STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 18-E-0130 - In the Matter of Energy Storage Deployment Program.

CASE 20-E-0112 – Tariff filing by Consolidated Edison Company of New York, Inc. to Implement the Competitive Procurement Process for Dynamic Load Management Resources and Premium Auto DLM Resources.

CASE 20-E-0113 – Tariff filing by Orange and Rockland Utilities, Inc. to Implement the Competitive Procurement Process for Dynamic Load Management Resources and Premium Auto DLM Resources.

ORDER ESTABLISHING TERM-DYNAMIC LOAD MANAGEMENT AND AUTO-DYNAMIC LOAD MANAGEMENT PROGRAM PROCUREMENTS AND ASSOCIATED COST-RECOVERY

Issued and Effective: September 17, 2020

Table of Contents

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany of September 17, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, concurring, in part and dissenting, in part
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 18-E-0130 - In the Matter of Energy Storage Deployment Program.

CASE 20-E-0112 – Tariff filing by Consolidated Edison Company of New York, Inc. to Implement the Competitive Procurement Process for Dynamic Load Management Resources and Premium Auto DLM Resources.

CASE 20-E-0113 – Tariff filing by Orange and Rockland Utilities, Inc. to Implement the Competitive Procurement Process for Dynamic Load Management Resources and Premium Auto DLM Resources.

ORDER ESTABLISHING TERM-DYNAMIC LOAD MANAGEMENT AND AUTO-DYNAMIC LOAD MANAGEMENT PROGRAM PROCUREMENTS AND ASSOCIATED COST-RECOVERY

(Issued and Effective September 17, 2020)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

In the 2018 Energy Storage Order,[1] the Public Service Commission (Commission) directed New York State's electric

[1] Case 18-E-0130, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018) (Energy Storage Order).

investor-owned utilities[2] (the Utilities) to supplement their existing Dynamic Load Management (DLM) programs by holding a competitive procurement for DLM resources, for a term of no less than three years.[3] The Commission directed that the procurements be held by the Utilities alongside their existing Commercial System Relief Program (CSRP), Distribution Load Relief Program (DLRP), and Direct Load Control Program (DLCP).[4] The current DLM program structures pay for yearly performance and result in a bias towards short-term, low-capital investment solutions.[5] The Energy Storage Order explained that securing compensation over a multi-year period is expected to stimulate more participation and investment in the programs.[6] Within this longer term, or term-DLM, procurement, the Commission directed the Utilities to establish a premium auto-DLM, or auto-DLM, resource category

---

[2] The electric investor-owned utilities include Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas & Electric Corporation (RG&E) (collectively, the Utilities or the Joint Utilities).

[3] While the Commission recommended a term between three years and five years, each of the Utilities were allowed to propose longer contract terms if desired.

[4] The existing tariff-based programs include the CSRP, a day-ahead peak shaving program; the DLRP, an intra-day reliability program; and the DLCP, a peak-shaving and reliability program designed for residential and small commercial non-demand customers. Con Edison and O&R are the only Utilities to have operational DLRPs, and Central Hudson does not currently operate a DLCP.

[5] Energy Storage Order, p. 32.

[6] Energy Storage Order, p. 33.

that requires higher performance factors than current DLM programs require.[7]

The Commission further required in the Energy Storage Order that the new programs: (1) operate alongside the existing tariff-based DLM programs; (2) offer a premium or discount compared to the existing DLM program offerings; (3) include penalties for non-performance; (4) offer a premium auto-DLM resource category requiring higher performance factors, stricter availability requirements, and more stringent multi-year participation requirements; (5) not measure performance based on submetering of specific equipment; and, (6) comply with the final rules adopted in response to the Department of Environmental Conservation's (DEC) proposal for air pollutant limits in 6 NYCRR Part 222. The Commission also directed the Utilities to make proposals regarding procedures for an orderly transition from participation in the new "Term-DLM" and "Auto-DLM" Programs[8] to participation in Non-Wire Alternative (NWA) projects in the event that an NWA project is designated during the term of the contract.[9]

On January 29, 2020, each utility separately filed proposals for the multi-year DLM procurements, referred to as the Term-DLM and Auto-DLM Programs, in accordance with the Energy Storage Order. In addition, on March 6, 2020, both Con

---

[7] Id.

[8] Con Edison and O&R refer to these as "Day-Ahead-DLM" and "Auto-DLM" Programs. NYSEG and RG&E refer to these procurements as "standard term and auto-DLM resources." Central Hudson refers to a Term-DLM procurement and within that a premium Auto-DLM resource category. National Grid refers to both a standard and premium auto-DLM, collectively "Term-DLM." In compliance with this Order, and to provide statewide consistency the Utilities shall update their procurement programs to Term-DLM and Auto-DLM.

[9] Energy Storage Order, p.33.

Edison and O&R filed tariff amendments to effectuate cost recovery for their proposed Day-Ahead-DLM and Auto-DLM Programs.

By this Order, the Commission approves the program filings, with modifications, and establishes consistent statewide program names and requirements for the DLM procurements, with contracted resources to be operational and ready to provide load relief by May 1, 2021. The Commission also directs two procurement components: (1) a day-ahead peak shaving Term-DLM Program whereby participants will provide load relief on not less than 21 hours advance notice during a specified four-hour period; and (2) a reliability and peak shaving Auto-DLM Program whereby participants will provide load relief on not less than 10 minutes advance notice at any time, except for specified off-peak charging hours, for a period of four hours. The Term-DLM Program shall be available throughout each utility's service territory, whereas the Auto-DLM Program shall be available in specified areas of each utility's service territory. Resources for both the Term-DLM Program and Auto-DLM Program shall be procured through a sealed-bid, pay-as-bid auction. As discussed below, Auto-DLM Program participants may not participate in any other distribution-level demand response program. Participants in the Term-DLM Program may also participate in the DLRP during the same period, if applicable, as load relief provided for peak shaving service through participation in the Term-DLM Program and for reliability service through the DLRP provides two separate and distinct benefits, even if called upon at the same time. Simultaneous participation in both utility-level DLM programs and wholesale demand response programs operated by the New York Independent System Operator, Inc. (NYISO) is allowed, subject to compliance with the applicable NYISO program rules. Value of Distributed Energy Resources (VDER) Value Stack customers may participate in

the Term-DLM and Auto-DLM programs, although the Distribution Relief Value (DRV) and Location-Specific Relief Value (LSRV) components of the Value Stack would be unavailable.[10] Further, the tariff filings to implement cost recovery of the procurements, made by Con Edison[11] and O&R[12] on March 3, 2020, are rejected. The Utilities are directed to file tariff amendments, detailing the Term- and Auto-DLM programs and associated cost recovery, to effectuate the directives herein.

TERM-DLM AND AUTO-DLM PROPOSALS

The Energy Storage Order required utility proposals be filed concurrently with their DLM Program Annual Reports on November 15, 2019. On November 12, 2019, the Joint Utilities requested an extension of that deadline in order to further develop their program proposals.[13] On November 15, 2019, the Secretary to the Commission accepted the Joint Utilities' request, extending the filing deadline for the Term-DLM and

[10] Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (VDER Transition Order).

[11] Case 20-E-0112, Tariff filing by Consolidated Edison Company of New York, Inc. to Implement the Competitive Procurement Process for Dynamic Load Management Resources and Premium Auto DLM Resources.

[12] Case 20-E-0113, Tariff filing by Orange and Rockland Utilities, Inc. to Implement the Competitive Procurement Process for Dynamic Load Management Resources and Premium Auto DLM Resources.

[13] 18-E-0130, JU Extension Request for Multi-Year and Auto-DLM Programs (filed November 12, 2020).

Auto-DLM Program Plans to January 29, 2020.[14] The Utilities filed their proposals on January 29, 2020.[15]

While the Utilities' proposals are generally similar, there are many details which differ amongst the Utilities or that were otherwise not included in certain proposals. Generally, Con Edison and O&R made the most specific proposals, whereas NYSEG and RG&E left many details unspecified or noted that such details would be included in the final solicitation documents. Each utility proposes a relatively consistent set of two new multi-year contractual demand response programs, but call them different program names. To avoid confusion, all Utilities shall update the program procurements to: a Term-DLM Program and an Auto-DLM Program. The Term-DLM Program proposals are consistently described as a peak shaving program to be called on with no less than 21 hours of advance notice. Similarly, the Auto-DLM Program proposals are also consistently described as providing both peak shaving and reliability services to be called on with no less than 10 minutes of advance notice. The Utilities all propose to issue a solicitation in the form of a Request for Proposals (RFP) between September and November of 2020, to procure DLM resources to be operational coinciding with the beginning of each Utilities' 2021 summer Capability Period.[16]

Each of the Utilities proposes to run simultaneous procurements for resources beginning participation in 2021 and

[14] 18-E-0130, Ruling on Extension Request (issued November 15, 2019).

[15] Con Edison and O&R jointly filed their proposal; NYSEG and RG&E jointly filed their proposal.

[16] The Capability Period for Con Edison, National Grid, NYSEG, O&R, and RG&E is May 1 through September 30 of a given year. For Central Hudson, the Capability Period is June 1 through September 30.

for resources beginning participation in 2022. Con Edison and O&R further propose to issue new solicitations to procure new Term-DLM and Auto-DLM Program resources each year, approximately 18 months prior to the beginning of the first capability period that would begin the contract term. Central Hudson and National Grid each propose to only issue subsequent procurements for Term-DLM and Auto-DLM Program resources on an as-needed basis. NYSEG and RG&E's filing did not specify its plans on additional procurements.

CON EDISON AND O&R TARIFF FILINGS

Con Edison (P.S.C. Nos. 10 and 12)[17] and O&R (P.S.C. No. 3) submitted tariff amendments to effectuate cost recovery of its proposed Day-Ahead-DLM and Auto-DLM Programs, changes to the eligibility requirements for its CSRP and DLRP programs, and modifications to the DRV and LSRV portions of its Value Stack tariff. Specifically, Con Edison and O&R made revisions to the DLM Surcharge section of their respective tariffs to add Term-DLM and Auto-DLM Programs to the list of programs eligible to have their costs recovered through the DLM Surcharge; allowing collection of a portion of the upfront costs of the Term-DLM and Auto-DLM Programs with the remainder of the costs being deferred as regulatory assets (with carrying charges at the overall pretax rate of return); and, allocating Term-DLM and Auto-DLM Program costs to service classifications consistent with the allocation methodology used for CSRP costs.[18]

[17] Con Edison's P.S.C. No. 10 will be referred to as the Electric Tariff, whereas P.S.C. No. 12 will be referred to as the PASNY Tariff.

[18] Con Edison Electric Tariff leaf 357, O&R leaves 249 and 249.1.

Con Edison and O&R made revisions to the Value Stack sections of their tariffs to state that Value Stack customers that participate in either the Term-DLM or Auto-DLM will not be eligible for the DRV or LSRV components of the Value Stack compensation for the duration of their participation in the Term-DLM or Auto-DLM Programs.[19] Finally, Con Edison and O&R made revisions to the CSRP and DLRP sections of their tariffs to restrict customers who are otherwise contractually precluded from taking service under the CSRP and DLRP, either by their own contract or because they are represented by a third party (such as an Aggregator) that is contractually precluded to be eligible for those programs.[20]

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), Notices of Proposed Rulemaking (Notices) regarding the Utilities' Term-DLM and Auto-DLM Proposals were published in the State Register on April 22, 2020 [SAPA Nos. 18-E-0130SP2, 18-E-0130SP3, 18-E-0130SP4, 18-E-0130SP5, 18-E-0130SP6, and 18-E-0130SP7]. The time for submission of comments pursuant to the Notices expired on June 22, 2020.

Furthermore, the Secretary to the Commission issued a Notice Announcing Technical Conference on May 29, 2020. During the May 29, 2020 Technical Conference, Department of Public Service Staff (Staff), Con Edison, O&R, Central Hudson, National Grid, NYSEG, and RG&E each presented information regarding the Utilities' filings.

---

[19] Con Edison Electric Tariff leaves 253.4 and 253.4.2; PASNY Tariff leaves 17.16 and 17.17; and O&R Tariff leaves 185.6.3, 185.7, and 185.8.

[20] Con Edison Electric Tariff leaf 268, PASNY Tariff leaf 26.3, and O&R Tariff leaves 156 and 157.

Additionally, on May 29, 2020, the Secretary issued a Notice Soliciting Comments, reiterating the comment deadline from the SAPA Notice of June 22, 2020, and establishing a deadline for reply comments of July 6, 2020. On July 1, 2020, the Joint Utilities requested additional time to submit reply comments. The Secretary granted the Joint Utilities' request for additional time on July 3, 2020, extending the reply comment period to July 13, 2020. Comments were received from Advanced Energy Management Alliance and Advanced Energy Economy Institute (collectively, AEMA), Multiple Intervenors (MI), Blueprint Power (Blueprint), and Digital Energy Corp (Digital).[21] The Joint Utilities filed reply comments addressing issues raised by AEMA, Blueprint, and Digital on July 13, 2020. The comments received are addressed below in the discussion and determination section, by issue, and are summarized by entity in Appendix A.

