

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company  
(U 902 E) for Approval of the Demand Response Contract  
with EnerNOC, Inc.

Application 09-03-012  
(Filed March 6, 2009)

**AMENDMENT TO APPLICATION OF SAN DIEGO GAS & ELECTRIC  
COMPANY (U 902 E) FOR APPROVAL OF ENERNOC, INC. DEMAND  
RESPONSE CONTRACT**

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**I. INTRODUCTION**

Pursuant to Rule 1.12 of the California Public Utilities Commission (Commission)'s Rules of Practice and Procedure, San Diego Gas & Electric Company (SDG&E) hereby files an Amendment to its Application for approval of its Demand Response (DR) capacity contract with EnerNOC, Inc. (EnerNOC). This Amendment is based on changes to a few of the terms of the agreement between SDG&E and EnerNOC (EnerNOC Agreement). These changes were the product of recent discussions between EnerNOC and the Division of Ratepayer Advocates (DRA) and are acceptable to SDG&E. The changes, described in more detail below, have been incorporated into an Amended and Restated EnerNOC Agreement, which is being served as a supplemental Attachment 12 to the previously served RFO Solicitation Contract Approval form (RFO Template).<sup>1</sup> Upon the filing of this Amendment, SDG&E understands the DRA will

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<sup>1</sup> As noted in the original Application, SDG&E's request for approval of the EnerNOC contract is supported by the testimony and attachments contained within the Commission-approved RFO Template. The RFO Template represents a new means of providing the Commission with testimony in support of a request for approval of an RFO-generated contract. The original EnerNOC Agreement was attached to the RFO Template as Attachment 5. Consistent with the confidential nature of original EnerNOC Agreement, the Amended and Restated EnerNOC Agreement is also being submitted as a confidential document. In support of such confidential treatment, a supplemental confidentiality declaration of SDG&E witness Guillermo Valdivieso is included as part of Attachment 12.

withdraw its protest, obviating the need for additional testimony and/or hearings in this proceeding. At that point, the proceeding will be submitted and ready for issuance of a Proposed Decision.

## **II. BACKGROUND**

As described in the original Application, EnerNOC is a publicly traded company which, among other things, operates a DR program for utilities and businesses. This program provides firm capacity to utilities by reducing peak demand in targeted geographic areas through the use of energy management expertise, technology and communications networks. Pursuant to its contract with SDG&E, EnerNOC commits to provide up to 25 megawatts (MW) of dispatchable load reduction during the 2010 capacity delivery season, which will increase to 35 MW during the 2011 capacity delivery season and finally to 40 MW starting with the 2012 capacity delivery season until the end of the contract term (subject to Commission approval, the EnerNOC agreement is effective through December 31, 2024, unless terminated earlier pursuant to the terms of the agreement). A capacity delivery season is May 1 through October 31 of a calendar year. SDG&E will be limited to dispatching a maximum of 50 total hours of load reduction during any capacity delivery season. None of the changes to the EnerNOC Agreement (as reflected in the Amended and Restated Agreement) alter any of these basic terms.

## **III. AMENDED AND RESTATED AGREEMENT WITH ENERNOC**

Following the Pre Hearing Conference held on May 8, 2009, DRA and EnerNOC engaged in a series of discussions regarding a few of the terms of the original EnerNOC Agreement. Pursuant to these discussions, EnerNOC agreed to make the following changes, which were incorporated into an Amended and Restated EnerNOC Agreement executed by both EnerNOC and SDG&E.

1. So as to clarify how the agreement will conform with the California Independent System Operator (CAISO)'s Market Redesign and Technology Upgrade (MRTU), Article 2.4 was amended to specify that, if necessary, the agreement would be changed to conform to the "CAISO tariff, Business Practice Manuals, Operating Procedures and other relevant requirements, as updated by CAISO from time to time, to preserve all performance attributes under the agreement."<sup>2</sup> Because the CAISO is still in the process of finalizing the processes necessary to fully implement the MRTU, the 45-day deadline following implementation of the MRTU was deleted from the agreement.
2. So as to strengthen the protection to ratepayers in case of an EnerNOC default, a new default provision was added to Article 10.1 to specify that EnerNOC would be in default if it failed to achieve an hourly delivery capacity ratio of at least 0.5 for each of three separate program events during the term of the agreement (however, subsequent to the first performance failure, only those performance failures occurring thirty days after the prior performance failure shall count for purposes of this new default provision). This default provision is consistent with similar provisions in other investor-owned utility (IOU) DR capacity contracts approved by the Commission.

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<sup>2</sup> Supplement Attachment 12 to the RFO Template (Amended and Restated Agreement with EnerNOC) at Article 2.4. For ease of reference, supplemental Attachment 12 includes a redlined version of the original EnerNOC Agreement.

3. So as to reduce the cost to ratepayers, a new and lowered DR capacity price per MW year was included in Table 1 of the Amended and Restated EnerNOC Agreement.

None of the foregoing changes to the EnerNOC Agreement alter any of the factors described in the original Application justifying Commission approval, including the following:

- The Commission has authorized, via its approval of SDG&E's 2006 Long Term Procurement Plan (LTPP), a bundled customer SDG&E system need that will be filled, in part, by the EnerNOC Agreement.
- The agreement with EnerNOC was solicited via SDG&E's competitive 2010-2012 Supply Request for Offers (2010-2012 RFO). The 2010-2012 RFO was designed to be consistent with SDG&E's portfolio as presented in its Commission-approved 2006 LTPP.
- At all stages of the 2010-2012 RFO, SDG&E consulted with its Procurement Review Group (PRG) and also worked with its Independent Evaluator (IE) to ensure that the solicitation was open, designed and evaluated without bias and likely to garner a robust response from the market.
- Following a multiple step evaluation process, it was determined that the EnerNOC offer was one of the top two DR bids (negotiations with the other top bidder are on-going).
- A cost-effectiveness analysis performed on the original EnerNOC Agreement indicates that the contract is cost effective for all performed tests, supporting the conclusion that it is a least-cost and best-fit opportunity for SDG&E's ratepayers.

The reduction in capacity payment in the Amended and Restated EnerNOC Agreement makes the contract even more cost effective.

- As a DR program, the Amended and Restated EnerNOC Agreement is consistent with the Commission's Energy Action Plan II loading order.
- As a DR program, the Amended and Restated EnerNOC Agreement is compliant with both the Commission's greenhouse gas (GHG) standards and SDG&E's GHG reduction objectives.
- SDG&E is requesting a regulatory accounting and cost recovery mechanism consistent with the established and previously authorized regulatory accounting and cost recovery for SDG&E's current DR programs.

With respect to timing, SDG&E is still requesting that approval of the EnerNOC Agreement be granted on or before October 29, 2009, which is consistent with the schedule set forth in the Assigned Commissioner Ruling and Scoping Memo, dated May 27, 2009. Such timing will trigger terms requiring EnerNOC to begin delivering DR capacity by the beginning of the 2010 delivery season (in May 2010). Indeed, the sooner approval is granted, the more likely it is that EnerNOC will be able to deliver the maximum amount of DR capacity allowed for in the Amended and Restated EnerNOC Agreement.

#### **IV. MOTION TO RECEIVE SDG&E'S TESTIMONY INTO EVIDENCE AND TO SEAL PORTIONS OF THE EVIDENTIARY RECORD**

As noted above, in footnote 1, SDG&E submitted its supporting testimony and attachments to testimony as part of its Commission-approved RFO Template. The RFO template was served in both public (redacted) and confidential (unredacted) form. Pursuant to Public Utilities Code sections 454.5(g) and 583; General Order 66-C; D.06-06-066; and D.08-04-023, SDG&E submitted (as part of the RFO Template) declarations of Robert Anderson, Guillermo

Valdivieso and Kevin McKinley to demonstrate that confidential treatment and redaction of portions of the RFO Template is necessary in this proceeding to protect against inappropriate disclosure of confidential, commercially sensitive information pertaining to SDG&E's electric procurement resources. Accordingly, SDG&E hereby moves that the RFO Template, including its Attachments 1 – 11 and supplemental Attachment 12, be received into the record in this proceeding and that the confidential portions be sealed and remain sealed pursuant to the confidential information guidelines set forth in D.06.06-066.

## V. CONCLUSION

For all the foregoing reasons, and based on the evidence included as part of the RFO Template, including Attachments 1 – 12, SDG&E requests that the Commission rule that:

1. SDG&E's bundled customers need the DR resource that is the subject of the Amended and Restated EnerNOC Agreement;
2. the prices and terms of the Amended and Restated EnerNOC Agreement are just and reasonable;
3. full cost recovery in rates, as requested by SDG&E, should be granted; and
4. such other relief as is necessary and proper.

DATED this 9th day of July, 2009, at San Diego, California.

Respectfully submitted,

/s/ JOHN A. PACHECO  
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**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true and correct copy of the foregoing **AMENDMENT TO APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY ( U 902 E) FOR APPROVAL OF THE ENERNOC, INC. DEMAND RESPONSE CONTRACT** to each party of named in the official service list for proceeding A.09-03-012 by electronic mail. Those parties without an email address were served by placing copies in properly addressed and sealed envelopes and depositing such envelopes in the United States Mail with first-class postage prepaid. Copies were also sent via Federal Express to the Assigned Commissioner and Administrative Law.

Dated at San Diego, California, this 9th day of July, 2009.

          /s/ Lisa Fucci-Ortiz            
Lisa Fucci-Ortiz