

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on November 14, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan, recusing
Radina R. Valova

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

ORDER APPROVING MODIFICATIONS TO DYNAMIC LOAD MANAGEMENT
PROGRAM PROCUREMENTS

(Issued and Effective November 19, 2024)

BY THE COMMISSION:

INTRODUCTION

In its 2024 Dynamic Load Management (DLM) Modification Order,¹ the Public Service Commission (Commission) directed the Indicated Utilities to provide more detail on the proposed modification to the DLM procurement methodology.² In response, the Indicated Utilities filed a supplemental proposal to modify

¹ Case 18-E-0130, Order Approving Modifications to Dynamic Load Management Program Procurements (issued March 14, 2024) (2024 DLM Modification Order).

² The Indicated Utilities include Central Hudson Gas & Electric Corporation (Central Hudson), 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 and Electric Corporation (RG&E).

the procurement mechanism for the Term-Dynamic Load Management (Term-DLM) and Auto-Dynamic Load Management (Auto-DLM) Programs (collectively, the Term- and Auto-DLM Programs) on May 14, 2024, in this proceeding (Proposal). The Indicated Utilities submitted a subsequent filing on July 2, 2024, providing additional details regarding the alternative procurement mechanisms considered in the May 2024 Proposal (Supplemental Filing).³

The current sealed-bid, pay-as-bid procurement requirement was described and approved in the Order Establishing Term-Dynamic Load Management and Auto-Dynamic Load Management Program Procurements and Associated Cost-Recovery (Term- and Auto-DLM Order), issued on September 17, 2020, in this proceeding.⁴ By this Order, the Commission approves the Indicated Utilities' proposal of adding a "fixed, published price" procurement methodology as an additional approach for Term- and Auto-DLM Program procurements.⁵ As discussed below, providing the Indicated Utilities the flexibility to adjust

³ The Proposal and Supplemental Filing are referred to collectively as the 2024 Proposals.

⁴ A sealed-bid, pay-as-bid auction method is a type of bidding process where bidders submit sealed bids without knowing what the other bidders have bid. Successful bids that pass an initial screening process, as outlined in each utility's Request for Proposal, are then weighed on the bidder's proposed price (up to an applicable price ceiling) and accepted in order of lowest price to the highest price underneath the bid ceiling, up until the point where the next bid would make the portfolio no longer cost-effective. Any difference between accepted bids and ceiling price is not passed on to bidders.

⁵ The Indicated Utilities refer to this in their filing as fixed price, published value of capacity, however the Commission adopts the more straightforward terminology of fixed, published price as there are many competing definitions for capacity.

their procurement methods should lead to greater customer involvement in the programs.

BACKGROUND

On December 13, 2018, the Commission issued the Energy Storage Order.⁶ The Energy Storage Order determined that the then-present state of the DLM Programs showed a bias toward short-term, low-capital investment solutions due to the short horizon of the DLM Program revenue stream. To correct this bias, the Commission directed the Joint Utilities to supplement their existing DLM Programs by holding a competitive procurement for DLM resources for a term of no less than three years.⁷ The Commission required that these multi-year agreements must include locked in payment rates for procured resources for the entire term of the agreement, that such payments could be offered at a premium or discount compared to the then-present DLM Program incentive payment rates, based on the most recent utility load forecasting, and that the agreements must include penalties for non-performance.⁸ The Commission also required the Joint Utilities to establish a premium auto-DLM resource category, which would require higher performance factors, as well as stringent availability and multi-year participation commitments.⁹

In accordance with the Energy Storage Order, the Joint Utilities individually filed proposals for their respective

⁶ Case 18-E-0130, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018) (Energy Storage Order).

⁷ The Joint Utilities include all of the Indicated Utilities as well as Consolidated Edison Company of New York, Inc. (Con Edison).

⁸ Energy Storage Order, p. 33.

⁹ Id.

