

143 FERC ¶ 61,218  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Enerwise Global Technologies, Inc.

Docket No. IN12-15-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued June 7, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Enerwise Global Technologies, Inc. (Enerwise). This Order is in the public interest because it resolves Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), into whether Enerwise violated the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (PJM Tariff) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2012), in connection with its registration and the participation of Maryland Stadium Authority (MSA) in 2009 as a guaranteed load drop (GLD) demand response customer in PJM's Interruptible Load for Reliability (ILR) program. Enerwise agrees: (i) to pay a civil penalty of \$780,000; (ii) to make \$500,000 in demand response metering and automatic load control technology improvements for PJM customers during calendar year 2013; (iii) to disgorge \$20,726 plus interest in unjust profits received by Enerwise from PJM relating to MSA's 2009 ILR participation; and (iv) to make compliance reporting.

**I. Background**

2. As described in the Agreement, Enerwise, a Delaware corporation, provides demand response products and services to markets throughout the country, including PJM. Enerwise is a wholly-owned subsidiary of Comverge, Inc. (Comverge). Enerwise functions as a Curtailment Service Provider (CSP) in PJM and is subject to the terms of the PJM tariff with respect to the provision of those services. CSPs such as Enerwise aggregate customer demand response resources and generally share demand response revenues with their customers pursuant to individual agreements.

3. PJM is a Commission-jurisdictional Regional Transmission Organization and Independent System Operator. The ILR program was a PJM demand response program, since terminated, in which participants were compensated for agreeing to reduce load

during zonal emergency events declared by PJM operators at times of peak demand or when the grid was otherwise experiencing emergency conditions. ILR resources participating as GLD customers committed to reduce their electricity demand from the grid by a contractually-specified amount (measured in MW) during these PJM-declared zonal emergency events. ILR resources were obligated to respond only during the period June 1 to September 30, and then only to a maximum of ten events, each of which could be up to six consecutive hours in duration. PJM's ILR program permitted CSPs to aggregate their individual customers' demand response commitments on a zonal basis within PJM. During the period 2008 to 2011 MSA was part of Enerwise's Baltimore Gas & Electric (BG&E) zone portfolio of demand response customers.

## **II. Investigation**

4. Enforcement opened a non-public, preliminary investigation of Enerwise in November 2010 after receiving a referral from PJM alleging irregular electricity consumption activity by MSA, a Maryland state-owned entity and an Enerwise ILR demand response customer, immediately prior to three 2010 PJM emergency events in the BG&E zone. Witnesses in Baltimore informed PJM that on September 24, 2010 MSA turned on stadium lighting at its Camden Yards baseball park used by the Baltimore Orioles on a non-Orioles game day immediately after PJM's declaration of an emergency event that was scheduled to start two hours later. PJM's referral alleged that increasing MSA's load in the two hours prior to the emergency event could have artificially increased the amount of demand reduction provided by MSA, thereby inflating potential payments (or eliminating potential shortfall penalties) to Enerwise and MSA. In July 2012, the Commission issued a non-public order converting the investigation from a preliminary investigation to a formal investigation.

5. Enforcement determined that Enerwise's registration of MSA for a portion of the 4.6 MW commitment in the ILR Program for the 2009/2010 PJM Delivery Year (June 1, 2009 to May 31, 2010) violated the PJM Tariff, Attachment DD, §2.44. This tariff provision required CSPs, at the time they certified resources, to nominate ILR values for individual resources limited to the value appropriate for the method by which the load reduction would be accomplished. Enerwise knew MSA's registration for 4.6 MW of load reduction was based on operation of an MSA ice storage facility and on MSA's two 1.8 MW backup generators, but that operational problems with the generators could cause the generators to trip off-line when operated simultaneously. Enerwise further knew that the intended repairs required to ensure that the MSA generators would not trip when operated simultaneously had not been made or scheduled prior to the June 1 start of the ILR program's mandatory load reduction period. Enerwise nevertheless registered MSA for the full 4.6 MW load reduction for the 2009/2010 PJM Delivery Year.

