STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 14, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 14-E-0423 - Proceeding on Motion of the Commission to Develop Dynamic Load Management Programs.

ORDER DIRECTING DEMAND RESPONSE PROGRAM MODIFICATIONS ON AN EXPEDITED BASIS

(Issued and Effective May 14, 2020)

BY THE COMMISSION:

INTRODUCTION

On April 3, 2020, Chair John B. Rhodes of the Public Service Commission (Commission) issued a letter seeking input from Demand Response (DR) program stakeholders, including aggregators and participants, New York State's six electric investor-owned utilities (Joint Utilities),[1] the New York Independent System Operator, Inc. (NYISO), the New York State Energy Research and Development Authority (NYSERDA), the Long Island Power Authority (LIPA), and Public Service Entities

[1] The Joint Utilities include: Central Hudson Electric & Gas Corporation; Consolidated Edison Company of New York, Inc. (Con Edison); New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and, Rochester Gas & Electric Corporation.

Group-Long Island (PSEG-LI).[2] Chair Rhodes' letter requested that stakeholders submit written comments by April 15, 2020, and scheduled a webinar to discuss the issues on April 9, 2020. The webinar was attended by over 50 stakeholders, and three written comments were submitted.

By this Order, the Commission directs the Joint Utilities to file tariff modifications implementing program changes for the 2020 summer capability period to provide additional flexibility to help ease the extraordinary impacts of the declared State disaster emergency for the COVID-19 virus on DR market participants. The requirements in this Order seek to balance the need for greater flexibility in setting and enforcing enrollment deadlines and increased performance flexibility, with maintaining DR program effectiveness for utility planning processes and response to peak shaving and reliability needs. The Joint Utilities are directed to file tariff modifications expeditiously to ensure program continuity. In addition, this Order directs Department of Public Service Staff (Staff) to continue coordinating with the NYISO, LIPA, and PSEG-LI to help ease similar issues facing those entities' DR programs.

BACKGROUND

On March 7, 2020, Governor Cuomo issued Executive Order No. 202 declaring a State disaster emergency for the entire State of New York. Among other things, the subsequent NY State on PAUSE Order requires all non-essential businesses to

[2] Demand Response is a generic term that encompass programs administered by the Joint Utilities, wholesale market operators, or other entities. As used herein, Dynamic Load Management (DLM) programs refer to the DR programs administered by the Joint Utilities.

temporarily close, and non-essential personnel to work from home to the extent practicable.[3]

As a result of the COVID-19 pandemic and the necessary response to protect public health, there is significant uncertainty regarding usage of the electric system compared to a more typical year. The NYISO has observed that the reduction in electric demand from commercial customers is a leading driver of overall reduced electricity consumption, which has fallen across the New York Control Area despite specific hourly residential use increases.[4] Despite this uncertainty, electric grid operators must continue to manage peak demands and ensure safe and reliable service at just and reasonable rates. The Joint Utilities' DR programs, and those operated by the NYISO and LIPA/PSEG-LI, will continue to be an important tool to manage peak demand conditions when and where they occur as well as help grid operators respond to reliability concerns.

COMMENTS

Over fifty stakeholders attended the April 9, 2020 webinar (April 9 webinar) and provided feedback. In addition, comments were received from the Advanced Energy Management Alliance (AEMA), Energy Technology Savings Inc. d/b/a Logical Buildings (Logical Buildings), and jointly from Energy Spectrum Inc. and the E-Cubed Company, LLC (Energy Spectrum). The written comments received largely reinforce statements made by stakeholders during the April 9 webinar. Stakeholder comments

[3] Executive Order No. 202.6. Available at: https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

[4] Load Shift Update in Response to COVID-19 (Wednesday, April 29, 2020). Available at: https://www.nyiso.com/covid.

from the April 9 webinar as well as the written comments received are summarized below.

