

141 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

EnerNOC, Inc.

Docket No. IN13-6-000

Celerity Energy Partners San Diego LLC

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued December 17, 2012)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), EnerNOC, Inc. (EnerNOC), and Celerity Energy Partners San Diego LLC (Celerity). This Order is in the public interest because it resolves Enforcement's investigations under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), into whether EnerNOC submitted inaccurate metering data without exercising due diligence in ISO New England's (ISO-NE's) demand response markets in violation of ISO-NE's tariff, and whether Celerity violated 18 C.F.R. §§ 35.7, 35.37(a)(1), and its market-based rate tariff under Federal Power Act (FPA) Section 205 by failing to comply with two Commission filing obligations in 2010. EnerNOC and Celerity agree to pay a civil penalty of \$820,000, disgorge \$656,806, plus interest, develop a compliance program, and submit to compliance monitoring.

I. Background

2. As described in the Agreement, EnerNOC is a demand response provider. EnerNOC enrolls demand response assets to participate in ISO-NE's Forward Capacity Market (FCM) as well as the Day-Ahead Load Response Program (DALRP). As a demand response provider, EnerNOC is bound by the terms of ISO-NE's tariff.

3. As described in the Agreement, Celerity is a limited liability company that operates or leases certain Networked Distribution Resource Facilities with a maximum aggregated generating capacity of 25 MW under a California Public Utilities Commission-approved contract with San Diego Gas & Electric Company. Celerity is

authorized by the Commission to make wholesale sales at market-based rates under FPA Section 205 and is a wholly-owned direct subsidiary of EnerNOC.¹

II. Investigations

4. Enforcement opened a non-public, preliminary investigation of EnerNOC in 2012 following two referrals from ISO-NE's Internal Market Monitoring Unit which stated that EnerNOC had submitted inaccurate data for five demand response assets.

5. Enforcement determined that EnerNOC had submitted overstated data for these five assets and had violated ISO-NE's tariff by submitting inaccurate data for settlement without first exercising due diligence.

6. In response to Celerity's 2011 late filings, consistent with an established FERC protocol for reviewing late-filed documents, an inter-office team from the Commission's Office of Energy Market Regulation (OEMR), Office of the General Counsel, and Enforcement recommended in December 2011 that Enforcement initiate an investigation. Enforcement opened a non-public, preliminary investigation of Celerity in 2012.

7. Enforcement determined that Celerity violated Order No. 714² and 18 CFR § 35.7 by failing to electronically file its baseline tariff by October 1, 2010. Enforcement also determined that Celerity violated Order No. 697³, 18 C.F.R. § 35.37(a)(1), and its market-based rate tariff by failing to file its updated market power analysis or a Category 1 Seller classification request by June 2010.

III. Stipulation and Consent Agreement

8. Enforcement staff, EnerNOC, and Celerity resolved Enforcement's investigations by means of the attached Agreement.

¹ *Celerity Energy Partners San Diego LLC*, Docket Nos. ER05-905-000 *et. al.* (June 23, 2005) (delegated letter order).

² *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008) (Order No. 714).

³ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, at P 849 (2007), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert denied*, 2012 U.S. LEXIS 4820 (Jun. 25, 2012).

9. EnerNOC and Celerity stipulate to the facts. EnerNOC admits that it submitted inaccurate data for five demand response assets without exercising due diligence, and that EnerNOC was overpaid for two of those assets. Celerity admits that it failed to file its updated market power analysis or a Category 1 Seller classification request by June 2010. Celerity also admits that it failed to make an electronic baseline filing of its currently effective tariff by October 1, 2010.

10. EnerNOC admits to the violation of ISO-NE's tariff, and Celerity admits to the violation of Order Nos. 714 and 697, Sections 35.7 and 35.37(a)(1) of the Commission's regulations, and its market-based rate tariff. EnerNOC and Celerity agree to pay a civil penalty of \$820,000, disgorge \$656,806 in unjust profits, plus interest, implement a compliance program, and submit to at least one year of compliance monitoring, with another year of monitoring at Enforcement's discretion.

IV. Determination of the Appropriate Sanctions and Remedies

11. Pursuant to section 316A(b) of the FPA, the Commission may assess a civil penalty of up to \$1,000,000 for each day that a violation continues.⁴ In determining the appropriate remedy for EnerNOC and Celerity, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines.⁵

12. For EnerNOC, Enforcement considered that none of EnerNOC's tariff violations were willful, fraudulent, intentional, or manipulative but were instead the result of failures to exercise due diligence before submitting inaccurate metering data to ISO-NE. Enforcement also considered that the violation caused less than \$1,000,000 of market harm; EnerNOC had no prior history of such violations; EnerNOC cooperated fully during all aspects of the investigation; although it did not have a fully-developed compliance program at the time of the violations, EnerNOC had invested significant amounts of technology and human capital in data quality and had in place data quality procedures; and EnerNOC admitted to the violations.

13. For Celerity, Enforcement considered that: Celerity's conduct was unintentional; the violations did not harm the efficient and transparent functioning of the market and did not result in an unjust economic benefit to Celerity, EnerNOC, or any EnerNOC-affiliated company; Celerity cooperated fully during all aspects of the investigation; and Celerity admitted to the violations. Enforcement also considered that: Celerity had a prior history of late filings; Celerity had no compliance procedures regarding regulatory filing obligations; and the violations impeded the integrity of the regulatory process.

⁴ 16 U.S.C. § 825o-1(b) (2006).

⁵ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

14. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of EnerNOC's and Celerity's conduct. The Commission also concludes that the civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.⁶

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶ *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

EnerNOC, Inc.)	Docket No. IN13-6-000
)	
Celerity Energy Partners San Diego LLC)	
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STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission or FERC), EnerNOC, Inc. (EnerNOC), and EnerNOC’s wholly-owned direct subsidiary, Celerity Energy Partners San Diego LLC (Celerity), enter into this Stipulation and Consent Agreement (Agreement) to resolve two investigations conducted under Part 1b of the Commission’s regulations, 18 C.F.R. § 1b (2012). Enforcement determined that EnerNOC committed violations of provisions of Appendix B of Section III (Market Rule 1) of the ISO New England, Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff) by not exercising due diligence to prevent the submission of inaccurate load data to ISO-NE and that Celerity violated 18 C.F.R. §§ 35.7, 35.37(a)(1), and its market-based rate tariff under Federal Power Act (FPA) Section 205 by failing to comply with two Commission filing obligations in 2010. EnerNOC and Celerity have agreed to pay a civil penalty of \$820,000 and to disgorge \$656,806, plus interest, to settle these investigations.

II. STIPULATIONS

Enforcement, EnerNOC, and Celerity hereby stipulate and agree to the following:

A. EnerNOC ISO-NE Tariff Violations

1. Background

2. EnerNOC is a corporation formed under the laws of the State of Delaware in 2003. EnerNOC’s primary business is participation in energy market demand response programs, including serving as a demand response provider in ISO-NE. ISO-NE’s demand response programs pay consumers of electricity to reduce load in order to lower prices and support system reliability. ISO-NE demand response programs include Real-Time Demand Response (RTDR), where assets reduce load in real time at the request of ISO-NE, and Day-Ahead Load Response (DALRP), where ISO-NE pays assets to reduce load in the day-ahead timeframe.

3. Enforcement's investigation of EnerNOC began with two referrals from ISO-NE's Internal Market Monitor (IMM) in November 2011 and January 2012 concerning the accuracy of load data submitted by EnerNOC for five of its approximately 1,800 demand response sites in New England: Plasticsan, Sheffield Plastics, Partners Healthcare, South Essex Sewerage District (South Essex), and Cascades.