Term-DLM and Auto-DLM Programs on January 29, 2020, in this proceeding. Subsequently, the Commission considered the utility filings and stakeholder comments as part of its Term- and Auto-DLM Order.¹⁰ The Term- and Auto-DLM Order established a consistent statewide framework for Term-DLM and Auto-DLM Programs, including the requirement to use a sealed-bid, pay-as-bid method for procuring Term- and Auto-DLM resources. The Term- and Auto-DLM Order also specified that, while the sealed-bid, pay-as-bid methodology should be used for the first procurements for resources beginning in 2021 and 2022, the Joint Utilities were to report on the effectiveness of their procurement strategies as part of their DLM Program Annual Report, as well as any other program-relevant information consistent with the data that each utility already provides in their DLM Program Annual Reports.¹¹

In a petition filed on August 1, 2023 (August 2023 Petition), the Indicated Utilities requested to modify the sealed-bid, pay-as-bid methodology as set in the Term- and Auto-DLM Order. As reported in the August 2023 Petition, participation levels under the sealed-bid, pay-as-bid methodology have resulted in little to no program participation in the first three procurement cycles in the Indicated Utilities' service territories.¹² In the August 2023 Petition, the Indicated Utilities noted that aggregators stated they were interested in procurement methods that provided more

¹⁰ Case 18-E-0130, Order Establishing Term-Dynamic Load Management and Auto-Dynamic Load Management Program Procurements and Associated Cost Recovery (issued September 17, 2020) (Term- and Auto-DLM Order).

¹¹ Term- and Auto-DLM Order, p. 31.

¹² Con Edison was not a party to the August 2023 Petition and, per its Annual DLM Reports, has had success using the sealed-bid, pay-as-bid method for procuring DLM resources.

transparency regarding potential customer earnings from program participation. They also emphasized that the proposed flexibility would allow each utility to either continue using the sealed-bid, pay-as-bid approach or select an alternative procurement method that aligns with the interests of potential program participants while still complying with the procurement methodology requirements of the Term- and Auto- DLM Order. However, the August 2023 Petition lacked information regarding what alternative procurement mechanism or mechanisms the Indicated Utilities would employ, as well as details regarding the process for how the Indicated Utilities would determine which alternative procurement mechanism would be appropriate or why the alternative would be more successful than the current sealed-bid, pay-as-bid mechanism.

In the 2024 DLM Modification Order, the Commission directed the Indicated Utilities to file a supplemental proposal outlining the proposed alternative mechanisms under consideration with details concerning the benefits and drawbacks of each alternative.¹³ Although Con Edison did not join the August 2023 Petition, the Commission stated that Con Edison is allowed to file its own supplemental proposal or join in on a collective proposal.¹⁴

THE 2024 PROPOSALS

Proposal

In their initial Proposal, the Indicated Utilities propose to modify the Term- And Auto-DLM procurement requirements to allow the use of a "fixed, published price." The Indicated Utilities propose to allow each utility to select

¹³ 2024 DLM Modification Order, p. 8.

¹⁴ Id. Con Edison did not join in on either the Proposal or the Supplemental Filing, nor did it submit its own proposal.

either the "sealed bid, pay as bid" auction or a "fixed, published price" to procure resources for the Term- and Auto-DLM Programs. A utility would be able to select among the two methodologies for the Term-DLM Program procurement, and again for the Auto-DLM Program procurement.¹⁵

The Indicated Utilities explain that the current "sealed bid, pay as bid" approach has resulted in little participation in their auction processes. Further, the Indicated Utilities note that they have received feedback from market participants that the blind approach inherent with the "sealed bid, pay as bid" method does not facilitate attracting potential participants. The Indicated Utilities assert that a "fixed, published price" would provide the transparency that stakeholders requested, simplify customer enrollment, and eliminate a component of the procurement that was identified as chilling market participation.

For a "fixed, published price" procurement, the Indicated Utilities propose to develop the fixed price in consultation with Department of Public Service staff (Staff) using a benefit-cost analysis (BCA) to provide for cost-effective procurement of DLM resources. The Indicated Utilities propose somewhat different processes for the Auto-DLM Program and Term-DLM Program. For the Auto-DLM Program, the Indicated Utilities propose that the price offered would reflect the potential benefits of deferring specific distribution system investments as well as the amount of load relief required to achieve that deferral. The Indicated Utilities state that Auto-DLM Program procurements would include a cap on the megawatt

¹⁵ For example, as proposed, National Grid would be able to hold a "sealed bid, pay as bid" auction to procure resources for its Term-DLM Program, and a "fixed, published price" to procure resources for its Auto-DLM Program.

