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*Director*

December 20, 2019

**By Hand Delivery and Electronic Mail**

Aida Camacho-Welch, Secretary  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: BPU Town Center Distributed Energy Resources Microgrid  
Detailed Designed Incentive Program – Staff Straw Proposal  
BPU Docket No. Pending**

Dear Secretary Camacho-Welch:

Please accept for filing the enclosed original and ten (10) copies of comments being submitted on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) in connection with the above-referenced matter. Copies of Rate Counsel’s comments are being provided to all parties on the service list by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. **Please stamp and date the extra copy as "filed" and return to our courier.**

Thank you for our consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Division of Rate Counsel

By:   
Sarah H. Steindel, Esq.  
Assistant Deputy Rate Counsel

SAB  
Enclosure

cc: [TCDERmicrogrid@bpu.nj.gov](mailto:TCDERmicrogrid@bpu.nj.gov)  
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**STATE OF NEW JERSEY**

**BEFORE THE BOARD OF PUBLIC UTILITIES**

**BPU Town Center Distributed Energy     )**  
**Resources Microgrid Detailed Design     )**  
**Incentive Program - Staff Straw Proposal   )**

**COMMENTS OF THE  
NEW JERSEY DIVISION OF RATE COUNSEL**

**December 20, 2019**

## INTRODUCTION

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“Board” or “BPU”) for the opportunity to provide these comments in response to Board’s November 22, 2019 Notice (the “Notice”) seeking comments on a Staff Straw Proposal for awarding funding for detailed design work for Town Center Microgrids. The Town Center Microgrids program (“TCDER”) was authorized in the Board’s Fiscal Year 2017 Clean Energy Program budget Order.<sup>1</sup> Phase I of the program provided funding to thirteen government entities to conduct feasibility studies for microgrids. Notice, p. 1. Under Phase 2 of the program, these thirteen entities can apply for funding for detailed design work. Id. The Notice seeks comments to assist the Board in implementing Phase 2 of the program.

The Notice seeks comments in four areas: (1) a proposed framework for consideration of applications, (2) proposed criteria for ranking proposals, (3) a proposed list of disqualifying elements, and (4) a series of questions relating to the configurations of the microgrids that should be included in the program. Rate Counsel’s comments in each area are set forth below.

## RATE COUNSEL’S COMMENTS

### Proposed Framework for Detailed Design Applications

**BPU Staff will create an application based on the following element and criteria.**

- **TCDER detailed design incentive awards will be competitive, based on the award criteria shown in the table below.**
- **The number of awards will be determined based on the rankings and available funds.**
- **Detailed designs may evolve from the specific TC DER Microgrid described in the Feasibility Studies.**

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<sup>1</sup> I/M/O the Clean Energy Programs and Budget for Fiscal Year 2017 and I/M/O Revision to New Jersey’s Fiscal Year 2017 Protocols to Measure Resource Savings, BPU Dkt. Nos. QO16040353 & QO16060525, Order at 16 (June 29, 2016).

- BPU will seek to select for award at least one TCDER project in each of the three participating Electric Distribution Companies (“EDC”) service territories.
- One Basis of Design per applicant will be considered. Alternative plans/options or future expansion capabilities will not be considered.
- No direct construction – related microgrid financial incentives are contemplated at this time. (Other existing incentives, such as through BPU’s Clean Energy Programs, may be applicable).

BPU reserves the right to negotiate scope of work, budget and funding levels with prospective awardees.

**Comments:**

Rate Counsel finds the proposed framework to be reasonable and agrees with the proposal to use a competitively-based process with defined award criteria.

**Proposed Award Criteria**

Criteria would be subject to “weighting” and shall add up to 100 points. Award criteria would be included in the request for applications (“RFA”).

Criteria	Maximum Points
<p><b>1. Project Narrative</b></p> <p>Applicants should include a project narrative that contains the following elements:</p> <ul style="list-style-type: none"> <li>• A summary of the prior FS</li> <li>• A high level description of the anticipated basis for detailed design</li> <li>• A description of how the application is consistent with, or varies from the FS</li> <li>• Description of the project team</li> <li>• Description of anticipated communication protocol and cyber security measures</li> <li>• Makes a case for how the project proposed for detailed design is expected to satisfy the award criteria contained herein</li> </ul>	<p style="text-align: center;"><b>20</b></p>
<p><b>2. Clean and Green</b></p> <p>Applicants should address their general approach to the following elements:</p> <ul style="list-style-type: none"> <li>• Renewable energy and energy storage</li> <li>• Electric vehicle charging</li> </ul>	<p style="text-align: center;"><b>20</b></p>

<ul style="list-style-type: none"> <li>• <b>Reduction in Greenhouse Gas (“GHG”) over Business as Usual</b></li> <li>• <b>Reduction in peak demand</b></li> </ul>	
<p><b>3. Social</b></p> <p>Applicants should address their general approach to the following elements:</p> <ul style="list-style-type: none"> <li>• <b>Capacity for use as a Public Shelter</b></li> <li>• <b>Critical facilities served</b></li> <li>• <b>Replicability by other jurisdictions</b></li> </ul>	<b>15</b>
<p><b>4. Financial</b></p> <p>Applicants should address their general approach to the following elements:</p> <ul style="list-style-type: none"> <li>• <b>Avoidance of transmission &amp; distribution expenditures by EDCs</b></li> <li>• <b>Management of the facility’s transmission &amp; distribution cost allocation</b></li> <li>• <b>Tariff proposals and discussion of who benefits and who pays</b></li> <li>• <b>Identification of beneficiaries and ratepayer impacts</b></li> <li>• <b>Viability of business model and financing</b></li> </ul>	<b>15</b>
<p><b>5. Technology</b></p> <p>Applicants should address their general approach to the following elements:</p> <ul style="list-style-type: none"> <li>• <b>Innovation (within the criteria specified herein)</b></li> <li>• <b>Degree of resilience</b></li> <li>• <b>Effect on the distribution system</b></li> <li>• <b>Need/reliability of existing distribution circuits and distributed energy resources</b></li> </ul>	<b>15</b>
<p><b>6. Cost Contribution</b></p> <p>Applicants should provide</p> <ul style="list-style-type: none"> <li>• <b>An estimate of the cost of the detailed design</b></li> <li>• <b>The amount of financial support they are requesting from the BPU towards that cost</b></li> <li>• <b>The portion of the cost to be funded by the applicant</b></li> </ul>	<b>15</b>
<b>TOTAL POINTS</b>	<b>100</b>

**Comments:**

Rate Counsel agrees with this proposed award criteria and assignment of points. The proposed criteria will allow the Board to identify the projects that are the most feasible, and will best meet the program goals.

**Disqualifying Content**

**Applications containing the following content will be considered disqualified:**

- 1. Applications proposing the use of State funding sources that do not currently exist or which have not been specifically identified and described.**
- 2. Applications consisting of a single building (Level 1) microgrid.**
- 3. Applications consisting of a campus-style (Level 2) microgrid.**

**Comments:**

Rate Counsel is in agreement with the proposed list of disqualifying content. The three listed items are consistent with the description of the Microgrids Program in the OCE's Fiscal Year 2020 Compliance Filing.<sup>2</sup>

**Issues for Stakeholder Input**

**1. Definition of a TCDER Microgrid**

**The U.S. Department of Energy Microgrid Exchange Group Defines a Microgrid as Follows:**

*A microgrid is 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.*

**BPU defines a TCDER Microgrid as follows:**

*A Town Center DER microgrid, for the purpose of this incentive program, is a cluster of critical facilities within a municipal boundary that may also operate as shelter for the public during and after an emergency event or provide services that are essential to function during and after an emergency situation. The Town Center DER microgrid could include, but not be limited to, multifamily buildings, hospitals, and local or state government critical operations in a relatively small radius. These critical facilities are connected to a single or series of DER technologies that can operate while isolated and islanded from the main grid due to a power outage.*

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<sup>2</sup> Id.

**Are these definitions sufficient for applicability to the BPU's TCDER Microgrid program?**

**Comments:**

Rate Counsel believes these definitions are sufficient. Rate Counsel notes that, in addition to these definitions, the Microgrid Program must be implemented in accordance with all applicable statutory limitations, as acknowledged at page 33 of the Board's 2016 Microgrid Report.<sup>3</sup>

**2. NJ League of Municipalities ROW Position**

**The League, in a March 15, 2015 letter, states that “municipalities (can) construct and operate, as general improvements, “municipal microgrids” in their own municipal right of way (ROW).” This interpretation would allow a municipal microgrid to extend well beyond the one ROW provision.**

**Is this position in accordance with existing law, and if not what changes would be required for municipalities to construct microgrids that cross more than one ROW?**

**Comments:**

Based on discussions with Staff, it is Rate Counsel's understanding that Staff is seeking input on the issue of whether a generation facility that is located remotely from the facilities using the energy can be an “on site generation facility” as defined in N.J.S.A. 48:3-51. Rate Counsel does not believe that this was intended in the statutory definition. N.J.S.A. 48:3-51 defines “on-site generation facility” as follows:

“On-site generation facility” means a generation facility, including, but not limited to, a generation facility that produces Class I or Class II renewable energy, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-

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<sup>3</sup> Available at: <https://www.nj.gov/bpu/newsroom/announcements/pdf/20161130micro.pdf>.



owned right-of-way, or if the end use customer is purchasing thermal energy services produced by the on-site generation facility, for use for heating or cooling, or both, regardless of whether the customer is located on property that is separated from the property on which the on-site generation facility is located by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way.

With regard to geographic proximity, the generating facility must be on a property that is “next to” the property on which the end user is located. The properties may be separated by a single right-of-way, or, in the case of a facility providing thermal energy services, multiple rights of way. The intent of this provision was to allow “contiguous” properties to be located across a right-of-way (or multiple rights-of-way) from each other. It was not intended to apply to properties that are not “next to” each other but at two distant locations along a narrow right-of way such as roadway or utility easement.

**3. Does N.J.S.A. 48:13-10 et. seq. provide authority to “sewerage companies” to use their ROWs for microgrids? References: <https://law.justia.com/codes/new-jersey/2013/title-48/section-48-13-10/>**

**Comments:**

Rate Counsel has no position on this issue. Rate Counsel notes, however, that this cited provision applies only to regulated utilities, and does not apply to municipal utilities that are not regulated by the Board.

Rate Counsel assumes that this question was asked with reference to the letter of the League of Municipalities dated March 15, 2015 cited in question No. 1 above.<sup>4</sup> In that letter, the League asserts that such authority would make N.J.S.A. 48:3-77.1 inapplicable. Rate Counsel disagrees with this assertion. N.J.S.A. 48:3-77.1 provides as follows:

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<sup>4</sup> The letter is available as Appendix D at pages 105-07 of The Board’s 2016 Microgrid Report, <https://www.nj.gov/bpu/newsroom/announcements/pdf/20161130micro.pdf>.

In order to avoid duplication of existing public utility electric distribution infrastructure, and to maximize economic efficiency and electrical safety, delivery of electric power from an on-site generation facility to an off-site end use thermal energy services customer as defined in section 3 of P.L.1999, c.23 (C.48:3-51), shall utilize the existing locally franchised public utility electric distribution infrastructure. The New Jersey electric public utility having franchise rights to provide electric delivery services within the municipality shall provide electric delivery services at the standard prevailing tariff rate that is normally applicable to the individual off-site end use thermal energy services customer.

The intent of this provision is to avoid the construction of new electric infrastructure when it would duplicate existing infrastructure. This provision applies whether or not a non-utility entity would otherwise possess the authority to construct electric infrastructure within a EDC's franchise area.

**4. Should the Board initiate a generic proceeding to clarify what constitutes a contiguous right of way?**

**Comments:**

Initially, Rate Counsel notes that the term “contiguous right of way” does not appear in the definition of “on-site generation facility” or elsewhere in the Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 et seq. The statutory definition refers to contiguous properties, not contiguous rights of way. Rate Counsel does not believe a generic proceeding to explore this issue is necessary because the Board has already provided guidance on this issue. For purposes of determining whether properties are contiguous, the Board has provided in its net metering regulations that the boundaries of a “property” are “as set forth within the official tax map.” N.J.A.C. 14:8-4.1(b). The same definition applies to on-site generation. As the Board explained in its decision in I/M/O Application of NJ Land, LLC Seeking a Declaratory Judgment Pursuant to N.J.S.A. 52:14B-1 et seq. or a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(b), BPU Dkt. No. QO160402382, Order at 2 (Jan. 25, 2017), the Board’s intent was to apply the same geographic limitations to net metering facilities as it

does to on-site generation facilities. Since the Board has issued guidance in a rule, any changes in that guidance must be through a rulemaking proceeding in accordance with the New Jersey Administrative Procedure Act. N.J.S.A. 52:14B-4(a).

**5. Would a proceeding to establish standard rates, terms and conditions under which EDCs would lease wires to third-parties be useful to microgrid developers?**

**Comments:**

Rate Counsel notes that the rates charged to microgrids must be in compliance N.J.S.A. 48:3-77.1, which requires the EDC to charge the “standard prevailing tariff rate that is normally applicable to the individual off-site end use thermal energy services customer.” To the extent the EDCs tariffs do not include provisions that would be applicable, a proceeding would be necessary to establish standard rates, terms and conditions for the use of the EDCs’ wires. Such proceedings would need to include cost-of-service studies to assure that costs are being allocated fairly to microgrid developers and other ratepayers.