6. Enforcement also determined that Enerwise violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2. Enforcement determined that, as of the start of

the 2009/2010 PJM Delivery Year, Enerwise knew or should have known MSA could not reliably operate both generators simultaneously in parallel with the grid to provide demand response. Nonetheless, Enerwise registered MSA for a 4.6 MW load reduction that depended on MSA's ability to operate both generators simultaneously. When PJM required Enerwise to perform a test event of its demand resources in the BG&E zone on August 18, 2009, Enerwise arranged to send an engineer on-site to MSA to perform a one-time work-around so that MSA temporarily could operate both generators simultaneously during the test event. Enerwise's work-around thereby misrepresented to PJM MSA's ability to reliably operate both generators simultaneously on an emergency basis. Had PJM called an emergency event during the 2009/2010 PJM Delivery Year on any other day, MSA would not have been able to reliably operate both generators simultaneously to provide PJM the load reduction to which Enerwise had committed them. Enforcement further determined that Enerwise in May 2009 also instructed MSA to increase its stadium load prior to the test event to portray a larger load reduction than actually occurred. MSA increasing its load prior to the test event allowed Enerwise to demonstrate a larger load reduction for MSA using an available PJM baseline methodology that calculated a customer's load reduction based on the difference between the metered load during the two hours prior to a load reduction event and the metered load during the event. Enerwise's instruction to MSA in 2009 to increase its load in the hours prior to events resulted in MSA portraying a larger load reduction than actually occurred in 2009 prior to the August 18, 2009 test event and during the three emergency events in 2010. However, as noted in the Agreement, MSA otherwise met its load reduction obligations during the three 2010 events and neither MSA nor Enerwise received any 2010/2011 PJM Delivery Year payments based on MSA's increased load because of PJM's detection of MSA's load irregularities.

7. As a result of its violations, Enforcement determined that Enerwise was paid for 1.8 MW of load reduction that MSA could not have reliably provided in an emergency declared during the 2009/2010 PJM Delivery Year. Enforcement determined that Enerwise received, less payments to MSA, unjust profits of \$20,726.

### **III. Stipulation and Consent Agreement**

8. Enforcement and Enerwise resolved Enforcement's investigations by means of the attached Agreement.

9. Enerwise stipulates to the facts. Enerwise neither admits nor denies that it violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 and the PJM Tariff.

10. Enerwise agrees to pay a civil penalty of \$780,000, disgorge \$20,726 in unjust profits plus interest, make \$500,000 in demand response metering and automatic load control technology improvements for PJM customers during calendar year 2013, 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.<sup>1</sup> In determining the appropriate remedy for Enerwise, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines.<sup>2</sup>

12. Enforcement considered that Enerwise's violations caused less than \$200,000 of market harm; a member of Enerwise's senior management was involved in the violations; Enerwise's violation lasted less than 250 days; Enerwise had no prior history of such violations; Enerwise did not have a documented compliance program at the time of its violations; and Enerwise cooperated fully during all aspects of the investigation.

13. 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 Enerwise's conduct. The Commission also concludes that the civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.<sup>3</sup>

**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.

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<sup>1</sup> 16 U.S.C. § 825o-1(b) (2006).

<sup>2</sup> *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

<sup>3</sup> *Id.*



amount of demand reduction provided by MSA, thereby inflating potential payments (or eliminating potential shortfall penalties) to Enerwise and MSA.

## **B. PJM's ILR Program**

4. During the 2008 to 2011 investigation period, Enerwise acted as a Curtailment Services Provider (CSP) in PJM. As a CSP, Enerwise registered and certified customers in PJM's ILR program, an annual capacity-based demand response product coincident with the PJM Delivery Year (June 1 to May 31). Enerwise's ILR customers were obligated to respond to zonal emergency events declared by PJM operators at times of peak demand or when the grid was otherwise experiencing emergency conditions. ILR resources participating as GLD customers committed to reduce their electricity demand from the grid by a contractually-specified amount (measured in MW) during these PJM-declared zonal emergency events. ILR resources were obligated to respond only during the period June 1 to September 30, and then only to a maximum of ten events, each of which could be up to six consecutive hours in duration. Individual ILR resources were registered as either long-lead time (two hours' notice of required curtailment) or short-lead time (one hour's notice of required curtailment).

5. PJM's ILR program permitted CSPs to aggregate their individual customers' demand response commitments on a zonal basis within PJM. Each Enerwise ILR resource was part of an Enerwise zonal portfolio commitment (measured in MW) and excess demand reduction by one Enerwise customer could offset a load reduction shortfall by another Enerwise customer in that same PJM zone.

6. Under then-applicable PJM rules, set forth in PJM Manual 19, revision 14, the amount of an individual GLD customer's load drop was determined by comparing the customer's metered load during the hours of a curtailment event to a "comparison load" approximating what that customer's load would have been in those hours had it not responded to the event. PJM provided several methodologies to calculate this "comparison load," and directed CSPs to choose the methodology resulting in the best possible estimate of what load would have been in the absence of a curtailment event. During 2009, Enerwise predominantly used the "Same Day" method, which compared the customer's metered event load to the customer's metered load in the hours surrounding the curtailment event.

7. The PJM Tariff, at Attachment DD, § 2.44, also required CSPs, at the time they certified resources, to nominate ILR values for individual resources limited to the value appropriate for the method by which the load reduction would be accomplished. Up until the start of the PJM Delivery Year (midnight on June 1 of each year), PJM's rules permitted CSPs to terminate individual ILR resource registrations that could not meet their certified load reduction values. Once the PJM Delivery Year began, PJM no longer permitted CSPs to terminate ILR resource registrations.

8. PJM paid CSPs a fixed annual capacity payment for their zonal portfolio of ILR resources on a per MW basis. CSPs such as Enerwise then divided this payment with their individual customers pursuant to the terms of their individual customer contracts. PJM also paid CSPs for the energy provided by their demand response resources during PJM emergency events. There were no energy payments associated with test events.

### **C. Maryland Stadium Authority's ILR Participation (2007-2008)**

9. MSA is a non-profit Maryland state entity organized to develop, own and operate facilities in downtown Baltimore and elsewhere. MSA's facilities include the Orioles Park at Camden Yards baseball complex and the neighboring M&T Bank football stadium. MSA is located in the BG&E zone within PJM.

10. Prior to 2007, MSA did not participate in PJM demand response programs despite having facilities and generators on site potentially capable of reducing MSA's load during an emergency event. MSA had an ice storage system that could operate during low load periods to build ice that later could be used in place of its electricity-consuming chiller system to provide cooling during an emergency event. MSA also had an emergency generator system located on Hamburg Street consisting of two 1.8 MW diesel-fired generators (3.6 MW total) which were not actively in use by MSA but could be used to displace MSA grid electricity consumption during an emergency if operated successfully.

11. In 2007, Enerwise signed up MSA as a new demand response customer under a master contract with the State of Maryland. At that time, Enerwise personnel met with MSA personnel, including MSA's stadium engineer and MSA's Utilities Group Supervisor. For the 2007/2008 PJM Delivery Year, based on emergency operation of the MSA ice storage system, Enerwise enrolled MSA for a 1.0 MW reduction in the PJM Base Residual Auction (a demand response program separate from, but operationally similar to, the PJM ILR program).

12. During the spring of 2007, Enerwise and MSA also explored including as part of MSA's demand response commitment all or a portion of the two MSA generators' capability. MSA informed Enerwise of operational issues with the generators that could cause them to trip off-line. In April 2007, Enerwise engineering personnel conducted a site visit to review the generators' condition and identified four problems. Enerwise sought an MSA generator repair contract, but MSA did not hire Enerwise to conduct further engineering or repair work in 2007, and the MSA demand response commitment for the 2007/2008 PJM Delivery Year did not reflect the generators' operation.

