

April 21, 2008

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426


**Re: Comments on Notice of Proposed Rulemaking
Wholesale Competition in Regions with Organized Electricity
Markets, Docket Nos. RM07-19-000, AD07-7-000**

Dear Ms. Bose:

Transmitted electronically for filing in the above-referenced dockets are the comments of EnerNOC, Inc.

If there are any questions concerning this filing, please call me at (410) 725-1462.

Sincerely,



Kenneth D. Schisler
Sr. Director, Regulatory Affairs
EnerNOC, Inc.

Enclosure



**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Wholesale Competition in Regions)	Docket Nos. RM07-19-000
with Organized Electric Markets)	and AD07-7-000

**COMMENTS OF ENERNOC, INC. ON NOTICE OF PROPOSED
RULEMAKING (NOPR), 18 CFR Part 35**

Pursuant to the Notice of Proposed Rulemaking¹ (“NOPR”) issued by the Federal Energy Regulatory Commission (the “Commission”) in the above-referenced dockets, EnerNOC, Inc. (“EnerNOC”) respectfully submits comments on the proposed rules.

I. BACKGROUND

EnerNOC is a leading demand response and energy management services provider in the United States and Canada. As of December 31, 2007, EnerNOC had more than 1,112 MW of demand response resources under management across approximately 2,189 sites across the continent. We actively participate in a range of reliability-based demand response programs, price response programs, and ancillary services markets. EnerNOC’s demand response activities are implemented via automated, aggregated, and intelligent management of end-user lighting, heating, ventilation, air-conditioning, distributed generation, and industrial process equipment.

EnerNOC is an active participant in the demand response programs in the organized markets that are the focus of this NOPR.

¹ Wholesale Competition in Regions with Organized Electric Markets, 73 Fed. Reg. 12,576 (2008)(to be codified at 18 CFR pt. 35) (hereinafter cited as “NOPR”).

II. COMMENTS

The NOPR addresses several policy areas in this effort to enhance competition in regions with organized wholesale electricity markets. EnerNOC will limit comments herein to addressing demand response proposals and scarcity pricing during operating reserve shortages.

A. Ancillary Services

1. **Requiring comparable treatment of demand resources in ancillary services markets is fundamental to the development of a sustainable demand response industry.**

EnerNOC fully supports the Commission's proposed rule to require Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs") to accept bids from demand response resources for various ancillary services, provided that those resources are capable of providing such services and can meet appropriate technical requirements. Allowing demand response resources to participate on a comparable basis to other resources in ancillary services markets is a fundamental prerequisite to the long-term sustainability of a robust demand response industry.²

Demand response resources, like generation resources, require access to all available revenue streams (e.g., energy, ancillary services, capacity) in order to make a sustainable and profitable business case for participation in electricity markets. Demand response resources in most ISOs and RTOs clearly do not now have comparable opportunities to fully participate in the electricity market, and also must contend with numerous barriers that traditional generation resources do not face. The inability of demand response resources to participate fully in ancillary services markets, despite the

²There is no need to recite the benefits of demand response participation in organized power markets. The Commission more than adequately summarized these benefits in the NOPR Order, ¶¶28-31.

technical capability of doing so, demonstrates that demand response does not enjoy comparable treatment with other resources in electricity markets in the United States. This fact, coupled with numerous other persistent barriers will, if not addressed, prevent the development of a stable and profitable demand response industry and efficient wholesale electricity markets.³ Adopting a final rule aimed at ensuring comparable treatment of demand response resources in ISO and RTO ancillary services markets is an important step forward.

2. ISO and RTO assessments of smaller load resource participation in ancillary services markets.

a. The assessment effort will reveal ways smaller loads can provide ancillary services while maintaining reliable operations and appropriate measurement and verification.

EnerNOC supports the Commission's proposal in the NOPR to require ISOs and RTOs to conduct an assessment of smaller load participation in ancillary services markets. The Commission's proposal addresses concerns raised in the Advanced Notice of Proposed Rulemaking⁴ ("ANOPR") by the California Public Utilities Commission that certain market rules for participation could create barriers to the participation of smaller loads in ancillary services markets. The assessment will inform ISO and RTO stakeholders of the substantial potential of smaller load participation in ancillary services markets, and reveal ways that technical requirements can be crafted in ways that do not exclude smaller loads from participation.

³ While last year was a watershed year that saw substantial interest in investment in the demand response industry, including successful initial public offerings of exchange-traded securities of two firms focused on demand response solutions - EnerNOC and Comverge - it is important to note that neither company has yet become profitable.

⁴ Wholesale Competition in Regions with Organized Electric Markets, Advance Notice of Proposed Rulemaking, 72 Fed. Reg. 36,276 (July 2, 2007) FERC Stats. & Regs. ¶32,617 (2007).

As discussed in more detail in the next section below, technical requirements for demand response participation in ancillary services markets can create an artificial barrier if the technical requirements exceed what is necessary in order to ensure reliable electric system operations. This is particularly true for smaller loads. For example, telemetry requirements might exclude the smaller loads from being able to participate. Each ISO and RTO assessment should focus on how to best capture the value of smaller load resource participation in a cost-effective way that maintains reliability. With this focus, it is highly likely that reasonable standards will emerge to allow smaller loads to participate in ancillary services markets in a meaningful way.

When considering the technical requirements associated with the participation of demand response in ancillary services markets, it's important to understand the performance characteristics of an aggregation of large numbers of loads. The "Law of Large Numbers" can help to ensure the stability and reliability of smaller customers as ancillary services resources without requiring telemetry and/or advanced meters at each customer site. Alternative methods of measurement and verification have been developed and should continue to be explored that are adequate for operations and market settlements.

EnerNOC is not suggesting that smaller loads be allowed to participate with less stringent standards. Instead, we submit that a portfolio of resources from a large number of customers can be structured with alternative measurement and verification methodologies, in order to achieve a level of reliability and performance that meets or exceeds performance of traditional generation resources in ancillary services markets.

The Commission did not prescribe what is meant by “smaller loads” in the NOPR.⁵ EnerNOC respectfully recommends the Commission clarify in its order adopting a final rule that the term should be construed broader than the residential class of customers. Any assessment of smaller loads should necessarily include customers for which technical requirements could pose a barrier to participation in ancillary services markets.

In assembling a portfolio of smaller load resources to provide ancillary services, the more diverse a portfolio can be, the more valuable that portfolio is to the market. A portfolio of diverse smaller loads that includes customers of varying load types -- residential, commercial and light industrial -- can be more valuable than the sum of its parts. A portfolio of diverse demand response resources can provide cost-effective, robust, and reliable ancillary products.

b. Smaller loads assessment should not create an excuse for delay in implementing reform efforts for allowing smaller load participation that are already underway.

There is a risk in the approach proposed by the Commission that some stakeholders will use the existence of the smaller loads assessment to sidestep or delay action on issues that could and should be addressed more quickly. As was noted by the Commission, a Demand Response Reserves Pilot is already underway in ISO New England. This pilot is intended to evaluate the technical feasibility of smaller load participation in ancillary services markets in that region. ISO New England has made considerable progress and has collected and analyzed substantial data. We respectfully request that the Commission convey in its Order adopting a final rule that the smaller

⁵ The California PUC comments, to which the Commission credits the NOPR proposal regarding a smaller loads assessment, did not describe what it means by “smaller loads” either.

loads assessment requirement should not be read as intending to slow or hinder progress that is already underway.

- c. **Smaller loads assessment should *inform* the ISO and RTO effort to develop technical requirements, and not create an opportunity to avoid addressing barriers to smaller load participation.**

EnerNOC is also concerned that the existence of the smaller loads assessment activity may delay the development of ancillary services markets for smaller loads. The NOPR proposes a broader parallel requirement that ISOs and RTOs develop technical requirements for demand response resources. EnerNOC is concerned that some might view the simultaneous existence of two distinct initiatives – one broad effort for all demand response resources and one more narrow effort for only smaller loads – as evidence that smaller loads should be considered only in the smaller loads assessment. EnerNOC is concerned that smaller loads will be sidestepped in the broader discussion. While such suggestions might sound expedient, it could actually become counterproductive to opening ancillary services markets to participation by smaller loads.

The Commission should clarify that the smaller loads assessment is intended in part to inform stakeholders working on the development of technical requirements for all demand response resources. The smaller loads assessment should serve as an aid to the broader effort in order to promote the inclusion of smaller loads in ancillary services markets. It should not be used to pigeon-hole or isolate or, even worse, to bury the issues of concern to smaller loads in the broader process of developing technical standards for demand response.

3. Requiring ISOs and RTOs to specify additional bidding parameters will enable demand response resources to participate in ancillary service markets in a manner that is comparable to similar opportunities for generators.

In the NOPR, the Commission observed that an absence of bidding parameters in ancillary services markets tailored to demand response resources serves as a barrier to demand response participation. The concern was that the bidding parameters of current markets may not account for unique operating constraints of demand response resources that are capable of providing ancillary services. Both generation and demand resources have constraints on operation in any market, and in some cases those constraints are different. Nevertheless, despite having different constraints, both demand response and generation resources are equally capable of providing many ancillary services.

Energy markets typically allow market participants to specify parameters or constraints on unit dispatch that account for physical limitations and other considerations related to a particular resource. Such parameters include specifying start-up costs, minimum run-time, ramp rate, and others. These parameters are integrated into the market-clearing algorithm to ensure efficient unit dispatch in light of the specified constraints. Such bidding parameters are entirely appropriate; however, typical bidding parameters specified in today's markets are not necessarily sufficient for demand response resources.

The typical parameters in today's markets were designed primarily with generation resources in mind. While the parameters themselves do not present a barrier, the absence of bidding parameters suited to demand response resources is a barrier to demand response resources. For example, generation resources may specify a minimum run time in a bid in order to ensure profitable operation and minimize wear from more

frequent start-up and shut-downs. By contrast, while demand response resources may be concerned about event frequency, they are likely to be generally less concerned about short response periods. In fact, a larger issue for many demand response resources is the “fatigue” associated with long response periods. Demand response resources might also become “fatigued” if too many dispatches occur in a close time frame, to the extent this disrupts business operations.

The NOPR proposal addresses the characteristics of demand response resources by proposing several potential additional bidding parameters. Specifically, the NOPR proposes incorporating new parameters into bidding rules that allow demand resources to specify: 1) maximum duration in hours; 2) maximum number of times that a demand response resource may be dispatched during a day; and 3) the maximum amount of electric energy that a demand response resource may be required to provide either daily or weekly.

As the Commission has noted, these additional parameters will encourage demand response by reducing the risk of too frequent or long dispatches that may lead to customer fatigue or business disruption.⁶ Although EnerNOC fully supports the proposed rule, it is important that the Commission maintain oversight over the way that these additional parameters are incorporated into business rules and the market clearing function to ensure that the addition of these parameters does not create a bias for or against demand response resources.

EnerNOC does not oppose making the additional parameters available for all bidders, not just demand response resources.

⁶ NOPR at ¶62.

4. Commission oversight is necessary over ISO and RTO efforts to develop reasonable size, telemetry, metering, measurement and verification, and compliance standards for demand response participation in ancillary services markets.

The Commission announced in the NOPR Order that it would not proceed to develop rules for a standardized set of size, telemetry, metering, measurement and verification, and compliance standards. EnerNOC agrees with the Commission's conclusion that it is not appropriate for the Commission to develop a standardized set of technical requirements. The Commission recognized, however, that coordination and standardization on these issues, to the extent practical, is desirable. The Commission instead proposed that ISOs and RTOs confer on the development of technical standards and provide the Commission with a technical basis for any necessary regional variations. By requiring coordination and justification for variations, without mandating standardization, the Commission has struck exactly the right compromise position.

The Commission directs the ISOs and RTOs to develop "reasonable" standards, and makes the standards subject to Commission approval.⁷ EnerNOC respectfully requests that the Commission clarify that its reasonableness requirement is aimed at ensuring that reasonable technical requirements not be unduly restrictive on demand response resources, such as those that may add unwarranted and unnecessary costs to participation, while maintaining reliable service standards for a particular ancillary service. The technical standards should avoid mandating the same technology applications that are used by generators (e.g. telemetry at every customer site), and should instead focus on the reliability parameters of the particular ancillary service and

⁷ NOPR at ¶56.

allowing demand response to utilize alternative methods to meet standards that are equivalent.

5. The development of ISO and RTO standards for measurement and verification should address customer baselines in order to ensure accuracy, integrity, and administrability, and maintain comparable treatment of demand response resources.

The ISO and RTO efforts aimed at developing standards for measurement and verification should focus substantial effort on increased sophistication surrounding approaches to customer baseline methodologies. All market participants, and the demand response industry in particular, need clear rules to ensure that baseline determinations serve as the basis for full and fair compensation for demand response. It is equally important that baseline methodologies be designed in a way that prevents demand response from being compensated in excess of actual load reductions. EnerNOC is fully committed to working with the Commission and within stakeholder processes toward improving and refining existing baseline methodologies.

There are at least four primary considerations in the development of customer baselines. The first consideration is accuracy: the baseline must be an accurate measure of what a customer's demand would have been absent demand response. The second consideration is integrity: the baseline must not be susceptible to manipulation that allows a customer to inflate a baseline in order to receive compensation in excess of its demand reduction. The third consideration is administrability: the baseline needs to be easy enough to understand, calculate, and readjust over time as customer demand changes, without an excessive drain on market participant or ISO and RTO staff resources. The fourth consideration is ensuring comparable treatment: the customer

baseline must not foreclose opportunities for demand response resources to participate in markets in the same manner as other resources.

Customer baselines can be designed that adequately address all four tenets above. In addition, as is already noted by the Commission, there may be opportunities for standardization of baseline determinations that are to be explored through the ISO/RTO Council. The ISO/RTO Council can and should serve as a valuable forum for exploring best practices in customer baseline methodologies as well as for achieving standardization wherever possible and appropriate.

We request that the Commission require ISOs and RTOs to demonstrate in future compliance filings that customer baseline methodologies appropriately address concerns of accuracy, integrity, administrability, and comparable treatment of demand response resources.

B. Deviation Charge

1. Eliminating deviation charges during system emergencies will eliminate a disincentive to demand response resources providing load relief in order to preserve system reliability.

EnerNOC continues to support the Commission's proposal first outlined in the ANOPR to eliminate the deviation charge⁸ for demand response resources during system emergencies. Eliminating deviation charges would be helpful in bringing incremental demand response resources to address system emergencies, especially from customers already participating in reliability-based demand response programs.

Deviation charges provide a particular disincentive for load response over performance during system emergencies. In real-time during a system emergency, we

⁸ Deviation charge is defined by the Commission as a charge to a buyer in the energy market for taking less electric energy in the real-time market than purchased in the day-ahead market; NOPR at ¶65

should want participating customers to deliver as much demand response as is possible, without having to worry about the severity of a deviation charge.

Eliminating deviation charges should enhance system reliability. EnerNOC agrees with the Commission assessment in the NOPR that this reliability value justifies the socialization of related uplift costs⁹, which is likely to be a relatively small amount in any event.

C. Aggregation of Retail Customers

1. Aggregators of Retail Customers add value to wholesale energy markets and ought to be able to participate in markets to the same extent as load-serving entities and other market participants.

Allowing ARCs to participate directly in wholesale markets in PJM, ISO-NE and NYISO has increased market efficiency, market penetration, and diversity of product offerings available to customers. The Commission's proposed rule to codify ARCs rights to participate in organized markets should bring some certainty and clarity to continued ARC access to these markets. There is particular value in the supporting criteria the Commission proposed to give substance to a regulatory requirement that ISOs and RTOs ensure comparable treatment of ARC bids to the bids of LSEs or large industrial customers.¹⁰

Even in markets where aggregation is permitted, however, there are numerous examples exist of disparate treatment of ARCs and persistent barriers to demand response generally. Those matters will be addressed in the various stakeholder processes and compliance filing requirements that are ordered in the NOPR. EnerNOC remains committed to participating in all of those activities. We very much appreciate the

⁹ NOPR at ¶79.

¹⁰ NOPR at ¶89.

Commission's leadership in bringing about important reforms now, as well as for emphasizing the need for continued work on policy development "to eliminate barriers to the participation of demand response in the organized power markets by ensuring comparable treatment of resources."¹¹ The Commission's proposed rule regarding ARC comparable access to wholesale markets will serve as a guidepost in future discussions concerning these much anticipated policy developments.

D. Market Rules Governing Price Formation During Period of Operating Reserve Shortage

1. Scarcity pricing proposals must be balanced in order to ensure robust participation of a wide variety of demand response resources.

The Commission has identified that price and bid caps during periods of operating reserves shortages diminish market efficiency by sending price signals that may not be reflective of scarcity conditions prevailing in the market, and may therefore inhibit demand response and deter new entry of demand response. EnerNOC agrees with the Commission's reasoning regarding the importance of appropriate price signals. We submits that addressing this issue will require great care and a balancing of other concerns and competing policy objectives.

The NOPR expressly provides guidance on one concern, preventing market power abuse, as an important prerequisite of moving forward with any scarcity pricing proposals. In addition to that concern, it is important that ISOs' and RTOs' compliance filings addressing scarcity pricing remain balanced so as not to discourage reliability-based demand response programs. We respectfully urge the Commission to incorporate

¹¹ NOPR at ¶38.

preserving diversity of demand response resources as an additional policy objective in any final rule it adopts.

2. Market designs that embrace both energy and capacity markets allow greater variety of opportunity for demand response participation in markets.

The Commission observes that one effect of scarcity pricing would be to reduce revenues recovered in capacity markets and shift those revenues from the capacity market to the energy market.¹² The Commission posits that scarcity pricing may encourage “greater demand response, as demand response may face fewer barriers to participating in energy markets than in forward capacity markets.”¹³ On the other hand, shifting revenues away from the capacity market would likely lead to some diminution of reliability-based demand response resources whose participation depends upon a stable source of revenue available from the capacity markets.

Some demand response resources are better suited for participation in energy markets, and others are better suited to participation in capacity markets.¹⁴ Still others are best suited to a hybrid form of participation. In fashioning its policies around scarcity pricing, the Commission should strive for policies that encourage demand response resources to interact in both energy and capacity markets, or either one, in a manner that is most appropriate for the demand response resource. In other words, EnerNOC

¹² NOPR at ¶¶112, 114.

¹³ NOPR at ¶114. EnerNOC is not in a position to confirm the Commission’s suggestion that demand response may face fewer barriers to participating in energy markets than capacity markets. Indeed, there are barriers in both types of markets that present challenges for demand response resources.

¹⁴ As an example, consider Customer A, an industrial customer who can generally curtail fairly flexibly most of the time, but needs the ability to continue operations if it is in the middle of a batch process. This customer would not be appropriate as a reliability-based capacity resource because the customer can not be relied upon to curtail at times beyond its control. However, Customer A can reap substantial savings in the energy market by scheduling production around high price periods. Customer B, another industrial customer, can curtail at any time on short notice, but doesn’t want to curtail too frequently because it needs to maintain fairly steady production. Customer B is an ideal customer for a reliability-based demand response program that is based in the capacity market, but it probably would not be cost effective for Customer B to closely track the energy market for a relatively small number of curtailments.

encourages the Commission not to pursue scarcity pricing to the point where it will create a binary choice for demand response resources: to participate in the energy market or not participate at all.

In organized markets with capacity markets today, there are substantial demand response resources that are anchored in the capacity markets. These resources are typically dispatched when reliability conditions warrant and serve as a valuable tool for maintaining system reliability. In PJM, NYISO, and ISO-NE, a commitment to participating in reliability-based programs is synonymous with demand response resource participation in the ISO or RTO capacity market.¹⁵ In the California, the most common form of demand response participation is a hybrid product that is both price-responsive and reliability-based. Although the California ISO does not have a capacity market, *per se*, a substantial portion of the value proposition for these resources is the capacity payment associated with participation.

While some demand response resources are capable of responding to day-ahead and real-time prices, as noted by the Commission, not all customers are suited to or interested in interaction with the energy markets.¹⁶ They are nevertheless willing to participate in a reliability-based demand response program that helps preserve reliability in their community and allows them to receive compensation as a reliability resource.

These resources need a stable revenue stream available in the form of a capacity payment in order to sustain participation. The energy payment received during reliability events called by the ISO or RTO is, while important, a secondary consideration. Since

¹⁵ In typical reliability-based demand response programs, customers commit to mandatory participation on an annual or seasonal basis to be available throughout the relevant term, according to the terms and conditions of the program.

¹⁶ NOPR at ¶110

demand response events may be infrequent and are dispatched by the ISO and RTO, the revenue that may be available from the energy market alone could become too speculative to make a business case for participation if capacity payments dissipate below a sustainable level.

Demand response resources that interact in energy markets are appropriate for more price elastic customers. These resources will usually curtail at a certain price level and compete with peaking generation. But these customers may not respond at the times when the ISO or RTO dispatches reliability-based demand response, and high prices are not always coincident with reliability events. The shortcoming of price-responsive demand response resources is that they may not have any binding obligation to curtail when grid operators are confronted with reliability concerns. Therefore price-responsive demand resources cannot be counted upon as a reliability resource.¹⁷

We may *hope* that price-responsive demand response resources would curtail when there are reliability concerns on the system. However, unless they are contractually committed to do so, they have no obligation to disrupt business operations at times beyond their control. Moreover, to the extent price-responsive demand response resources are not being compensated as reliability resources, we can not expect them to fulfill that function.

Reliability-based demand response programs often serve as the gateway toward more and greater demand response participation for new customers. Many new

¹⁷ Some customers may choose to participate only in a voluntary price-responsive program because they may not be able to respond on relatively short notice of a reliability event on times beyond their control. In other words, because of the nature of the demand response resource, they may not be able to reliably perform at unexpected times. ARCs work with customers to identify the appropriate level of participation to capture the value of the demand response resource, while not placing unacceptable risks or disruptions on customers.

customers begin participating as demand response resources in reliability-based demand programs based in capacity markets. These programs are attractive to new customers because the terms are generally very clear and because the number of interruptions is likely to be few. As these customers become comfortable with demand response participation and understand how their curtailment activities affect their business operation, many customers find they can do more to participate in other market opportunities. Moreover, the revenues these customers derive from participation in reliability-based programs are often reinvested to enable a more sophisticated level of demand response participation.

As the Commission understands, the demand side of the electricity market in the United States remains dramatically underdeveloped. The presence of reliability-based programs has been a primary catalyst to bring more demand side resources into the market. If reliability-based demand response program opportunities diminish as revenues shift from the capacity market to the energy market, it could make it harder to attract new customers and could stunt the growth of demand response resources in organized markets, thus decreasing overall market efficiency.

Reliability-based demand response resources and price-responsive demand response resources (and hybrid forms of both) each provide important market benefits. Price-responsive demand resources instill pricing discipline in the energy market and may provide capacity market benefits (to the extent that high prices and system peaks are correlated). Reliability-based demand response resources are vital to vibrant competition within capacity markets because they tend to be less expensive capacity than peaking generation. While reliability-based demand response resources do not directly impact

energy prices, they may do so indirectly, and most importantly, can be counted on by system operators to preserve reliability.

The challenge, therefore, is for the Commission to support a market design that preserves the positive attributes of reliability-based demand response and price-responsive demand response. EnerNOC respectfully requests that the Commission balance its scarcity pricing policy to ensure maximum opportunities for demand response resources of all types to participate in power markets.

E. Stakeholder Processes for NOPR Reforms Implementation

1. There are tremendous opportunities for stakeholder involvement to make progress on implementation of NOPR proposals and future demand response reforms.

The Commission has proposed numerous opportunities for stakeholder involvement to aid the implementation of proposed reforms and to address additional barriers to demand response resources' participation in organized power markets. EnerNOC is fully committed to participating as a stakeholder in these discussions. EnerNOC appreciates the Commission's attempt to bring parties together to make steady progress toward eliminating barriers and ensuring comparable treatment of demand response resources.

Among the stakeholder processes discussed in the NOPR are the following: 1) a staff technical conference to be held after NOPR comments are received to identify barriers and solutions to demand response participation, appropriate compensation, and standardization of terms, practices, rules and procedures associated with demand response¹⁸; 2) an assessment and studies of the participation of smaller loads in ancillary

¹⁸ NOPR at ¶95.

services markets¹⁹; 3) the development of bidding parameters that recognize the operating constraints of demand response resources to enable comparable treatment for demand response resources in ancillary services markets; 4) the coordination amongst ISOs and RTOs toward standardization of technical requirements for participation²⁰; 5) the development of tariff revisions for ensuring that ARCSs have the opportunity to bid on behalf of retail customers in wholesale markets²¹; 6) a requirement that ISOs and RTOs assess and report on barriers to demand response resources with proposed solutions and a timeline, including opportunities for reporting of minority views and the views of the Independent Market Monitor for each ISO and RTO.²²

2. It is crucial that the Commission, ISOs and RTOs, and state commissions collaborate on removing barriers to demand response that may overlap federal and state jurisdiction.

The specific demand response reforms embodied in the NOPR are geared toward matters which fall under federal jurisdiction. As the Commission has observed there is a need to explore state-federal coordination to promote and integrate demand response into retail and wholesale markets.²³ In order to confront the challenges associated with coordinating state and federal interests, it is crucial that the effort be redoubled and substantial focus be placed on retail-wholesale coordination in regions with organized wholesale markets.

The Commission has appropriately made clear its intention to respect regional differences²⁴ and the responsibility of state commissions.²⁵ The Commission states that

¹⁹ NOPR at ¶59

²⁰ NOPR at ¶64

²¹ NOPR at ¶92

²² NOPR at ¶95.

²³ NOPR at ¶36.

²⁴ NOPR at ¶¶24, 90, 107, 117, 225, 270.

²⁵ NOPR at ¶14.

where issues related to retail markets are concerned, such issues should be explored in separate proceedings where the interaction of retail and wholesale market can be explored.²⁶ EnerNOC respectfully requests that the Commission and state commissions in the individual regions served by organized wholesale markets collaborate in a focused manner so that specific solutions to barriers in individual markets can be addressed.

The Commission has been careful in its regulatory approach not to usurp state authority. At the same time, state commissions located in regions with organized wholesale markets have at times been reticent to undertake specific reforms that could create disjointed and incompatible rules in a multi-state common market. Both concerns are valid and appropriate. However, without focused coordination, there is a substantial risk that crucial barriers that lie at the intersection of state and federal jurisdiction do not get addressed in a timely fashion. As discussed below, there are several efforts underway to achieve coordination. Those efforts are welcome and have been valuable. Unfortunately, some have either too broad a focus or too narrow a focus, or lack the resources, to enable them to seriously confront barriers involving the federal-state jurisdictional overlap.

We applaud the Commission and NARUC members who have participated in the NARUC-FERC Collaborative Dialogue on Demand Response. That effort has brought to light important challenges to promoting demand response and spawned progress throughout the United States. While the effort has been both productive and worthwhile, its focus is necessarily generic to demand response issues confronted throughout the United States. By design, it is not focused on regions with organized wholesale markets, or in specific ISOs or RTOs.

²⁶ *Id.*

Virtually all ISOs and RTOs have established working groups or stakeholder committees to consider demand response issues. While their work is specific to the particular ISO or RTO, their primary focus historically has been to address ISO and RTO procedures and federal tariff provisions. The ISOs and RTOs, like the Commission itself, are concerned about treading upon issues that are under the province of state regulatory authorities. Moreover, to a greater or lesser degree in individual ISOs and RTOs, the direct involvement of state commission representatives in ISO and RTO stakeholder activities is limited.

Numerous state commission members have also formed demand response task forces, such as the Mid-Atlantic Demand Response Initiative and the Midwest Demand Response Initiative, to name a couple. These regional groups have been very helpful in bringing focus on some of the important issues and barriers to demand response participation in markets. However, it would appear that these groups lack the resources to resolve the complex issues that lie at the intersection of state and federal jurisdiction, and may also lack participation of all affected states in a particular ISO or RTO. Moreover, while there have been clear lines of communication by these groups' members with representatives at the various ISOs and RTOs, in most markets we have yet to see the full integration of the perspectives of state regulators in the ISO and RTO stakeholder processes.

EnerNOC recommends that the Commission and its state commission peers consider combining these efforts or developing a greater level of coordination around regional issues so that region-specific solutions can be developed. Inasmuch as regional differences exist, and are likely to continue, solutions to barriers that lie at the federal-

state jurisdictional intersection can only truly be addressed through a focused regional approach with an eye toward standardization where appropriate and possible.

3. Commission oversight will be critical in order to ensure success in eliminating barriers to demand response.

There is a mixed record of stakeholder-developed proposals for eliminating barriers to demand response participation. There has been some progress in most markets. EnerNOC wants to acknowledge the sincere effort, particularly amongst the professional staff at ISOs and RTOs, to increase opportunities for demand response resource participation. However, stakeholder processes have limitations because of the relative influence and voting strength of certain stakeholders under current ISO and RTO governance regimes. Some of these stakeholders, while often professing support for demand response, in fact perceive competitive threats from demand response and are otherwise less than motivated to support reforms. This reality has, without question, made the process of bringing about reform through stakeholder involvement slow and arduous. Stakeholder processes have often led to sub-optimal results in terms of market access and comparable treatment for demand response resources. This is part of the reason substantial barriers to participation persist.

EnerNOC is encouraged by the Commission's stated objective to continue its active oversight and review and approve proposed implementation of proposed reforms and consideration of future reforms. EnerNOC will endeavor to work with all stakeholders toward consensus for approaches to eliminate barriers to demand response. However, should those efforts fall short for any reason, the Commission's continued involvement and active engagement may be a necessary and important element toward the goal of eliminating barriers to demand response.

III. CONCLUSION

The Commission is to be commended for its leadership in proposing the specific NOPR reforms concerning demand response participation in organized markets. The Commission also made clear that much work remains toward eliminating barriers to demand response, and sets forth in the NOPR an aggressive agenda that will compel ISOs and RTOs and stakeholders to make continued progress with continued Commission oversight. EnerNOC deeply appreciates the Commission's determination to remove barriers to demand response and commits to working closely with the Commission, the ISOs and RTOs, and other stakeholders to bring that vision into reality. EnerNOC respectfully requests that the Commission consider its comments herein and move forward with the adoption of final rules.

Respectfully submitted,



Kenneth D. Schisler
EnerNOC, Inc.
75 Federal St., Suite 300
Boston, MA 02110
410-745-8104
kschisler@enernoc.com

On behalf of EnerNOC, Inc.

Dated: April 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2008, I caused a copy of the foregoing document to be served electronically upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission.