

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

## MOTION TO INTERVENE

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

<sup>1</sup> See, R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11.

Cleveland Electric Illuminating Company, and Toledo Edison Company (collectively, FirstEnergy or Companies)<sup>2</sup> compete with programs offered by EnerNOC in Ohio.

The reasons the Public Utilities Commission of Ohio (Commission) should grant EnerNOC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,  
ENERNOC, INC.

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<sup>2</sup> FirstEnergy also filed its reports in Case Nos. 09-580-EL-EEC, 09-581-EL-EEC and 09-582-EL-EEC.

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms.	)	Case Nos.	09-1947-EL-POR
	)		09-1948-EL-POR
	)		09-1949-EL-POR
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In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Initial Benchmark Reports.	)	Case Nos.	09-1942-EL-EEC
	)		09-1943-EL-EEC
	)		09-1944-EL-EEC
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**MEMORANDUM IN SUPPORT**

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These cases involve the Companies' Energy Efficiency and Peak Demand Reduction Program Portfolio Plan (Portfolio Plan) and Initial Benchmark Reports. EnerNOC may be adversely affected by, and has a direct interest in, the outcome of these cases. EnerNOC provides demand response and energy efficiency services to Ohio retail customers and the programs offered in the Portfolio Plan directly compete with EnerNOC's offering. R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. EnerNOC's interests may be adversely affected by these cases because the terms and conditions of the programs proposed by

Companies in the Portfolio Plan. Therefore, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of EnerNOC's interest is to provide demand response and energy efficiency services to the customers of FirstEnergy. This interest is different from that of any other party and especially different from that of the utility.

Second, EnerNOC's legal position relates to how demand response and energy efficiency services should be provided to Ohio retail customers. Ohio retail customers should be allowed to participate in any programs offered in Ohio and there should be no financial incentive for retail customers to participate in FE's programs over others. This position is directly related to the merits of the cases pending before the Commission.

Third, EnerNOC's intervention will not unduly prolong or delay the proceedings. EnerNOC has extensive experience practicing before state and federal commissions. This will allow for the efficient processing of these cases.

Fourth, EnerNOC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. EnerNOC has and will develop information that this Commission should consider for equitably and lawfully deciding the cases in the public interest.<sup>3</sup>

EnerNOC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the Commission should grant EnerNOC's Motion to Intervene.

Respectfully submitted,  
ENERNOC, INC.

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<sup>3</sup> EnerNOC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that EnerNOC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), which EnerNOC has demonstrated.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* was served on the persons identified below, *via* First Class Mail, postage prepaid, this 13<sup>th</sup> day of January 2010.

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Summary: Motion Motion to Intervene of EnerNOC, Inc. electronically filed by Ms. Jacqueline Lake Roberts on behalf of EnerNOC, Inc.