During the April 9 webinar, stakeholders made several observations concerning the DR market as a whole. Stakeholders explained that significant drops in building loads may result in a lower ability to provide load relief. This observation is further bolstered in AEMA and Energy Spectrum's comments, which noted recent reports of demand decreases observed by the NYISO ranging from 1 percent to 18 percent decreases in typical demands during late March and early April 2020.

AEMA, Energy Spectrum and other stakeholders identified the lack of staffing in compliance with the NY on PAUSE order as an issue causing complications in the DR market. AEMA and Energy Spectrum noted difficulties in reaching the appropriate decision-makers at previous or would-be participants negatively impacting the enrollment process. Stakeholders further note that, even once enrolled, a lack of staffing at participating customer locations while non-essential employees are working from home may pose further difficulties in executing load relief strategies if Events are called. AEMA notes that many businesses deemed non-essential have been shut down, and that even those deemed essential may have difficulty responding to Events due to staffing issues or because of the essential nature of the product or service they provide. Stakeholders stated that lower program payments erode the business case for customers to participate in DR programs.

In addition to issues with being able to respond to Events, stakeholders noted impacts of increased uncertainty. Stakeholders noted that customers may not know by the final May 1, 2020, enrollment deadline if they will be able to participate in the 2020 DR summer capability season. Stakeholders note that uncertainty is further compounded for new

participants, whom may require installation of interval metering in areas where Advanced Metering Infrastructure (AMI) is not already available. These new participants may not be able to get such meters since such work is considered non-essential. AEMA states that this delay is preventing customers from participating in DR programs, resulting in customers missing out on revenues that would have otherwise been available to them.

Further, during the April 9 webinar stakeholders cautioned that planned AMI rollouts have been or are likely to be delayed, therefore more participants will have to bear additional costs of traditional interval metering.[5] These stakeholders recommend implementing a partial reimbursement program to provide funding against the increased costs of metering.

Distribution Utility DLM Programs

Due to the increased uncertainty during typical enrollment timeframes and the difficulties in reaching customers given lower than typical staffing levels, stakeholders recommend extending enrollment deadlines for the summer 2020 DLM programs. AEMA and Energy Spectrum each request that the Joint Utilities allow for start dates beginning July 1, 2020, August 1, 2020, and September 1, 2020. Logical Buildings requests a one-month extension allowing for a June 1, 2020 filing deadline to begin program participation on July 1, 2020.

Due to concerns regarding inability to perform during Events, stakeholders recommend a number of changes to the utility DLM programs for the 2020 season. Both AEMA and Energy Spectrum recommend that the 25 percent minimum Performance

[5] Customers that elect to have a communicating interval meter installed often have to pay for the meter, installation, and communications service, whereas no additional payments are required once a communicating meter capable of reading interval demands is installed as part of an AMI rollout.

Factor be waived, with Energy Spectrum suggesting that a 5 percent minimum Performance Factor threshold may be more appropriate. AEMA recommends that the Joint Utilities allow participants to modify enrolled kilowatt (kW) amounts participating in the program on a monthly basis, and that the Joint Utilities should hold off on calling Test Events until later in the summer capability period, preferably July or August. Energy Spectrum recommends eliminating any financial security that DLM program participants may be responsible for providing.

Regarding metering issues, stakeholders recommend that the Joint Utilities provide additional flexibility during the 2020 summer capability period. AEMA recommends allowing enrollments to be approved where meter communications equipment is not yet installed and operational.[6] AEMA suggests that data can be obtained from such meters once communications service is obtained, or through manual meter reading. Both AEMA and Energy Spectrum also suggest that in instances where utility interval or AMI metering equipment or communications are delayed due to COVID-19 related directives, third-party or customer-owned metering[7] that can provide hourly interval data and meet revenue grade metering requirements should be allowed for submission and use in calculating baselines and performance for the DLM programs. AEMA notes that this type of atypical metering arrangement is currently available as an option in Con Edison's Gas Demand Response Pilot.

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[6] For example, where the appropriate interval metering has already been installed but the participant has not been able to obtain communications service.

[7] For example, data collected from a Building Management System.

NYISO DR Programs

During the April 9 webinar, stakeholders identified two main issues related to participation in the NYISO's DR programs, specifically the Special Case Resources (SCR) program, due to impacts of the COVID-19 outbreak. Due to potentially dramatically lower load during the NY on PAUSE period, AEMA identifies the potential for penalties that are assessed resulting from reductions of a participant's load below 70 percent of the effective Average Coincident Load (ACL), and potential reductions of ACLs in future Capability Periods that would be suppressed due to operational changes stemming from COVID-19 related directives. AEMA also identifies challenges in obtaining pertinent customer data required to support enrollment in the SCR Program and in accessing meter data to develop ACLs. AEMA recommends that the Commission work with the Joint Utilities to ensure that timely access to customer data by DR providers to support NYISO DR program participation is maintained. AEMA further notes it may be necessary for the Commission to advocate at the NYISO to reform the ACL methodology if loads continue to be down over Summer 2020.

NYSERDA Programs

Both AEMA and Energy Spectrum recommend that NYSERDA re-institute the Demand Management Program (DMP) incentive programs state-wide for 2020 as a means to help stimulate the New York economy and facilitate increased DR participation in the DLM programs in future program years. Both AEMA and Energy Spectrum recommend that such program be limited to stimulate short term economic activity in the DR segment.

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 "encourage[ing] electric corporations to formulate and carry out long-range programs . . . for . . . the preservation of environmental values and the conservation of natural resources."[8] PSL §66 authorizes the Commission to examine, investigate, and prescribe changes in rates and charges. Further, pursuant to the PSL §66(12)(b), the Commission may, for good cause shown, authorize changes in electric utilities' tariffs, other than major rate increases.

DISCUSSION

The State disaster emergency declared because of the COVID-19 crisis and necessary containment steps included in the Governor's NY on PAUSE directive have resulted in significant uncertainty over and above the typical annual uncertainty that electric grid operators must manage as they plan for the upcoming summer peak demand months. This uncertainty has also significantly disrupted customer operations during critical enrollment timelines, casting into doubt the amount of load relief DR participants would be able to provide during a more typical year. The Commission recognizes the significant hardships facing the DR market, both participants and grid operators.

Since utility-level DR programs were implemented at Con Edison in 2009,[9] and expanded statewide in 2014,[10] the DR market overall has been growing and providing benefits to electric grid operations, planning processes, and to customers.

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[8] PSL §5(2).

[9] Case 09-E-0115, DR Initiatives, Order Adopting In Part and Modifying In Part Con Edison's Proposed DR Programs (issued October 23, 2009) (Order Adopting Con Edison's DR Programs).

[10] Case 14-E-0423 et al., DLM Programs, Order Instituting Proceeding Regarding DLM and Directing Tariff Filings (issued December 15, 2014).

Given both the present and future need to continue modernizing electric grid operations and to assist in meeting New York's substantial clean energy policy goals, it is imperative that progress in growing this market not cease or reverse, even during this time of crisis. Therefore, it is reasonable to provide critical relief to DR participants struggling to maintain typical operations in these atypical conditions.

While seeking to bolster customers' ability to participate in this market, however, the Commission must ensure that DR programs continue to fulfill their core function: to decrease costs to customers. Ultimately, it is not the Joint Utilities that pay DR participants, but electric customers, many of whom are experiencing significant impacts of the COVID-19 outbreak themselves. Therefore, the Commission must balance providing flexibility to DR participants with continuing to ensure that such participants provide the services that customers are paying for. The modifications directed by this Order seek to strike that balance, providing flexibility for DR market participants while avoiding potential gaming opportunities and ensuring value for the customers paying for these services.