Also pursuant to SAPA §202(1), a Notice was published in the State Register regarding Con Edison and O&R's tariff filings on May 13, 2020 [SAPA Nos. 20-E-0112SP1, and 20-E-0113SP1]. The time for submission of comments pursuant to the Notice expired on July 13, 2020. No comments were received.

LEGAL AUTHORITY

Pursuant to Public Service Law (PSL) §§5, 65(1) and (8), and 66 (1) and (12), the Commission has broad authority over electric corporations, including the responsibility to ensure that all charges made by such corporation for any service rendered shall be just and reasonable, and the power to "encourage electric corporations to formulate and carry out

[21] Although Digital's comments were submitted after the close of the public comment period, the contents of such comments will be considered in this Order as they add to the public record.

long-range programs . . . for . . . the preservation of environmental values and the conservation of natural resources."[22] PSL §66 authorizes the Commission to examine, investigate, and prescribe changes in rates and charges. Per PSL §74, the Commission is empowered to establish and carry out a deployment policy to support the 2030 energy storage goal. Pursuant to the PSL, the Commission has the authority to review proposed tariff leaves, and to modify, reject or approve those tariff leaves.

DISCUSSION

The Commission approves the Term-DLM and Auto-DLM program proposals with the modifications discussed below. These programs establish consistent statewide requirements for the DLM procurements, with contracted resources to be operational and ready to provide load relief by May 1, 2021.

The two procurement components are: (1) a day-ahead peak shaving Term-DLM Program whereby participants will provide load relief on not less than 21 hours advance notice during a specified four-hour period; and (2) a reliability and peak shaving Auto-DLM Program whereby participants will provide load relief on not less than 10 minutes advance notice at any time, except for specified off-peak charging hours, for a period of four hours. The Term-DLM Program shall be available throughout the Utilities' service territories, whereas the Auto-DLM Program shall be available in specified areas of the Utilities' service territories. Resources for both the Term-DLM Program and Auto-DLM Program shall be procured through a sealed-bid, pay-as-bid auction.

[22] PSL §5(2).

As stated above, Con Edison and O&R's proposed tariff filings are rejected; the Utilities are directed to file tariff amendments in compliance with this Order. The tariff amendments are to detail the Term-DLM and Auto-DLM programs, associated cost allocation, and cost recovery mechanisms as discussed in the body of this Order. The tariff amendments shall be made by November 16, 2020, and shall have an effective date of December 1, 2020. The filings are to go into effect on a temporary basis and will remain in effect on a temporary basis until acted on by the Commission.

I. Participant Eligibility Requirements

The Utilities' Proposals

Each of the Utilities proposes to set minimum qualifications to bid and participate in the new Term-DLM and Auto-DLM Program procurements for direct participants and aggregators equivalent to the existing minimum qualifications in effect for the CSRP and DLRP. Central Hudson, National Grid, NYSEG, and RG&E each propose to exclude diesel-fired generation sources from participating in the Term-DLM and Auto-DLM Programs, whereas Con Edison and O&R propose to exclude all fossil fuel-fired generation sources from participating. Furthermore, Central Hudson proposes that distributed generation and energy storage resources must be either currently operational or already in the utility's interconnection queue to be eligible to participate in the Term-DLM and Auto-DLM Programs.

Con Edison, O&R, and Central Hudson propose that Value Stack customers could also participate in the Term-DLM and Auto-DLM procurements, although the DRV or LSRV components of the Value Stack would be unavailable for these participants. National Grid proposes that Value Stack customers should not be

eligible to participate in the Term- and Auto-DLM programs. NYSEG and RG&E were silent on this issue.

Con Edison and O&R propose that Net Energy Metered customers not be eligible to participate in the Term-DLM and Auto-DLM Programs, consistent with their existing DLM Programs. The other utilities are silent on this aspect.

Comments

AEMA notes their concern regarding the significant differences between eligibility requirements for resources amongst the Utilities. AEMA states that the Energy Storage Order framed the development of these Term-DLM and Auto-DLM Program procurements around providing more market opportunities for energy storage resources, whereas some of the utilities' proposals appear to limit participation to existing resources that are already in the interconnection queue when the solicitation is issued. AEMA further argues that if a fossil fuel generator is technically capable of meeting the operating requirements outlined in the solicitations to provide the services while meeting all other applicable environmental regulations in effect during the contracted term, it does not seem appropriate to deem them ineligible from consideration.

Digital agrees with Central Hudson that diesel fuel-based generation should be excluded and supports including efficient CHP. Digital disagrees with the blanket exclusion of fossil fuel resources in Con Edison and O&R's plan, stating that this proposal is not consistent with the Energy Storage Order.

The Joint Utilities agree with AEMA that it may be appropriate to allow new projects to be eligible to participate in the Term-DLM and Auto-DLM programs in a manner similar to Con Edison's proposal, noting, however, that including new versus in-queue or existing resources may have implications regarding whether financial assurance is required of participants upon

execution of a contract. The Joint Utilities state that the purpose of restricting eligibility to existing or in-queue projects was to provide assurance that the resources selected will be in place in time to meet the commitments made to the program.

The Joint Utilities state that if new resources may participate in the procurements, such resources should be required to provide financial assurance, as Con Edison and O&R propose. To maintain consistency amongst the utility programs, Con Edison and O&R state that they will only require financial assurance for aggregations or portions of aggregations which contain new resources. Regardless, the Joint Utilities state that limiting the procurements to existing resources is appropriate for the first round of procurements due to the practical considerations of having only approximately six months for a new resource to be sited and operational after the procurement and prior to performance obligations.

Determination

The Commission finds that the Joint Utilities' proposals requiring direct participants and aggregators to meet the same minimum requirements to participate in the Term-DLM and Auto-DLM Programs as the CSRP and DLRP is reasonable and adopts these minimum requirements. Maintaining a single set of minimum requirements across the various commercial DLM Program offerings is clear and rational and affords participants consistency across program offerings.

The Commission finds that Con Edison and O&R's proposal to exclude all fossil fuel-fired generation sources from participating in the Term-DLM and Auto-DLM Programs is unreasonable at this time. As noted by Digital, the Energy Storage Order required that resources participating in the Term-DLM and Auto-DLM Programs would have to satisfy the requirements

of the Department of Environmental Conservation's regulations contained in 6 NYCRR Part 222. Con Edison and O&R's blanket restriction of all fossil fuel-fired resources goes beyond the reasonable restrictions to participation provided for in the Energy Storage Order.

While the Commission will not approve the overly restrictive proposal submitted by Con Edison and O&R, it is reasonable to restrict diesel-fired generators from participating in the Term-DLM and Auto-DLM Programs. Although the Commission generally agrees with AEMA's position that there may be fossil fuel generators technically capable of meeting both operating requirements of the Term-DLM and Auto-DLM Programs, while simultaneously meeting environmental regulations, in this specific instance allowing the diesel-fired subset of generators to participate would present operational challenges. The Commission therefore finds it reasonable to exclude fossil fuel generators from the Term-DLM and Auto-DLM Programs.

Each of the Utilities' CSRP options currently includes maximum participation limits on diesel-fired generators of up to 20 percent of the total amount of load relief capacity enrolled in the CSRP in a given year. This process is manageable for the CSRP, since the Utilities can monitor CSRP enrollments each year and advise participants whether certain equipment will be eligible or ineligible to provide load relief. However, the process is likely to become much more complicated when attempting to manage multi-year contracts with aggregators whose list of enrolled accounts may change from year to year.

Customers that desire to participate in DLM programs using their diesel generation equipment may continue to do so as part of the CSRP, to the extent that such participation is allowed under the current rules governing that program.

Further, the ban on diesel-fired generators was universally proposed by each of the Utilities and has also garnered stakeholder support, as Digital notes.

Since allowing customers to use diesel generation equipment has the potential for significantly complicating program administration, does not reduce customers' ability to participate using such equipment in the CSRP, and has broad support amongst the Utilities and stakeholders, the Commission directs the Utilities to exclude diesel-fired generation resources from participating in the Term-DLM and Auto-DLM Programs.

AEMA raises a salient concern regarding Central Hudson's proposal to only allow existing assets or assets currently in the utility's interconnection queue to participate in Term-DLM and Auto-DLM. For resources procured for the 2022 Capability Period and beyond, the Commission is not persuaded that only existing assets or assets in a utility interconnection queue by the time of the 2021 procurement should be permitted to submit a bid. There should be sufficient time for construction to progress between the solicitation issuance and when participation in the program is required. Further, as discussed below, imposition of an Early Exit Fee[23] and accelerated de-rating through adjustments to the Performance Factor for poor performance will provide powerful incentives for solicitation respondents to bid conservatively with only the load relief that they are confident they can deliver when needed.

As noted by the Joint Utilities, however, reliability of the load relief procured through these programs is paramount,

[23] An Early Exit Fee, as defined by Con Edison and O&R, is a fee Aggregators can pay prior to the beginning of the first Capability Period to partially avoid financial responsibility for inadequate provision of Load Relief.

and it is unlikely that a new resource not already in the interconnection queue would be able to be operational by the beginning of the 2021 Capability Period. Therefore, the Utilities are directed to restrict participation in their solicitations for the 2021 season to existing resources or resources already in the interconnection queue.

The Commission finds Con Edison and O&R's proposal to allow Value Stack Tariff customer to participate in the Term-DLM and Auto-DLM Programs if they relinquish payment for the DRV and LSRV components of the Value Stack to be reasonable. The DLM programs are largely developed to compensate participants for the value of avoiding future utility-level transmission and distribution facilities, which are precisely the same values for which the DRV and LSRV components of the Value Stack provide compensation.

Allowing DLM Program participants to earn incentives under both the DLM Programs and the Value Stack would constitute double-compensation for the same benefit provided, and is therefore prohibited. Further, this issue was previously addressed by the Commission for the other DLM Programs in the Order Regarding Value Stack Compensation.[24] The Utilities are directed to allow Value Stack Tariff customers to participate in the Term-DLM and Auto-DLM Programs, provided that such customers do not receive DRV or LSRV compensation through the Value Stack during the term of their participation in the Term-DLM and Auto-DLM Programs.

The Commissions finds that net energy metering (NEM) customers shall be prohibited from participating in the Term-DLM and Auto-DLM programs, as proposed by Con Edison and O&R. Since NEM does not disaggregate the various value streams that are

[24] 15-E-0751, supra, Order Regarding Value Stack Compensation (issued April 18, 2019).

being compensated, it is impossible to ensure that such customers are not being double-compensated for providing the same benefit.

II. Program Availability and Coordination with Other DLM Programs

Utility Proposals

National Grid, NYSEG, and RG&E propose to only procure Term-DLM and Auto-DLM resources in specific constrained areas, whereas Con Edison, O&R, and Central Hudson propose to procure Term-DLM and Auto-DLM resources territory-wide. Con Edison, O&R, and Central Hudson propose to exclude Term-DLM Program and Auto-DLM Program participants from also participating in the CSRP and DLRP, whereas National Grid proposes to allow participation in both programs. NYSEG and RG&E's plans do not address whether Term-DLM and Auto-DLM program participants would be able to participate in those utilities' CSRP.[25]

Comments

AEMA recommends the Commission allow participation in both the contract-based and tariff-based programs, provided that the customer is using different technologies to enable participation in the different programs. For example, AEMA states that if a customer currently performs as a tariff-based DLRP resource via curtailing a chiller, it would not be reasonable to allow them to participate in Term-DLM with that resource since it would constitute a double payment for the same service. On the other hand, AEMA argues that customers that are evaluating whether to add behind-the-meter energy storage should not have to choose between participating in the Auto-DLM Program or the tariff-based DLM programs, so long as the additional load

[25] During the Stakeholder Forum, NYSEG and RG&E noted that they plan to specify their position on this issue as part of the solicitation.

relief provided through the Auto-DLM program can be determined, for example, through submetering.

Blueprint requests clarification regarding whether an energy storage system can participate in the Term-DLM and the Auto-DLM programs concurrently, and how performance would be evaluated when the utility calls overlapping DLM Event hours when the participant is enrolled in both. Blueprint requests clarification regarding whether one program takes precedence over the other. Blueprint further proposes to allow third-party monitoring systems to supply interval data to meet the metering requirements of the Utilities. Blueprint recommends that the third-party monitoring system should include, but not be limited to, the building management systems, energy management system, other metering service entities approved by the Commission, or other energy monitoring systems capable of measuring and recording hourly interval consumption data. Blueprint notes that a precedent of such practice has been established in the Gas Demand Response Pilot program in Con Edison's service territory.

The Joint Utilities argue that dual participation for the Term-DLM and Auto-DLM programs and the typical tariff-based DLM programs should only be permitted in scenarios where the resources are able to provide distinct and accumulative value to the electricity system. The Joint Utilities explain that their individual approaches to dual participation vary due to differing amounts of overlap between the uses for the new Term- and Auto-DLM programs and the existing CSRP and DLRP programs. The Joint Utilities state that dual participation in both Term-DLM and CSRP is reasonable at National Grid, NYSEG, and RG&E because those utilities propose targeted local programs for their Auto-DLM and Term-DLM programs, whereas their respective CSRPs are service territory-wide. They further note that under

this participation model, the timing of call windows may differ and the resource will be satisfying two use cases: local and system-wide.

The Joint Utilities also state that dual participation in both the Term-DLM and CSRP is not reasonable at Con Edison because Con Edison's existing CSRP already has location-specific elements with different call windows based on load areas and individual network peaks. Further, the Joint Utilities state that the values for Con Edison's competitively procured DLM resources will be based on the same marginal costs as the tariffed DLM programs, resulting in a double-payment if dual participation were allowed.

Regarding AEMA's proposal to allow energy storage submetering, and Blueprint's proposal to allow alternate metering technologies, the Joint Utilities do not agree and urge the Commission to reject these proposals. The Joint Utilities also point out that the Commission previously rejected allowing submetering to qualify for DLM programs in the Energy Storage Order.

Determination

The Commission rejects the variation in the proposals regarding whether a program component is available throughout the service territory or only in specified areas. Instead, the Commission directs the Utilities to implement consistent program availability parameters for the Term-DLM and Auto-DLM Programs throughout New York State. Although the Utilities generally fell into two categories with National Grid, NYSEG, and RG&E proposing to implement Term-DLM and Auto-DLM Programs only in specified areas, and Con Edison, Central Hudson, and O&R proposing to implement such programs system-wide, even this level of variation is unreasonable since these programs will not be one-time procurements. As with the other DLM programs

offered by the Utilities, consistency statewide is critical to ensure a well-functioning demand response marketplace throughout the State.

The Commission requires that the Term-DLM Program be made available throughout the Utilities' service territories. The Utilities may define separate bid price ceilings and call windows by location, and may require resources to be aggregated within those specified areas. However, customers within all areas of the Utilities' service territory shall be eligible to participate in the Term-DLM Program. The program shall be designed to provide peak shaving services called on a day-ahead basis, similar to the CSRP, and the solicitation shall include a specific four-hour call window applicable to each area of the Utilities' service territories. Since this Term-DLM Program will be providing similar peak shaving value as the CSRP, customers shall not be allowed to participate in both the CSRP and the Term-DLM Program or, as discussed below, the Auto-DLM Program. However, since the Term-DLM Program is not designed to provide reliability services, Term-DLM Program participants shall be eligible to simultaneously participate in the DLRP, where available.

The Commission directs that the Auto-DLM Program shall be made available in specified areas of the Utilities' service territories where there is value for reliability services in addition to the value of peak shaving.[26] The Utilities may define separate bid price ceilings by location, and may require resources to be aggregated within those specified locations.

The Auto-DLM Program shall be designed to provide both peak shaving and reliability services called on an intra-day basis, and the solicitation shall include daily 16-hour load

[26] Utilities may optionally offer participation in the Auto-DLM Program in all areas of their service territory.

relief availability hours specific to each area of the Utilities' service territories, or a single set of availability hours if locational specificity is not required. These availability hours will define the times when Auto-DLM Program resources are not required to provide load relief. As the Auto-DLM Program will be used to provide both peak shaving and reliability services, Auto-DLM Program participants shall not be eligible to participate in the CSRP, DLRP, or Term-DLM Program.

The Commission rejects AEMA and Blueprint's proposals regarding incremental participation in both the tariffed DLM programs and the Term-DLM and Auto-DLM Programs (e.g., by submetering individual pieces of equipment). The Joint Utilities' comments are persuasive that the Energy Storage Order was clear and explicit in its rejection of submetering as an eligible participation pathway.[27] AEMA and Blueprint have provided no persuasive evidence in this proceeding that the Commission's rejection of submetering in the Energy Storage Order should be reversed.

The Commission rejects Blueprint's proposal to allow building management systems, energy management systems, or other metering service entities to be used to determine customer participation. Blueprint's reliance on the Commission's approval of such equipment as part of its approval of Con Edison's Gas Demand Response Pilot is misplaced.[28] As described in the Order Approving Gas Demand Response Pilot, the Commission approved the use of non-revenue grade metering devices for the Gas Demand Response Pilot due to a lack of other available gas interval metering options. In contrast, interval metering

[27] Energy Storage Order, p. 34.

[28] Case 17-G-0606, Con Edison Smart Solutions, Order Approving with Modification Gas Demand Response Pilot (issued August 9, 2018) (Order Approving Gas Demand Response Pilot).

options for electric customers are widely available at customer request and are being routinely installed as part of Advanced Metering Infrastructure (AMI) rollouts for those utilities, including Con Edison, whose AMI rollout plans have already been approved.

III. Procurement Strategy, Payment Structure, and Financial Assurance

Utility Proposals

Central Hudson and National Grid propose to procure Term-DLM and Auto-DLM Program resources through a sealed-bid, uniform clearing price procurement. National Grid explains that the uniform clearing price structure is a standard practice for capacity markets, is consistent with how the NYISO accepts capacity market bids, incentivizes bidders to offer their lowest acceptable price, and reduces complexity for the utility to administer the solicitation and thus saving program administration and implementation costs. Con Edison, O&R, NYSEG, and RG&E, on the other hand, propose to procure resources using a pay-as-bid method.

NYSEG and RG&E noted that they would pay up to a maximum ceiling price that they determine. Central Hudson states that the RFP will include a price ceiling based primarily on its Marginal Cost of Service study results in effect at the time of the solicitation, energy savings, environmental benefits, less forecast program administration and implementation costs, and further noted that the price ceiling determined for the Auto-DLM Program will be set 10 percent higher than the price ceiling determined for the Term-DLM Program.

Regarding incentive payments, Con Edison and O&R propose to pay up to 70 percent of the Contract Value[29] after the first year if the Performance Factor is greater than 80 percent, with the remainder of the contract value to be paid out in annual performance-based installments for the remainder of the contract term. To go along with this payment method, Con Edison and O&R also propose to collect Financial Assurance and impose early exit fees. Specifically, Con Edison and O&R propose that the Financial Assurance be set equal to the lesser of: (1) $150 per kilowatt (kW) contracted; or, (2) 30 percent of the Contract Value. Con Edison and O&R propose that the Early Exit Fee be set at 10 percent of the contract value for the amount of kW a participant will no longer be able to provide – that is, 10 percent of the contracted price per kW per year multiplied by the number of years in the contract, multiplied by the number of kW a participant will no longer be providing.

Central Hudson, National Grid, NYSEG, and RG&E propose to make annual performance-based payments at the end of each capability period evenly distributed over the course of the contract. These utilities did not propose any financial assurance requirements, nor did they specify early-exit fees.

The Utilities propose to make a single annual payment at the end of each summer capability period reflective of a participant's performance throughout the capability period, although the types of incentive payments the Utilities plan to offer differ somewhat from utility to utility. National Grid proposes to make both Reservation Payments and Performance Payments, similar to the existing payment structure of the

[29] Con Edison and O&R define Contract Value as the contracted price per kW per year, multiplied by the number of years in the contract term, multiplied by the kW of load relief contracted.

existing commercial DLM programs.[30] National Grid further proposes to make additional Performance Payments to participants that provide load relief during undefined or unplanned events that are called outside the typical availability requirements, and that participation in such events be deemed voluntary (i.e., that performance during such unplanned events would not be counted for the purposes of determining the performance factor). Con Edison and O&R, on the other hand, propose to only make Reservation Payments.

Comments

Procurement Strategy

AEMA believe the uniform clearing price methodology will result in a more competitive playing field for companies that receive awards for providing the Term-DLM and Auto-DLM services while driving potential bidders to submit bids at their lowest acceptable price. AEMA recommends that, where the Utilities intend to provide incentive payments on a uniform clearing price, there should be separate procurements for both Term-DLM resources and Auto-DLM resources with separate clearing prices established for each resource type.

Blueprint recommends that the Utilities adopt a consistent procurement strategy and use a uniform clearing price to imitate a market-based approach as much as possible. Blueprint also requests that the Commission require the Utilities to disclose information related to bids that were selected, including the clearing price, quantity procured, anonymous bid curves with price and quantity of contract offering. Blueprint further recommends that the Utilities

[30] Reservation Payments are made on a consistent dollar per kW per month basis regardless of whether an Event is called in a specified month, whereas Performance Payments are made on a dollar per kWh basis only for load relief kWh provided during Events.

provide feedback to solicitation respondents whom are not selected to participate.

Digital states that the information provided in the utility proposals do not provide the details necessary to determine an accurate assessment of the risk embedded in the procurement process. Digital advocates for an open and transparent auction process, such as a descending clock auction used by the NYISO and similar to the auction held by Con Edison to procure demand response resources for the Brooklyn Queens Demand Management Program in 2016. Alternatively, Digital prefers the sealed bid, uniform clearing price method. Digital requests that if a transparent auction process is not required, a description of how and who will make the selection determination, the quantity of load relief to be procured through the DLM program, and the geographic areas with the highest priority for load relief, should be required. Digital questions which organizations will perform a quality review of the selections and oversee the bid evaluation and selection process, if undertaken by the Utilities. Digital further suggests the Commission should consider making changes to how DLM programs are administered, and that it may be time to develop a formal oversight function through independent market monitoring. Digital states that it is concerned about a lack of transparency about how the programs are run, a lack of feedback to the marketplace to allow for efficient assessment of risk/reward by prospective participants, and the potential for skewed legal agreements that are written by the Utilities that disfavor the participant, adding risk to the marketplace.

Blueprint questions whether the Term-DLM and Auto-DLM procurements will allow multiple price-quantity pairs of resource capacity. Blueprint recommends that the Utilities allow different contract prices for each participation year in

the same contract, stating that this will encourage the DER developers to accurately reflect the value of the load relief in the bid and align the new DLM programs with the existing demand response programs. Blueprint recommends that the Term-DLM and Auto-DLM Program procurements allow for flexibility in contract transferability, such as the ability of the project developer to sell, assign, or transfer the whole or part of their dispatch obligations to another party, subject to the same financial assurance and performance evaluation terms.

The Joint Utilities state that their proposed procurement structure was designed for different purposes, and thus support differing procurement processes. They argue that the pay-as-bid structure proposed by Con Edison, O&R, NYSEG, and RG&E is used for programs that do not have a load relief capacity cap because the intent of the program is to procure resources across the entire service territory. The Joint Utilities state that the uniform clearing price structure proposed by National Grid and Central Hudson, on the other hand, are used for programs that are location-specific and have a defined megawatt (MW) procurement target associated with specific constraints.

The Joint Utilities argue that the uniform clearing price methodology is reasonable for defined areas and quantity-constrained programs since each resource participating in those programs provide the same level of benefits. The Joint Utilities argue that, on the other hand, it would not be appropriate to pay the same price for load relief procured through programs available throughout the service territory, which would occur in areas with distinct or disparate values. The Joint Utilities further clarify that resources may not participate in both the Term-DLM and Auto-DLM procurements since Auto-DLM resources will be deployed for Term-DLM events with the

possibility of call times shifting to respond to changing grid conditions.

The Joint Utilities disagree with Blueprint's recommendation to allow different contract prices for each participation year under the same contract. The Joint Utilities state that their approach reflects the Commission's determination made in the Energy Storage Order, that the incentive payments would be fixed during the term of the contract, and that the Commission should uphold its prior ruling on this topic. The Joint Utilities further state that they will submit information regarding their DLM procurements in their annual DLM program reports, including the total MW procured and cleared by location for National Grid and Central Hudson, and average weighted price for Con Edison, NYSEG, RG&E, and O&R.

The Joint Utilities disagree with Digital's recommendation to implement an independent market monitoring function, noting that the Commission and Department of Public Service Staff already provide sufficient oversight, and that there is no evidence to suggest that such oversight is lacking or insufficient to monitor the procurement processes and implementation of the DLM programs.

Payment Structure

In general, AEMA supports the Con Edison and ORU approach to pay out 70 percent of the contract value after the first program year, with no payment issued for a seasonal Performance Factor of under 80 percent, and the remaining 30 percent of contract value paid out through the duration of the contract term . Where a resource performs below the 80 percent Performance Factor threshold during the first season, AEMA recommends a one-time option to delay the contract a year such that if a project commencing in Summer 2022 performed at 75%, it could have a one-time option to defer the contract to Summer

2023. AEMA recommends that if a resource had to exercise this option, it would forfeit 10 percent of their overall revenues to establish a balance between accountability for performance and being able to finance a project.

AEMA maintains that kilowatt-hour (kWh) performance from load reduction observed behind-the-meter should be compensated at the effective tariff-based DLM program Performance Payment rate, or at a rate as defined in the solicitation, unless the resource is receiving compensation for the kWh through another retail or wholesale program. For injecting resources, energy injected during tests and events should be compensated as well, unless the resource is being compensated through another retail or wholesale program.

Digital states that it prefers a pay-for-performance model which would compensate the participant each year at the end of the performance period. Digital proposes to require the program's annual DLM program payment to be issued within 45 days from the end of the Capability Period for a given year. Digital recommends that the Commission require the Joint Utilities to add a Performance Payment provided during tests and events similar to the existing CSRP and the 2016 BQDM DR Programs.

As part of the Joint Utilities' reply comments, Con Edison and O&R state that they disagree with AEMA's proposal to provide an option to delay the contract start date by one year, arguing that this approach would create increased system planning uncertainty. Con Edison proposes, however, that it would offer participants a second chance to prove their performance capability during the second year of the contract to qualify for a smaller amount of front-loaded payment. Con Edison proposes that if a participant fails to achieve the first-year benchmark, but achieves at least an 80 percent Average Season Performance Factor during the second year, such

participant would receive the remainder of the potential upfront payment based on a contract one year shorter in duration.

Financial Assurance

AEMA posits that Con Edison and O&R's proposed plan is unclear regarding when participants must declare a load relief deficiency and pay early exit fees. AEMA recommends that, should the Commission find that early exit fees are appropriate, that direction should be provided to Con Edison and O&R to clarify in the solicitation documents and contracts the dates by which deficiencies must be declared and early exit fees paid. AEMA recommends that timing for notification that a resource will be short of its obligation be consistent amongst Utilities and recommends that the date be changed to April 1st of the first applicable delivery year of the contract term.

AEMA argues that Con Edison and O&R's requirement for DLM contract awardees to provide financial assurance based upon the minimum of 30 percent of the total term contract value or $150/kW, is unreasonable. AEMA states that the high risk of developing in Con Edison's service territory, including permitting and construction barriers, along with a 70 percent reduction in payments if a resource's seasonal Performance Factor falls below 80 percent in the first year of participation, may create an untenable risk for project developers. AEMA recommends reducing the financial assurance to 10-20 percent of the total term contract value. AEMA finds that exit fees are unnecessary if there are also substantial financial assurance requirements. AEMA recommends that if the Commission finds that exit fees are necessary, they should not exceed 10 percent of the value of the deficient load reduction, and that these rules should apply to all contract awardees, not just aggregators.

Digital requests clarification regarding why some utilities feel the need for financial security payments while others do not. Digital recommends that if the Commission finds that financial assurances are necessary, the amount should be reduced to the lower of $100 per kW or 15 percent of the total reservation payment amount. Digital states that its recommendations in this regard will encourage the development of energy storage resources in the Con Edison territory.

Determination

National Grid, NYSEG, RG&E, AEMA, Digital, and Blueprint all make salient points regarding the benefits of running procurements using a Uniform Clearing Price methodology. However, there are considerations which must be considered when selecting a procurement methodology that persuades the Commission to require a pay-as-bid method for both the Term-DLM and Auto-DLM Programs. The uniform clearing price methodology is most appropriate when: (1) the procurement will be responded to by a large number of competitors; (2) procurement respondents are bidding against each to provide a service at least cost instead of bidding against an alternative utility cost; and, (3) the product being procured is well-defined and every bid essentially includes the same service. In the case of these new Term-DLM and Auto-DLM Programs, none of these criteria are met.

First, it is unclear just how many responses will be submitted to these procurements. Second, to a certain extent, bidders are not competing to provide a service at least cost but are competing for the maximum value of the load relief they intend to provide. Third, while each participant will be providing a relatively similar load relief product, depending upon the characteristics of the electric grid where the load relief is provided there are potentially disparate values of the load relief itself. For these reasons, the Commission directs

the Utilities to use a pay-as-bid method for procuring Term-DLM and Auto-DLM Program resources. While the pay-as-bid methodology shall be used for the first procurements for resources beginning in 2021 and 2022, the Commission directs the Utilities to report on the effectiveness of their procurement strategies as part of their DLM Program Annual Report.

The Commission finds that Central Hudson, NYSEG, and RG&E's proposal to develop bid ceiling prices is reasonable. Each of the other utilities shall similarly develop bid ceiling prices. These price ceilings shall be kept confidential to ensure a level playing field for all procurement participants. The Utilities shall consult with Staff to ensure that the bid ceilings are properly and consistently designed prior to determining which bids to award.

The Commission rejects Blueprint's recommendation to allow year-to-year fluctuations in incentive payment rates within the same contract. The Joint Utilities comment is persuasive in this regard; noting that the Energy Storage Order was explicit that the multi-year procurements would be for consistently priced Term-DLM and Auto-DLM Programs. Blueprint has not provided convincing evidence to persuade the Commission otherwise. Blueprint's other recommendation to allow contractual obligations to be transferred from one entity to another, along with any associated payments or financial obligations, is reasonable and therefore adopted. The Utilities shall therefore include provisions for transferring Term-DLM and Auto-DLM Program obligations in the solicitation documents.

The Commission rejects the combination of front-loaded incentive payments and significant financial assurances proposed by Con Edison and O&R; instead each of the Utilities are directed to implement a payment structure with the contract value equally spread out over the term of the contract, assuming

full performance. The more evenly spread payment structure should be more favorable for energy storage financing, since the even payment structure typically does not require upfront financial assurances which could be unduly burdensome and discourage participation. For all these reasons, the potential Contract Value for the Term-DLM and Auto-DLM shall be spread evenly over the contract term, subject to performance requirements.

Although the Commission determined that the Financial Assurances in Con Edison and O&R's proposal are too burdensome, imposing an early exit fee as described by Con Edison and O&R is reasonable. This early exit fee provides both an incentive for participants to maintain the enrolled level of load relief throughout the course of the contract term and allows for some flexibility for participants to declare a deficiency and preserve their Performance Factor going forward. For these reasons, the Utilities are directed to include the 10 percent early exit fee as described in Con Edison and O&R's plan within their respective Term-DLM and Auto-DLM solicitations.

The ability to declare deficiencies and pay early exit fees should begin with the 2022 Capability Period. AEMA's concerns regarding setting a specific date are persuasive, and therefore for each solicitation the Utilities shall further specify a consistent date by which participants must announce a deficiency and be eligible to make the Early Exit fee payment.

The Commission agrees with National Grid proposal and Digital's recommendation to establish a Performance Payment, and directs each of the other utilities to develop such a payment in addition to the planned Reservation Payments. Performance Payments provide an important role in maximizing performance not only during called events, but also for compensating customers

for participating in voluntary events where participants are not obligated to provide load relief.

IV. Load Relief Availability and Event Dispatch Requirements Utility Proposals

Con Edison proposes that both Term-DLM and Auto-DLM Program participants must be available to provide load relief during four-hour events from 6 AM to 12 AM, seven days per week during the summer Capability Period. Each of the other utilities propose that participants should be available seven days per week, but do not specify off-hours when events will not be called.

Only Central Hudson, Con Edison, and O&R submitted specific Term-DLM dispatch triggers they intend to use as part of their plans, with the remaining utilities opting to define these values in the RFP. Con Edison and O&R propose to have the option to call Term-DLM Program events when the day-ahead demand forecast meets or exceeds 88 percent of the applicable utility's forecast system peak demand for the season,[31] a voltage reduction of five percent or greater in a defined area has been ordered, or if other contingency criteria are met. Con Edison and O&R state that these dispatch criteria will allow participants to provide service for both peak shaving and reliability support if enough advance notice for such events can be provided to participants.

Central Hudson, National Grid, NYSEG and RG&E state that their respective solicitations will establish a specific threshold required for each utility to either have the option to

[31] Con Edison and O&R clarified at the Stakeholder Forum that they would use the 88 percent threshold as an option to call an Event and would be required to call an Event when the day-ahead forecast exceeds the 92 percent threshold currently used for those Companies' CSRP.

call an Event for the next day, or to require activation of enrolled resources. Central Hudson states that it anticipates that the Event trigger it will require for its solicitation will be similar to the 97 percent threshold currently used for its CSRP. National Grid further states that its solicitation will inform potential participants of the number of events that they will be expected to participate in and will also specify a maximum number of events the company may call.

For the Auto-DLM Program, each of the Utilities proposed to provide a minimum of ten minutes of advance notice of an Event before performance is required. Each of the utility filings noted that customers may be required to provide for machine-to-machine communication where appropriate, although no further detail was provided in their plans. Con Edison and O&R proposed that to the extent that an Auto-DLM Program Event is called on the same day that a Term-DLM Program Event is scheduled, the Auto-DLM Program Event would take priority. Con Edison and O&R propose that once a Term-DLM Program Event has already commenced, Auto-DLM Program Events would not be called.

Con Edison and O&R propose to implement four-hour Test Event s for its Term-DLM and Auto-DLM program participants. Each of the other utilities proposed one-hour events, consistent with existing CSRP Test Event durations.

Comments

Load Relief Availability Requirements

Digital supports the principle that the number of hours a resource must be available to provide load relief should be as small as possible to provide for the needs of the utility, and suggests Con Edison’s availability requirements be shortened to no more than eight hours to call a four-hour event. Digital requests further clarification regarding whether Con Edison

plans to call Term-DLM and Auto-DLM Events which coincide with dispatch requirements of other DLM Programs.

Event Dispatch Requirements

AEMA recommends that where Utilities intend for the Term-DLM dispatch trigger to be lower than their existing CSRP threshold such as described in Con Edison and O&R's plan, the Commission should direct those utilities to provide a back-cast of the number of times that the proposed dispatch threshold would have resulted in an Event during the 2017-2019 Capability Periods prior to the RFP documents being issued. AEMA states that this information is necessary for potential RFP respondents to have a sense of how many calls may be expected, and to be able to communicate these expectations with customers or resource owners and to inform their solicitation responses.

Blueprint similarly requests clarification regarding how the Utilities will call events. Blueprint questions whether Con Edison would plan to call a day-ahead or voluntary Event on selected networks when the load forecast reaches 88 percent, but not the 92 percent of the system peak. Blueprint questions how many Events the Utilities expect to call each year using the criteria of 88 percent of the system peak. Blueprint also questions whether Con Edison would plan to call a day-ahead Event only on selected networks, or whether it would call every participant who has an active contract regardless of system location when the load forecast for the day reaches 92 percent of the system peak.

Digital requests that the Joint Utilities provide detailed Event trigger criteria and the internal procedures used to call events to illustrate how many Event calls would have been made using that criteria each summer over the last five years, including an analysis of weather history and detailed

historical load data compared to the proposed DLM Event call criteria.

Event Notice for Auto-DLM Program

AEMA notes that resources participating in NYISO programs which have schedules awarded in the day-ahead market must submit any changes to their scheduled operation prior to the real-time market closing, 75-minutes prior to the beginning of the operating hour. AEMA states that a resource participating in both the NYISO markets and in a utility program as an Auto-DLM resource, would not be able to provide notice to NYISO of its schedule deviations prior to the real-time market, subjecting such resources to applicable over- or under-generation penalties if it were dispatched using the Joint Utilities' proposed ten-minute notice for Auto-DLM Program Events. AEMA argues that the Utilities did not present clear evidence that a 10-minute response for distribution-level reliability issues is needed, nor that the two-hour response time currently in place for the DLRP is insufficient. AEMA requests that the Commission direct the Utilities to increase the Auto-DLM response requirement to 95 minutes to ensure response to Auto-DLM Program Events in a timely manner while enabling dual participation in existing NYISO markets.

Similarly, Digital states that the Utilities should provide a report justifying a definitive need to use a 10-minute dispatch signal for Auto-DLM Program resources. Otherwise, Digital suggests the two-hour DLRP requirement seems reasonable and would allow for dual participation in the NYISO market. Digital requests further clarification regarding whether the Auto-DLM will be dispatched for a network-level reliability issues similar to the DLRP in Con Edison's service territory.

The Joint Utilities state that the recommendations made by AEMA and Digital to increase the amount of time

available to under the Auto-DLM program past 10 minutes run counter to the Commission's directives in the Energy Storage Order. The Joint Utilities note that the 10-minute notice under the Auto-DLM program is intended to procure resources that can be dispatched with little advanced notice, could be called on to meet immediate system needs, and which would warrant premium prices paid to participants as well as an alternative participation model to the Term-DLM program. The JU further state that the call notice for the Auto-DLM program should not be harmonized with the DLRP's 2-hour advanced notice, since doing so would result in an Auto-DLM program which is duplicative of the DLRP.

The Joint Utilities argue that the 10-minute notice for Auto-DLM resources should not be lengthened to allow for dual-participation in the NYISO demand response markets either. The Joint Utilities posit that the number of times that Auto-DLM resources would conflict with the NYISO's participation requirements would be small, based on historical data of Con Edison's DLRP Immediate Event call frequency. The Joint Utilities argue that the Auto-DLM programs were intentionally designed as an alternative offering to the DLRP, and that not every resource will participate in both the Auto-DLM program and the NYISO's demand response programs. The Joint Utilities further note that the Term-DLM program's rules more closely align with the NYISO's programs. Therefore, the Term-DLM program would allow the customers the option to simultaneously participate in both the NYISO's programs and the utility-level DLM programs.

Test Event Duration and Frequency

AEMA recommends that the Commission reject the four-hour test requirement proposed by Con Edison and O&R in favor of a one-hour test requirement. AEMA states that increased test

durations have not resulted in an increased correlation to how the resource may respond during an Event and that Test Event duration should be standardized for the sake of consistency across the programs. AEMA also suggests that the Commission direct each of the Utilities to make seasonal Term-DLM and Auto-DLM tests mandatory only if actual events have not already been called within a capability period.

Determination

The Commission finds Digital's proposal to reduce the number of hours that Term-DLM Programs must stand ready to provide load relief is persuasive. Historically, new maximum peak conditions occur within a relatively stable period year after year. Typically, for areas where demand is predominantly commercial, or a mix of commercial and residential, peak conditions typically occur during summer weekday afternoons. In areas with a much more distinct residential composition, peak demand conditions happen later during weekday evenings. In either case, the makeup of an area, if driven mostly by commercial demand versus mostly residential demand, changes gradually over a period of many years, which is much longer than the term durations considered in these programs. Therefore, the Commission does not find Con Edison and O&R's proposal to require Term-DLM participants to be available for 18 hours a day, seven days per week, to be reasonable.

Instead, the Commission directs the Utilities to determine a specified four-hour call window for each area of their service territories when peak demand conditions are most likely to occur, similar to how Con Edison has specified its

call windows for the CSRP.[32] These call windows should be clearly defined geographically, and must be communicated as part of the solicitation documents.

Further, the Term-DLM program shall only be called on a Monday through Friday basis, when new peak demand requiring incremental load serving capability is much more likely to occur. Utilities are directed to monitor weekend peak demand and report the number of events that would have been called under the CSRP and/or Term-DLM dispatch triggers if those programs were available on weekends. The Commission may reconsider this issue if weekend peak demand conditions become problematic in the future.

The Commission finds Central Hudson's proposed Term-DLM dispatch trigger thresholds to be reasonable, and finds AEMA, Blueprint, and Digital's requests for additional data to be persuasive. National Grid, NYSEG, and RG&E shall specify Term-DLM Program dispatch thresholds as part of their solicitation documents. The Utilities are directed to provide five years of historical data to demonstrate how many events would have been called per year under the defined dispatch threshold as part of the solicitation documents. Regarding Con Edison and O&R's proposed Term-DLM dispatch criteria, the Commission finds that the threshold levels are reasonable, although Con Edison and O&R shall not call Term-DLM Program events which require participants to provide load relief for

[32] Having a single call window throughout the service territory is acceptable if a utility determines that it is not feasible to implement multiple call windows based on characteristics of demand served.

reliability-based events since Term-DLM Program participants will be allowed to also participate in the DLRP.[33]

The Commission finds the Auto-DLM Program availability requirements proposed by Con Edison and O&R (i.e., mandatory availability to participate in a four-hour Event for 18 hours per day, seven days per week) are reasonable. Unlike peak demand conditions, reliability issues occur often on short notice and at unpredictable hours. Load relief provided as part of reliability programs helps maintain the Utilities' ability to serve load reliably, even during a contingency when equipment typically used to serve load is not available.

Therefore, unlike the Term-DLM program which solely provides peak shaving services, it is reasonable to require much wider availability requirements in both hours of the day and days of the week for the Auto-DLM Program. Since the Auto-DLM Program will be deployed for both peak shaving and reliability, the Utilities shall include five years of historical data demonstrating the number of events that would have been called during those years based on the dispatch requirements detailed in the Auto-DLM solicitation, to the extent such data is available.

The Commission finds the Auto-DLM Program dispatch triggers proposed by Con Edison and O&R are reasonable. These dispatch triggers will allow for the Auto-DLM Program to be called to provide both peak shaving and reliability services. Central Hudson, National Grid, NYSEG, and RG&E are directed to include specific reliability-based dispatch criteria, in addition to calling the Auto-DLM resources when an event is

[33] Utilities may call for Term-DLM Program participants to provide load relief during reliability-based events on a voluntary basis, to the extent that such participants are not also participating in the utility's DLRP.

called under the Term-DLM Program, as part of their respective Auto-DLM Program solicitation documents.

The Commission accepts the Joint Utilities' proposal to call Auto-DLM Program events using a 10-minute notice period. While appreciating the substantial comments on this topic provided by AEMA and Digital, the Joint Utilities point out, and the Commission agrees, that the 10-minute event notice requirement for the Auto-DLM Program will allow for expansion of the number of use cases that these resources will be able to provide to the distribution system. Furthermore, the fact that the 10-minute notice will enable the Utilities to address real-time overloads and contingencies that require a very rapid, if not an immediate response, increases the value that such resources provide to ratepayers and therefore supports the premium payment that would be provided.

Moreover, as we continue to move toward achievement of the State's ambitious renewable energy goals, the need to have flexible load resources at the distribution level will likely increase to balance residual load variations. The Auto-DLM program is a first step in developing those needs and enabling such use cases. The Commission continues to strongly support the ability of customers to simultaneously participate in both the utility DLM Programs and NYISO demand response programs and finds that those opportunities remain with the existing CSRP, DLRP, and the programs being adopted today, with the various risks and rewards associated with such participation. Therefore, the Utilities are directed to establish a 10-minute advance notice for Auto-DLM Program events.

The Commission finds that Con Edison and O&R's proposed four-hour Test Event duration is unreasonable. As noted by AEMA, a one-hour test is the demand response industry standard, and is also the duration recommended by Central

Hudson, National Grid, NYSEG, and RG&E. Con Edison and O&R have historically proposed to lengthen the duration of Test Events, some of which have been adopted. However, the conditions that have previously led to the Commission adopting a two-hour Test Event for the DLRP are not present for these Term-DLM and Auto-DLM Programs.

Specifically, Con Edison's DLRP Test Event duration was increased from one hour to two hours to address an issue where participants demonstrate a strong Performance Factor in the one-hour Test Event but were unable to provide similar load relief during actual DLRP Events. In part, this issue is a result of the relative infrequency of DLRP Events in certain portions of Con Edison's service territory. Since the Auto-DLM Program will call for both peak shaving and reliability events, it is highly unlikely that the Auto-DLM Program will have as few events as DLRP does in some areas. Therefore, more opportunities for incentive payments that are based on performance during actual events, instead of Test Evens, should be included in the Auto-DLM Program than in the DLRP.

V. Performance Factor Adjustments

Utility Proposals

The Utilities generally proposed to apply non-performance penalties through modifications to the typical Performance Factor used in determining final incentive payments.[34] Con Edison and O&R provided detailed calculations on how their Performance Factors would be calculated, while Central Hudson described a slightly different process. National Grid's

[34] Performance Factor is defined as the ratio of the amount of load relief kW provided during an Event to the amount of load relief kW enrolled in the program, from a minimum of 0 percent to a maximum of 100 percent.

filing noted that the solicitation would specify the non-performance penalty provisions, whereas NYSEG and RG&E's filing was silent on the matter.

Con Edison, O&R and Central Hudson propose imposing non-performance penalties through accelerating decreases in the Performance Factor below a specified level. For the Term-DLM Program, Con Edison, O&R, and Central Hudson propose that the Performance Factor decrease on a one-to-one ratio between 100 percent and 80 percent, and on a two-to-one basis between 80 percent and 40 percent.[35] For the Auto-DLM Program, Con Edison, O&R, and Central Hudson propose that the Performance Factor decrease on a one-to-one ratio between 100 percent and 90 percent and on a two-to-one basis between 90 percent and 45 percent.[36] NYSEG and RG&E propose to set a minimum Performance Factor for Auto-DLM resources of 80 percent, but they did not specify how the minimum Performance Factor would be calculated.

Con Edison and O&R propose to determine a single seasonal performance factor, which would form the basis for participant incentive payments, in three steps by first determining a Performance Factor for each event. Second, each event's Performance Factor would be adjusted as described above to apply the non-performance penalty adjustments (i.e., below 80 percent and 90 percent for the Term-DLM and Auto-DLM Programs, respectively). Third, the Seasonal Performance Factor would be determined as the average of all adjusted per-Event Performance Factors throughout the Capability Period. Central Hudson,

[35] Participants would not earn any Reservation Payment for the Term-DLM Program for providing 40 percent or less of the contracted kW load relief.

[36] Participants would not earn any Reservation Payment for the Auto-DLM Program for providing 45 percent or less of the contracted kW load relief.

however, proposes to determine performance based on the average kW of load relief provided throughout all call hours of the capability period, capped at 100 percent of the contracted kW load relief amount.[37]

Comments

AEMA advocates that consistency among the Joint Utilities' programs is critical. Of the methods proposed, AEMA favors Con Edison and O&R's proposed method for accelerated payment reductions for under-performance more than that of Central Hudson.[38] AEMA recommends that the Commission direct the Utilities to adopt a standard method for reducing performance factors for payments for underperformance by two percent for each percent of underperformance below 80 percent for Term-DLM resources, and by two percent for each percent of underperformance below 90 percent for Auto-DLM resources.

AEMA notes that consistency among Utilities on how performance is calculated in tests and called events during each Capability Period and how the calculations will impact payments is essential to the success of these programs. Each utility has proposed an annual payment structure, as opposed to the monthly structure utilized under the existing tariff based DLM programs, calculating a single seasonal Performance Factor that will impact the annual payment is appropriate. AEMA recommends an alternative method for calculating these seasonal performance factors, drawing from some of the ideas in the Utilities' plans.

[37] The difference between Con Edison and O&R's proposed method and Central Hudson's proposed method is that Con Edison and O&R would apply adjustments to the Performance Factor for each event, whereas Central Hudson would apply adjustments to the Performance Factor at the end of the season.

[38] Although described in different terms, the performance factor adjustments proposed by Con Edison, O&R and Central Hudson are mathematically equivalent.

AEMA further recommends that the seasonal performance factors for each capability period would be calculated separately for Term-DLM and Auto-DLM resources following four steps. First, AEMA recommends calculating a per-Event Performance Factor at the applicable aggregation level based upon the average hourly performance compared to the aggregation's obligation, with no cap on performance above 100 percent on either an individual resource or an aggregation in each performance hour. AEMA recommends that the same methodology should be used for calculating performance during seasonal one-hour tests, if called. Second, AEMA recommends calculating an adjusted per-Event Performance Factor at the aggregation level based upon the applicable acceleration rates for performance below the target thresholds by resource type. Third, AEMA recommends calculating a seasonal PF based upon the average of all test and Event adjusted Performance Factors. Fourth, AEMA recommends applying performance derating as applicable to the aggregation(s) where the aggregation's seasonal performance factor falls below the target threshold by resource type.

Digital also makes several suggestions regarding calculation of performance factors. First, Digital requests that performance be measured on a per-Aggregation basis, allowing overperformance of component accounts to compensate for underperformance of other accounts within an aggregation. Digital requests that a single aggregator be allowed to participate through more than one aggregation, as currently allowed in CSRP. Finally, Digital requests allowance for a standard bonus percentage to be applied for an annual portfolio performance factor equal to 1.0. Digital suggests that adding a bonus payment would balance the Term-DLM and Auto-DLM Programs'

penalty provisions against their rewards and would act as good marketing tool to encourage participation by end-user customers.

Digital further comments that Con Edison's baseline procedure provides for separate baseline computational formulas for weekday events compared to weekend events. Digital argues that the difference in baseline methodology between weekday and weekends forces the solicitation respondents to evaluate both scenarios to determine load curtailment. Digital proposes to either use the weekday baseline procedure for all seven days or allow for two offer levels in the RFP responses.

The Joint Utilities state that the system value created by the Auto-DLM and Term-DLM programs is predicated on reliable and consistent performance during every event. The Joint Utilities disagree with AEMA's proposed methodology for calculating seasonal performance factors, stating that they cannot support awarding more than 100 percent performance on individual events, and that the performance factor should be calculated and capped at 100 percent for each event. The Joint Utilities argue that allowing performance factors greater than 100 percent would allow an aggregation with inconsistent or poor performance in some events to make up for lack of performance by over-performing in other events. The Joint Utilities further argue that paying for an aggregation that does not perform consistently is unjustified and would hinder system planning efforts. The Joint Utilities also oppose AEMA's proposal to apply performance factor derating at the seasonal level rather than on a per-Event basis. The Joint Utilities argue that this request would similarly allow an inconsistent aggregation to earn substantial compensation by reducing penalties for participating poorly in some events by over-performing in others.

In response to Digital's requests, the Joint Utilities clarify that the Term-DLM and Auto-DLM programs will allow a single aggregator to have more than one aggregation, and that performance factors will be calculated for each aggregation, not each customer.

Determination

The Commission finds that AEMA's recommendation is persuasive to adopt a single consistent methodology for determining the Performance Factor. The Commission is further persuaded by AEMA's recommendation to adopt a method which reduces performance factors for payments for underperformance by two percent for each percent of underperformance below 80 percent for Term-DLM resources, and by two percent for each percent of underperformance below 90 percent for Auto-DLM resources. The Commission finds that Con Edison and O&R's proposed Performance Factors and adjustments for poor performance are reasonable and comply with these requirements.

