

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 14, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
John B. Howard
David J. Valesky
John B. Maggiore

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

ORDER APPROVING MODIFICATIONS TO DYNAMIC LOAD MANAGEMENT
PROGRAM PROCUREMENTS

(Issued and Effective March 15, 2024)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on August 1, 2023 (Petition), Central Hudson Gas and Electric Corporation (Central Hudson), New York State Electric and 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 Indicated Utilities) seek to modify the Public Service Commission's (Commission) requirements for procurements under the Term-Dynamic Load Management (Term-DLM) and Auto-Dynamic Load Management (Auto-DLM) Programs (collectively, the Term- and Auto-DLM Programs). The current procurement requirements were set forth 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.

As discussed below, allowing the Indicated Utilities to modify the procurement methodology presents an opportunity to explore methods to increase customer participation in the Term- and Auto-DLM Program. However, more information on the particular alternative procurement mechanisms that the Indicated Utilities would like to implement is needed before the current mechanism is abandoned. By this Order, the Commission directs the Indicated Utilities to file a proposal outlining the alternative procurement mechanisms under consideration.

BACKGROUND

On December 13, 2018, the Commission issued the Order Establishing Energy Storage Goal and Deployment Policy.¹ The Energy Storage Order considered the recommendations contained in the "New York State Energy Roadmap and Department of Public Service/New York State Energy Research and Development Authority Staff Recommendations," as well as stakeholder comments submitted in response.² The 2018 Roadmap made specific recommendations regarding actions that the Commission should take to encourage the development of energy storage in New York, including recommending that the Joint Utilities be required to offer an option for multi-year DLM program participation

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

² Case 18-E-0130, New York State Energy Storage Roadmap (filed June 21, 2018) (2018 Roadmap).

agreements.³ The 2018 Roadmap recommended that these multi-year agreements include a term of three to five years, or longer, that the agreements be competitively procured, and include penalties for non-performance. The 2018 Roadmap also recommended that the Commission require the Joint Utilities to develop a "premium" auto-DLM resource category, which would include that participants maintain high performance factors, availability, visibility, and reliability.

The Energy Storage Order agreed with the 2018 Roadmap and stakeholder comments 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.⁴ The Commission agreed with the 2018 Roadmap and stakeholders 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.⁵ The Commission also required the Joint Utilities to establish a premium auto-DLM resource category,

³ Energy Storage Order, pp. 30-31. The Joint Utilities include the Indicated Utilities and Consolidated Edison Company of New York, Inc. (Con Edison).

⁴ Energy Storage Order, pp. 32-33.

⁵ Id., p. 33.

which would require higher performance factors, as well as stringent availability and multi-year participation commitments.⁶

In accordance with the Energy Storage Order, the utilities individually filed proposals for their respective 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. 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.⁷

PETITION

In the Petition, the Indicated Utilities request authorization to modify the requirement to use a sealed-bid, pay-as-bid procurement of Term- and Auto-DLM program resources. As exhibited in Attachment A of the Petition, and as reported in their DLM Program Annual Reports, participation levels under the

⁶ Id.

⁷ Case 14-E-0423, et al., Proceeding on Motion of the Commission to Develop Dynamic Load Management Programs, Order Adopting Program Changes with Modifications and Making Other Findings (issued April 19, 2018).

seal-bid, pay-as-bid methodology have resulted in little to no program participation in the first two procurement cycles in the Indicated Utilities' service territories. The Indicated Utilities' Petition seeks to modify the procurement mechanism in an effort to motivate additional activity in future DLM resource solicitations.

The Indicated Utilities note that engagement with aggregators has indicated that there is interest in pursuing procurement methodologies that offer more visibility into potential revenues available to customers for program participation. They also note that the flexibility proposed in the Petition would allow for each of the Indicated Utilities to choose to either continue with the sealed-bid, pay-as-bid mode or chose an alternate procurement method that meets the interests of prospective program participants while still adhering to the requirements of the Term- and Auto- DLM Order.

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 September 27, 2023 [SAPA No. 18-E-0130SP14]. The time for submission of comments pursuant to the Notice expired on November 27, 2023. Con Edison submitted comments in support of the Petition.

COMMENTS

Con Edison notes that the current procurement method is not a one-size-fits-all mechanism, and that while the pay-as-bid model may work for some utilities, the Petition demonstrates that it does not work for others. Con Edison supports flexibility in utilizing alternative strategies that adhere to

the same cost-effectiveness standards that currently apply to the sealed-bid, pay-as-bid model in order to motivate participation.

