

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Consideration and
Implementation of Section 393.1075, the Missouri
Energy Efficiency Investment Act

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File No.: EW-2010-0368

Initial Comments of EnerNOC, Inc.

EnerNOC, Inc. (“EnerNOC”) respectfully submits the following initial comments concerning the Commission Staff draft proposed regulations to be codified as 4 CSR 240-20.093, 4 CSR 240-20.094, 4 CSR 240-3.163, and 4 CSR 240-3.164.

I. Introduction to EnerNOC

EnerNOC is a leading developer and provider of clean and intelligent power solutions to commercial, institutional, and industrial (C&I) end use customers, as well as electric power grid operators and utilities. EnerNOC’s technology-enabled demand response and energy management solutions help both customers and grid operators optimize the balance of electric supply and demand.

EnerNOC currently manages over 4,350 MWs of demand response resources throughout North America and the United Kingdom,¹ and is the largest company of its kind in the world. EnerNOC actively manages aggregated demand response resources participating in a broad variety of reliability-based programs, economic price-response programs, and ancillary services markets.

EnerNOC is a direct market participant in ISO-New England, PJM Interconnection, New York ISO, and the Electric Reliability Council of Texas (ERCOT) wholesale electricity markets. In addition, EnerNOC provides demand-side management services through bilateral arrangements with utilities throughout North America, in both investor-owned and public power utility systems in the Tennessee Valley Authority Region, Arizona, California, Colorado, Florida, Idaho, Maryland, Vermont, and

¹ As of December 31, 2010.

Washington. EnerNOC also provides demand-response services in open-market programs in Ontario, Canada and in the United Kingdom.

EnerNOC does not provide demand response services to Missouri utilities or directly bid demand response resources into the Southwest Power Pool (SPP) or Midwest ISO (MISO) wholesale markets at this time. However, EnerNOC provides energy efficiency services to Missouri customers and is interested in expanded clean energy business activities in Missouri. EnerNOC has also been actively involved in developing the rules for direct participation that have been submitted to FERC for approval through MISO's Demand Response Working Group.

II. Brief Statement of Position

EnerNOC generally supports the draft rules, and appreciates the efforts of staff in drafting a high-quality and sensible set of rules for the Commission to consider. The draft rules take significant steps toward carrying out the intent of the Missouri Energy Efficiency Investment Act ("MEEIA"). However, EnerNOC concurs with other stakeholders that additional provisions are required to guarantee that Missouri utilities and customers realize the full potential of demand side resources. In our comments, we will provide greater detail on the following points:

- EnerNOC agrees with AmerenUE, Kansas City Power & Light (KCP&L), Missouri Department of Natural Resources (MDNR), and Natural Resources Defense Council (NRDC) that the rules provide sufficient cost recovery mechanisms and financial incentives.
- EnerNOC agrees that the rules do not adequately address the throughput incentive² which inhibits demand side resource investment, also expressed in the June 25 KCP&L, MDNR,

² The "throughput incentive" generally refers to utility rate structures that depend upon high volumetric sales to ensure utility profitability. Where investor-owned utilities have a throughput incentive embedded in rate structures, demand side programs that reduce consumption run contrary to utilities' fiduciary obligations to investors.

NRDC joint filing.

- EnerNOC supports the annual demand savings targets codified in the regulation and further supports establishing the utility guideline as the greater of the market potential study finding or the percentages listed in the regulation. EnerNOC opposes the adoption of a four year term for a DSIM and the four year general rate proceeding requirement.

III. Alignment of Utility Incentives

EnerNOC's experience in dozens of states suggests that utilities require adequate cost recovery mechanisms and financial incentives in order to capture the full potential of demand side resources. As correctly noted by KCP&L and AmerenUE, current cost recovery constructs in Missouri deters demand side investment. SB 376 addresses this shortcoming, specifically allowing for:

- 1) Program cost recovery for utilities;
- 2) A mechanism to eliminate the utility throughput incentive that correlates a utility's revenue with sales volume; and
- 3) Incentives that promote DSM investment.

The draft rules propose sufficient measures to allow for program cost recovery, and create an effective incentive for investment with the inclusion of shared net benefits. Regarding cost recovery, EnerNOC concurs with KCP&L, AmerenUE, MDNR, and NRDC that one potential method for cost recovery is direct expense recovery. Other viable methods include the average of three year projected and/or historic expenses suggested in the KCP&L, NRDC, MDNR joint filing or AmerenUE's option of utilizing "a short amortization period (three years or less), with unamortized balances receiving a return equal to the return allowed for the utility's rate base."