The Commission rejects AEMA's recommended modifications to Con Edison's proposed Adjusted Performance Factor calculations. As noted by the Joint Utilities, AEMA's proposal would allow for Term-DLM and Auto-DLM Program participants to compensate for poor performance in one event with better performance in others, resulting in greater compensation for inconsistent load relief as compared to Con Edison and O&R's proposed method. Demand Response programs are most valuable as system planning tools where load relief is reliable in each and every event called, and must be especially so when program terms are locked in for longer multi-year periods. For these reasons, the Utilities are directed to adopt Con Edison and O&R's proposed methodology for determining seasonal and per-event Performance Factors.

The Commission declines to adopt Digital's proposal to provide bonus payments for performance beyond 100 percent Performance Factor. The Commission finds that such additional bonus payments are not necessary to spur reliable performance in the Term-DLM and Auto-DLM Programs. Achieving a high Performance Factor is reward in itself as doing so will maintain the maximum Reservation Payments, as well as earn additional Performance Payments during events, which are paid out on a per kWh basis.

The Commission is sensitive to Digital's concern regarding differing baseline calculation methodologies between weekdays and weekends, especially since each utility proposes to be able to call events for the Auto-DLM Program seven days a week.[39] Digital's request that each solicitation provide detailed baseline methodologies for both weekday and weekend events is reasonable, and therefore the Commission directs the Utilities to include a detailed description of such methodologies within their respective solicitations.

However, the Commission rejects Digital's recommendations that the weekday baseline methodology be used for weekend events or that participants be allowed to nominate different kW load relief amounts for weekday and weekend events. As noted by the Utilities, and discussed previously herein, value provided by demand response programs is directly proportional to the reliability of load relief enrolled in such programs – this is especially so in the case of programs designed to bolster local reliability, and is further reinforced when such programs include short-notice event dispatch. What

[39] Utilities should provide a detailed description of the weekend baseline methodology in the Term-DLM procurement documents as well as in the event that the Term-DLM Program participants voluntarily respond to an Event called outside the defined call window.

Digital sees as a program flaw - that participants must consider what amount of kW load relief they are able to provide at short notice and under potentially adverse conditions - is in fact a boon. To state it more clearly, the purpose of the DLM Programs is not to provide a subsidy from all customers to participants, but to accurately compensate participants for the services they provide to all customers. Customers should not be paying participants for demand response services that those participants are unwilling or unable to provide when called upon.

VI. Coordination with NWA Projects

Utility Proposals

Con Edison and O&R propose that resourced contracted into the Term-DLM and Auto-DLM Programs would need to provide services during the entire term of the contract before participating in an NWA, unless participants are able to provide incremental load relief. Central Hudson and National Grid each propose that Term-DLM and Auto-DLM Program participants should be able to bid into new NWA procurements without penalty, and that the NWA contracts would preempt contracts for participation in the Term-DLM and Auto-DLM Programs. NYSEG and RG&E's filing noted that its solicitation would specify its plans for this transition but did not provide any detail.

Comments

AEMA states that resources participating under a Term-DLM or Auto-DLM Program contract should be eligible for consideration in an NWA procurement if the resource can provide the services specified to meet the requirements of the NWA project. Should the resource be awarded a contract under the NWA procurement, the utility should not impose an early exit fee or otherwise penalize the resource or third-party aggregator

that is the primary entity that has contracted with the respective utility.

Determination

The Commission finds Con Edison and O&R's proposal to require Term-DLM and Auto-DLM Program participants to fulfill the remaining load relief obligations in their Term-DLM or Auto-DLM Program contracts before beginning participation in new NWA project procurements to be the most rational option presented. The value of both DLM Programs and NWA projects to the Utilities is predicated on the reliability of the load relief provided, and whether or not a utility can rely on demand-side resources in lieu of building additional infrastructure. If a utility is relying on contracted load relief in the DLM Programs to meet current demand, then any DLM Program load relief that abdicates its commitment must be procured as part of the NWA project in addition to the forecast load relief need. In short, allowing Term-DLM and Auto-DLM Program participants to abandon their commitments as part of those Programs when a new NWA project is announced both diminishes the usefulness of the DLM Programs toward system planning and increases uncertainty for implementing the NWA project.

This issue, however, does not occur to the extent that a Term-DLM or Auto-DLM participant is able to offer new incremental load relief in addition to their DLM contract amount as part of the NWA project. Therefore, the Joint Utilities are directed to modify their proposed plans to require Term-DLM and Auto-DLM resources to provide the contracted load relief for the entire duration of the contract term, with provisions to allow such resources to provide additional load relief incremental to the contracted kW amount if selected to provide such service as part of an NWA project.

VII. Cost Allocation and Recovery

Utility Proposals

Con Edison and O&R each filed tariff amendments specifying their plans for recovery of Term-DLM and Auto-DLM Program costs. In their filings both Con Edison and O&R propose to allocate the costs associated with the Term-DLM and Auto-DLM Program to service classifications using a methodology that is consistent with the manner in which CSRP costs are allocated.[40]

National Grid proposes to recover its Term-DLM and Auto-DLM Program costs through its existing DLM Surcharge mechanism, and to allocate costs to all delivery customers in the same manner as the Company's CSRP costs are allocated. National Grid proposes to make a separate tariff filing to effectuate cost recovery as well as make other necessary tariff amendments. Central Hudson, NYSEG and RG&E's filings did not include proposals related to recovering Term-DLM and Auto-DLM Program costs.

Comments

Multiple Intervenors emphasizes the importance of resolving outstanding cost allocation and cost recovery issues in an equitable and cost-based manner. MI recommends that the Commission direct each of the Utilities to include details about how costs would be equitably allocated to and collected from customers as part of their final Procurement plans. MI states that the cost allocation and cost recovery associated with the Procurements also should operate in a manner consistent with cost-of-service principles. MI also notes to the extent surcharges are utilized to recover costs related to the Procurements, such surcharges should be assessed on a demand (i.e., per kW) basis, at least for classes with demand meters.

[40] Con Edison Electric Tariff leaf 357, O&R leaves 249 and 249.1.

Determination

The Commission agrees with MI regarding the importance of proper cost allocation and recovery mechanisms. Many of these issues have already been considered by the Commission in the context of the Utilities' tariffed DLM Programs. The Commission sees no reason that the Term-DLM and Auto-DLM costs should be allocated and recovered any differently than the way that the tariffed DLM Programs are recovered. The features that MI described, such as benefits-based cost allocation to service classifications and recovery of such costs through demand-based charges for demand-billed customers are already part of DLM cost recovery. Since both the Term-DLM Program and Auto-DLM Program are designed to achieve peak shaving benefits, and many of the utilities do not operate a DLRP, it is reasonable to recover the costs of both the Term-DLM and Auto-DLM program in the same manner as CSRP costs are allocated and recovered.

The November 16, 2020, tariff filings directed by this Order shall effectuate cost allocation and recovery of Term-DLM and Auto-DLM Program in the same manner as CSRP costs.

VIII. Evaluation Criteria

Utility Proposals

NYSEG and RG&E provide a list of ten criteria they plan to use in evaluating bidder responses. NYSEG and RG&E state that they plan to provide additional detail in the solicitation documents. The criteria identified are: (1) cost effectiveness; (2) operational characteristics of the resource; (3) any specific technical requirements listed in the solicitation; (4) overall project viability including site control, regulatory approvals and permits, and interconnection considerations; (5) feasibility of completing construction prior to beginning participation (6) construction and operational

record of the bidder; (7) credit quality of the bidder; (8) whether the bidder is willing to execute the proposed contract without modification; (9) the bidder's plan to conduct public outreach and communications with regulatory authorities; and (10) experience deploying similar technologies in New York State and in each Company's service territory.

Comments

AEMA recommends that that the evaluation scoring methodologies be aligned and clearly delineated in the RFP documents, that the requirements of how various resource types will be weighted should be included, and the environmental benefits associated with resources should have a specific value assigned for evaluation.

Digital requests additional clarification in the Utilities' RFPs regarding detailed proposal evaluation criteria, and an explanation of the weight assigned to each criteria element.

The Joint Utilities state that they propose to include the RFP response evaluation criteria used to select winning bids in the RFPs themselves. The Joint Utilities state that bidders will have such information prior to responding to the RFPs, however, the Joint Utilities further state that the evaluation criteria will vary among utilities and procurements based on the need that the procurement is targeted to meet.

Determination

The Commission finds AEMA and Digital's comments persuasive, and directs the Joint Utilities to include bid evaluation criteria and any associated weighting of criteria within the Term-DLM and Auto-DLM solicitation documents. The Commission finds NYSEG and RG&E's list of bid evaluation criteria to be reasonable. However, the Joint Utilities will be allowed to determine their own evaluation criteria and assign

weighting of those criteria as they deem most effective. The Joint Utilities are directed to consult with Staff prior to finalizing which bids will be awarded and which bids will be rejected to ensure that bids are awarded in a reasonable fashion consistent with the criteria and weighting identified in the solicitation documents. In addition, as recommended by Blueprint, the Joint Utilities should allow the bidders that were not selected to participate to request feedback, to the extent feasible.

IX. Con Edison General Rule 8.3

Comments

Digital requests that the Commission direct Con Edison to remove the current tariff rules contained in General Rule 8.3 that excludes export-capable Standby Service customers so that these customers can be included in all of Con Edison's DR programs.

As part of the JU's reply comments, Con Edison states that Digital's assertion that General Rule 8.3 of Con Edison's tariff does not allow export-capable Standby Service customers to export onto the electric system to participate in Demand Response programs is unfounded. Con Edison explains that such export-capable Standby Service customers may qualify to export to the system under Buyback Service or the Value Stack tariff, and therefore may participate in demand response programs. Con Edison states that General Rule 8.3 of its tariff is designed for customers with electric generators which may not qualify for Buyback Service or the Value Stack Tariff and therefore may only export during certain specific circumstances. Con Edison notes that the Commission had previously approved the elimination of Rider T, Con Edison's CSRP and DLRP, as a special circumstance

to export under General Rule 8.3 in the Commission's January 27, 2016 Order in Case 15-E-0570.

Determination

Digital's comments regarding Con Edison's Tariff General Rule 8.3 are outside the scope of the utility filings at issue here. The Commission agrees with Con Edison's comments and rejects Digital's request. As noted by Con Edison, Standby Service customers can participate in DLM Program offerings through Buyback Service or through other options such as the Value Stack Tariff. The only customers that General Rule 8.3 excludes from being able to export electricity to the distribution system during a DLM Program Event are those customers whose generating technologies do not qualify for either Buyback Service or the Value Stack Tariff, and therefore should not be exporting to the grid on a regular basis.

Further, Digital actively participated in the 2015 proceeding where Con Edison's CSRP and DLRP were removed from the list of special provisions for export to the distribution system under General Rule 8.3 and did not object to the tariff amendments under consideration at that time;[41] Digital has provided no evidence in this proceeding to support its current request. For the above reasons, the Commission rejects Digital's request to require Con Edison to file further tariff amendments related to General Rule 8.3.

CONCLUSION

The Utilities are directed to consult with Staff to finalize solicitation documents consistent with the directives in this Order and to issue such solicitations as soon as is practicable. The Utilities are directed to file the resulting

[41] Case 15-E-0570, Con Edison Commercial Demand Response, Order Approving Tariff Amendments (issued January 27, 2016).

RFP documents in this proceeding as well as in Case 14-E-0423. In addition, the Utilities are directed to include information regarding Term-DLM and Auto-DLM Program operations in their DLM Program Annual Reports as described above, as well as any other program-relevant information consistent with the data that each utility already provides in their DLM Program Annual Reports.

While the Commission will not explicitly require the Utilities to issue annual solicitations for new contractual resources in the Term-DLM and Auto-DLM Programs, we hereby establish the expectation that such solicitations will become a regular part of DLM Program operations. The Utilities should issue solicitations annually beginning in 2021 for participation beginning not less than 18 months from the issuance of the solicitation.[42] Utilities that choose not to issue a solicitation for a given period are directed to consult with Staff to discuss the decision and issues not less than 24 months prior to the beginning of the affected Capability Period and must file a formal letter in this proceeding via the Commission's Document and Matter Management System explaining why procuring Term-DLM and/or Auto-DLM resources is not reasonable or feasible.

The Utilities are directed to file tariff amendments consistent with the directives in this Order to detail the Term-DLM an Auto-DLM programs, and associated cost allocation and cost recovery mechanisms. Since these tariff revisions are being required by the Commission per the directives in this Order, the requirements of PSL §66(12)(b) and 16 NYCRR §720-8.1 as to newspaper publication are waived.

[42] Solicitations for Term-DLM and Auto-DLM resources for the 2023 Capability Period should be issued during fall 2021.

The Commission orders:

1. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid d/b/a Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation are directed to solicit resources for a 21-hour advance notice peak-shaving Term-DLM Program to be available throughout their respective service territories beginning in Summer 2021 using a sealed bid, pay as bid auction.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid d/b/a Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation are directed to solicit resources for a 10 minute advance notice peak-shaving and reliability Auto-DLM Program to be available in utility-specified areas of their respective service territories beginning in Summer 2021 using a sealed bid, pay as bid auction.

3. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid d/b/a Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation are directed to annually report on effectiveness of the Term-DLM Program and Auto-DLM Program as described in the body of this Order as part of their DLM Program Annual Reports beginning with the report to be filed on November 15, 2021.

4. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid d/b/a Niagara Mohawk Power Corporation, New York

State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation are directed to consult with Department of Public Service Staff prior to publishing these solicitations to ensure compliance with the directives in this Order.

5. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Grid d/b/a Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation are directed to file tariff amendments, with an effective date of December 1, 2020, detailing the Term- and Auto-DLM programs as cost recovery as described in the body of this Order. The tariff amendments are to be made by November 16, 2020, and will go into effect on a temporary basis until made permanent by the Public Service Commission.

6. Consolidated Edison of New York Inc. and Orange & Rockland Utilities, Inc. are directed to file cancellation supplements, cancelling the tariff amendments listed in Appendix B, within five days of the issuance of this Order.

7. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 as to newspaper publication of the proposed changes as directed in Ordering Clauses 5 and 6 are waived.

8. In the Secretary’s sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

9. These proceedings are continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

Advanced Energy Management Alliance and Advanced Energy Economy Institute (collectively, AEMA)

Regarding the utilities' procurement strategies, AEMA believe the uniform clearing price methodology will result in a more competitive playing field for companies that receive awards for providing the Term-DLM and Auto-DLM services while driving potential bidders to submit bids at their lowest acceptable price. AEMA recommends that where utilities intend to pay based upon a clearing price as opposed to pay-as-bid, that there should be separate procurements for both resource types, with separate clearing prices established for each resource type.

In general, AEMA support the Con Edison and ORU approach to pay out 70% of the contract value after the first program year, with no payment issued for under 80% seasonal performance, and the remaining 30% paid out through the duration of the term of contract. In case of a resource performing below 80% in the first season, AEMA recommends a one-time option to delay the contract a year, such that if a project commencing in Summer 2022 performed at 75% it could have a one-time option to defer the contract to Summer 2023. AEMA recommends that if a resource had to exercise this option, they would forfeit 10% of their overall revenues so that there is balance between accountability for performance and being able to finance project.

AEMA maintains that kWh performance from load reduction observed behind-the-meter should be compensated at the effective tariff-based DLM program rate or at a rate as defined in the RFP, unless the resource is receiving compensation for the kWh through another retail or wholesale program. For injecting resources, kWh injected during tests and events should be compensated as well, unless the resource is being compensated through another retail or wholesale program.

AEMA advocates that consistency among the Joint Utilities' programs regarding determination of Performance Factor is critical. Of the methods proposed, AEMA favors Con Edison and O&R's proposed method for accelerated payment reductions for under-performance more than that of Central Hudson. AEMA recommends that the Commission direct the Joint Utilities to adopt a standard method for reducing performance factors for payments for underperformance by 2% for each percent of underperformance below 80% for Term-DLM resources, and by 2% for each percent of underperformance below 90% for Auto-DLM resources.

AEMA notes that consistency among utilities on how performance is calculated in tests and called events during each Capability Period and how the calculations will impact payments is essential to the success of these programs. AEMA recommends that since each utility has proposed an annual payment structure, as opposed to the monthly structure utilized under the existing tariff based DLM programs, calculating a single seasonal Performance Factor that will impact the annual payment is appropriate. AEMA recommends the following method for calculating these seasonal PFs, drawing from some of the ideas in the Implementation Plans, though with some changes, and reflecting the recommendations provided above regarding testing requirements. AEMA advocates calculating a Seasonal Performance Factor for each Capability Period using a four step process. First AEMA recommends calculating a per-event Performance Factor at the applicable aggregation level based upon the average hourly performance compared to the aggregation's obligation, with no cap on performance above 100% on either an individual resource or an aggregation in each performance hour. The same methodology should be used for calculating performance during seasonal one-hour tests, if called. Second, AEMA recommends

calculating an adjusted per-event Performance Factor at the aggregation-level based upon the applicable acceleration rates for performance below the target thresholds by resource type. Third, AEMA recommends calculating a Seasonal Performance Factor based upon the average of all Test and Event Performance Factors. Fourth, AEMA recommends applying performance de-rates as applicable to the aggregation where the aggregation's Seasonal Performance Factor falls below the target threshold by resource type.

AEMA states that it finds that Con Edison and O&R's plan language creates confusion regarding early exit fees, as it specifies that as it does not specify a date by which a deficiency must be declared. AEMA recommends that, should the Commission find that early exit fees are appropriate, that direction should be provided to Con Edison and ORU to clarify in the RFP documents and contracts the dates by which deficiencies be declared and early exit fees be paid. AEMA recommends that timing for notification that a resource will be short of its obligation be consistent and recommends that the date be changed to April 1st of the first applicable delivery year of the contract term.

AEMA states that it finds Con Edison and O&R's proposal that DLM contract awardees to provide financial assurance based upon the minimum of 30% of the total term contract value or $150/kW to be unreasonable. AEMA argues that the high risk of developing in Con Edison territory combined with permitting and construction barriers along with stripping 70 percent of payments if a resource falls below a Seasonal Performance Factor 80 percent in in the first year may create an untenable risk for project developers. AEMA recommends reducing the financial assurance to ten to twenty percent of total term contract value. AEMA suggests that Early Exit Fees are

unnecessary if there are also substantial financial assurance requirements. AEMA recommends that if the Commission finds Early Exit Fees to be necessary, such fees should not exceed ten percent of the contract value, and such fees should apply to all contract awardees, not just aggregators.

AEMA recommends the Commission should allow the same customer to participate in the contract-based and tariff-based programs simultaneously, provided that the customer is using different technologies to enable participation in the different programs. For example, AEMA states that if a customer currently performs as a tariff-based DLRP resource via curtailing a chiller, it would not be reasonable to allow them to participate in Term DLM with that resource – it would be double payment for the same service. On the other hand, AEMA argues that customers whom are evaluating whether to add behind-the-meter storage should not have to choose between participating in the Auto-DLM program or the tariff-based DLM programs, so long as the additional load relief provided through the Auto-DLM call can be determined, for example through submetering.

AEMA states that resources participating under a DLM contract should be eligible for consideration in an NWA procurement, should the need arise, if the resource can provide all of the services specified to meet the requirements of the NWA. AEMA recommends that, the utility should not impose an early exit fee or otherwise penalize the resource or third-party aggregator that is the primary entity that has contracted with the respective utility should the resource be awarded a contract under the NWA procurement.

AEMA states that it is reasonable to require customers currently on net energy metering (NEM) to transition to the Value of Distributed Energy Resources (VDER) Value Stack tariffs.

AEMA recommends that the Commission reject the four-hour test requirement proposed by Con Edison and ORU in favor of a one-hour test requirement as increased test durations have not resulted in an increased correlation to how the resource may respond during an event and for the sake of consistency across the programs. AEMA also suggests that the Commission direct each of the utilities to make seasonal Term- and Auto-DLM tests mandatory only if actual events have not already been called within a program season on which performance may be judged.

AEMA recommends that, where utilities intend for the dispatch trigger to be lower than their existing CSRP threshold, the Commission direct those utilities to provide, prior to the RFP documents being issued, a back-cast of the number of times that the proposed dispatch threshold has been reached within the 2017-2019 Capability Periods and the number of events that would have been called under these scenarios. AEMA believes this information is necessary for potential RFP respondents to have a sense of how many calls may be expected, to be able to communicate these expectations with customers or resource owners, and to inform their RFP bids.

AEMA notes that NYISO resources participating within the Energy Storage Resource (ESR) or DER participation models that have schedules awarded in the day-ahead market must submit any changes to their scheduled operation prior to the real-time market closing, which closes 75-minutes prior to the operating hour. AEMA further notes that a resource dually-participating in either the ESR or DER participation models and in a utility program as an Auto-DLM resource, would not be able to provide notice to NYISO of its schedule deviations prior to the real-time market and if it were dispatched by the utility with ten-minute notice, and would then be subject to any over- or under-generation penalties compared to its NYISO market schedules.

AEMA states that it believes the utilities did not present clear evidence that a 10-minute response for distribution-level reliability issues is needed, nor that the two-hour response time in DLRP is insufficient. In lieu of this, AEMA suggests the Commission direct the utilities to increase the Auto-DLM response requirement to 95 minutes to ensure response in a timely manner while enabling dual participation.

AEMA recommends that that the evaluation scoring methodologies be aligned and clearly delineated in the RFP documents. AEMA requests that the requirements of how various resource types will be weighted should be included in the RFP, and that the environmental benefits associated with resources should have a specific value assigned for evaluation.

AEMA notes their concern regarding the significant differences between eligibility requirements for resources, stating that the 2018 Order framed the development of these procurements around providing more market opportunities for energy resources and some of the utility's plans appear to limit participation to existing resources that are already in the interconnection queue when the RFP is issued.

AEMA states that if a fossil fuel generator is technically capable of meeting the operating requirements outlined in the RFPs to provide the services while meeting all other applicable environmental regulations in effect during the contracted term, it does not seem appropriate to deem them ineligible from consideration.

Blueprint Power (Blueprint)

Blueprint recommends that the Joint Utilities adopt a consistent procurement strategy and use a uniform clearing price to imitate a market-based approach as much as possible. Blueprint also requests the Joint Utilities to disclose the

clearing price and quantity as well as anonymous bid curves with price and quantity of contract offering, and provide feedback to individual proposers if they do not get selected. Blueprint asks whether the contract will allow multiple price-quantity pairs of resource capacity. Blueprint recommends that the utilities allow different contract prices for each participation year in the same contract, stating that this will encourage the DER developers to accurately reflect the value of the load relief in the bid and align the new DLM programs with the existing demand response programs. Blueprint recommends that the DLM procurements allow for flexibility in contract transferability, such as the ability of the project developer to sell or assign or transfer the whole or part of their dispatch obligations to another party, subject to the same financial assurance and performance evaluation terms.

Blueprint requests clarification regarding whether a storage system can participate in the Day-ahead DLM and the Auto-DLM programs concurrently, and if so, how performance would be evaluated when the utility calls overlapping DLM event hours when the participant is enrolled in both. Blueprint requests clarification regarding whether one program takes precedence over the other. Blueprint also that the Commission allow third-party monitoring systems to supply interval data to meet the metering requirements of the programs. Blueprint recommends that the third-party monitoring system should include, but not be limited to, the building management systems, energy management systems, other metering service entities approved by the Commission, or other energy monitoring systems capable of measuring and recording hourly interval consumption data. Blueprint notes that a precedent of such practice has been established in the Gas Demand Response Pilot program in the Con Edison territory.

Blueprint requests clarification regarding how the utilities will call events. Blueprint questions whether Con Edison would plan to call a Day-ahead event on selected networks or voluntary participation when the load forecast reaches 88% but not the 92% of the system peak. Blueprint questions how many events the JU expects to call each year using the criteria of 88% of the system peak. Blueprint questions whether Con Edison plan to call a Day-ahead event on selected networks, or does it call every participant who has an active contract regardless of system location when the load forecast reaches 92% of the system peak.

Digital Energy Corp (Digital)

Digital finds that the information provided in the draft DLM proposals to not provide the details necessary to determine an accurate assessment of the risk embedded in the procurement process. Digital advocates for an open and transparent process, a descending clock auction. In lieu of either of those options, Digital prefers a sealed bid, uniform clearing price procurement method. If not a transparent auction process, Digital requests a description of how and who will make the selection determination, and questions which organization will perform quality review of the utilities' bid evaluations, the quantity of MWs being procured through the DLM program, and the geographic areas with the highest priority for load relief.

Digital states that it prefers a pay for performance model that pays the participant each year at the end of the performance period. Digital proposes to require the program's annual DLM program payment to be issued within 45 days from the end of the Capability Period for that year. Digital recommends that the Commission add a Performance Payment for kWh generated

during tests and events, as is available in the CSRP and the 2016 BQDM DR Program.

Digital makes several suggestions regarding computation of Performance Factors. First, Digital requests that performance be measured on a per-Aggregation basis, allowing overperformance of component accounts to compensate for underperformance of other accounts within an aggregation. Digital requests that a single aggregator be allowed to participate through more than one aggregation, as currently allowed in CSRP. Finally, Digital requests allowance for a standard bonus percentage to be applied for an annual portfolio Performance Factor equal to 100 percent. Digital suggests that adding a bonus payment would balance the skew of the program's penalty versus reward rules and would be a good marketing tool to encourage participation by end-user customers.

Digital also comments that Con Edison's baseline procedure provides for separate baseline computational formulas for weekday versus weekend events which forces the RFP respondent to evaluate both scenarios so as to determine load curtailment. Digital proposes to either use the weekday baseline procedure for all seven days or allow for two offer levels in the RFP responses.

Digital requests clarification regarding why some utilities feel the need for financial security payments while others do not. Digital proposes the amount of Financial Assurance be reduced to $100/kW or 15% of the total Reservation Payment amount, whichever is lower.

