

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of Energy Storage Deployment Program) Case 18-E-0130

**JOINT UTILITIES PETITION FOR CLARIFICATION OF THE TERM-DLM AND
AUTO-DLM PROGRAMS**

On September 17, 2020, the Public Service Commission (“Commission”) issued its *Order Establishing Term-Dynamic Load Management and Auto-Dynamic Load Management Program Procurements and Associated Cost-Recovery* (“Order”)¹ directing the Joint Utilities² to implement, with modifications, their resource solicitation plans for a Term-Dynamic Load Management (“DLM”) Program designed for peak reduction and an Auto-DLM Program designed for both peak reduction and for reliability of the electric system, especially during grid contingencies.³ As discussed below, the Joint Utilities respectfully seek clarification as to whether utilities may include in their respective agreements a negative performance factor should a participant fail to provide its contractually obligated load relief as a critical operational program requirement.

¹ Case 18-E-0130, *In the Matter of Energy Storage Deployment Program* (Storage Proceeding), Order Establishing Term-Dynamic Load Management and Auto-Dynamic Load Management Program Procurements and Associated Cost-Recovery (issued September 17, 2020) (“Order”).

² The Joint Utilities are Central Hudson Gas & Electric 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. (“O&R”), and Rochester Gas and Electric Corporation.

³ The Term-DLM program can be called during fixed four-hour call windows aligned with network peaks on days where the day-ahead load forecast rises above certain thresholds. The Auto-DLM program can be called with ten-minute notice in response to emergencies that may impact reliability. Auto-DLM customers can also be called using the same criteria as for Term-DLM program events.

By way of background, the Commission’s *Order Establishing Energy Storage Goal and Deployment Policy* (“Storage Order”)⁴ required the Joint Utilities to develop DLM resource programs and file implementation plans detailing a competitive procurement process for DLM resources.⁵ Under both the Term- and Auto-DLM programs, the Commission directed the Joint Utilities to issue solicitations for contracts of up to three-to-five years in duration with program participants for load relief during the May 1 through September 30 capability period (“Capability Period”) of each contracted year. Program participants would be compensated at the end of each contracted Capability Period with reservation payments, based on their contractual price of dollar-per-kW for their provided load relief, and their Average Season Performance Factor for that Capability Period.⁶ Notably, the Commission directed that the utilities’ programs “should include penalties for nonperformance.”⁷

Each of the utilities filed unique proposed implementation plans for their respective Term-DLM and Auto-DLM programs.⁸ As an example, in response to the Commission’s direction, the Con Edison/O&R Implementation Plan⁹ included a negative performance factor¹⁰

⁴ Storage Proceeding, *Order Establishing Energy Storage Goal and Deployment Policy* (issued December 13, 2018) (“Storage Order”).

⁵ *Id.*, pp. 32-36, 108.

⁶ Storage Proceeding, *Plan of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. to Implement Competitive Procurement Process For Dynamic Load Management Resources and Premium Auto-DLM Resources* (“Con Edison/O&R Implementation Plan”) (issued January 29, 2020), pp. 19-21. The Average Season Performance Factor is the average of all Adjusted Performance Factors during all the individual demand response events in a single Capability Period. Storage Proceeding, *Con Edison/O&R Implementation Plan*, pp. 20-21.

⁷ Storage Proceeding, *Storage Order*, p. 33.

⁸ *See, e.g.*, Storage Proceeding, *Con Edison/O&R Implementation Plan*.

⁹ Storage Proceeding, *Con Edison/O&R Implementation Plan*, pp. 19-21.

¹⁰ The negative performance factor is different than the Commission-approved early exit fee. Storage Proceeding, *Storage Order*, p. 15, n.23. The early exit fee permits the participant to withdraw from the program after contract signing but prior to when actual performance is needed. The participant can decide not to go forward with a project and pay the utility to withdraw from the program. The early exit fee provides the utilities the necessary time to secure other resources for reliability purposes.

in the Average Season Performance Factor.¹¹ For each called event, the utility would calculate each participant's Performance Factor,¹² which is then used to compute Adjusted Performance Factors.¹³ Simply put, the combination of these two calculations compares the contracted load relief to the actual load relief provided. If the participant meets its requirement, it is entitled to be paid whereas, when participants fall below a certain performance level (*e.g.*, 40 or 45 percent of their contracted load amounts for Term-DLM and Auto-DLM, respectively), they receive reduced compensation or may need to pay the utility.

