

**STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION**

**In the Matter of the Merger of Exelon            )  
Corporation and Pepco Holdings, Inc.           )**

**Case No. 9361**

**COMMENTS OF THE  
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits comments pursuant to the March 1, 2018, Notice of Hearing and Request for Comments issued in the above-referenced proceeding. Specifically, the Commission requested comments on Pepco’s proposed pilot public purpose microgrid project. Pepco made an original filing on the proposal in September 25, 2017, that was supplemented by a February 15, 2018 filing. NEM files these comments to express its general recommendation that competitive markets should be relied upon for the provision of distributed energy resource (DER) solutions, including microgrid projects, such as are at issue in the instant proposal. Indeed, permitting the utility to function as a DER provider would thwart technological innovation by deterring competitive entry and investment by competitive market participants, vest the utility with instant economies of scope and scale in the provision of competitive DER products and services, implicate market power concerns and run counter to established state law and Commission policy in favor of competitive markets. NEM also respectfully suggests that the Commission develop and implement generally applicable rules and standards applicable to

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<sup>1</sup> The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM’s membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

microgrid projects that provide market participants with clear “rules of the road” to facilitate third party investment and participation.

## **I. Pepco’s Microgrid Proposal**

Pepco filed a pilot public purpose microgrid proposal on September 25, 2017, with a supplemental filing on February 15, 2018, as anticipated under Condition No. 13 of the Exelon-Pepco Merger agreement that was approved by the Commission in Order No. 86990. Condition 13 included a commitment for Pepco to address “different ownership and operational structures for a microgrid located in the State, including a legal assessment of the ability of an investor-owned utility to own either or both of the distribution and generation assets integrated into a microgrid project.”<sup>2</sup> Importantly, in reviewing this provision of the merger settlement, the Commission stated “we do not endorse the prudence of ratepayer-funded public-purpose microgrid projects at this time, nor do we endorse the concept that ratepayers alone should be solely responsible for funding such projects.”<sup>3</sup>

Pepco is seeking authorization under the proposal for:

1. Authorization no later than June 1, 2018 to proceed with the development of the identified Montgomery County and Prince George’s County microgrids to permit sufficient time to construct the Montgomery County microgrid by the summer of 2021 and defer the construction of two distribution system improvements.
2. Authorization to establish a Regulatory Asset in which the Company will record microgrid costs net of any available grant monies, including depreciation and amortization expense. The Regulatory Asset will accrue a return based upon Pepco’s authorized rate of return.
3. Authorization to recover the established Regulatory Asset through a future base distribution rate case, subject to prudence review.
4. Authorization for Pepco to own the battery energy storage systems and the microgrid controllers in each proposed microgrid, as well as authorization for a

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<sup>2</sup> Order 86990, App. A, A-19.

<sup>3</sup> Order 86990 at 77.

third-party project developer to own the natural gas-fired generation and photovoltaic solar arrays at each proposed microgrid.<sup>4</sup>

As explained in more detail in its proposal, Pepco proposes to recover the \$63.4 million in project costs, net of other contributions, from all of its Maryland electric distribution customers.<sup>5</sup> Pepco estimates project benefits of \$13.4 million in distribution deferrals and \$7.6 million in outage avoidance benefits as well as reliability benefits and community resiliency benefits that were not quantified.<sup>6</sup>

Pepco's filing recounts its plan to own the microgrid controller and battery energy storage system (BESS), that will be competitively procured.<sup>7</sup> It states that a third-party developer will own the natural gas fired generation (NGG) and the photovoltaic solar arrays (PV), that will be selected through an RFP process.<sup>8</sup> The third-party developer will install and integrate all microgrid components.<sup>9</sup> However, notwithstanding its description of the competitive procurement process to be utilized, Pepco also "proposes to own any microgrid DG if it can do so at a cost lower than that provided through the competitive procurement process."<sup>10</sup>

With respect to retail choice participation, Pepco stated that, "Microgrid Participants will continue to have the same access to the retail competitive supply market as any other customer. Specifically, the Microgrid Participants will continue to be served by their retail energy supplier of their choosing, and will pay the same energy supply rate that they would otherwise pay (independent of

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<sup>4</sup> Pepco February 15, 2018, Filing Letter at 2.

<sup>5</sup> Pepco February supplement at 2, Original Filing, Section 7.6 at 58.

<sup>6</sup> Pepco February supplement, Section 6, Table 6-2, at 23.

<sup>7</sup> Id. at 19.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Pepco Original Filing, Section 5.2.2.2 at 42.

their interconnection with the microgrid). The Microgrid Participants will continue to receive their electricity bills as they currently do.”<sup>11</sup>

## **II. Relevant Statutory, Regulatory and Caselaw Background**

Pepco’s microgrid proposal should be evaluated within the context of relevant state law in favor of competitive energy markets, Commission Orders and policies implementing that law. Pepco’s microgrid proposal should not be permitted to inadvertently undermine two decades of policy in favor of the provision of generation and generation-related products and services by the competitive marketplace.

Maryland adopted state policy supporting the availability of electric choice in 1999 with the passage of the Electric Customer Choice and Competition Act.<sup>12</sup> A significant element of the move to retail electric choice was the requirement for utilities to unbundle generation from their regulated rates. Maryland electric utilities divested themselves of their generation assets as part of this statutory scheme.<sup>13</sup> The utilities now utilize a competitive procurement process to obtain electric supplies to provide Standard Offer Service. The law also provides that generation service is not to be subject to Commission regulation except under enumerated circumstances.<sup>14</sup>

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<sup>11</sup> Pepco Original Proposal, Section 5.3, at 45.

<sup>12</sup> PUA §§ 7-501 to 7-517. The purpose of the law set forth in Section 7-504 was to:

- (1) establish customer choice of electricity supply and electricity supply services;
- (2) create competitive retail electricity supply and electricity supply services markets;
- (3) deregulate the generation, supply, and pricing of electricity;
- (4) provide economic benefits for all customer classes; and
- (5) ensure compliance with federal and State environmental standards.

<sup>13</sup> PUA § 7-509(b).

<sup>14</sup> PUA Section 7-509(a) provides that:

- (a) (1) On and after the initial implementation date, the generation, supply, and sale of electricity, including all related facilities and assets, may not be regulated as an electric company service or function except to:
  - (i) establish the price for standard offer service under § 7-510(c) of this subtitle; and
  - (ii) review and approve transfers of generation assets under § 7-508 of this subtitle.
- (2) This subsection does not apply to:
  - (i) regulation of an electricity supplier under § 7-507 of this subtitle; or

Subsequently, in 2006, PUA Section 7-510 was amended to allow the Commission to approve the construction of new generation resources in Maryland as needed “to meet long-term, anticipated demand in the State.”<sup>15</sup>

Also of relevance to the examination of Pepco’s proposal, is a BGE microgrid proposal of December 18, 2015, that the Commission considered and denied without prejudice in its July 19, 2016, Order No. 87669 in Case 9416. In doing so, the Commission stated, “[e]ven if we assume, which we do not in this Order, that we may approve the development of public purpose microgrids pursuant to § 7-510(c)(6), we decline to do so vis-à-vis BGE’s Proposal. As filed, the Proposal is deficient in several key aspects which preclude us from finding that the project, despite its stated benefits, would provide adequate, reasonable, and proper electricity service in Maryland.”<sup>16</sup> The Commission expressed many concerns with BGE’s proposed cost recovery. This included the proposed imposition of a monthly surcharge on all ratepayers rather than use of the traditional ratemaking process; lack of investment in the project by intended commercial beneficiaries or BGE shareholders; and BGE’s failure to seek alternative funding.<sup>17</sup> The Commission also disapproved of the proposal’s sole reliance on natural gas-fired generation for the microgrid project and failure to include any renewable energy options, CHP, or energy storage.<sup>18</sup>

The Commission also found that BGE’s proposal was deficient because of its failure to contemplate third party participation or service provider options. BGE proposed to retain

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(ii) the costs of nuclear generation facilities or purchased power contracts that, as part of a settlement approved by the Commission, remain regulated or are recovered through the distribution function.

<sup>15</sup> PUA § 7-510(c)(6).

<sup>16</sup> Order 87669 at 7.

<sup>17</sup> Order 87669 at 7-11.

<sup>18</sup> Order 87669 at 13-14.

ownership of the generation, although willing to bid out construction of the generation units, without adequate justification. The Commission reasoned,

While the Task Force<sup>19</sup> left unanswered questions concerning the current state of Maryland Law and the extent to which third-party providers can participate in public purpose microgrid development and deployment, we observe that campus-style microgrids already take advantage of competitive market forces to source generation. This feature is noticeably absent, however, from the BGE Microgrid Proposal, even though third-party generation owners could reasonably assume a portion of the risks associated with microgrids. We note that the spirit of the ‘Electric Customer Choice and Competitive Act’ envisions a competitive market for energy generation and services; the competitive element is lacking in this Proposal. While the lack of third-party participation in BGE’s design is not by itself dispositive, it lends additional credence to our conclusion that the Proposal is deficient as filed.”<sup>20</sup>

The Commission also noted that BGE failed to explore “partnerships with third parties to provide microgrid services.”<sup>21</sup> Another negative aspect of the BGE proposal identified by the Commission was its proposal to require all microgrid customers to adopt BGE’s Standard Offer Service during islanding events, thereby preventing access to retail choice during those times.<sup>22</sup> Finally, noting the Commission’s broader inquiry into the “grid of the future,” the Commission questioned whether “it may be premature to consider a specific project of this nature.”<sup>23</sup>

Subsequent to its decision on the BGE microgrid proposal, the Commission launched PC44 in September 2016 “for the purpose of commencing a targeted review to ensure that electric distribution systems in Maryland are customer-centered, affordable, reliable and environmentally sustainable.” In PC44, the Commission provided guiding principles “for the future of Maryland’s electric distribution systems” that are of relevance to the instant proceeding. These principles

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<sup>19</sup> Reference is to the Resiliency Through Microgrids Task Force Report of June 23, 2014.

<sup>20</sup> Order 87669 at 15-16.

<sup>21</sup> Id. at 17.

<sup>22</sup> Id. at 16.

<sup>23</sup> Id. at 18.

recognize the utilities' role as distribution system operators and the reliance on competitive markets for innovation, customer choices and cost reductions. The PC44 guiding principles are as follows:

- a. Electric service should be reliable, cost-effective, and environmentally sustainable for numerous reasons, including the growth of Maryland's economy, and there should be a balance among these three objectives;
- b. Universal access to electricity for all Marylanders is a bedrock principle of Maryland public utility regulation, so evaluating ratepayer impact – particularly for limited income Marylanders – is always a factor;
- c. New and improving technologies are driving fundamental change in Maryland's electric distribution systems, and we want to enable and seamlessly integrate technologies that will result in clear benefits – including cost reductions – for Maryland's electric customers;*
- d. Competitive markets are an integral part of Maryland's electricity landscape that seek to promote innovation, reduce costs, and increase customers' choices;*
- e. Electric distribution companies and cooperatives should maintain their current role as the operators of Maryland's electric distribution grid;*
- f. Electric distribution companies and cooperatives must serve as impartial grid operators, particularly when non-regulated affiliates are market participants;*
- g. As an alternative to traditional cost-based rates, performance-based incentives or alternative revenue collection methods might be appropriate for consideration; and
- h. Collaboration between stakeholders, and particularly with Maryland state agencies, is the preferred method of developing lasting solutions.<sup>24</sup> (emphasis added).

The Commission ultimately identified six topics for consideration in PC 44: rate design; electric vehicles; competitive markets and customer choice; interconnection process; energy storage; distribution system planning (if sufficient funding available).<sup>25</sup> The work groups examining these issues are on-going.

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<sup>24</sup> PC44, Notice, issued January 31, 2017, at 3-4.

<sup>25</sup> Id.

### **III. Pepco’s Microgrid Proposal Should be Examined in View of its Potential Negative Impacts on the Functioning of the Competitive Energy Marketplace**

NEM is concerned that approval of Pepco’s microgrid proposal would represent a significant step backward in the Commission’s near twenty-year history of successfully implementing state policy in favor of competitive energy markets. NEM urges the Commission to rely on the competitive marketplace and competitive entities to meet identified needs for distributed energy resource (DER) projects, including the microgrid project proposal at issue here. Competitive entities are best suited for developing and implementing innovative DER solutions as an integral part of the 21<sup>st</sup> century grid. Utilities should focus on their core competency of ensuring the reliability of delivery infrastructure and should be incented to do so. Indeed, the utility’s primary role in the competitive marketplace as the distribution system operator is embedded in the electric choice law and has been reiterated in the Commission’s recent PC44 guiding principles. Allowing monopoly utility participation in competitive energy markets, including those for DERs like microgrids, is poor public policy, is not in the public interest and would deter and discourage private capital investment and technology innovation.

NEM addresses specific components of the Pepco microgrid proposal below:

#### **A. Utility Ownership of Generation Assets**

Pepco has proposed to own the BESS and microgrid controllers associated with the project and to have a third-party developer own the NGG and PV assets. However, by the terms of its proposal, Pepco reserves the ability “to own any microgrid DG if it can do so at a cost lower than that provided through the competitive procurement process.”<sup>26</sup> It bears noting that one of the factors

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<sup>26</sup> Pepco Original Filing, Section 5.2.2.2 at 42.



leading to the Commission's disapproval of BGE's proposal was its proposal to retain ownership of the microgrid assets. The Commission was concerned that since BGE was not relying on the competitive market for generation, it was contrary to the electric restructuring law and lacking a competitive element. NEM strongly urges the Commission not to reverse the longstanding precedent in Maryland against utility ownership of generation through the approval of this utility microgrid proposal.

Utility ownership of microgrid generation assets as well as distribution assets presents market power concerns. The incumbent utility monopoly's ability to exercise market power acts to deter competitive entry and investment as well as technological innovation in DER. The market power concerns associated with utility DER ownership could be pervasive, bringing with it a high level of required regulatory oversight to maintain adequate controls.

PUA Section 7-510(c)(6) allows the Commission to approve the construction of new generation resources in Maryland as needed "to meet long-term, anticipated demand in the State." However, it bears noting that this legislative change occurred in 2006 in the context of the expiration of long-term utility rate caps that had shielded consumers from market-based pricing. Increases in commodity costs during the rate freeze led to concerns about consumer "rate shock" and calls for reform to standard offer service. The legislative history and circumstances do not support the application of this provision to the instant utility microgrid proposal. Indeed, PJM's wholesale marketplace has been and continues to work to identify and meet long-term anticipated demand for generation resources. Over a decade later, and under current market conditions, the concerns underlying Section 7-510(c)(6) simply are not implicated.

In addition, and from a practical perspective, since the battery storage will be working in concert with the PV, it is also unclear why Pepco would seek to bifurcate ownership of these resources between itself and the third-party developer as it has proposed to do.

## **B. Cost Recovery**

Pepco's proposal to recover the costs of the microgrid proposal from all of its distribution ratepayers should be denied. As a general matter, generation costs should not be recovered in delivery rates. This would be contrary to state law that required the unbundling of generation costs from utility delivery rates in order to foster price transparency. There is no justification for "rebundling" utility rates to include generation costs at this point in competitive market development. In fact, allowing utilities to recover generation costs through delivery rates is inherently anti-competitive because competitive entities cannot compete against the utility with related products when the utility rate structure has such costs hidden in delivery rates.

Moreover, utility ratepayer-backed deployment of these generation resources will discourage at-risk competitive investments and competitive innovation. The Commission should promote private investments to meet the demand for competitive DER products and services. The Commission should give clear signals that it does not intend to rely on a utility backstop to perform the role of DER provider. This regulatory direction will incent the type of competitive activity and investment that is needed to transform the market and to develop DER innovations that meet consumer needs.

Finally, Pepco's proposal to recover microgrid project costs from all of its distribution ratepayers is contrary to the Commission's recent direction in reviewing BGE's proposed cost recovery method in its microgrid proposal. There, the Commission questioned BGE's failure to include investment by the

project beneficiaries or utility shareholders, and it was one of the factors cited in the disapproval of the proposal.

### **C. Retail Access Participation**

It appears that Pepco is not proposing any restriction on microgrid participants ability to participate in retail choice. Pepco's proposal specifically states that "the Microgrid Participants will continue to be served by their retail energy supplier of their choosing, and will pay the same energy supply rate that they would otherwise pay (independent of their interconnection with the microgrid)." This is in contrast to the BGE proposal considered by the Commission. In that case, the Commission noted disapprovingly, that BGE would have restricted all microgrid customers to receiving SOS during islanded configuration. If, despite NEM's recommendations herein, Pepco's microgrid proposal is approved, it is critical that microgrid participants be permitted full access to retail choice, even during islanded configuration. To do otherwise sends a tacit, unwarranted and just plain wrong signal that utility SOS is superior to, or somehow more reliable than, competitive supply options.

### **IV. Establishing a General Policy on Microgrids**

NEM is concerned that the piecemeal approach of evaluating utility microgrid proposals may lead to negative unintended consequences and should be avoided. NEM respectfully suggests that the Commission develop and implement generally applicable rules and standards applicable to microgrid projects, after vetting in a diverse and inclusive stakeholder collaborative, that provide market participants with clear "rules of the road" to facilitate third party investment and participation. The Commission should give market participants clear direction up front that the rules and standards will implement a general policy in favor of the provision of microgrid solutions

by competitive entities. The rules should address issues such as a mechanism for competitive entities to obtain current, relevant system data for the purposes of identifying locations for microgrid projects. Likewise, competitive market participants need to be provided with a mechanism for obtaining timely access to customer data to develop and implement DER products and to enhance consumer engagement in their energy usage decisions. There is a significant role for the utilities as distribution system operators and facilitators of DER in partnering with competitive entities to provide this system and customer data.

## **V. Conclusion**

NEM appreciates this opportunity to offer its comments on Pepco's pilot public-purpose microgrid proposal. As explained herein, NEM urges the Commission to rely upon the competitive marketplace for the provision of competitive DER solutions, including microgrids.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Craig Goodman", with a long horizontal flourish extending to the right.

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