Digital requests that the Commission Con Edison to remove the current tariff rule under General Rule 8.3 that excludes export capable standby rate customers so that these customers can be included in all of Con Edison's DR programs, including the new DLM programs.

Digital requests detailed event trigger criteria and the internal procedure used to call an event, including an analysis of weather history and historical detailed load data vs. the proposed DLM event call criteria, to illustrate how many event calls would have been made using that criteria each summer over the last five years.

Digital state that it supports the principle that the call window should be as small as possible to provide for the needs of the utility sponsoring the program based on their load profile, and suggests Con Edison's call window be shortened to no more than eight hours to call a four-hour event. Digital requests further clarification regarding whether the concept Con Edison is proposing the specific 4-hour events called by Con Edison may or may not be coincident with other DLM resource dispatch.

Digital states that if the Utilities have a definitive need to use a 10-minute dispatch signal, then they should provide a report justifying the need. Otherwise, Digital suggests the 2-hour DLRP requirement seems reasonable and would allow for dual participation in the NYISO market. Digital requests further clarification regarding whether Auto-DLM a network level program like DLRP in Con Edison territory.

Digital requests additional clarification in the utilities' RFPs regarding detailed proposal evaluation criteria, and an explanation of the weight assigned to each criteria element. Digital further suggests the Commission should consider making changes to how programs are administered, and that it may be time to develop a formal oversight function through independent market monitoring. Digitals states that it is concerned about a lack of transparency about how the programs are run, a lack of feedback to the marketplace to allow for efficient assessment of risk/reward by prospective participants,

and the potential for skewed legal agreements that are written by the Utilities that disfavor the participant, adding risk to the marketplace.

Digital agrees with Central Hudson that diesel fuel-based generation should be excluded and supports the inclusion of efficient CHP. Digital disagrees with the blanket exclusion in the Con Edison DLM proposal, arguing that Con Edison and O&R interpretation is not supported by the Storage Order.

Multiple Intervenors (MI)

Multiple Intervenors hereby emphasizes the importance of resolving outstanding cost allocation and cost recovery issues in an equitable, cost-based manner. MI recommends that the Commission direct each of the Utilities to include, as part of their final Procurement plans, details about how costs would be equitably allocated to and collected from customers. MI states that the cost allocation and cost recovery associated with the Procurements also should operate in a manner consistent with cost-of-service principles. MI also notes to the extent surcharges are utilized to recover costs related to the Procurements, such surcharges should be assessed on a demand (i.e., per kW) basis, at least for classes with demand meters.

Joint Utilities Reply (JU)

The JU state that their respective filings are consistent in many regards: (1) 10-minute response requirement for Auto-DLM resources; (2) allowing dual-participation with tariff-based programs where distinct value is offered; (3) dual participation with the Value Stack tariff provided that the customer foregoes the DRV and LSRV payments; (4) not allowing dual participation between Term-DLM and Auto-DLM; (5) excluding the use of submetering; (6) capping performance at 100% and

applying penalties at the event level; (7) allowing new resources via a forward market provided financial assurance is offered; (8) not publishing RFP response evaluation, selection, and clearing methodology; and (9) supporting the continued oversight of the Commission with no need for additional oversight. The JU state that the differences among their filings stem from the fact that the utilities propose to use the Term- and Auto-DLM programs for different purposes, and that each utility should have the flexibility to develop solutions appropriate for each service territory. The JU state that flexibility is important in several areas: (1) procurement strategy; (2) payment terms; (3) program availability; (4) coordination with other DLM programs; (5) coordination with NWAs; (6) test event duration; and load relief availability.

The JU state that their proposed procurement structure were designed for different purposes, and thus have support differing procurement processes. The JU argue that the pay as-bid structure proposed by Con Edison, O&R, NYSEG, and RG&E is used for programs that do not have a MW cap because the intent of the program is to procure resources across the entire service territory. The JU state that the uniform clearing price structure proposed by National Grid and Central Hudson, on the other hand, are used for programs that are location-specific and have a defined MW procurement target associated with specific constraints. The JU argue that the uniform clearing price methodology is reasonable for defined area and quantity programs since each resource participating in those programs are interchangeable since they each provide the same level of benefits. The JU argue that, on the other hand, it would not be appropriate to pay the same price for load relief procured through programs available throughout the service territory, which would occur in areas with distinct or disparate values.

The JU further clarifies that resources may not participate in both the Term-DLM and Auto-DLM procurements. The JU state that Auto-DLM resources will be deployed for Term-DLM events with the possibility of call times shifting to respond to changing grid conditions. In response to Digital's request, the JU clarify that the Term- and Auto-DLM programs will allow a single aggregator to have more than one aggregation, and that performance factors will be calculated for each aggregation, not each customer.

The JU disagrees with Blueprint's recommendation to allow different contract prices for each participation year under the same contract. The JU states that their approach reflects the Commission's determination made in the Storage Order, and that the Commission should uphold its prior ruling on this topic. The JU state that they will submit information regarding their DLM procurements in their annual DLM program reports, including the total MWs procured and cleared by location for National Grid and Central Hudson, and average weighted price for Con Edison, NYSEG, RG&E, and O&R.

The JU disagree with Digital's recommendation to implement an independent market monitoring function. The JU state that the Commission and Department of Public Service Staff already provide sufficient oversight, and that there is no evidence to suggest that such oversight is lacking or insufficient to monitor the procurement processes and implementation of the DLM programs.

As part of the JU's reply comments, Con Edison and O&R state that they disagree with AEMA's proposal to provide an option to delay the contract start date by one year, arguing that this approach would create increased system planning uncertainty. Con Edison and O&R propose, however, that they would offer participants a second chance to prove their

performance capability during the second year of the contract to qualify for a smaller amount of upfront payment. Con Edison and O&R propose that if a participant fails to achieve the first-year benchmark, but achieves at least an 80 percent Average Season Performance Factor during the second year, such participant would receive the remainder of the potential upfront payment based on a contract one year shorter in duration.

The JU posit that the system value created by the Auto- and Term-DLM programs is predicated on reliable and consistent performance during every event. The Joint Utilities disagree with AEMA's proposed methodology for calculating seasonal performance factors, stating that they cannot support awarding more than 100 percent performance on individual events, and that the performance factor should be calculated and capped at 100 percent for each event. The JU posit that allowing performance factors greater than 100 percent would allow an aggregation with inconsistent or poor performance in some events to make up for such lack of performance by over-performing in other events. The JU argue that paying for an aggregation that does not perform consistently is unjustified, would hinder system planning efforts. The JU also oppose AEMA's proposal to apply performance factor derating at the seasonal level rather than on a per-event basis. The JU argue that this request would have a similar effect in allowing an inconsistent aggregation to earn substantial compensation by reducing penalties for participating poorly in some events.

The JU argue that dual participation for the Term- and Auto-DLM programs and the typical tariff-based DLM programs should only be permitted in scenarios where the resources are provided distinct and accumulative payments for distinct and accumulative value to the electricity system, that is, where the values created in one program do not overlap the values created

in the other. The JU explain that their individual approaches to dual participation vary due to differing amounts of overlap between the uses for the new Term-DLM and Auto-DLM programs and the existing CSRP and DLRP programs. The JU state that dual participation in both Term-DLM and CSRP is reasonable at National Grid and Central Hudson because those utilities propose targeted local programs for their Auto-DLM and Term-DLM programs, whereas their respective CSRPs are service territory-wide. The JU note that under this participation model, the timing of call windows may differ and the resource will be satisfying two use cases: one local and one system-wide. Conversely, the JU state that dual participation in both the Term-DLM and CSRP is not reasonable at Con Edison because Con Edison's existing CSRP already has location-specific elements with multiple call windows based on load areas and individual network peaks. Further, the JU states that the values for Con Edison's competitively-procured DLM resources will be based on the same marginal costs as the tariffed DLM programs, resulting in a double-payment if dual participation were allowed.

Regarding AEMA's proposal to allow energy storage submetering, and Blueprint's proposal to allow alternate metering technologies, the JU do not agree and urge the Commission to adopt this recommendation. The JU point out that the Commission previously rejected submetering to qualify for DLM programs in the Storage Order.

As part of the JU's reply comments, Con Edison states that Digital's assertion that General Rule 8.3 of Con Edison's tariff does not allow export-capable standby rate customers to export onto the electric system to participate in Demand Response programs is unfounded. Con Edison explains that such export-capable standby service customers may qualify to export to the system under Buyback Service rates or the Value Stack

tariff, and therefore may participate in demand response programs. Con Edison states that General Rule 8.3 of its tariff is designed for customers with electric generators which may not qualify for buyback service or the value stack tariff, and therefore may only export during certain specific circumstances. Con Edison notes that the Commission had previously approved the elimination of Rider T, Con Edison's CSRP and DLRP, as a special circumstance to export under General Rule 8.3 in the Commission's January 27, 2016 Order in Case 15-E-0570.

As part of the JU reply comments, Con Edison explains that it selected the 88 percent threshold instead of the 92 percent threshold used under the CSRP to allow Term-DLM program resources to have the flexibility to be used to address capacity constraints in particular networks. That is, Con Edison would have the option to call a system-wide event at the 88 percent threshold level, and would be required to call an event at the 92 percent threshold.

The JU state that the recommendations made by commenters to increase the amount of time available to under the Auto-DLM program past 10 minutes run counter to the Commission's vision for the program as laid out in the Storage Order. The JU note that the 10-minute notice under the Auto-DLM program is intended to procure resources that can be dispatched with little advanced notice, could be called on to meet immediate system needs, and which would warrant premium prices paid to participants as well as an alternative participation model to the Term-DLM program. The JU further state that the call notice for the Auto-DLM program should not be harmonized with the DLRP's 2-hour advanced notice, since doing so would result in an Auto-DLM program which is duplicative of the DLRP.

The JU argue that the 10-minute notice for Auto-DLM resources shouldn't be lengthened to allow for dual-

participation in the NYISO demand response markets either. The JU posits that the number of times an Auto-DLM resources would conflict with the NYISO's participation requirements would be small, based on historical data of Con Edison's DLRP Immediate Event call frequency. The JU argue that the Auto-DLM programs were intentionally designed as an alternative DR offering, and that it is realistic that not every resource will participate in both the Auto-DLM program and the NYISO's demand response programs. The JU further note that the Term-DLM program's rules more closely align with the NYISO's programs, therefore, the Term-DLM program will allow the customers the option to simultaneously participate in the NYISO's programs.

The JU state that they propose to include the RFP response evaluation criteria used to select winning bids in the RFPs themselves. The JU state that bidders will have such information prior to responding to the RFPs, however, the JU further state that the evaluation criteria will vary among utilities and procurements based on the need that the procurement is targeted to meet.

The JU agree with AEMA that it may be appropriate to allow new projects to be eligible to participate in the Term- and Auto-DLM programs in a manner similar to Con Edison's proposal, noting, however, that including new versus in-queue or existing resources may have implications regarding whether financial assurance is required of participants upon execution of a contract. The JU state that the purpose of restricting eligibility for program participation to existing or in-queue projects was to provide assurance that the resources selected will be in place in time to meet the commitments made to the program. The JU state that if new resources are allowed to participate in the Term- and Auto-DLM procurements, such resources should be required financial assurance, as Con Edison

and O&R propose. To maintain consistency amongst the utility programs, Con Edison and O&R state that they will only require financial assurance for aggregations or portions of aggregations which contain new resources. Regardless, the JU state that existing resources are a more appropriate fit for the first round of Term- and Auto-DLM procurements due to the practical considerations of having only about six months for a new resource to be sited and operational after the procurement and prior to performance.

APPENDIX B

SUBJECT: Filing by CONSOLIDATED EDISON OF NEW YORK, INC.

Amendment to Schedule P.S.C. No. 10 – Electricity
Second Revised Leaf No. 253.4
First Revised Leaf No. 253.4.2
Sixth Revised Leaf No. 268
Seventh Revised Leaf No. 357

Amendment to Schedule P.S.C. No. 12 – Electricity
First Revised Leaf No. 17.16
First Revised Leaf No. 17.17
Seventh Revised Leaf No. 26.3

Issued: March 3, 2020 Effective: August 1, 2020

Postponed to October 1, 2020.

SAPA: 20-E-0112SP1 – State Register – May 13, 2020

NEWSPAPER PUBLICATIONS: April 1, 8, 15, and 22, 2020.

SUBJECT: Filing by ORANGE & ROCKLAND UTILITIES, INC.

Amendment to Schedule P.S.C. No. 3 – Electricity
Fifth Revised Leaf No. 156
Fourth Revised Leaf No. 157
First Revised Leaf No. 185.6.3
Fourth Revised Leaf No. 185.7
Fourth Revised Leaf No. 185.8
Sixth Revised Leaf No. 249

APPENDIX B

First Revised Leaf No. 249.1

Issued: March 3, 2020 Effective: August 1, 2020

Postponed to October 1, 2020.

SAPA: 20-E-0113SP1 – State Register – May 13, 2020

NEWSPAPER PUBLICATIONS: March 25, April 1, 8, and 15, 2020.