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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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**GARY PIERCE, Chairman**  
**BOB STUMP**  
**SANDRA D. KENNEDY**  
**PAUL NEWMAN**  
**BRENDA BURNS**

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. E-01933A-11-0055  
TUCSON ELECTRIC POWER COMPANY FOR )  
APPROVAL OF ITS 2011-2012 ENERGY ) NOTICE OF FILING OF  
EFFICIENCY IMPLEMENTATION PLAN ) REBUTTAL TESTIMONY

EnerNOC, Inc. hereby provides notice of filing of the Rebuttal Testimony of Mona Tierney-Lloyd in the above-docketed proceeding.

Dated this 6<sup>th</sup> day of July 2012.

Respectfully submitted,

*Lawrence V. Robertson, Jr.*

Lawrence V. Robertson, Jr.  
Attorney for EnerNOC, Inc.

The original and thirteen (13) copies of the foregoing will be filed this 6<sup>th</sup> day of July 2012 with:

Docket Control Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Arizona Corporation Commission  
**DOCKETED**  
JUL -6 2012

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A copy of the same served by e-mail or first class mail this same date to:

All Parties of Record

*AE*

LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P.O. Box 1448  
Tubac, Arizona 85646  
(520) 398-0411

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LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P.O. Box 1448  
Tubac, Arizona 85646  
(520) 398-0411

**Rebuttal Testimony  
of  
Mona Tierney-Lloyd  
EnerNOC, Inc.**

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**Q.1 Please state your name, business affiliation and business address.**

A.1 My name is Mona Tierney-Lloyd. I am Director, Western Regulatory Affairs, for EnerNOC, Inc. ("EnerNOC"). My business address is P. O. Box 378, Cayucos, California 93430.

**Q.2 Please describe the nature of EnerNOC's business activities, and particularly those activities which are relevant to the subject matter of this preceding.**

A.2 EnerNOC is an implementer of commercial and industrial customer energy management solutions, including demand response and a suite of energy efficiency services which provide continuous savings through software and services. EnerNOC has approximately 8,000 MW of dispatchable demand response available to provide peak capacity reductions, energy and ancillary services through contractual relationships with utilities or grid operators in North America, the United Kingdom, Australia and New Zealand.

**Q.3 Please describe your position responsibilities with EnerNOC.**

A.3 I am a Director of Western Regulatory Affairs for EnerNOC. In my position, I am responsible for representing EnerNOC's interests before utility regulatory agencies in California, Arizona and New Mexico. Those interests could include protecting the value of existing contracts from changes in the regulatory environment, advocating for the approval of contracts by the regulatory agencies, advocating for expanded opportunities for third-party administered programs for energy efficiency and demand response and for the incorporation of energy efficiency and demand response into resource planning proceedings.

**Q.4 Have you previously presented testimony before this Commission or regulatory commissions in other decisions?**

LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P.O. Box 1448  
Tucson, Arizona 85646  
(520) 398-0411

1 A.4 I have previously testified before the Arizona Corporation Commission (“ACC”) in Case  
2 No. U-000-84-165. I have participated in the ACC’s Energy Efficiency Rulemaking  
3 (Docket Nos. E-00000J-08-0314, E-00000C-09-0427). I have provided public comment  
4 in ACC Open Meetings in this proceeding as well as in support of the approval of the  
5 Commercial Direct Load Control Program (Docket No. e-01933A 07-0401). I have  
6 recently filed testimony in California in Docket Number R.12-03-014, the Long-Term  
7 Procurement Proceeding for all California Investor-Owned Utilities (IOUs), wherein  
8 EnerNOC is testifying to the ability for demand response to provide fast-response  
9 resources to displace the need for conventional resources. I have testified before the  
10 Minnesota Public Utilities Commission in Docket No. E-999/CI-09-1449 about the value  
11 of third-party demand response providers and the New Mexico Public Regulatory  
12 Commission in Case No. 09-00257 to preserve the existing load management  
13 programs, including EnerNOC’s contract with Public Service of New Mexico (PNM). In  
14 my positions preceding my employment with EnerNOC, I have testified in various  
15 dockets in various state proceedings.  
16

17 **Q.5 What is the purpose of your Rebuttal Testimony?**

18 A.5 I will be discussing current proposals by Tucson Electric Power Company (“TEP”) and  
19 the Commission’s Staff to resolve certain issues which have arisen in this proceeding.  
20 Specifically, I will address Commission’s Staff’s proposals contained in its June 15, 2012  
21 Direct Testimony.  
22

23 **Q.6 Does EnerNOC have a business relationship with TEP which will be impacted by**  
24 **the Commission’s decision in this proceeding?**

25 A.6 Yes.  
26

27 **Q.7 Please describe the nature of that business relationship.**  
28

1 A.7 EnerNOC has a four-year agreement with TEP to provide commercial load curtailment  
2 services pursuant to TEP's Commercial Direct Load Control Program ("DLC Program").  
3 EnerNOC provides TEP with firm capacity curtailment services from TEP's commercial  
4 and industrial customers. More specifically, TEP pays EnerNOC for those load  
5 reductions and EnerNOC pays the customers to curtail their demand as directed. In that  
6 regard, EnerNOC provides the customers with equipment that communicates real-time  
7 energy usage information to EnerNOC's network operations center (NOC), the customer  
8 and TEP. EnerNOC also provides the customers with a site analysis and a detailed  
9 energy curtailment plan.

10  
11 **Q.8 Please briefly describe the benefits of the DLC Program to TEP and to its**  
12 **customers.**

13 A.8 The DLC Program provides several benefits to both TEP and its customers, participants  
14 and non-participants alike. The DLC Program gives TEP the ability to call upon the  
15 program when its demand is approaching peak conditions. By initiating an event, TEP's  
16 participating customers reduce their demand and thereby (i) may reduce stress or  
17 congestion on the distribution or transmission system, (ii) may obviate the need for a  
18 higher-priced capacity or energy resources, and (iii) may contribute to the reserve margin  
19 for planning purposes. The DLC Program is distributed across TEP's service territory. It  
20 doesn't require green field or brown field development permits or approvals or any new  
21 infrastructure investment.

22 From a participating customer's perspective, they receive all equipment necessary  
23 to participate at no charge. They are provided a detailed curtailment execution plan.  
24 They receive real-time access to their energy usage data on a five-minute interval basis.  
25 They gain insight into the ways that they can manage their energy demand, control a  
26 portion of their energy costs and receive a payment for that modified behavior, while  
27 providing an overall benefit to the reliability of the electrical system. Further, EnerNOC  
28

1 insulates customers from any penalties for failure to perform. In the difficult economic  
2 climate for businesses today, customers need any edge they can access to improve the  
3 bottom line. Non-participating customers receive value by TEP being able to defer  
4 additional investment in infrastructure through a cost-effective resource that does not add  
5 new air emissions.

6  
7 **Q9 Are you familiar with the history of this proceeding, and the various proposals**  
8 **which have been submitted by both TEP and the Commission's Staff at various**  
9 **stages?**

10 **A.9** Yes, I am. TEP filed its original Energy Efficiency Implementation Plan in January  
11 2011. In response, Commission Staff filed its Recommended Order on November 16,  
12 2011, which approved a budget for TEP's Energy Efficiency Programs of \$34.7 million  
13 for 2011 and 2012 and suggested deferring action on TEP's proposed Authorized  
14 Revenue Requirement True-Up (ARRT) Mechanism, as well as TEP's proposed revised  
15 incentive mechanism, until a future rate case. TEP filed Exceptions to the Recommended  
16 Order on December 2, 2011. I represented EnerNOC at the ACC's Open Meeting held  
17 on January 10, 2012 and provided public comment in support of TEP's original EE  
18 Implementation Plan. The ACC declined to make a decision upon the matter; however,  
19 the ACC did order the parties to meet to see if a settlement was possible.

20 Thereafter, Residential Utility Consumers Office (RUCO), Southwest Energy  
21 Efficiency Project (SWEEP), Arizonans for Electric Choice and Competition and Freeport  
22 McMoRan (AECC/Freeport McMoRan), collectively "The Settling Parties", and TEP  
23 reached a settlement in support of TEP's Revised Implementation Plan with some further  
24 changes which was filed on January 31, 2012. That plan is referred to as the Modified Plan.  
25 However, Commission Staff did not reach agreement with TEP and The Settling Parties.

26 The matter was discussed at the ACC's March 16, 2012 Open Meeting and  
27 referred to the ACC's Hearing Division. A Procedural Conference was convened on  
28

1 April 11, 2012. On May 2, 2012, TEP filed and update to the Modified Plan referred to as  
2 the Updated Plan. A Procedural Order was issued on May 24, 2012 establishing the dates  
3 for filing Direct Testimony, June 15, 2012, and Rebuttal Testimony, July 6, 2012.  
4

5 **Q.10 Is it your understanding that the Updated Modified Plan filed by TEP on May 2,**  
6 **2012 represents TEP's current proposal for resolving the various issues which have**  
7 **arisen during the history of this proceeding?**

8 A.10 Yes.

9  
10 **Q.11 What is your understanding of the Updated Plan?**

11 A.11 My understanding of the Updated Plan is that it includes the following:

- 12 • Funding for the programs, recommended by Commission Staff in the
- 13 Recommended Order, at 75% of the funding level
- 14 • Elimination of the AART Mechanism
- 15 • An interim performance incentive mechanism
- 16 • A budget of \$27.9 million from October 1, 2012 through December 31, 2013
- 17 • Establishment of a Demand Side Management Surcharge at \$.002497/kWh for
- 18 residential customers and 2.86% on all charges (except for taxes and
- 19 governmental charges) for all non-residential customers.

20  
21 **Q.12 Is it your understanding that the Direct Testimony filed by the Commission's Staff**  
22 **on June 15, 2012 represents the Commission Staff's current Primary Proposal for**  
23 **resolving such issues, plus two (2) alternative forms of resolution if the Commission**  
24 **Staff's Primary Proposal is not adopted by the Commission?**

25 A.12 Yes.  
26  
27  
28

1 **Q.13 Please describe your understanding of Commission Staff's Primary Proposal and**  
2 **the two alternative proposals.**

3 A.13 My understanding of Commission Staff's Primary Proposal is as follows:

- 4 • Adoption of Staff's Recommended Order
- 5 • Increase TEP's budget from \$18.5 to \$23.5 million to ensure meeting the EE
- 6 targets
- 7 • TEP's requests for waivers of the 2012 and 2013 EE Standards would be denied
- 8 • TEP's revised incentive mechanism would be denied and the current incentive
- 9 mechanism would remain in place until TEP's next rate case
- 10 • The DSM Surcharge would remain at equal cents/kWh for all customer classes
- 11 • The lost fixed cost recovery (LFCR) would be dealt with in TEP's next rate case

12 My understanding of Alternate 1 is it:

- 13 • Includes TEP's budget of \$18.5 million
- 14 • Grants a waiver for 2012 and 2013 EE Standards
- 15 • Recommends adoption of Staff's position on the true-up mechanism and the 2013
- 16 Implementation Plan
- 17 • Establishes a DSM Surcharge of \$.02284 with TEP's spending proposal and
- 18 Staff's recommended performance incentive mechanism and recovery mechanism

19 My understanding of Alternate 2 is as follows:

- 20 • Includes the existing budget of \$7.5 million
- 21 • Grants a waiver for 2012 and 2013 EE Standards
- 22 • Establishes a DSM Surcharge at \$.001432, on a equal cent/kWh basis from all
- 23 customers
- 24 • TEP would be granted a waiver from filing a 2013 EE Implementation Plan
- 25 • True-up would be done in accordance with Staff's recommendation
- 26 • All other issues would be resolved in TEP's just filed rate case and remain in
- 27 effect until a decision is rendered in that case.

28

1 **Q.14 Please discuss how Commission adoption of TEP's Updated Plan would impact**  
2 **EnerNOC's existing business relationship with TEP, and how such impact, in turn,**  
3 **would affect the ability of both TEP and EnerNOC to fully realize the originally**  
4 **contemplated benefits for each company under the contract between them.**

5 A.14 EnerNOC supports adoption of TEP's Updated Plan as a reasonable middle ground  
6 between Commission Staff's November 16, 2011 Recommended Order and TEP's  
7 January 31, 2011 original proposal by balancing funding levels for existing programs  
8 while ensuring a reasonable recovery opportunity for TEP.

9 By way of background, the ACC approved the DLC Program in Decision No.  
10 71787 on July 12, 2010. TEP and EnerNOC entered into a four-year contract to provide  
11 up to 40 MW of demand response capacity through curtailable load. Less than six (6)  
12 months later, TEP submitted its original EE Implementation Plan proposal on January 31,  
13 2011. Since the DLC Program was approved, EnerNOC has been working with TEP and  
14 its customers to enable commercial and industrial customers to participate in the  
15 program. To do so, requires marketing and sales efforts, establishing the program  
16 parameters in EnerNOC's internet technology systems, training employees about the  
17 program, site visits with customers and development of individual curtailment plans,  
18 enabling the customer sites with EnerNOC's Site Servers to provide real-time insight into  
19 customer energy usage, coordinating with TEP on utility installation of devices, etc.  
20 Accordingly, pursuant to its contract with TEP, EnerNOC has made an investment in  
21 human resources, equipment and technology to implement the DLC Program and meet  
22 contract performance expectations.

23 TEP's original proposed EE Implementation Plan program cost for 2011 and 2012  
24 was slightly more than \$51 million. Of that, TEP had proposed a 2-year budget for the  
25 DLC Program of \$5.4 million. The Updated Plan contains a budget for October 1, 2012  
26 through December 31, 2013 of \$27.89 million, of which the program budget is \$18.5  
27 million. The budget for the DLC Program in the Updated Plan is \$1.431 million. The  
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LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P.O. Box 1448  
Tubac, Arizona 85646  
(520) 398-0411

1 Commission Staff's Recommended Order provided a budget for the DLC Program of  
2 \$1.336 million in 2011 and \$2.752 million in 2012. The difference between the 2011 and  
3 2012 budgets for the DLC Program is mainly related to anticipated growth in the  
4 program. While TEP's Updated Plan contains a DLC Program budget that is  
5 significantly less than that originally presented by TEP and that proposed in the  
6 Recommended Order, EnerNOC is recommending adoption of the Updated Plan, because  
7 EnerNOC believes it represents a reasonable resolution of some thorny issues for the  
8 interim period until TEP's next rate case is resolved.

9 EnerNOC's expectation for the program, whose first year of implementation was  
10 in 2011, was to continue to add capacity to the DLC Program up to the full contract  
11 capacity. Now, 2011 and a large portion of 2012 will have passed without clarity on the  
12 EE Implementation Plan and EnerNOC's contract opportunities relative to the DLC  
13 Program. TEP notified EnerNOC, as reflected in the Direct Testimony of TEP Witness  
14 Denise Smith, to suspend recruitment of new customers into the program. At the budget  
15 levels presented by TEP Witness Denise Smith, EnerNOC could grow its program  
16 slightly in 2012 and 2013 above 2011 levels. While still falling short of EnerNOC's  
17 expectations in terms of program growth and revenue, it is a better proposition than  
18 freezing the funding at current levels (\$7.5 million).

19 No implementation contractor wants to face the prospect of freezing its growth  
20 potential for a couple of years on a new contract with a finite term. However, EnerNOC  
21 is a partner to TEP and is interested in cultivating a longer-term relationship, if possible.  
22 Therefore, we are willing to accept a share of the burden during the interim period in  
23 order to reach a reasoned compromise, which is what the Updated Plan represents.

24  
25 **Q.15 You referred to "thorny issues" in the proceeding a moment ago. Does EnerNOC**  
26 **have a position at this time on the technical aspects of the performance incentive**  
27 **and cost recovery mechanisms which have been proposed?**  
28

1 A.15 No.  
2

3 **Q.16 Please discuss how Commission adoption of Commission Staff's Primary Proposal**  
4 **would impact EnerNOC's existing business relationship with TEP, and how it**  
5 **would affect the ability of TEP and EnerNOC to realize their respective originally**  
6 **contemplated contractual benefits.**

7 A.16 Commission Staff has a Primary Proposal and two alternative proposals, which are  
8 discussed in its June 15, 2012 Direct Testimony. The Primary Proposal would increase  
9 the amount of funding relative to TEP's Updated Plan. While at first blush that approach  
10 might appear to be a good outcome for EnerNOC's individual program, and other EE  
11 programs, it also places TEP in the untenable position of spending more on energy  
12 efficiency while it is losing revenues and contributions toward its related fixed cost  
13 recovery. In that regard, it is EnerNOC's belief that EE program rules and requirements  
14 are only viable and durable if there is a perceived commitment to a regulatory paradigm  
15 which reflects rule consistency and ongoing regulatory support. In addition, the utility  
16 and the implementation contractor must have a reasonable expectation that the program  
17 can actually be implemented, as expected. For the implementation contractor, that means  
18 the opportunity to realize the full contract capacity and associated revenue generation  
19 from the program. For the utility, they would receive the resource they were expecting  
20 and a reasonable opportunity to recover associated costs to implement the programs. If  
21 TEP is placed in the position of losing revenue and an inability to make contributions  
22 toward its fixed cost recovery and its rate of return, then TEP conceivably will be put into  
23 the position of having to seek waivers to the rules, in order to protect its fiduciary  
24 responsibility to its shareholders and its ability to provide safe, adequate and reliable  
25 service to its ratepayers. Commission Staff's Primary Proposal contemplates an increase  
26 in spending without modifying either the performance incentive or the lost revenue  
27 recovery mechanism, which will affect TEP's ability to recover associated costs for  
28

1 implementing the program. The inability to resolve this issue has frozen existing  
2 programs, which has impacted EnerNOC's contract capacity and revenue generation  
3 expectations, it has impacted the ability to add customers that had exhibited an interest in  
4 the Program, and it has created uncertainty as to those expectations for the next year or  
5 longer, until the rate case is resolved. Therefore, it has hurt the overall program  
6 implementation.

7  
8 **Q.17 Please discuss how Commission adoption of Commission Staff's Alternative #1**  
9 **would impact EnerNOC's existing business relationship with TEP, and how it**  
10 **would affect the ability of TEP and EnerNOC to realize their respective originally**  
11 **contemplated contractual benefits.**

12 A.17 Alternative 1 would adopt TEP's program budget proposal of \$18.5 million, but would  
13 not adopt the DSM Surcharge allocation methodology or the performance incentive  
14 mechanism. Commission Staff's position is that the lost revenue recovery and changes to  
15 the performance incentive mechanism should be proposed and addressed in the rate case  
16 filed by TEP on July 2, 2012. As previously noted, EnerNOC's position is to support  
17 TEP's Updated Plan for the interim period, while the rate case is pending. It provides a  
18 middle ground of providing continued funding to existing programs while also providing  
19 some revenue certainty for TEP. Commission Staff's Alternative #1 does not do so, and  
20 could result in some of the same adverse consequences for EnerNOC as Commission  
21 Staff's Primary Proposal, discussed above. Accordingly, EnerNOC opposes Alternative  
22 #1.

23  
24 **Q.18 Please discuss how Commission adoption of Commission Staff's Alternative #2**  
25 **would impact EnerNOC's existing business relationship with TEP, and how it**  
26 **would affect the ability of TEP and EnerNOC to realize their respective originally**  
27 **contemplated contractual benefits.**

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LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P.O. Box 1448  
Tubac, Arizona 85646  
(520) 398-0411

1 A.18 Alternative 2 would be devastating to implementation contractors by reducing EE  
2 program funding to 2011 levels and thereby disallowing any growth to occur during 2012  
3 and 2013 until the new rates would take effect. For EnerNOC, that would create great  
4 uncertainty and cause harm to the existing program. EnerNOC would have to contact  
5 currently registered customers who were equipped, trained and ready to perform and ask  
6 them not to participate in the program until further notice. These customers have planned  
7 to reduce consumption in exchange for monetary inducements, may have planned or  
8 budgeted for their reduced energy spend, and would now have to either look for other  
9 options or just incur the additional expense. That would harm the specific relationships  
10 with the affected customers, and it could generally hurt the reputation of EnerNOC and  
11 the program as a whole. Further, customers might not have confidence to re-enlist once  
12 the budget concerns are worked out, since it may appear that TEP and/or the Commission  
13 is reconsidering the value of EE programs.

14 Thus, EnerNOC would be in the position of having deployed resources with the  
15 expectation of receiving revenues that would not be realized. Plus, EnerNOC's near-term  
16 opportunities to realize increased revenues by expanding the program over 2011 levels  
17 would be frozen until the rate case is resolved, which potentially could be through the end  
18 of 2013. EnerNOC's contract with TEP was entered into with certain expectations of  
19 both counterparties. EnerNOC's enrollment and revenue opportunities, as well as those  
20 of participating customers would be significantly undercut by this proposal. Of all of the  
21 Commission Staff's proposals, this is the most detrimental from an implementation  
22 contractor's perspective.

23  
24 **Q.19 Please summarize why EnerNOC believes that the Commission should adopt TEP's**  
25 **Updated Plan rather than the Commission Staff's Primary Proposal or the**  
26 **Commission Staff's Alternative #s 1 or 2.**

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LAWRENCE V. ROBERTSON, JR.  
ATTORNEY AT LAW  
P.O. Box 1448  
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(520) 398-0411

1 A.19 It is EnerNOC's position that the Commission should adopt TEP's Updated Plan, rather  
2 than the Commission Staff's Primary Proposal or Commission Staff's Alternative  
3 Proposals, since the Updated Plan represents a reasoned compromise in which all parties  
4 will absorb a little pain in order to maintain an appropriate balance of interests until the  
5 Commission reaches a decision in TEP's recently filed rate case.  
6

7 **Q.20 The history of this proceeding suggests that several important aspects of TEP's**  
8 **Energy Efficiency Programs and Implementation Plans may be carried over into**  
9 **TEP's forthcoming rate case. Does EnerNOC plan to request intervention in that**  
10 **proceeding?**

11 A.20 Yes, as of this juncture.  
12

13 **Q.21 Does that complete your Rebuttal Testimony?**

14 A.21 Yes.  
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