

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

**IN THE MATTER OF
DCMR – CHAPTER 48-
MICROGRIDS**

)
)
)

RM48-2022-01

COMMENTS OF NORESCO, LLC

Pursuant to the Notice of Proposed Rulemaking (“NOPR”)¹ and the Public Notice Extension² issued in the above-captioned proceeding, NORESCO, LLC (“NORESCO”), submits comments in response to the NOPR and certain comments previously submitted in this proceeding.

I. Introduction

In Formal Case No. 1163, the Commission began its “investigation into microgrid ownership and operation structures, business models and value propositions, and benefits and costs of microgrids, and the different microgrid variances, which lead to appropriate microgrid classifications and regulatory treatments,”³ after the Commission determined its authority to regulate microgrids if they were acting within the definition of a public utility.⁴ On June 30th, the Commission identified certain microgrid classifications and determined its authority to regulate the various categories of microgrids it identified.⁵ The Commission determined that with respect to two categories of microgrids – Single customer microgrids and Single customer-campus

¹ *In the Matter of 15 DCMR Chapter 48 – MICROGRID*, RM29-2022-01, Notice of Proposed Rulemaking, issued July 8, 2022.

² *In the Matter of 15 DCMR Chapter 48 – MICROGRID*, RM29-2022-01, Public Notice, issued August 12, 2022.

³ *Formal Case No. 1163, In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia*, Order No. 21172, issued June 30, 2022, at P. 2. (“Order No. 21172”).

⁴ *Id.*, citing, Formal Case No. 1130, Order No. 20286 ¶ 60, rel. January 24, 2020.

⁵ *Id.*, at P. 5.

microgrids – neither category is deemed to be an Electric Company and therefore are not regulated by the Commission. A third category of microgrid – Multiple Customer microgrids, are deemed to be an Electric Company as defined by D.C. Code § 34-207, is a public utility as defined by D.C. Code §34-207 and are subject to Commission regulation. Order No. 21172 relayed the Commission’s intent to issue the instant NOPR based on the microgrid classifications identified in the Order to provide clarity and facilitate microgrid development in the District. On July 8, 2022, the Commission issued the instant NOPR.

NORESCO is accredited as an Energy Service Company (ESCO) and Energy Service Provider (ESP) by NAESCO, the National Association of Energy Service Companies. NORESCO is recognized for its expertise and technical depth in developing and implementing comprehensive energy efficiency, performance-based and build/own/operate distributed generation, cogeneration or combined heat and power (CHP) projects, as well as verifying energy savings according to accepted industry practice and consulting or contracting for commodity electricity or gas supply. NORESCO’s past projects include microgrid projects, primarily for federal customers, including ones that have met the U.S. Department of Energy definition of microgrid - “a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid. A microgrid can connect and disconnect from the grid to enable it to operate in both grid-connected or island mode.” To date, NORESCO’s microgrid projects have primarily been on the customer side of the utility meter and have not been subject to utility regulations other than interconnection requirements needed to connect to the existing distribution system.⁶ NORESCO is an interested participant in the District

⁶ The Commission should ensure that its microgrid tariff aligns with tariffs that exist in other jurisdictions such as California, Hawaii and Puerto Rico where benefits to consumers are captured in tandem with clear oversight of microgrids. See, *The District of Columbia wants to designate certain microgrids as electric utilities*, available at: <https://microgridknowledge.com/microgrid-as-utilities-dc/>.

of Columbia energy market and has plans to develop in the District of Columbia in the coming years.

The ongoing focus nationally on resiliency, and restored tax incentives under the Inflation Reduction Act for combined heat and power facilities, provide incentives for companies to participate in microgrid projects in the District. NORESKO encourages the Commission to recognize that both the ownership and operational structures of microgrids are ever evolving. While simpler structures like a single customer microgrid serving a single building load such as a hospital, school, or apartment building exist and will continue to be developed, far more complex structures including multiple buildings, facilities, and meters also want the reliability and cost benefits that microgrids bring. The Commission's proposed rules, if adopted as proposed, will likely have the unintended consequence of forestalling that evolution eliminating resilience, stability, and cost saving to consumers by reducing the number of competitive options that are available. The proposed rule does this by regulating certain microgrids as an Electric Company as proposed in the NOPR. If the NOPR is finalized as drafted, NORESKO and companies like it will be eliminated from the District's microgrid development landscape for these microgrids, and the associated benefits will be lost to consumers. As discussed below, the Commission should remain mindful of its objective of "aiding the development of microgrids that spur economic development while integrating innovative technology into the local energy market."⁷ NORESKO offers comments to aid the Commission's decision-making process before it issues a final rule.

⁷ See, Proposed Section 4800.1 Purpose.

