

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for \*  
Alternative and Renewable Energy \*  
Technologies and Resources, and Emission \*  
Control Reporting Requirements, and \*  
Amendment of Chapters 4901:5-1, 4901:5-3, \*  
4901:5-5, and 4901:5-7 of the Ohio \*  
Administrative Code, pursuant to Chapter 4928, \*  
Revised Code, to Implement Senate Bill No. \*  
221. \*

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Case No. 08-888-EL-ORD  
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**ENERNOC, INC. COMMENTS ON STAFF'S PROPOSED  
RULES – NEW CHAPTER 4901:1-39**

Pursuant to the Commission's Order of August 20, 2008 in the above-captioned docket, EnerNOC, Inc. submits the following comments regarding proposed new chapter 4901:1-39 of Staff's Proposed Rules.

Background on EnerNOC

EnerNOC is a leading demand response, energy efficiency, and energy management services provider in the United States and Canada. As of June 30, 2008, EnerNOC had more than 1,643 MW of demand response resources under management across approximately 3,067 sites across the continent. Our demand response offerings include a range of reliability-based demand response programs, price response programs, and ancillary services markets. EnerNOC's demand response activities are implemented via automated, aggregated, and intelligent management of end-user lighting, heating, ventilation, air-conditioning, distributed generation, and industrial process equipment. In addition to demand response activities, EnerNOC offers a suite of energy management solutions including energy efficiency and procurement.

EnerNOC is an active participant in the demand response programs in Ohio through its participation PJM Interconnection, LLC wholesale Electricity market demand response programs.

#### Comments on Staff's Proposed Rules

Staff's Proposed Rules provide establish new processes and requirements for electric distribution company-sponsored demand response and energy efficiency activities, as well as mercantile customer activity who enter into a contractual relationship to participate in an electric distribution company program contributing to specific levels of energy savings and demand reductions. While the reporting scheme appears to be adequately crafted as far as it goes, it will not capture a large amount of peak reduction activity in Ohio that is the result of curtailment service provider participation in PJM Interconnection, LLC wholesale electricity market demand response programs. EnerNOC respectfully suggests that the Commission might want to include provisions in its proposed rule to capture peak reduction and energy efficiency activity occurring in Ohio as part of PJM programs that are not affiliated with electric distribution company sponsored programs.

EnerNOC is a member of PJM and registered as a curtailment service provider doing business throughout the Regional Transmission Organization (RTO). EnerNOC engages commercial and industrial customers to provide demand response as a third party outside of electric distribution company programs. Traditional demand response programs available through utilities failed to reach large segments of customers, who for a variety of reasons, could not be served under the utility program. Third party curtailment service providers fill the critical niche of providing demand response

opportunities to customers who are either ill-suited for the utility program, or are ineligible for it.

Typical utility program offerings tended to focus only on the largest of customers, and often imposed technical and other requirements that were beyond the capability of smaller and medium-sized customers. Utility tariff program rules for curtailment tend to be standardized in a “one size fits all” mold that is unworkable for many customers, thereby limiting the potential for customer participation. In addition, utility programs tended to subject customers directly to strict penalties, which included an element of risk many customers are unwilling to expose themselves to.

Unlike typical utility tariff offerings, EnerNOC and other curtailment service providers can work with customers to capture the demand response value that is unique to the customer and the customer’s business needs. Because of utilities’ mandate for non-discriminatory treatment of customers, utilities cannot generally offer the same flexibility of contract terms that is necessary to attract broad participation.

Curtailment service providers provide a critical load response aggregation service that manages risk of under- and over-performing load response resources to deliver a portfolio of reliable demand response resources. Curtailment service providers are subject to the same penalties as utilities participating in PJM administered wholesale market programs. Curtailment service providers may, and often do, contract with end use customers to insulate them from penalty risk.

Penalty risk is a major barrier to customer participation in demand response programs because there are times when a customer may legitimately not be capable of performing during an event. Since customers know this can occur, they will often refuse

to enter a program that subjects them to penalties. This is a barrier that third party curtailment service providers are uniquely situated to resolve – with the result of more robust demand response participation in the market.

We do not read Staff's Proposed Rules as intending to foreclose customer participation in demand response programs through third party curtailment service providers. Indeed, to do so would run contrary to the lofty policy objectives of SB221. However, inasmuch as Ohio law requires electric distribution companies to achieve peak load reduction and energy efficiency goals, demand response and energy efficiency activity by customers engaged by third party curtailment service providers should count toward a utility's goals.

Including third party curtailment service provider activity occurring in a utility service territory will achieve at least two positive things for Ohio customers. First, it will align utility and curtailment service providers toward achieving the Ohio goals. If third party activity does not count toward the utility's goals, demand response activity through third parties will be seen as undermining the utility's goals. Second, recognizing third party curtailment service provider activity as part of the solution will encourage growth and innovation on the demand side of the market. As has been repeatedly stated by the PJM Market Monitor in the annual PJM State of the Market Report, the demand side of the electricity market is underdeveloped everywhere throughout the market. The result of insufficient demand response activity is reduced market efficiency, higher prices, and increased risk for the exercise of market power by dominant suppliers in the marketplace. Curtailment service providers are aiding in the development of the demand side of the market and are responsible for much of the innovation and new products and services that

have never been available to customers before, and to a much broader segment of customers that have ever been served before. It is appropriate, therefore, to craft regulation that harnesses and promotes continued development of an “all hands on deck” approach to demand side management that will work in parallel and cooperation with utility efforts.

We respectfully urge changes to Staff’s Proposed Rules – New Chapter 4901:1-39 to include provisions to capture the demand response and energy efficiency activity of third party curtailment service providers in utility compliance reporting.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Kenneth D. Schisler".

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*On behalf of EnerNOC, Inc.*

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Summary: Comments EnerNOC, Inc. Comments on Staff's Proposed Rules - New Chapter 4901:1-39 electronically filed by Mr. Kenneth D Schisler on behalf of EnerNOC, Inc. and Mr. Kenneth D Schisler