13. On August 8, 2007, PJM declared an emergency event in the BG&E zone. MSA used its ice storage to meet its 1.0 MW load reduction commitment. During the emergency MSA also successfully operated one of its generators to provide additional voluntary load reduction to PJM and Enerwise without additional compensation.

14. In early 2008, Enerwise, with MSA's consent, increased MSA's participation in PJM demand response programs to 2.77 MW for the 2008/2009 PJM Delivery Year. The approximately 1.8 MW increase was based on operation of one of MSA's two generators, reflecting MSA's successful use of one generator during the August 2007 event. There were no emergency events in the BG&E zone during the 2008/2009 PJM Delivery Year.

15. In 2008, MSA engaged Pepco Energy Services (Pepco), an energy consultant, to study the MSA generators' condition. Pepco and MSA hired TA Engineering to further study the generators' condition. TA Engineering produced two reports to MSA on the generators. Among other things, TA Engineering noted that MSA personnel expressed the concern that MSA could reliably operate only one of its two generators at a time.

#### **D. Maryland Stadium Authority's 2009/2010 ILR Participation**

16. In January 2009, Enerwise recommended, and MSA agreed, to increase MSA's 2009/2010 PJM Delivery Year ILR participation to 4.6 MW. The additional 1.8 MW commitment was based on operation of the second MSA generator. At the time Enerwise registered MSA for this increased commitment, Enerwise's Senior Vice President for Sales, George Hunt, and the Enerwise MSA account representative, David Resler, were aware that the operational issues with MSA's ability to reliably use both generators for demand response had yet to be remedied.

17. In February 2009, MSA accepted an Enerwise proposal to conduct an engineering study of MSA's generator problems. An Enerwise electrical engineer undertook the MSA generator study, as part of which he obtained and reviewed the two TA Engineering reports prepared for MSA the previous summer that identified the potential tripping issue with operating both MSA generators simultaneously. In April 2009, Enerwise's engineering and sales personnel were aware that the potential generator trips were caused by harmonic current on the grounded neutral conductor, a problem arising when both generators operated simultaneously. On May 15, 2009, Enerwise's engineer developed an engineering solution for MSA involving installation of a new neutral ground resistor.

18. On May 28, 2009, one business day before the start of the 2009/2010 PJM Delivery Year, Enerwise gave MSA a price quote for the equipment Enerwise recommended to fix the MSA generators' grounding problems. At the time, MSA had yet to approve the contract for this remedial engineering work, equipment needed to perform the repairs had not been ordered, and no date had been set to conduct the recommended repairs.

19. That same day, PJM notified participating CSPs that the deadline for terminating 2009/2010 ILR registrations was May 31, 2009 at 11:59 p.m. PJM's notification stated that "[i]f your resource cannot meet its committed reduction value in response to a PJM call to reduce, or a test, you have until the deadline to terminate its registration. Remember that after the deadline terminations are not allowed and the resource is committed."



20. As of the June 1, 2009 start of the 2009/2010 PJM Delivery Year, Enerwise neither terminated MSA's 4.6 MW ILR registration nor informed PJM of any potential concern with the MSA generators' ability to operate to provide the full registered load reduction.

**E. PJM 2009 Test Event**

21. In the spring of 2009, PJM implemented new rules establishing a one-hour test event for participating ILR resources for the 2009/2010 PJM Delivery Year. A test event would only take place in a particular PJM zone if PJM had not called an emergency event in that zone by August 15. The rules provided that each CSP could self-schedule the test event for its customers in a given zone, that all of the CSP's customers in a zone were to be tested at the same time, that under certain circumstances a CSP could re-test certain customers that did not meet their obligations during the initial test, and that a CSP that ultimately failed to meet its zonal commitment would incur a financial penalty of 120% of the revenue associated with the shortfall. Prior to this change no penalty applied if a CSP failed to meet its ILR commitment.

