PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments in Response to Tariff Filings to the New York State Public Service Commission ("Commission") in Cases 14-E-0423, 15-E-0186, 15-E-0188, 15-E-0189, 15-E-0190 and 15-E-0191.[1]

Multiple Intervenors' Comments respond to tariff filings by Central Hudson Gas & Electric Corporation ("Central Hudson"), New York State Electric & Gas Corporation ("NYSEG"), Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk"), Rochester Gas and Electric Corporation ("RG&E") and Orange and Rockland Utilities, Inc. ("O&R"), which were filed on or about February 16, 2016, seeking to modify various aspects of their recently-established retail demand response, or dynamic load management ("DLM"), programs.[2] Notices of the Utilities' tariff filings were published in the March 9, 2016 edition of the *New York State Register* (I.D. Nos. PSC-10-16-00007-P [Niagara Mohawk], PSC-10-16-00008-P [Central Hudson], PSC-10-16-00009-P [RG&E], PSC-10-16-00013-P [NYSEG] and PSC-10-16-00014-P [O&R]).

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[1] Cases 14-E-0423, *Proceeding on Motion of the Commission to Develop Dynamic Load Management Programs*, 15-E-0186, *Petition of Central Hudson Gas & Electric Corporation to Effectuate Dynamic Load Management Programs*, 15-E-0188, *Petition of New York State Electric & Gas Corporation to Effectuate Dynamic Load Management Programs*, 15-E-0189, *Petition of Niagara Mohawk Power Corporation d/b/a National Grid to Effectuate Dynamic Load Management Programs*, 15-E-0190, *Petition of Rochester Gas and Electric Corporation to Effectuate Dynamic Load Management Programs*, and 15-E-0191, *Petition of Orange and Rockland Utilities, Inc. to Effectuate Dynamic Load Management Programs*.

[2] Central Hudson, NYSEG, Niagara Mohawk, RG&E and O&R collectively are referred to herein as the "Utilities."

Multiple Intervenors members have been long-time supporters of demand response. In fact, Multiple Intervenors has played an instrumental role in helping to develop, and modifying as needed, the wholesale demand response programs administered by the New York Independent System Operator, Inc. ("NYISO"). That being noted, Multiple Intervenors' support for (and willingness to participate in) retail demand response programs regulated by the Commission currently is in flux. While Multiple Intervenors contends that well-designed retail demand response programs can benefit customers by moderating electricity costs (particularly during peak periods) and helping to maintain grid reliability, it is essential that the Commission resolve outstanding cost allocation and cost recovery issues in an equitable, cost-based manner.

On June 18, 2015, the Commission issued its *Order Adopting Dynamic Load Management Filings with Modifications* ("Order") in these proceedings. On July 17, 2015, Multiple Intervenors petitioned for rehearing of the Order on the limited issues of cost allocation and cost recovery ("Petition"). Nine months later, Multiple Intervenors' Petition still is pending at the Commission awaiting action.

In its Petition, Multiple Intervenors advanced a number of significant concerns regarding holdings in the Order relating to how retail demand response program costs should be allocated to, and recovered from, customers. First, Multiple Intervenors advocated that the Commission distinguish between transmission-related costs and distribution-related costs for purposes of cost allocation and cost recovery. Customers served off of a utility's transmission system – such as customers served at transmission and sub-transmission voltages – typically are not allocated distribution-related costs in any reputable cost-of-service study because such costs are not caused by them and they do not benefit directly (if at all) from such investments. Similar to infrastructure investments, the costs of a utility's DLM programs focused on its distribution system should not be allocated to, or recovered from, customers served off of the transmission system.[3] Multiple Intervenors is not opposed to distribution system DLM programs, provided that the costs of such programs are allocated equitably in accordance with well-established cost-of-service principles. (*See* Petition at 6-8.)

Second, Multiple Intervenors advocated that the costs of DLM programs be allocated to, and recovered from, applicable service classes based on demand in whole or large part. Most of the anticipated benefits of DLM programs – *e.g.*, reducing peak demands, maintaining reliability, improving resiliency, and avoiding or delaying infrastructure investments – are (or should be) allocated to the responsible service classes based on class contribution to system demand. For instance, infrastructure investments are not recovered on a purely volumetric, per kWh, basis. Rather, such investments typically are allocated to the appropriate service classes on the basis of class contribution to overall demand, either on an annual, monthly or seasonal basis. The Commission previously recognized that: "Allocating DLM program costs in the same way that other utility costs are allocated represents a step forward to seamlessly integrating DLM programs into regular utility operations." (Order at 16.) Consistent with that approach, the Commission should not allocate or recover costs that are demand-based in whole or material part pursuant to a per kWh volumetric methodology, even if it may be administratively easier or expedient to do so. Accordingly, DLM program costs should be allocated to the appropriate, responsible service classes on a demand basis (and, for demand-metered classes, then recovered within each class on the basis of demand). (Petition at 8-10.)

For the reasons set forth in its Petition, now is the time for the Commission to establish equitable, cost-based policies with respect to the allocation and the recovery of DLM

[3] In contrast, the cost of a utility's DLM programs focused on its transmission system should be allocated to and recovered from all customers because all customers are served by, and benefit from, the transmission system.

program costs. If that occurs, Multiple Intervenors anticipates that its members will actively support, and participate in, the Utilities' DLM programs. Importantly, however, the present uncertainty regarding how the costs of the DLM programs will be allocated and recovered from customers is impacting decisions by Multiple Intervenors members as to whether or not they should participate in the programs.

Multiple Intervenors will not further rehash its pending Petition here. Rather, the remainder of these Comments focus on a limited number of issues pertaining to how the Utilities' DLM programs can be improved. Specifically, Multiple Intervenors addresses issues pertaining to: (a) inadequate transparency with respect to DLM program compensation levels; (b) the inability of customers with multiple accounts in the same utility service territory to aggregate performance; (c) the merits of ensuring consistent use of performance factors to ensure that non-residential customers participating in DLM programs are compensated based on actual performance; and (d) Niagara Mohawk's apparently-unique exclusion of transmission level customers from participating in any of its DLM programs.

COMMENTS

THE COMMISSION SHOULD MODIFY THE UTILITIES' TARIFF FILINGS AND/OR CURRENT DLM PROGRAMS IN ACCORDANCE WITH MULTIPLE INTERVENORS' COMMENTS

Multiple Intervenors recommends that the Utilities' tariff filings and/or existing DLM programs be modified in the following respects: (a) more transparency is needed with respect to DLM program compensation levels; (b) customers participating in DLM programs should be allowed to aggregate accounts within a utility's service territory; (c) DLM programs directed at non-residential customers should utilize performance factors consistently to ensure that participants only are compensated for actual performance; and (d) Niagara Mohawk's exclusion of transmission-level customers from all of its DLM programs should be modified.

A. More Transparency Is Needed With Respect to DLM Program Compensation Levels

Multiple Intervenors advocates that participants in DLM programs be paid commensurate with the economic savings or benefits realized by such participation. Thus, there should be a rational basis for compensation levels, and Multiple Intervenors is opposed to proposals that would unduly subsidize DLM program participants (including by reliance on selected so-called externalities). The potential subsidization of DLM would send inaccurate (or non-economic) price signals to customers and increase unnecessarily the financial burdens on non-participating customers.[4]

In reviewing the Utilities' tariff filings, it is apparent that the compensation levels for DLM programs vary widely for reasons that are not apparent to Multiple Intervenors. For instance, in the Utilities' various Commercial System Relief Programs, the tariff Reservation Payments are as follows:

Utility	Reservation Payment – Up to 4 Planned Events	Reservation Payment – 5+ Planned Events
Central Hudson	$4.00/kW/mo.	$5.00/kW/mo.
Niagara Mohawk	$2.25/kW/mo.	$2.67/kW/mo.
NYSEG	$2.75/kW/mo.	$3.00/kW/mo.
RG&E	$3.25/kW/mo.	$3.50/kW/mo.
O&R	$3.00/kW/mo.	$4.00/kW/mo.

Thus, for up to four planned events, the Utilities' Reservation Payments range from $2.25/kW/mo. to $4.00/kW/mo., while for five or more planned events, the Reservation Payments range from $2.67/kW/mo. to $5.00/kW/mo.

[4] Multiple Intervenors contends that subsidization of demand response is unnecessary because, *inter alia*, well-designed and well-implemented programs should produce compensable, economic savings that are sufficient to incentivize participation in the programs.

Although Multiple Intervenors would suspect that the economic value of peak demand reductions varies somewhat from utility to utility (and between NYISO capacity zones), the reasons for such large discrepancies in compensation levels amongst the Utilities' DLM programs are not clear to Multiple Intervenors. Moreover, there appears to be a lack of transparency as to how Reservation Payments and other compensation levels contained in the Utilities' tariffs are calculated. Indeed, it is not clear whether the Utilities even are utilizing consistent methodologies to calculate DLM program compensation levels. Thus, for the foregoing reasons, Multiple Intervenors urges the Commission to: (a) examine and evaluate, and modify as necessary, the compensation levels contained within the Utilities' DLM programs; and (b) adopt policies to provide for greater transparency as to how such compensation levels are to be calculated and updated on a periodic basis.

B. Customers Participating in DLM Programs Should Be Allowed to Aggregate Accounts Within a Utility's Service Territory

Based on Multiple Intervenors' review of the Utilities' tariff filings, it appears that customers with multiple accounts within a utility's service territory still are not able to aggregate accounts for purposes of participating in DLM programs. This omission should be modified.

A number of Multiple Intervenors members – and many other non-residential customers – operate multiple facilities within a single utility's service territory. Each of these facilities typically has its own account (and, in some instances, there are multiple accounts within a single, larger facility). These customers should be permitted, on their own (*i.e.*, without having to resort to an aggregator), to aggregate multiple accounts.

For instance, a manufacturer may operate three facilities, with three different accounts, within the Niagara Mohawk service territory. Based on the nature of their operations, and customer orders, each facility on its own only may be willing to commit to reduce demand by

1 MW during peak hours for purposes of participating in a DLM program. If, however, that manufacturer possessed the flexibility to aggregate performance at its three facilities during events (*e.g.*, depending on production schedules, the status of customer orders, the status of certain equipment and processes), it might be much more willing and able to commit to reducing demand by 6 MW (or some other amount greater than 3 MW) during such events. Under such circumstances, the manufacturer conceivably could choose to reduce demand by 3 MW at two facilities and not reduce demand at all at a third facility. This flexibility, if added to the Utilities' DLM programs, likely would increase not only the number of customers choosing to participate therein, but also the amount of demand that they would be willing to commit to reducing when called upon to perform.

For the foregoing reasons, Multiple Intervenors recommends that the Utilities be directed to modify their non-residential DLM programs to provide customers with the ability to aggregate performance among multiple accounts. Because Multiple Intervenors is proposing that such ability to aggregate be limited, for now, to accounts within a single utility's service territory, this modification should not be unduly difficult or time-consuming to implement.

C. DLM Programs Directed at Non-Residential Customers Should Utilize Performance Factors Consistently to Ensure That Participants Only are Compensated for Actual Performance

Multiple Intervenors supports the Utilities' use of performance factors in calculating compensation levels for the participation of non-residential customers in DLM programs. Tariff-based compensation levels should be cost-based (*i.e.*, consistent with savings produced by demand reductions) and, importantly, participating customers only should be paid for actual performance. In approving and overseeing the Utilities' non-residential DLM programs, the Commission should ensure that there is general consistency in whether and how compensation is paid to participants (recognizing that, based on utility-specific circumstances, differences in actual compensation levels may be warranted).

Performance factors measure whether – and to what extent – non-residential customers participating in DLM programs perform (*i.e.*, reduce demand) when called upon to do so during a system event. Customers that perform at or above committed levels are entitled to more compensation than customers that provide only partial performance (or no performance at all). It appears that all of the Utilities rely on performance factors to calculate compensation, although there are limited differences in approaches. For instance, Niagara Mohawk sets the initial performance factor at 1.0, while NYSEG and RG&E set it at 0.50.[5] Multiple Intervenors encourages the Commission to adopt a uniform approach to measuring and compensating performance in DLM programs. Furthermore, Multiple Intervenors recommends that residential DLM programs similarly only compensate participants for actual performance, recognizing that the evaluation techniques applied to those programs may be different.

A retail demand response or DLM program that is well-designed and well-administered should provide economic benefits and assist a utility in maintaining reliability. Participating customers deserve to be compensated based on actual performance (and the economic value of such performance). Importantly, however, participating customers should not be subsidized by non-participating customers. Accordingly, compensation should be tied to actual performance, and while the Utilities' use of performance factors for non-residential DLM programs generally appears reasonable, the Commission should ensure that a consistent approach is utilized.

[5] *See* Niagara Mohawk, Proposed Tariff Leaf 263.23; NYSEG, Proposed Tariff Leaf 86.20; RG&E, Proposed Tariff Leaf 117.46.6. There appears to be some type of true-up implemented by NYSEG and RG&E that may minimize this apparent difference.

D. Niagara Mohawk's Exclusion of Transmission-Level Customers From its DLM Programs Should Be Modified

Niagara Mohawk's DLM programs for non-residential customers – which include a Distribution Load Relief Program ("DLRP") and a Commercial System Relief Program ("CSRP") – are limited to customers served at secondary and primary voltage levels only.[6] Thus, although S.C. 3 and 3A customers ordinarily would be eligible to participate in those programs, customers served at sub-transmission and transmission voltages within those classes would be excluded. For the reasons set forth below, Niagara Mohawk's exclusion of transmission-level customers from its DLM programs should be modified.

Initially, Multiple Intervenors notes that Niagara Mohawk's exclusion of customers served at sub-transmission and transmission from its DLM programs targeted at non-residential customers appears to be unique among the Utilities. Recognizing that while there may be legitimate differences among utilities and their service territories with respect to certain aspects of DLM programs, the inclusion or exclusion of a large group of customers from the eligibility criteria appears to be one area where consistency or uniformity would be beneficial.

Multiple Intervenors can perceive a rationale for excluding sub-transmission and transmission customers from distribution-level DLM programs. If, *arguendo,* potential reductions in peak demand by transmission level customers would not benefit Niagara Mohawk's distribution system, then the exclusion of such customers from participation seemingly would be reasonable.[7]

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[6] *See* Niagara Mohawk, Proposed Tariff Leaves 263.9 and 263.16.

[7] As Multiple Intervenors has advocated on rehearing herein, transmission-level customers do not benefit from – and, therefore, should not be compelled to pay for – distribution-level DLM programs. It also might be the case that distribution system customers realize no benefit from reductions in demand on the transmission system that do not extend to the distribution system.

Significantly, however, the same rationale does not appear applicable to Niagara Mohawk's CSRP. During peak periods, certain portions of the transmission system serving Niagara Mohawk customers can become constrained. The transmission system serves all of Niagara Mohawk's customers and, therefore, all customers should benefit from timely reductions in demands placed on that system. Thus, for purposes of the CSRP, the exclusion of customers served at sub-transmission and transmission voltages appears unwarranted, and also is inconsistent with similar programs offered by other utilities.[8]

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to modify the Utilities' DLM programs in a manner consistent with these Comments.

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Respectfully submitted,

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[8] For instance, S.C. 13 customers are eligible to participate in Central Hudson's CSRP, and that class is comprised entirely of sub-transmission and transmission voltage customers. *See* Central Hudson, Proposed Tariff Leaf No. 163.5.40.