(MW) amount of load relief procured, based on anticipated distribution system deferral needs, and that bids would be accepted in the order they are received. For the Term-DLM Program procurements, the Indicated Utilities note that there would be no MW cap on resources procured.

The Indicated Utilities state that the "fixed, published price" methodology would be an additional tool for structuring procurements, and is not intended to permanently supplant or eliminate the "sealed bid, pay as bid" methodology. The Indicated Utilities state that they envision an iterative process that can be re-evaluated over time to assess effectiveness in attracting new and quality participation, and that each utility would evaluate their specific circumstances and determine the most appropriate procurement methodology to use for each procurement. The Indicated Utilities note that other details of the Term- and Auto-DLM Program procurements would remain the same, including contracting cadence.

Supplemental Filing

The Indicated Utilities submitted a supplemental filing to provide more information on the alternative procurement methodology included in their initial proposal. In seeking out information as to why the sealed-bid, pay-as-bid procurement mechanism was not attracting participants, the Indicated Utilities state that they engaged with market participants and other stakeholders to gather feedback on the Auto-DLM and Term-DLM procurement processes with the goal of understanding how to increase program participation. The Indicated Utilities report that feedback received from stakeholders suggest that the lack of price transparency inherent in the "sealed bid, pay as bid" method was the primary deterrent against participation in the procurements, as

potential bidders felt they did not have enough information to know whether it would be worthwhile to participate in the procurements.

The Indicated Utilities state that they compared three procurement methodologies to develop their Proposal. The Indicated Utilities note that the "sealed bid, pay as bid" method requires developers to create a proposal without knowing whether they will be selected, and that the lack of price visibility creates uncertainty for potential bidders.¹⁶ The Indicated Utilities also considered a "sealed bid, uniform clearing price" methodology, but determined that while the uniform clearing price mechanism fosters a competitive environment, there is the potential to overpay for lower-cost measures and does not solve identified issues with price visibility.¹⁷ The Indicated Utilities note that the "fixed, published price" method allows developers to design products and customer offers based on known compensation levels and eliminates the price visibility issues raised by stakeholders.

The Indicated Utilities state that they would develop a BCA model that incorporates estimated costs and benefits for each Vintage Year, and then model a fixed price of capacity. The Indicated Utilities note that this process would ensure that the Term- and Auto-DLM Programs would reasonably exceed a

¹⁶ In "sealed bid, pay as bid auctions," bidders propose a price for the service they will provide, and winning bidders are paid at the price they bid. Since the bids are sealed, bidders will not receive information about prices other bidders have requested.

¹⁷ In a "sealed-bid, uniform clearing price" auction all successful bids are paid at the market clearing price, regardless of the price in the participants bid. Since the bids are sealed, bidders would not receive information about the prices other bidders have requested, other than the clearing price.

societal cost test result of 1.0, thus delivering net benefits to customers while allowing for a margin of error for necessary assumptions, such as the number of events called during a Capability Period.¹⁸

The Indicated Utilities state that it would be preemptive to set firm evaluation criteria to dictate when a utility would operate a "sealed bid, pay as bid" auction versus a "fixed, published price" before seeing the markets response to the proposed procurement mechanisms. The Indicated Utilities state that they would consider general themes when determining which mechanism to run, specifically: the number of total bids submitted, the number of bids considered for an award, and the goals of spurring participation versus fostering a more competitive bidding process. The Indicated Utilities note that they would consult with Staff to determine whether to revert to the "sealed bid, pay as bid" method.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) was published in the State Register on July 31, 2024 [SAPA No. 18-E-0130SP15]. The time for submission of comments pursuant to the Notice expired on September 30, 2024. No comments were received.

LEGAL AUTHORITY

Pursuant to Public Service Law (PSL) §§5, 65(1), and 66(1) and (12)(b), the Commission has broad authority over electric corporations, including the responsibility to ensure

¹⁸ The Capability Period refers to the summer months, typically of May through September, with the exception of Central Hudson's Capability Period that begins in June.

