

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U 338-E) for Approval of its 2009-2011
Energy Efficiency Program Plans and Associated
Public Goods Charge (PGC) and Procurement
Funding Requests.

Application 08-07-021
(Filed July 21, 2008)

And Related Matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031
(Filed July 21, 2008)

**RESPONSE OF ENERNOC, INC, TO
JOINT IOUS' PETITION FOR MODIFICATION OF DECISION 09-09-047**

Sara Steck Myers
Attorney for **EnerNOC, Inc.**
122 - 28th Avenue
San Francisco, CA 94121
Telephone: 415-387-1904
Facsimile: 415-387-4708
Email: ssmyers@att.net

Melanie Gillette
Director, Regulatory Affairs
EnerNOC, Inc.
115 Hazelmere Drive
Folsom, CA 95630
Telephone: 916-501-9573
Facsimile: 916-984-1784
Email: mgillette@enernoc.com

October 18, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U 338-E) for Approval of its 2009-2011
Energy Efficiency Program Plans and Associated
Public Goods Charge (PGC) and Procurement
Funding Requests.

Application 08-07-021
(Filed July 21, 2008)

And Related Matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031
(Filed July 21, 2008)

**RESPONSE OF ENERNOC, INC. TO
JOINT IOUS' PETITION FOR MODIFICATION OF DECISION 09-09-047**

EnerNOC, Inc. (EnerNOC) respectfully submits this Response to the Petition for Modification of Decision (D.) 09-09-047 filed by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), and San Diego Gas and Electric Company (SDG&E) in this proceeding on September 17, 2010 ("Joint IOUs' Petition"). This Response is timely filed pursuant to Rules 1.14 and 16.4(f) of the Commission's Rules of Practice and Procedure.

**I.
INTRODUCTION**

The Joint IOUs' Petition requests modifications or clarifications to D.09-09-047, by which decision, the Commission approved the investor-owned utilities' (IOUs') 2010-2012 energy efficiency (EE) portfolios and funding, including requirements for portfolio design and implementation. The Joint IOUs' requested modifications include amending D.09-09-047 to "remove ambiguity around *ex ante* assumptions and ensure its directives to freeze data are

implemented.”¹ This request is also reflected in Appendix C (“Customized Project Approach”) of the Joint IOUs’ Petition.

EnerNOC is a trusted leader in implementing reliability and cost-effective energy efficiency and demand response programs for utilities and grid operators in North America, focusing exclusively on the commercial, institutional, and industrial end-use segments. EnerNOC has innovative new SiteSMART programs with SCE and PG&E, which take a monitoring-based approach to energy efficiency, resulting in identification of substantial savings on an ongoing basis. EnerNOC’s combination of retro commissioning and monitoring-based commissioning activities are enhanced by the use of real-time building data to ensure continued optimization of building operations and persistence of energy savings over time. This data is used by customers to create benchmarks for optimal building operations and to continuously track building operation and performance.

For these reasons, EnerNOC has a vested interest in the amendments being proposed by the Joint IOUs that claim to remove ambiguity around the energy savings assumptions to measure performance against goals for the 2010-2012 energy efficiency program cycle. While EnerNOC generally supports the Joint IOUs’ requested modifications designed to remove ambiguity around the ex ante assumptions, EnerNOC also believes that several of these requests require further clarification by the IOUs before the Commission can act on them.

Specifically, the Joint IOUs’ Petition provides little, if any, explanation of how its modifications of D.09-09-047 are impacted by the directions given by the Commission in D.10-04-029 related to the IOUs’ working relationship with the Commission’s Energy Division staff. Since the requested modifications to D.09-09-047 relate in large part to data exchanges between the utilities and staff, it is important for all parties to be informed of whether the IOUs’ asserted

¹Joint IOUs Petition, at p. 2.

current need for change in D.09-09-047 has arisen either in the course or because of staff requests and utility responses that have transpired since D.10-04-029 was issued.

On this point, the Joint IOUs' Petition mention D.10-04-029 only in the context of the Commission confirming that it "intends to actively supervise and is supervising the Joint IOUs" in their implementation of statewide energy efficiency programs to avoid allegations of antitrust violations.² However, this order also has relevance in explaining whether the issues that the Joint IOUs' Petition seeks to resolve have arisen in the course of seeking to comply with D.10-04-029.

As addressed in more detail herein, EnerNOC, therefore, recommends:

1. Before reaching a decision on the Joint IOUs' Petition, the Commission should first direct the IOUs to clearly explain how the IOUs and/or the Energy Division determined that Customized Projects that meet or exceed certain trigger points require additional Energy Division review.
2. Before reaching a decision on the Joint IOUs' Petition, the Commission should also determine that it is necessary and important to review Non-DEER Customized Projects above a certain trigger point. If that finding is made, EnerNOC could then support the levels recommended in the Joint IOUs' Petition.
3. Before reaching a decision on the Joint IOUs' Petition, the Commission should also direct the Joint IOUs to modify their Petition to include timelines for the Non-DEER Customized Project review, with the objective of eliminating delay to customer implementation and payments.
4. To the extent that the Joint IOUs' process for reviewing Customized Projects is adopted, the Commission should also adopt a process for communicating to customers and program implementers the impacts of that review process.

² Joint IOUs' Petition, at pp. 24-27.

On October 8, 2010, the Commission scheduled a prehearing conference (PHC) on the Joint Utilities' Petition for October 22, 2010. Such a step suggests that the Commission does not intend to move directly to a decision on the Joint Utilities' Petition without discussing it first among interested parties. EnerNOC believes that the PHC offers an opportunity for the Commission to adopt a process by which it first directs the Joint Utilities to clarify their petition, as requested by EnerNOC in its recommendations 1 through 3 above, and, with those clarifications, allows parties to provide further comment in response. EnerNOC will also make this request at the PHC.

**II.
BEFORE REACHING A DECISION ON THE JOINT IOUS' PETITION, THE
COMMISSION SHOULD FIRST DIRECT THE JOINT IOUS TO CLEARLY EXPLAIN
HOW THE IOUS AND/OR THE ENERGY DIVISION DETERMINED THAT
CUSTOMIZED PROJECTS THAT MEET OR EXCEED CERTAIN TRIGGER
POINTS REQUIRE ADDITIONAL ENERGY DIVISION REVIEW.**

According to the Joint IOUs' Petition, its proposed Customized Project Approach (Appendix C) is intended to facilitate a process for the utilities to "provide information to Energy Division for review of customized projects for the 2010-2012 program cycle."³ Further, it is the Joint IOUs' intent that this review process be conducted "in parallel to the utilities' own internal project application review and approval process."⁴

EnerNOC fully supports the Commission's goal to "streamline EM&V processes, and enhance timeliness, transparency and consistency across EM&V work products."⁵ However, EnerNOC is concerned that this worthy goal is jeopardized by setting arbitrary trigger levels for "High Impact Measures" that may significantly delay project implementation. Yet, this outcome could result from the Joint IOUs' Petition and proposed Customized Project Approach, which

³ Joint IOUs' Petition, at C-1.

⁴ Joint IOUs' Petition, at C-1.

⁵ D.09-09-047, at p. 301.

assumes there will be additional Energy Division review of projects that meet or exceed certain arbitrary trigger points without fully explaining how that determination, either by Energy Division and/or the IOUs, was or will be made.

Thus, instead of asking for an “approach” that will foster a transparent, consistent, and timely EM&V process, without further clarification, it appears that the Customized Project Approach could in fact be one that would seriously jeopardize such a process. The Customized Project Approach, without further explanation, also appears to be at odds with the 2010-2012 Joint Energy Division and IOU Evaluation Measurement and Verification Plan (EM&V Plan) adopted in D.10-04-029.⁶ Based on EnerNOC’s review of D.10-04-029, it does not appear that that adopted EM&V Plan provided any details or included any direction on the need for review of projects that meet or exceed certain trigger points.

To preserve “transparency” in the EM&V process, it is imperative that all parties are “on the same page” regarding the exchange of information that is currently transpiring or will transpire between the Joint IOUs and the Energy Division. For this reason, EnerNOC asks that, before any action is taken on the Joint IOUs’ Petition, the Commission first direct the IOUs to clarify how the determination was made, either by the Joint IOUs and/or the Energy Division, that this additional Energy Division review was or is required. This information is critical to ensure that all parties understand which projects are being considered as part of this Customized Project review.

⁶ D.10-04-029, at Attachment 1.

**III.
BEFORE REACHING A DECISION ON THE JOINT IOUS' PETITION, THE
COMMISSION MUST FIRST DETERMINE THAT IT IS NECESSARY
AND IMPORTANT TO REVIEW NON-DEER CUSTOMIZED
PROJECTS ABOVE A CERTAIN TRIGGER POINT.**

The Customized Project Approach, included as Appendix C to the Joint IOUs' Petition, includes the following recommendation:

“For applications that meet or exceed the trigger points defined below, the Joint IOUs will provide custom project applications and ex ante and incentive estimate supporting documentation to Energy Division.

“The trigger level is set for projects that meet or exceed:

- 500,000 kWh;
- 250 kW; and
- 150,000 therms”⁷

As is the case with establishing a need for the Customized Project Approach discussed above, this recommendation assumes facts that are not part of the Joint IOUs' Petition or any public record of which EnerNOC is aware. Specifically, the Joint IOUs' Petition does not establish the condition precedent to making this recommendation. Namely, it is not clear that “trigger points” are even needed for Customized Projects.

For this reason, before action is taken on the Joint IOUs' Petition, EnerNOC requests that the Commission seek further information on which it can determine that establishing such trigger points is vital to the EM&V process. If and when that determination is made, then EnerNOC could support the Joint IOUs' proposal to set the trigger levels at 500,000 kWh, 250 kW and 150,000 therms.

⁷ Petition to Modify at C-4

**IV.
BEFORE REACHING A DECISION ON THE JOINT IOUS' PETITION,
THE COMMISSION SHOULD FIRST DIRECT THE JOINT IOUS' TO
PROVIDE TIMELINES FOR THE NON-DEER CUSTOMIZED
PROJECT REVIEW, WITH THE OBJECTIVE OF ELIMINATING
DELAY TO CUSTOMER IMPLEMENTATION AND PAYMENTS.**

As stated above, it is not clear that Non-Deer Custom Projects above a certain trigger automatically require additional Energy Division review. However, if the Commission determines that this review is critical, the Commission, before taking any action on the Joint IOUs' Petition, should additionally direct the Joint IOUs to first clearly identify timelines for the review process being proposed.

In this regard, the Joint IOUs assert that the Customized Project Approach is intended to ensure the following:

“Energy Division’s review process will be implemented without causing a delay in the Joint IOUs’ program application process or the project implementation activity and will not cause any retroactive adjustments to projects that have already been completed and reported.”⁸

EnerNOC agrees that timely review is critical to ensuring customer participation. Any review process that results in delays to customer implementation and payments will act as a detriment to customer participation in these important efficiency measures. In EnerNOC’s experience, delaying customer implementation beyond 30 days is not practical for customers, particularly for no-cost measures.

However, EnerNOC is concerned that there does not appear to be a transparent timeline associated with the Customized Project Review, as proposed in the Joint IOUs’ Petition. EnerNOC, therefore, urges the Commission, prior to taking any action on the Joint IOUs’ Petition or its proposed Customized Project Review, first direct the Joint IOUs to outline a

⁸ Petition to Modify at C-1

transparent review process timeline so that program implementers, utilities, and customers will be on an equal footing as to what can be expected in the implementation of this process.

**V.
AS PART OF ANY APPROVAL OF THE “CUSTOMIZED PROJECT REVIEW,”
THE COMMISSION MUST ENSURE THAT THE IMPACTS OF
THAT REVIEW ARE PROPERLY COMMUNICATED
TO CUSTOMERS AND PROGRAM IMPLEMENTERS.**

In addition to providing clarification on the need for Energy Division review of customized projects and the proposed timeline for such review, if deemed necessary, EnerNOC requests that, if the Joint IOUs’ proposed Customized Project Review is approved, the Commission should direct that it be modified to include a process for communicating the impacts of the customized project review process to customer and program implementers. EnerNOC is concerned that the lack of a clearly defined and well-communicated review process introduces a high degree of uncertainty for both customers and program implementers. Ultimately, this uncertainty may deter customers from participating in IOU energy efficiency programs. In addition, this uncertainty may deter Program Implementers from proposing projects with savings above certain savings thresholds so as to be able to maintain timely delivery of their services to customers. These unintended consequences are not in the best interest of customers, program implementers or utilities, and they do not further the Commission’s energy efficiency goals.

EnerNOC encourages the Commission to provide as much clarity as possible to utilities and program implementers for appropriately communicating to customers the impacts of the proposed review process. If adopted, the Customized Project Review should, therefore, answer all of the following questions:

- Is it accurate to assume that a customer project cannot move forward to implementation if the Commission decides to review ex ante savings calculations?

- Is it accurate to assume that this review process delays incentive payments to Program Implementers as well as to customers until ex ante calculations are approved?
- How long will the process be expected to take?
- What is the appropriate message we need to communicate to customers to adequately explain this review process?
- Should these messages come from Program Implementers or from the IOUs?

VI. CONCLUSION

EnerNOC respectfully requests that before reaching a decision on the Joint IOUs' Petition, the Commission first determine there is a need for additional review of Non-DEER Customized Projects above a certain trigger point and then direct the IOUs to explain how they arrived at the trigger points recommended in their Petition. If additional review is determined to be necessary for certain projects, EnerNOC requests that the Joint IOUs provide specific timelines for this review and adopt a process for communicating these timelines and impacts to customers and program implementers.

Respectfully submitted,

October 18, 2001

/s/ SARA STECK MYERS
SARA STECK MYERS
Attorney for EnerNOC, Inc.

Sara Steck Myers
Attorney at Law
122 - 28th Avenue
San Francisco, CA 94121
Telephone: 415-387-1904
Facsimile: 415-387-4708
Email: ssmyers@att.net

CERTIFICATE OF SERVICE

I, Sara Steck Myers, am over the age of 18 years and employed in the City and County of San Francisco. My business address is 122 - 28th Avenue, San Francisco, California 94121.

On October 18, 2010, I served the within document **RESPONSE OF ENERNOC, INC., TO JOINT IOUS PETITION FOR MODIFICATION OF D.09-09-047**, in A.08-07-021, et al., with service according to the Commission Rules of Practice and Procedure on the A.08-07-021, et al., service list and with separate service by U.S. Mail of paper copies on Assigned Commissioner Grueneich and Assigned ALJ Gamson, at San Francisco, California.

Executed on October 18, 2010, San Francisco, California.

/s/ SARA STECK MYERS

Sara Steck Myers