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FILE NO: 11616/02

September 11, 2009

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

Re: Docket Nos. M-2009-2092222, M-2009-2112952, M-2009-2112956 – Petition for Approval of Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company

Dear Mr. McNulty:

Enclosed herewith please find an original copy of the "**Main 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
Scott H. DeBroff, Esq.

Enclosures

cc: Certificate of Service

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION FOR CONSOLIDATION OF PROCEEDINGS AND APPROVAL OF ENERGY EFFICIENCY AND CONSERVATION PLANS OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, AND PENNSYLVANIA POWER COMPANY	DOCKET NO. M-2009-2092222 DOCKET NO. M-2009-2112952 DOCKET NO. M-2009-2112956

MAIN BRIEF ON BEHALF OF ENERNOC, INC.

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DATED: SEPTEMBER 11, 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 Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company's ("First Energy" or "Company") Energy-efficiency and Conservation Plan ("EE&C Plan").

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 29, 2009 the Prehearing Conference was held. On August 31, 2009 an Evidentiary Hearing 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 September 11, 2009, EnerNOC filed its Main Brief.

Consistent with the procedural schedule for this proceeding, EnerNOC is submitting this Brief in order to address its positions and concerns regarding the Company's Petition.

[1] *See generally* Docket No. A-2009-2102368.

III. DESCRIPTION OF FIRSTENERGY'S PLAN

On July 1, 2009, Met-Ed, Penelec and Penn Power submitted a Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans ("Joint Petition").[2] The Companies' EE&C Plan proposes to fulfill the requirements of Act 129 through the implementation of 19 energy efficiency and demand reduction programs for Residential, Commercial, Industrial, and Governmental/Institutional customers.[3] Specifically, the Companies have targeted eight programs for Residential customers; four programs for Governmental/Institutional customers; and seven Commercial and Industrial ("C&I") customers.[4]

IV. SUMMARY OF ARGUMENT

EnerNOC supports many of the key program implementation details for FirstEnergy's demand response programs, including a program that leverages existing PJM Demand Response Programs and focusing on reductions in at least 50 peak hours, rather than across all of the top 100 peak hours. However, EnerNOC also believes that the Commission should make several changes to their proposed programs.

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[2] The Companies requested consolidation of the individual docket numbers assigned to each Company in light of the general similarity of the EE&C Plans developed by FirstEnergy Corp. ("FirstEnergy") on their behalf. The Companies' individual EE&C Plans were attached to the Joint Petition. The Companies' EE&C Plans are collectively referred to throughout these Comments as the "EE&C Plan." Where necessary, EnerNOC will distinguish between the individual EE&C Plans.

[3] *See* Joint Petition, p. 10.

[4] *See id.*

EnerNOC disagrees with FirstEnergy's interpretation of Act 129 in regard to the demand response program duration and instead PPL's EE&C Plan that anticipates the possibility that demand response programs could be extended past 2013. In addition, EnerNOC believes that a longer program ramp-up time than what FirstEnergy proposes will also be needed for the programs to be successful.

EnerNOC also disagrees that FirstEnergy can act as a CSP for its PJM demand response program. EnerNOC believes that Act 129 clearly excludes EDCs from acting as CSPs. Further, EnerNOC would recommend that the Commission require FirstEnergy to submit a competitive RFP and choose one qualified CSP to mange their curtailment program rather than assign CSPs load to curtail on a "first come first served" basis. Also, the Commission should require FirstEnergy to raise its incentives for their demand response program in order to make it advantageous for a CSP to run the programs and to attract enough participants for the programs to be successful.

V. ARGUMENT

A. EnerNOC supports the Position that Act 129 allows FirstEnergy to implement its Conservation and Energy Efficiency Programs, specifically FirstEnergy's Load Curtailment Program, through the initial 42 month window and Past May 31, 2013.

EnerNOC, as a national curtailment service provider, is primarily interested in the Demand Response programming being offered in FirstEnergy's service territories and supported in their EE&C Act 129 filing.

FirstEnergy has filed two demand response programs for the Commission's consideration. The first is the "Commercial Industrial Demand Response Program-CSP Mandatory and Voluntary Curtailment Program" (Met-Ed/ Penelec Curtailment Program and the Penn Power Curtailment Program).