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 long-range programs ... for ... the preservation of environmental values and the conservation of natural resources." PSL §66 authorizes the Commission to examine, investigate, and prescribe changes in rates and charges. The Commission may exercise this broad authority to direct regulatory standards to execute the provisions contained in the PSL. Pursuant to PSL §74, the Commission is empowered to establish and carry out a deployment policy to support the 2030 energy storage goal.

DISCUSSION AND CONCLUSION

The DLM Programs play a crucial role in the Indicated Utilities' future system planning by offering valuable tools for achieving long-term peak reduction and system reliability. As such, it is essential to regularly evaluate the DLM Programs and adjust if necessary. The Commission's expectation that the Indicated Utilities procure resources over a multi-year period was intended to encourage greater participation in the DLM Programs. With the exception of Con Edison, the Indicated Utilities' annual filings reveal that the sealed-bid, pay-as-bid procurement method has not been particularly successful.¹⁹ The Indicated Utilities' August 2023 Petition and their DLM Program

¹⁹ See Case 14-E-0423, Central Hudson Annual Report (filed November 16, 2020, November 15, 2021, November 15, 2022, and November 15, 2023); National Grid Annual Report (filed November 16, 2020, November 15, 2021, November 15, 2022, and November 15, 2023); NYSEG Annual Report (filed November 16, 2020, November 15, 2021, November 15, 2022, and November 15, 2023); O&R Annual Report (filed November 16, 2020, November 15, 2021, November 15, 2022, and November 15, 2023); RG&E Annual Report (filed November 16, 2020, November 15, 2021, November 15, 2022, and November 15, 2023).

Annual Reports reflect the challenges they have encountered in securing a portfolio of Auto-DLM and Term-DLM resources under the programs' current sealed-bid, pay-as-bid procurement methodology.

The alternative procurement mechanisms proposed in the Indicated Utilities' 2024 Proposals should increase the chances of future successful solicitations. As stated in the 2024 Proposals, the rigid sealed-bid, pay-as-bid procurement model has not been particularly effective, primarily due to lack of price transparency, but also owing to the fact that it does not provide customers with information about potential revenue. The Indicated Utilities' proposal to select a procurement option that better aligns with the interests of program participants, while still complying with the requirements of the Term- and Auto-DLM Order, is a sensible approach to increase participation in the Term- and Auto-DLM Programs.

As noted throughout the annual reports, 2023 Petition, and the 2024 Proposals, there has been little to no participation in the Indicated Utilities' Term- and Auto-DLM Programs using a sealed-bid, pay-as-bid procurement methodology. For vintage year 2024, the most recent auction thus far, National Grid received two bids and awarded two bids for their Term-DLM Program.²⁰ Other than Con Edison, no other utility received any Term-DLM bids. No bids have been received by any utility since inception, other than Con Edison, for the Auto-DLM Program. The Indicated Utilities' 2024 Proposals provide an alternative to the current sealed-bid, pay-as bid method with a fixed, published price mechanism as a means to foster customer engagement leading to growth of the market over several cycles.

²⁰ Case 14-E-0423, Proceeding on Motion of the Commission to Develop Dynamic Load Management Programs, National Grid Annual Report (filed November 15, 2023).

The proposed fixed, published price procurement mechanism mitigates the issue of price visibility that has been raised by stakeholders. All participants will now know the price being offered upfront and all bidders will receive the same price. This option is anticipated to maximize participation by safeguarding bidder compensation and enhance market interest in future solicitations. Further, experience with the procurements to date demonstrates that a one-size-fits-all procurement methodology for the Term- and Auto-DLM Programs is not the optimal approach state-wide. While the sealed-bid pay-as-bid method has proven successful for some utilities, it has been unsuccessful in others thus far. The proposed fixed, published price method provides an additional procurement option for the Indicated Utilities to consider in an effort to increase participation in the Term- and Auto-DLM Programs.

