

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF INQUIRY

FORMAL CASE NO. 1163, IN THE MATTER OF THE INVESTIGATION INTO THE REGULATORY FRAMEWORK OF MICROGRIDS IN THE DISTRICT OF COLUMBIA,

1. As part of our DC PowerPath proceeding, the Microgrid Working Group (“MWG”) was initially tasked to review microgrids as directed in Order No. 19432,¹ to look into microgrid development in the District of Columbia (“District”), benefits and costs of microgrids, and provide recommendations addressing among other things, microgrid ownership, operation, standards, and regulations.² Some of the recommendations offered by the MWG were:

- Single, behind-the-meter microgrids that serve one customer or building’s load that can island on-demand and is on contiguous property should be exempt from full Commission regulation;
- Microgrids serving multiple customers are unregulated monopolies and should be subject to Commission regulations addressing customer protection and consumer rights and responsibilities that apply to electricity suppliers;
- For all multi-customer microgrids, a private contract with microgrid-specific disclosure provisions is sufficient for retail choice and should be subject to compliance review regarding such provisions by the Commission; if review determines that those provisions are sufficient for customer choice, then there should be “safe harbor” from advanced review from the Commission;
- If a microgrid operator imports electricity, it should be subject to similar renewable portfolio standards applicable to electricity suppliers in Title 15 of the DCMR;
- If the microgrid has existing or new utility distribution assets, then the microgrid operator should be subject to electricity quality of service standards parallel to the standards applicable to electric companies as outlined in Title 15 of the DCMR;
- If the microgrid has low-voltage distribution assets below 13.8 kV, it should be held to existing Department of Consumer and Regulatory Affairs (“DCRA”) construction codes; if not, it must be required to file a Notice of Construction and Certificate of Public Convenience and Necessity for consideration by the Commission;

¹ *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, ¶ 6, rel. August 9, 2018 (“Order No. 19432”).

² *Formal Case No. 1130, Final Report v1.0 of the DCPSC MEDSIS Stakeholder Working Groups* at pp. 167-203, filed May 31, 2019 (“Final WG Report”).

- All microgrids should be held to existing safety and performance standards;
- The Commission should establish a microgrid tariff for microgrid services that do not fall under the existing net energy metering rules;
- Distributed assets that are owned by the utility should be subject to cost recovery through the utility's rate base; assets built for the purposes of adding a resiliency benefit should also be recovered through rate base; and,
- Interconnection rules should be amended to address islanding capabilities.

2. Upon review of the specified questions, the MWG recognized that given the large variances of microgrid types, the current statutory framework of the Commission presents challenging issues.³ The Commission Staff Proposed Order recognized the Commission's authority to regulate microgrids if it determines that they are acting within the definition of a "public utility."⁴ By Order No. 20286,⁵ 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.

3. By this Notice of Inquiry ("NOI"), the Public Service Commission of the District of Columbia ("Commission") solicits public comments regarding the Commission's role in the regulatory framework of microgrids in the District.⁶ The goal of seeking stakeholder input to further develop this framework is to provide a higher level of regulatory certainty and transparency into the decision-making process. To aid in the formulation of responsive comments, the Commission provides the following:

Potential Regulatory Framework

4. *Clean Energy DC*⁷ states that an electricity distribution system with a high number of local renewable energy systems will require a modernized electricity system. *Clean Energy DC* also recommends that the District explore changes to the current Standard Offer Service ("SOS") that would increase the purchase of renewable energy and explore where neighborhood-scale

³ Final WG Report at 178.

⁴ *Formal Case No. 1130*, Order No. 19984, rel. August 2, 2019.

⁵ *Formal Case No. 1130*, Order No. 20286, rel. January 24, 2020.

⁶ *Formal Case No. 1163, In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia*.

⁷ 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/sites/default/files/dc/sites/ddoe/page_content/attachments/Clean%20Energy%20DC%20-%20Full%20Report_0.pdf ("Clean Energy DC").

energy systems such as microgrids and thermal energy districts could be expanded or installed.⁸ With that backdrop, the Commission understands that various regulatory frameworks could be employed to assist the Commission’s goal of enabling microgrids to operate in the District, like the one adopted by the New York Public Service Commission (“NY PSC”); a seven-factor test, like the one used in Maine; or a two-pronged approach, like the one proposed in Maryland.

5. For the most part, the regulatory framework for microgrid operations is prescribed with discretion through state utility commission decisions. For example, in an Order approving the transfer of ownership in Eastman Business Park (“Eastman Park”) in Rochester,⁹ the NY PSC laid out the standards it would consider when agreeing to lightly regulate a microgrid. Since Eastman Park 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—this was enough for the NY PSC to lightly regulate Eastman Park. Additionally, the Maine Public Utilities Commission developed a seven-factor test to determine whether the Kimball Lake Shores microgrid is devoted to serving the public in general (as a public utility) or particular individuals (as a microgrid). The seven factors are: (1) the size of the enterprise; (2) whether the enterprise is operated for profit; (3) whether the system is owned by the user(s); (4) whether the terms of service are under the control of its user(s); (5) the manner in which the services are offered to prospective user(s); (6) limitation of service to organization members or other readily identifiable individuals; and (7) whether membership in the group (e.g., whether taking service) is mandatory.¹⁰

6. Similarly, the Public Service Commission of Maryland (“MPSC”) proposes to use the seven-factor test in conjunction with a two-pronged approach to determine whether the MPSC should approve light-touch regulation for a microgrid. MPSC’s proposed two-pronged approach focuses on whether a microgrid utilizes new, non-utility distribution assets or is operated by third parties utilizing existing electric distribution company assets.¹¹ This two-pronged approach is strikingly similar to some of the MWG’s recommendations. If any of the approaches here or in the preceding paragraphs, or any other approach, should be used by the Commission, then we seek input on how to implement these approaches when considering how to regulate microgrids.

⁸ Clean Energy DC at p. 159.

⁹ *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, pp. 31-33, issued May 30, 2013.

¹⁰ *Kimball Lake Shores Association*, M.221, Issuance of Show Cause Order (Me. P.U.C. Jan. 31, 1980).

¹¹ Abigail Ross Harper, Maryland Resiliency through Microgrids Task Force Report 45-55 (2014), https://energy.maryland.gov/Documents/MarylandResiliencyThroughMicrogridsTaskForceReport_000.pdf (last visited Jul 7, 2020).

7. The above frameworks are merely examples of how the Commission can structure an analytical framework that appropriately addresses the various considerations we must make when considering how we should regulate microgrids. They are in no way meant to limit stakeholders' comments as the Commission will consider any proposals that help us comply with the District's public climate commitments.

Commission Authority/Action to Date

8. The Commission has recently defined the term "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.¹² A microgrid can connect and disconnect from the grid to enable it to operate in both a grid-connected or island mode.¹³ Due to the vast differences in how microgrids are used, the question of whether we have jurisdiction to regulate a particular microgrid as a public utility necessarily turns on the individual circumstances of each case.

9. The Commission notes at the outset that "the Public Service Commission is an administrative body possessing only such powers as are granted by statute, and it may make only such orders as the Public Utilities Act authorizes."¹⁴ The D.C. Code states that the Commission has the authority to regulate all "public utilities" in many specific instances.¹⁵ It is clear that the Commission has the authority to regulate microgrids if we determine they are acting within the definition of a public utility. A "public utility," according to D.C. Code § 34-214, is any "gas plant, gas company, electric company, telephone corporation, ... and pipeline company." An "electric company," according to D.C. Code § 34-207, includes:

[E]very corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. **The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other related electricity services solely to occupants of the building for use by the occupants.** The term also excludes a person

¹² 15 DCMR § 4099.

¹³ 15 DCMR § 4099.

¹⁴ *Washington Gas Light Co. v. Pub. Serv. Comm'n of D.C.*, 982 A.2d 691, 718 (D.C. 2009). *See also, Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n*, 378 A.2d 1085, 1089 (D.C. 1977) ("The Commission is a creature of statute and has only those powers given to it by statute.").

¹⁵ *See, e.g.*, D.C. Code § 34-401 (2001) (investigation of accidents); § 34-402 (2001) (enforcement of all laws relating to public utilities); § 34-502 (2001) (issuance of securities); and § 34-901 (regulation of public utility rates).

or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.¹⁶

A “customer,” as defined by D.C. Code § 34-1501(12), is a “purchaser of electricity for end use in the District of Columbia.”

Conclusion

10. For microgrids that may fall under our regulatory authority, the threshold question is whether and to what extent we should employ a different paradigm such as “lightened regulation” or “light touch or light-handed” oversight to facilitate deployment. These terms are used interchangeably to refer to exempting a microgrid from traditional Commission regulations such as keeping accounts, records and books, from making annual reports, and from filing rate schedules and tariffs.¹⁷

11. Therefore, to better understand the benefits, or potential impacts, that microgrids bring to the customers they serve or the distribution system as a whole and the appropriate regulatory framework for microgrids, we invite interested persons to comment on the following questions:

- (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?
- (2) What specific standards should microgrids follow to ensure safe design and operation?
- (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?
- (4) If the microgrid is connected to Pepco’s distribution system, how would the Commission’s existing interconnection rules apply?
- (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?

¹⁶ D.C. Code § 34-207 (2001) (emphasis added).

¹⁷ See generally *Case No. 14-M-0101*, Order Adopting Regulatory Policy Framework and Implementation Plan, pp. 109-110, issued Feb. 26, 2015.

12. All persons interested in commenting on the questions set forth in this NOI are invited to submit written comments by August 31, 2020, and replies no later than September 15, 2020. Comments may be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 and submitted electronically on the Commission's website at https://edocket.dcpssc.org/public/public_comments. Persons with questions concerning this Notice should call the Commission Secretary's Office at 202-626-5150.