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Via Electronic Mail
Sherri L. Lewis, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 1st Floor
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Board.Secretary@bpu.nj.gov

Re: In the Matter of New Jersey's Distributed Energy Resource Participation in Regional Wholesale Electricity Markets BPU Docket. No. EO24020116

Dear Secretary Lewis:

The Division of Rate Counsel ("Rate Counsel") is pleased to provide these comments to the Board of Public Utilities ("BPU") pursuant to the January 7, 2025 Updated Notice of Technical Conference in BPU Docket No. EO24020116 requesting comments on or by January 31, 2025. Rate Counsel previously submitted comments in this docket in response to the March 7, 2024 Request for Information. Rate Counsel also offered oral comments as a participant in Panel 3: Addressing the Costs of Order 2222 at the Technical Conference on Order 2222 on January 17, 2025. The purpose of this Technical Conference was to help stakeholders: 1) understand PJM's Order 2222 Compliance Filing; 2) understand the technical standards required by the Compliance Filing and Order No. 2222; 3) identify any remaining barriers to implementing Order 2222; 4) examine and evaluate the potential impacts of Order 2222 on ratepayers; and 5) identify potential paths for implementation of Order 2222 within the state.

The purpose of Panel 3 was to discuss how Order 2222 will affect the markets and the costs that may accrue in allowing distributed energy resources ("DERs") to aggregate, what is currently being done to ensure cost avoidance measures are being actively considered, how any costs of aggregation are allocated, and how to ensure equity for ratepayers and other impacted parties in bearing the costs of Order 2222 and receiving the benefits. These comments are based upon and add to these previous discussions and comments. We start with general comments and then address specific questions discussed in Panel 3.

General Comments

Rate Counsel is generally supportive of DER participation in wholesale markets through the implementation of Order 2222, which can enable installation of more DERs, provide new revenue stream(s) for DER owners and distributed energy resource aggregators ("DERAs"), increase market supply and supply diversity, increase competition which can reduce rates for all ratepayers, improve system reliability and resilience, and advance equity, among other benefits. However, implementation must be done well for these benefits to materialize in New Jersey at any scale. Implementation needs to balance the desire by DER owners and aggregators to realize benefits that outweigh costs with the desire of Electric Distribution Companies ("EDCs") and their ratepayers for reasonable and stable rates. Implementation also needs to allow DERAs to deploy creative solutions to bring DERs into the market while establishing basic protections to guard against undue risk, anticompetitive behavior, and cost exposure for DER owners, as well as ratepayers generally.

Rate Counsel requests BPU's attention to the following implementation areas which are our top priorities: cost, cost recovery, and cost allocation; reliability and resilience; coordination with state clean energy programs; DER owner protections; and equity. We address each issue in more detail below.

Cost, cost recovery, and cost allocation: At this time, the costs and types of costs that EDCs, DER owners, and DERAs will incur to implement Order 2222 are unknown, as is their allocation. Similarly, it is unclear what benefits EDCs, DER owners and DERAs will receive from implementation of Order 2222 and whether the benefits to each party will more than offset the costs. It is Rate Counsel's position that cost allocation should be consistent with traditional cost-causation utility ratemaking principles which state that those who benefit should pay. Ratepayers who do not own DERs should not cover the costs incurred by ratepayers who own DERs, DERAs, and EDCs to aggregate DERs so that DERs can participate in wholesale markets for financial gain that will not be shared with ratepayers. Benefit cost analyses ("BCA") from different perspectives (EDCs/ratepayers, DER owners, and DERAs) will be necessary to inform Order 2222 cost allocation, set appropriate incentive levels for DERs for state programs, and ensure that this effort does not place any undue cost burden onto ratepayers, especially low- and moderate-income ratepayers. The BPU should ensure that BCAs are conducted properly and include all costs and benefits associated with implementing Order 2222, to ensure that it is cost-effective for DER owners and EDCs/ratepayers. If those analyses are not done effectively, the BPU risks DER owners losing confidence in the process, and ultimately lower participation in the wholesale markets, which would cause New Jersey and its ratepayers to see fewer benefits from the inclusion of DERs.

Reliability and resilience: In addition to assessing the costs, benefits, net benefits, and benefit cost ratios of this effort from EDC/ratepayer, DER owner, and DERA perspectives, the BPU should assess the impacts of implementing Order 2222 on grid reliability (the ability to avoid sudden disruptions), grid resilience (the capability to withstand, respond to and recover from power disruptions), and resource adequacy (the system's ability to supply aggregate demand at all times). The BPU should require EDCs to track and report SAIDI, SAIFI, Momentary Average Interruption Frequency Index (MAIFI), Customer Average Interruption Duration Index (CAIDI), Customers Experiencing Multiple Interruptions (CEMI), and Customers Experiencing Long Interruption Duration (CELID) at the system and subsystem level and with and without major event days. SAIDI, SAIFI, and MAIFI metrics indicate system performance as a whole, while CAIDI, CEMI, and CELID offer more insight into impacts on customers.

Coordination with state clean energy programs: There are several potential sources of cost savings. The first is systemwide savings from increased competition and lower market prices that accrue to all ratepayers. The second is savings for ratepayers who adopt DERs. The third is reductions in ratepayer contributions to New Jersey's DER incentive programs. To access this third source of cost savings, the BPU will need to review and update DER programs and program designs considering the new source of revenues for ratepayers who adopt DERs. Costs and benefits of DER programs need to be re-evaluated to incorporate new revenue streams for DERs and ensure existing incentive offerings are not overcompensating ratepayers who choose to invest in DERs. The BPU should pay particular attention to whether and how owners of existing DERs can participate in wholesale markets. For example, there may be customers who are enrolled in the state's solar net metering program who want to participate in wholesale access market tariffs. The BPU's review should pay particular attention to evaluating and eliminating double compensation between existing and new revenue streams. There could also be customers with DERs that will be prevented from participating in wholesale markets, particularly as energy efficiency resource participation is uncertain. This re-evaluation will require careful analysis to appropriately support different resources without overcompensating them with ratepayer funding. Finally, the BPU should consider whether DERs that choose to not participate in an available wholesale aggregation should remain eligible for any ratepayer-funded subsidies.

DER Owner Protections: BPU should apply the same level of customer protection standards used for energy competition to DER aggregation offerings. DERAs are sophisticated businesses with marketing and technical knowledge and capabilities driven by profit. Private DER owners may not be equipped to evaluate complex agreements and advocate for their interests. The BPU should therefore establish protections for DER owners.

Equity: Equity includes not overcharging ratepayers, especially low- and moderate-income ratepayers, for DERA rollout and ensuring all ratepayers can participate as DER owners if they so choose. The BPU should require EDCs to consider the impacts of DERA rollout on low-income communities. Such requirements should include minimum program design standards that appropriately align costs with benefits, consideration of low-income prevalence in DERA site evaluation, and continued monitoring and data tracking of DERA investment impacts on low-income customers as compared to all customers. Tracking this information will enable New Jersey to better understand and mitigate inequitable impacts. The BPU should also set equity metrics and goals for DER owners to ensure diversity related to income (low- and moderate-income) and location (overburdened communities), structure program designs to achieve those goals, and evaluate performance against goals to determine if adjustments to the program design are needed.

Responses to Panel 3 Questions

Given that the current EDC rate setting construct (including retail supply) is based upon energy flow at the EDC's meter, do you think the BPU should consider how behind the meter DERs would impact the cost allocation of the distribution system between providing service to retail load and the cost to handle the input of DERs?

Regarding allocation of investments in the distribution system to accommodate more DERs, the majority of states allocate most, if not all, the cost of distribution system upgrades to DER owners and aggregators. New Jersey should follow this approach which should avoid the assignment of additional costs to ratepayers altogether.

Regarding fair allocation of distribution system costs to ratepayers more generally, DER owners who wish to receive compensation from wholesale programs should pay their fair share of distribution system costs. Additional distribution system investments may be needed to support their export to grid capabilities, especially for EV and battery storage installations. DERs that choose to remain behind the meter resources should be strictly prevented from receiving double compensation from wholesale and retail programs for providing the same energy and capacity. The BPU should provide guidance on the choices that existing DER owners have, especially those with solar resources involved in net metering, with regards to participating in wholesale programs.

How are distribution system upgrades allocated to component DERs that are triggered by DERA reliability reviews?

This is an ideal time for the BPU to review and update how distribution system upgrades are allocated to DERAs and their component DERs. Siting discipline under the traditional first come, first pay approach has been a challenge for DER developers, despite favorable state and federal subsidies. To address this infirmity in the market, the BPU may wish to look at EDC programs that allow distribution system upgrade costs to be spread out across the many DER owners who cause the need for the upgrade. DERAs may help in this regard as the pool of DER owners who lead to the need for upgrade and should pay those upgrade costs is better defined. However, the distribution system cost upgrades triggered by DERAs may be high in some cases and limit some DER owners from being able to install DERs. More information on costs and cost allocations is needed to determine whether this limitation is likely to materialize in practice. Regardless of the cost and the approach the BPU takes to cost allocation, protections are needed for DER owners involved with DERAs. Component DERs need to be able to exit agreements with DERAs if the aggregation triggers the need for distribution system upgrade costs that component DERs find to be untenable or cost inefficient.

Should any additional policies (outside of PJM's position that DERAs are responsible for metering and getting generation output data from each participating customer) be considered?

Yes, the BPU should develop a code of conduct for DERAs to protect DER owners from predatory or harmful practices, much like the code of conduct that was developed for third-party suppliers. During Panel 3, Rate Counsel was informed that DOE has developed a code of conduct for DERAs that Maryland has used. BPU should consider this code of conduct. Cybersecurity guardrails for DERs are also necessary. During Panel 3, Rate Counsel became aware of a cybersecurity guidance document that is under development by NARUC and DOE. The BPU should consider leveraging this cybersecurity guidance document upon its release.

Do you have any other specific suggestions for what actions the BPU can take to ensure equitable cost allocation and recovery for DER operators and beneficiaries?

Equity involves ensuring everyone benefits from DER deployment and reasonable access to DER ownership by any ratepayer who chooses to participate.

Respectfully submitted,

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DW/dl
c: Service List (via electronic mail)

I/M/O NJ Distributed Energy Resource Participation in Regional Wholesale Electricity Markets
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