The Commission approves the Indicated Utilities' Proposal to modify the Term- and Auto-DLM Program procurement methodology to include a fixed, published price option and directs the Indicated Utilities to consult with Staff to establish a cost-effective fixed, published price prior to any solicitations.

Most of the Indicated Utilities' Term- and Auto-DLM Program Implementation Plans need to be updated to accurately reflect the changes to the procurement processes approved herein.²¹ Central Hudson's, National Grid's, and NYSEG and

²¹ Case 18-E-0130, Central Hudson's Auto- and Term-DLM Implementation Plan (filed April 1, 2021) (Central Hudson's Implementation Plan); Con Edison and O&R updated Term-DLM and Auto-DLM Implementation Plan (filed April 1, 2021) (Con Edison and O&R's Implementation Plan); National Grid Updated Implementation Plan for Term-DLM and Auto-DLM Programs (filed April 1, 2021) (National Grid's Implementation Plan); and 2021-04-01 NYSEG-RGE DLM Implementation Plan (filed April 1, 2021) (NYSEG and RG&E's Implementation Plan).

RG&E's Implementation Plans each contain specific references to the "sealed bid, pay as bid" procurement.²² National Grid's and NYSEG and RG&E's Implementation Plans contain language which could be unclear regarding whether Term-DLM Program resources and Auto-DLM Program resources would have to be procured using the same methodology, or would be allowed to follow different procurement methods as approved in this Order.²³

O&R's Implementation Plan provides no specific detail on the procurement methods which would be used, but refers the reader to procurement documents - an outcome the Commission deems satisfactory given that we have provided additional flexibility to procure Term- and Auto-DLM Program resources in this Order. This arrangement eliminates the need for future unnecessary changes to the Implementation Plan documents if further modifications to procurement procedures are necessary. However, O&R may file an update to its shared Implementation Plan to effectuate the directives of this Order if it deems necessary. Updates to the Indicated Utilities' Implementation Plans shall be filed no later than November 30, 2024, in this proceeding.

Further, each of the Indicated Utilities must submit tariff amendments to effectuate the directives in this Order, as their present tariffs reference "pay as bid" procurements in the

²² Central Hudson's Implementation Plan, pp. 4, 9, 14; National Grid's Implementation Plan, p. 15; NYSEG and RG&E's Implementation Plan, pp. 4, 7.

²³ National Grid's Implementation Plan, p. 5; NYSEG and RG&E's Implementation Plan, p. 3.

applicable sections describing the Term- and Auto-DLM Programs.²⁴ These tariff amendments shall be filed to become effective on January 1, 2025, on not less than 30 days' notice. Since these tariff amendments will be filed in compliance with this Order, require only minimal changes to effectuate the directives of this Order, and there has already been a public notice and comment period addressing the modifications, the newspaper publication requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 are waived.

The Commission orders:

1. Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and 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 2025 using either a sealed-bid, pay as bid auction or a fixed, published price procurement.

2. Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to solicit resources for a 10 minute advance notice peak-shaving

²⁴ P.S.C. No. 15 - Central Hudson Gas & Electric Corporation Schedule for Electric Service, Leaf No. 163.5.50; P.S.C. No. 120 - New York State Electric & Gas Corporation Schedule for Electric Service, Leaf No. 117.55; P.S.C. No. 220 - Niagara Mohawk Power Corporation d/b/a National Grid Schedule for Electric Service, Leaf No. 263.31; P.S.C. No. 3 - Orange and Rockland Utilities, Inc. Schedule for Electric Service, Leaf No. 189.6; P.S.C. No. 19 - Rochester Gas and Electric Corporation Schedule for Electric Service, Leaf No. 160.40.3.

and reliability Auto-DLM Program to be available in utility-specified areas of their respective service territories beginning in Summer 2025 using either a sealed-bid, pay as bid auction or a fixed, published price procurement.

3. Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and 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.

4. Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall file updated Implementation Plans consistent with the discussion in the body of this Order no later than November 30, 2024.

5. Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall file tariff amendments needed to effectuate the directives discussed in the body of this Order to become effective on January 1, 2025, on not less than 30 days' notice.

6. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1, related to newspaper publication of the tariff amendments required in ordering clause 5 are waived.

7. 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.

8. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary