

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 COMMISSION¹

September 10, 2015

I. Introduction

The Federal Trade Commission (FTC) staff appreciates this opportunity to submit a comment in reply to certain comments filed last month in the Reforming the Energy Vision (REV) proceeding before the State of New York Public Service Commission (NY PSC). The NY PSC has requested input concerning the NY PSC Staff White Paper on Benefit-Cost Analysis in the Reforming Energy Vision Proceeding (Staff BCA).²

As we have done previously,³ we commend the NY PSC and its staff for their efforts to reconceive the structure and operations of the electric distribution system in the face of a number

¹ This comment expresses the view of the FTC's Office of the General Counsel, Office of Policy Planning, and Bureau of Economics. The comment does not necessarily represent the views of the FTC or of any individual Commissioner. The Commission, however, has voted to authorize the filing of this comment.

² State of New York, Dep't of Public Service, *Staff White Paper on Benefit-Cost Analysis in the Reforming the Energy Vision Proceeding* (July 1, 2015) (Staff BCA), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={168B59A0-14A9-4DE3-8B97-DFE25A067CF9}>; *Notice Inviting Public Comment on the Staff White Paper on Benefit-Cost Analysis* (July 2, 2015), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={411B7682-90CB-40D8-922E-19F4A4FB1A27}>. We use the acronym "BCA" throughout this comment to stand for "benefit-cost analysis."

³ Reply Comment of the Staff of the Federal Trade Commission Before the State of New York Public Service Commission, Proceeding on the Motion of the Commission in Regard to Reforming the Energy Vision: DPS Staff Straw Proposal on Track One Issues, Case No. 14-M-0101 (Oct. 23, 2014), available at https://www.ftc.gov/system/files/documents/advocacy_documents/federal-trade-commission-staff-reply-comment-new-york-state-public-service-commission-reforming/141024nypsccomment.pdf.

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 Companies⁵ 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 BCA⁸ 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

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.

recommendations for additional benefits and costs to be included in the Staff BCA and explains the importance to the NY PSC of insights regarding the sensitivity of BCA results.

We encourage the NY PSC and its staff to broaden the perspective of the Staff BCA to take more complete account of the REV proceeding's potential effects on competition, including those beyond just cost and price considerations. At a fundamental level, REV is an effort to open the marketplace to DERs at the distribution level of the electric power industry. This is an area that – aside from limited self-supply options – has historically operated as a regulated monopoly. Opening markets to competition can create opportunities for quality improvements, wider customer choice, and increased rates of innovation (in addition to lower costs and prices). All of these economic benefits – stemming from more effective competition – redound to the benefit of customers. Yet despite the breadth of this array of benefits that could flow from the increased competition presented by DERs, the Staff BCA appears to focus mainly on potential cost and price benefits.

As discussed in Section II of this comment, the FTC – with a long history of law enforcement and policy research regarding the effects of changes in the intensity of competition – employs economic analysis to assess competitive conditions and engages in antitrust enforcement to block mergers or anticompetitive practices that harm competition and consumers. The FTC's analysis of competitive effects entails the examination of price effects and efficiency effects, consistent with the focus of the Staff BCA. Appropriate analysis of competitive effects does not necessarily end, however, with assessment of price and efficiency effects. The competition analysis extends to non-price aspects as well, including effects on the quality of goods or services, innovation, and the number of choices available to customers. This latter group of concerns is particularly acute when excessively restrictive regulations impede suppliers from exercising their otherwise legal right to respond to customers' divergent preferences.

In our view, the NY PSC and the public would benefit from broadening the perspective of the Staff BCA. By focusing on a more complete range of potential economic performance benefits likely to flow from the growing competitive role of DERs, the NY PSC can illuminate additional opportunities to benefit customers. Section III of this comment discusses this issue in the context of the "Principles of the BCA Framework" set forth early in the Staff BCA. Section IV offers examples of additional categories of benefits, drawn from the broader spectrum of competitive effects that the FTC examines in its competition analysis and competition advocacy. Section V discusses how the importance of these additional categories of benefits may vary as revealed by sensitivity analyses.

