

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>New York State Public Service Commission,</b>	)	<b>Docket No. EL16-92-001</b>
<b>New York Power Authority, Long Island Power</b>	)	
<b>Authority, New York State Energy Research</b>	)	
<b>and Development Authority, City of New York,</b>	)	
<b>Advanced Energy Management Alliance,</b>	)	
<b>and Natural Resources Defense Council</b>	)	
	)	
	)	
<b>v.</b>	)	
	)	
<b>New York Independent System Operator, Inc.</b>	)	

**REPLY ARGUMENT OF INDEPENDENT  
POWER PRODUCERS OF NEW YORK, INC.**

In accordance with ordering clause C of the Federal Energy Regulatory Commission’s (“Commission”) February 20, 2020 Order in the above-captioned docket, which commenced the paper hearing and the Commission’s subsequent Notice in this docket,<sup>1</sup> Independent Power Producers of New York, Inc. (“IPPNY”) hereby submits this reply argument in response to comments, evidence and testimony submitted by the Companies<sup>2</sup> and SCR Exemption Proponents<sup>3</sup>

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<sup>1</sup> *N.Y. State Pub. Serv. Comm’n. et al. v. N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,120 (2020) (“2020 SCR Order”); *see also* Docket EL16-92, *N.Y. State Pub. Serv. Comm’n. et al. v. N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time (Apr. 14, 2020) (“Notice”). The 2020 SCR Order permitted parties to submit initial and reply testimony, evidence, and/or argument within 60 days and 30 days thereafter, respectively, dates that were subsequently extended to May 11, 2020 and June 15, 2020, respectively.

<sup>2</sup> The Companies are Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland (“O&R”) Utilities, Inc.

<sup>3</sup> The group that submitted initial comments and testimony is composed of a subset of the parties that filed the complaint that initiated this proceeding—specifically, the New York State Public Service Commission (“NYPSC”), Advanced Energy Management Alliance (“AEMA”), New York State Energy Research and Development Authority (“NYSERDA”), the City of New York (“NYC”) and the Natural Resources Defense Council (“NRDC”)—together with a demand response entity, Energy Spectrum, Inc. (“SCR Exemption Proponents”).

(together, the “Program Advocates”).<sup>4</sup> The purpose of the paper hearing, as established by the 2020 SCR Order, is to gather current and comprehensive information on the scope, nature and structure of a subset of retail-level demand response programs previously identified in this proceeding to evaluate whether resources under those programs provide wholesale-level capacity service or are limited to solely addressing distribution-level reliability needs and, therefore, payments thereunder can be excluded from the calculation of Offer Floors for new Special Case Resources (“SCRs”) under the New York Independent System Operator’s (“NYISO”) buyer-side market power mitigation measures (“BSM Measures”) set forth in its Market Administration and Control Area Services Tariff (“MST”).<sup>5</sup>

IPPNY has reviewed the information provided by the Program Advocates on the administration of two retail-level demand response programs in the Mitigated Capacity Zones – the Commercial System Load Relief Program (“CSR”) and the Distribution Load Relief Program (“DLRP”). Upon review of the comments and testimony submitted, it remains apparent that the CSR is, at its core, a capacity program, that continues to provide payment for services beyond *solely* distribution-level reliability services. As established *infra*, the evidence demonstrates the design and structure of this program and the NYISO’s SCR program mirror each other in significant respects and there is substantial overlap between them. Given that the CSR clearly is designed to provide payment for the provision of Installed Capacity (“ICAP”) to reduce system peak load, it serves the express purpose of payments provided to resources participating in the

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<sup>4</sup> IPPNY is a trade association representing companies involved in the development of electric generating facilities and the generation, sale, and marketing of electric power in the State of New York. IPPNY member companies produce a majority of New York’s electricity utilizing almost every generation technology available today, such as wind, solar, natural gas, oil, hydro, biomass, energy storage, and nuclear. IPPNY’s fundamental interest remains rooted in the continued development and enhancement of reliable, efficient, and non-discriminatory integrated regional wholesale competitive electricity markets.