The second program is the "Commercial Industrial Demand Response Program – Customer Mandatory Curtailment Program" (Met-Ed/Penelec PJM Program).

The program design for FirstEnergy's Large Commercial and Industrial Demand Response program is described on pages 63 – 72 of its EE&C plan and also in the Supplemental Testimony of Company Witness George Fitzpatrick on pages 3-7 and in the Met-Ed/Penelec/Penn Power Exhibit GLF-2.

The first program for the Met-Ed and Penelec service territories that FirstEnergy proposes is the Met-Ed/Penelec Curtailment Program. In this program, the Company will solicit bids from CSPs to register load in PJM capacity programs, for peak load reduction for at least 50 peak load hours based on the Companies' notification. This program is scheduled to run from June – September for two program planning years. In the 2011/2012 planning year, the Companies plan to solicit 20 MW from Met-Ed and Penelec service territories. In the 2012/2013 planning year, the Companies intend to solicit 40 MW from the Met-Ed and Penelec service territories. FirstEnergy has scheduled this program to end on May 31, 2013.

For the Penn Power service territory, instead of using CSPs for the Penn Power Curtailment Program, FirstEnergy seeks to employ Electric Generation Suppliers ("EGSs") to run the program and find participants. In this program, FirstEnergy will enter into agreements with EGSs for peak load reductions in at least 50 peak load hours based on Company notifications for the annual performance periods during 2011/12 and 2012/13 of the PJM planning years, which run from June through September. In the 2011/2012 planning year, the Company plans to solicit 30 MW from the Penn Power service territory and in the 2012/2013 planning year, it intends to solicit 60 MW from their territory. Like the program for Met-Ed and Penelec, Penn Power has also scheduled this program to end on May 31, 2013.

The second program is called the "Commercial Industrial Demand Response Program – Customer Mandatory Curtailment Program"("Met-Ed/Penelec PJM Program") for Met-Ed and Penelec. In this program, the utility will be acting as a CSP within PJM. There is a description of this program under the "Target Market" and "Objective" sections on page 7 of 16 of Met-Ed/Penelec/Penn Power Exhibit GLF-2. This program will also run during the months of June – September. Customers who take service from EGSs can also be included in the Met-Ed/Penelec PJM Program. Also, any customer who participates in this program must agree to have their load curtailed for a minimum of 2 years.

In the FirstEnergy Rebuttal Testimony of George L. Fitzpatrick, specifically on pages 9-10, the Company explains the rationale for why Met-Ed/Penelec will be acting as a CSP within the PJM program, in addition to having CSPs run the Met-Ed/Penelec Curtailment Program. Mr. Fitzpatrick explains that Met-Ed and Penelec have offered an alternative to the development of a competitive CSP demand program, "essentially as a contingency plan to ensure that Met-Ed and Penelec are able to secure the level of demand reduction needed." Mr. Fitzpatrick expressed a concern that there may not be enough CSPs that contract with Met-Ed or Penelec to run the demand response program and reduce the required peak load necessary to be in compliance with Act 129. FirstEnergy believes that in order for it to meet its statutory requirements, it needs to implement this alternative program in addition to the Met-Ed/Penelec Curtailment Program.

EnerNOC believes that Act 129 does not allow Met-Ed, Penelec, or any other EDC for that matter, to act as a Conservation Service Provider. 66 Pa.C.S. § 2806.1(M) defines a Conservation Service Provider as "An entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that **<u>has no direct or indirect ownership, partnership or other affiliated interest with an</u>**

Electric Distribution Company." An EDC clearly has "ownership, partnership and affiliation" with itself and therefore can clearly **not act in the capacity of** a CSP for any of the programs in its EE&C plan. Therefore, Met-Ed and Penelec should not be allowed to run an alternative program such as their Met-Ed/Penelec PJM Program where they act as the CSP to meet the requirements under the Act.

Instead of allowing the utility to participate as a CSP, EnerNOC believes that the Commission should issue a competitive RFP and choose one CSP to implement and run its demand response program. EnerNOC firmly believes that this will be the best solution possible in order for the EDCs to meet their requirements under Act 129.

Term of the Plan

EnerNOC supports the position that FirstEnergy's current portfolio will need to be altered so that the Companies can enter into contracts with CSPs that will extend beyond the end of its EE&C plan date of May 31, 2013.

As filed in FirstEnergy's proposed EE&C plans, the Demand Response programming that they support terminates 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.

EnerNOC believes that 66 Pa.C.S. § 2806.1(d)(2) supports the concept of EDCs being able to enter into long term contracts with a CSP and how that process would ultimately be more "prudent and reasonable" for the EDCs to do.

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

EnerNOC seeks to support a FirstEnergy Demand Response program design that promotes the continuation of its DR program beyond 2013. In PPL's EE&C filing and supporting testimony, before this Commission, it has argued that its current portfolio design contemplates that the Company will need to enter into contracts with CSPs that <u>extend beyond</u> 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, PPL 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 <u>more</u> costly – at approximately $5 million beyond the current portfolio. <u>Id</u>. at 13-14. EnerNOC urges FirstEnergy to adopt PPL's position that the utility be allowed to enter into contracts with CSPs in its service territory for five (5) to eight (8) years or as necessary.

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." <u>Id</u>.; <u>see also</u> Tr. at 166. It was confirmed that the total projected costs in each of the extra years will be approximately $5 million - $10 million per year. Tr. at 168.

EnerNOC supports the continuation of the DR programming beyond the 2013 time frame and contends that this is the best decision that this Commission could make in all of the EE&C cases. Demand Response programs need time to ramp up in order to generate successful opportunities for both ratepayers and utilities.

EnerNOC disagrees with FirstEnergy's 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, 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)(l) 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 for the words "additional incremental requirements", which mean requirements for demand reductions beyond those already obtained. Had the Pennsylvania 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 2013.

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 FirstEnergy seeks to act as a CSP and also issue performance contracts with **one or more** Curtailment Service Providers and EGSs (in Penn Power service territory), who will recruit FirstEnergy customers and deliver the demand reduction target set in their program.

EnerNOC opposes this rationale and supports a single CSP model for the C&I Curtailment Program. Demand Response program success for FirstEnergy, as with any utility, is based upon a clearly defined program that can be implemented with a reputable and credit-worthy CSP partner, one 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.[5]

EnerNOC supports 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 FirstEnergy's Commercial Industrial Demand Response Program-CSP Mandatory and Voluntary Curtailment Program.

EnerNOC, in reflecting on the design of FirstEnergy's Curtailment Program, believes that oversubscription will not be necessary if RFP terms, security and penalties are appropriate.[6]

B. CSP ISSUES

A. Met-Ed and Penelec

1. FirstEnergy's "First Come, First Served" Approach To Participation In The C&I DR Curtailment Program Presents Serious Challenges That Threaten Its Successful Implementation.

Met-Ed's and Penelec's C&I Curtailment Program description states that the Companies will enter into an agreement with a CSP "selected on a first come first serve basis."[5] Based on a plain reading of the program description, the meaning of "first come first serve" is not clear. To

5 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 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.

6 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 FirstEnergy. Oversubscription is a luxury that FirstEnergy and its customers cannot afford and even if they can, may simply not be possible.

5 *Id.*

the extent Met-Ed and Penelec intend this phrase to mean that there will be no bilateral, upfront commitments, but rather capacity be enrolled in the program as it is acquired, EnerNOC respectfully submits that this approach presents several challenges. A "first come first serve" approach provides no assurance that Met-Ed and Penelec are securing the most reliable, cost-effective resources. This approach also may make it more difficult for a CSP to justify investing in the relevant service territory. Unlike other approaches, the "first come first serve approach" lacks transparency, thereby rendering it difficult for a CSP to determine whether building capacity will provide the necessary returns to support the investment. Finally, because timing is essentially the only selection criterion under this approach, it will be very difficult for a CSP to aggregate load and effectively manage risk across a portfolio. Thus, as proposed, Met-Ed's and Penelec's "first come first serve" approach presents a number of serious challenges that threaten the successful implementation of the C&I DR Program and realizing Act 129's objectives and EnerNOC recommends that the Commission not adopt such an approach.

