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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
SUSAN BITTER SMITH
BOB BURNS

IN THE MATTER OF THE APPLICATION OF)
TUCSON ELECTRIC POWER COMPANY) DOCKET NO. E-01933A-12-0291
FOR THE ESTABLISHMENT OF JUST AND)
REASONABLE RATES AND CHARGES) NOTICE OF FILING OF
DESIGNED TO REALIZE A REASONABLE) ENERNOC, INC.
RATE OF RETURN ON THE FAIR VALUE OF)
ITS OPERATIONS THROUGHOUT THE)
STATE OF ARIZONA.)

EnerNOC, Inc. hereby provides notice of filing of the prepared Direct Testimony of Mona Tierney-Lloyd in support of the Settlement Agreement filed with the Commission's Docket Control on February 4, 2013 in the above-docketed proceeding.

Dated this 14th day of February 2013.

Respectfully submitted,

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

The original and thirteen (13) copies of the foregoing will be filed the 15th day of February 2013 with:

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

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

All Parties of Record

Arizona Corporation Commission
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Prepared Direct Testimony
Of
Mona Tierney-Lloyd
In Support of Settlement Agreement
For
EnerNOC, Inc.

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**Prepared Direct Testimony
Of
Mona Tierney-Lloyd
In Support of the Settlement Agreement
for
EnerNOC, Inc.**

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 Are you the same Mona Tierney-Lloyd whose prepared Direct Testimony was filed with the Commission's Docket Control in this proceeding on December 21, 2012?

A.2 Yes, I am.

Q.3 Did EnerNOC participate in the settlement discussions which resulted in the Settlement Agreement that was filed in this proceeding with the Commission's Docket Control on February 4, 2013?

A.3 Yes. The Company participated throughout those discussions, both through its attorney of record in this proceeding, and through my periodic communications with him and Tucson Electric Power Company ("TEP") personnel involved in TEP's Energy Efficiency (EE) programs. EnerNOC was also an Intervenor in Docket No. E-01933A-11-0055 and participated in that proceeding.

Q.4 Is EnerNOC a Signatory to the Settlement Agreement?

A.4 Yes, it is.

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Q.5 Why does EnerNOC support the Settlement Agreement?

A.5 To be more accurate, EnerNOC's execution of the Settlement Agreement means that (i) EnerNOC supports those provisions of the Settlement Agreement which do, or conceivably could, affect EnerNOC, and (ii) the Company does not object to other provisions of the Settlement Agreement which do not implicate the Company. In particular, EnerNOC supports the Settlement Agreement because of the content of Article VII (Energy Efficiency Resource Plan) (EERP).

Q.6 Why does EnerNOC specifically support the provisions of Article VII, and the EERP?

A.6 EnerNOC supports the Settlement Agreement with respect to the EERP for the following reasons:

1. It adopts adequate annual funding for Commission-approved and effective EE programs;
2. It treats EE investments and cost recovery on a basis comparable to other supply-side resources;
3. It dampens rate impacts for consumers;
4. It provides a funding mechanism for EE programs, implementation contractors and customers;
5. It removes some of the economic disincentives to TEP engaging in EE programs by providing for a return on its investments and a reasonable period of time over which to recover its costs and return.

Q.7 EnerNOC supported TEP's EERP as contained in TEP's July 2, 2012 original filing in this docket. Why is EnerNOC supporting the Settlement Agreement,

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Article VII, and the now revised EERP?

A.7 EnerNOC supported TEP’s previous EERP for various reasons. At page 3, lines 5-15 of my December 21, 2012 prepared Direct Testimony, I discussed EnerNOC’s existing four-year contract with TEP to provide commercial load curtailment services pursuant to TEP’s Commercial Direct Load Control Program (“DLC Program”). At page 3, line 17-page 4, line 26 of that testimony, I described the benefits of the DLC Program to both TEP and its customers. At page 9, line 17-page 11, line 4 of that testimony, I discussed (i) TEP suspension of funding of the DLC Program in the Spring of 2012, (ii) the impact of that suspension on EnerNOC and its contract with TEP, (iii) the implications of TEP’s suspension of funding at that time for all of its EE programs upon all concerned and impacted by such action, and (iv) the importance for TEP to have stability in the funding mechanisms that translates into stable EE programs and stable regulatory support. While EnerNOC supported TEP’s proposal in its Rate Case Application, in the spirit of negotiating and supporting a comprehensive settlement of all issues contained in the case, Article VII of the Settlement Agreement addresses EnerNOC’s interests and concerns in this regard in an acceptable manner.

Q.8 Specifically, what aspects of Article VII does EnerNOC support?

A.8 Section 7.1 of the Settlement Agreement provides that TEP will implement an EERP (“Plan” within the context of the Settlement Agreement) of the nature proposed by the Commission’s Staff in its previously filed prepared Direct Testimony. The Plan is intended to treat EE investments on a basis similar to typical supply resource investments in that it allows TEP to amortize the cost of its annual EE investments over a 5-year period and to earn a reasonable rate of return

1 on those investments. This section also requires that TEP invest in demonstrably
2 cost-effective, and efficient, Commission-approved EE programs. This means that
3 TEP can recover its investments subject to a demonstration of effectiveness and
4 only for those programs that have been found to be cost-effective and approved by
5 the Commission. Therefore, the Commission, and all stakeholders, can participate
6 in a process to provide regulatory oversight of EE programs to ensure these
7 programs are providing the expected benefits, in excess of costs, to the system and
8 to ratepayers.

9 Section 7.3 provides that, beginning March 1, 2013, TEP will resume
10 funding EE programs previously approved by the Commission; and, TEP will
11 request recovery of program costs so funded through the Plan. This provision is of
12 particular importance to EnerNOC and its ability to support the Settlement
13 Agreement. The DLC Program was previously approved by the Commission on
14 July, 2010 in Decision No. 71787, in which the Commission discussed both the
15 DLC Program and EnerNOC's related contract with TEP. Against that
16 background, and the express language of Section 7.3, EnerNOC is optimistic that
17 the DLC Program will be among those EE programs on which TEP will resume
18 funding beginning March 1, 2013.

19 With reference to Section 7.4, EnerNOC understands that, as to programs
20 previously approved by the Commission for which TEP has resumed funding
21 beginning on March 1, 2013, pursuant to Section 7.3, such resumed funding would
22 not be disrupted or terminated by reason of the language of Section 7.4. Rather,
23 that language addresses TEP's funding obligation post-July 1, 2013, but does not
24 interfere with the funding it has resumed on March 1, 2013 through June 30, 2013,
25 assuming Commission approval of the EERP.
26

1 Section 7.5 addresses the disposition of Docket No. E-01933A-11-0055,
2 which involves TEP's proposed 2011-2012 EE Implementation Plan, upon which a
3 decision by the Commission has yet to be rendered. EnerNOC has been an active
4 intervenor in that proceeding. Section 7.5 provides that TEP will file a request
5 with the Commission to close that docket, upon the effective date of rates approved
6 by the Commission in this proceeding, and Commission approval of the EERP. In
7 such event(s), and assuming TEP's interim performance pursuant to Section 7.3,
8 EnerNOC will file an appropriate pleading in support of TEP's request that Docket
9 No. E-01933A-11-0055 be closed.

10 Finally, with reference to Section 7.7, this section provides that TEP will
11 conduct the Plan pursuant to the Plan of Administration ("POA") set forth in
12 Attachment "D" to the Settlement Agreement. EnerNOC has reviewed Attachment
13 "D," and discussed several of the funding assumptions reflected in the POA with
14 TEP personnel responsible for the administration of its EE programs on January
15 28, 2013. Based upon our review and that discussion, EnerNOC is supportive of
16 the proposed POA.

17
18 **Q.9 What about Sections 7.2, 7.6, 7.8 and 7.9 of Article VII?**

19 A.9 Section 7.2 specifies an amortization plan of five (5) years will be used for EE
20 investments made under the Plan, which EnerNOC supports. Section 7.6 provides
21 a process for certain customers to petition the Commission for exemption from the
22 DSM adjuster approved for TEP, if such customers can satisfy the requirements of
23 Section 7.6. Section 7.8 addresses the manner in which the DSM surcharge is to be
24 assessed and expressed as between residential and non-residential customers, upon
25 adoption of the Plan. None of these provisions are applicable to EnerNOC; and,
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EnerNOC has no objection to any of them.

Section 7.9 is intended by the signatory parties to make clear that their agreement to and support of the Plan is not intended to intrude upon the Commission's policy prerogatives or standards with respect to EE.

Q.10 Is the Settlement Agreement, and the capitalization proposal for EE programs, consistent with the Commission's EE Rules? If so, please Explain.

A.10 Yes. Section 14-2-2410.I. of the EE rules states that "The Commission will review and address financial disincentives, recovery of fixed costs and recovery of net lost income/revenue due to Commission-approved DSM programs if requested to do so by the affected utility in its rate case and the affected utility provides documentation/records supporting its request in the rate application."

Q.11 Does the capitalization approach contemplated in Article VII of the Settlement Agreement remove TEP's investments in EE programs from Commission oversight?

A.11 No. There are still several opportunities for Commission oversight and approval or disapproval of TEP's investments and cost recovery under the Settlement Agreement. For example, pursuant to Article 7.1, TEP will invest in cost-effective and Commission-approved programs. Secondly, TEP will only receive cost recovery for those investments upon a demonstration that the programs have achieved a minimum kWh savings that is at, or below, the maximum cost per kWh. In that regard, TEP will file annual implementation plans on June 1 of each year, wherein any new program proposals will be submitted and examined by the Commission. Additionally, TEP will file annually, beginning on March 1, 2014,

1 for its Demand-Side Management Surcharge (DSMS) reset, to be implemented
2 beginning on June 1 of each year following Commission review. Further, TEP will
3 provide annual and mid-term progress reports to Commission Staff on March and
4 September, respectively, of each year. Thus, there are a number of ways through
5 which the Commission would continue to retain meaningful regulatory oversight
6 with respect to TEP's EE programs.
7

8 **Q.12 Are these EE resource investments necessary?**

9 A.12 Yes. In TEP's 2012 Integrated Resource Plan (IRP), they project that they will
10 have approximately 500 MW of energy efficiency and demand response to meet
11 coincident peak demand by 2026.¹ That amount will accrue over time only with
12 continuous development and investment. Further, without that 500 MW of
13 capacity from demand response (DR) and EE resources, TEP would have to invest
14 in some other resources to make up the difference. Given the passage of time
15 between now and 2026, and potential restraints on the use of resources other than
16 DR and EE, the ongoing role of DR and EE resources would appear quite
17 important.
18

19 **Q.13 EnerNOC supported TEP's Revised Implementation Plan in Docket No. E-**
20 **01933A-11-0055, in which TEP proposed expense treatment for its EE**
21 **programs. Which funding mechanism does EnerNOC now support?**

22 A.13 EnerNOC supports the Settlement Agreement as a negotiated resolution of the EE
23 issues which have arisen in this case. As a result of its experience in Docket No.
24 E-01933A-11-0055, and its participation in the settlement discussions, EnerNOC
25

26 ¹ TEP's 2012 IRP, pp. 30-32.

1 supports the capitalization mechanism as a reasonable approach. Resolving EE
2 funding through a rate case may resolve the difficulties that TEP experienced when
3 its obligations under the EE Rules and its previous rate case settlement obligations
4 were not synchronized. The proposed EERP seems to eliminate the potential for a
5 future “disconnect” of a similar nature. Also, this synchronization occurring within
6 the context of a general rate case proceeding may eliminate legal concerns that
7 were expressed relative to this problem in Docket No. E-01933A-11-0055.

8 However, each approach is equally legitimate. EnerNOC’s support for an
9 EE funding mechanism is based upon several important considerations:

- 10 1. The stability of the source to provide adequate funding to support the
11 continuation of cost-effective, performing, Commission-approved EE
12 programs, resulting in the achievement of the targets contained in the EE
13 Rules;
 - 14 2. The ability of TEP to recover its reasonable costs and earn a reasonable
15 return;
 - 16 3. The removal of disincentives to TEP continuing to offer EE programs.
- 17 Naturally, other factors need to be considered as well, including Commission
18 oversight and review of program proposals and the rate impacts to consumers.
19

20 **Q.14 Why are these considerations important for successful implementation of EE**
21 **Programs?**

22 A.14 As EnerNOC has stated in its previous testimony in support of the Revised
23 Implementation Plan in Docket No. E-01933A-11-0055 and its December 21, 2012
24 Direct Testimony in this case, stability of the funding source and the continuity of
25 the programs are of primary importance to EnerNOC as an Implementation
26

1 Contractor (IC). Disruption in the program funding and the resulting disruption in
2 the availability of EE programs and services have consequences that not only affect
3 TEP's ability to achieve EE target goals, but also affect TEP's and the IC's
4 relationship with the customer, the customer's experience with the programs and,
5 ultimately, the programs' effectiveness. It affects confidence in the programs,
6 customer's ability to plan their home or business's energy expense, plans to invest
7 and implement energy efficiency measures, jobs associated with implementation
8 contractors, material inventory management, etc.

9 Customer recruitment to participate in EE programs is a labor- and resource-
10 intensive effort. In EnerNOC's case, it is not only the recruitment, but site visits to
11 determine a customer's potential to curtail, development of a curtailment plan, and
12 providing enabling technologies and communication equipment to measure
13 customer performance. EnerNOC makes an up-front investment with the
14 expectation of performance. If that relationship fails to materialize due to funding
15 unavailability, then EnerNOC cannot recover its costs, much less earn a return, and
16 the customer's expectations are not met. EE does not occur without customer
17 cooperation, incentives and willingness. When there is a disruption in funding or
18 program activity, it takes additional trust-building, and effort, to repair those
19 relationships. Once a sale is made, it is very important to be able to provide the
20 service that was promised, when promised.

21 As previously mentioned in EnerNOC's testimony, EnerNOC has a finite
22 contract with TEP to provide services, wherein a significant portion of that contract
23 period has been under suspension, due to regulatory uncertainty as to TEP's ability
24 to timely recover its program investments. The suspension has significantly
25 reduced EnerNOC's ability to realize its contract potential, despite the fact that the
26

1 EE program, under which EnerNOC's services are provided, was approved by the
2 Commission in July 2010 in Decision No. 71787. Regulatory uncertainty creates
3 business uncertainty and can be damaging to future business development
4 opportunities.

5 For these reasons EnerNOC has been and is supportive of TEP's position in
6 both this and the EE Implementation Docket, each of which are designed to ensure
7 that TEP is given a reasonable opportunity to (i) recover its costs for services that
8 they have been directed to provide and (ii) provide TEP a reasonable opportunity to
9 earn a return on their investment or a performance incentive. A return on
10 investment or an appropriate incentive to invest can offset the potential loss of
11 revenue otherwise associated with making fewer sales and not making investments
12 in traditional generation resources.

13 If TEP does not have a reasonable opportunity to recover its costs and an
14 appropriate incentive or return, as they would for rate-based generation resources,
15 then TEP conceivably could be inclined to continue to make rate-based generation
16 investment decisions, even if EE investments are more cost effective. Addressing
17 the disincentive to utility investments in EE is one of the keys to the success in
18 choosing demand solutions over supply solutions. Many commissions have
19 recognized that utilities have a built-in earning opportunity for supply-side
20 investments that does not exist with demand-side investments without regulatory
21 intervention. Said another way, if utilities can only expect revenue erosion as a
22 result of EE implementation, they will be driven, from a strictly fiduciary
23 responsibility to their shareholders, toward supply-side solutions, even if those
24 investments are not the most efficient choices for consumers.
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Q.15 If the Commission determines that the EERP is not appropriate, and instead favors an expense mechanism, what would EnerNOC's position be?

A.15 As previously discussed, EnerNOC supports the Settlement Agreement and Section 7 Plan approach. However, as acknowledged in Section 7.9 of the Settlement Agreement, the Commission can make any determination it chooses with respect to the EE portion (Article VII) of the Settlement Agreement. In the event of disapproval or a modification, EnerNOC would need to analyze the Commission's decision, and consistent with Articles XXI and XXII of the Settlement Agreement, determine its position and how to proceed.

However, it is our understanding that in its Testimony in Support of Settlement, TEP will be proposing a comparison option under the existing EE Rules for the Commission to consider in the event that it determines not to approve the EERP. Nonetheless, EnerNOC believes that if the EERP is not adopted, the Commission should consider moving expeditiously to resume funding TEP's cost-effective, Commission-approved EE programs for its customers (consistent with other utilities in the State like APS). It has been nearly a year since TEP's EE programs have been suspended, pending resolution of their funding requests.

Q.16 Does that complete your Direct Testimony in support of the Settlement Agreement?

A.16 Yes, it does.