4. The ISO-NE Tariff requires market participants to submit accurate metering data to ISO-NE, and submission of inaccurate metering data without exercising due diligence to ensure the data's accuracy is a Tariff violation. Market Rule 1, Sections III.B.3.4.4 and III.B.3.4.7(b).

2. Accuracy Violations

a. Plasticsan (2009-2012)

5. EnerNOC became Plasticsan's demand response aggregator in November 2008. In December 2008, EnerNOC performed an "acceptance test" to determine Plasticsan's potential load reduction. EnerNOC measured Plasticsan's load during the acceptance test with an interval meter it attached to the utility meter at Plasticsan. Interval meters require a "pulse multiplier" obtained from the utility to properly interpret the utility meter's pulses. Due to a math error, a utility employee provided EnerNOC with an incorrect pulse multiplier for the Plasticsan utility meter that was more than twice the correct value.

6. Before the acceptance test, EnerNOC had eleven months of Plasticsan's utility bills reflecting maximum peak power consumption of 4 -5 MW depending on the month. During those eleven months, Plasticsan's maximum peak power consumption did not exceed 5.003 MW. Based on the utility billing information, EnerNOC initially estimated that Plasticsan would achieve 4.5 MW of curtailment. Because of the incorrect pulse multiplier provided by the utility, Plasticsan's maximum load during the acceptance test incorrectly showed as 7 MW and its curtailment incorrectly showed as 6 MW.

7. The 6 MW projected curtailment indicated by the acceptance test was greater than Plasticsan's highest load during the previous eleven months and led an EnerNOC project manager to express concern to the employee in the EnerNOC division in charge of asset registrations in the New England region over the discrepancy between Plasticsan's utility bills and the acceptance test results. EnerNOC did not follow up on the project manager's concern or execute any further checks to confirm the acceptance test results before enrolling the asset. As a consequence, EnerNOC enrolled the asset for 6 MW of interruptible capacity under the Transitional Installed Capacity (TICAP) program beginning in February 2009.

8. In 2010, ISO-NE transitioned from TICAP to the Forward Capacity Market (FCM). During the initial FCM test event on June 18, 2010, an EnerNOC Data Quality

employee recognized that Plastician's load data might be incorrect due to a pulse multiplier error and she initiated a process to investigate this issue. However, EnerNOC did not expedite this process resulting in ISO-NE's 101-day resettlement period closing with no correction of Plastician's inaccurate data and EnerNOC receiving excess payments for Summer 2010. When EnerNOC's Data Quality Division completed its review and informed the EnerNOC Energy Market's employee responsible for this asset that Plastician's load data was inaccurate, he concluded that EnerNOC did not have to notify ISO-NE of either the error or the overpayments because he believed that there was no means to correct the overpayments because ISO-NE's resettlement period had closed.

9. In November 2010, EnerNOC received a corrected pulse multiplier from the utility and submitted correct interval meter data for Plastician to ISO-NE for August 2010 and ensured that ISO-NE would receive correct interval meter data from that date forward. However, EnerNOC failed to timely correct the inaccurate data for September through early November 2010 which continued to overstate Plastician's baseline load. As a result of the inaccurate baseline and ISO-NE's program rules that carry baselines and performances forward, EnerNOC continued to receive overpayments for 2011 and 2012. As a result of submitting inaccurate load data, EnerNOC received \$793,331 in excess TICAP and FCM payments.

10. Staff concluded that EnerNOC violated ISO-NE's Tariff by not exercising due diligence to prevent the submission of inaccurate load data used in settlement for Plastician. EnerNOC did not exercise due diligence because it failed to address the discrepancy between Plastician's utility bills and the acceptance test results, failed to correct the inaccurate June 2010 data in time for resettlement despite having the necessary information in its possession, and failed to completely correct the erroneous data in November 2010, when it received the corrected pulse multiplier, resulting in continuing overpayments into 2011 and 2012. Enforcement has determined that EnerNOC received, less customer payments, unjust profits of \$556,040 relating to the Plastician asset's enrollment in ISO-NE's markets.

b. Sheffield Plastics & South Essex (2010)

11. Inaccurate pulse multipliers also caused FCM load data to be inaccurate at Sheffield Plastics and South Essex. After new meters were installed at these sites by their utility, employees of EnerNOC failed to promptly and accurately update the pulse multipliers for the new meters in EnerNOC's systems to ensure that ISO-NE received accurate load data for these assets.

12. For Sheffield Plastics, the EnerNOC project manager overlooked an email from the utility that provided the new pulse multiplier, and as a result, EnerNOC relied on an outdated pulse multiplier and submitted inaccurate data to ISO-NE for this asset from March 2010 into June 2010. EnerNOC identified the problem and internally reprocessed the data in June 2010, but did not submit corrected data to ISO-NE and failed to alert

ISO-NE that Sheffield Plastics' data was inaccurate. ISO-NE discovered the error on its own and excluded the Sheffield Plastics asset from Summer 2010 FCM payments. If ISO-NE had not denied settlement for this asset, EnerNOC would have received excess FCM payments. Because of ISO-NE's actions, EnerNOC received no unjust profits for this asset.

13. For South Essex, the utility changed the pulse multiplier without informing EnerNOC. EnerNOC identified the problem and requested the correct pulse multiplier from the utility to reprocess its data. The utility sent an email with a new pulse multiplier value, but did not specify whether it was a "3-wire value" or a "2-wire value" and the EnerNOC project manager who received the email did not seek clarification. As a result, EnerNOC submitted inaccurate data for South Essex from June 2010 through September 2010. In September 2010, EnerNOC began submitting correct data to ISO-NE for this asset but failed to notify ISO-NE of the earlier inaccurate data. ISO-NE also excluded South Essex from Summer 2010 FCM payments, and therefore, EnerNOC received no unjust profits for this asset. If ISO-NE had not denied settlement, EnerNOC would have received excess FCM payments for this asset.

14. Staff concluded that EnerNOC violated ISO-NE's Tariff for these two assets by not exercising due diligence to prevent the submission of inaccurate metering information for settlement and by not notifying ISO-NE that the assets' data was inaccurate and would result in excess payments.

c. Partners Healthcare and Cascades (2010 - 2011)

15. Faulty equipment was responsible for inaccurate data at Partners Healthcare and Cascades. In both cases, EnerNOC was aware that these assets had data problems but took insufficient steps to timely fix the errors and ensure that ISO-NE received accurate data.

16. ISO-NE excluded Partners Healthcare from Summer 2010 FCM payments due to a "spikey" load pattern at the facility. EnerNOC failed to timely determine the cause of the inaccurate load data and did not pursue any corrective action in 2010. When this asset produced inaccurate data during Summer 2011, EnerNOC investigated and discovered a faulty Modbus converter. EnerNOC replaced the malfunctioning device and resubmitted correct data to ISO-NE except for two months (August 2011 and September 2011). EnerNOC, however, did not notify ISO-NE that these two months of data were still inaccurate.

17. Staff concluded that EnerNOC failed to exercise due diligence for Partners Healthcare when it did not promptly address the problems responsible for the inaccurate data and when it did not notify ISO-NE that inaccurate data was being used for settlement. Enforcement has determined that EnerNOC received no unjust profits for this

asset and that EnerNOC would have received excess FCM payments had ISO-NE not excluded this asset from the Summer 2010 settlement.

18. Cascades was enrolled as an EnerNOC cogeneration asset in ISO-NE's FCM. For this asset, EnerNOC equipment problems were compounded by EnerNOC's use of incorrect transformer ratios, which like pulse multipliers, are used to determine load data. EnerNOC discovered the incorrect ratios in June 2010, and internally reprocessed its data but failed to notify ISO-NE of the error, resulting in overpayment for the Summer 2010 FCM. EnerNOC's malfunctioning metering device continued to overstate Cascades' data and EnerNOC continued to submit inaccurate data for the asset until October 2011. EnerNOC received \$170,401 in overpayments from ISO-NE for this asset.

19. EnerNOC failed to exercise due diligence for Cascades when it failed to promptly discover and resolve the causes of the inaccurate load. Enforcement has determined that EnerNOC received unjust profits of \$100,766 for Cascades.

3. Additional Factors

20. Since the period of the tariff violations, EnerNOC has strengthened its compliance and data quality procedures, including strengthening compliance with FERC and ISO/RTO rules in response to a FERC audit conducted in 2011. EnerNOC has also undertaken significant efforts to enhance its compliance controls and procedures. These efforts have included hiring a consulting firm to advise EnerNOC on its compliance program, creating a high-level risk management and compliance committee, hiring an experienced Director of Regulatory Compliance, and expanding its compliance training program for its Data Quality, Software Engineering, and Energy Markets departments.

21. Enforcement determined that none of EnerNOC's tariff violations were willful, fraudulent, intentional, or manipulative but were instead the result of failures to exercise due diligence before submitting inaccurate metering data to ISO-NE and failures to promptly inform ISO-NE of the inaccurate data for these assets.

22. Enforcement determined that no harm occurred to ISO-NE's market transparency or system reliability as a result of the violations.

23. EnerNOC has cooperated fully with Enforcement during all stages of the investigation.

B. Celerity FPA Section 205 Violations

1. Background

24. Celerity is a limited liability company that operates or leases certain Networked Distribution Resource Facilities (NDR Facilities) under a California Public Utilities Commission-approved contract with San Diego Gas & Electric Company (SDG&E). The

NDR Facilities are located in CAISO with a maximum aggregated generating capacity of 25 MW. Celerity is authorized by the Commission to make wholesale sales at market-based rates under FPA Section 205. Celerity is a wholly-owned direct subsidiary of EnerNOC with no employees – eleven EnerNOC employees, on a limited part-time basis, had varying degrees of responsibility for Celerity’s day-to-day operations.

25. As a wholly-owned subsidiary, Celerity does not have its own compliance policies and procedures; rather, EnerNOC’s compliance program applies to Celerity.

26. Enforcement’s investigation of Celerity began after the company was nearly 12 months late in filing its electronic baseline tariff and over 15 months late in filing its Category 1 request (or updated market power analysis), despite warning language in two 2008 Orders reminding Celerity to make future filings on a timely basis or face possible sanctions. In response to Celerity’s 2011 late filings, consistent with an established FERC protocol for reviewing late-filed documents, an inter-office team from the Commission’s Office of Energy Market Regulation (OEMR), Office of the General Counsel, and Enforcement recommended in December 2011 that Enforcement initiate an investigation.

2. Celerity’s 2008 Late Filings

27. In 2008, Celerity made two late filings related to an upstream change in ownership which occurred on May 23, 2006, when EnerNOC acquired all of the membership interests in Celerity. At that time, Celerity, as the public utility, was responsible for making these filings, not EnerNOC.

28. Specifically, on April 25, 2008, Celerity applied for prospective authorization of the 2006 transaction under FPA Section 203. Under FPA Section 203, jurisdictional facilities may not be transferred without prior authorization from the Commission. Celerity’s filing was over 23 months late. On October 20, 2008, the Commission authorized the sale on a prospective basis, but included “late-filer” warning language reminding Celerity that it must submit required filings on a timely basis or face possible sanctions by the Commission.

29. On April 25, 2008, Celerity also filed a notice of change in status in relation to the upstream change in ownership transaction outlined above in compliance with the reporting requirements of 18 C.F.R. § 35.42 and Order No. 652. Because a change in status filing must be made no later than 30 days after the change in status occurs, this filing was due on June 23, 2006, and was 22 months late. By delegated letter order, which included the same “late-filer” warning language, the Commission accepted Celerity’s notice of change in status on October 28, 2008.

30. Following Celerity's 2008 late filings, three Celerity/EnerNOC Officers reviewed the Commission orders where Celerity received "late-filer" warning language. However, EnerNOC did not implement any additional compliance procedures to ensure that Celerity's future Commission filings (other than electric quarterly reports (EQRs)) would be timely. Celerity's late filings in 2008 are not the subject of this investigation, but put Celerity on notice of potential consequences for future late filings.

3. 2011 Late Filing Violations

31. Celerity failed to comply with two different filing obligations in 2010.

32. Celerity was required by Order No. 714 to make an electronic baseline filing of its currently effective tariff by October 1, 2010. On August 31, 2011, OEMR issued a delegated letter order directing 254 companies, including Celerity, to file a baseline electronic filing with their currently effective market-based rate tariffs in compliance with Order No. 714 within 30 days (OEMR Letter Order). Celerity filed its electronic baseline tariff on September 30, 2011, nearly one year late. Celerity acknowledges it submitted its baseline tariff in response to the OEMR Letter Order and not of its own accord. Staff concluded that Celerity violated 18 C.F.R. § 35.7, which codified the requirements of Order No. 714, by failing to file its baseline tariff by October 1, 2010.

33. Celerity was required by Order No. 697 to file its updated market power analysis or a Category 1 Seller classification request by June 2010. Celerity made a filing requesting Category 1 Seller classification on October 7, 2011, over 15 months late. Staff concluded that Celerity violated 18 C.F.R. § 35.37(a)(1), which codified the requirements of Order No. 697, and its market-based rate tariff by failing to file its updated market power analysis or a Category 1 Seller classification request by June 2010.

34. Staff concluded that a lack of a compliance program specific to Celerity was responsible for Celerity's failure to comply with the Commission filing requirements enumerated in Order Nos. 714 and 697. Until July 2012, EnerNOC had no written FERC compliance policies and procedures for Celerity, other than for EQR submissions, and instead relied upon reminders from outside counsel about the FERC filing requirements applicable to Celerity. EnerNOC did not have outside FERC counsel regarding Celerity between March 2010 and July 2011.

4. Additional Factors

35. Since the commencement of Enforcement's investigation, EnerNOC has undertaken significant efforts to develop and implement a compliance program to address Celerity's violations and the underlying issue of ensuring that its subsidiaries comply with their FERC filing requirements. These efforts have been described in Paragraph 20

of this Agreement. EnerNOC has also created and internally disseminated a calendar of Celerity's FERC filing obligations.

36. Enforcement determined that none of Celerity's violations were willful, fraudulent, intentional, or manipulative but were instead the result of not having compliance procedures in place for its market-based rate activities, other than EQR filings.

37. Enforcement determined that Celerity's violations did not harm the efficient and transparent functioning of the market and did not result in an unjust benefit to Celerity, EnerNOC, or any EnerNOC-affiliated company.

38. Enforcement determined that Celerity's violations impeded the integrity of the regulatory process.

39. Celerity has cooperated fully with Enforcement during all stages of the investigation.

III. REMEDIES AND SANCTIONS

40. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigations, EnerNOC and Celerity agree with the facts as stipulated and Enforcement's determinations that EnerNOC violated Section III.B.3.4.4 of Market Rule 1 of ISO-NE's Tariff for the five assets listed and that Celerity violated 18 C.F.R. §§ 35.7, 35.37(a)(1), as well as its market-based rate tariff under FPA Section 205.

A. Civil Penalty and Disgorgement

41. EnerNOC and Celerity shall pay a total civil penalty of \$820,000 to the United States Treasury.

42. EnerNOC shall also disgorge \$656,806, plus interest calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii) (2012), which represents Enforcement's determination of unjust profits related to EnerNOC's violations. The disgorgement will be distributed to ISO-NE for pro-rata distribution to the entities that were assigned the costs for the respective demand response programs during the applicable periods.

B. Compliance Monitoring

43. EnerNOC agrees to develop and maintain an effective compliance program focusing on compliance with ISO-NE's Tariff requirements, the tariff requirements of any other regions in which EnerNOC participates, Celerity's FERC filing requirements,

the FERC filing requirements of any other EnerNOC market-based rate holding subsidiaries, and other applicable Commission regulations. EnerNOC shall make semi-annual reports to Enforcement for one year following the Effective Date of this Agreement, with the option of another year of such reports at Enforcement's discretion. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The remainder of the reports shall be submitted in six month increments thereafter. Each report shall: (1) detail EnerNOC's activities and compliance in ISO-NE's demand response programs; (2) detail Celerity's compliance with FERC filing requirements; (3) describe any updates of compliance measures instituted and training administered during the preceding period for EnerNOC and Celerity, respectively; (4) advise Enforcement if any additional violations have occurred; and (5) include an affidavit executed by an officer of EnerNOC and Celerity that the compliance reports are true and accurate. Upon request by staff, EnerNOC shall provide to staff all documentation supporting its reports.

IV. TERMS

44. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the tariff violations and late filings specifically addressed herein as to EnerNOC, Celerity, any affiliated entity, their agents, officers, directors, and employees, both past and present, and any successor in interest to EnerNOC or Celerity. This agreement shall also resolve all unintentional tariff violations which EnerNOC may have committed in ISO-NE's demand response programs relating to the submission of inaccurate data from December 1, 2008 to May 31, 2012.

45. Commission approval of this Agreement without material modification shall fully, irrevocably, and unconditionally release EnerNOC and Celerity and forever bar the Commission from holding EnerNOC, Celerity, any affiliated entity, their agents, officers, directors, and employees, both past and present, and any successor in interest to EnerNOC or Celerity liable for any and all administrative or civil claims arising out of, related to, or connected with the violations addressed in Paragraph 44 of this Agreement and any late filings previously made by Celerity.

46. Failure to make timely civil penalty payments or disgorgement payments or to comply with the compliance program improvements and monitoring agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject EnerNOC and Celerity to additional action under the enforcement and penalty provisions of the FPA.

47. If EnerNOC and Celerity do not make the civil penalty payment described above at the times agreed by the parties, interest payable to the United States Treasury will

begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

48. The Agreement binds EnerNOC, Celerity, and their agents, successors, and assignees. The Agreement does not create any additional or independent obligations on EnerNOC, Celerity, or any affiliated entity, their agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

49. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent, or representative of Enforcement, EnerNOC, or Celerity has been made to induce the signatories or any other party to enter into the Agreement.

50. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement, EnerNOC, nor Celerity shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and EnerNOC.

51. In connection with the payment of the civil penalty provided for herein, EnerNOC and Celerity agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. EnerNOC and Celerity waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

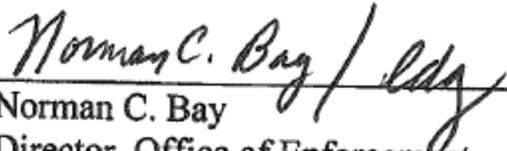
52. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

53. The undersigned representatives of EnerNOC and Celerity affirm that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information, and belief, and that they understand that the Agreement is entered into by Enforcement in express reliance on those representations.

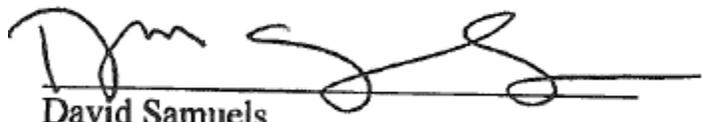
54. The Agreement may be signed in counterparts.

55. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:


Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 12/13/12


David Samuels
Executive Vice President and General Counsel
EnerNOC, Inc.

Date: December 13, 2012