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August 31, 2020

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

Re: Formal Case No. 1163

Dear Ms. Westbrook-Sedgwick:

Enclosed please find Potomac Electric Power Company's ("Pepco") Comments on Microbid NOI in the above referenced proceeding.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

/s/ Andrea H. Harper

Andrea H. Harper

Enclosure:

cc: All Parties of Record

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

**IN THE MATTER OF)
THE INVESTIGATION INTO THE)
REGULATORY FRAMEWORK OF)
MICROGRIDS IN THE)
DISTRICT OF COLUMBIA)**

Formal Case No. 1163

COMMENTS OF POTOMAC ELECTRIC POWER COMPANY

Pursuant to the Notice of Inquiry issued in Formal Case No. 1163 on July 17, 2020 (“NOI”), Potomac Electric Power Company (“Pepco” or the “Company”) files its comments (“Comments”) responding to the questions the Public Service Commission of the District of Columbia (“Commission”) posed in the NOI. The NOI focuses on “whether and to what extent [the Commission] should employ a different paradigm such as ‘lightened regulation’ or ‘light touch or light-handed’ oversight to facilitate deployment” of microgrids in the District, and the Commission directed interested parties to comments addressing five 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?

I. Introduction

The provision of safe, reliable, resilient, and affordable electricity delivery is Pepco's core obligation and is vital to enabling communities to thrive. Pepco continues to support and invest in initiatives to enhance the quality of service to customers across the District of Columbia. Company initiatives to address safety and reliability challenges are subject to rigorous review by the Commission and stakeholders through regulatory processes designed to ensure that the programs provide customer value. Pepco is proud to be among the top-rated utilities across the country for system reliability;¹ however, even with Pepco's initiatives to guard against, identify and respond to grid challenges, national security and other man-made threats as well as natural disasters may disrupt service. Select customers may require more resilience than the grid can affordably offer everyone, and microgrids may be a tool for meeting these exceptional needs. Public purpose microgrids that provide resilience to essential services may provide significant societal value, such as ensuring hospitals or fire stations have access to power in times of grid outage, though the metrics to quantify and monetize this societal value for regulatory purposes are still under development.

The appropriate regulatory considerations for microgrids vary based on each microgrid's configuration. Simple microgrids that serve one customer (e.g., campus microgrids) pose relatively limited regulatory challenges beyond compliance with regulations related to interconnection and safety because the decisions that the operator of the microgrid makes do not impact any other customers. Complex microgrids are multi-customer microgrids (e.g., public

¹ Pepco participates in a quarterly review conducted by the Institute of Electrical and Electronics Engineers (IEEE) that benchmarks reliability of participating utilities across the country for several key indicators. Pepco has been reporting to the Commission on the Company's ratings since 2010. See Pepco's updated IEEE benchmarking results published the 2020 Annual Consolidated Report at <https://edocket.dcpsec.org/apis/api/filing/download?attachId=103276&guidFileName=019facf3-611f-42b6-9462-0fb2ba68e21a.pdf>, accessed on August 25, 2020.

purpose microgrids) that functionally act as electric companies, as described in Section 34-207 of the DC Code. These complex microgrids should be subject to the same customer protections, reliability, safety, and cost-allocation issues that the Commission addresses through existing regulatory processes.²

In the NOI, the Commission introduced the idea of “light touch” oversight of microgrids as a potential regulatory approach for microgrids. There is no agreed upon definition of what “light touch” regulation means in practice. However, some parties have envisioned “light touch” regulation as closer to an unregulated model. Under that model, consumer protection, service quality, and safety standards for microgrids would be removed from the Commission’s purview and established through contracts that would be enforced through the Court system. This extensive altering of the existing regulatory construct is not immediately apparent when the term “light touch” is used. The impact, however, is that microgrid customers may lose certain service quality protections, complaint rights, successor customer rights, billing/payment rights, and potentially the right to choose a supplier or the essential ability to rely on utility-provided distribution service. If a third-party operator of a microgrid acts like an electric company, the operator of the microgrid should be regulated as an electric company to ensure customer protections are subject to the Commission jurisdiction, oversight and enforcement, without the need for customers to pursue other avenues for remedies in forums that do not have the Commission’s expertise.

Further, allowing a proliferation of complex microgrids may result in inequitable shifting of costs to the customers who remain on Pepco’s system. The uncertainty surrounding cost allocation of complex microgrid elements may lead to regulatory or legal disputes over who pays for grid reliability or other utility programs that provide broad-based benefits to the District.

² D.C. Code §34-207.

Commission and third-party interest in microgrids is growing, and Pepco supports a role for third parties in the development of microgrids that leverage the Company's expertise in the ownership and operation of the distribution system as a platform. Throughout the PowerPath DC process, the Company stated and reiterated the important role that third parties can play in microgrid development, including the ability to design, operate, maintain, and optimize distributed energy resources ("DERs"), including distributed generation. Third parties can also play a significant role in utility-owned public purpose microgrids, which would be fully integrated with the operation of the Pepco electric distribution system and create additional value that would not exist if the microgrid was not integrated. Thus, Pepco would be able to dispatch these assets during times of local system emergencies and support the operation of the distribution system. In addition, as the microgrid controller, Pepco may be able to use components of the microgrid to provide support for outages and interruptions during emergencies. The Company looks forward to working with microgrid developers to develop solutions to bolster system resiliency and reduce costs.

II. Responses to Individual NOI Questions

(1) What regulations or policies should the Commission consider for microgrids?

As discussed below, Pepco generally believes the current regulations are adequate to regulate microgrids in the District of Columbia. The Commission developed the current set of regulations to provide safe, cost-effective, and reliable power to all customers. The current regulatory framework for electricity distribution is the result of decades of evolution and reflects the transition of the electricity distribution from numerous uncoordinated and inefficient distribution systems into the single, efficient distribution electric company subject to the oversight of the Commission.

The D.C. Code provides a definition of an electric company that is subject to Commission regulation and that must be compliant with the Commission’s requirements, currently only applied to Pepco. Section 34-207 of the D.C. Code defines what constitutes an “electric company” subject to the Commission’s jurisdiction as:

[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 exemption from this provision is limited to building owners, lessees or managers that “own[], lease[], or manage[], the internal distribution system serving the building and who suppl[y] electricity and other related electricity services solely to occupants of the building for use by occupants.” As such, the statute provides, by its terms, that any distribution system that operates outside of a building should be regulated as an electric company.

As Pepco discussed in Formal Case No. 1153, entities that seek exemption from D.C. Code Section 34-207 for a complex microgrid attempt to redefine the interpretation of “internal distribution system.” The Company believes the current interpretation clearly defines an “internal distribution system” to those within a building, as explicitly stated in the D.C. Code.

There are numerous additional requirements applied to an “electric company” under the D.C. Code. One of the many requirements is that under D.C. Code § 34-1101(b), entities are required to obtain a Certificate of Public Convenience and Necessity (“CPCN”) to provide electric distribution services, a process that allows the Commission to review and approve proposed rates for retail customers³ for electric distribution service.⁴ Pepco is currently the only company that

³ Including the distribution rates applicable to low-income customers, seniors and customers with disabilities.

⁴ D.C. Code §34-1101(b) provides, in part:

has a CPCN to provide electric distribution services in the District of Columbia.⁵ Moreover, if not exempted from Section 34-207, the operation of a microgrid’s electric distribution system would also be required to comply with the Consumer Rights and Responsibilities in 15 D.C.M.R. Chapter 3 (Residential Customers) and Chapter 18 (Non-Residential Customers), and the Commission has the jurisdiction to enforce such compliance. Section 34-804(d)(4) provides independent investigatory powers to Office of the People’s Counsel of the District of Columbia (“OPC”) regarding the electric distribution rates charged and services provided to customers of entities subject to Section 207 of the D.C. Code.

Overall, the existing regulatory structure achieves the Commission’s goals, both broadly and in the case of system reliability. As evidenced by the Company’s reliability performance, Pepco effectively coordinates and manages the system, while meeting the regulations and rate approval requirements.⁶ The Commission has the jurisdiction and oversight power to scrutinize and approve and OPC and interveners can challenge the Company’s expenditures recovered from customers, ensuring the development of a cost-effective system. Implementing a light touch framework for developers/microgrid operators endangers the Commission’s ability to review

No public utility shall furnish a service or facility, directly or indirectly, without first proceeding and proving to the satisfaction of the Public Service Commission (“Commission”) that the present and future public convenience and necessity requires that the service be provided or the facility be offered. Upon application of a public utility for a certificate of present and future public convenience and necessity pursuant to this subsection, the Commission, upon a hearing and notice to the public, shall issue an order granting or denying the application, in whole or in part, stating the reasons for the action.

Under 15 D.C.M.R. §1508.12, a public utility that violates any provision of the Public Utilities Amendment Act of 1989 or the Commission’s implementing regulations shall be subject to penalties under Section 34-706 of the D.C. Code.

⁵ Under Section 34-1101(c), “Every public utility that was regulated by the Commission and that furnished a service or facility within the District of Columbia as of June 27, 1989 is deemed to have been granted a certificate of public convenience and necessity.”

⁶ Pepco’s 2020 updated IEEE benchmarking results for the 2020 Annual Consolidated Report, <https://edocket.dcpsec.org/apis/api/filing/download?attachId=103276&guidFileName=019facf3-611f-42b6-9462-0fb2ba68e21a.pdf>, accessed on August 25, 2020.

entities compliance today and into future, which would limit changes the Commission may want to make to regulations and policy to be responsive to changing community and system needs.

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

Significant changes to the existing regulations for electricity distribution, such as the creation of a light touch regulatory framework, could result in risks to consumer protections, inefficient and duplicative distribution system investments, and fundamental questions surrounding the necessity of distribution utility regulation. Under the light touch regulation framework described above, the Commission has minimal regulatory authority over an operator of a microgrid, and the protections and transactions between the operator and its customers would instead be governed by private contracts. The provision of safe electricity service is an essential service to all District of Columbia customers and the global pandemic and economic challenges have highlighted the need for the Commission to enable customer protections through the regulatory compact during these times. Pepco is opposed to any light touch framework for distribution of electricity on current or new infrastructure. However, the regulatory scheme that currently applies to District third-party suppliers could be applied to the supply sources in a microgrid.

Light touch regulation of microgrids also may lead to customer confusion. Without clear jurisdictional definition, customers will likely have uncertainty about fundamental aspects of electric distribution service, such as

- Start/termination of service;
- Customer assistance programs, like Residential Aid Discount program, the Low-Income Home Energy Assistance Program (operated by the District Department of

Energy and the Environment) and the credit for senior citizens and disabled residents ordered in Formal Case No. 1149;

- Payment arrangements or billing questions;
- Complaint process;
- Energy efficiency programs; and
- Outage updates.

Moreover, residents of microgrids regulated under light-touch regulation may believe that OPC may act as their public advocate regarding electric distribution rates and services when it may not have the authority to do so.

Beyond creating customer protection and reliability risks, allowing lightly regulated or unregulated complex microgrids has the potential to raise fundamental questions surrounding the basis for regulation of utilities. If unregulated or lightly regulated multi-customer microgrids are distributing electricity to retail customers and acting as electric companies, it implies that there is nothing inherent in electricity distribution services that requires regulation. This undermines the foundation for Commission regulation of all electric companies, including Pepco.

The Commission referenced several examples in the NOI of jurisdictions considering light touch regulation and the Company does not believe that the examples listed are applicable to the District's specific needs and grid. Circumventing the existing regulations for an electric company in the District would create significant distribution system and consumer protection risks without known, specific, resilience benefits. Rather, any endeavors to enhance resilience should be subject to the same regulations, requirements, and oversight that has facilitated Pepco's increasingly improved reliable performance.

Furthermore, the Commission has provided important guidance in hiring practices and driving local economic development, which could be forfeited in a light touch regulatory framework. Specifically, District hiring and Certified Business Enterprise contracting are requirements that benefit local businesses and residents and ensure re-investment into the District.

Finally, any additional regulatory framework for microgrids that the Commission adopts should ensure that microgrids support the District's climate and clean energy goals. These goals include reducing District Greenhouse Gas emissions by 50 percent by 2032 and 80 percent by 2050 (compared to 2006 levels) and the District Department of Energy and Environment's Clean Energy DC initiative.

(2) What specific standards should microgrids follow to ensure safe design and operation?