II. Flexibility in Microgrid Design is Essential to the Promotion of Microgrids in the District of Columbia

Since 2018, the District has planned the increased use of microgrids to advance its clean energy goals.⁸ The current definition of Multiple Customer microgrid in the NOPR limits the development and design of these vital facilities in a way that will deter the expansion of microgrids in the District. Microgrids are well-suited for campus-type environments, and it is increasingly more common that those campuses, even if controlled by a single entity, include other end-user customers. As currently defined in the NOPR, a Multiple Customer microgrid is “a microgrid that has a single distribution energy resource (DER) or multiple DER’s 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.”⁹ The existence of multiple meters alone, however, should not be the determining factor of whether a microgrid is regulated as an Electric Company.

The Commission should consider whether a microgrid should be subject to regulation as an Electric Company where the microgrid serves one customer primarily and a second customer tangentially. Under the proposed rule, such a microgrid would be regulated as a Multiple Customer microgrid however, the service it would provide is the same as that provided in the context of a Single Customer - Campus microgrid. The only distinguishing factor is that the campus facility formerly had multiple meters connected to the electric distribution system. The Commission should recognize that the existence of the multiple meters alone should not change the regulatory

⁸ Clean Energy DC, The District of Columbia Climate and Energy Action Plan, at p. 40 available at https://doee.dc.gov/sites/default/files/dc/sites/ddoe/page_content/attachments/Clean%20Energy%20DC%20-%20Summary%20Report_0.pdf.

⁹ Proposed Section 4801.1 (a).

status of the microgrid in such an instance. The Commission should consider that the effect of the proposed rule will be to reduce the amount of competition that naturally would exist if these microgrid developers were not regulated as Electric Companies. Ultimately, reduced competition in microgrid development will mean fewer cost and reliability benefits to District consumers.

Ideally, a microgrid design reduces the responsibilities of the Electric Company. The microgrid manager provides additional benefit to both the customer and, the electric distribution provider company, and to the distribution system. The microgrid manager is responsible for managing load and supply, as well as supporting the customer's reliability needs. Each of these roles is beneficial to consumers and requiring microgrid managers to be regulated as an Electric Company will substantially reduce these benefits to consumers as companies seek opportunities elsewhere. The Commission should not adopt a final rule that imposes this obligation. Rather, the Commission should provide a process through which the proposed design of a microgrid can be evaluated to determine the scope of services and benefits the microgrid provides and the appropriate level of oversight required to produce benefits to consumers. Where the microgrid manager only provides service to a single customer *e.g.*, a hospital, university campus, or military installation, it should not be viewed any differently than the Single-Customer-Campus microgrid.¹⁰

The adoption of a process where such design elements are evaluated by the Commission would permit entities to establish why they should not be regulated as an Electric Company and allow the Commission to determine whether the exercise of its regulatory authority is appropriate.

¹⁰ The DOE defines the 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. A microgrid can connect and disconnect from the grid to enable it to operate in both grid-connected or island mode." Many other organizations define microgrids with very similar definitions, including the concept of a system of multiple loads and generation, and of islanding from the grid. See, U.S. Department of Energy, Smart Grid Research & Development Multi-Year Program Plan:2010–2014, Sept. 2011 Update in Draft (at http://events.energetics.com/SmartGridPeerReview2012/pdfs/SG_MYPP_2011.pdf).

The Commission should carefully consider adopting such a provision in its final rule.¹¹ This would give the Commission discretion to decide how a specific entity should be regulated and not provide a blanket rule that could unintentionally preclude companies from providing services as a microgrid manager.

- III. The existing regulatory requirements for Multiple Customer microgrid operators are onerous and will deter development.

The Commission's suggestion that Multiple Customer microgrid operators comply with the requirements in proposed Section 4806 of the DCMR fails to recognize the unique nature of Multiple Customer microgrids. These entities are not structured to meet the full requirements of Electric Company regulation that would be established in proposed Section 4806.¹² For example, the requirement in Section 4806.3(m) for a billing model that bills customers on a per kilowatt hour basis¹³ presumes that the microgrid manager is structured to charge on a kilowatt hour basis.¹⁴ The fees charged under many microgrid arrangements are negotiated with an eye toward both reliability and cost feasibility. Microgrid customers (universities, hospitals, and military installations) are looking to provide stability and reliability as well as minimize cost. Microgrid managers are not accustomed to developing fees on a traditional cost-of-service basis. The Commission is aware that not all microgrids are designed to charge customers for the use of service as in a PPA business model.¹⁵ In an Energy Saving Performance ("ESPC") or Utility Energy Service Contract ("ESC") application, the microgrid would be used to offset utility costs, and

¹¹ NORESCO supports the comments of the Department of Energy and Environment's Comments in Response to Notice of Proposed Rulemaking RM48-2022-01 ("DOEE Comments") at pages 3-4 in this regard.

¹² See, DOEE Comments at 5-6.

¹³ While the proposed provision also allows the Microgrid Applicant to request authorization for an alternative payment structure, such a waiver would not offset the totality of regulation that otherwise would be imposed.

¹⁴ See, DOEE Comments at 6.

¹⁵ *Id.*

provide resiliency where the offset savings cover the costs. There is not a direct transaction of fees for kwh. These are two examples underscoring that the billing requirement in proposed Section 4806.3(m) is unnecessarily onerous. The Commission should consider modifying its proposed rule and eliminating those requirements that mirror Electric Company cost-of-service rate regulation and streamline the regulation and compliance responsibilities associated with Multiple Customer microgrid operators to the greatest degree possible.

IV. The proposed rule will serve as a disincentive to the development of microgrids in the District of Columbia.

In Order No. 21172, the Commission correctly found that “microgrid adoption and investment may be hampered in part because of an uncertain regulatory environment.”¹⁶ While the Commission seeks in this NOPR to provide clarity and certainty for microgrid developers, its proposed rule is more likely to forestall investment and hinder the deployment of new technologies by creating a regulatory structure that is onerous, fails to identify the realities of microgrid structures and microgrid ownership and investment, and ultimately serves as a disincentive to microgrid investment due to the increased costs of regulatory compliance that would be necessary to expand the corporate infrastructure of microgrid owners and developers to meet these new and additional requirements as an Electric Company. The added cost to comply with the proposed regulations will be an added risk and a deterrent to pursue actual projects that otherwise would bring real reliability, stability, and cost benefits to consumers, while likewise having a downward impact on greenhouse gas emissions. NORESKO has developed, designed, built, financed, operated, and in some cases owned central utility plant assets through a variety of contracting and financing mechanisms for nearly 30 years and is concerned that the proposed rules will deter not

¹⁶ Order No. 21172 at P. 5.

only it, but other developers as well. The Commission should only adopt rules that encourage microgrid development if it intends to meet its goals as established by the Clean Energy DC Plan and the Resilient DC Strategy.¹⁷ Microgrids are a key component of the District’s clean energy plan to address climate change and regulations that will hamper, not encourage, microgrid development are an unnecessary impediment to the District achieving its climate change goals. For this reason, the Commission should reconsider and revise the proposed regulatory treatment of Multiple Customer microgrids in the NOPR.

V. Conclusion.

NORESCO encourages the Commission to continue to provide regulatory clarity and certainty regarding the development of microgrids in the District of Columbia. The adoption of rules and regulations that foster development and support consumer goals of affordability and reliability will ensure that customers continue to have the ability to look to microgrid development to meet these goals. NORESKO appreciates the opportunity to comment on the vital proposal.

¹⁷ Department of Energy & Environment, *Clean Energy DC: The District of Columbia Climate and Energy Action Plan*, rel. August 2018, available at <https://doee.dc.gov/cleanenergydc> (“Clean Energy DC”); *Resilient DC, Resilient DC: A Strategy to Thrive in the Face of Change*, available at <http://resilient.dc.gov/>.

Respectfully submitted,
NORESKO, LLC

By: /s/ Regina Y. Speed-Bost
Regina Y. Speed-Bost
DC Bar No. 480878

SB Law, PLLC
660 North Capitol Street, NW
7th Floor
Washington, DC 20001

Of Counsel to
Nelson Mullins Riley and Scarborough LLP
101 Constitution Ave., NW,
Suite 900
Washington, DC 20001
rspeed-bost@sblawlegal.com
regina.speedbost@nelsonmullins.com

Dated: September 7, 2022

CERTIFICATE OF SERVICE

I hereby certify on the 7th day of September 2022, that I caused true and correct copies of NORESKO, LLP’s comment on the Notice of Proposed Rulemaking – RM48-2022-01 – In the Matter of DCMR Chapter 48 – Microgrid to be served via email to the following:

Ms. Brinda Westbrook-Sedgwick Commission Secretary Public Service Commission of the District of Columbia 1325 G Street, N.W., Suite 800 Washington, D.C. 20005 bwestbrook@psc.dc.gov	Sarah Kogel-Smucker, Esq. Assistant People’s Counsel Office of the People’s Counsel 1133 15 th Street, N.W., Suite 500 Washington, D.C. 20005 ssmucker@opc-dc.gov
Luke Tougas Consultant to Public Service Commission 1325 G. Street, N.W. Washington, D.C. 20005 l.tougas@cleanenergyresearch.com	Brian Caldwell, Esq. Office of the Attorney General for the District of Columbia 441 Fourth Street, N.W. Suite 450 North Washington, D.C. 20001 Brian.caldwell@dc.gov
Andrea Harper, Esq. Dennis Jamouneau, Esq. Potomac Electric Power Company 701 9 th Street, N.W. Suite 1100, 10 th Floor Washington, D.C. 20068 aharper@pepcoholdings.com djamouneau@pepcoholdings.com	

/s/ Regina Y. Speed-Bost
Regina Y. Speed-Bost
Counsel for NORESKO, LLC