Con Edison/O&R included the negative performance factor for several reasons. First, if the participant fails to meet its contractual requirement, the utility will require other resources to mitigate load needs. Second, the mechanism is designed to encourage participants to place dependable load relief bids and, combined with the Early Exit Fee, provides appropriate incentives for participants to notify the utility in a timely manner of any change in their ability to fulfill their agreed upon performance obligations.¹⁴ Both the utility and the participant are entering into a multi-year contract for which each side needs certainty – the participant needs to be sure of payment receipt and the utility needs certainty of the load relief that will be available for operational needs. In this case, the utilities would pay participants to provide load relief that results in a downward adjustment to the load forecast, which requires that participants meet contractual performance obligations.

¹¹ Central Hudson's plan mentioned a similar factor, *see* Storage Proceeding, Central Hudson Gas & Electric Corporation Description of a Competitive Procurement Process for Dynamic Load Management Resources and Premium Auto-Dynamic Resources (filed January 29, 2020), p. 6, but did not include the level of detail provided in the Con Edison/O&R Implementation Plan. Other utilities did not mention this component.

¹² The Performance Factor is calculated as the ratio of load relief in kW provided during an Event to the amount of load relief in kW enrolled in the program, from 0 to a maximum of 100 percent. Storage Proceeding, Order, p. 42, n.34.

¹³ *See* Storage Proceeding, Con Edison/O&R Implementation Plan, pp. 19-21, where these calculations are described.

¹⁴ Con Edison's non-wires solutions and Brooklyn Queens Demand Management programs have contractual negative performance factors for this same purpose.

The Order generally accepts the utilities' implementation plans, conforms the utilities plans for consistency, and addresses the issues raised in comments.¹⁵ While the Commission includes a five-page discussion of Performance Factor Adjustments, including descriptions of how the adjustments would work, the Order does not address the proposed negative performance factor included in the Con Edison/O&R Implementation Plan.¹⁶ While two footnotes in the Order state that participants would not earn Reservation Payments if they fail to provide less than 40 or 45 percent of their contracted load amounts for DLM and Auto-DLM, respectively,¹⁷ the footnotes do not address the proposed negative performance factor. The Order describes information utilities should include in performance factors, with no mention of the proposed negative factor. The Order also notes that Con Edison/O&R's "proposed Performance Factors and adjustments for poor performance are reasonable"¹⁸ but does not specifically refer to the negative performance factor.

Notwithstanding its silence on negative performance factors, the Order's discussion of Performance Factors aligns with the Joint Utilities' position that negative performance factors should be included in contracts with participants and be enforceable. The Commission states that 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."¹⁹ The Commission further emphasizes that "[c]ustomers should not be paying

¹⁵ Notably, no party commented about the negative performance factors. One could infer that the inclusion of the negative performance factors was not an issue of concern for parties.

¹⁶ However, the Order requires the Implementation Plans to be consistent among utilities. Storage Proceeding, Order, p. 4. As a result, the Joint Utilities believe that this negative performance factor should be included in all implementation plans.

¹⁷ Storage Proceeding, Order, p. 43, nn. 35-36.

¹⁸ *Id.*, p. 47.

¹⁹ *Id.*, p. 49.

participants for demand response services that those participants are unwilling or unable to provide when called upon.”²⁰

The Joint Utilities urge the Commission to clarify its intent to authorize this important operational program element. Negative performance factors are key to the implementation of these programs because they provide certainty that the load relief will be available when called upon and address the Commission’s concern that customers should only pay for demand response that is actually provided. In view of the importance of negative performance factors in the overall implementation of the Term-DLM and Auto-DLM programs, the Joint Utilities respectfully ask the Commission to explicitly approve this tool.

Dated: October 19, 2020

Respectfully submitted,

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