STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on the Motion of the Commission in Regard to Reforming the Energy Vision	)	Case 14-M-0101
Staff White Paper on Benefit-Cost Analysis	)	

REPLY COMMENT OF THE STAFF OF THE FEDERAL TRADE COMMISSION[1]

September 10, 2015

of key developments. Those developments include: (1) important technical advances in distributed energy resources (DERs), together with tools to optimize the inclusion of DERs in the distribution level of the power system;[4] (2) increasing concerns about the environmental impacts of fossil-fueled generation; and (3) growing evidence of consumer interest in customized electric service, including differing preferences for increased reliability and resiliency. Our comment draws on the FTC's experience both in enforcing competition laws and in advising federal and state regulatory agencies about the competitive effects of an array of regulatory programs focused on the electric power system.

The Staff BCA seeks to describe a framework that the NY PSC will apply in examining categories of distribution utility expenditures related to developing the Distributed System Platform, the procurement of DERs via selective processes, the development (via tariffs) of customers' and third parties' efficient investment in DERs, and energy efficiency programs. This is all in the context of "the evaluation of opportunities to avoid traditional utility distribution investments by calling upon the marketplace to supply DER alternatives." The NY PSC reserves the authority to modify the final version of the BCA framework based on the type, range, and duration of the potential benefits and costs.

Our comment responds to initial third-party comments on the Staff BCA. For example, the comments of both Exelon Companies[5] and the Advanced Energy Economy Institute (with others)[6] found value in the Staff BCA framework for assessing the benefits and costs of DERs as an alternative to conventional distribution utility investments.[7] We likewise saw value in that framework. In addition, both comments also recommended additional types of benefits and costs for inclusion in the Staff BCA[8] and cautioned about the potential sensitivity of BCA results to models and assumptions used in BCA regarding future economic and environmental conditions. We agree that BCA should assess additional types of benefits and costs and that the Staff BCA should include sensitivity analysis of BCA results. The remainder of this comment identifies our

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[4] See, e.g., Gerry Braun & Stan Hazelroth, Energy Infrastructure Finance: Local Dollars for Local Energy, 28 Electricity J. 6, 9, 19 (June 2015).

[5] Exelon Companies, Benefit-Cost Analysis Comments of the Exelon Companies (Aug. 21, 2015) (Exelon Comment), available at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={42634466-F7A9-43FB-B699-EA43BF5B48A4}.

[6] Advanced Energy Economy Institute, Alliance for Clean Energy New York, & New England Clean Energy Council, Comments on Staff White Paper on Benefit-Cost Analysis in the Reforming the Energy Vision Proceeding (Aug. 21, 2015) (AEEI Comment), available at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C02AD3D8-6153-4FAD-A605-C57453337CB2}.

[7] Exelon Comment at 2; AEEI Comment at 2-3. See also the extensive appendix to the AEEI Comment, consisting of a report, Benefit-Cost Analysis for Distributed Energy Resources: A Framework for Accounting for All Relevant Costs and Benefits (Sept. 22, 2014)

[8] Exelon Comment at 4, 6-9; AEEI Comment at 9.

education through its Division of Consumer and Business Education.[9] In the course of all of this work, the FTC applies established legal and economic principles as well as recent, innovative developments in economic theory and empirical analysis.

The energy sector, including the electric power industry, has been an important focus of the FTC's merger review and other antitrust enforcement, competition advocacy, and consumer protection efforts.[10] In particular, the FTC and its staff have filed numerous comments advocating competition and consumer protection principles with state utility commissions, state legislatures, the Department of Energy (DOE), and the Federal Energy Regulatory Commission (FERC).[11] The FTC's competition advocacy program also has issued two staff reports on electric power industry restructuring issues at the wholesale and retail levels.[12] In addition, the

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[9] For an overview of the FTC's education efforts, see the FTC staff's comment to the Consumer Financial Protection Bureau concerning "Request for Information on Effective Financial Education," Docket No. CFPB-2012-0030 (Nov. 2, 2012), available at http://www.ftc.gov/os/2012/11/1211cfpb.pdf.

[10] See, e.g., In re DTE Energy Co., Dkt. No. C-4008 (2001) (consent order), available at http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2001/05/dte-energy-company-and-mcn-energy-group-inc; In re PacifiCorp, File No. 971 0091 (1998) (consent agreement), available at http://www.ftc.gov/sites/default/files/documents/cases/1998/02/9710091.agr_.htm; FTC Conference on --

FTC staff (along with staff from FERC, the Department of Justice, the Department of Agriculture, and DOE) contributed to the work of the Electric Energy Market Competition Task Force, which issued a Report to Congress in the spring of 2007.[13]

III. Include Service Quality, Service Choices, and Innovation Rates in the Principles of the BCA Framework

The Staff BCA (at 3-4) lays out the "Principles of the BCA Framework

- limited versus unlimited backup services for DER owners;
- peak load shaving incentives;
- choices among potential combinations of capacity charges, minimum use charges, and energy use charges;
- bundling of analysis of cross-sectional and longitudinal power consumption data and data display equipment with energy services; and
- degrees of power quality assurances provided by equipment on either side of a customer's meter.

In addition, when growth and profit opportunities arise in competitive markets from offering improved equipment or services, this incentivizes further innovation. We expect the opening of the electric distribution system to competition (pursuant to the REV plan) to yield major benefits from increased innovation in customized electricity services. We recommend that the Principles of the BCA Framework explicitly include the benefits of increased rates of innovation.

A modification of the second Principle could easily take account of both service differentiation and innovation. For example, the second Principle could be modified to read: "List all benefits and costs borne by all parties, including localized impacts on host communities; customization of services that better match customer preferences regarding prices, service quality, and variety of service; and rates of innovation."

IV. Add Competition, Efficiency, and Customer Choice to the List of Benefits[15]

Table 1 lists benefits and costs to include in the BCAs that distribution utilities conduct. The table expresses the benefits almost exclusively in terms of avoided costs, some of which occur at the bulk power level while others are at the distribution level. Some of the listed costs focus on reliability, while others concern externalities. A residual item covers "Net Non-Energy Benefits." The Staff BCA invites comments on whether to revise this proposed list of benefits and costs to be assessed by utilities when comparing traditional distribution utility investments to DER and energy efficiency alternatives.

As discussed in Section III of this comment, we recommend that the Staff BCA take a broader view of DERs' potential benefits. The benefits list in Table 1 focuses primarily on bulk system and distribution system benefits associated with traditional utility operations, which provided little service variety to satisfy differing customer preferences. Consistent with our recommendation in Section III, we recommend an additional category of benefits associated with

[15] We also recommend an addition to the list of potential DER costs. Tariff changes to induce DER or to pay for DER investments may cause some customers to reduce their energy consumption. The value of this for-1.15 Td [(pr)-2(oype /Pagi0b)-2(oype /Pa9n.001 Tc -0.001 Tw [(lis)6(t o)2(

the increased value of electric services that DERs provide to customers that incorporates the principles of competition, efficiency, and customer choice. Chief among these benefits could be the extra value that customers of retail electric services derive from the increased customization of those services.[16]

We do not have a basis to recommend specific ways to measure these DER benefits. Rather, we want to emphasize that the NY PSC is likely to create the conditions in which these benefits can flourish if it fosters a competitive environment conducive to increased DER participation.[17]

In addition, although Table 1 includes "Wholesale Market Price Impacts" as a benefit, we recommend that NY PSC staff determine whether the beneficial effects of increased competition receive adequate attention in the power system modeling discussed at pages 14-15 in the Staff BCA. The competitive benefits of the REV are not limited to the immediate impacts of DERs or energy efficiency projects that substitute for distribution system expenditures. The benefits may also include the long-term impacts of increased competition at the distribution level of the power system.[18]

Increased competition in formerly regulated monopoly markets also may induce efficiency improvements and more rapid innovation.[19] Accordingly, we also recommend the addition of "Efficiency Improvements" and "Increased Innovation" to the list of benefits in Table 1.

V. Sensitivity of BCA Results

The Staff BCA uses various models or assumptions to account for uncertainties regarding future technological, economic, and environmental conditions. Future benefits and costs can depend on the numerous