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Sandra Mattavous-Frye, Esq.
People's Counsel

August 8, 2022

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

Re: RM48-2022-01-, In the Matter of 15 DCMR Chapter 48 – Microgrid

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceeding, please find the *Office of the People's Counsel for the District of Columbia's Initial Comments.*

If there are any questions regarding this matter, please contact me at 202.727.3071.

Sincerely,

/s/ Sarah Kogel-Smucker
Sarah Kogel-Smucker
Assistant People's Counsel

Enclosure

cc: Parties of record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

In the Matter of	§	
	§	
15 DCMR Chapter 48 - Microgrid	§	**RM-48-2022-01**
	§	

INITIAL COMMENTS OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA

The Office of the People's Counsel for the District of Columbia ("OPC" or "Office"), the statutory representative of the District of Columbia utility ratepayers and consumers,[1] hereby respectfully submits *Initial Comments of the Office of the People's Counsel for the District of Columbia* on the Notice of Proposed Rulemaking in this proceeding filed July 8, 2022 ("NOPR").

I. INTRODUCTION

OPC commends the Commission for proactively addressing the important issue of microgrid regulation and issuing the instant NOPR. Microgrids can provide District residents with important resiliency and clean energy benefits—generating clean energy locally, storing it, and providing electricity during emergency outages. For this reason, microgrids are a key part of the District's strategy to address climate change.[2] A microgrid is a local energy grid with control capability, which means it can disconnect from the traditional grid and operate autonomously.[3]

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1 D.C. Code § 34-804 (Lexis 2022).

2 *See, e.g.,* DC Dep't of Energy and Envt., Resilient DC at 106 *available at* https://resilient.dc.gov/page/about-resilient-dc; DC Dep't of Energy and Envt., Clean Energy DC at 16 *available at* https://doee.dc.gov/cleanenergydc.

3 PSC regulation defines microgrid as:

Microgrids usually have on-site electricity generation, and often have energy storage. Microgrid's unique structure is challenging to fit within the electric regulatory environment. That is, in the District, the electric transmission and distribution system is provided by a public utility, Pepco. Electric supply is subject to competitive retail choice. A microgrid, however, does not fit neatly into these categories because it connects to the local electric grid like other distributed energy resources ("DER"), but unlike most other DER, can be set up to sell electric supply to local consumers.

The Commission has been mindful of this challenge, devoting time and resources to addressing appropriate microgrid regulation through its Microgrid Working Group in the Modernizing the Energy Delivery System for Increased Sustainability (MEDSIS) proceeding and through a 2020 Notice of Inquiry ("NOI"). Order No. 21172 released on June 30, 2022, and the NOPR,[4] now interpret District law to subject multi-customer microgrids to the full suite of public utility regulation while allowing for more microgrid specific-regulation for microgrids without third-party customers (i.e., single customer microgrids and single customer-campus microgrids). For the reasons described herein, OPC recommends a "light touch" approach to microgrid regulation and therefore respectfully requests that the Commission withdraw the NOPR and reissue one that provides for case-by-case regulation of microgrids to further study best practices to develop the best regulatory approach to microgrids in the District.

[A] collection of interconnected loads, generation assets, and advanced control equipment, installed across a limited geographic area and within a defined electrical boundary that is capable of disconnecting from the larger Electric Distribution System. A Microgrid may serve a single customer with several structures or serve multiple customers. A Microgrid can connect and disconnect from the distribution system to enable it to operate in both interconnected or island mode.

15 DCMR § 999.

4 *RM-48-2022-01, In the Matter of 15 DCMR Chapter 48 – Microgrid*, filed July 8, 2020 ["NOPR"].

OPC applauds the Commission's goal in issuing this NOPR to "provide clarity and certainty for microgrid development participants."[5] However, OPC respectfully submits that in this instance, the Commission's regulatory approach to microgrids could chill their deployment, consequently hindering advancement of the District's climate change goals, without providing sufficient customer benefits. Moreover, the NOPR fails to address potential inequitable access to clean energy technologies in the District. Likewise, the NOPR fails to address potential stranded assets and overly defers cybersecurity questions to Pepco. The NOPR also raises questions about how District law and the regulations resulting from the NOPR would be applied.

Instead, as recommended in OPC's 2020 comments on the NOI,[6] the Commission should retain discretion to approve proposed multi-customer microgrids on a case-by-case basis. The Commission should establish the factors it will consider in exercising discretion to approve multi-customer microgrids and apply robust consumer protections to any approved microgrid. Such an approach should also be informed by microgrid regulatory and programmatic developments in other states.

II. PROCEDURAL HISTORY

The Commission has made advancing microgrid regulation a key component of its grid modernization strategy. As such, microgrids were the subject of one of the six working groups of the MEDSIS working group process.[7] MEDSIS, and its outgrowth PowerPath, is the PSC's grid

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5 *Formal Case No. 1163*, *In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia ("Formal Case No. 1163")*, Order No. 21172, ¶ 5, rel. June 30, 2022 ("Order No. 21172").

6 *Formal Case No. 1163, Office of the People's Counsel for the District of Columbia's Initial Comments*, filed Aug. 31, 2020 ["OPC NOI Comments"].

7 Smart Electric Power Alliance (SEPA), MEDSIS Modernizing the Electric Delivery System for Increased Sustainability Final Report V1.0 at 172-73 (May 31, 2019) *available at* https://dcpsc.org/PSCDC/media/PDFFiles/HotTopics/GridModernizationFinalReport.pdf ["MEDSIS Final Report"].

modernization proceeding to create "a modern, sustainable, and well-planned energy delivery system that encourages distributed energy resources and preserves the financial health of the energy distribution utilities."[8] The Microgrid Working Group's recommendations were detailed in the MEDSIS Final Report, which was filed on May 31, 2019.[9]

By Order No. 20286, the Commission opened *Formal Case No. 1163* to further investigate microgrid ownership and operation structures, business models and value propositions, benefits and costs of microgrids, and the different microgrid variances, which lead to appropriate microgrid classifications and regulatory treatments.[10] On July 17, 2020, the Commission released an NOI requesting input on the classification and regulation of microgrids including specific questions about a potential "light touch" regulatory framework that would subject microgrids to less-than the full suite of regulations required of an electric utility.[11] Parties, including OPC, submitted comments and reply comments on the NOI.

