

September 10, 2009

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. M-2009-2093218 – Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan

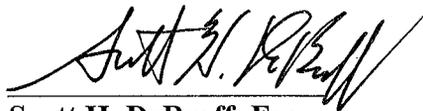
Dear Mr. McNulty:

Enclosed herewith please find an original copy of the “**Reply Brief on Behalf of EnerNOC, Inc.**” in the above captioned proceeding. This document has been electronically filed through the PUC’s efiling system. Please enter this into the docket and timestamp the additional five (5) copies. A copy of the Brief will also be served to the parties on the service list.

Should you have any questions, please do not hesitate to contact me at (717) 237-6716.

Sincerely,

RHOADS & SINON LLP

By: 
Scott H. DeBroff, Esq.

Enclosures

cc: Service List for Docket M-2009-2093218

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF WEST PENN POWER
COMPANY D/B/A ALLEGHENY POWER FOR
APPROVAL OF ITS ENERGY EFFICIENCY
AND CONSERVATION PLAN, APPROVAL
OF RECOVERY OF COSTS THROUGH A
RECONCILABLE ADJUSTMENT CLAUSE
AND APPROVAL OF MATTERS RELATING
TO THE ENERGY EFFICIENCY AND
CONSERVATION PLAN

DOCKET NO. M-2009-2093218

REPLY BRIEF ON BEHALF OF ENERNOC, INC.

**SCOTT H. DEBROFF, ESQUIRE
ALICIA R. PETERSEN, ESQUIRE**
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE
P.O. BOX 1146
HARRISBURG, PA 17108-1146

TEL: (717) 237-6716
FAX: (717) 237-6790
EMAIL: SDEBROFF@RHOADS-SINON.COM
APETERSEN@RHOADS-SINON.COM

DATED: SEPTEMBER 10, 2009

COUNSEL FOR ENERNOC, INC.

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I. INTRODUCTION

EnerNOC, Inc. ("EnerNOC"), a leading demand response ("DR") and energy management services provider throughout the United States, appreciates the opportunity to offer comments on the Petition for Approval of an Energy Efficiency and Conservation Plan, Approval of Recovery of Costs through a Reconcilable Adjustment Clause, and Approval of Matters Relating to the Energy Efficiency and Conservation Plan ("EE&C Plan" or "Plan") submitted by West Penn Power Company d/b/a Allegheny Power ("Allegheny" or "Company").

EnerNOC currently manages over 3,150 MW of demand response resource capability from over 2,400 customers across 5,450 sites nationwide. As an active demand response provider across three Independent System Operators ("ISOs") or Regional Transmission Organizations ("RTOs") (*i.e.*, New York Independent System Operator, Inc., ISO New England, Inc., and PJM) and numerous states with various statutory and regulatory regimes, EnerNOC has a broad base of experience on which to draw and, as a result, has a unique perspective to offer in this proceeding. EnerNOC also has signed contracts with a variety of utilities to provide demand response services, including Allegheny Power, Baltimore Gas and Electric, Delmarva Power and PEPCO, Southern California Edison, Pacific Gas & Electric, San Diego Gas & Electric, the Tennessee Valley Authority, Tampa Electric Company, Public Service Company of New Mexico, Xcel Energy (Colorado), Salt River Project and Idaho Power.

EnerNOC's demand response activities are implemented via automated, aggregated, and intelligent management of end-user lighting, HVAC, distributed generation, and industrial process equipment. Every one of EnerNOC's thousands of sites is connected to its Network Operations Center (the "NOC" in EnerNOC) and communicates real-time load data over a secure Internet connection, allowing its operations staff to monitor and verify facility load reductions in

real time. This customer visibility allows EnerNOC to ensure that customers are delivering their contracted reductions and where they are not to take efforts to "coach" them, or to dispatch technicians to take corrective action. As a result, EnerNOC dispatched emergency demand response resources in its network over 100 times during 2008 and delivered performance that averaged over 100% during the year, based on nominated versus delivered capacity.

II. PROCEDURAL HISTORY

Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"), on October 15, 2008. Consistent with the Act's requirements, on July 1, 2009, all Pennsylvania EDCs filed with the Commission proposed energy efficiency and conservation plans ("EE&C Plan") that seek to meet the Act's energy efficiency and conservation requirements.

By letter issued July 2, 2009, the PUC also approved EnerNOC's Application to Register as a Conservation Service Provider.¹ On July 28, 2009 the Prehearing Conference was held. On August 3, 2009, EnerNOC filed a Petition to Intervene in this proceeding. On August 7, 2009, EnerNOC filed its initial comments in this proceeding. On August 19-20, 2009 an Evidentiary Hearing was held. On August 31, 2009, EnerNOC filed its Main Brief.