<sup>5</sup> 2020 SCR Order at PP 16–18.

NYISO's SCR program. Therefore, the Commission should determine that payments provided to resources participating in the CSRP must be included in the Offer Floor calculations under the BSM Measures when these resources also seek to participate in the NYISO's SCR program.

## **I. BACKGROUND**

In a complaint filed by the NYPSC et al. in June, 2016, the SCR Exemption Proponents provided certain information concerning the DLRP, CSRP and a number of other programs for the period 2011-2015, and requested a blanket exemption for SCRs from the NYISO's BSM Measures or, alternatively, exclusion of these various programs identified therein from the Offer Floor calculations.<sup>6</sup> Because the Commission granted the request for a blanket SCR exemption in the 2017 SCR Order, it did not address the specific merits of including or excluding the payments from the Offer Floor calculation for each respective individual program that had been proposed.<sup>7</sup> IPPNY sought rehearing of the Commission's decision to exempt SCRs from the BSM Measures on the grounds, *inter alia*, that the identified programs did not serve a different purpose from the NYISO's SCR program and collectively these resources could significantly artificially suppress capacity market prices.<sup>8</sup>

The Commission's 2020 SCR Order granted in part and denied in part the IPPNY Rehearing Request of the Commission's 2017 SCR Order. Finding "a blanket exemption does not appropriately recognize that certain payments made to SCRs outside of the ICAP market could provide SCRs with the ability to suppress ICAP market prices below competitive levels," the

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<sup>6</sup> Docket No. EL16-92, *supra*, Complaint Requesting Fast Track Processing of the NYPSC, New York Power Authority, Long Island Power Authority, New York State Energy Research and Development Authority, City of New York, Advanced Energy Management Alliance, and Natural Resources Defense Council (June 24, 2016) at 2-3 (the "2016 Complaint").

<sup>7</sup> *N.Y. State Pub. Serv. Comm'n. et al. v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137, at P 1 (2017) ("2017 SCR Order").

<sup>8</sup> Docket No. EL16-92, *supra*, Request for Rehearing of IPPNY (Mar. 6, 2017) ("IPPNY Rehearing Request").

Commission determined in the 2020 SCR Order that “all new SCRs should be subject to NYISO’s buyer-side market power mitigation rules.”<sup>9</sup> To calculate the Offer Floor for these resources, the Commission established that the incremental costs of providing wholesale-level capacity services must be included.<sup>10</sup> In contrast, the Commission specified that payments from retail-level demand response programs designed solely to address distribution-level reliability needs, rather than provide a capacity service, should be excluded from the calculation of SCRs’ offer floors.<sup>11</sup> Deciding that the information concerning retail programs which dated back to the period of 2011-2015 was both stale and limited, the Commission reopened the record for paper hearing to determine whether the retail-level demand response programs that had been previously identified address “*solely* distribution-level reliability needs.”<sup>12</sup>

On May 12, 2020, the Commission issued the May Order in response to a self-described compliance plan filed by the NYISO<sup>13</sup> in which the NYISO described how it would treat SCRs under the BSM Measures until the time the Commission had issued its determinations concerning which of the previously identified programs would be included and excluded in the Offer Floor calculation in the paper hearing.<sup>14</sup> In the May Order, the Commission directed the NYISO to delete the proposed MST language, referred to as the “State Program Language.”<sup>15</sup> The May Order

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<sup>9</sup> 2020 SCR Order at PP 16–17.

<sup>10</sup> *Id.* at P 18.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at P 19 (emphasis added).

<sup>13</sup> Docket No. EL16-92-002, *supra*, Notice of Compliance Plan and Request for Conditional Waiver of the New York Independent System Operator, Inc. (Mar. 11, 2020).

<sup>14</sup> *N.Y. State Pub. Serv. Comm’n. et al. v. N.Y. Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,114 (2020) (“May Order”) (characterizing NYISO’s “compliance plan” as a request for clarification of the 2020 CSR Order).