On June 30, 2022, the Commission released Order No. 21172 to address legal issues involving the Commission's regulatory authority over microgrids and direct the Potomac Electric Power Company ("Pepco") to propose modifications to the current Standby Service (Schedule S) to accommodate a distributed energy resources ("DER") focus on microgrids.[12] The Microgrid NOPR was published on July 8, 2022.

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[8] Public Service Commission District of Columbia, Clean Energy, https://dcpsc.org/CleanEnergy (last visited July 23, 2022).

[9] *See* MEDSIS Final Report at 167-234.

[10] *Formal Case No. 1130*, Order No. 20286, rel. Jan. 24, 2020.

[11] *Formal Case No. 1163, In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia ("Formal Case No. 1163")*, Notice of Inquiry, rel. July 17, 2020 ["Microgrid NOI"].

[12] *Formal Case No. 1163,* Order No. 21172, ¶ 1, rel. June 30, 2022 ("Order No. 21172").

III. BRIEF SUMMARY OF ORDER NO. 21172 AND THE MICROGRID NOPR

The intent of Order No. 21172 and the related Microgrid NOPR is to provide "clarity and certainty for microgrid development participants."[13] The Order and NOPR set three classifications for microgrids based on ownership and customer type:

- **Multiple Customer Microgrid** - a Microgrid that has a single distributed energy resource (DER) or multiple DERs serving multiple customers on multiple meters that may have their connections to the Electric Distribution System and the Microgrid through a Point of Common Coupling;
- **Single Customer Microgrid** - a single DER or multiple DERs that serve one customer behind a single meter; or
- **Single Customer-Campus Microgrid** - a single DER or multiple DERs serving multiple facilities controlled by one meter at the Point of Common Coupling.[14]

Order No. 21172 and the NOPR address current District law regulating electric utilities and the generation and distribution of electricity and reflect that neither a single customer microgrid nor a single customer-campus setting microgrid is an electric company as defined by D.C. Code § 34-207 and therefore are not public utilities under D.C. Code § 34-214.[15] By contrast, the Commission concludes that a multiple customer microgrid is an electric company and thus a public utility.[16] As such, it is required to apply for a certificate of present and future public convenience and necessity and is subject to all of the provisions of Title 34 of the D.C. Code

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13 *Id.* ¶ 5.

14 *Formal Case No. 1163,* Order No. 21172, ¶ 10; NOPR § 4801.1

15 *Formal Case No. 1163*, Order No. 21172 ¶ 13.

16 *Id.* ¶ 15.

applicable to a public utility.[17] A microgrid that generates electricity for sale is also an "electric generating facility" and while neither a single customer microgrid nor a single customer-campus microgrid is deemed an "electricity supplier" as defined by D.C. Code § 34-1501(17), a multiple-customer microgrid is considered an electricity supplier.[18]

The Microgrid NOPR sets technical standards for microgrid operation and interconnection. It also requires multi-customer microgrids to have standard contracts, develop customer classes, set standard rates and to not discriminate against customers within its geographic area.[19] The NOPR provides that the Commission may "waive any provision of this chapter for good cause."[20]

IV. COMMENTS

A. *By cementing multi-customer microgrids as public utilities pursuant to District law at this juncture, the proposed regulations subject microgrids to requirements that could hinder advancement of the District's climate change goals and stifle competition without providing concomitant customer benefits.*

In Order No. 21172, the Commission concludes that multi-customer microgrids are electric companies as defined by D.C. Code § 34-207 and therefore are public utilities under D.C. Code § 34-214. However, instead of conducting pilots to examine how to best regulate such microgrids under current law or examining how the law may need to be updated to directly address the regulation of microgrids, the Commission issued the Microgrid NOPR focused on these three classifications. This NOPR reinforces this interpretation of District law and would subject multi-customer microgrids to the full suite of public utility regulation.

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17 *Id.*

18 *Id.* ¶ 18.

19 NOPR § 4806.

20 *Id.* § 4810.1.

At this nascent juncture in microgrid development in the District, however, the microgrid structure does not fit within the so-called "regulatory compact" undergirding public utility regulation. Public utility regulation is largely understood to be based on an informal regulatory compact under which "a utility waives market competition and subjects itself to government oversight in exchange for revenue guaranteed by a cost-of-service model."[21] "Utility shareholders accepted lower rates of return on their investment in exchange for the certainty of regulated rates and resulting ability to recover prudently incurred costs."[22] The public in turn, ideally benefits from lower cost-of-service provided by the monopoly conditions, protected by robust regulation.[23] In the District, policymakers have decided to apply this compact to the transmission and distribution of electric service but due to regulatory reform, not electricity supply.

At this stage of the modernization and transformation of the Grid, the rationale underlying the traditional regulatory compact barely applies to microgrid owners. Several microgrid projects are just now advancing in planning and development in the District.[24] Under present day circumstances, a microgrid developer receives little benefit from the predictability of monopoly service and a reasonable rate of return while being subject to significant burdens from full public

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[21] Daniel Shea, Natl. Conf. State Legs. (NCSL), Electricity Markets: A Primer for State Legislators (Dec. 14, 2021), https://www.ncsl.org/research/energy/electricity-markets-a-primer-for-state-legislators.aspx (last visited July 27, 2022); Jim Rossi, The Common Law "Duty to Serve" and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring, 51 V and. L. Rev. 1233, 1248-51 (1998).

[22] *Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667, 700 (D.C. Cir. 2000).

[23] *See Article: Private (Utility) Regulators*, 50 Envtl. L 999, 1001 (2020).