II. Interest and Experience of the FTC

The FTC is an independent agency of the United States Government responsible for maintaining competition and safeguarding the interests of consumers. The FTC fulfills these missions through law enforcement, policy research, and advocacy. For example, in the field of consumer protection, the FTC enforces Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices. In its competition mission, the FTC enforces antitrust laws regarding mergers and unfair methods of competition that harm consumers. In addition, the FTC often analyzes regulatory or legislative proposals that may affect competition, allocative efficiency, or consumer protection. It also engages in considerable consumer

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

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](http://www.ftc.gov/sites/default/files/documents/cases/1998/02/9710091.agr.htm); FTC Conference on Energy Markets in the 21st Century: Competition Policy in Perspective (Apr. 10, 2007), *available at* <http://www.ftc.gov/news-events/events-calendar/2007/04/energy-markets-21st-century-competition-policy-perspective>.

¹¹ A listing, in reverse chronological order, of FTC and FTC staff competition advocacy comments to federal and state electricity regulatory agencies is available at http://www.ftc.gov/policy/advocacy/advocacy-filings?combine=&field_matter_number_value=&field_advocacy_document_terms_tid=5290&field_date_value%5Bmin%5D%5Bdate%5D=&field_date_value%5Bmax%5D%5Bdate%5D=&Apply. In addition, the FTC's Bureau of Consumer Protection has been monitoring the evolving uses of energy-related consumer data for privacy and data security issues. *See, e.g.*, Letter from Jessica L. Rich, Dir., Bureau of Consumer Protection, FTC, to Eric Lightner, Director, Federal Smart Grid Task Force, Office of Electricity Delivery and Energy Reliability, U.S. Dep't of Energy, concerning a Voluntary Code of Conduct for Utilities and Third Parties Providing Consumer Energy Use Services (Oct. 29, 2014), *available at* https://www.ftc.gov/system/files/documents/public_statements/599251/141029consumer_energy_vcccomment.pdf.

¹² FTC Staff Report, *Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform: Focus on Retail Competition* (Sept. 2001), *available at* <http://www.ftc.gov/reports/competition-consumer-protection-perspectives-electric-power-regulatory-reform-focus-retail>; FTC Staff Report, *Competition and Consumer Protection Perspective on Electric Power Regulatory Reform* (July 2000), *available at* <http://www.ftc.gov/reports/competition-consumer-protection-perspectives-electric-power->

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” and asks for recommended revisions, additions, or deletions. In our view, this statement of Principles would benefit from an explicit recognition that electricity services are no longer homogeneous. One of the attractions of the REV proceeding is the opportunity it presents to continue to allow for the customization of electricity services to better match customers’ varying preferences. To be consistent with the REV’s opening of the distribution system to customized electricity services, the Staff BCA Principles should acknowledge the benefits of more closely matching those services to customers’ varied preferences. This matching between customers’ preferences and services provided could involve any aspect of energy services that interests customers. Such an explicit statement in the Principles would make clear that the staff recognizes the value of customization in the context of the Staff BCA.¹⁴ Equally important, it would demonstrate the staff’s recognition, in the context of the Staff BCA, of the NY PSC’s view that a one-size-fits-all model of retail electric services for all customers is not optimal.

A non-exhaustive list of kinds of retail electric service differentiation would include:

- dynamic retail prices that track wholesale prices, or that reduce price volatility by undertaking hedging against a variety of price risks;
- the inclusion of renewable resources or other products that reflect retail customers’ preferences regarding impact on the environment;
- degrees of service resiliency in the face of severe weather or other service disruptions;
- bundling of DER equipment and DER equipment services with retail electric service;
- aggregation of demand responses from multiple customers;
- energy conservation incentives;
- bundling of energy management services with retail electric services;
- energy efficiency incentives and energy audit services;

[regulatory-reform](#) (containing edited compendium of excerpts from previous comments that the FTC and its staff provided to various state and federal agencies).

¹³ That report is available at <http://www.ferc.gov/legal/fed-sta/ene-pol-act/epact-final-rpt.pdf>.

¹⁴ A more recently issued NY PSC staff white paper focuses on this keystone concept of the REV process. State of New York, Department of Public Service, *Staff White Paper on Ratemaking and Utility Business Models* (July 28, 2015), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={48954621-2BE8-40A8-903E-41D2AD268798}>. See esp. Section III of the July 28 white paper (“Aligning Customer Value with Earnings Opportunities”).

- 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 Benefits¹⁵

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 forgone electricity consumption may constitute a cost to the customer (or to society). Logically, this value would be classified as a part of "Net Non-Energy Costs" in Table 1 of the Staff BCA. If distributed generation substitutes for lower consumption from the grid, there may be little or no forgone consumption. Instead, the source of supply has simply changed from the grid to an onsite generation resource.

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 It is not clear to what degree the modeling and forecasting sources cited in this section of the Staff BCA incorporate these effects. The Staff BCA envisions calculating benefits and costs over the full life of investments (the seventh listed Principle, at page 4); accordingly, any analysis of the dynamic benefits of increasing competition at the distribution level should cover the same time span. If the modeling referenced on pages 14-15 does not incorporate the benefits of these newly released dynamic market forces, we recommend that the staff add consideration of this source of benefits to the Staff BCA.

¹⁶ This category of benefits could also be treated as a subgroup under “Net Non-Energy Benefits.” This is a designation for benefits that do not align with savings (avoided costs) in traditional utility cost categories.

¹⁷ At a later stage of this proceeding, if the NY PSC wished to gain insights into the size of the associated benefits, it could, for example, examine the rates at which these services have been adopted in New York or other jurisdictions and the extent of customer satisfaction with the services. In some instances, it might be possible to estimate customer bill savings, environmental benefits, or the value of reliability assurances that customers derive from these customized services.

¹⁸ Increasingly active customers can reinforce the dynamic benefits of opening DERs’ access to the grid. This interaction between active sellers and buyers, termed “market animation,” is described in the Synapse Energy Economics appendix to the AEEI Comment, *supra* notes 6-7: “At the retail level, adoption of DERs increases the number of market actors involved in supplying energy products and services, facilitating both competition and innovation. This effect is referred to as ‘market animation’ and was described in the Staff’s Track One Straw Proposal. At the individual customer level, DERs empower customers to take control of their utility bills and usage, enabling customers to make consumption decisions that more accurately reflect the actual value that they place on the product or service.” *Id.* at 26 (footnote omitted). Some of these benefits also may be captured by the concept of “organic conservation.” See Ryan Hledik, Ahmad Faruqui, & Wade Davis, *The Emergence of Organic Conservation*, 28 *Electricity J.* 48, 48-51 (June 2015).

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 future conditions that can influence demand and supply. Thus, faced with a multi-year time frame, BCA must take future conditions into consideration.

The transparency of BCA depends in part on the recognition that BCA results could change depending on current estimates of future conditions. In part, this means highlighting for decision-makers the sensitivity of BCA results to potential variances in future conditions. Such recognition should help decision-makers make informed decisions about how to handle risk.²⁰

In the context of the REV proceeding, alternative future conditions of interest could include shifts in relative fuel prices, climate change impacts, and the pace of technological changes affecting both the supply and demand sides of the market (including, of course, competitive conditions). If the BCA results, based on the most likely future conditions, prove sensitive to alternative future conditions – or to rates of change in future conditions – then additional benefits may be associated with the customization of services and the increased rates of innovation that stem from increased competition. Specifically, the customization of services and increased rates of innovation increase the markets’ ability to respond to changing demand more quickly and at lower cost.

This source of benefits is similar to the benefits of resiliency investments, but it deals with the general flexibility of future markets rather than flexibility in restoring service after disruptive events. If a wider array of services is already available because of customization, changes in customer preferences (due to changes in conditions) can be satisfied more quickly and at lower cost because the newly popular services are more likely to be available already. Expanding the supply of an existing type of service (with a known technology) is likely to be quicker and less costly than starting from scratch to develop entirely new services and associated technologies. If future conditions diverge from anticipated conditions, sensitivity analysis can

¹⁹ For a discussion of parallels between efficiency and innovation impacts of increased competition in the telecommunications and electricity sectors, see William P. Zarakas, *Growth Prospects and Shifting Electric Utility Business Models: Retail, Wholesale and Telecom Markets*, 28 *Electricity J.* 59, 63-65 (June 2015).

²⁰ Generally, if BCA results are robust to potential variations in future conditions, decision-makers can proceed with less concern about interim reevaluations, hedging, and contingency planning. Conversely, if BCA results are highly sensitive to future conditions, decision-makers may want to emphasize interim reevaluations, hedging, and contingency planning.

help decision-makers understand the implications.²¹ Increased market nimbleness (from the opening of electricity distribution to more DER competition) may make a major difference in long-term market performance in the face of unexpected economic, weather, or technical conditions.

VI. Conclusion

The FTC staff appreciates the opportunity to provide this reply comment. If you have any questions or comments, please contact John H. Seesel, Office of the General Counsel, at (202) 326-2702.

²¹ Advanced system optimization techniques may also be helpful for this purpose. *See, e.g.,* Francisco D. Munoz, Jean-Paul Watson, & Benjamin F. Hobbs, *Optimizing Your Options: Extracting the Full Economic Value of Transmission When Planning Under Uncertainty*, 28 *Electricity J.* 26, 32-35 (June 2015).