

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish A Standard Service Offer Pursuant to R.C 4928.143 in the form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	)	Case No. 14-841-EL-SSO
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	)	Case No. 14-842-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20	)	
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**REPLY BRIEF OF ENERNOC, INC.**

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EnerNOC, Inc. (“EnerNOC”) submits the following reply brief in the above-captioned proceeding addressing the application of Duke Energy Ohio, Inc (“Duke Ohio” or “the Company”) for approval of an electric security plan. EnerNOC’s response is limited to the interruptible load program positions stated by the Ohio Energy Group (“OEG”) in the initial brief. OEG was the only party that addressed Duke Ohio’s interruptible load program in their post-hearing brief.

The Commission should provide an equivalent demand response opportunity to all customers with a transparent process. It is the policy of this State to “[p]rovide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates”.<sup>1</sup> OEG has requested that the Commission modify and expand the terms of the Large Customer Interruptible Program as opposed to “completely

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<sup>1</sup> Ohio Revised Code §4929.02(J). (emphasis added)

abandoning” the program as Duke Ohio proposes.<sup>2</sup> As discussed below, EnerNOC does not oppose OEG’s proposal. However, EnerNOC requests that the Commission open up a new docket to address demand response programs going forward.

The “uncertainty” regarding the future of regional demand response programs, along with the fact that more focused attention around the broader issues OEG raised in its post-hearing brief is needed, make this topic one that should be further discussed in a separate docket. This is similar to the approach the Commission took in the original American Electric Power (“AEP”) ESP proceeding, 08-917-EL-SSO.. The Commission should open a new docket and order the parties to explore potential opportunities and develop a reasonable and transparent interruptible load tariff that is open to all commercial and industrial customers. In fact, the best way to develop transparency and equality in the Electric Security Plan process is to open one docket to address all interruptible riders throughout the State.

## I. Introduction

Duke Ohio’s application and filed direct testimony in the above-captioned proceeding proposed the elimination of the Company’s existing large customer interruptible rider.<sup>3</sup> The application states that the program is “obsolete”.<sup>4</sup> The Company’s testimony states that the Large Customer Interruptible Program would be eliminated effective June 2015.<sup>5</sup>

Duke Ohio witness, James E. Ziolkowski testified that the Company does not intend to continue the interruptible program because the program “will no longer be needed.”<sup>6</sup> Company

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<sup>2</sup> OEG Post-hearing brief at 25.

<sup>3</sup> See Company Ex. 6, direct testimony of William Don Wathen Jr. at page 22 lines 6-21 and page 23, lines 1-4; and Company Exhibit 18, direct testimony of James E. Ziolkowski (May 29, 2014) at page 8, lines 4-11.

<sup>4</sup> See Company Application at 10.

<sup>5</sup> Id.

<sup>6</sup> Company Exhibit 18, Direct Testimony of James E. Ziolkowski (May 29, 2014). at page 8, lines 5-6. (Mr. Ziolkowski cited the testimony of William Don Wathen Jr. for further explanation).

witness, William Don Wathen Jr. further explained that the Company agreed to offer the interruptible program with “above-market credits” to transmission voltage customers with loads in excess of 10 MW as part of the overall settlement in the prior ESP.<sup>7</sup> Mr. Wathen Jr. stated that eliminating the program helps to ensure that only competitive forces are at work in establishing competitive generation charges for customers.<sup>8</sup> Mr. Wathen Jr. further explained that the value of participating in the demand response programs should be determined only with regard to competitive market forces and not by “non-market-based incentives.”

OEG’s post-hearing brief provided significant opposition to Duke Ohio’s proposed elimination of the Large Customer Interruptible Program. OEG identified four customers representing 52 MWs of interruptible load that participate in the Large Customer Interruptible Program.<sup>9</sup> OEG made two requests. First, OEG requested that the four customers currently participating in the program get to stay in the Large Customer Interruptible Program.<sup>10</sup> Second, the terms of the program should be modified and expanded.<sup>11</sup>

EnerNOC does not support or oppose OEG’s position. Rather, EnerNOC notes that the record lacks critical details regarding the opportunities for interruptible load participation going forward. These critical details, which will be discussed below, need to be addressed. Duke Ohio did not propose to extend the tariff, so there is no proposal for a Large Customer Interruptible Program moving forward. As such, if the Commission finds it is appropriate to continue the program on current terms, or approve revised terms, it is necessary to open a new docket to afford all parties the opportunity to review those terms.

EnerNOC requests that the Commission approach interruptible program opportunities in

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<sup>7</sup> Company Exhibit 6, Direct Testimony of William Don Wathen Jr. (May 29, 2014) at page 22, lines 9-15.

<sup>8</sup> Id. page 22, lines 19-21 and page 23, line 1.

<sup>9</sup> OEG Post-hearing brief (December 19, 2014) at 16.

<sup>10</sup> OEG Post-hearing brief (December 19, 2014) at 25.

<sup>11</sup> See OEG Post-hearing brief (December 19, 2014) at 25.

a consistent and transparent process throughout the State. As discussed below, OEG also presents the inconsistencies in the approved terms of interruptible programs throughout the State. The best way to achieve a consistent and transparent approach to these opportunities is through the creation of a single docket where basic guidelines for these programs can be established.

## II. Discussion

OEG was the only other party in the proceeding to file a post-hearing brief addressing the Large Customer Interruptible Program. OEG cited extensively from the testimony of OEG witness, Stephen Baron, and his opposition to Duke Ohio's plan to eliminate the Large Customer Interruptible Program rider. OEG also cited to a number of statements from the hearing record to establish that it would be inappropriate for Duke Ohio to terminate this rider. In fact, OEG supports the idea of maximizing participation in these programs.<sup>12</sup>

OEG appropriately cited specific policies of the State and the many benefits that interruptible loads offered by commercial and industrial customers provide for the grid and for Duke Ohio's general customer base.<sup>13</sup> OEG cited the Commission's approval of AEP-Ohio's interruptible program, pursuant to which the Commission stated that demand response programs further State policy of encouraging and furthering Ohio's "effectiveness in the global economy."<sup>14</sup>

OEG correctly noted that the Large Customer Interruptible Program provides the same reliability, economic, and energy conservation benefits to customers as Duke Ohio's PowerShare program: "[b]oth the PowerShare® program and the large customer interruptible load program

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<sup>12</sup> See Transcript VIII at page 2309 lines 5-14. (Cross examination of OEG witness Baron on October 31, 2014).

<sup>13</sup> See OEG Post-hearing brief at 20-25. See also Transcript VIII at page 2338 lines 4-12. (Cross examination of OEG witness Baron on October 31, 2014)

<sup>14</sup> OEG Post-hearing brief at 18. (Citing R.C. 4928.02): "It is the policy of this state to do the following throughout this state: (N) Facilitate the state's effectiveness in the global economy."

can provide reliability, economic, and energy conservation benefits to customers.”<sup>15</sup> OEG provided the cross-examination response of Company witness Wathen Jr. to establish that demand response programs that are similar to the Duke Ohio PowerShare program will have similar benefits.<sup>16</sup> OEG further identified the benefits that demand response programs provide by quoting from Duke Ohio’s PowerShare 2014/15 program brochure, which set forth the very real benefits interruptible programs provide to all Duke customers.<sup>17</sup>

OEG also included specific examples of the benefits that participants in all interruptible load programs have created for all Duke Ohio customers. For example, interruptible customers helped reduce strain on the electric grid during the “polar vortex” in January 2014.<sup>18</sup> OEG also pointed out that interruptible programs will be increasingly useful in maintaining the grid moving forward, particularly as the State deals with the expected retirement of 27,000 MWs in the Midwest region.<sup>19</sup>

OEG also made the case to the Commission that the Large Interruptible Load Program should continue because of the pricing and legal uncertainty in the PJM market opportunity.<sup>20</sup> OEG asserted -- and EnerNOC concurs -- that the Commission should “retain a state-administered interruptible load program in order to preserve the benefits offered by interruptible resources.”<sup>21</sup> For example, OEG cited the recent D.C. Circuit Court of Appeals decision, calling into question whether PJM will be permitted to continue allowing demand response resources to

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<sup>15</sup> See OEG Post-hearing brief at 20.

<sup>16</sup> OEG post-hearing brief at 21.

<sup>17</sup> OEG Post-hearing brief at 20-21.

<sup>18</sup> OEG Post-hearing brief at 17 and Transcript VIII at page 2317 lines 3-18. (Cross examination of OEG witness Baron on October 31, 2014)

<sup>19</sup> OEG Post-hearing brief at 17.

<sup>20</sup> Transcript VIII at pages 2334 - 3336. (Cross examination of OEG witness Baron on October 31, 2014).

<sup>21</sup> OEG Post-hearing brief at 23.

participate in its energy and capacity markets.<sup>22</sup> Under these circumstances, the State should keep all demand response options open and explore new possibilities.

Finally, OEG asserted that the Commission should continue the Large Customer Interruptible Load program so industrial customers in Southern Ohio are not at a disadvantage to similar customers in Northern Ohio. OEG cited to the Commission's adoption of an interruptible demand response program in Northern Ohio to suggest the Commission must allow similar opportunities in Southern Ohio, stating in part that "a steel mill in Northern Ohio would potentially have a significant advantage over a similar customer in Duke's service territory for a full year."<sup>23</sup> EnerNOC supports equal treatment of customers. For this reason, the Commission should adopt a State-wide policy regarding demand response programs, thus ensuring that inequities in demand response opportunities between different utility programs and their customers are eliminated or at least minimized to the greatest possible extent. As discussed further below, EnerNOC proposes that the Commission open a new and separate docket and consider all of the State interruptible programs in one, transparent place, where all interested parties can be heard.

To ensure the current reliability, economic, and energy conservation benefits of the Large Customer Interruptible Program continue, OEG's proposal includes additional parameters on the participants. OEG requests that the Commission modify the terms of the program by requiring the participants to be available for unlimited emergency-only interruptions throughout the year.

However, any approved interruptible tariff should afford a fair opportunity for as many customers as possible to participate, while balancing against maximizing the benefits to all customers in the Duke Ohio territory. OEG witness Baron agrees these demand response

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<sup>22</sup> OEG Post-hearing brief at 24.

<sup>23</sup> OEG Post-hearing brief at 24.

programs should be open to all<sup>24</sup> participants and should maximize participation.<sup>25</sup> Yet, there is no explanation in the record why this opportunity is only open to the “Large Customers.”

For example, as part of the proposed separate docket, the Commission should examine the 10 MW level of participation requirement. There is no support for why a 10 MW floor is necessary or appropriate and, indeed, it simply amounts to a barrier to participation for many customers. In addition, there is very little discussion regarding the appropriate level of annual demand response participation that is necessary outside of the summer period. (i.e. the Commission could attract more annual demand response participants with some limitations on the hours that are needed during “off periods”.) Finally, the Commission should specifically include the ability to aggregate customers for participation as part of its review. Again, these are the types of details which EnerNOC believes should be developed in a separate docket.

There is past precedent for the Commission to defer the demand response discussion to a separate docket when an ESP proceeding did not fully address the issues at hand. In the initial AEP ESP proceeding, 08-917-EL-SSO, there was a significant debate regarding the opportunity for customers to use third-party curtailment service providers (“CSPs”) to participate in PJM programs. AEP was opposed to the suggestion and a number of parties supported the concept. The Commission reached two conclusions. First, the Commission allowed customers to participate in PJM demand response programs through CSPs until such time as a more thorough review of the PJM process could be reviewed.<sup>26</sup> Second, the Commission concluded that the

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<sup>24</sup> Transcript VIII at page 2320 lines 20-25. (Cross examination of OEG witness Baron on October 31, 2014)

<sup>25</sup> Transcript VIII at page 2309, lines 5-14. (Cross examination of OEG witness Baron on October 31, 2014)

<sup>26</sup> In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets, Opinion and Order, (March 18, 2009) at 58. (“AEP ESP I”)

issue must be deferred and addressed in a separate proceeding, which was established pursuant to a subsequent entry.<sup>27</sup> EnerNOC requests the same opportunity here.

Finally, as identified above, OEG also presented the inconsistencies in the Commission's review of interruptible programs throughout the State. The best way to achieve a consistent and transparent approach to these opportunities is through the creation of a single – statewide -- docket where basic guidelines for these programs can be explored and potentially established. The Commission has the authority to create such a docket. During the AEP ESP I proceeding, the Commission cited to “broad and comprehensive” jurisdiction over electric service recognized by the Supreme Court – including tariff provisions such as demand response program participation.<sup>28</sup> In addition, the Commission could also establish a uniform demand response tariff that is appropriate for all customers under the Reasonable Arrangement statute.

### III. Conclusion

EnerNOC does not oppose the parameters proposed by OEG as part of maintaining the current customers participating in some sort of Duke Ohio Large Customer Interruptible Program. EnerNOC cannot express support for OEG's proposal without knowing the full details of the provisions behind such program, and whether those provisions will allow equal opportunities for all in a fair and consistent manner. OEG raises the concern that industrial customers in Southern Ohio should have the same interruptible program opportunities as comparable customers in Northern Ohio. EnerNOC agrees. However, those opportunities should be available and the same for all customers – not just the large industrial customers. To this end, if the Commission authorizes and/or adopts OEG's recommendations, EnerNOC

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<sup>27</sup> Id.

<sup>28</sup> Id. at 57-58.



requests that the Commission order the parties to work out the remaining details of the tariff in a separate docket, preferably a State-wide demand response docket.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on December 29, 2014.

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