<sup>15</sup> *Id.* at P 20. The proposed State Program Language provided:

The Offer Floor calculation shall include any payment or the value of other benefits that are awarded for offering or supplying Mitigated Capacity Zone Capacity *except for* payments or the value of other benefits provided under

further noted that the Commission explicitly had rejected the State Program Language in its 2015 SCR Order.<sup>16</sup> Because the Commission intended that it – not the NYISO – would rule on the legitimacy of specific State programs, it further noted that the 2015 SCR Order had further directed the NYISO to implement its BSM Measures applying the rule that “unless ruled exempt by Commission order on a request for exemption filed by the state, all rebates and other benefits from state programs must be included in the SCR Offer Floor.”<sup>17</sup>

On May 29, 2020, the NYISO made a compliance filing with the Commission removing the State Program Language and confirming it will include all payments or benefits received by SCRs or Responsible Interface Parties “under programs administered or approved by New York State or a government instrumentality of New York State” in the calculation of SCRs’ Offer Floors.<sup>18</sup> The CSR and DLRP proposed by the Program Advocates are approved by the NYPSC. The two additional programs proposed by the Companies that go beyond the scope set for this paper hearing process are currently pending review before the NYPSC. Therefore, unless and until the Commission decides as part of the paper hearing that CSR or DLRP payments can be excluded or any other payment can be excluded in response to a future FPA Section 206 filing, they must be included in the calculation of SCRs’ Offer Floors.

## **II. ARGUMENT**

IPPNY’s sole interest in providing these comments is to ensure that the costs of providing ICAP service by SCR program participants are properly reflected in the NYISO’s capacity market so that capacity prices accurately reflect the cost of doing business for all resources participating

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programs administered or approved by New York State or a government instrumentality of New York State (emphasis added).

<sup>16</sup> *Id.* at P 19.

<sup>17</sup> *Id.* at P 5 (citing *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,208, at P 30 (2015) (“2015 SCR Order”).

<sup>18</sup> Docket No. EL16-92, *supra*, NYISO Compliance Filing (May 29, 2020).

in the competitive wholesale markets.<sup>19</sup> IPPNY does not dispute the Commission’s finding that retail-level program payments may be excluded from the calculation of an SCR’s offer floor if the program at issue addresses *solely* distribution-level needs. IPPNY further does not contest the evidence provided by Program Advocates which demonstrates that the DLRP is intended to provide solely distribution-level reliability services. However, unlike the DLRP, the CSR does not provide for *solely* distribution-level reliability service, but is instead explicitly intended to reduce peak load, *i.e.*, provide capacity to the system to address system needs under tight operating conditions – the very purpose of the NYISO’s SCR program.

In their Comments, the Companies assert that the CSR and DLRP are designed exclusively to provide distribution system reliability benefits, that the CSR is designed to shave peak load in certain Con Edison networks or O&R circuits, and that these functions enable the Companies “to either avoid or defer distribution infrastructure investment, thereby reducing customer costs, and maintain distribution system reliability.”<sup>20</sup> Similarly, the SCR Exemption Proponents claim that the information provided demonstrates that the CSR and DLRP provide distinct services from those of SCRs participating as capacity resources under the NYISO’s

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<sup>19</sup> Citing to the need to “harmonize” policies, the Program Advocates assert that payments under these programs should not be included in SCR Offer Floors because they could produce Offer Floors that are too high for these resources to clear the market (*i.e.*, offers that reveal the resources are uneconomic at that time), and thus, could cause these resources to discontinue participating in the utility programs. (*See, e.g.*, Docket No. EL16-92-001, *supra*, Initial Comments of the CSR Exemption Proponents (May 11, 2020) at 7 (“CSR Exemption Proponents Comments”); SCR Exemption Proponents Comments, Evans Declaration at PP 31–34; Docket No. EL16-92-001, Comments and Submission of Testimony on Behalf of Companies (May 11, 2020), Reilly Affidavit at PP 17–18 (the “Companies’ Comments”). To be clear, IPPNY agrees that it is important to harmonize the competitive markets, where possible, with State public policy. However, artificially suppressing the capacity market clearing prices to accommodate these resources – the outcome here – and effectively cross-subsidizing these resources is not a viable or sustainable approach. IPPNY submits that, to the extent these resources would be mitigated, the NYPSC could simply authorize the utilities to compensate these resources commensurate with their value under the utility programs. Nor is the timing of mitigation review an issue. (*See* SCR Exemption Proponents Comments, Evans Declaration at 12–13 (claiming mitigation testing constitutes “a huge unknown risk for the resource.”) Unlike generation resources, SCRs are able to secure mitigation determinations the month before they participate in the NYISO markets. Once tested, the determination holds for the SCR going forward (*i.e.*, it is not retested).

<sup>20</sup> Companies’ Comments at 6.

program.<sup>21</sup> The Program Advocates together then provide six affidavits that largely repetitively delineate CSRP, DLRP, and SCR program administration parameters and cull data concerning program activations in an attempt to support their positions. However, as demonstrated *infra*, there is substantial overlap between the CSRP and NYISO SCR program. Indeed, the data provided actually *supports* the fact that the CSRP cannot reasonably be distinguished from the NYISO's SCR program.

**A. THE STRUCTURE OF THE CSRP AND SCR PROGRAM MIRRORS EACH OTHER IN MATERIAL RESPECTS AND PROGRAM ADVOCATES' DATA DEMONSTRATES SIGNIFICANT OVERLAP BETWEEN ACTIVATION OF THE CSRP AND SCR PROGRAM AS VIEWED IN THE CONTEXT OF THE SCR PROGRAM.**

The Program Advocates provide evidence intended to demonstrate that there is minimal activation overlap between their proposed two demand response programs and the SCR program.<sup>22</sup> Specifically, framing program data in an attempt to support their position, the Companies argue there is “no correlation” between the CSRP and SCR program and seek to diminish the fact that both programs share benefits by characterizing such benefits as “isolated” and “purely happenstance or incidental.”<sup>23</sup>

Likewise, the SCR Exemption Proponents (1) cull data on the Con Edison, O&R, Central Hudson, and New York State Electric and Gas utilities' individual CSRP and DLRP demand response program event call history, where applicable, from the program seasons for 2016-2019, again, in a manner to support their position, and (2) attempt to distinguish payments made under

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<sup>21</sup> SCR Exemption Proponents Comments at 3.

<sup>22</sup> IPPNY's reply focuses on data submitted by the SCR Exemption Proponents as it largely aligns with the data submitted by the Companies.

<sup>23</sup> See Companies' Comments at 6–7 (further claiming a resource's CSRP value “does not rival or compete with” its value under the SCR program and asserting “[e]ach product is distinct, and carries its own independent value” but acknowledging “isolated circumstances” when SCR program has benefited from CSRP).

these utility demand response programs to those provided for the provision of ICAP. For example, while the underlying data used to complete the calculations is not provided, Mr. Adam Evans calculates in his declaration that the CSRP overlapped with the SCR program 15 percent (Zone J), 31 percent (Zone H-I), 5 percent (Zone G), and 9 percent (Zone G) of the time.<sup>24</sup> In the affidavit of Sergey Shabalin, Mr. Shabalin notes that, since the summer of 2016, the NYISO has called four SCR events while Con Edison has called 12 CSRP events. However, when considered in the context of the SCR program – the program under the Commission’s jurisdiction – the overlap in programs is much greater than the witnesses attempt to persuade.

First, it cannot reasonably be disputed that both of the CLRP and SCR programs have the same core purpose – capacity for load reduction – and have the same core design elements. Per the NYISO’s MST, SCRs are resources “whose Load is capable of being interrupted upon demand at the direction of the [NY]ISO” and “can be operated to reduce Load from the NYS Transmission System *or the distribution system* at the direction of the ISO.”<sup>25</sup> Correspondingly, as the SCR Exemption Proponents establish, the CSRP applies across the entire Con Edison service territory and is a distribution-level peak reduction program.<sup>26</sup> In addition, these programs both have the same participation prerequisites. In both cases, notification is given 21 hours in advance of the event start time and confirmation of program activation must be given 2 hours in advance of the event start time.<sup>27</sup> Moreover, both programs also carry the same minimum 4-hour performance

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<sup>24</sup> SCR Exemption Proponents Comments, Evans Declaration at P 11.

<sup>25</sup> NYISO MST § 2.19 (emphasis added). Pertinent here, relatively early in the NYISO’s operations, it took over bidding, scheduling and dispatch on the Con Edison 138 kV distribution system.

<sup>26</sup> See SCR Exemption Proponents Comments at 9.

<sup>27</sup> See NYISO MST § 5.12.11.1; see also SCR Exemption Proponents Comments at 9.



requirement.<sup>28</sup> Given that they were clearly designed to promote dual participation, the evidence confirms that the vast majority of parties participate in both programs.<sup>29</sup>

Nor does the data support the Program Advocates' position vis-a-vis the CSR. In Mr. Evans' case, he provides neither the data relied upon for his calculations nor any reference. Mr. Griffin Reilly did provide data for 2017 through 2019 in his affidavit attached to the Con Edison filing and that data shows a very different conclusion. First, many of the calls are for tests both in the Con Edison program and in the NYISO's programs. Those test calls should be ignored because they relate to showing response capability and there is no reason to expect they would overlap or even be related to system conditions. When the event data is examined, however, it is clear that, while Con Edison calls its CLRP program more often than the NYISO does, there is a 100% overlap between when the NYISO called its SCR program for an event and the CLRP was called for an event.

Moreover, as Mr. Shabalin acknowledges, and the Reilly data shows, comparing SCR calls to CSR calls to determine program alignment reveals the SCR events "did *all* overlap with the CSR events."<sup>30</sup> In other words, when viewed in the context of the SCR program at issue here over which the Commission has jurisdiction, activation of the SCR program overlapped 100% of the time with the CSR. This should not be a surprise. The CSR program is called any time that the forecast load for the next day is more than 92% of the projected annual peak load. While the NYISO calls its program based on expectations that it might be short of reserves without the SCR

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<sup>28</sup> NYISO MST § 5.12.11.1. While the SCR Exemption Proponents focus on the fact that the NYISO can utilize any four-hour period and Con Edison predefines specific four-hour periods (*see* SCR Exemption Proponents Comments at 9), it is a distinction without a material difference. The core focus of both programs is to shave load during high peak periods.

<sup>29</sup> As reflected in the Companies' testimony, there is a 98% overlap in the O&R CSR and SCR program participation and an 87% overlap in the Con Edison CSR and SCR program participation.

<sup>30</sup> SCR Exemption Proponents Comments, Shabalin Testimony at 9 (emphasis added).

resources, high loads are a significant contributor to a likelihood of running short of reserves. It should be no surprise that the NYISO's SCR calls find the CSRPs resources already called because of forecast high loads. Indeed, as noted above, the data for the Con Edison program show that 100% of the NYISO SCR calls overlapped with the CSRPs calls.

To mute that dispositive fact, Mr. Shabalin attempts to distinguish the events by longer durations for some CSRPs calls. The duration of the events is irrelevant, however. The fact that the utilities may elect to more conservatively operate their programs does not negate the fact the programs are called for the same peak load reduction purposes. Likewise, the attempt of the Companies witness, Mr. Reilly, to characterize the benefits of the SCR program as providing a statewide capacity contribution is also unavailing in this context given that the NYISO has enhanced its SCR program over time to apply in Zone J alone as warranted.<sup>31</sup> It also is negated because calling the CSRPs also provides a statewide contribution.

Moreover, while the Commission asked for the data that was previously filed to be updated, it certainly remains relevant to consider the interaction between these programs that has transpired over a longer period of time. Taking into account data from years prior to 2016 that was provided in the 2016 Complaint shows a higher percentage of overlap between the CSRPs and SCR program in some periods. As the data provided by a subset of the SCR Exemption Proponents demonstrated in the 2016 Complaint, Con Edison's CSRPs and the SCR program were called together 45% of the time over the 5-year study period (2011-2015), which can hardly be characterized as an

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<sup>31</sup> See MST § 5.12.11.1 (providing that NYISO may call SCR less than the total in NYCA or in a Zone per ISO Procedures); see also NYISO ICAP Manual § 4.12.3 & 4.12.4 (providing that, "when requested by the Transmission Owner, the NYISO may call SCRs to reduce Load in targeted sub-load pockets within Load Zone J for the Targeted Demand Response Program (TDRP) as specified in Section 6 of the NYISO's [Emergency Demand Response Manual]").

inconsequential overlap.<sup>32</sup> Additionally, as with the current filing, the complaint did not provide the data on the individual calls so it is not possible to verify the level of overlap. Moreover, as noted above, the overlap should be considered from the perspective of whether the CSRPs would have already been called at the time that the SCR program was called. Given the direction that the CSRPs are called any time the forecast peak for the next day is more than 92% of the annual forecast peak, it is likely that the 2011-2015 data shows near to 100% overlap between when the SCR program is called and the CSRPs resources already have been called.

The testimony submitted by David Ahrens in support of the SCR Exemption Proponents further demonstrates that the primary benefit of the CSRPs is to reduce capacity payments made to NYISO market participants. Mr. Ahrens states that, “over the last decade, an estimated \$4.5 billion of ratepayer money – in “capacity payments” – have gone to the owners of the city’s Peaker plants. Effective demand response should reduce those costs.”<sup>33</sup> The statement is a clear and unequivocal admission that one of the primary purposes of demand response programs is to incent resources to reduce capacity costs. As previously stated, *supra*, the ability for certain payments made to SCRs outside of the ICAP market to provide SCRs with the ability to suppress ICAP market prices below competitive levels was the exact reason that the Commission directed that new SCRs should be subject to the BSM Measures.<sup>34</sup>

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<sup>32</sup> 2016 Complaint at 45. As IPPNY demonstrated in its Rehearing Request in 2015, even if there had been limited overlap in the hours when demand response resources under a particular State demand response program, such as the CSRPs, and the NYISO’s SCR program have been activated—which was not true then and continues to not be true now—payments provided to the demand response resources under this State program have enabled SCRs to participate in the NYISO’s wholesale energy and capacity markets and provide other wholesale market benefits which, again, mirror the purposes of the NYISO’s SCR program itself. *See* IPPNY Rehearing Request at 5-6.

<sup>33</sup> SCR Exemption Proponents Comments, Ahrens Testimony at 11.

<sup>34</sup> 2020 SCR Order at 17. Just because the Program Advocates claim that CSRPs payments are not intended to provide for ICAP service does not make it so. In actuality, the aforementioned evidence demonstrates that reducing capacity payments by reducing system peak load is the primary purpose of the CSRPs.

Thus, the CSRP clearly does not -- and was never intended to -- address *solely* distribution level system needs. Given that the dispatch of resources in the Con Edison participating in the SCR program were also called to perform under the CSRP for those same periods, it is clear both programs are addressing the same system needs. Thus, as established by the Commission in the 2020 SCR Order,<sup>35</sup> the CSRP payments must be included in SCR Offer Floor calculations.

**B. RETAIL-LEVEL DEMAND RESPONSE PROGRAMS NOT LISTED IN SCR EXEMPTION PROPONENTS' 2016 COMPLAINT BUT FOR WHICH EXEMPTIONS ARE SOUGHT MUST BE FILED UNDER FPA SECTION 206 AND EVALUATED ON AN INDIVIDUAL PROGRAM BASIS.**

In the 2020 SCR Order, the Commission expressly established that the paper hearing was limited to providing updated and additional information to allow the Commission to evaluate whether any of the retail-level demand response programs listed in the 2016 Complaint constituted programs solely designed to address distribution-level reliability needs.<sup>36</sup> The Commission further specified any new programs parties wished the Commission to consider must be advanced through an FPA Section 206 filing. Claiming through their witnesses that two new programs currently under NYPSC review – the Day-Ahead DLM and auto-DLM programs – will serve the same purpose as CSRP and DLRP and that their analyses apply equally to the two new programs,<sup>37</sup> the Companies argued that payments under these two programs should also be excluded from the SCR Offer Floor calculations.<sup>38</sup> For the reasons set forth herein, the Companies' proposal to consider additional programs in this paper hearing process must be rejected.

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<sup>35</sup> See 2020 SCR Order at P 18.

<sup>36</sup> *Id.* at P 19.

<sup>37</sup> See Companies' Comments, Reilly Affidavit at P 5, Hilowitz Affidavit at P 7.

<sup>38</sup> Companies' Comments at 6 (specifying plans have been filed with the NYPSC to operate these programs in the future); *see also* Companies' Comments, Reilly Affidavit at P 5 (noting Con Edison has proposed different design parameters for these two new programs such as incentives established through RFP processes and more stringent performance requirements).

First, the Day-Ahead DLM and auto-DLM programs are not programs that were listed in the 2016 Complaint. Because the Companies have proposed programs beyond those contained in the 2016 Complaint, they fall outside the scope of this paper hearing proceeding and cannot be considered here.<sup>39</sup> This aspect of their filing must be rejected on this basis alone.

Second, the Commission defined a paper hearing process that would be streamlined so that it could expeditiously address programs previously brought before it. In contrast, entirely new programs require a more complete process and, concomitantly, additional time to be considered. For that reason, the Commission pointed to the FPA Section 206 process, a fulsome process with defined deadlines that requires defined determinations to proceed with rule changes.<sup>40</sup> At the same time, the Commission specified that it would consider any additional programs proposed in the future using the same threshold – does the program solely provide distribution-level benefits.

Relying on the FPA Section 206 structure is particularly critical here given that these programs remain pending before the NYPSC at this time and contain different features than the existing programs that could be adopted in their entirety, modified or rejected outright. Therefore, it is impossible for the Commission or any party to meaningfully assess these programs to determine whether payments thereunder should be included or excluded in SCR Offer Floors under the NYISO's BSM Measures. Presuming they are approved by the NYPSC at some point in the future thereby finalizing their scope, nature and structure, the Companies and any other party that

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<sup>39</sup> Indeed, in their comments, the Companies forthrightly acknowledge the express parameters of the paper hearing process established by the Commission in the 2020 SCR Order noting the hearing process is “to examine, on a program specific basis, whether the retail demand response programs *that had been listed in the [2016] Complaint* are, indeed, designed to address distribution level reliability needs.” (See Companies’ Comments at 4; emphasis added.) Inexplicably, the Companies nevertheless elected to include entirely new (and yet to be approved) programs.

<sup>40</sup> 2020 SCR Order at P 19. As clearly stated by the Commission, “nothing in [the 2020 SCR Order] precludes parties from making a filing under section 206 of the [Federal Power Act (“FPA”)] to request the exclusion of payments from specific retail-level demand response programs not listed in the complaint from the calculation of SCRs’ offer floors.”

wishes to proceed have recourse. They may proceed under FPA Section 206 requesting program evaluation.

In any event, if *arguendo*, the Day-Ahead DLM program could be considered in this paper hearing process notwithstanding the Commission's clear edicts, the Companies' own evidence demonstrates payments thereunder must be included in the SCR Offer Floor calculations. Per the Companies, the Day-Ahead DLM program and CSRPs serve the same purpose. Thus, like the CSRPs, the Day-Ahead DLM program also will not provide for *solely* distribution-level reliability service. Therefore, like the CSRPs, any payments made under this program must be included in SCR Offer Floor calculations.

### **III. CONCLUSION**

For the foregoing reasons, IPPNY respectfully requests that the Commission find that the CSRPs, a program expressly designed to reduce peak loads across the system of each utility in the Mitigated Capacity Zones, provides both wholesale capacity services as well as distribution level services. Therefore, payments that an SCR receives under the CSRPs must be included in the calculation of its Offer Floor under the NYISO's BSM Measures.

Dated: June 15, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

Matthew Schwall  
Matthew Schwall

Dated: June 15, 2020