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FILE NO: 11616/2

June 3, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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2011 JUN -3 AM 10: 07
PA PUC
SECRETARY'S BUREAU

Re: Docket No. M-2009-2108601 – Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions

Dear Secretary Chiavetta:

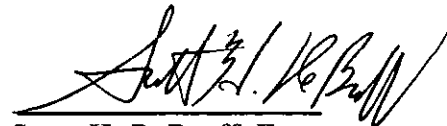
Enclosed herewith please find the original and fifteen (15) copies of the “**Comments to Act 129 of 2008 – Total Resource Cost Test (TRC) Test 2011 Revisions on Behalf of EnerNOC, Inc.**” in the above-captioned proceeding. Please enter this into the docket and timestamp the additional two (2) copies.

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.
Alicia R. Duke, Esq.
Counsel for EnerNOC, Inc.**

Enclosures

cc: Certificate of Service for Docket M-2009-2108601
Commission's Act 129 (via email – ra-Act129@state.pa.us)

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IMPLEMENTATION OF ACT 129 OF 2008 –
TOTAL RESOURCE COST (TRC) TEST
2011 REVISIONS

Docket No. M-2009-2108601

COMMENTS TO ACT 129 OF 2008 – TOTAL RESOURCE COST (TRC) TEST
2011 REVISIONS ON BEHALF OF ENERNOC, INC.

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Dated: June 3, 2011

Counsel for EnerNOC, Inc.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IMPLEMENTATION OF ACT 129 OF 2008 –
TOTAL RESOURCE COST (TRC) TEST
2011 REVISIONS**

Docket No. M-2009-2108601

**COMMENTS TO ACT 129 OF 2008 – TOTAL RESOURCE COST (TRC) TEST
2011 REVISIONS ON BEHALF OF ENERNOC, INC.**

AND NOW COMES, **EnerNoc, Inc** (“EnerNOC”) by and through its counsel, **Scott H. DeBroff, Esquire** and **Alicia R. Duke, Esquire** of Rhoads & Sinon LLP, for the purpose of these "Comments" with respect to this proceeding before the Commonwealth of Pennsylvania Public Utility Commission ("PUC" or the "Commission") pursuant to 52 Pa. Code §§ 5.71-5.74. In support of this docket, EnerNOC avers the following:

1. EnerNOC is a leading provider of clean and intelligent energy management applications and services for the smart grid, which include comprehensive demand response and energy efficiency applications and services. EnerNOC manages a demand response (DR) portfolio of over 6,300 MW from over 3,900 commercial, institutional, and industrial end-use customers across more than 10,100 sites. EnerNOC actively participates in a range of capacity, energy, and ancillary services markets, and is an active Aggregator of Retail Customers (ARC)² in the demand response programs of ISO New England, New York ISO, ERCOT and PJM, among other ISOs/RTOs. In addition, EnerNOC partners with utilities both inside ISO/RTO regions and

in traditionally regulated markets to provide cost effective and reliable demand side management services to utilities and their customers.

2. EnerNOC operates specifically in the Commonwealth of Pennsylvania as a Conservation Services Provider. As a Conservation Services Provider, EnerNOC provides commercial, industrial and institutional organizations with demand response and energy efficiency services. By letter dated July 2, 2009, the PUC also approved EnerNOC's Application to register as an Act 129 Conservation Service Provider. A primary focus of EnerNOC's service is support for small to medium size commercial and small industrial and institutional customers and the cost of metering is a primary determinant of the customers who can be cost-effectively served.

3. EnerNOC has participated in the other related Act 129 proceedings. EnerNOC participated as a party in all of the Energy Efficiency and Conservation Plan proceedings for each Pennsylvania investor owned utility.

4. On May 6, 2011, a Tentative Order was entered in this proceeding seeking comments on the proposed additions and updates to the PA TRC test.

5. EnerNOC would like to submit the following Comments in response to the proposed changes found in Section A, Demand Response, on Pages 7 – 15 of the Tentative Order.

6. EnerNOC's counsel and parties to whom all correspondence and pleadings in this docket should be directed to are:

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COMMENTS TO ACT 129 TRC TEST – SECTION A (DEMAND RESPONSE)

EnerNOC first expresses its appreciation for the Commission's efforts to solicit stakeholder input. The issues addressed in the Proposed Order are significant and we appreciate the opportunity to provide our comments and suggestions.

As noted above, EnerNOC is actively involved in the Commonwealth's Act 129 demand response programs as a registered Conservation Services Provider. EnerNOC is also very active as a Curtailment Services Provider in the PJM demand response programs.

PJM is EnerNOC's largest market, and Pennsylvania is the most important state in that market, with over 1,000 MW of demand response resources currently participating in the PJM emergency DR programs. We expect that many existing participants in PJM's emergency DR programs will also participate, through EnerNOC, in the demand response programs offered by the Commonwealth's Electric Distribution Companies (EDCs.).

EnerNOC's comments are focused solely on the Commission's tentative determination that payments from PJM for participation in its emergency DR programs be treated differently, depending on whether the payments come through an EDC or a CSP.

This Commission has a long history of supporting competition in many aspects of the industries that it regulates, including the EE&C programs operated by the EDCs. We are concerned that the Proposed Order has the potential to create anti-competitive results.

Simply put, the proposed treatment of PJM payments (which are likely to be very significant) threatens to artificially tilt the playing field heavily toward EDC-run DR programs.

EnerNOC believes that the EDC DR programs should rise or fall, and be continued or not, based upon the best estimates of their cost-effectiveness. Two programs, one run by an EDC and another by a CSP under contract to an EDC, both of which achieve the exact same peak load reductions, at the exact same costs, with the exact same revenues from PJM, should receive the exact same cost effectiveness score. The EDC program should not be favored simply because it gets to count the CSP revenues and the CSP does not.

The basis for the disparate treatment in the Proposed Order appears to be the perceived lack of transparency of the level of payments to customers between EDCs and CSPs. The Commission appears to reason that because it does not know with certainty what fraction of each PJM dollar is going to each end use customer, that the assumption should be that none of the money is going to customers. This logic is facially unreasonable.

The Commission can be 100% certain that customers not adequately compensated for undertaking the substantial and frequent demand reductions required under the Act 129 programs will not provide those reductions. This is true regardless of whether the payments flow from an EDC or a CSP. Inadequately paid customers will not respond.

Similarly, both EDCs and CSPs will incur significant costs to develop and implement their programs, and there are significant costs to implement Act 129 programs with a high frequency of dispatch, relative to the costs of implementing PJM's much less rigorous programs. It is not clear why the Commission's statement, at page 10 of the Order, that CSPs must retain a

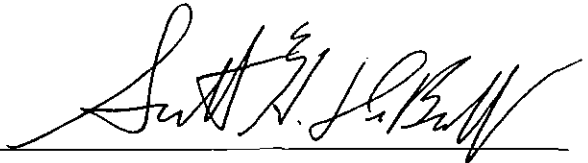
portion of the PJM costs to conduct their business, is not just as true for the EDCs. Thus, it is not clear why this should form a basis for discriminating between the two provider options.

CSPs assume many risks when they offer to provide firm services to the EDCs and they are required to provide firm assurances that they can meet their obligations, yet CSPs cannot typically pass these risks of non-performance onto their customers (CSPs have found that customers will participate at much lower levels if penalties are passed on.) The assumption of that risk has value and that value is accounted for as a component of the portion of the EDC and PJM payments the CSP retains.

EnerNOC has built a best-in-class, award-winning infrastructure of hardware, software, and above all highly skilled people that enable it to deliver thousands of MWs over hundreds of events at a performance level that is consistently over 100%. Some of that infrastructure is paid for by EnerNOC's retained share of PJM payments and some will be paid for by its retained share of Act 129 contract payments, but it is those retained payments that allow us to cost-effectively offer the firm and reliable service -- the benefits -- that the EDCs are purchasing on the ratepayers' behalf.

WHEREFORE, EnerNOC respectfully requests that the Pennsylvania Public Utility Commission enter these Comments to Section A, Demand Response, of the May 6, 2011 Tentative Order into the record and consider modifications to the revisions in line with our comments.

Respectfully submitted,

By: 

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DATED: JUNE 3, 2011

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IMPLEMENTATION OF ACT 129 OF
2008 – TOTAL RESOURCE COST
(TRC) TEST 2011 REVISIONS

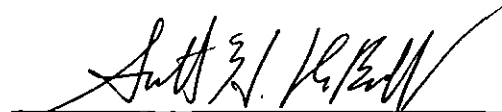
DOCKET NO. M-2009-2108601

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: **June 3, 2011**

By:



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CERTIFICATE OF SERVICE - M-2009-2108601

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