22. On May 15, 2009, Enerwise's Senior Vice President for Sales and the MSA account representative met with MSA's stadium engineer and MSA's Utilities Group Supervisor at MSA's facilities and discussed the PJM testing requirement and MSA's load reduction protocols. MSA personnel testified that during this meeting, Enerwise informed MSA of a new protocol for responding to PJM demand response events. MSA personnel testified that Enerwise instructed MSA to portray a "load profile" immediately prior to demand response events that would involve turning on available load consuming equipment to increase MSA's load to reflect the "profile." MSA personnel testified that Enerwise told them to "turn on everything that [MSA] could" prior to events.

23. PJM did not call an emergency event in the BG&E zone during the 2009/2010 PJM Delivery Year prior to August 15, thereby triggering a test event under the new PJM procedures. Enerwise scheduled its BG&E zone test for August 18, 2009 between 2 p.m. and 3 p.m.

24. Prior to the August 18, 2009 Enerwise test event, Enerwise had yet to complete repairs to the MSA generators. MSA did not enter into the repair contract with Enerwise until July 2009 and Enerwise was not able to conduct the repairs prior to the August 18, 2009 test event due to a combination of factors, including the time necessary for MSA to approve the contract and the delivery times for the parts required to effect the repair of the potential tripping issue. In the weeks prior to the test event, individuals at both Enerwise and MSA expressed concern about MSA's ability to meet its load reduction obligations during the test without the generator repairs having been completed.

25. Realizing that the generator repairs would not be completed prior to the August 18, 2009 test event, Enerwise arranged for its electrical engineer who had studied the MSA generators to go on-site at MSA's Hamburg Street generating station to perform a

manual work-around to make the generators operational during the test event. Enerwise's engineer had determined that manually bypassing a sensor on the MSA generators' protective relays would prevent the generators from tripping when they were operated simultaneously. On the morning of August 18, 2009, the engineer tested the manual sensor bypass to confirm that this would allow the MSA generators to temporarily operate simultaneously without tripping. The manual sensor bypass proved effective, as MSA's two generators operated without tripping during the morning pre-test. MSA personnel and the Enerwise engineer testified that no individual at MSA knew how to perform the manual bypass or knew prior to August 18, 2009 that this work-around would eliminate the generator tripping issue.

26. In preparation for the 2 p.m. test event, MSA's stadium engineer told Hunt by e-mail of the success of Enerwise's work-around and informed him that MSA would "insure heavy electrical load" at 12:30. No one at Enerwise replied to this e-mail or communicated about it to MSA.

27. MSA personnel testified that MSA turned on its stadium lights, HVAC air handlers and other electricity-consuming equipment in the hours prior to the test event. MSA then powered them down 15 minutes before the test event began. MSA personnel testified that MSA took these actions to increase MSA's electricity usage to comply with their understanding of the protocol obtained at the May 2009 meeting with Enerwise's Senior Vice President for Sales and the MSA account representative, and that they did so in order to show their PJM load profile.

28. During the one-hour test event, MSA successfully used its ice storage system and its two 1.8 MW generators to reduce its electricity consumption from the grid. Following the test, Enerwise's engineer restored the MSA generators' protective relay sensor to its original setting.

29. Enerwise submitted compliance data for the August 18, 2009 test event using PJM's "same-day" methodology for determining MSA's comparison load. That data took the difference between MSA's load during the hours surrounding the test event and MSA's metered load during the test event. That data indicated that MSA exceeded its 4.6 MW commitment.

30. On August 18, 2009, Enerwise exceeded its BG&E zonal load commitment by greater than the amount attributable to MSA's turning on the stadium lights and other equipment and the Enerwise work-around to make MSA's generators operate simultaneously. Therefore, the MSA load increase and generator work-around did not result in additional payments from PJM (or the avoidance of underperformance penalties) beyond the revenue attributable to the 1.8 MW from the second MSA generator.

31. Enerwise completed the contracted-for repair of MSA's generating units in December 2009 – after the September 30, 2009 close of the reduction obligation period

for the 2009/2010 PJM Delivery Year and prior to the registration period for the 2010/2011 PJM Delivery Year.

#### **F. 2010/2011 MSA Conduct During Emergency Events**

32. During the 2010/2011 PJM Delivery Year, Enerwise recommended, and MSA agreed, to register MSA for 4.3 MW of demand reduction. PJM called three emergency events in 2010: July 7, 2010; September 23, 2010; and September 24, 2010. In each of the three emergency events, MSA personnel testified that MSA took actions to increase its load in the hours prior to the emergency event in accordance with their understanding of Enerwise's May 2009 instructions regarding MSA's "load profile."

33. Before final PJM settlement for the load reduction provided during the three 2010 emergency events, PJM became aware of MSA's increased load on the days of these events. Accordingly, PJM did not permit Enerwise to use the "same day" comparison load methodology for MSA for the three 2010 emergency events. Neither Enerwise nor MSA received demand response payments from PJM in 2010 for the load attributable to MSA turning on the stadium lights and other equipment. Instead, Enerwise supported MSA's load reduction using an alternate method for calculating the comparison load, under which MSA met its contracted-for 4.3 MW load reduction.

### **III. VIOLATIONS**

34. Enforcement determined that Enerwise's registration of MSA for a portion of the 4.6 MW in the ILR Program for the 2009/2010 PJM Delivery Year violated the PJM Tariff, Attachment DD, §2.44. Enerwise knew MSA's registration was based on operation of the ice storage facility and both MSA generators and that the repairs required to ensure the MSA generators would not trip when operated simultaneously had not been made or scheduled prior to the June 1 start of the mandatory load reduction period.

35. Enforcement also determined that Enerwise violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2. As of the start of the 2009/2010 PJM Delivery Year, Enerwise knew or should have known MSA could not reliably operate both generators simultaneously in parallel with the grid to provide demand response. Nonetheless, Enerwise registered MSA for a 4.6 MW load reduction that depended on MSA's ability to operate both generators simultaneously. When PJM required Enerwise to perform a test event in the BG&E zone, Enerwise arranged to send an engineer on-site to MSA to perform a one-time work-around so that MSA could temporarily operate both generators simultaneously during the test event, thereby misrepresenting to PJM MSA's ability to reliably operate both generators simultaneously on an emergency basis. Had PJM called an emergency event during the 2009/2010 PJM Delivery Year on any other day, Enerwise would not have been able to reliably operate both generators simultaneously to provide the committed load reduction. Enforcement further determined that Enerwise also instructed MSA to increase its load prior to the test event to portray a larger load reduction than actually occurred. Enerwise's instruction to MSA

in 2009 to increase its load resulted in MSA portraying a larger load reduction than actually occurred in 2009 prior to the test event and during the three emergency events in 2010.

36. As a result of its violations, Enforcement determined that Enerwise was paid for 1.8 MW of load reduction that MSA could not have reliably provided in an emergency declared during the 2009/2010 PJM Delivery Year. Enforcement determined that Enerwise received, less payments to MSA, unjust profits of \$20,726.

37. Since the commencement of staff's investigation, Enerwise and Comverge have appointed new management in charge of demand response activities in PJM. Enerwise has strengthened its resource compliance and verification procedures, and Enerwise also has hired its first compliance director.

38. Enerwise and Comverge have fully cooperated with Enforcement during all stages of the investigation.

#### **IV. REMEDIES AND SANCTIONS**

39. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Enerwise agrees with the facts as stipulated in Section II, but neither admits nor denies that those facts constitute violations of the PJM tariff and section 1c.2 of the Commission's regulations. Enerwise agrees to take the following actions.

##### **A. Civil Penalty and Disgorgement**

40. Enerwise shall pay a civil penalty of \$780,000 by wire transfer to the United States Treasury within twenty (20) days of the Effective Date of this Agreement, as defined below.

41. Enerwise shall also disgorge \$20,726, plus interest (accrued consistent with 18 C.F.R. § 35.19a(a)(2)), which represents Enforcement's determination of unjust profits related to Enerwise's violations. Enerwise will pay the disgorged funds and interest to PJM, to be used or distributed in PJM's discretion for the benefit of electric ratepayers. Such disgorgement shall be made within twenty (20) days from the Effective Date of this Agreement.

##### **B. Enerwise Metering and Technology Investment in PJM**

42. Enerwise also commits for calendar year 2013 to make \$500,000 in new investments in real-time metering equipment and automatic demand response technology permitting remote, electronic control of customer load drops for demand response customers in PJM. Enerwise further agrees to make a non-public report to Enforcement, no later than March 31, 2014, detailing and substantiating these investments, including an

affidavit executed by an officer of Enerwise that the investments reported are true and accurate. Upon request by Enforcement staff, Enerwise shall provide all documentation supporting its reported equipment and technology investments.

### **C. Compliance Monitoring**

43. Enerwise agrees to develop and maintain an effective compliance program focusing on compliance with PJM's tariff requirements, the tariff requirements of any other regions in which Enerwise participates, and applicable Commission regulations. Enerwise 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 Enerwise's activities with respect to compliance in PJM's demand response programs; (2) describe any updates of compliance measures instituted and training administered during the preceding period; (3) advise Enforcement whether Enerwise has maintained compliance; and (4) include an affidavit executed by an officer of Enerwise that the compliance reports are true and accurate. Upon request by staff, Enerwise shall provide to staff all documentation supporting its reports.

### **V. 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 and that order becomes no longer subject to appeal. When effective, this Agreement shall resolve the matters specifically addressed herein as to Enerwise, Comverge, any affiliated entity, and any successor in interest to Enerwise.

45. Commission approval of this Agreement in its entirety and without material modification shall release Enerwise and forever bar the Commission from holding Enerwise, any affiliated entity, any successor in interest to Enerwise, and any Enerwise agents, officers, directors or employees liable for any and all administrative or civil claims arising out of, related to, or connected with Enforcement's determination of violations addressed in this Agreement, and any other potential violations committed by Enerwise in PJM's demand response programs relating to the registration and certification of demand response resources and those demand response resources' performance during test and emergency events in PJM from 2008 through 2011.

46. Enerwise's failure to make timely civil penalty payments, disgorgement payments, or specified metering equipment and technology investments in PJM 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 Federal Power Act (FPA), 16 U.S.C. §792, et seq., and may subject Enerwise to additional action under the enforcement and penalty provisions of the FPA.

47. If Enerwise does not make the civil penalty and disgorgement payments 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. §35.19(a)(2)(iii) from the date that the payments are due, in addition to any other enforcement action or any penalty that the Commission may take or impose.

48. The Agreement binds Enerwise and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Enerwise, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section IV of this Agreement. Enforcement and Enerwise do not intend for this Agreement to entitle any other party to any claim or right of any kind, it being the intent of Enforcement and Enerwise that this Agreement shall not be construed as a third-party beneficiary contract.

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 or Enerwise 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 nor Enerwise shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Enerwise.

51. In connection with the payment of the civil penalty provided for herein, Enerwise agrees 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. Enerwise waives 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 representative of Enerwise affirms that he or she has read this Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that

this Agreement is entered into by Enforcement in express reliance on those representations, and that he or she has had the opportunity to consult with counsel.

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 Bay 5.29.13  
Director  
Office of Enforcement

 May 24, 2013  
Steven K. Moffitt  
Vice President  
Enerwise Global Technologies, Inc.