

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the joint request of )  
**THE DETROIT EDISON COMPANY, INDIANA** )  
**MICHIGAN POWER COMPANY, THE** )  
**MICHIGAN ELECTRIC AND GAS ASSOCIATION** )  
**and CONSUMERS ENERGY COMPANY** to )  
initiate an investigation of the licensing rules, and )  
regulations needed to address the effect of the )  
participation of Michigan retail customers, including )  
those associated with aggregators of retail customers, )  
in a regional transmission organization wholesale )  
market. )  
\_\_\_\_\_ )

Case No. U-16020

At the January 25, 2010 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman  
Hon. Monica Martinez, Commissioner  
Hon. Greg R. White, Commissioner

**ORDER**

On September 29, 2009, the Commission issued an order in this proceeding that commenced an investigation at the request of The Detroit Edison Company, Indiana Michigan Power Company (I&M), the Michigan Electric and Gas Association, and Consumers Energy Company. The investigation concerns the appropriate regulatory response by this Commission to the direct participation of Michigan retail customers in regional transmission organization (RTO) wholesale markets. The Commission solicited comments on the relief requested by the utilities and

temporarily restricted participation of Michigan retail customers in any regional transmission organization wholesale markets during the pendency of this proceeding.

On October 29, 2009, EnerNOC, Inc., filed a petition to intervene, and a petition for rehearing and clarification pursuant to 1999 AC, R 460.17403 (Rule 403). Accompanying the petition for rehearing was a motion for admission *pro hac vice*, requesting permission for EnerNOC's out-of-state attorney to appear and to participate as its counsel in this proceeding. On November 12, 2009, the Commission issued an order granting the motion for admission *pro hac vice*.

On November 19, 2009, I&M and the Commission Staff (Staff) filed responses to the petitions for intervention and rehearing.<sup>1</sup>

#### Petition to Intervene

EnerNOC states that it provides demand response resources and energy management services throughout the U.S., and is an active curtailment service provider (CSP) in the PJM Interconnection. EnerNOC states that its demand response services are implemented through automated and aggregated management of end-user lighting, HVAC, distributed generation, and industrial process equipment. EnerNOC further avers that it has existing contracts with retail customers who are located in I&M's service territory that participate in PJM's demand response programs.

EnerNOC states that the Commission's September 29 order has had the effect of restricting participation by Michigan retail customers in any RTO wholesale electricity markets during the pendency of this proceeding, including the participation of EnerNOC's customers. EnerNOC argues that this gives the company a substantial interest in this proceeding that cannot be

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<sup>1</sup>On November 25, 2009, EnerNOC filed an answer to the Staff's and I&M's responses. The Commission's Rules of Practice and Procedure, 1999 AC, R 460.17201, 460.17203, and 460.17403, do not provide for consideration of briefs filed in response to responses.

adequately represented by any other party, and, as such, EnerNOC is entitled to intervene as of right.

In response, I&M argues that the petition to intervene should be denied because this is not a contested case, and EnerNOC has the opportunity to provide comments in this proceeding along with all other interested parties.

Likewise, the Staff argues that the Commission commenced a comment proceeding and that intervention is not necessary.

The Commission agrees with the Staff and I&M and finds that EnerNOC's petition to intervene should be denied. This is not a contested case, and the Commission notes that EnerNOC filed comments in this proceeding on December 4, 2009, and reply comments on January 6, 2010.

#### Petition for Rehearing and Clarification

EnerNOC contends that its petition meets the standards for rehearing required by Rule 403, because the Commission's September 29 order has the unintended consequence of abrogating EnerNOC's existing contracts for curtailment services, thus harming "the very energy innovations the State of Michigan strives to achieve." Petition, p. 5. EnerNOC states that the Commission was not aware of the existence of these contracts, and that the September 29 order requires the suspension of the company's existing contracts in the PJM wholesale market. EnerNOC requests that the Commission "clarify its Order and (sic) to allow all contracts with retail customers existing at the time the Order was issued to remain in effect during the investigation that is the subject of this case." Petition, p. 8.

I&M supports EnerNOC's petition, agreeing that the September 29 order should be clarified to indicate that the restriction is prospective and existing contracts remain unaffected. I&M further states that it is authorized to represent that the other petitioners support EnerNOC's request.

The Staff also supports EnerNOC's petition, stating that the Staff was unaware of the existence of affected customers.

While the Commission has authority to temporarily restrict existing contracts during the course of an investigation, the Commission finds that EnerNOC's petition for rehearing should be granted along with the requested relief. The Commission clarifies the September 29, 2009 order to indicate that all CSP contracts with retail customers existing on September 29, 2009, remain in effect during the pendency of the Commission's investigation in this matter.

THEREFORE, IT IS ORDERED that:

A. EnerNOC, Inc.'s, petition to intervene is denied.

B. EnerNOC, Inc.'s, petition for rehearing and clarification is granted, and the relief requested is granted. The Commission's September 29, 2009 order in this matter is clarified to indicate that all curtailment service provider contracts with retail customers existing on September 29, 2009, remain in effect during the pendency of the Commission's investigation in this matter.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Greg R. White, Commissioner

By its action of January 25, 2010.

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Mary Jo Kunkle, Executive Secretary