Instead, EnerNOC recommends that the Companies use a competitive RFP approach such as that proposed by PPL and PECO in their EE&C filings for similar programs. As previously stated, EnerNOC recommends that FirstEnergy issue an RFP and then select the CSP that provides the most reliable, efficient, and economic services for its demand response program for Large Commercial and Industrial customers.

2. A Longer Ramp-Up Period Would Allow Met-Ed and Penelec To Maximize the Value of Resources Under the C&I Curtailment Program.

As part of the implementation strategy for the Met-Ed/Penelec Curtailment Program, Met-Ed and Penelec plan to engage CSPs for annual performance periods.[6] These annual performance periods will address the 2011/2012 (*i.e.*, June 1, 2011 to May 31, 2012) and 2012/2013 (*i.e.*, June 1, 2012 to May 31, 2013) PJM planning years.[7] In other words, Met-Ed and Penelec will provide customers with incentive payments for only two years. As discussed below, the proposed two-year period may not provide customers or CSPs with sufficient certainty to make the investments necessary to participate in the proposed C&I Curtailment Program.

In addition, in Witness Fitzpatrick's Supplemental Testimony on page 3, he states that the Commercial/Industrial Peak Load Reduction program launch has now "been moved back to the third quarter of 2010." The push back of the launch of this program will provide even less time for CSPs to implement a successful program and find participants before the program is scheduled to start a few months later in the Summer of 2011.

It has been EnerNOC's experience that providing only two years of incentives presents a challenge on two fronts. First, the economic case for customers is harder to make for such a relatively short time period considering the ramp up involved, which likely will result in either lower participation on a customer basis, or less capacity reduction from those customers who do participate. This reason alone amplifies the need for a longer ramp-up and program period. Second, providing multiple years of incentives will allow Met-Ed and Penelec to ramp up the

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[6] *Id.*

[7] *Id.*

program over a longer period of time, and test and calibrate resources to ensure capacity will be available when called upon to meet the requirements of Act 129.

It is important for the Commission to recognize that, unlike energy efficiency initiatives, which are often installed and remain in place after a program twilights, demand response resources often disappear immediately in the absence of the provision of incentives.[8] Committing to a multi year program allows the implementing party (in this case the CSP) and the participating customers to make requisite up-front investments with certainty around future return. As indicated previously, this will likely increase both participation in numbers and amount of load.

In addition, running this program for a longer time period than the FirstEnergy proposed two planning years, will also give the companies more time to create and promote the program through a marketing campaign. By having the time to develop a campaign that can successfully reach the greatest number of customers will hopefully boost the customer interest and ultimate participation in the program.

3. Incentives For The C&I Curtailment Program May Be Insufficient To Facilitate Expected Participation Levels.

With respect to the C&I Curtailment Program, Met-Ed and Penelec propose a quarterly incentive payment of $6.88 per kW, or $27.52 per kW-year.[9] EnerNOC respectfully submits that this level of incentive payment will be substantially lower than necessary to attract customers willing to deliver the 50+ hours of curtailable load, particularly when members of the targeted

[8] 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 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.

[9] *Id.* at 64.

customer class have opportunity to participate in the PJM Emergency Demand Response Program. Under such circumstances, a substantial incentive is necessary to achieve projected participation levels. In addition to covering the incentive for customer participation, payment must also be calculated to cover a CSP's investment costs, business risk, and opportunity cost of investing in the Met-Ed or Penelec service territories compared to other utilities in Pennsylvania or in other parts of the country where incentives may be more attractive. Accordingly, EnerNOC suggests that the Commission examine the appropriateness of the incentive level for Met-Ed and Penelec's C&I Curtailment Program, relative to those in PPL and PECO programs.

4. EnerNOC Supports The Revised Credit Requirements That Were Provided In Supplemental Testimony and MetEd/Penelec/Penn Power Exhibit GLF-2 On Pages 1-2.

In the Supplemental Testimony of FirstEnergy's witness George L. Fitzpatrick, on pages 1-2 of MetEd/Penelec/Penn Power Exhibit GLF-2, it states that the Companies must meet the following criteria to be deemed credit worthy:

> (a) the CSP has a minimum senior unsecured debt rating (or, if unavailable, corporate issuer) from one of the following rating agencies of at least "BBB-" from S&P, "Baa3" from Moody's or "BBB-" from Fitch;
>
> (b) If the CSP does not meet the creditworthiness requirement, the CSP will need to post a parent guaranty from a guarantor that meets the credit requirement as stated above, or a Letter of Credit from a bank with an S&P credit rating of A or Moody's credit rating of Aa2, or Cash deposit to meet the customer's default obligation under the curtailment program.

EnerNOC promotes and fully supports an open and competitive RFP process for the Met-Ed/Penelec Curtailment Program and welcomes the challenge of equally qualified opponents in the bidding process in order to be chosen as the most qualified and effective CSP to implement their program and to meet FirstEnergy's Act 129 peak demand reduction requirements.

In EnerNOC's opinion, it is absolutely critical that FirstEnergy supports appropriate credit requirements as a threshold for active participation in their C&I Curtailment Program. To not have credit requirements to insure against a case of non-performance would not be a "prudent or reasonable" business decision on the EDC's part. Under Act 129, FirstEnergy 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 supports FirstEnergy's revised credit requirements in order to participate in the C&I Curtailment Program and seeks a competitive RFP process in which to choose one qualified and creditworthy CSP that will implement and run the utility's Program.

B. <u>Penn Power EE&C Plan</u>

Like Met-Ed and Penelec, Penn Power proposes a C&I Program that distinctly resembles the program set out by its related companies. In particular, Penn Power's proposal also focuses on reductions in at least 50 peak hours, rather than across all of the top 100 peak load hours, a characteristic that EnerNOC supports.[10] While EnerNOC supports certain aspects of Penn Power's C&I Curtailment Program, there is, again, room for improvement that exists in order to maximize the cost efficiency and effectiveness of this proposed demand response initiative. As the Commission evaluates Penn Power's Commercial Industrial Demand Response Program –

[10] *Id. at 63*

CSP Mandatory and Voluntary Curtailment Program ("Penn Power C&I Curtailment Program"), EnerNOC submits the following position for the Commission's consideration.

1. The Use of Curtailment Service Providers (CSPs) Rather Than Electric Generation Suppliers (EGSs), Would Increase the Likelihood Of The C&I Curtailment Program's Successful Implementation And Administration.

As stated above, according to Penn Power's C&I Curtailment Program description, the Company intends to work with Electric Generation Suppliers ("EGSs") to recruit and enroll EGS customers, rather than aggregating load through CSPs.[11] EnerNOC respectfully submits that the use of CSPs, rather than EGSs, would increase the likelihood of the Penn Power C&I Curtailment Program's successful implementation and administration.

As entities primarily engaging in the provision of demand response and energy efficiency services, CSPs bring a wealth of knowledge, experience and expertise about the Demand Response field. As a result, CSPs have the practical "know-how" needed to maximize participation and capacity in the most efficient and cost-effective manner. Furthermore, to achieve the full benefits of demand response, particularly for higher hour programs, it is important to align the interests of the key players in the program. In this case, EGSs are expected to maximize the reliability and capacity of the customers that they enroll into the C&I Curtailment Program. The goals and objectives of an EGS are diametrically opposed to the objectives of a Demand Response curtailment service provider. EGSs want to sell the customer energy. By contrast, CSPs are looking for ways to encourage C&I customers to use **less** energy and get an incentive for doing so.

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[11] *Id.*

For these reasons, EnerNOC encourages Penn Power to engage Curtailment Service Providers (CSPs) to implement their C&I Curtailment Program. EGSs could certainly have the opportunity to also enroll customers in the Company's demand response program, but that opportunity should not be an exclusive one. Penn Power and its customers will certainly benefit from the competition this approach will engender.