[24] *See, e.g.*, Elisa Wood, *University to install unique microgrid and community solar combination in Washington, D.C.*, Microgrid Knowledge (Apr. 15, 2022), https://microgridknowledge.com/microgrid-university-for-the-deaf/; Govt. of D.C., Exec. Office of the Mayor, *Mayor Bowser Announces a New Microgrid at St. Elizabeths East to Increase Resiliency and Reliability*, (Apr. 22, 2022), https://mayor.dc.gov/release/mayor-bowser-announces-new-microgrid-st-elizabeths-east-increase-resiliency-and-reliability; *DC Water plans microgrid for one of world's largest wastewater treatment plants; issues solicitation*, Microgrid Knowledge, (March 15, 2022), https://microgridknowledge.com/dc-water-microgrid/.

utility regulations. For example, a regulated entity must have an office in the District, a 7-17 person board,[25] detailed reporting requirements, and set rates through a procedurally proscribed rate case. These burdens and risks may add prohibitive costs to an otherwise viable microgrid project.[26] As stated in an article in T&D World, "Being regulated as a utility imposes regulatory requirements that make the operation of most microgrids financially unsustainable."[27]

Likewise, the microgrid customer may lose more in the tradeoff between enhanced competition and public utility regulation at this juncture. Given that the multi-customer microgrid will now have set rates developed in a rate proceeding and subject to non-discrimination clauses, sophisticated commercial customers will have lost their ability to negotiate terms of service directly with the microgrid owner. Instead, such customers would be required to represent their interests in potentially lengthy and detailed rate cases before the Commission. Overall, at this stage, this regulatory approach may result in higher rates for microgrid customers or less microgrid options.

Microgrid customers should have robust consumer protections under any regulatory regime. Based on information and experience amassed to date, regulating multi-customer microgrids as a public utility, however, is not the only, or necessarily most effective, way to ensure that consumers are protected. Instead, as described in Section IV.G below, OPC's 2020 NOI comments describe ways to protect consumers under a regulatory framework that does not

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[25] DC Code § 34-404.

[26] Oueid, R.K., 2019, *Microgrid finance, revenue, and regulation considerations* U.S. Department of Energy, 20585, United States. TheElectricityJournal32 (2019) at 2–9 ("The prospect of being treated as a traditional utility, where billing, rates, and quality of services are all regulated, adds significant cost and risk, further reducing a project's economic viability").

[27] Anabelle Pratt and Francisco Flores-Espino, *The Regulatory Path Forward for Networked Microgrids* T&D World (May 21, 2020), https://www.tdworld.com/distributed-energy-resources/article/21131999/the-regulatory-path-forward-for-networked-microgrids.

immediately regulate multi-customer microgrids as public utilities. OPC's recommendations include updating the CBOR to have a clear formal complaint process against microgrid operators.[28] And, while Pepco may argue that "light touch" regulations for microgrids threaten the monopoly protection from transmission and distribution competition undergirding its own regulatory compact, case-by-case experience can help the Commission better address how to support microgrid expansion while preserving the financial health of the electric utility.[29]

At this juncture, without tangible experience or empirical data, applying the District's public utility regulatory approach to microgrids, OPC urges caution and expresses concern about the potentially chilling effect of such regulation on microgrid expansion before it has a chance to develop in the District. Such a chilling effect could include the NOPR prohibiting viable and customer-friendly microgrid business models. For instance, Mark Feasel, executive vice president and chief commercial officer at FuelCell Energy, indicated that the NOPR creates questions about the viability of the energy-as-a-service model in the District.[30] In the energy-as-service model, a third party provides the capital to build the microgrid and owns and operates it and customers pay a fee for the services the microgrid provides to them. The NOPR, however, requires customers to cover the amortized cost of capital. Mr. Feasel argues that "[m]ost consumers are not and should

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[28] OPC NOI Comments at 9-10.

[29] While initially during the MEDSIS proceeding OPC supported the concept of regulating multi-customer microgrids as public utilities, throughout this proceeding OPC's primary concern was to prohibit unregulated monopolies to operate without requisite consumer protection. MEDSIS Final Report at 179. Market changes, new laws, and aggressive environmental policies have evolved over the years. OPC's positions are responsive to the District's current and forward-looking goals and objectives. In OPC's NOI comments as described in Section IV.G below, OPC supported exploring "light touch" regulation with robust consumer protections.

[30] *Formal Case No. 1167*, Office of the People's Counsel of the District of Columbia, Equity Assessment of Electrification Incentives in the District of Columbia, at 36, filed Dec. 3, 2021 ["OPC Electrification Study"].

not be mobilized to take the technical, regulatory and financial risks associated with owning distributed energy infrastructure. Therefore, the net impact may be fewer microgrids . . . ."[31]

Likewise, this chilling effect could make it harder, or more costly, to achieve the District's climate change goals. The District Government has made microgrids an important component of its clean energy, decarbonization, and climate change resiliency goals. OPC is concerned about disincentivizing potentially viable and cost-effective microgrid business models and of raising the costs of achieving these benefits.[32] In particular, OPC is concerned that the NOPR could disincentivize near-term private investment in this clean energy technology in the District, leaving consumers and taxpayers to shoulder a higher portion of the cost of deploying microgrids.

B. *An inadvertent effect of the proposed rule's approach to the creation of monopolies may be to exacerbate inequitable access to microgrid technologies in the District and locate microgrids in areas that are not best suited for them.*

The proposed rule takes a curious approach to creating mini-monopolies: it leaves the geographic location of new microgrids to the competitive market by allowing potential microgrid developers to propose microgrid locations, but then prohibits discrimination within the geographic location chosen by the microgrid developer. Yet, the most public benefit of Commission oversight may be, instead, from reviewing the initial location of the microgrid through case-by-case regulation. OPC understands that under the proposed rules the Commission would review an application for public convenience and necessity. However, OPC is concerned that initially allowing microgrid developers to select the location of the microgrid but then guaranteeing them

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[31] Eliza Wood, *The District of Columbia wants to designate certain microgrids as electric utilities* Microgrid Knowledge (July 11, 2022), https://microgridknowledge.com/microgrid-as-utilities-dc/.

