

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

06-13-11
04:39 PM

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local Procurement Obligations.

R.09-10-032
(Filed October 29, 2009)

**COMMENTS OF ENERNOC, INC., ON THE
PROPOSED DECISION OF ALJ GAMSON ADOPTING LOCAL PROCUREMENT
OBLIGATIONS AND REFINING RESOURCE ADEQUACY PROGRAM**

SARA STECK MYERS
Attorney for
EnerNOC, Inc.

122 – 28th Avenue
San Francisco, CA 94121
(415) 387-1904 (Telephone)
(415) 387-4708 (FAX)
ssmyers@att.net (e-mail)

MONA TIERNEY-LLOYD
Director of Western Regulatory Affairs
EnerNOC, Inc.

P.O. Box 378
Cayucos, CA 93430
(805) 995-1618 (Telephone)
(805) 995-1678 (FAX)
mtierney-lloyd@enernoc.com (e-mail)

June 13, 2011

TABLE OF CONTENTS

Page

Table of Contents i

I. INTRODUCTION 1

II. THE PROPOSED DECISION SHOULD BE MODIFIED
TO ADOPT ENERNOC’S PROPOSAL TO ALLOCATE
RA CAPACITY TO ELIGIBLE DR PROVIDERS ON
AN INTERIM BASIS 3

III. CONCLUSION 5

APPENDIX A: Proposed Findings of Fact, Conclusion of Law, and Ordering Paragraphs

TABLE OF AUTHORITIES

Page

COMMISSION DECISIONS

Decision (D.) 10-06-034 *passim*

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local Procurement Obligations.

R.09-10-032
(Filed October 29, 2009)

**COMMENTS OF ENERNOC, INC., ON THE
PROPOSED DECISION OF ALJ GAMSON ADOPTING LOCAL PROCUREMENT
OBLIGATIONS AND REFINING RESOURCE ADEQUACY PROGRAM**

EnerNOC, Inc., (EnerNOC) respectfully submits its Comments on the Proposed Decision of Administrative Law Judge (ALJ) Gamson Adopting Local Procurement Obligations for 2012 and Further Refining the Resource Adequacy (RA) Program (Proposed Decision). The Proposed Decision was mailed in this rulemaking on May 23, 2011. These Comments are filed and served pursuant to Article 14 of the Commission's Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.¹

**I.
INTRODUCTION**

EnerNOC has been an active participant on the issues included within Phase 2 of this rulemaking by the Phase 2 Scoping Memo, issued on November 3, 2010, and revised on February 3, 2011. Among other things, EnerNOC participated in the Energy Division-facilitated workshops on RA Program refinement issues held on January 18 and 25, 2011, and filed comments on the issues addressed there on February 8, 2011 (EnerNOC February 8 Comments).

In its February 8 Comments, EnerNOC recommended that a final decision in Phase 2 should do all of the following:

¹ Because the due date for Opening Comments on the Proposed Decision fell on a Sunday (June 12), the time limit is extended to the next day, Monday, July 13, 2011. (Commission Rules of Practice and Procedure, Rule 1.14 ("Computation of Time").)

1. Adopt registered capacity as the basis for determining qualified capacity, as opposed to the load impact protocols, for resources that participate in the California Independent System Operator's (CAISO's) Demand Response (DR) Programs;
2. Adopt an availability requirement of either 48 hours over the summer months and/or a requirement to be available to run for 4 hours over 3 consecutive days as the basis for DR qualifying for resource adequacy when participating in the wholesale market;
3. Establish a new Maximum Cumulative Contribution (MCC) for DR resources that incorporates the availability requirements recommended in item 1 above;
4. Implement limits on emergency-triggered programs qualifying for RA as adopted in Decision (D.) 10-06-034 and a determination on how the RA capacity is allocated among eligible DRPs;
5. Determine that backup generators are able to participate as a DR resource in Proxy Demand Response (PDR) and count for RA; and
6. Once the Commission has established RA-eligibility for DR resources that participate in the wholesale market, encourage DR providers' participation in the CAISO discussions regarding integrating DR resources into SCP, or another tradable product.²

Consistent with these recommendations, EnerNOC supports the Proposed Decision's adoption of a consistent counting convention for both wholesale and retail demand response resources. The adopted rule will require DR to be available for four consecutive hours on three consecutive days.³

However, EnerNOC objects to the Proposed Decision's determination that the allocation of the megawatt (MW) cap on RA credit for reliability-based DR programs "is outside the scope of this proceeding."⁴ This determination is completely at odds with the Proposed Decision's

² EnerNOC February 8 Comments, at pp. 8-9.

³ Proposed Decision, at p. 54.

⁴ Proposed Decision, at p. 58.

explicit recognition that the question of this allocation is a “valid issue,”⁵ and the fact that this issue is clearly within the Phase 2 scope of this rulemaking.

Under these circumstances, no basis exists for the Proposed Decision to decline to address this issue and defer it to the “2013 RA proceeding.”⁶ EnerNOC, therefore, asks that the Proposed Decision be modified to adopt EnerNOC’s unopposed, RA allocation proposal on an interim basis in the Commission’s final decision. This result, as supported by EnerNOC’s Proposed Findings of Fact, Conclusion of Law, and Ordering Paragraphs contained in Appendix A hereto, will provide third parties participating in the CAISO’s Reliability Demand Response Product (RDRP) with an opportunity to receive a proportionate share of RA capacity credit.

II.
THE PROPOSED DECISION SHOULD BE MODIFIED TO ADOPT
ENERNOC’S PROPOSAL TO ALLOCATE RA CAPACITY
TO ELIGIBLE DR PROVIDERS ON AN INTERIM BASIS.

On June 24, 2010, the Commission issued D.10-06-034 adopting a settlement of Phase Three issues in this rulemaking related to emergency-triggered DR programs (Settlement). By adopting this Settlement, caps on reliability-based DR programs were adopted by D.10-06-034 that will count for resource adequacy purposes.

EnerNOC was a settling party and participated in the Settlement discussions. Also, as part of the Settlement, CAISO was to develop, with stakeholder input, and submit to the Federal Energy Regulatory Commission (FERC), a proposal for the RDRP that would allow retail emergency-triggered programs to participate in the CAISO. The Settlement explicitly recognized the ability for qualified DR providers to participate in RDRP,⁷ but did not address

⁵ Proposed Decision, at p. 58.

⁶ *Id.*

⁷ Settlement, at p. 4.

“how the allocation of RDRP RA-eligible capacity might be shared among the IOUs and other qualified DR providers in the future.”⁸

On November 3, 2010, the Phase 2 Scoping Ruling was issued in this rulemaking and directly applies to the Proposed Decision at issue here. Contained within the adopted Phase 2 Scope was the implementation of “the limits set for emergency only DR adopted in D.10-06-034.”⁹

On November 30, 2010, EnerNOC filed comments in Phase 2 stating:

“EnerNOC supports the implementation of the Settlement. That implementation should include a discussion about how a portion of the RA-eligible RDRP capacity will be allocated to eligible DRPs.”¹⁰

Further, in its Comments filed on February 8, 2011, EnerNOC proposed a pro-rata allocation of RA capacity for eligible DR providers, which was unopposed by any party to this rulemaking.¹¹

As of May 24, 2011, CAISO has submitted its RDRP proposal to FERC. EnerNOC is concerned that RDRP will be implemented sometime in 2012, but if the Proposed Decision is issued as currently written (deferring a decision on this RA credit allocation), the issue of third-party DRP access to RA credit in RDRP will not begin to be discussed until sometime in 2013 and possibly not resolved until 2014. In the meantime, third party participation in RDRP will be without any associated RA credit. Such an outcome is inequitable.

As such, EnerNOC urges the Commission to revise the Proposed Decision to adopt EnerNOC’s unopposed proposal to allocate RA capacity credit on a pro-rata basis among eligible DRPs on an interim basis until the issue is revisited in 2013. It is EnerNOC’s position that this

⁸ Settlement at p. 9, Footnote 4.

⁹ Scoping Ruling, at p. 4.

¹⁰ EnerNOC November 30 (2010) Comments, at p. 7.

¹¹ EnerNOC February 8 Comments, at pp. 5-6.

unopposed proposal is not only a “valid issue,” but one that is within the scope of Phase 2 and must be decided by the Commission now as part of this Proposed Decision.

III. CONCLUSION

EnerNOC encourages the Commission to adopt EnerNOC’s proposal to allocate RA credit to eligible DR Providers who participate in RDRP on an interim basis until the issue can be revisited in 2013. To that end, EnerNOC requests that the Commission issue a final decision that includes EnerNOC’s Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs contained in Appendix A hereto.

Respectfully submitted,

June 13, 2011

/s/ SARA STECK MYERS
SARA STECK MYERS

Sara Steck Myers
Attorney at Law
122 – 28th Avenue
San Francisco, CA 94121
(415) 387-1904
(415) 387-4708 (FAX)
ssmyers@att.net

And

Mona Tierney-Lloyd
Senior Manager Western Regulatory Affairs
EnerNOC, Inc.
P.O. Box 378
Cayucos, CA 93430
Telephone: 805-995-1618
Facsimile: 805-995-1678
Email: mtierney-lloyd@enernoc.com

For EnerNOC, Inc.

APPENDIX A

PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDERING PARAGRAPHS

EnerNOC proposes that the following modifications to the findings of fact, conclusions of law, and ordering paragraphs be added to the Proposed Decision of ALJ Gamson in R.09-10-032 (Resource Adequacy (RA)). These additions are numbered to follow the last finding and conclusion or before the last order of the Proposed Decision. All additions are shown in bold; deletions in bold strikethrough.

PROPOSED FINDINGS OF FACT:

40. CAISO is expected to submit a proposal to FERC in 2011 for RDRP.
41. EnerNOC's addressed a valid issue for Phase 2 regarding the allocation of the capped emergency demand response capacity eligible to qualify for RA within each IOU service territory to all eligible DR providers participating in RDRP.
42. Neither D.10-06-034 nor the Settlement adopted therein resolved this issue.
43. To ensure fairness among participations, third-party DR providers participating in RDRP should be given an opportunity to receive a portion of the RA credit.
44. EnerNOC's proposal to allocate RA capacity among eligible DR providers on a load ratio share was unopposed by any party and is reasonable.

PROPOSED CONCLUSION OF LAW:

24. It is reasonable to adopt EnerNOC's load ratio share RA capacity allocation methodology for all eligible DR providers who participate in RDRP on an interim basis.

PROPOSED ORDERING PARAGRAPHS:

15. EnerNOC's proposal to allocate RA capacity among eligible DR providers participating in RDRP on a load ratio share basis is adopted.
156. Rulemaking 09-10-032 shall remain open.