Distribution Utility DLM Programs

It is clear from the input received during the April 9 webinar and from all of the written comments received that flexible enrollment deadlines for the Reservation Payment Option of the DLM programs is needed during the 2020 summer capability period. The Commission finds stakeholder comments identifying difficulties with reaching decision-makers at potential participants sites, as well as determining the amount of load relief such participants can provide thereafter, to be persuasive. Therefore, each of the Joint Utilities is directed to file tariff amendments extending the program enrollment

deadlines for the Reservation Payment Option under their Commercial System Relief Program (CSRP) and the Distribution Load Relief Program (DLRP) programs, as applicable, to allow customers to enroll by June 1, 2020, for a July 1, 2020 start date.

Although the Commission is sympathetic to the AEMA and Energy Spectrum's requests to allow participants to enroll in the DLM Programs beyond June 1, 2020 (e.g., for start dates beginning on August 1, 2020, or September 1, 2020), the most likely month that peak conditions will occur during is July. Therefore, allowing enrollments beyond a July 1, 2020 start date offers little additional value for grid operators and customers. Customers wishing to participate in the DLM programs that are not able to enroll by the June 1, 2020, deadline will still be able to participate under the Voluntary Option, which allows customers to enroll on a continuous basis under existing tariffs.

The Commission finds stakeholders' request to only hold Test Events later in the capability period persuasive. While the Joint Utilities should dispatch at least one Test Event at some point in the capability period if an actual event[11] has not already been called, given the additional flexibility in enrolling customers provided herein and the potential for participant difficulty in responding to such event if called early in the season, it is reasonable to withhold on calling Test Events until later in the season. The Joint Utilities are directed not to call a Test Event until July 1, 2020, at

[11] An actual event is a Planned Event under the CSRP or a Contingency Event under the DLRP.

earliest.[12] As suggested by AEMA, this does not preclude any utility from calling events for other reasons, if conditions warrant, during the months of May and June.

The Commission agrees with stakeholder comments requesting flexibility to modify the amount of kW load relief enrolled in the DLM Programs during the capability period, given the significant uncertainty that exists prior to the usual enrollment deadlines. Therefore, the Joint Utilities are directed to allow participants that have already enrolled to modify the amount of load relief enrolled in the DLM programs if such requests are made by June 1, 2020, with such modified enrollment amount to become effective on July 1, 2020.[13] The intent of this modification is to provide the greatest possible certainty for grid operators that the load relief enrolled in the DLM Programs on July 1, 2020, will be available when called upon.

While the Joint Utilities will be required to provide this additional flexibility regarding the amount of load relief enrolled in their DLM Programs, the Commission will not allow monthly changes to enrolled kW per participant, as requested by AEMA and Energy Spectrum. While the Commission is sensitive to the continued uncertainty which DLM Program participants will face throughout the 2020 summer capability period, allowing greater flexibility to increase or decrease enrolled kW load relief monthly presents an unacceptable risk for “bad actors” to

[12] The Commission would prefer that Test Events, if required, be scheduled for August if practicable, but declines to make such a requirement.

[13] The Joint Utilities shall not retroactively modify a participant’s enrolled kW during the months of May or June in the event that a participant reduces its kW enrollment.

game the system.[14] The Commission's decision to only allow for increased flexibility in kW enrollments for a July 1, 2020 start date is intended to balance providing the extra flexibility for those participants negatively impacted by increased uncertainty during the typical enrollment period with ensuring that the value of the service customers are paying for is maintained.

Although the Commission is sensitive to the increased uncertainty faced by many DR participants during enrollment, it is not in electric customers' interest to waive the 25 percent minimum Performance Factor. For the DLM Programs to provide value, the load relief enrolled in the programs must be accurate enough for utility planning and operations processes to rely on this load relief in lieu of building new infrastructure. Since the DLM Programs do not have penalty provisions associated with failure to provide the enrolled amount of load relief, the minimum Performance Factor threshold is one of the main inducements for customers to accurately enroll load relief in the programs. If participants are uncertain about whether they will actually be able to provide the amount of load relief they enrolled in the program, they should make use of the opportunity to modify their enrolled kW load relief amounts accordingly and submit such modifications by June 1, 2020.