Consistent with the procedural schedule for this proceeding, EnerNOC is submitting this Reply Brief in order to address its positions and concerns regarding party positions taken in their Main Briefs.

¹ See generally Docket No. A-2009-2102368.

III. DESCRIPTION OF ALLEGHENY'S PLAN

The Company's EE&C Plan proposes to fulfill the requirements of Act 129 through the implementation of 22 energy efficiency, conservation, and demand response programs for each of the Company's customer segments – Residential, Commercial, and Industrial.² Specifically, the Company has targeted 11 programs for the Residential sector, six programs for the Small C&I sector, four programs for the Large C&I sector, and one program for government, schools and non-profit customers.³ According to the EE&C Plan, the Company also contemplates contracting with a third-party Curtailment Service Provider to interface with C&I customers to carry out certain aspects of the Company's proposed Contracted Demand Response Program.⁴

IV. SUMMARY OF ARGUMENT

EnerNOC supports some of the key program elements of Allegheny's Customer Load Response Program, but where Allegheny is attempting to act as a Curtailment Service Provider, the current law may not support their interpretation and ability to act in that capacity. EnerNOC likes some of the language in the initial description of Allegheny's "Contracted Demand Response Program" for small and large C&I Customers, but it believes that more definitive DR programming needs to be in place today as opposed to Allegheny's program that will not be implemented until there is a review of their current load resources. EnerNOC also disagrees with Allegheny's interpretation of Act 129 in regard to DR program duration.

² See EE&C Plan at 11.

³ See *id.*

⁴ See *id.* at 116.

EnerNOC disagrees with the West Penn Power Industrial Intervenors' and ClearChoice's argument regarding access to multiple CSPs and instead supports the single CSP structure for Allegheny Power's demand response program, if it is ever implemented. EnerNOC also supports the concept that the approved CSP for the Allegheny Power program would be the one that all large C&I customers in the service territory would work through, whether or not they had an existing relationship with an Allegheny Power-contracted PJM CSP or were acting as their own CSP.

Finally, EnerNOC disagrees with the Department of Environmental Protection's recommendation that distributed generation to reduce peak demand should be prohibited.

V. ARGUMENT

A. Allegheny Power

EnerNOC agrees with Allegheny's clarification on page 42 of its Main Brief concerning its Customer Load Response Program that is available to large commercial and industrial customers. Allegheny states that its demand response program is voluntary and does not count customer participation in PJM programs without assistance of the Company's EE&C Plan as load reduction. Allegheny also states that it is not opposed to including conservation measures undertaken by large commercial and industrial customers beginning July 1, 2009. EnerNOC agrees with the statements that Allegheny Power has clarified and believes that the Commission should adopt these components of their demand response plan.

Allegheny Power further argues on page 55-56 of its Main Brief that Section 2806.1(b)(E) of Act 129 "is clear that an EDC has the discretion to contract with only one Conservation Service Provider and to contract with only that Conservation Service Provider for

only a portion of the plan.” Allegheny continues to argue that Section 2806(b)(E) which defines a “Conservation Service Provider” is clear and that an EDC’s affiliate, but not the EDC itself is precluded from being a Conservation Service Provider. Allegheny concludes that Act 129 does not expressly exclude it from being a CSP in its EE&C plan.

EnerNOC believes that Allegheny’s interpretation of the Act is incorrect and that an EDC cannot be a CSP. 66 Pa.C.S. § 2806.1(M) defines a Conservation Service Provider as follows: “An entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that **has no direct or indirect ownership, partnership or other affiliated interest with an Electric Distribution Company.**”

An EDC clearly has “ownership, partnership and affiliation” with itself and therefore can clearly **not** be a CSP for any of the programs in its EE&C plan.

As previously stated, EnerNOC recommends that the Commission have Allegheny Power issue a competitive RFP and choose one CSP to implement and run its demand response program.

Allegheny comments on EnerNOC’s previous arguments on pages 43-44 of its Main Brief. Allegheny states that it has already addressed all of EnerNOC’s suggestion on pages 36-38 of its Statement No. 2-R. First, Allegheny states that it has confirmed that the program will last more than one year from the 2010 Plan year through the 2012 Plan year. Second, Allegheny Power explains that it has contracted with a CSP to complete a market assessment of the load resources that are available from the Company’s commercial/industrial base that will help it to decide whether to pursue additional demand response services based on the test results and the performance of the their programs. Third, Allegheny Power explains that it does not favor limiting the program to a 50-hour target, as the Company needs flexibility with its programs and

targets in order to meet its statutory obligation to reduce the top 100 hours of peak demand. Lastly, Allegheny Power has confirmed that its Load Response Program will target both small and large commercial and industrial customers with a demand of 300 kW or greater and will be expanded to other small commercial and industrial customers in the future.

EnerNOC disagrees with Allegheny's programming target and recommends that their Customer Load Response Program utilize a 50-hour target as a realistic and cost-effective approach. EnerNOC strongly recommends that Allegheny allow the CSP to meet the Act 129 requirement by calling resources for a maximum of 50 hours (anytime during the top 100 hours) such that the average response over the 100 hours equals or exceeds the contracted amount committed by the CSP.

EnerNOC firmly believes that the best solution would be to have one CSP implement and run the demand response program.

In Allegheny Power's EE&C Plan on page 14, it represents that its overall demand reduction requirements under Act 129 will be 160 MW. On pages 116-119 of Allegheny Power's EE&C plan filing, their Contracted Demand Response Program is specifically addressed. Under the "Objectives" section of that program on page 116 of their Plan, it states that the program is focused on reducing demand in the small and large, commercial and industrial, and governmental/non-profit customer sectors. This program will be implemented only if the Allegheny EE&C and DR plan requires additional demand reduction to meet demand reduction targets if other demand response programs are lagging. The program is only set to run, if at all, from June 2012 through September 2012.

Term of the Plan

EnerNOC disagrees with Allegheny Power's interpretation of Act 129 in regard to DR program duration.

In support of its argument here, EnerNOC cites to its argument made concurrently in its Reply Brief in the PPL EE&C Plan docket. PPL, in its Plan, argues that its current portfolio design contemplates that it will need to enter into contracts with CSPs that extend beyond the end of its EE&C plan (May 31, 2013).

The result of Allegheny Power's proposed plan is that their initial Plans terminate at the end of 42 months unless the PUC affirmatively determines that the actual benefits outweigh the actual costs and that the PUC would establish new DR goals for the utility.

In its Main Brief, EnerNOC explained why 66 Pa.C.S. § 2806.1(d)(2) supports the EDCs entering into long term contracts with a CSP and how it would ultimately be more "prudent and reasonable" for the EDCs to do so.

EnerNOC disagrees with the stance that the Legislature would have intended that Allegheny or any other EDC for that matter, should be forced into dropping a successful peak load reduction program just as it got underway.

EnerNOC supports PPL's plan design and testimony that supports the continuation of its DR program beyond 2013 as necessary. PPL has argued that its current portfolio design contemplates that the Company will need to enter into contracts with CSPs that extend beyond the end of its EE&C plan (May 31, 2013), although those payments are not included in the current portfolio and would likely be structured in the CSP contract to be contingent on the Commission's extension of peak load reduction targets and funding beyond the life of their current plan. (PPL EE&C Plan, p. 13 [emphasis added]).

Further, in the PPL case, the Company states that if it were limited to contracts that expire on September 12, 2012, which is the compliance date for peak load reductions, they contend that these short-term contracts could be more costly – at approximately \$5 million beyond the current portfolio. Id. at 13-14. PPL is proposing, and EnerNOC is supporting, PPL’s position that it be allowed to enter into contracts with CSPs in many cases for five (5) to eight (8) years. See PPL Response to OTS 1-3(b). EnerNOC supports this position in regards to Allegheny.

As PPL states, “assuming a contract is awarded in late 2009 and demand reduction programs (and associated incentive payments to participants and the CSP) will start gradually in mid-2010, a five (5) to eight (8)–year contract term would extend to 2015-2017.” Id.; see also Tr. at 166. Mr. Cleff, a witness for PPL, confirmed that the total projected costs in each of the extra years will be approximately \$5 million - \$10 million per year. Tr. at 168.

The testimony of PPL in its EE&C case supports the continuation of the DR programming beyond the 2013 time frame, and EnerNOC contends that this is the best decision this Commission could make, in all of the EE&C cases, in order to generate successful demand response opportunities for both ratepayers and the utilities.

EnerNOC disagrees with the Allegheny interpretation of Act 129 and contends that EnerNOC’s argument in support of PPL’s testimony on the differing DR program costs and the ability to conduct a more effective and cost-conscious DR program, in its own EE&C case, is the only interpretation that will provide both program benefits to ratepayers and accomplish the reduction goals of Act 129.

In support of our argument, we cite to 66 Pa.C.S. § 2806.1(d)(1) and (2) of Act 129 which states:

(1) By May 31, 2013, the weather-normalized demand of the retail customers of each electric distribution company shall be reduced by a minimum of 4.5% of annual system peak demand in the 100 hours of highest demand. The reduction shall be measured against the electric distribution company's peak demand for June 1, 2007, through May 31, 2008; and

(2) By November 20, 2013, the Commission shall compare the total costs of energy efficiency and conservation plans and capacity costs to retail customers in this Commonwealth or other costs determined by the Commission. If the Commission determines that the benefits of the plans exceed the costs, the commission shall set **additional incremental requirements** for reduction in peak demand for the 100 hours of great demand or an alternative reduction approved by the Commission. Reductions from demand shall be measured from the Electric Distribution Company's peak demand for the period from June 1, 2011, through May 31, 2012. The reduction in consumption required by the Commission shall be accomplished no later than May 31, 2017. (emphasis added)

Here we only find plain meaning of the words “additional incremental requirements”, which means requirements for demand reductions beyond those already obtained. Had the Legislature intended for the Commission to reinstitute demand response requirements, obtained once and then allowed to lapse, it would have said so.

Our interpretation is that the intent of the Legislature was to have the EDCs maintain the status quo with the DR program, while the potential for “additional incremental” (not “existing”) reductions was being assessed by the Commission. Unlike energy efficiency investments, demand response programs will only work if the EDCs provide continuing support. It would be prudent and most beneficial to the ratepayers if the EDCs maintained the current demand response and peak load reductions during that time of the Commission review. If these programs are not maintained during that interim period, the EDCs will have to incur more costs to meet any new requirements beyond the 4.5% peak demand reduction goal for 2013⁵.

⁵ Some parties may argue that the Act 129 DR resources will continue to exist in the PJM demand response programs. This may true for many of those resources, however, the Commission should understand that a resource’s participation in the PJM capacity programs is highly unlikely to result in a reduction in peak demand

Further, other components of the EE&C plan, such as deployment of Smart Metering, that will tie into the Load Control Program, will certainly continue to be in service and operational long after the May 31, 2013 deadline. Energy Efficiency Programs and Demand Response Programs work together in the same demand side management spectrum, and will need to be available to work in concert with Smart Metering, which contributes the platform for measurement, verification and evaluation of such programming. With this Commonwealth's commitment to the deployment of advanced metering and the creation of a Smart Grid, there is every reason to infer that the Demand Response and Energy Efficiency programming once started, was meant to endure as well.

Number of Providers

In its EE&C Program filing as previously stated it appears that Allegheny Power seeks to act as a CSP and also issue performance contracts with **one or more** Curtailment Service Providers who will recruit Allegheny Power customers and deliver the demand reduction target set in the program.

EnerNOC opposes this rationale and supports a single CSP model for the Contracted Demand Response Program. As we have stated in our Main Brief in this case, DR program success for Allegheny Power, as with any utility, is based upon a clearly defined program that can be implemented with a reputable and credit-worthy CSP partner who can successfully market that program to the utility's customers and is willing to shoulder significant penalties for failure to perform. By diluting the load and splitting up the program responsibilities, the utility makes aggregation more difficult and creates more risk of program failure.⁶

for the customer or the state. This is due to the fact that such resources are only called during emergencies or periodic tests which have generally not correlated with the times at which peak load contributions are set.

⁶ The essence of what CSPs do is aggregate customers to allow the over-performance of some to offset the under-performance of others. It is only in this way that CSPs can take upon themselves the performance risks that

In our PPL Reply Brief, we support a program design that will provide confidence to the utility as well as to the Commission and offers the best chance for program success. In this case, we support a single CSP model for the Allegheny Contracted Demand Response Program.

EnerNOC in reflecting on the design of that Allegheny Customer Load Response Program, believes that oversubscription will not be necessary if RFP terms, security and penalties are appropriate.⁷

B. ClearChoice Energy

On page 10 of ClearChoice's Main Brief, they cite to 66 Pa.C.S. §2811(a), which states that the Commission can take steps to prevent discriminatory conduct or unlawful exercise of market power. EnerNOC strongly disagrees with their representation that Allegheny's Customer Load Response Program is somehow discriminatory in nature and requires correction. This is not the case, as EnerNOC would contend that Allegheny's program design is just the opposite. This argument is purely an attempt to position ClearChoice to be able to participate in a process that it may not be financially or practically able to handle at this time.

would otherwise be borne by the EDCs. Customers, especially smaller ones, are generally unwilling to accept non-performance risks/penalties themselves and will simply not participate if required to do so. Obviously, the larger the aggregation, the less likely it is that the performance of a few large resources will jeopardize the performance of the entire group. Thus, larger aggregations allow for achieving a given level of performance with less of a "cushion" and therefore lower costs that would otherwise be borne by the EDCs.

⁷ It is difficult to overstate how much more difficult it is to enroll customers in a 50-hour per year program, than a less than 10-hour per year program such as the PJM Emergency program. EnerNOC is a party to several bilateral contracts with such terms and we can attest to the fact that customer recruitment is far more difficult than it first appears to those who have not attempted it. It will be a significant challenge for any CSP to meet the aggressive goals envisioned by Allegheny. Oversubscription is a luxury that Allegheny and its customers cannot afford and even if they can, may simply not be possible.

ClearChoice also goes on to indicate in its Main Brief at page 11, that Footnote 23 of the Commission's Implementation Order (p.38), states that subsidies or incentives not offered to competitive providers of service cannot be cost-subsidized. EnerNOC contends that ClearChoice has taken the meaning of the footnote and what it refers to completely out of context. This footnote refers to a phrase in the Implementation Order that indicates that when EE&C plans are offered by EDCs, those programs will benefit customer choice and default customers equally. The footnote only tries to alert us to the fact that some customer programs may not be subsidized if they only impact certain classes of customers. ClearChoice's argument that it has some pre-established right to participate in every DR program, no matter what the requirements are, has nothing to do with this section.

In its Main Brief at page 11, ClearChoice states that Allegheny Power's goal for its Customer Load Response Program is to achieve demand savings of 59.5 MW over the four year planning horizon with 360 participants in Year 4. ClearChoice states that a program of this size "equals 45 percent of the MW and nearly 14 times the number of sites currently participating in the PJM program within the Allegheny Power Service Territory."

ClearChoice's arguments serve to highlight the size and complexity of the Act 129 requirements. From our perspective, most PJM participants will not be interested in a 50 hour program. Therefore, ClearChoice's argument works against them. It will be hard enough for one CSP to effectively sell the 50 hours of demand response Allegheny needs, let alone a half dozen or a dozen CSPs competing head to head for the same limited group of potential participants.

In ClearChoice's Main Brief, at page 11, it explains why it wants Allegheny Power to give consideration to allowing multiple CSPs to participate in both AP's demand response programs and the marketing of the programs to ensure that their program is "nondiscriminatory and competitively neutral." Specifically, ClearChoice recommends that any marketing material by Allegheny Power must not "prefer the use of one curtailment service provider over another, and all information provided to CSPs participating in the Allegheny Power program, also must be provided to non participating CSPs." (Main Brief at p. 12).

EnerNOC disagrees with ClearChoice's marketing recommendation. It is imperative to present customers with easy to read and understandable marketing materials that will create less confusion to the customer. As stated above, EnerNOC believes that Allegheny Power should pursue a strategy that includes issuing a competitive RFP that selects the most qualified demand response provider. It would only cause confusion in program implementation and stability in running the program if the marketing materials also promoted CSPs that were not selected as the most qualified demand response provider for the service territory.

In its Main Brief, on page 12, ClearChoice further argues that the Commission should place a cap on the amount a CSP can be awarded so that no CSP can be awarded more than "50% of the demand reduction required by the plan." ClearChoice seemingly makes this recommendation to ensure that multiple providers can participate in the Demand Response program.

EnerNOC strongly disagrees and opposes the concept of placing any "cap" on the amount of demand reduction that any one CSP can be awarded under Allegheny's plan. Our position on the promotion of a "cap" on the amount of demand reduction awarded would create a situation in which multiple CSPs would be crowding the market and attempting to implement the same

program. Having a number of CSPs attempting to market to the same customer group will drive the customer acquisition costs higher and the resource will be less reliable for the aggregation reasons noted previously. Instead, EnerNOC recommends that Allegheny issue an RFP and then select the CSP that provides the most reliable, efficient, and economic services for the Contracted Demand Response Program.

Also in its Main Brief, on pages 12-13, ClearChoice proclaims that Allegheny Power should make several allowances for “disadvantaged businesses” such as itself. ClearChoice claims that EDCs should not be allowed to ask CSPs to post collateral as a guarantee of performance of the demand side resources participating in the program. (Main Brief at p. 13). ClearChoice goes on to state that since it is a “disadvantaged business,” it lacks the capital to post collateral as a performance guarantee in the EDC curtailment programs.

ClearChoice cites to page 26 of the Commission’s Implementation Order, which states that part of the minimum criteria for reviewing and approving the CSP bidding process that EDCs should “encourage efforts to acquire bids from ‘disadvantage business’ (i.e., minority owned, women-owned, persons with disability-owned, small companies, companies located in Enterprise Zones, and similar entities- consistent with the Commission’s Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.” ClearChoice states that the “essence of what makes a disadvantaged business “disadvantaged” is the limited capital to fund its operations. In its alternative argument, ClearChoice states that if Allegheny Power’s program includes posting collateral as a performance guarantee, then it must set aside 25 percent of its demand response program for disadvantaged businesses with the proviso that the disadvantaged business would not have to post collateral in the program. (pg 14).

EnerNOC strongly disagrees with ClearChoice's recommendation and interpretation of the Implementation Order and the Pennsylvania Code. To begin with, the section in the Implementation Order and the provisions of the Code require that a "disadvantaged business" be given "an equal opportunity to compete." Also a disadvantaged business is defined in the Order and the Code as " minority/women/person with disabilities-owned." Nowhere in the Code or the Order does it define "disadvantaged business" as one with "limited capital." EnerNOC believes that the rationale behind the Commission's citing to Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808 on page 26 of its Implementation Order was to ensure that no inherent discrimination between two equally **qualified** businesses takes place. All RFPs given out for any EDC program should be awarded to the most **qualified** CSP that meets the requirements of the program. The Code and Implementation Order simply align with national policy concerns against discrimination. Utilities should not be forced to rely on unreliable DR providers when the program successes are so critical.

Allegheny Power has filed for a Contracted Demand Response Program that if implemented, looks to provide an "equal opportunity" for all CSPs to bid on its program. In addition, its plan promotes implementation by a contracted demand response provider, which will likely be chosen in a competitive RFP process, open to all CSPs to bid on.

EnerNOC promotes and fully supports an open and competitive RFP and welcomes the challenge of equally qualified opponents in the bid to be chosen as the most qualified and effective CSP to implement a program for Allegheny Power to meet its Act 129 mandate for peak demand reduction.

Further, ClearChoice supports the setting aside of a 25 percent piece of the demand response program for disadvantaged businesses without the requirement of posting collateral or

providing third party guarantees. In EnerNOC's opinion, setting aside any percentage of a program to a company that ultimately admits it will not be able to make payment on penalties for non-performance would not be a "prudent or reasonable" business decision on the EDC's behalf. Under Act 129, Allegheny has a duty to make "prudent and reasonable" decisions and to protect its ratepayers. (66 Pa. C.S. §2806.1). It would **not** be prudent or reasonable for an EDC to award a program bid to a company that lacked the experience and capital to back up its performance guarantee.

EnerNOC requests that the Commission require Allegheny Power to submit competitive RFPs and to choose one CSP that is the most qualified to implement and run the demand response program that is needed for the EDC to meet its requirements under Act 129.

C. West Penn Power Industrial Intervenors

The West Penn Power Industrial Intervenors ("WPPII") state that they support the use of multiple PJM CSPs for the Customer Load Response Program. WPPII points out that Allegheny Power's witness Miller clarified that while Allegheny plans to act as a PJM CSP, customers are not required to use Allegheny as the PJM CSP and can still participate in the Allegheny Power program. WPPII on page 7 of their Main Brief stated that they do not have any issues with the demand response programs as long as Allegheny's programs are voluntary and a customer can still participate in the PJM program. Also, WPPII want customers to be able to use their own PJM CSP in Allegheny's Demand Response Program.

As we stated earlier relating to our argument to Allegheny's filing, by diluting the load and splitting up the program responsibilities, the utility creates more risk of program failure. EnerNOC supports a program design that will provide confidence to the utility as well as to the

Commission and offers the best chance for success. We oppose WPPII's argument and support the concept that other CSPs and customers could participate through the CSP that was selected in the RFP process by Allegheny.

D. DEP

In the Department of Environmental Protection's Main Brief, on pages 7-9, it argues that the use of emergency or backup generators to reduce peak demand should be prohibited. DEP states that using distributed generation to reduce peak demand is not permitted under Act 129 and that the only acceptable strategies to reduce peak demand are to reduce overall consumption or shift consumption to non-peak hours.

DEP continues by stating that reducing consumption of electricity during the highest specified period simply cannot occur by generating electricity with a behind the meter source other than solar energy. They state that grid demand reduction that is merely replaced by higher emitting distributed generation has negative air impacts and is an unacceptable strategy for Pennsylvania.

EnerNOC believes that backup generators can be an effective type of demand response programming for Allegheny. Backup generation is a low cost piece of the DR solution set which CSPs should be allowed to use to meet their commitments in the Contracted Demand Response Program, provided that such generation is permitted to allow such participation and that the operation of such units fully comports with their permits.

EnerNOC supports a strategy in targeting eligible commercial/industrial customers in their service territory who have existing backup generation resources or are interested in having grid-connected generating units installed at their facilities in order to realize energy savings and peak demand reductions.

VI. CONCLUSION

For all of the foregoing reasons as well as the reasons expressed in EnerNOC's earlier filings, EnerNOC respectfully requests that the Commission adopt its proposed recommendations to Allegheny Power's EE&C Plan.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That Allegheny Power's Customer Load Response Program and Contracted Demand Response Program be structured in a way in which it can continue on successfully after the statutory deadline of May 31, 2013.
2. That Allegheny Power issue a competitive RFP and select one CSP to implement and run its Load Response Program.

Respectfully submitted,

By: 

SCOTT H. DEBROFF, ESQUIRE

Attorney ID No. 61170

ALICIA R. PETERSEN, ESQUIRE

Attorney ID No. 209672

RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE
P.O. BOX 1146
HARRISBURG, PA 17108-1146

TEL: (717) 237-6716

FAX: (717) 237-6790

EMAIL: SDEBROFF@RHOADS-SINON.COM

EMAIL: APETERSEN@RHOADS-SINON.COM

DATED: SEPTEMBER 10, 2009

COUNSEL FOR ENERNOC, INC.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF WEST PENN POWER
COMPANY D/B/A ALLEGHENY POWER FOR
APPROVAL OF ITS ENERGY EFFICIENCY
AND CONSERVATION PLAN, APPROVAL
OF RECOVERY OF COSTS THROUGH A
RECONCILABLE ADJUSTMENT CLAUSE
AND APPROVAL OF MATTERS RELATING
TO THE ENERGY EFFICIENCY AND
CONSERVATION PLAN

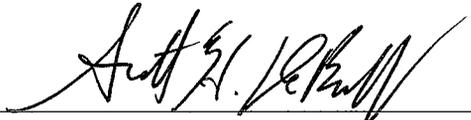
DOCKET NO. M-2009-2093218

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties, listed on the next page, in accordance with the requirements of §1.54 (relating to service by a party).

Dated: **September 10, 2009**

By:



SCOTT H. DEBROFF, ESQUIRE
ALICIA R. PETERSEN, ESQUIRE
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE
P.O. BOX 1146
HARRISBURG, PA 17108-1146

TEL: (717) 237-6716

FAX: (717) 237-6790

E-MAIL: SDEBROFF@RHOADS-SINON.COM

E-MAIL: APETERSEN@RHOADS-SINON.COM

COUNSEL FOR ENERNOC, INC.

CERTIFICATE OF SERVICE - M-2009-2093218

VIA EMAIL OR FIRST CLASS MAIL

TANYA McCLOSKEY, Esq.
CHRISTY M. APPLEBY, Esq.
OFFICE OF CONSUMER ADVOCATE
555 WALNUT STREET
FORUM PLACE, 5TH FLOOR
HARRISBURG, PA 17101-1923
TMCCLOSKEY@PAOCA.ORG
CAPPLEBY@PAOCA.ORG

JOHN F. POVILAITIS, Esq.
RYAN, RUSSELL, OGDEN & SELTZER P.C.
800 NORTH THIRD STREET, SUITE 101
HARRISBURG, PA 17102-2026
JPOVILAITIS@RYANRUSSELL.COM

RICHARD A. KANASKIE, Esq.
JOHNNIE E. SIMMS, Esq.
ADEOLU A. BAKARE, Esq.
PENNSYLVANIA PUBLIC UTILITY COMMISSION
OFFICE OF TRIAL STAFF
P.O. Box 3265
HARRISBURG, PA 17105-3265
RKANASKIE@STATE.PA.US
JOSIMMS@STATE.PA.US
ABAKARE@STATE.PA.US

JOHN L. MUNSCH, Esq.
WEST PENN POWER COMPANY
800 CABIN HILL DRIVE
GREENSBURG, PA 15601-1689
JMUNSCH@ALLEGHENYENERGY.COM

LILLIAN S. HARRIS, Esq.
THOMAS J. SNISCAK, Esq.
HAWKE McKEON & SNISCAK LLP
P.O. Box 1778
100 NORTH TENTH STREET
HARRISBURG, PA 17101
LSHARRIS@HMSLEGAL.COM
TJSNISCAK@HMSLEGAL.COM