2. A Longer Ramp-Up Period Would Allow Penn Power To Maximize Their Value Of Resources Under The C&I DR Program.

As part of the implementation strategy for the C&I DR Program, Penn Power plans to engage CSPs for annual performance periods.[12] These annual performance periods will address the 2011/2012 (*i.e.*, June 1, 2011 to May 31, 2012) and 2012/2013 (*i.e.*, June 1, 2012 to May 31, 2013) PJM planning years. *Id.* In other words, like Met-Ed and Penelec, Penn Power will provide customers with incentive payments for only two years. Also as EnerNOC stated above, in Witness Fitzpatrick's Supplemental Testimony on page 3, the Commercial/Industrial Peak Load Reduction program launch has now "been moved back to the third quarter of 2010." The push back of the launch of this program will give even less time for EGSs, and hopefully our suggested inclusion of CSPs, to implement a successful program and find participants before the program is scheduled to start a few months later in the Summer of 2011.

For the reasons discussed above, the proposed two-year period will not provide customers, EGSs or CSPs with sufficient certainty to make the investments necessary to participate in the proposed C&I DR Program. Thus, EnerNOC respectfully reiterates that implementing the Penn Power C&I Curtailment Program over a longer ramp-up period and

[12] *Id.*

extending the program past May 31, 2013, makes more economic sense for participating EGSs and CSPs and customers, as well as maximizes the value of the program's resources.

In addition, running this program for a longer time period than the Penn Power proposed two planning years, will also give the companies more time to create and promote the program through a marketing campaign. By having the time to develop a campaign that can successfully reach the greatest number of customers will hopefully boost the customer interest and ultimate participation in the program.

3. Penn Power's Proposed Incentives Are Unlikely To Achieve Projected Levels of Participation.

Pursuant to its C&I Curtailment Program, Penn Power proposes a quarterly incentive payment of $7.50 per kW, or $30.00 per kW-year.[13] Based upon EnerNOC's interpretation of the C&I Program description, the $30.00 per kW-year payment represents the entire program budget, not just the customer incentives. *Id.* at 66. EnerNOC respectfully states that this level of incentive payment will be substantially lower than necessary to attract customers willing to deliver 50+ hours of demand response per year.

To improve the likelihood of achieving the expected participation levels, Penn Power should recognize the substantial incentives required to deliver sufficient levels of capacity to contribute meaningfully towards its Act 129 goals. Based on EnerNOC's experience serving as a CSP in multiple markets, the incentives contemplated in Penn Power's program budget reflect unrealistic incentive requirements for the delivery of reliable capacity available for dispatch. By contrast, EnerNOC supports the approach adopted by PECO, which includes a proposed budget representing <u>incremental</u> incentives to existing PJM demand response incentives, in exchange for

[13] *Id.* at 64.

additional dispatch responsibilities toward PECO's Act 129 goals.[14] Establishing payments that are more closely calibrated to the projected participation levels for the C&I Curtailment Program is instrumental to the Company achieving its statutory objectives. Accordingly, EnerNOC recommends that Penn Power incorporate a similar approach into its C&I Curtailment Program.

[14] *See* PECO EE&C Plan, p. 174.

VI. CONCLUSION

For all of the foregoing reasons as well as the reasons expressed in EnerNOC's initial comments, EnerNOC proposes that our recommendations to FirstEnergy's EE&C Plan be accepted by this Commission.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That FirstEnergy's Commercial & Industrial Demand Response Program- CSP Mandatory and Voluntary Curtailment Program be structured in a way in which it can continue to operate successfully after the statutory deadline of May 31, 2013.

2. That FirstEnergy's Commercial & Industrial Demand Response Program- CSP Mandatory and Voluntary Curtailment Program have a longer Ramp-Up period that will start before the third quarter of 2010.

3. That FirstEnergy issue a competitive RFP for its Commercial Industrial Demand Response Program- CSP Mandatory and Voluntary Curtailment Program.

Respectfully submitted,

By: ______________________

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION FOR CONSOLIDATION OF PROCEEDINGS AND APPROVAL OF ENERGY EFFICIENCY AND CONSERVATION PLANS OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, AND PENNSYLVANIA POWER COMPANY	DOCKET NO. M-2009-2092222 DOCKET NO. M-2009-2112952 DOCKET NO. M-2009-2112956

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 11, 2009**

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