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September 15, 2010

Hon. Mark J. Pruitt
Director
Illinois Power Agency
100 West Randolph St., Suite 3-355
Chicago, IL 60601-3274

Re: Comments on Draft Power Procurement Plan

Dear Executive Director Pruitt:

EnerNOC, Inc. ("EnerNOC") appreciates this opportunity to comment on the Illinois Power Authority ("IPA") Draft Power Procurement Plan ("Procurement Plan") for the period June 2011 through May 2016.

EnerNOC is an energy management services firm that provides, among other things, demand response services to end use customers and utilities. EnerNOC provides customized demand response applications to commercial, institutional and industrial customers. As of June 30, 2010, EnerNOC managed 4,800 MW of demand response capacity. EnerNOC is one of the largest demand response providers in the PJM Interconnection, LLC ("PJM") wholesale market, and recently obtained approval as a market participant in the Midwest Independent System Operator ("MISO"). EnerNOC operates in both competitive wholesale electricity markets as well as bilateral markets throughout North America.

EnerNOC would be very interested in providing demand response services to Illinois utilities and customers as part of the IPA's plan to serve the default service needs at lowest cost to customers. We believe that we have the experience, the capability and resources to deliver firm commitments of cost-effective demand response resources to benefit customers under the Procurement Plan.

While EnerNOC is interested in participating as a demand response resource provider in the Procurement Plan, there are elements of the Procurement Plan that are deeply problematic. EnerNOC recognizes that the Procurement Plan is governed under the provisions of the Illinois Power Agency Act ("IPA Act"). However, we believe that the IPA's interpretation of its mandate as it relates to the procurement of demand response resources will result in a program that will fail to yield substantial, if any, demand response resources at lower cost to customers. Moreover, we respectfully suggests that the IPA's interpretation of one narrow provision is inconsistent with other language in the law that more clearly expresses legislative intent, and would work at cross-purposes with the Illinois' retail restructuring law.

The IPA Act requires the IPA to develop a procurement plan that includes contracts with a demand response provider to be procured "from eligible retail customers."[1] "Eligible retail customers" are those customers whose default service needs will be served under the Procurement Plan, and does not refer to customers whose load needs are met under a competitive retail supply contract.[2] The statute seems to suggest, and

[1] 220 ILCS 5/16-111.5(b)(3)(ii)(A).
[2] 220 ILCS 5/16-111.5(a).

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has apparently been interpreted by the IPA to mean, that only customers who receive default service under the Procurement Plan may be utilized as part of a contract with a demand response provider.

Although this interpretation could be deemed to be consistent with the statute language, EnerNOC respectfully suggests that such a narrow reading would be inconsistent with the IPA Act. Specifically, such a reading would be inconsistent with other language of the statute that states: "*The cost-effective demand-response measures shall be procured whenever the cost is lower than procuring comparable capacity products, * * *.*" [3] Under the IPA's current interpretation of the statute, the restrictive "from eligible customers" language would prevent the IPA from being able to procure demand response from all customers, including those not receiving default service, even if doing so would be a lower cost. Any demand response program pursuant to this narrow reading of the statute would necessitate a marketing approach to attempt to find default service customers only. This would add tremendous unnecessary and wasteful transaction costs, and ultimately would likely fail to yield substantial results. It seems unlikely that the Illinois legislature intended such a bizarre result. Clearly the legislature would not have intended to add language that would needlessly add costs to customers, or otherwise imperil the possibility of allowing the IPA to procure lower cost demand response resources to meet customers' needs. We recognize the language of the statute is unfortunate, and appears to have an internal inconsistency. However, we believe this inconsistency can be appropriately reconciled to give effect to the above language from the statute, which articulate a fundamental principle for the IPA to follow as it considers procuring demand response at lowest cost to customers.

We recommend that the demand response provisions of the IPA Act ought to be interpreted, as appears consistent with the IPA Act, to deliver targeted benefits of cost-effective demand response to customers served under a Procurement Plan. In other words, demand response resources from any and all customers should be allowed to be part of a program that delivers targeted benefits of demand response to customers served under a Procurement Plan (e.g. lower purchased power costs, enhanced reliability, increased energy services and supply options available to customers). This approach would be consistent with the "from eligible retail customers" language in the statute because the eligible pool of resources would include default service customers. Restricting the eligible sources of demand response capability to customers actually served under a Procurement Plan does not serve the policy goals of the IPA Act. It needlessly restricts the market potential for lowest cost demand response resources that can benefit customers served under a Procurement Plan, which is clearly at odds with legislative intent.

Demand response activities provide benefits to both the customers who participate as providers of demand response, as well as customers who do not participate. Customers who participate receive benefits because they have the opportunity to receive compensation for performing as a demand response resource. Customers who do not participate in demand response also benefit from demand response resources being available in the market since demand response resources displace higher cost generation supply resources to meet system needs, and therefore lower the cost to serve load – a key objective of the Procurement Plan.

Instead of restricting the potential for cost-effective demand response resources, the Procurement Plan should shift its focus to a design which ensures that the benefits of demand response activity inure to the customers under a Procurement Plan. Such an approach is entirely faithful to the IPA Act's goals, and will result in a far more successful demand response procurement model. There are several workable models for achieving that result, while not subsidizing other customers that are not served under the Procurement

[3] 220 ILCS 5/16-111.5(b)(3)(ii).

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Plan, and without creating any unnecessary "double purchases" of demand response capacity. EnerNOC would very much like to work with the IPA to create a mechanism to achieve this objective.

Limiting the pool of customers who can participate in demand response to customers served under a Procurement Plan creates numerous problems. First, demand response providers marketing to customers would generally never know whether the customer is served by a competitive supplier or whether the customer is served through default service. As potential bidders under the Procurement Plan, demand response providers would have no ability to assess whether their preferred marketing plan will target customers who can actually participate. There is substantial risk to the demand response provider that its marketing efforts will lead to many non-target customer contacts, with the result that transactions costs may be increased considerably. This "hit or miss" marketing concern will require demand response providers to need to include a premium to cover the costs associated with outreach to customers who cannot participate.

Second, an even more problematic artifact of limiting demand response to those customers actually served under a Procurement Plan, is the deleterious effect it will have on the competitive retail electric supply market in Illinois. If a demand response provider is successful in identifying customers who take default service, and then that customer later switches to a competitive retail supplier, presumably the customer would no longer be eligible to participate in the demand response program. The customer would be unable to continue to enjoy the benefits of demand response participation, and importantly, all other customers that are being served under a Procurement Plan would be denied the opportunity to be served at lower cost. Again, it is simply not reasonable that the legislature would have intended such a perverse result that erects a non-sensible barrier to retail completion.

For all these reasons, EnerNOC respectfully requests that the IPA consider an appropriate redesign for demand response procurement that is consistent with the intent of the IPA Act and faithful to a reading of the statute in its totality. We believe failing to do so will lead to an undesirable and unattractive demand response procurement effort that will not likely be successful.

Sincerely,

Kenneth D. Schisler
Senior Director, Regulatory Affairs