HARRY S. GELLER, Esq.
JOHN C. GERHARD, Esq.
PENNSYLVANIA UTILITY LAW PROJECT
118 LOCUST STREET
HARRISBURG, PA 17101
HGELLERPULP@PALEGALAID.NET
JGERHARDPULP@PALEGALAID.NET

GEORGE JUGOVIC, Esq.
ASSISTANT COUNSEL
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
400 WATERFRONT DRIVE
PITTSBURGH, PA 15222-4745
GJUGOVIC@STATE.PA.US

CAROLYN PENGIDORE, Esq.
PRESIDENT/CEO
CLEARCHOICE ENERGY
180 FORT COUCH ROAD, SUITE 265
PITTSBURGH, PA 15241
CAROLYN@CLEARCHOICE-ENERGY.COM

THEODORE J. GALLAGHER, ESQ.
SENIOR COUNSEL
NISOURCE CORPORATE SERVICES COMPANY
501 TECHNOLOGY DRIVE
CANONSBURG, PA 15317
TJGALLAGHER@NISOURCE.COM

CHRISTOPHER A. LEWIS, ESQ.
CHRISTOPHER R. SHARP, ESQ.
MELANIE J. TAMBOLAS, ESQ.
BLANK ROME, LLP
ONE LOGAN SQUARE
PHILADELPHIA, PA 19103
LEWIS@BLANKROME.COM
SHARP@BLANKROME.COM
TAMBOLAS@BLANKROME.COM

CHARLES E. THOMAS, JR., ESQ.
THOMAS T. NIESEN, ESQ.
THOMAS, LONG, NIESEN & KENNARD
P.O. Box 9500
212 LOCUST STREET, SUITE 500
HARRISBURG, PA 17108-9500
CTHOMASJR@TTANLAW.COM
TNIESEN@TTANLAW.COM

DERRICK PRICE WILLIAMSON, ESQ.
ADAM L. BENSHOFF, ESQ.
SHELBY LINTON-KEDDIE, ESQ.
MCNEES WALLACE & NURICK LLC
100 PINE STREET
P.O. Box 1166
HARRISBURG, PA 17108-1166
DWILLIAMSON@MWN.COM
ABENSHOFF@MWN.COM
SKEDDIE@MWN.COM

DANIEL CLEARFIELD, ESQ.
KEVIN J. MOODY, ESQ.
ECKERT SEAMANS CHERIN & MELLOTT, LLC
213 MARKET STREET, 8TH FLOOR
P.O. Box 1248
HARRISBURG, PA 17108-1248
DCLEARFIELD@ECKERTSEAMANS.COM
KMOODY@ECKERTSEAMANS.COM

MARK C. MORROW, ESQ.
UGI CORPORATION
460 NORTH GULPH ROAD
KING OF PRUSSIA, PA 19406-2807
MORROWM@UGICORP.COM

LEE E. HARTZ, ESQ.
ASSISTANT GENERAL COUNSEL
NATIONAL FUEL GAS DISTRIBUTION
CORPORATION
P.O. Box 2081
ERIE, PA 16512
HARTZL@NATFUEL.COM

PAMELA C. POLACEK, ESQ.
MCNEES WALLACE & NURICK LLC
100 PINE STREET
P.O. Box 1166
HARRISBURG, PA 17108-1166
PPOLACEK@MWN.COM

JONATHAN P. NASE, ESQ.
KATHRYN G. SOPHY, ESQ.
OFFICE OF SPECIAL ASSISTANTS
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET
COMMONWEALTH KEYSTONE BUILDING
HARRISBURG, PA 17120-3265
JNASE@STATE.PA.US
KSOPHY@STATE.PA.US

LAUREN M. LEPKOSKI, ESQ.
OFFICE OF SMALL BUSINESS ADVOCATE
COMMERCE BUILDING, SUITE 1102
300 NORTH SECOND STREET
HARRISBURG, PA 17101
LLEPKOSKI@STATE.PA.US

THE HONORABLE KATRINA DUNDERDALE
ADMINISTRATIVE LAW JUDGE
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
1103 PITTSBURGH STATE OFFICE BUILDING
300 LIBERTY AVENUE
PITTSBURGH, PA 15222
KDUNDERDALE@STATE.PA.US

SCOTT PERRY, ESQ.
ASPASSIA V. STAEVSKA, ESQ.
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
RCSOB, 9TH FLOOR
400 MARKET STREET
HARRISBURG, PA 17101-2301
SCPERRY@STATE.PA.US