All microgrids should be subject to the latest applicable National Electrical Safety Code (NESC) and National Electric Code (NEC), equipment/system design and operations standards, communications protocols, safety and construction regulations regardless of the point of connection/common coupling, ownership or operation. In addition, customer accessible equipment should be certified by a recognized national lab to the appropriate Underwriter's Laboratories (UL) standard for safety. The Company has an existing list of Company and industry standards regarding DERs, which would be applicable, in whole or in part, to a microgrid interconnection such as: IEEE 1547-2018, UL 1741, and Pepco's Technical Interconnection Requirements. The Company may look adopt microgrid-specific requirements that leverage industry standards such as: IEEE 2030.7 thru 2030.9. Moreover, multi-customer microgrids should be subject to the applicable Commission regulations, such as the Electric Quality of Service Standards (EQSS) requirements.

(3) Should microgrids be subject to the existing Consumer Bill of Rights (“CBOR”) rules?

Yes. The Commission’s role is providing and enforcing customer protections in its regulation of electric distribution service and is best positioned to protect District microgrid customers under the existing CBOR. All District customers should receive the protections provided by the CBOR. By contrast, light touch regulation relies on contractual arrangements to protect customers. Reliance on contractual arrangements assumes that all customers understand the contractual protections and have the resources and the knowledge to take the operator of the microgrid to court to enforce their rights under the contractual arrangements. Exempting District customers from existing protections in favor of special contractual arrangements could forfeit the Commission’s authority to regulate and would inhibit the role of existing District government agencies, such as OPC, to protect consumers and intervene on their behalf.

Customers should not have to be equipped with the knowledge, time, and capital required to engage in a contract dispute with an operator of a microgrid in either legal or arbitration scenarios. These contract disputes are costly and confusing, and the requirement to address customer protection issues through contracts would disproportionately impact vulnerable communities that may not have the resources to file or contest a dispute.

As stated above, Pepco should retain ownership, operation, and maintenance for distribution and billing services and act as a platform for electrical transactions to allow third parties to build DERs, which may also act as a microgrid. To that end, there would be no need to change the application of the CBOR or alter existing consumer protection practices if Pepco maintains its role as the provider of electric distribution services.

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

Customer protections in the CBOR are applicable both to suppliers and the electric company, and maintaining those protections for the distribution of electricity is critical. Multi-customer microgrids should not be exempt from the CBOR in order to be developed and operate in the District. To the contrary, the Commission and several agencies in the District exist to protect consumers and intervene on their behalf and circumventing the CBOR would inhibit that activity.⁷

(4) If the microgrid is connected to Pepco’s distribution system, how would the Commission’s existing interconnection rules apply?

There are existing interconnection rules that currently are applied to microgrids (or a DER asset within a microgrid). Specifically, the Small Generator Interconnection Rules 15 D.C.M.R. §4000 *et seq.*, are applicable and being used in the interconnection and parallel operations of microgrids with Pepco’s distribution system.

(5) For the customers who are served by a microgrid, should the retail Standard Offer Service (“SOS”) 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?

All metered customers should continue to have the right to choose their supplier and if they do not, they should receive the SOS supply. At this time, it is not possible to foresee the types of contracts that operators of a microgrids may offer customers, but any new contracts should comport with existing regulations, the CBOR, and be transparent to include all-in costs, such as

⁷ If the Commission chooses to allow distribution assets to be owned by an operator of a microgrid and the operator either self-supplies or obtains third-party supply for the whole system, Pepco will have no operational or supply interaction with the customer(s) and should have no associated liability.

escalation over the term. Furthermore, SOS is a safety net service provided to customers to ensure access to electricity supply and removing this safety net would place customers at risk.

The Company anticipates continuing to serve its customers through Commission-approved tariffs, and Pepco is continually evaluating new tariffs to meet the evolving needs of customers. The application of a light touch regulatory framework that results in differentiated levels of resilience could significantly affect rate design regulations that are currently focused on providing high levels of reliability, resiliency, and fair cost allocation to all District of Columbia customers on Pepco's system.

III. Conclusion

Pepco appreciates the opportunity to provide comments on the NOI and looks forward to continued engagement with the Commission and stakeholders on the development of microgrids within the District.

Respectfully submitted,
POTOMAC ELECTRIC POWER COMPANY

By: /s/ *Andrea H. Harper*

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August 31, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of Potomac Electric Power Company's Pepco's Comments on Microbid NOI has been served this August 31, 2020 on:

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