EnerNOC also is in agreement with the June 25 joint filing by KCP&L, NRDC, and MDNR that argues the draft rules do not address the throughput incentive. Without removal of the throughput incentive, utilities will not be fully financially motivated to make DSM investments.

Research indicates that removing the throughput incentive is essential for states that wish to unlock the full potential of DSM investment. Indeed, every state in the top five of the American Council for an Energy-Efficient Economy (ACEEE) scorecard has a mechanism to address the throughput incentive. Conversely, all of the states that are ranked in the bottom five have a throughput incentive.³ EnerNOC therefore believes that the rules need to create an explicit mechanism for eliminating the throughput incentive for utilities.

Table 1: Throughput Incentives by State

Ranking	State	Throughput Incentive
1	California	N
2	Massachusetts	N
3	Connecticut	N
4	Oregon	N
5	New York	N
47	Nebraska	Y
48	Alabama	Y
49	Mississippi	Y
49	North Dakota	Y
51	Wyoming	Y

IV. Specific Recommendations to Staff's Draft Regulations

A. Establishing annual demand savings targets - 4 CSR 240-20.094(2)

The Staff draft appropriately establishes annual demand savings target guidelines as the greater of the utility's market potential or the targets listed in the regulation. EnerNOC's experience in other markets and the overwhelming evidence from literature on demand side resource market potential supports the notion that a fair analysis of the Missouri market would reveal opportunities that should well

³ The 2009 State Energy Efficiency Scorecard. October 2009. Report Number E097.

exceed the target percentages listed in the regulation. Nevertheless, the targets listed in the regulation are important to demonstrate continued progress toward achieving the goals of the MEEIA.

Including the targets and incremental increases in the regulation sends a powerful and appropriate message that Missouri is serious about implementing the key objective in the MEEIA of achieving all cost effective demand side savings. The strength and clarity of this message is critical to encourage clean energy firms like EnerNOC wishing to invest in demand side management in Missouri. EnerNOC and other firms specializing in delivering energy efficiency and demand response services look for constructive regulatory policies that encourage cost effective demand side investment when deciding whether to seek to do business in a particular state.

In crafting regulations to implement a statute like the MEEIA, there are almost always efforts to weaken the legislative language through interpretation, and that risk is present in the current effort. By including the target guidelines in the regulation, the regulations will serve as a benchmark and a check against the erosion of the MEEIA's objectives over time. Although we expect that future market potential studies will reveal that the potential will exceed the targets, the targets provide an important backstop that demonstrates that Missouri is fully committed to the sort of progress clearly envisioned under the MEEIA.

EnerNOC specializes in providing demand side management services to C&I customers. Our focus on this market segment is driven by the reality that utility programs are often not well-suited to the highly variable loads and addressing the needs of C&I customers that need customized applications to achieve demand-side savings. While utility programs have historically offered some C&I programs to customers, and some of them have been successful, the penetration of such programs has barely scratched the surface of the market potential for C&I customers.

EnerNOC's customized applications can yield tremendous unrealized cost effective demand side savings opportunities, and we look forward to bringing our expertise to Missouri. Almost our entire customer base throughout the United States never participated previously in demand side programs. Equally importantly, we have a proven track record of providing customer support and assistance that

achieves success, sustains customer participation, and improves utility customer satisfaction. We do so by flexibly adapting to customer needs and expectations in a way that traditional utility programs find difficult or impossible to do.

As one example, we focus substantial effort on avoiding customer fatigue, a critically important issue in customer success in a demand response program. If the customer is called too frequently, or has improperly enrolled too much load in a demand response program, the customer can become unhappy very quickly. This can lead to customers quitting the program, becoming uncooperative or simply becoming an unreliable resource such that they cannot be counted on to reduce load according to the program guidelines. With contract flexibility and deep expertise that we share with customers, we can attract the demand side capability of individual customers that is matched to their needs and ability to participate. Through the use of technology, we can then aggregate the customers' capability into a networked portfolio of distributed demand resources that can be managed to reliably meet the utility's firm resource needs. This enables us to achieve much greater market penetration than traditional demand side programs, and maintain very high levels of customer satisfaction and retention. Under traditional approaches, this flexibility and ability to customize services to customers to make demand response a "win-win" for the utility and its customers is virtually non-existent.

There is enormous latent potential for cost effective demand side savings amongst C&I customers in Missouri. The annual demand savings target percentages are entirely reasonable, perhaps even too modest. Moreover, as has already been demonstrated by the AmerenUE Market Potential Study, we believe there is tremendous potential that will likely be revealed in future market potential studies. For this reason, we fully support establishing the guideline as the greater of the market potential study finding or the percentages listed in the regulation. We respectfully request that the Commission resist arguments to weaken this language in the draft regulation.

Finally, the annual demand savings targets are posited in the draft regulation as a guideline, and are within the Commission's authority. At the end of this process, the Commission will determine for each of its jurisdictional utilities the appropriate level of demand side investment that achieves all cost

effective demand side savings. The Commission is not bound to apply the guidelines in a final determination, but the guidelines do give utilities valuable guidance at the beginning of the process. Utilities often crave such guidance as they embark upon efforts to craft a road map to implement Commission policy.

For all these reasons, EnerNOC fully supports the establishment of the annual savings targets in the Staff proposed draft regulations.

B. Four year duration of a DSIM and requirement for general rate proceeding within four years - 4 CSR 240-20.093(5)

The Staff draft would create a sunset provision that would limit the term of a DSIM to four years and a requirement that a utility with an approved DSIM file a general rate case with effective dates for new rates at least every four years to receive a Commission Order approving a DSIM. While EnerNOC appreciates that rationale for such requirements, we are concerned about unintended consequences that could develop from such a requirement. We address each in order.

1. Four year term for a DSIM

It is entirely appropriate to evaluate demand side programs on a periodic basis, and a four year regulatory review process is not unreasonable. However, the draft regulation creates a presumption that programs will be discontinued after four years. While any program should be discontinued if it is determined that it is not succeeding in serving its intended purpose, or is not cost effective, it is not appropriate to preemptively craft a regulation that all programs should be presumptively eliminated. A better approach would be to require a utility to make a filing at least every four years to determine whether the DSIM should be continued without change, modified, or eliminated. This slight change would remove the presumption that DSIM programs will be eliminated after four years, and remove a powerful deterrent to demand side investment.

This requirement sets up an unfavorable regulatory climate for continued long term investment in demand side programs. Every four years, the utility, demand side program vendors and providers, and customers who have come to support and rely upon demand side programs would be confronted with

elimination of the program as a default rule. This would be true even if the program was very successful and well-supported. This requirement is not only unnecessary, but it could be deleterious to program success.

This limitation is a particular concern for customers who will be evaluating demand side investments that may have a pay off period beyond four years. EnerNOC would expect that certain programs may be proposed to require customers to invest substantial dollars to enable improvements in energy efficiency and demand side management. If the utility DSIM is nearing the end of its four year term, the customer might be concerned that its demand side investment might become stranded and choose not to participate.

2. Four year general rate proceeding requirement

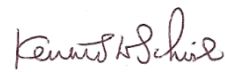
Under the draft regulation, seeking and then later obtaining approval for a DSIM has the legal effect of committing the utility to a general rate case in the near future. Decisions regarding the timing of a utility general rate case are important and consequential decisions that involve numerous considerations. EnerNOC is concerned that codifying this requirement in the regulation may lead utilities to become reticent about proposing demand side programs in the first place, or delaying a decision to proceed based upon the anticipated timing of a general rate proceeding.

Rate cases may naturally occur more frequently than every four years. But conditions over time may lead utilities, public counsel, Commission Staff, and others to conclude that a general rate proceeding is not necessary or appropriate on a cycle that will never exceed four years. If the draft regulation remains as it is written, utilities will be required to proceed with a general rate proceeding even if it was not necessary and no party was aggrieved by delaying the filing of a general rate proceeding. EnerNOC urges that the draft regulation strike language requiring a general rate proceeding within four years of approval of a DSIM. At a minimum, the draft regulation should make the requirement explicitly waivable by the Commission on motion by a utility or other interested party.

V. Conclusion

EnerNOC remains generally very supportive of the Staff draft regulations, and applauds Staff for its leadership in developing a high-quality proposal for the Commission's consideration. We appreciate this opportunity to submit comments concerning the importance of the alignment of utility incentives to embrace demand side investment as well as our recommendations regarding specific provisions of the Staff draft proposal.

Respectfully submitted,

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

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