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August 5, 2009

Secretary James McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re:

Metropolitan Edison Company (Met-Ed) EE&C Plan- Docket No. M-2009-209222
Pennsylvania Electric Company (Penelec) EE&C Plan - Docket No. M-2009-2112952
Pennsylvania Power Company (Penn Power) EE&C Plan - Docket No. M-2009-2112956

Dear Secretary McNulty:

On behalf of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power"), enclosed please find an Answer Opposing the Petition to Intervene filed by EnerNOC, Inc. in the above-referenced proceeding. This Answer was electronically filed today.

If you have questions, please do not hesitate to contact me.

Sincerely,

STEVENS & LEE



Michael A. Gruin

MAG/kdd
Enclosures

cc: ALJ David Salapa
Certificate of Service

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2092222

Pennsylvania Electric Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2112952

Pennsylvania Power Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2112956

**METROPOLITAN EDISON COMPANY
PENNSYLVANIA ELECTRIC COMPANY AND
PENNSYLVANIA POWER COMPANY'S
ANSWER OPPOSING THE PETITION TO INTERVENE OF ENERNOC, INC.**

Pursuant to 52 Pa. Code §5.66, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”) and Pennsylvania Power Company (“Penn Power”) (collectively referred to as the “FirstEnergy Companies”) by and through its attorneys, Stevens & Lee, hereby files the Answer Opposing the Petition to Intervene of Enernoc, Inc. (“Enernoc”). In support of this Answer, the FirstEnergy Companies aver as follows:

I. SUMMARY OF OPPOSITION

The Petition of Enernoc, filed and dated August 3, 2009 is untimely and should be rejected. Moreover, Enernoc’s untimely Petition is “defective on its face” because it fails to comply with the Commission’s Rules of Practice and Procedure and provide reasonable grounds for Petitioner’s failure to intervene earlier in these proceedings as required by 52 PA Code § 1.15.

II. BACKGROUND

1. On July 1, 2009, Met Ed, Penelec and Penn Power filed their Energy Conservation and Efficiency (“EE&C”) plans with the Commission pursuant to the Commission’s orders and Act 129, along with their Testimony in support of the plans. The Met-Ed, Penelec and Penn Power EE&C Plans and Testimony were assigned individual docket numbers and published on the Commission’s website. Also on July 1, 2009, Met Ed, Penelec and Penn Power filed a joint petition for consolidation of the proceedings.

2. By Notice dated July 2, 2009, the Commission scheduled a Prehearing Conference for this matter on July 29, 2009 at 9:30 a.m. in Hearing Room 3, Commonwealth Keystone Building in Harrisburg and assigned Administrative Law Judge David A. Salapa to preside. The Notice of the Prehearing Conference was published on the Commission’s website and publicly available.

3. ALJ Salapa issued a Prehearing Conference Order on July 8, 2009. The Prehearing Conference Order was published on the Commission’s website under the dockets corresponding to the First Energy Company EE&C Plan proceedings. The Prehearing Conference Order established a July 29, 2009 deadline for the timely filing of petitions to intervene and stating:

Parties shall be limited to those persons or entities who file a petition to intervene pursuant to 52 Pa. Code §5.71-76 (or a notice of intervention for those entities with a statutory right of participation pursuant to 52 Pa. Code §5.72(b) (4)) on or before July 29, 2009, and who attend the initial prehearing conference. After the prehearing conference, intervention is limited to those persons or entities granted party status pursuant to 52 Pa. Code §§5.71-5.76. Petitions to intervene, if not untimely, or otherwise defective on their face, shall be deemed granted if not objected to within

three business days after filing. If objected to, such pleadings will be addressed by order.¹

4. On Saturday, July 25, 2005 the Commission filed Notice of the filing of the EE&C Plans of the FirstEnergy Companies in the Pennsylvania Bulletin and specifically provided that: “Petitions for Intervention should be filed with the Secretary and a copy served on the Administrative Law Judge on or before July 29, 2009.”²

5. On July 29, 2009 ALJ Salapa conducted a prehearing conference in this case in which counsel for the FirstEnergy Companies and counsel for various intervenors were present. Members of the law firm representing Enernoc were present at the prehearing conference.³ The intervention deadline was specifically discussed at the Prehearing Conference. During the Conference, Counsel for the FirstEnergy Companies stated:

“Our concern, Your Honor, is that the intervention date as published in the “Bulletin” and in Your Honor’s Order remain the same, that today is the deadline for intervention in this proceeding.”⁴

III. ARGUMENT

6. The Petition of Enernoc, filed and dated August 3, 2009 (5 days after the deadline for seeking intervention) is clearly untimely. The July 8, 2009 Prehearing Conference Order of ALJ Salapa clearly establishes that July 29, 2009 is the deadline for the timely filing of petitions to intervene in this proceeding. Moreover, the Commission’s Notice published in the Pennsylvania Bulletin establishes that Petitions for Intervention should be filed with the Secretary and a copy served on the Administrative

¹ PREHEARING CONFERENCE ORDER, July 8, 2009 at pages 1-2.

² 39 Pa.B. 4404, July 25, 2009.

³ Enernoc is represented by McNees, Wallace & Nurick, who also represents the industrial groups that have intervened in this matter.

⁴ Tr. at 38.

Law Judge on or before July 29, 2009. Petitioner and its counsel clearly knew, or should have known, that the instant petition filed on August 3, 2009 would be untimely; however, Petitioner fails to provide any reasonable explanation for its untimely filing.

7. The Commission's regulations clearly establish an obligation to provide reasonable grounds for Petitioner's failure to timely intervene in this proceeding. 52. Pa Code §1.15(a) (1) provides:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. **Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.** (EMPHASIS ADDED)

8. Petitioner's failure to provide any reasonable grounds for its untimely filing causes the Petition of Enernoc for intervention in this proceeding to be defective on its face. Accordingly, Petitioner's Petition to Intervene is untimely and defective should be denied.

9. The Petitioner acknowledges that it has been an "active participant" in the Commission's Act 129 Proceedings since 2008, and acknowledges that it has "relied on the Commission's website for information".⁵ Enernoc is represented by experienced PUC counsel, and Enernoc itself is a sophisticated enterprise that has participated in Commission proceedings before. Enernoc filed comments in both the Commission's Technical Resource Manual proceeding at Docket No. M-00051865 and in the Commission's Act 129 Implementation proceeding at Docket No. M-2008-2069887.

10. Enernoc and its counsel clearly have experience in navigating the Commission's website dockets, based upon their active participation in prior Commission proceedings. With the docket numbers of the FirstEnergy EE&C plans published on the website for weeks, ALJ Salapa's July 8, 2009 Prehearing Conference Order was easily locatable and readily available to them.

11. Yet, despite acknowledging that it has been an "active participant" in the Commission's Act 129 proceedings, and despite the sophistication of itself and its counsel, and despite the fact that multiple notices were published on the Commission's website advising of the deadline for intervention, Enernoc somehow claims that it was not aware of the deadline for intervention. This excuse by Enernoc is not the type of reasonable ground that would permit a late-filed intervention, especially in a proceeding with such a compressed schedule.

12. Enernoc's excuse is not reasonable. Enernoc did not file its Petition to intervene until 5 days after the Prehearing Conference. The issue of the deadline for intervention was discussed at length at the prehearing conference, and knowing the importance that was placed on the deadline Enernoc should not have waited 5 additional days to file its Petition.

13. The prehearing conference order established an intervention deadline for a reason. This proceeding is moving forward on an extremely truncated litigation schedule. The proceeding involves highly complex and technical issues. Based on the number of intervenors who filed their interventions by the deadline, a carefully crafted schedule of testimony, public input hearings, and discovery modifications was agreed upon.

⁵ See Enernoc Petition to Intervene, at paragraph 11

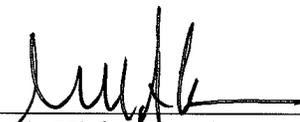
Discovery is underway, and public input hearings have already been held. An informal technical presentation was made to the intervenors to explain FirstEnergy's EE&C plans and models in great detail. Initial settlement discussions have taken place with multiple parties. Enernoc's unreasonably late-filed intervention will now bring new issues to the table, in the middle of the shortened litigation schedule, after many of the parties have already exchanged information and attempted to narrow the issues in dispute.

14. Enernoc had plenty of notice and opportunity to intervene in this proceeding before it was underway. Enernoc has given no legitimate or reasonable excuse for its failure to intervene by the deadline. Enernoc's Petition to Intervene is therefore defective, untimely, and should be denied.

WHEREFORE, for all of the foregoing reasons, Met-Ed, Penelec and Penn Power respectfully request that Enernoc's Petition to Intervene be denied.

Respectfully submitted,

Dated: August 5, 2009



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy and Conservation Plan	:	Docket No. M-2009-209222
	:	
Pennsylvania Electric Company and Conservation Plan	:	Docket No. M-2009-2112952
	:	
Pennsylvania Power Company and Conservation Plan	:	Docket No. M-2009-2112956

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer to Petition to Intervene by first class mail and electronic mail upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55.

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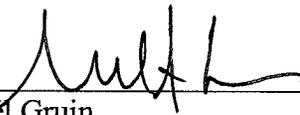
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Dated: August 5, 2009