[32] *See* Anabelle Pratt and Francisco Flores-Espino, *The Regulatory Path Forward for Networked Microgrids* T&D World (May 21, 2020), https://www.tdworld.com/distributed-energy-resources/article/21131999/the-regulatory-path-forward-for-networked-microgrids ("...regulation can sometimes prevent technological advances from being implemented economically or at all.").

a reasonable rate of return may not prioritize areas that most need microgrid technologies. In creating mini-monopolies, the NOPR does not address the cost-effectiveness, particular need, nor particular vulnerability of any given location for a microgrid. Left to market forces, it may be that microgrids largely get proposed in more affluent areas, depriving the disadvantaged communities of the important resiliency and emergency service benefits of microgrids. As documented by OPC's study *Equity Assessment of Electrification Incentives in the District of Columbia* ("Study"), and elsewhere, stark inequalities exist among District communities.[33] In the District, Wards 7 and 8, which have the lowest median incomes, are more likely to have high rates of poverty, high energy expenditures, high percentage of racial/ethnic minorities, higher rates of eligibility for and participation in government assistance programs, higher percentage of renters, and lower rates of college graduates.[34] These two wards, and Ward 5, also had more customers affected by outages in 2020, 2021 and 2022 than other wards. And, if the implementation of microgrids or other DERs is not preceded by an independent third-party analysis of the current distribution system capabilities, the microgrid may not be cost-effective in the proposed location because it may require expensive and otherwise unnecessary distribution system upgrades.

C. *The NOPR does not sufficiently address the concern of stranded assets.*

Given the nascent and dynamic nature of the microgrid industry, there is a considerable risk of stranded microgrid assets. The proposed rules do require multi-customer microgrid customers to apply for a certificate of public convenience and necessity that includes a requirement to "demonstrate the financial responsibility of the applicant."[35] OPC suggests that this may be

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33 *See* OPC Electrification Study at 5.

34 *Id.*

35 15 DCMR § 1501.3(d).

insufficient to address the concern of stranded assets and any updated rule should provide for addressing stranded assets in a manner that protects non-microgrid customers from having to shoulder any related costs.

D. *The NOPR should not defer all cybersecurity questions to Pepco.*

Section 4803.3 of the proposed rule requires the Microgrid Operator to "have communication and control systems that meet the requirements established by the Electric Distribution Company, including cybersecurity, as specified in the Microgrid Interconnection Agreement." The NOPR, or a related order, however, should more fully discuss the types of generation assets (including energy storage), the components and functions, the kind of technologies that would be used, and the compatibility of those technologies with Pepco's system to address how to best protect the distribution system from cyber-attack and other reliability issues.[36] While Pepco has essential knowledge on security issues related to its current interconnection, microgrids have unique cybersecurity challenges.[37] The Commission should ensure that such cybersecurity issues related to microgrids are adequately handled by addressing them directly and by drawing on experiences from other jurisdictions.

E. *The Commission should clarify whether all District law applicable to Pepco would be applicable to multi-customer microgrids.*

The NOPR should clearly state the difference between the multi-customer microgrid, referred to as "an electric distribution company" and Pepco, referred to as "the electric distribution company." The Commission expressly and succinctly stated in Order No. 21061, that "Pepco is

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36 *See Article: The Urban Microgrid*, 41 Fordham Urb. L.J. 1695, 1756 (2016)("When non-utility parties have access to detailed customer data, and likely in a more lightly-regulated environment, customer data privacy issues will grow in significance"); McKenzie, S. H., et al., *Cybersecurity of Networked Microgrids: Challenges, Potential Solutions, and Future Directions*, DOE, Los Alamos National Laboratory (2021).

37 *See* Nejabatkhah, F. et al., *Cyber-Security of Smart Microgrids: A Survey*, Energies 2021 at 14, 27.

statutorily barred from owning generation assets."[38] As such, Pepco cannot engage in the business of electricity supply, nor own or have substantial control of such supply. This is the bedrock principle of "retail choice" reflected in District law: that the electricity distribution utility may not also compete in the generation and supply market. Yet, most microgrids have a generation component. Any updated microgrid rules should remove any statements that could be misinterpreted to imply that Pepco can own microgrid generation assets. Section 4806.1 of the NOPR provides that a multi-customer Microgrid Operator "shall be considered *an* Electric Distribution Company" (emphasis added) and shall "comply with all rules, regulations, standards, and orders applicable to *an* Electric Distribution Company" (emphasis added). The NOPR, however, seems to potentially make a distinction between *an* EDC and *the* EDC because it exempts *the* EDC from the NOPR. Specifically, section 4801.4 of the NOPR states, "Microgrids owned or developed by the Electric Distribution Company are not subject to this chapter." If the NOPR intends to distinguish between *an* EDC (a multi-customer microgrid owner) and *the* EDC (Pepco), that distinction is confusing and more clarifying terminology should be used for each type of entity.

F. *The Proposed Rules raise a number of practical regulatory questions.*

OPC raises the following practical regulatory questions regarding the proposed rule:

- Section 4802.1 – Does the prohibition on selling or distributing excess Electric Service to other Persons include net metering?
- 4804.1 – In complying with the District's Renewable Portfolio Standard, how are the renewable energy credits that the microgrid generates to be

[38] *Formal Case No. 1163,* Order No. 21061 ¶ 8.

treated? Does it need to sell its RECs and then purchase sufficient RECs or is there some other process? What about the possibility of microgrids participating in the wholesale market?[39]

- 4806.1 – does this provision include the requirement in DC Code § 34-404 to have a 7-17 person board and the requirement in § 34-1112 that public utilities have offices in the District?
- 4806.8(2) – How will the Commission determine "discrimination" against a potential microgrid customer? When initially reviewing proposed geographic boundaries, will the Commission consider census data regarding race and income levels in geographic areas? Will the Commission consult with ANCs regarding potential discrimination?
- 4810.1 – What sort of factors will the Commission consider when weighing "good cause"?
- Funding - The PSC and OPC assess the utility companies for the cost of formal proceedings. For rate cases, the Commission can assess no more than one-quarter of 1% of the jurisdictional value of the utility company, per case. For non-rate cases, the Commission can assess no more than one-twentieth of 1% of the jurisdictional value of the utility company for the calendar year.[40] Has the Commission evaluated the likely jurisdictional value of a multi-customer microgrid owner to ensure that it would be

[39] *See, e.g.,* Cohn, L. 2021, *What FERC Order 2222-A Means for Microgrids and Energy Democracy*, Apr. 19, 2021.

[40] DC Code § 34-912.

sufficient to cover robust regulation and fulsome consumer advocacy in proceedings related to that microgrid including the required rate proceedings?

- Federal exemptions – Would microgrids that are "qualifying facilities" under The Public Utility Regulatory Policies Act of 1978 (PURPA) be exempt from being regulated as public utilities under District law?[41]

G. *As recommended in OPC's 2020 Comments, the Commission should regulate microgrids on a case-by-case basis to develop additional learnings.*

As recommended in OPC's 2020 comment on the NOI, annexed hereto as Exhibit A, because of the many potential benefits of microgrids, the Commission should support the expansion of microgrids where cost-effective and in locations that could benefit from enhanced resiliency such as critical facilities or locations that are particularly vulnerable to power outages. To start, because of the challenge of fitting microgrids into the current regulatory structure, the Commission should retain discretion to approve proposed multi-customer microgrids on a case-by-case basis to gain additional experience regulating them. The Commission should establish the factors it will consider in exercising discretion to approve multi-customer microgrids. Clearly established factors will help promote microgrids by allowing potential microgrid operators and sophisticated microgrid users to make informed business decisions. Such approvals should come with robust consumer protections. With additional learnings, the Commission can better understand how best to balance robust consumer protection, fulsome regulation, and support of microgrid expansion while ensuring the financial health of the electric transmission and

[41] *See* 18 CFR § 292.602(c)(1)(i-ii) (exempting qualifying facilities from state "financial and organizational regulation," which arguably could include designation as public utilities under District law).

distribution company. Additional experience regulating microgrids on a case-by-case basis would also allow the Commission to examine the various microgrid ownership structures such as the microgrid owned by an investor, or group of investors, by a community, or by an institution. This is not addressed in the NOPR.

H. *Regulatory and programmatic updates since 2020 in Connecticut, Hawaii, and New Jersey further bolster adopting OPC's 2020 recommendations.*

States with similar greenhouse gas reduction goals to the District have not established regulations classifying multi-customer microgrids as utilities. Instead, these states have enacted programs and tariffs that support microgrid expansion. For instance, Connecticut's Public Act 13-298 of 2013 adjusted the regulatory framework to allow for municipal ownership of microgrids that cross a public right of way without regulating such microgrids as a utility. Connecticut's Microgrid Grant and loan program has subsequently provided several rounds of funding to support microgrids for critical facilities.[42] In New Jersey, the Board of Public Utilities is administering a US Department of Energy funded Town Center DER Microgrid program to fund the development of municipal microgrids to a cluster of critical facilities within a municipal boundary that are capable of providing essential municipal services and shelter for the public during and after an emergency situation.[43] In Hawaii, in 2021, the Public Utility Commission approved a microgrid service tariff distinguishing between single-customer microgrids and "hybrid" microgrids in which infrastructure from the utility and customer are combined to supply electricity.[44] OPC reiterates

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[42] Connecticut Dep't of Envtl. Protection, Microgrid Grant and Loan Program, https://portal.ct.gov/DEEP/Energy/Microgrid-Grant-and-Loan/Microgrid-Grant-and-Loan-Program (last visited July 27, 2022).

[43] Relevant documents *available at* New Jersey Board of Public Utilities, Microgrids, https://nj.gov/bpu/commercial/microgrid.html (last visited July 27, 2022).

[44] Hawaii Public Utility Commission, *Docket No. 2018-0163, Instituting a Proceeding to Investigate*

its recommendation from the NOI reply comments that the Commission conduct a survey of other states' approaches to microgrid regulation.[45]

V. CONCLUSION

WHEREFORE, the Office of the People's Counsel respectfully requests the Commission consider and adopt the recommendations discussed herein.

Respectfully Submitted,

/s/ Sandra Mattavous-Frye
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Dated: August 8, 2022

Establishment of a Microgrid Services Tariff, Decision and Order No. 37786, rel. May 17, 2021.

[45] *Formal Case No. 1163, Reply Comment of the Office of the People's Counsel for the District of Columbia*, filed Sept. 15, 2020.

Exhibit A

OPC-DC
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Sandra Mattavous-Frye, Esq.
People's Counsel

August 31, 2020

Ms. Brinda Westbrook-Sedgwick
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Public Service Commission
of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

Re: Formal Case No. 1163, *In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia*

Dear Ms. Westbrook-Sedgwick:

Attached for filing in the above-referenced proceeding please find *The Office of the People's Counsel for the District of Columbia's Initial Comments*.

If there are any questions regarding this matter, please contact me at 202.727.3071.

Sincerely,

/s/ Sarah Kogel-Smucker

Sarah Kogel-Smucker
Environmental and Climate Attorney

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Pursuant to the Public Service Commission of the District of Columbia's ("PSC" or "Commission") Notice of Inquiry ("NOI") in Formal Case No. 1163, *In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia*,[1] the Office of the People's Counsel for the District of Columbia ("OPC" or "Office") the statutory representative of the District of Columbia utility ratepayer and consumers,[2] hereby respectfully submits initial comments regarding the Commission's role in the regulatory framework of microgrids in the District.

I. SUMMARY OF COMMENTS

By law, OPC, while advocating on matters must consider the conservation of natural resources, and the preservation of environmental quality, including effects on global climate change and the District's public climate commitments.[3] Microgrids can enhance the grid's reliability, resiliency, and aid in decarbonizing the District's energy-supply. The Office commends the Commission for opening this investigation into appropriate microgrid classifications and regulatory treatments. OPC believes current regulations should be amended to allow District

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1 *Formal Case No. 1163, In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia ("Formal Case No. 1163")*, Notice of Inquiry, rel. July 17, 2020 ["Microgrid NOI"].

2 D.C. Code § 34-804 (2020).

3 *Id*.

residents to benefit from an expansion of microgrids in the District. Customers of microgrids developed by large commercial customers, or by institutions such as universities, hospitals, are differently situated than customers in potential multiparty microgrids such as neighborhood-based microgrids. Any regulatory framework created by the PSC should account for these differences. The District is not alone. States across the nation are also facing this challenge as microgrids often do not fit within the existing regulatory frameworks. Hence, a "one size fits all" approach to microgrid regulation is not tenable.

To inform the Commission's classifications and regulatory treatment of microgrids, OPC provides answers to the questions the Commission posed in the July 17th NOI. As described below, OPC recommends the Commission amend regulations to enable an initial expansion and adopt factors and time-frames that it will consider in reviewing, approving, and classifying microgrid projects. In amending regulations and reviewing projects, the Commission must ensure robust protections for consumers. Equally important, costs associated with microgrid interconnection to the larger grid should not be shifted onto general ratepayers.

II. BACKGROUND

The declining costs for solar photovoltaic systems, advances in distributed storage alternatives, and the rapid development of energy management technologies has paved the way for the development of microgrids in the District.[4] Parties have been in the process of developing and operating microgrids in the District for the past decade.[5] As part of the Commission's DC PowerPath proceeding, Order No. 19432 directed the Microgrid Working Group to review

[4] *See* Kevin B. Jones et al., *The Urban Microgrid: Smart Legal and Regulatory Policies to Support Electric Grid Resiliency and Climate Mitigation*, 41 Fordham Urb. L. J. 1694, 1698 (2015).

[5] *See* Melanie Kaplan, *Howard University Plans Washington's First Microgrid*, Smart Planet (July 28, 2010) *available at* https://www.zdnet.com/article/howard-university-plans-washingtons-first-microgrid.

microgrids, look into microgrid development in District, and provide recommendations.[6] By Order No. 20286, the Commission opened *Formal Case No. 1163* to further investigate microgrid ownership and operation structures, business models and value propositions, benefits and costs of microgrids, and the different microgrid variances, which lead to appropriate microgrid classifications and regulatory treatments.[7]

The Commission defines a microgrid as "a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that act as a single controllable entity with respect to the grid."[8] A microgrid can connect and disconnect from the larger microgrid typically called a macrogrid to enable it to operate in both a grid-connected and island mode. As described in the Final Report of the DCPSC MEDSIS Stakeholder Working Groups, microgrids can serve a single customer, single customer-campus, or multiple customers.[9]

Not surprisingly, states are developing myriad regulatory solutions to address the problem of how to enable the development of microgrids. In order to develop a regulatory framework, states must decide how to characterize different types of microgrids and what regulatory structure should apply to those characterizations. For instance, Puerto Rico enacted comprehensive microgrid regulation in response to the prolonged outages and damage to the electric system caused by Hurricane Maria.[10] These regulations characterize microgrid by ownership structure, size, and

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[6] *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability ("Formal Case No. 1130"),* Order No. 19432, Rel. Aug. 9, 2018.

[7] *Formal Case No. 1130*, Order No. 20286, Rel. Jan. 24, 2020.

[8] 15 DCMR § 4099 (2020).

[9] Smart Electric Power Alliance (SEPA), MEDSIS Modernizing the Electric Delivery System for Increased Sustainability Final Report V1.0 at 172-73 (May 31, 2019) *available at* https://dcpsc.org/PSCDC/media/PDFFiles/HotTopics/GridModernizationFinalReport.pdf ["MEDSIS Final Report"].

[10] *Case No. CEPR-MI-2018-0001, In re Regulation of Microgrid Development*, Adoption of Proposed Regulation on Microgrid Development Resolution ¶ 3, Issued May 16, 2018 (Puerto Rico PUC).

whether or not they engaged in the sale of energy services and/or other grid services.[11] In contrast, other states including Massachusetts, New York, and California have retained public utility commission discretion to review, approve, and decide appropriate level of regulation for individual microgrid projects while adopting programs and targeted regulatory changes that enable their development.[12]

III. RESPONSE TO PSC QUESTIONS

A. PSC Question #1: What regulations or policies should the Commission consider for microgrids? Should a light touch regulatory framework be considered? What components would be included in such framework?

i. What regulations or policies should the Commission consider for microgrids?

Because of the many potential benefits of microgrids, the Commission should support the expansion of microgrids where cost-effective and in locations that could benefit from enhanced resiliency such as critical facilities or locations that are particularly vulnerable to outages. It is difficult to opine on the exact form regulatory support for microgrids should take without more experience with microgrids in the District because the varied potential ownership structures do not

[11] Regulation on Microgrid Development of the Puerto Rico Energy Commission §§ 2.01 (characterizing microgrids as either personal not subject to the regulation, cooperative or third-party), 5.01, 5.02. Among other things, the Puerto Rico regulations require third-party microgrid operators to develop a complaint procedure (section 5.08), a standard contract (section 5.09), and provide annual reports to the Commission (section 5.12).

[12] *See* California Public Utilities Commission, Resiliency and Microgrids, https://www.cpuc.ca.gov/resiliencyandmicrogrids (last visited Aug. 31, 2020)(outlining the tracked steps to implement SB 1339 enacted in 2018, which directed the CA PUC to facilitate the commercialization of microgrids for distribution customers of large electrical corporations); KEMA, Microgrids - Benefits, Models, Barriers and Suggested Policy Initiatives for the Commonwealth of Massachusetts at 1-1, 10-4 (Feb. 3, 2014) *available at* https://www.masscec.com/microgrids-0 (Massachusetts Clean Energy Center study to better understand the opportunities to promote and support the development of microgrids that recommends microgrid pilot projects before more comprehensively addressing regulatory and policy issues that have to be addressed to move microgrids forward); *CASE 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan at 112, 126, Issued Feb. 26, 2015 (deciding to establish and define several configurations of microgrids that will be presumptively permissible, without excluding other types of proposed microgrids from consideration but declining to identify specific configurations for presumptive approval at that time due to the complexity of the issues, the importance of establishing clear rules for potential market participants, and the need for additional stakeholder input).

neatly fit into the current regulatory framework.[13] For that reason the Commission should retain discretion to approve proposed multi-customer microgrids on a case-by-case basis supporting targeted microgrid projects to gain additional experience regulating them.

The Commission should establish the factors it will consider in exercising discretion to approve multi-customer microgrids. Clearly established factors will help promote microgrids by allowing potential microgrid operators and sophisticated microgrid users to make informed business decisions. The Commission should solicit additional targeted stakeholder input on what the relevant factors should be. The Commission should also provide a clear regulatory approval process that includes established time frames to provide predictability and allow beneficial projects to advance. Experiences gained in other jurisdictions should inform how and where the Commission needs to exercise varying degrees of regulation. Lastly, as described more fully in Section A.ii, the Commission's interconnection rules for small generators should be amended to accommodate microgrids, and net metering rules may need to be amended depending on the generation capacity of planned microgrids. In making these changes, it would be helpful for the Commission to establish a "regulatory roadmap" sequencing how and when it will develop the full suite of regulations needed to promote microgrid expansion.

ii. Should a light touch regulatory framework be considered? What components would be included in such framework?

Yes, the Commission should consider a "light-touch" regulatory framework for certain multi-customer microgrids. Microgrids can serve a single customer, single customer-campus, or multiple customers.[14] Customers in single-customer microgrids are similarly situated to other

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13 *See* MEDSIS Final Report at 182-83.

14 MEDSIS Final Report at 178-79.

behind the meter generators, such as rooftop solar, and therefore do not risk being subject to the full suite of regulations applicable to an electric utility.

For example, in the District of Columbia, Gallaudet University ("Gallaudet") is in the process of implementing a private campus microgrid system to serve only the Gallaudet campus with energy services including electricity, heating and cooling, and domestic hot water.[15] As one component of the private campus microgrid, Gallaudet planned to install approximately 3 MW (AC) of solar PhotoVoltaic ("PV").[16] The Community Renewable Energy Facility ("CREF") project required a Commission waiver from the requirement that CREFs be directly interconnected to the utility distribution system, because the virtual CREF would use metering and billing software behind the meter to allow one point of interconnection instead of requiring PEPCO to install cables to each of the 37 planned solar arrays.[17] Gallaudet is otherwise similarly situated to other behind the meter generators.

The question of "light-touch" is, therefore, relevant primarily to multi-customer microgrids. Some stakeholders have argued multi-customer microgrids should be characterized as a public utility and thus be subject to the full suite of regulations that would then apply.[18] By contrast "light-touch" regulation acknowledges that certain multi-party microgrid operators and customers are differently situated than traditional electric utilities and their customers, and thus warrant different regulatory treatment. As noted in the NOI, "light-touch" regulation of multi-

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15 *Formal Case No. RM09-2019,* Motion to Waive Part of 15 D.C.M.R. § 906.1 To Allow for Interconnection of a Community Renewable Energy Facility at Gallaudet University, at ¶ 1 (Sept. 27, 2019).

16 *Id.*

17 *Formal Case No. RM9-2015-01, In the Matter of 15 DCMR Chapter 9-Net Energy Metering,* Order No. 20271 ¶¶ 3, 5, Issued Dec. 19, 2010.

18 *See, e.g.,* MEDSIS Final Report at 179.

customer microgrids would mean exempting a microgrid from traditional PSC regulations such as keeping accounts, records and books, from making annual reports, and from filing rate schedules and tariffs.[19]

The NOI highlights a New York example in which the New York PSC considered an application for Eastman Kodak Company ("Kodak") to sell its electric, gas, steam and water utility facilities at a business park to a third-party company, RED, as part of Kodak's bankruptcy proceedings.[20] There were twelve existing customers at the business park and Kodak planned on remaining onsite.[21] In setting up the business park, Kodak had been entitled to incidental regulation because it showed that revenues from its gas, electric, steam and water businesses were incidental and subsidiary to earnings from its primary manufacturing business.[22] Kodak had been granted lightened ratemaking regulation of its utility businesses, except for its water business because the New York Public Service Commission ("NY PSC") determined that Kodak operated in competitive retail markets, where customers could avail themselves of alternatives to taking service from Kodak.[23] The NY PSC approved retaining the existing lightened regulation for RED

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19 Microgrid NOI ¶ 10.

20 *Id.* ¶ 5; *Case No. 13-M-0028*, *Red-Rochester LLC and Eastman Kodak Company*, Approval to Transfer Certificates of Public Convenience and Necessity, for Continued Lightened and Incidental Regulation, Approval of Financing and Authorization, to the Extent Necessary, for Submetering, at 1-2, issued May 30, 2013.

21 *Case No. 13-M-0028*, *Red-Rochester LLC and Eastman Kodak Company*, Approval to Transfer Certificates of Public Convenience and Necessity, for Continued Lightened and Incidental Regulation, Approval of Financing and Authorization, to the Extent Necessary, for Submetering, at 18, issued May 30, 2013.

22 *Id.* at 21.

23 *Id.*

after considering several factors that weighed whether the customers in question were sufficiently protected under such regulation.[24]

Here, similar to the NY PSC, the Commission should allow a light-touch regulatory framework for microgrids under certain proscribed circumstances with robust customer protections and should establish the factors it will consider when determining when to allow light-touch regulations.

iii. What components would be included in such framework?

Any framework for reviewing and approving light-touch regulations for microgrids must sufficiently protect consumers. To protect consumers, factors that the PSC considers in deciding whether to apply light-touch regulation must include: (1) whether customers can avail themselves of the full range of competitive alternatives to service, including self-supply options or the seeking out of alternative providers, such as Third Party Suppliers ("TPS"); and (2) whether the microgrid is operated by an experienced operator (with a set minimum number of years of experience) that is sufficiently capitalized.[25]

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[24] *Id*. Factors were that the arrangement would: (i) allow customers to leave the bounds of the microgrid for competitive alternative locations (which would necessarily affect prices for electricity and gas); (ii) enable customers to avail themselves of the full range of competitive alternatives to service, including self-supply options or the seeking out of alternative providers; and (iii) be managed by experienced gas, electric, steam, and water facility operators, be sufficiently capitalized, and continue the existing arrangements for maintaining water facilities. *Id*.

[25] *See Case No. 13-M-0028, Red-Rochester LLC and Eastman Kodak Company, Approval to Transfer Certificates of Public Convenience and Necessity, for Continued Lightened and Incidental* Regulation, Approval of Financing and Authorization, to the Extent Necessary, for Submetering, ¶¶ 31-33, Issued May 30, 2013 (NY PSC decision allowing light touch regulation for a microgrid).

B. PSC Question #2: What specific standards should microgrids follow to ensure safe design and operation?

As noted in the MEDSIS Final Report, the District's relevant design and construction safety standards already apply to microgrids and OPC is not aware of any stakeholder argument that they should not.[26] In terms of operation, it is vitally important that microgrids are dispatched prior to needing them in a critical need/emergency situation to ensure that they can be used for that purpose. Additionally, the Commission's interconnection rules for small generators may need to be amended to accommodate microgrids. Rules should address how a microgrid can safely connect to the system for net metering and disconnect from the system and use the microgrid's islanding capabilities during periods of disruption or to avoid periods of disruption.

The interconnection rules should be sufficiently comprehensive to cover the microgrid interconnection process and unique terminology should be clearly defined. Any amendment to the interconnection rules should preserve PEPCO's right to require adequate cybersecurity precautions to ensure that a microgrid does not create a point of vulnerability for cyber-attacks on the larger grid. The Commission must also ensure that costs associated with interconnection are not shifted onto ratepayers not served directly by the microgrids. OPC recommends the Commission expeditiously begin the process of updating the interconnection rules.

C. PSC Question #3: Should microgrids be subject to the existing Consumer Bill of Rights ("CBOR") rules? If not, how can the Commission ensure that customer protections and safeguards will be maintained, including the right to choose an electricity supplier?

i. Should microgrids be subject to the existing Consumer Bill of Rights ("CBOR") rules?

For the most part, microgrids are already subject to the existing CBOR when serving residential customers. If a microgrid is operated by an energy supplier or electric utility and serving

[26] MEDSIS Final Report at 191-92.

a residential customer, the CBOR applies.[27] In addition, all customers of utility companies and third-party suppliers already have the right to file a complaint with the PSC and the Commission should ensure that any regulatory treatment of microgrids continues to afford customers that right.[28] Issues may arise if there are multiple operators for the same microgrid. Accordingly, the Commission should develop a process to designate the operator for multi-party microgrids, so customers can direct complaints appropriately and it is clear who needs to address them. It is important that there is a clear formal process for complaints that might arise. Therefore, the Commission should amend the CBOR as needed in order to ensure protection of all energy customers.

ii. If not, how can the Commission ensure that customer protections and safeguards will be maintained, including the right to choose an electricity supplier?

An increase in microgrid development could lead to an increase in both the number and complexity of consumer complaints, and so, as noted in the MEDSIS Final Report, the Commission should ensure that the existing process for customer complaints can address that increase without sacrificing service, including response times and resources to address each complaint.[29]

D. PSC Question #4: If the microgrid is connected to Pepco's distribution system, how would the Commission's existing interconnection rules apply?

The Commission's Interconnection Rules for Small Generators do not currently address how a microgrid can safely connect to the system for net metering and disconnect from the system,

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27 15 DCMR § 300.2.

28 15 DCMR § 327.1; *see* Public Service Commission District of Columbia, Utility Customer Complaints Mediation and Inquiries, https://dcpsc.org/Consumers-Corner/Utility-Bills-Complaints-and-Service-Providers/Utility-Consumer-Complaints-Mediation-Inquiries.aspx (last visited Aug. 17, 2020).

29 MEDSIS Final Report at 219-20.

and use the microgrid's islanding capabilities during periods of disruption or to avoid periods of disruption.[30] Because the interconnection of a microgrid to Pepco's distribution system could impact reliability and safety, the rules governing this touchpoint need to carefully spell out the roles and responsibilities of Pepco and the owner(s) of the microgrid. OPC recommends the Commission look to other jurisdictions to see how rules have been developed for this process.

E. PSC Question #5: For the customers who are served by a microgrid, should the retail Standard Offer Service rates apply to those customers who are not selecting the third-party competitive suppliers? Under what conditions should the microgrid customers be subject to non-tariffed rates through special agreements?

i. For the customers who are served by a microgrid, should the retail Standard Offer Service rates apply to those customers who are not selecting the third-party competitive suppliers?

For the portion of electricity serving the microgrid customer from the larger grid, if those customers are not selecting third-party competitive suppliers, the retail SOS rates do apply and should continue to apply.[31]

ii. Under what conditions should the microgrid customers be subject to non-tariffed rates through special agreements?

As noted above, this proceeding should develop a framework to determine when a light touch regulatory framework is appropriate for multi-customer microgrids, which could allow retail rates through special agreements. That framework should ensure robust consumer protections including preserving retail choice options, customer complaint procedures, and safe harbor contract terms. Pilot projects may be helpful to evaluate the proper mechanisms to protect customers served by multi-party microgrids and to develop any limitations on when multi-party

[30] *See* 15 DCMR § 4000 *et seq.*

[31] *See* 15 DCMR §§ 4100.4, 4100.5.

microgrids are appropriate. Additionally, SOS ratepayers should not have costs associated with the proliferation of microgrids shifted onto them.

IV. CONCLUSION

WHEREFORE, the Office of the People's Counsel respectfully requests the Commission consider and adopt the recommendations discussed herein.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

RM48-2022-01, In the Matter of 15 DCMR Chapter 48 – Microgrid

I certify that on August 8, 2022, a copy of *OPC's Initial Comments* was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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