer of the applicant and notarized.

3.3 Application fee. An applicant for a certificate shall submit a non-refundable application fee of \$750 with the application.

3.4 Notice. An applicant shall publish notice of the filing of its application in accordance with 26 Del.C. §102A. Notice of the application shall be sent by the applicant to:

3.4.1 The State Energy Office within the Department of Natural Resources and Environmental Control;

3.4.2 The DOT; and

3.4.3 Any local government bodies where the facility will be wholly or partially located within the government bodies' boundaries.

3.5 Incomplete or abandoned applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the staff within 4 months of a failure by the applicant to respond to the requests.

3.6 Waiver of certification requirements. Upon the request of any applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these regulations or 26 Del.C. §1001 et seq.

3.7 Review of the application. After the close of the comment period, staff shall make a recommendation to the Commission to approve, conditionally approve, or deny the application. The Commission may choose to

approve, approve with conditions, modify, or deny a certificate to an applicant where it finds that doing so is in the public interest.

- 3.8 Timing of application decision. The Commission shall act on an application in accordance with 26 Del.C. §203F(k).
- 3.9 Material change in application information. Applicants shall inform staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide this notice within 10 business days after the change may be grounds for rejection of the application.
- 3.10 Accuracy of information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with staff or the Commission, may be grounds for rejection of the application. Nothing in this section shall preclude the Commission or the State of Delaware from undertaking any action to address the provision of false information in an application.
- 3.11 Terms. Certificates are valid until revoked by the Commission or abandoned in accordance with Section 6.0 of this regulation.
- 3.12 Financial surety. The Commission may require financial assurance, including a bonding requirement, as part of any certificate to ensure appropriate decommissioning of the facilities. If a financial surety for decommissioning is required as part of another agencies or government bodies permitting requirements, the applicant shall submit proof of the financial surety with the application. In this case, the Commission would not ask for additional financial surety for decommissioning purposes.

4.0 Reports to be Provided to the Commission and DOT

If an applicant is granted a certificate, the applicant shall provide quarterly reports to the Commission regarding the status of construction of the applicant's projects in the State of Delaware until the projects are placed in service. These updates shall include budgeted vs. actual costs, milestones achieved, and the expected in-service date of the project. For any applicants granted a certificate with projects that impact State of Delaware rights of way, this report shall also be provided to DOT.

5.0 Sale or Ownership Transfer of Renewable Energy Interconnection Facility

- 5.1 If a facility that has been granted a certificate from the Commission changes ownership, the new owner must file an application for a new certificate as outlined in Section 3.0 of this regulation.
- 5.2 The existing owner of the facility must file an application to abandon the issued certificate as outlined in Section 6.0 of this regulation.

6.0 Abandonment or Discontinuance of Certificate of Public Convenience and Necessity

- 6.1 No person or entity shall abandon or discontinue any renewable energy interconnection facility without first having received Commission approval for an abandonment or discontinuance.
- 6.2 Applications for approval under Section 6.0 shall be made to the Commission at least 60 days before the abandonment or discontinuance, in writing, verified by oath or affirmation and contain the following:
 - 6.2.1 Identity of the applicant, including name, address, telephone, email address, and primary contact person;
 - 6.2.2 Original docket number and order number granting the certificate;
 - 6.2.3 Reason for abandonment of the certificate;
 - 6.2.4 If reason for abandonment of the certificate is sale or change of ownership, the name and contact information of the new owner;
 - 6.2.5 If the facility is not being sold or changing ownership, details related to whom will be responsible for the facility, handling operations and maintenance, repairs, and future decommissioning, if applicable.
- 6.3 The Commission may conduct an investigation and hold hearings in the matter as it deems necessary or appropriate and may attach reasonable terms and conditions to the granting of such approval.
- 6.4 The Commission shall approve any application when it finds the applicant 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.
- 6.5 If, within 60 days after the filing of an application, the Commission has not acted concerning the application, it shall be deemed to have been approved. The Commission may, within this 60-day period, set the matter for hearing, in which event the Commission shall render a decision concerning the application within 6 months from the date the application was filed or the application shall be deemed in fact and law to be approved.

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

28 DE Reg. 724 (04/01/25) (Prop.)