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 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 review the proposed tariff leaves, as well as modify, reject, or approve such filed tariffs. As such, the Commission has the legal authority to review the Companies filings and approve and make effective tariff amendments, as prescribed in this Order.

DISCUSSION AND CONCLUSION

The Term- and Auto-DLM Programs are an integral part of the Joint Utilities' system planning in future years by providing valuable tools for achieving long-term peak reduction and system reliability. The Commission's expectation that the Joint Utilities procure resources over a multi-year period was to engage increased participation in the DLM programs.

The Term- and Auto-DLM Order directed the Joint Utilities to use a sealed-bid, pay-as-bid method for procuring Term-DLM and Auto-DLM Program resources for the initial procurements for resources beginning in 2021 and 2022, and directed the Joint Utilities to report on the effectiveness of

their procurement strategies as part of the DLM Program Annual Reports. Beginning November 15, 2021, the Joint Utilities began reporting on the effectiveness of their Term- and Auto-DLM Programs in their DLM Program Annual Reports. Both the DLM Annual Reports, and Attachment A of the Petition, illustrate that participation levels in the Term- and Auto-DLM Programs are non-existent, or nearly non-existent. The Indicated Utilities have received limited to no bids in the first two DLM procurement cycles (for the 2021/2022 and 2023 Vintage Years).

It is important to continually assess the state of the DLM programs and make changes as necessary. Here, the change proposed by the Indicated Utilities is intended to increase the likelihood of future successful solicitations. As described in the Petition, the prescriptive sealed-bid, pay-as-bid procurement model has been less than successful for the Indicated Utilities, and does not offer current or historical visibility to customers about potential revenue. The Indicated Utilities' proposal to choose a procurement option that better meets the interests of program participation, while still adhering to the requirements in the Term- and Auto-DLM Order, is a reasonable solution to pursue to increase participation in the Term- and Auto-DLM Programs.

However, the proposal lacks details regarding what alternative procurement mechanism or mechanisms would be employed. Additionally, the proposal lacks information regarding the process for how the Indicated Utilities would determine which alternative procurement mechanism is appropriate and why the alternative could be more successful than the currently employed sealed-bid, pay-as-bid mechanism. The lack of specificity regarding which alternative mechanisms may be employed also prevents stakeholders from receiving an

appropriate amount of notice or opportunity to provide comment. Therefore, the Commission directs the Indicated Utilities to file a supplemental proposal, either jointly or individually, outlining the alternative procurement mechanisms currently under consideration, as well as the benefits and drawbacks of each alternative, within 60 days of this Order, for Commission review and approval. Although Con Edison was not a party to the Petition, the Commission will allow Con Edison to also file its own supplemental proposal, or join in on a collective proposal, for alternative procurement mechanisms so that it has the flexibility to use an alternative procurement mechanism in the future.

Request for Timeline Accommodation

On November 2, 2023, the Indicated Utilities filed a Request for Timeline Accommodation Regarding the Procurement of DLM Programs. The Term- and Auto-DLM Order required that solicitations must provide at least 18 months between date of solicitation and the beginning of the first performance period. For most of the Indicated Utilities, the next performance period begins on May 1, 2025; Central Hudson's performance period begins on June 1, 2025. In order to maintain compliance with the 18-month requirement, the Indicated Utilities requested a one-time allowance to shorten the 18-month procurement period in order to allow for time to implement modifications to the

procurement mechanism for the 2025 vintage year following the anticipated Commission order.⁸

At this time, the Indicated Utilities' request is moot as they have already issued the solicitation for the 2025 vintage year. Even if the Indicated Utilities' request were still viable, the Commission is reluctant to shorten the procurement period without the opportunity for public comment. If the Joint Utilities would like to shorten the procurement period for the 2026 vintage year, they should make their request as part of their annual reports or in their alternative procurement mechanism proposal. The request can then go through the proper notice and comment process.

The Commission orders:

1. Central Hudson Gas and Electric Corporation, New York State Electric and 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 a proposal outlining the proposed alternative procurement mechanisms, as directed in the body of this Order, no later than 60 days after the issuance of this Order, for future commission review and approval.

⁸ The Indicated Utilities' request did not specify a specific shortened procurement period as they did not know when the Commission would issue an order responding to their Petition. However, the Indicated Utilities did explain that participation beginning May 1, 2025, begins with the December 2023 procurement launch - an 18-month procurement period. If the procurement launch is delayed until March 2024, the Indicated Utilities request the procurement timeline be shortened from 18 to 15-months to meet start of the May 1, 2025 performance period.

2. 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.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary