

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



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ELECTRONIC FILING

August 8, 2022

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

**Re: RM-48-2022-01, IN THE MATTER OF 15 DCMR CHAPTER 48 —
MICROGRID**

Dear Ms. Westbrook-Sedgwick:

On behalf of the Department of Energy and Environment, please find its Initial Comments on the Notice of Proposed Rulemaking issued in the above-captioned matter. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

In the Matter of 15 DCMR Chapter 48 – Microgrid)))	RM48-2022-01
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**DEPARTMENT OF ENERGY AND ENVIRONMENT’S
COMMENTS IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING
RM48-2022-01**

Pursuant to the Public Service Commission of the District of Columbia’s (Commission) Public Notice published in the District of Columbia Register on July 8, 2022, the Department of Energy and Environment (DOEE), on behalf of the District of Columbia Government (the District), respectfully submits these Comments on the Notice of Proposed Rulemaking (NOPR) published by the Commission in the above-captioned proceeding.

I. BACKGROUND

The NOPR creates a new chapter, Chapter 48 of Title 15 of the District of Columbia Municipal Regulation (DCMR). The stated purpose of the NOPR is to establish a new chapter governing microgrids in the District of Columbia. The Commission also released Order No. 21172 on the subject of microgrid classification and regulation on July 26, 2022, of which DOEE filed a Motion of Reconsideration on August 1, 2022. An Order on DOEE’s Motion for Reconsideration is pending. DOEE submits the following comments on the NOPR.

II. OVERVIEW

DOEE appreciates the Commission’s commitment to updating the DCMR to cover aspects of microgrid regulation, and finds that the creation of a new Chapter, Chapter 48, to

govern microgrid regulation is useful. However, DOEE finds that the Commission’s proposed regulations would harm the microgrid market in the District of Columbia and stymie the District’s ability to meet its climate commitments. Particularly, choosing to regulate microgrids by placing them into strict categories or buckets, rather than regulating them by their functionalities, will create market confusion and render microgrids that do not fall neatly into such categories difficult to bring to fruition. Additionally, treating microgrids as either an “electric company” or “electric supplier” is inappropriate given their role as distributed energy resources (DER), and treating them as both simultaneously is inconsistent with District law. DOEE’s comments fall under the following 6 categories: A) microgrid classifications; B) submetering; C) technical requirements; D) multi-customer microgrids; E) definitions; and F) Pepco ownership.

III. MICROGRID CLASSIFICATIONS

DOEE has previously made clear in working groups and rulemaking comments that microgrid regulation requires a new framework rather than retrofitting these DER into existing and outdated paradigms intended for utilities serving loads in one direction. Regrettably, the Commission’s NOPR does not address the options for alternative regulation that were provided by several stakeholders including DOEE, and instead places microgrids into distinct and rigid categories that do not amount to an enabling regulatory environment for microgrids that will further the District’s climate, resilience, and equity commitments. DOEE made clear in its comments in response to the Commission’s July 31, 2020 Notice of Inquiry in Formal Case No. 1163 the critical role that microgrids, including multi-customer microgrids, play in furtherance of

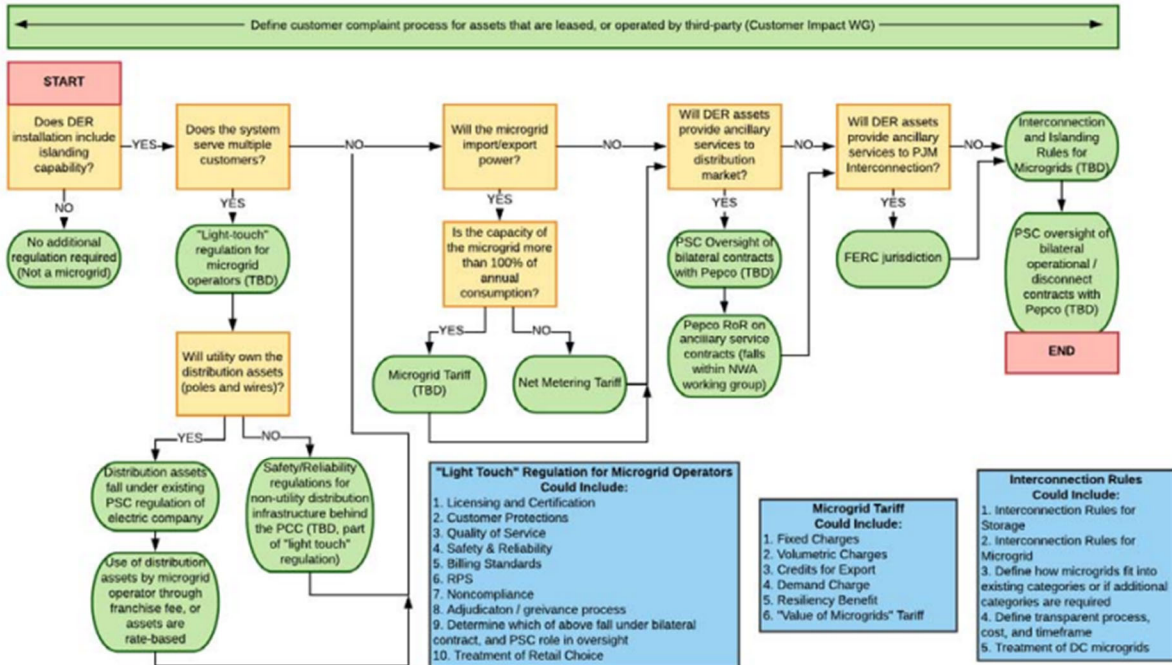
these commitments.¹ Further, this NOPR appears to contradict Federal policy, including the new tax credit for microgrids that is included in the Inflation Reduction Act that has passed the US Senate.² DOEE is unaware of any other state in the US that is choosing to regulate certain microgrids as electric companies, and notes that the *Microgrid Knowledge* publication was similarly incredulous: “Energy regulators for the District of Columbia have taken the unusual step of proposing rules that would require certain microgrids operate as regulated electric utilities. The microgrid industry has fought such proposals for years, saying they would burden microgrids, which are smaller operations than utility companies, with a level of complexity incompatible with their size and resources.”³ DOEE is concerned that national providers of microgrid services will ignore the District of Columbia market, at a time when microgrids are becoming more critical to serve both our climate and resilience needs.

DOEE has also presented an example flow-chart as a potential jumping off point for a Commission overarching roadmap regarding microgrids, including what types of regulation are necessary due to different microgrid *functionalities*.

¹ DOEE Initial Comments in FC1163, pp. 2-5.

² <https://microgridknowledge.com/climate-bill-cut-microgrid-costs/>

³ <https://microgridknowledge.com/microgrid-as-utilities-dc/>



Unfortunately, this NOPR oversimplifies the needs and functions of microgrids, rather than using the Commission’s authority to implement alternative forms of regulation (AFOR) to chart a path forward that encompasses the various permutations of microgrids that do currently exist and will exist in the future. As DOEE noted in Formal Case No. 1163, "A microgrid, even if it serves multiple customers, is not intended to replace an EDC but rather to act as aggregated, interconnected generation and load that may be coordinated by the EDC or Distribution System Operator. A microgrid serving multiple customers is also distinct from a retail supplier. A retail supplier may be contracted to provide power that is imported into a microgrid, but on-site local solar generation and other DER do not fit neatly into the box of a retail supplier."

IV. SUBMETERING

DOEE finds that the Commission’s language in 4802.1 is overly strict as it relates to submetering: “Single Customer Microgrids and Single Customer-Campus Microgrids may provide Electric Service to building occupants but shall not sell or distribute excess Electric

Service to other Persons.” It would be helpful for the Commission to clarify what “excess Electric Service” is, and who the “other Persons” are. Also, the Commission should clarify that this does not undo the ability of single customer or single customer-campus microgrids to enter into commercial submetering agreements with tenants, which could unnecessarily block campus microgrids in the District of Columbia. Further, it would be helpful for the Commission to clarify if whether a master-metered multi-unit building that establishes a single customer microgrid within the building can charge tenants a premium for the reliability provided by the islanding capability of the microgrid.

V. TECHNICAL REQUIREMENTS

DOEE finds that the Commission’s language in 4803.1 may be construed to be limiting to the types of assets that may be included in a microgrid and recommends striking this sentence: “Microgrids may include DERs such as CHP, solar, energy storage, and microturbines”, or revising to “Microgrids may include DERs ~~such as~~ including, but not limited to, the following examples: CHP, solar, energy storage and micrturbines.”

VI. MULTI-CUSTOMER MICROGRIDS

DOEE does not agree with the Commission’s finding in 4806.1 that multi-customer microgrids should be regulated as electric companies and required to seek “a certificate of present and future public convenience and necessity from the Commission.” In fact, this NOPR does not contemplate how the interaction will proceed between multiple electric companies connecting to each others’ distribution equipment. Clearly, Pepco is the grid operator, and this regulation does not contemplate treating microgrid operators on equal footing.

As will be discussed more below, it is unclear how the SGIR would relate to the interconnection of two different electric distribution systems. One need to look no further than the first words of 15 D.C.M.R. § 4001, *et. seq.*, entitled “Interconnection Requests, Fees, and Forms” which refer to the “Interconnection Customer” before questions start to accumulate.

DOEE also finds it limiting that the Commission proposes that microgrids *must* bill customers on a per-kWh basis in Section 406.3 (M). Microgrids are part of the DER market and offer new and different manners in which to bill customers, including in configurations where the cost for power could be a flat monthly price. Because of microgrids’ versatility in providing multiple services beyond the distribution of energy (e.g. on-site clean energy maximization, reliability, resiliency, etc.), to maximize their full functionality and expand the potential market, the PSC should enable a microgrid operator and its customer(s) to find cost-paradigms most appropriate for the unique needs of the customer. By narrowing cost constructs to per-kWh, the PSC communicates to the market that these valuable and important functions are useless and do not constitute a service. Such a communication would dampen the District’s ability to grow and strengthen the green economy. DOEE recommends removing the need to require per-kWh billing of microgrid customers.

There is also some confusion about how Section 4806.4 would work in practice, because microgrid customers will likely get billed twice for the Energy Assistance Trust Fund (EATF), the Sustainable Energy Trust Fund (SETF), Public Space Occupancy Surcharge (PSOS), Delivery Tax, Residential Aid Discount (RAD), Underground Project Charge (UPC), among other charges. The interaction between the microgrid and Pepco’s distribution system should be the point at which those charges would be applied – otherwise the microgrid will pay those charges and pass them onto the microgrid customers, who will then also be charged for those

funds a second time on power they purchase from the microgrid. Additionally, customers who simply put net-metered solar on their roof would be at an advantage over customers who join a solar microgrid, which further underscores the need to appropriately treat microgrids as DER rather than as electric companies, as this disadvantage represents a major equity concern for the District. The solar microgrid customer would pay twice for the EATF, SETF, PSOS, RAD, UPC, and delivery tax among others, while the NEM-solar customer would only pay those charges once.

In general, more thought needs to be put into the rationale for requiring microgrids to charge their customers many of these taxes and surcharges. For example, it makes little sense for a microgrid customer, who may be paying for the resilience benefits of a microgrid, to be charged a UPC, which is meant to compensate Pepco for the costs of placing certain poor performing feeders underground to improve Pepco's resilience. The RAD discount that low-income microgrid customers receive may need to be dramatically overhauled since the vast majority of a microgrid customers' charges will be for generation. These are but a few examples of likely many incongruities that will result from the Commission's treatment of multi customer microgrids as an "Electrical Company."

On the subject of cost recovery, tariff classes, and rate-setting, and contract length, this NOPR goes far beyond the level of regulation that other types of DERs receive in the market in a way that will be cost-prohibitive to the development of multi-customer microgrids. DOEE notes that a simple solar and battery installation that serves one customer would be regulated entirely differently than one that serves two customers, which is impractical in the face of the need to interconnect as much local solar as possible to meet the District's carve-out. This NOPR even goes so far as to require rate cases for microgrid tariffs, in 4806.6. It is inconceivable that a solar

neighborhood microgrid serving 8-10 customers would have the resources to go through a litigated rate case before the Commission and still be able to move forward with operation. The alternative, a policy framework encouraging neighborhood microgrids serving 8-10 customers will radically improve the grid's ability to host more solar without further development, thus enabling RPS compliance at a lower cost to the rate payer. Further, a small group of customers desiring a neighborhood-scale solar microgrid would only pursue such a project if the resulting power provisions were less expensive than Pepco's, so insisting on a litigated rate case before the Commission will not serve any of the parties' interests.

On the subject of non-discrimination, it is unclear what the Commission means by the 4806.8 Section on "near vicinity." This is again an issue with defining multi-customer microgrids as "Electrical Companies." Under DC Code § 34-1506(a)(1) "[t]he electric company shall provide distribution services **to all customers and electricity suppliers** on rates, terms of access, and conditions that are comparable to the electric company's own use of its distribution system. The electric company shall not operate its distribution system in a manner that favors the electricity supply of the electric company's affiliates." (emphasis added).⁴ A microgrid that is required to register as a distribution company cannot exist under this regulation because, by definition, no microgrid would be capable of serving the entirety of the District customer base because microgrids serve a defined geographic boundary. A change to the above-quoted statutory language would be required to make this requirement for an "Electrical Company" apply to microgrids.

⁴ DC Code § 34-1506.

VII. DEFINITIONS

DOEE recommends several changes to the definitions. DOEE recommends changing “customer” to “microgrid customer,” given that “customer” in other DCMR chapters denotes a Pepco customer. In this chapter, the Pepco customer is the Microgrid or Microgrid Operator. DOEE disagrees with the definition of EDC insofar as it excludes the provision of DC Code § 34–1506, which requires the EDC to serve every customer in the District of Columbia. This EDC definition should be revised to make clear that the EDC definition only applies to Pepco. Similarly, it is unclear if the Commission intends to define EDS as Pepco’s EDS **and also** the EDS’ of any multi-customer microgrid. If so, an overhaul of the SGIR would be required to contemplate the interconnection between two or more EDS. Interconnection is similarly defined without clarifying if the EDS is the microgrid itself or Pepco’s EDS.

DOEE finds the definition of “electric service” confusing, as it appears to incorporate some demand-side management which is actually a service provided by the end-use customer, not the distribution system. DOEE recommends that a new definition should be constructed for Multiple Customer Microgrids. The definition presented in the NOPR mentions “multiple meters” in a way that could prevent commercial submetering on standard campus microgrids. The definition also notes that the microgrid would be served by DER rather than defining the microgrid directly as a type of DER, which DOEE believes is in error. Given the controls packages and islanding capabilities, microgrids, regardless of their configurations, act as a single DER. Additionally, the multi-customer definition should be clear that a microgrid operator is selling power and/or other services directly to microgrid customers, **while the microgrid operator is also acting as a single customer of Pepco.** The Point of Common Coupling

definition should be updated to include that a microgrid could have one or more points of common coupling.

The Single Customer microgrid (which is really just back-up power) and the single customer campus microgrid should be clarified to note that **the microgrid itself is a DER** rather than served by DER. Additionally, it should be made clear that a campus microgrid, similar to a single building, can enter into commercial submetering within its footprint without being considered a multiple customer microgrid.

DOEE also has concerns about the limitations inherent in the “microgrid owner” definition, which could preclude community ownership of multi-customer solar neighborhood microgrids by requiring a single owner rather than a cooperative model that could provide communities, including low-income communities, a chance to own and benefit from multi-customer microgrid operation.

VIII. PEPCO OWNERSHIP

The chapter introduces legal inconsistency. Statements in proposed Sections 4800.1 and 4801.4 should be deleted: “This chapter shall not apply to Microgrids owned and/or operated by the Electric Distribution Company.”⁵

The “Electric Distribution Company” (i.e. Pepco) should not be allowed to own or develop Microgrids. As an electric utility, Pepco may “not engage in the business of an electricity supplier in the District of Columbia except through an affiliate” kept separate through a code of conduct, or through its provision of standard offer of service. In 1999, Pepco was ordered to divest itself of all its generation assets. The Commission recently affirmed that D.C.

⁵ citation

Code § 34-1513(a) creates a statutory bar to Pepco owning generation assets. “Although the legislature subsequently made clear that the Commission can authorize a Pepco proposed EE/DR program, it also made clear that the original barrier to owning a generation asset remains in place.”

However, the Commission’s proposed definition of Microgrid describes Microgrids as having “interconnected loads, generation assets, and advanced control equipment.” Further, each proposed Microgrid classification “has a single distributed energy resource (DER) or multiple DERs.” Because Pepco is prohibited by law from owning generation assets, proposed Section 4801.4 is unnecessary because Pepco should not be allowed to file a request with the Commission proposing to do something it is prohibited by law from doing – own or develop Microgrids.

IX. CONCLUSION

DOEE appreciates the Commission taking this step to establish a regulatory framework for microgrids in the District of Columbia. However, DOEE regrettably finds that the NOPR does not result in a regulatory framework that will enable the construction of microgrids in the District of Columbia, which will be an important part of meeting the District’s local solar carve-out and the development of community microgrids that will allow the District to reap the benefits of the clean energy transition. DOEE continues to see the need for an overarching regulatory roadmap that will bring the District of Columbia into a modern framework that enables microgrids. DOEE believes that the Commission should look to the work done on microgrids in other states to provide an appropriate and predictable regulatory framework for microgrids.

CERTIFICATE OF SERVICE

I hereby certify on this 8th day of August 2022, that I caused true and correct copies of DOEE's Initial Comments on Chapter 48 NOPR to be emailed to the following:

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