Accurate metering of customer demand during Events, data outside of Events needed for determining the customer's baseline usage, and communications of such data to the utility are critical to operation of the DLM Programs. The Commission finds AEMA and Energy Spectrum's comments, as well as those views expressed during the April 9 webinar, regarding

[14] For example, gaming could occur by increasing enrolled kWs during months where an Event or Test Event is not likely, and decreasing enrolled kWs during those months where Events or Test Events are most likely.

participant difficulties in obtaining metering or communications services during the NY on PAUSE period to be persuasive. Additional flexibility should be provided given the impacts of the COVID-19 outbreak on customers' ability to obtain the metering and communications necessary to participate. While additional flexibility is needed, it is also imperative to ensure that customers paying for these programs receive the value of the service they are paying for. Therefore, the Commission will provide some, but not all, of the requested metering and communications flexibility.

In situations where utility-provided interval metering has already been installed, but the participant has been unable to obtain communications service, the relevant utility shall allow such customers to participate in the DLM Programs provisionally until communications service is established. The Joint Utilities are directed to withhold incentive payments related to these participants until communications service is established and the necessary data can be downloaded and verified.[15] In the unusual instance that, prior to establishing communications service, data from the utility meter is unavailable during a time which impacts calculation of customer baseline load or performance during an event, the participant's performance during such event shall be set to zero – this ensures that customers only pay for verified performance during events.[16] Once communications service is obtained, the Joint

[15] Tariff filings made in compliance with this Order should specify disposition of withheld incentive payments. Aggregators should consider sub-aggregating participant accounts without currently available communications service to ensure incentive payment continuity for those participants that have already established communications service.

[16] Participants should seek to establish communications service expeditiously, since some models of interval meter are only capable of storing up to two months of data.

Utilities shall follow their typical guidelines for handling any issues with participants' meter data.

Although the Commission is sympathetic to the issues that stakeholders raised regarding their inability to have the relevant utility install interval metering at their premise during the NY on PAUSE period, the Commission declines to adopt stakeholders' request to allow non-utility grade metering as a substitute for utility-provided interval metering. There are several reasons why allowing such a substitution would be inappropriate.

First, as AEMA notes, while Con Edison has made use of alternative metering in its Gas Demand Response Pilot, doing so at any of the other utilities is administratively infeasible since none of the other utilities have used such data for DR purposes nor do they have a framework to use such data.

Second, although Con Edison does have experience with using alternate data sources as part of its Gas DR Pilot, there is a significant difference of scale between that project and Con Edison's DLM Programs, and that method for data collection is not without issues. Regarding scale, there were 38 customers participating in the performance-based option of Con Edison's Gas DR Pilot as of Con Edison's last annual report, of which only two were participating using data from customer-owned Building Management Systems or Energy Management Systems,[17] (the remainder of customers participated using utility-owned AMI meters or volume-correctors)whereas there were over 1,500

[17] Case 17-G-0606, Con Edison Smart Solutions, 2019 Con Edison Gas DR Annual Report (submitted July 1, 2019).

customers participating in Con Edison's DLRP[18] during 2019.[19] Further, the number of customers participating in Con Edison's CSRP and DLRP have been growing at approximately 12 percent per year – if even a modest portion of the new customers anticipated during 2020 would be participating using non-utility meter data, the number of customers participating in this manner could quickly outstrip Con Edison's capacity to verify data in a timely manner. Finally, due to the scale of participation in these programs and significant amount of available incentives, allowing participants to submit their own interval data with little ability for utilities to verify such data in a timely manner represents an unacceptable gaming risk.

Each of the Joint Utilities is directed to file tariff amendments in compliance with this Order effectuating the modifications above for the 2020 summer capability period.[20] Such compliance tariffs shall be filed to be effective on June 1, 2020, on not less than one day's notice. Because these tariff modifications will be filed in compliance with this Order, the requirements of Public Service Law §66(12)(b) and NYCRR §720-8.1 regarding newspaper publication are waived.

NYISO Issues

Staff reports that outreach to the NYISO is ongoing, the NYISO is aware of participant difficulties, and is committed to helping participants work through these issues. Staff further reports that the NYISO SCR program already has some of

[18] 1,300 customers participated in Con Edison's CSRP, with many customers participating in both CSRP and DLRP.

[19] Case 09-E-0115, supra, Con Edison 2019 DR Annual Report (submitted November 15, 2019).

[20] Although the Commission does not directly regulate LIPA, the Commission nevertheless recommends that LIPA direct similar modifications to the DLM Programs currently in place on Long Island to maximize statewide consistency of DLM Programs.

the flexibility that stakeholders requested. For example, SCR program participants have the ability to modify enrollments on a monthly basis and the ability to report shutdown kW as part of monthly enrollments and could update shutdown kW values on a monthly basis as conditions change over time, limiting exposure to potential penalties. Staff is directed to continue interfacing with the NYISO and participating in stakeholder engagement processes to help lessen impacts of any issues identified regarding operation of the SCR Program during the 2020 summer capability period. Regarding provision of utility meter data needed for SCR Program enrollment, the utilities are directed to work expeditiously to provide such data as quickly as possible. Staff is directed to work with the Joint Utilities and the NYISO to help ease SCR Program enrollment issues stemming from provision of utility data.

NYSERDA Programs

The Commission finds that stakeholders' request to implement a new iteration of the Indian Point Demand Management Program[21] (DMP) is not warranted at this time. The DMP was justified and implemented to lessen impacts of the planned shutdown of the Indian Point Nuclear Generation Facility, and included specific geographic location requirements, load relief duration and timing requirements, and in-service date requirements. Although the Commission recognizes the difficulty that the DR market has experienced as a result of the COVID-19 outbreak, the program modifications described herein are intended to address those concerns. The need for a statewide incentive program for the DR market, rather unlike the DMP, has not been justified.

[21] Case 12-E-0503, Indian Point Demand Management Program, Order Accepting Modified Reliability Contingency Plan (issued September 15, 2016) (referred to as the EE/DR/CHP Program).

Emergency Adoption

This Order is issued on an emergency basis pursuant to the State Administrative Procedure Act (SAPA) §202(6). The Commission finds that immediate adoption of this rule is necessary for the general welfare, which may be harmed by proceeding with DR programs that do not take into account the substantial impacts of the State disaster emergency to the industry. To comply with the requirements of SAPA §202(1) is, therefore, contrary to the public interest. This notice shall constitute notice of proposed rulemaking in accordance with SAPA §202(1). This notice does not constitute a notice for revised rulemaking for the purposes of SAPA §202(4)(a).

CONCLUSION

The public health crisis being experienced due to the COVID-19 pandemic is impacting New Yorkers and the New York DR industry. The Commission expects that the balanced program modifications described in this Order will allow DR participants the needed flexibility for maximum program participation while providing reliable forecasts for electric grid operators. The Joint Utilities are directed report on whether the program modifications directed by this Order should continue into the 2021 summer capability period as part of the Annual Reports to be filed on November 15, 2020.

The Commission orders:

1. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas & Electric Corporation are directed to file, with an effective date of June 1, 2020, and on not less than one

day's notice, tariff amendments to effectuate the directives described in the body of this Order.

2. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas & Electric Corporation are directed to work expeditiously to provide utility meter data necessary for enrollment in the New York State Independent System Operator Inc.'s Demand Response Programs as quickly as possible.

3. New York State Department of Public Service Staff is directed to work with the New York State Independent System Operator, Inc. and Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas & Electric Corporation to ease issues regarding provision of utility meter data, as well as to continue participation in the New York Independent System Operator Inc.'s stakeholder processes.

4. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1, as to newspaper publication with respect to the tariff filings directed in Ordering Clause No. 1, are waived.

5. This Order is adopted on an emergency basis under §202(6) of the State Administrative Procedure Act.

6. 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 one day prior to the affected deadline.

7. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary