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JUN 21 2013

PUBLIC SERVICE
COMMISSION



Jeremiah A. Byrne

Member

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June 21, 2013

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2012-00578
EnerNOC, Inc.'s Motion for Leave to Intervene

Dear Mr. Derouen:

Enclosed please find the original and ten (10) copies of EnerNOC, Inc.'s *Motion for Leave to Intervene* in the above referenced proceeding, for filing in your office.

If you have any questions or require additional information, please do not hesitate to contact me at (502) 779-8129. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Byrne".

Jeremiah A. Byrne

Enclosure

Mr. Jeff Derouen

June 21, 2013

Page 2

cc: John R. McCall
Joe Childers (w/ enclosure)
Shannon Fisk (w/ enclosure)
Hector Garcia (w/ enclosure)
Kenneth J. Gish, Jr. (w/ enclosure)
Jennifer B. Hans (w/ enclosure)
Kristin Henry (w/ enclosure)
Robb W. Kapla (w/ enclosure)
Michael L. Kurtz (w/ enclosure)
Mark R. Overstreet (w/ enclosure)
Ranie Wohnhas (w/ enclosure)
Michael T. Hogan (w/ enclosure)

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 21 2013

PUBLIC SERVICE
COMMISSION

In The Matter Of:

APPLICATION OF KENTUCKY POWER COMPANY FOR (1) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE TRANSFER TO THE COMPANY OF AN UNDIVIDED FIFTY PERCENT INTEREST IN THE MITCHELL GENERATING STATION AND ASSOCIATED ASSETS; (2) APPROVAL OF THE ASSUMPTION BY KENTUCKY POWER COMPANY OF CERTAIN LIABILITIES IN CONNECTION WITH THE TRANSFER OF THE MITCHELL GENERATING STATION; (3) DECLARATORY RULINGS; (4) DEFERRAL OF COSTS INCURRED IN CONNECTION WITH THE COMPANY'S EFFORTS TO MEET THE FEDERAL CLEAN AIR ACT AND RELATED REQUIREMENTS; AND (5) ALL OTHER REQUIRED APPROVALS AND RELIEF

CASE NO. 2012-00578

EnerNOC, Inc.'s Motion for Leave to Intervene

Pursuant to KRS § 278.310 and 807 KAR 5:001, Section 4(11), EnerNOC, Inc., ("EnerNOC"), 1 Marina Park Drive, Suite 400, Boston, MA 02210, hereby petitions the Commission for leave to intervene in the above-captioned proceeding.

Kentucky's Administrative Regulations provide that an entity that wishes to become a party to a proceeding before the Commission may, by timely motion, request leave to intervene. 807 KAR 5:001, Section 4(11)(a). An intervening party must show that it has a special interest in the proceeding not otherwise adequately represented, or that its involvement in the case is likely to present issues or develop facts that assist the commission in fully considering the

matter. *Id.* Finally, an intervening party must show that its involvement would not unduly complicate or disrupt the proceedings. *Id.* Because EnerNOC has satisfied all of these requirements, its Motion for Leave to Intervene should be granted.

EnerNOC should be granted leave to intervene in this proceeding to advance and protect its unique interests. EnerNOC's sole interest in this case relates to EnerNOC's June 10, 2013 response to a Request for Proposals ("RFP") by Kentucky Power Company ("Kentucky Power"). The RFP was part of Kentucky Power's "process to determine the least, reasonable cost solution to replacing, the (250 MW of) impending generation loss anticipated with the retirement of its Big Sandy Unit 1 generation unit."¹ As discussed further below, through the first six (6) months of this proceeding Kentucky Power specifically stated that this proceeding would not incorporate the review of the Big Sandy 1 coal-fired generation loss and the RFP process. However, a Memorandum of Understanding submitted by some parties to this proceeding on May 28, 2013 injected the RFP into this proceeding, unreasonably disregarded the RFP, and predisposed some parties against EnerNOC's bid proposal.

EnerNOC seeks intervention in this proceeding to have its bid evaluated and analyzed in a reasonable manner. EnerNOC's interests are not being adequately protected by current parties to this proceeding. In fact, the parties have taken a position that unfairly prejudiced EnerNOC's interests.

This Motion is timely because EnerNOC's interest arose once the Memorandum of Understanding was submitted by parties to this proceeding on May 28, 2013, and EnerNOC submitted its response to the RFP on June 10, 2013 just 11 days ago.

¹ Request for Proposals, Up to 250 MW (Nameplate) of Long-term Capacity and Energy (PJM Resources Only), Issued on March 28, 2013 by American Electric Power Service Corporation as an agent of the Kentucky Power Company.

Finally, intervention by EnerNOC will not disrupt or complicate this proceeding because the Commission ordered Kentucky Power Company to submit an analysis of the RFP bid responses on June 28. Kentucky Power has not submitted that analysis yet. Because Kentucky Power has not submitted the Commission ordered report yet, EnerNOC and all the other parties are similarly situated as it pertains to addressing the Memorandum of Understanding and RFP issues at the evidentiary hearing scheduled for July 10.

A. EnerNOC provides a valuable economic resource for industrial, commercial, and institutional customers.

EnerNOC is a leading developer and provider of clean and intelligent energy solutions to commercial, institutional, and industrial end-use customers, as well as electric power grid operators and utilities. EnerNOC's technology-enabled demand side response and energy management solutions help both customers and grid operators optimize the balance of electric supply and demand. Quite simply, EnerNOC provides many customers with the flexibility they need to participate in demand response programs.

EnerNOC manages aggregated demand response resources across numerous commercial, institutional and industrial customer verticals, including, education, government, health care, hospitality, retailing, commercial real estate, agri-business, manufacturing, and more. EnerNOC is the world's largest provider of demand response resources to utilities and grid operators, with more than 24,000 MW of peak load under management – of which 30-35% is curtailable – across more than 14,000 customer sites.²

EnerNOC actively manages aggregated demand response resources participating in a broad variety of reliability-based programs, economic price-response programs, and ancillary service markets. EnerNOC is a direct market participant in wholesale electricity markets

² As of March 31, 2013.

including ISO-New England, PJM Interconnections, New York ISO, and the Electric Reliability Council of Texas. In addition – and germane to this proceeding – EnerNOC provides demand-side management services through bilateral arrangements with utilities throughout North America, in both investor-owned and public power utility systems in Tennessee, Arizona, California, Colorado, Florida, Idaho, Maryland, Vermont, and Washington. EnerNOC also provides demand response services in open-market programs in Ontario, Canada and in the United Kingdom.

In addition, EnerNOC has significant experience delivering energy savings in the industrial market sector. Over the last ten (10) years, EnerNOC (and before it, Global Energy Partners, acquired in 2011) has helped utility partners achieve over 550 million kWh in first-year energy savings for industrial customers.

B. EnerNOC has a special interest in this proceeding because its bid for a portion of Kentucky Power’s capacity would provide a lower cost alternative for a greater number of Kentucky Power’s customers.

The options set forth in EnerNOC’s bid have been excluded from the Memorandum of Understanding filed on May 28, 2013. (*See* Memorandum of Understanding at 7, ¶ 9). Clearly, the parties could not have evaluated the least cost alternative bids responsive to the RFP because the bids had not yet been submitted.

EnerNOC has a special interest in ensuring its responsive bid is evaluated, analyzed, and considered because it believes its bid can be part of the least cost alternative for a greater number of Kentucky Power’s ratepayers. In addition, EnerNOC’s proposal will bring economic development value throughout the Kentucky Power territory by providing revenue to the commercial, industrial, and institutional customers who can participate in demand response programs through aggregation. EnerNOC therefore should be allowed to intervene in this

proceeding pursuant to 807 KAR 5:001, Section 4(11) to present its response to Kentucky Power's RFP, ensure its bid response is considered for inclusion in any settlement of this proceeding, and seek clarification of its rights.

EnerNOC's Motion for Leave to Intervene should be granted.

C. Allowing EnerNOC to intervene and present its proposal will assist the Commission in fully considering this matter.

The details of EnerNOC's response to Kentucky Power's RFP will certainly assist the Commission in fully considering the pricing and availability of alternative long term generation resources. This is certain because the Commission stated exactly that in its May 28, 2013 Order. (*See* May 28, 2013 Order of the Kentucky Public Service Commission ("May 28 KPSC Order") at 3). Indeed, the Commission stated that "[t]he details of the bids submitted in response to [Kentucky Power's RFP] should provide useful information regarding the current availability and pricing of long-term generation, *and will assist the Commission in investigating the reasonableness of Kentucky Power's proposed purchase of 50 percent of the Mitchell Generation Station.*" (*See* May 28 KPSC Order at 3 (emphasis added)).

EnerNOC's intervention is required to assist the Commission in full consideration of its RFP response and the availability of alternative long-term generation resources. The Commission ordered Kentucky Power to provide it with "an analysis of the net present value revenue requirements" of the bids received in response to the RFP, including EnerNOC's bid. (*See id.* at 3-4). This Order followed Rebuttal Testimony by Gregory G. Pauley promising that Kentucky Power would evaluate all responses to its RFP and compare them with AEPSC'S Projects, Controls & Construction Group's proposal to convert Big Sandy Unit 1 to a natural gas fired unit. (*See* Rebuttal Testimony of Gregory G. Pauley, On Behalf of Kentucky Power Company ("Pauley Rebuttal Testimony") at 20). The purpose of the evaluation and comparison

is “to determine the least-cost alternative to replace Big Sandy Unit 1’s coal-fired generation.” (See Pauley Rebuttal Testimony at 20). Despite this testimony, on May 28, 2013, Kentucky Power filed the Memorandum of Understanding without the promised analysis and evaluation being completed.

EnerNOC seeks to intervene in this proceeding simply to demonstrate that it has resources that should be included as a least-cost alternative generation resource for the benefit of a greater number of Kentucky Power’s ratepayers. The analysis will certainly assist the Commission in its consideration of this matter and therefore satisfies the requirements of 807 KAR 5:001, Section 4(11)(a).

EnerNOC’s Motion for Leave to Intervene should be granted.

D. EnerNOC’s proposal is not adequately represented in this proceeding.

EnerNOC is not adequately represented in this proceeding. Its responsive bid has not been advocated, advanced, or even presented by Kentucky Power or any of the current intervenors. To the contrary, Kentucky Power and some intervenors have submitted the “Memorandum of Understanding” that may prejudice them against options outside of their settlement. Not only are EnerNOC’s interests not being adequately represented in this matter, but parties to this proceeding have advanced contrary positions. Thus, without intervention, EnerNOC’s interests will not be represented adequately in this proceeding. 807 KAR 5:001, Section 4(11)(b) is satisfied.

EnerNOC’s Motion for Leave to Intervene should be granted.

E. EnerNOC’s unique interest in this proceeding first arose on June 10, and therefore, its Motion to Intervene is timely.

This Motion to Intervene is timely because it is being submitted to the Commission eleven (11) days after EnerNOC’s interests arose. EnerNOC’s interest in this proceeding did not

materialize until Kentucky Power and other parties entered into the Memorandum of Understanding on or about May 28, 2013 *and* EnerNOC subsequently submitted its RFP response (eleven (11) days ago).

This Motion to Intervene was filed promptly after EnerNOC's interests first arose. In this short period of time, EnerNOC found and hired counsel, researched and determined the status of this proceeding, and drafted and filed the present motion. Thus, EnerNOC's motion is timely.

Kentucky Power may argue in opposition to this Motion that its Application for Transfer has been pending since last December, and that this fact alone renders EnerNOC's motion untimely. Any such argument is belied by its own testimony in this proceeding. Kentucky Power submitted Direct Testimony of Gregory G. Pauley contemporaneously with its Application for Transfer in December of 2012. (*See* Direct Testimony of Gregory G. Pauley, On Behalf of Kentucky Power Company ("Pauley Direct Testimony")). Mr. Pauley directly addressed in his testimony the question of whether Big Sandy Unit 1 was the subject of this proceeding. (*See id.* at 20). Mr. Pauley plainly testified that it was not. (*See id.*). Instead, Mr. Pauley testified that "Kentucky Power intends to issue a competitive solicitation in the first part of 2013 for approximately 250 MW of long-term capacity and energy." (*See id.*). Given this Direct Testimony by Kentucky Power, EnerNOC had no interest or reason to intervene in this proceeding when it was first initiated in December 2012.

Furthermore, as of May 3, 2013, Kentucky Power submitted Rebuttal Testimony from Mr. Pauley clearly indicating Kentucky Power was conducting an "on-going" investigation regarding the least cost alternative for disposition of Big Sandy Unit 1. (*See* Pauley Rebuttal Testimony at 19-20). Mr. Pauley explained that Kentucky Power planned to consider options for the disposition of Big Sandy Unit 1, including an analysis of responses to the March 28, 2013

RFP. (*See id.*). Mr. Pauley further testified that Kentucky Power would be collecting responses to the RFP until June 11, 2013 (eleven (11) days ago) and would evaluate them thereafter. (*See id.* at 20). So, as of May 3, 2013 Kentucky Power was promising to evaluate EnerNOC's responsive bid and analyze it to determine whether it was the lowest cost alternative. Then, on May 28, 2013 (less than a month ago) EnerNOC learned for the first time this would not happen as Kentucky Power and the other parties filed the Memorandum of Understanding without the promised analysis and evaluation being completed. Less than a month later, EnerNOC filed this Motion for Leave to Intervene. Therefore, the motion is timely under 807 KAR 5:001, Section 4(11)(a).

EnerNOC's Motion for Leave to Intervene should be granted.

F. Intervention by EnerNOC will not complicate or disrupt this proceeding.

The only resolution of this proceeding thus far is the Memorandum of Understanding. EnerNOC's involvement in this proceeding is limited to the opportunities provided in Kentucky Power's March 28 RFP and EnerNOC's June 10 response to that RFP. EnerNOC simply seeks to present its bid responsive to Kentucky Power's RFP, ensure its bid is adequately considered as part of this proceeding, and seek clarification of its rights.

EnerNOC's role in this proceeding cannot be fully determined until June 28. The Commission has ordered Kentucky Power to file "an analysis of the net present value revenue requirements" of the bids received in response to its March 28 RFP. (*See* May 28 KPSC Order at 4). Like the other parties in this case, EnerNOC will have a vested interest in that analysis.

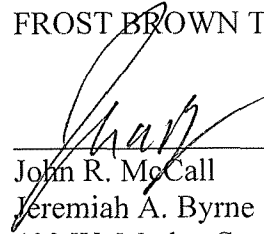
It is not EnerNOC's intention to complicate or disrupt this proceeding and therefore this Motion for Leave to Intervene comports with 807 KAR 5:001, Section 4(11)(b).

EnerNOC's Motion for Leave to Intervene should be granted.

WHEREFORE, EnerNOC Inc. hereby moves the Public Service Commission to grant it leave to intervene in these proceedings pursuant to 807 KAR 5:001, Section 4(11).

Respectfully submitted,

FROST BROWN TODD LLC



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid, upon the following parties of record, this 21st day of June, 2013.

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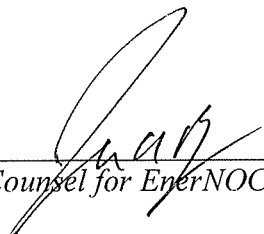
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