

February 28, 2013

Ms. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: NERC Full Notice of Penalty regarding EnerNOC, Inc.,  
FERC Docket No. NP13- \_000**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty<sup>1</sup> regarding EnerNOC, Inc. (EnerNOC), NERC Registry ID# NCR11021,<sup>2</sup> in accordance with the Federal Energy Regulatory Commission's (Commission or FERC) rules, regulations and orders, as well as NERC's Rules of Procedure including Appendix 4C (NERC Compliance Monitoring and Enforcement Program (CMEP)).<sup>3</sup>

EnerNOC is a demand response, energy efficiency, emissions management, and energy advisory services provider. As of June 30, 2012, EnerNOC managed over 8,300 MW of demand response

<sup>1</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards* (Order No. 672), III FERC Stats. & Regs. ¶ 31,204 (2006); *Notice of New Docket Prefix "NP" for Notices of Penalty Filed by the North American Electric Reliability Corporation*, Docket No. RM05-30-000 (February 7, 2008). See also 18 C.F.R. Part 39 (2012). *Mandatory Reliability Standards for the Bulk-Power System*, FERC Stats. & Regs. ¶ 31,242 (2007) (Order No. 693), *reh'g denied*, 120 FERC ¶ 61,053 (2007) (Order No. 693-A). See 18 C.F.R § 39.7(c)(2).

<sup>2</sup> Texas Reliability Entity, Inc. (Texas RE) confirmed that EnerNOC, Inc. (EnerNOC) was included on the NERC Compliance Registry as a Load-Serving Entity (LSE) on April 12, 2010. As an LSE, EnerNOC is subject to the requirements of NERC Reliability Standards IRO-001-1.1 and TOP-001-1. EnerNOC is registered as a Qualified Scheduling Entity (QSE), as defined by Electric Reliability Council of Texas, Inc. (ERCOT) Protocol § 2.1, and registered as an Entity B LSE per Attachment A of TRE's LSE Coordinated Functional Registration Declaration. From February 2, 2011 through February 3, 2011, EnerNOC was interconnected to ERCOT's system via participation in the Emergency Interruptible Load Service's (EILS) program, and had 123 MW of EILS in ERCOT during the period of the violation. In its role as QSE in ERCOT, EnerNOC was responsible at that time for complying with the applicable NERC CIP requirements set forth in Texas RE's LSE Coordinated Functional Registration (CFR) List.

<sup>3</sup> See 18 C.F.R § 39.7(c)(2).

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capacity across a commercial, institutional, and industrial customer base of approximately 5,600 accounts and approximately 13,000 sites throughout multiple electric power grids. EnerNOC participates in a range of capacity, energy, and ancillary services markets, and is an active aggregator of retail customers in the demand response programs of ISO New England, New York ISO, ERCOT, and PJM Interconnection LLC (PJM). In addition, EnerNOC partners with utilities both inside Independent System Operator/Regional Transmission Organization (ISO/RTO) regions and in bilateral markets to provide cost effective and reliable demand side management services to utilities and their customers.

This Notice of Penalty is being filed with the Commission because Texas Reliability Entity, Inc. (Texas RE) and EnerNOC have entered into a Settlement Agreement to resolve all outstanding issues arising from Texas RE's determination and findings of the violations<sup>4</sup> of IRO-001-1.1 and TOP-001-1.<sup>5</sup> According to the Settlement Agreement, EnerNOC acknowledges the violations and has agreed to the assessed penalty of twenty-five thousand dollars (\$25,000), in addition to other remedies and actions to mitigate the instant violations and facilitate future compliance under the terms and conditions of the Settlement Agreement. Accordingly, the violations identified as NERC Violation Tracking Identification Numbers TRE2012009967 and TRE2012009968 are being filed in accordance with the NERC Rules of Procedure and the CMEP.

### **Statement of Findings Underlying the Violations**

This Notice of Penalty incorporates the findings and justifications set forth in the Settlement Agreement entered into as of February 22, 2013, by and between Texas RE and EnerNOC, which is included as Attachment a. The details of the findings and basis for the penalty are set forth in the Settlement Agreement and herein. This Notice of Penalty filing contains the basis for approval of the Settlement Agreement by the NERC Board of Trustees Compliance Committee (NERC BOTCC). In accordance with Section 39.7 of the Commission's regulations, 18 C.F.R. § 39.7 (2012), NERC provides the following summary table identifying each violation of a Reliability Standard resolved by the Settlement Agreement, as discussed in greater detail below.

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<sup>4</sup> For purposes of this document, each violation at issue is described as a "violation," regardless of its procedural posture and whether it was a possible, alleged, or confirmed violation.

<sup>5</sup> While evaluation of issues relating to the February 2, 2011 cold weather event (Event) remains ongoing, Texas RE and EnerNOC have resolved issues related to the Event. Processing this Notice of Penalty now is appropriate because it is separate and distinct from other matters relating to third parties that remain under evaluation and would ensure timely processing of the instant matter that already is resolved.

Region	Registered Entity	NOC ID	NERC Violation ID	Reliability Std. <sup>6</sup>	Req. (R)	VRF	Total Penalty
Texas Reliability Entity, Inc.	EnerNOC, Inc.	NOC-1825	TRE2012009967	IRO-001-1.1	8	High	\$25,000
			TRE2012009968	TOP-001-1	4	High	

IRO-001-1.1

The purpose statement of Reliability Standard IRO-001-1.1 provides:

Reliability Coordinators must have the authority, plans, and agreements in place to immediately direct reliability entities within their Reliability Coordinator Areas to re-dispatch generation, reconfigure transmission, or reduce load to mitigate critical conditions to return the system to a reliable state. If a Reliability Coordinator delegates tasks to others, the Reliability Coordinator retains its responsibilities for complying with NERC and regional standards. Standards of conduct are necessary to ensure the Reliability Coordinator does not act in a manner that favors one market participant over another.

IRO-001-1.1 R8 provides:

Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load-Serving Entities, and Purchasing-Selling Entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements. Under these circumstances, the Transmission Operator, Balancing Authority, Generator Operator, Transmission Service

<sup>6</sup> At the time of the violation, EnerNOC had a Coordinated Function Registration (CFR) agreement in place. The CFR includes the following additional language. EnerNOC was responsible for complying with these additional requirements at the time of the event:

1. If directed by the Reliability Coordinator, EnerNOC will inform its loading acting as resource (LaaR) and EILS resources that the Reliability Coordinator has issued a directive that requires the EILS or LaaR to deploy unless such action would violate safety, equipment, or regulatory or statutory requirements. EnerNOC will have documentation (e.g. contract, attestation, etc.) that the LaaR or EILS will deploy when such a directive is issued.
2. If the LaaR or EILS resource is unable to deploy and communicates this to EnerNOC, EnerNOC will immediately inform the Reliability Coordinator.
3. If EnerNOC complies with Part 1 and 2 above, EnerNOC is not responsible under this Standard if a LaaR or EILS fails to deploy.

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Provider, Load-Serving Entity, or Purchasing-Selling Entity shall immediately inform the Reliability Coordinator of the inability to perform the directive so that the Reliability Coordinator may implement alternate remedial actions.

IRO-001-1.1 R8 has a “High” Violation Risk Factor (VRF) and a “Severe” Violation Severity Level (VSL). The subject violation applies to EnerNOC’s LSE function.

#### TOP-001-1

The purpose statement of Reliability Standard TOP-001-1 provides: “To ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency.”

TOP-001-1 R4 provides:

Each Distribution Provider and Load Serving Entity shall comply with all reliability directives issued by the Transmission Operator, including shedding firm load, unless such actions would violate safety, equipment, regulatory or statutory requirements. Under these circumstances, the Distribution Provider or Load Serving Entity shall immediately inform the Transmission Operator of the inability to perform the directive so that the Transmission Operator can implement alternate remedial actions.

TOP-001-1 R4 has a “High” VRF and a “Severe” VSL. The subject violation applies to EnerNOC’s LSE function.

On March 30, 2012, during a Spot Check, Texas RE determined that EnerNOC had a violation of IRO-001-1.1 R8 and TOP-001-1 R4 because EnerNOC failed to comply with a Reliability Coordinator/ Transmission Operator (RC/TOP) directive, issued by ERCOT, to shed EILS load within 10 minutes of ERCOT’s request when such action would not have resulted in actions that would violate safety, equipment, regulatory or statutory requirements.<sup>7</sup>

This violation occurred when the ERCOT system was stressed. Reserve margins in ERCOT fell during the morning of February 2, 2011 due to cold weather related generating unit forced outages and deratings. This resulted in ERCOT declaring an Energy Emergency Alert - 3 (EEA-3) at 5:43 a.m. CST, and

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<sup>7</sup> For the purposes of the Settlement Agreement and Full Notice of Penalty, the description and treatment of these two violations are being consolidated, given ERCOT is both the RC and TOP and these two requirements are identical except for the distinction between RC and TOP.

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ERCOT making a hot-line call to inform entities in ERCOT of the EEA-3 and on-line reserve levels. An EEA-3 is declared when ERCOT has difficulty maintaining a system frequency of 59.8 Hz and firm load will need to be shed. During the call, ERCOT issued the first directive to shed 1,000 MW of firm load. ERCOT also issued the directive to EILS providers (including EnerNOC) at 5:49 a.m. to interrupt their non-business hour load. Per the regional ERCOT Protocols and Operating Guides, the firm load had 30 minutes to meet their load shed obligation and the EILS providers had 10 minutes to meet their load shed obligation. At 6:04 a.m., 21 minutes after issuing its first order for 1,000 MW of firm load shed, ERCOT issued another directive shedding an additional 1,000 MW of firm load. At 6:23 a.m., 19 minutes after issuing the second order for 1,000 MW of firm load shed, ERCOT issued a third load shed directive for an additional 2,000 MW firm load (4,000 MW total). ERCOT issued orders from 7:57 a.m. to 1:07 p.m. that gradually restored the firm load. At 8:50 a.m. ERCOT issued a directive for EILS providers to shed their business hours load in addition to the earlier non-business hours load shed. ERCOT had the EILS providers hold their load shed until the next day at 10:00 a.m.

The RC/TOP directive with which EnerNOC did not comply was issued by the RC/TOP on February 2, 2011 at 5:49 a.m. This RC/TOP directive was a verbal dispatch instruction to EnerNOC and the other EILS customers instructing them to interrupt the non-business hour load they had contracted with ERCOT to shed. Based on ERCOT recordings of the dispatch phone call, the EnerNOC network operations center operator on duty at 5:43 a.m. on February 2, 2011, did pick up the telephone for the dispatch call, but did not initiate dispatch actions in response.

EnerNOC had contracted to interrupt 80 MW of load during “Non-Business Hours,” the time during which the reliability directive was issued. EnerNOC also had contracted to have its load shed within 10 minutes of the issuance of the RC/TOP directive (by 5:59 a.m.) but did not shed it until the 15-minute interval ending at 9:15 a.m.

At 8:50 a.m., the RC/TOP issued another RC/TOP directive by way of a verbal dispatch instruction calling for the shedding of an additional block of load available during the time frame designated “Business Hours” in the EILS contracts. EnerNOC was under contract to shed 43 MW of load in the “Business Hours” in addition to the 80 MW it was contracted to shed during the “Non-Business Hours.” The total load shed by EnerNOC after the second RC/TOP directive was 123 MW.

During the course of the second RC/TOP directive, EnerNOC became aware that it had not shed the earlier 80 MW. EnerNOC then shed the load as directed by both RC/TOP directives at approximately 8:53 a.m., and was compliant from the 15-minute interval ending at 9:15 a.m. until it was allowed to restore the load 26 hours later at 10:00 a.m. on February 3, 2011. The violation, which lasted approximately three hours, was due to operator error, and it affected 80 MW of load.

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Texas RE determined the duration of the violation to be approximately three hours on February 2, 2011.

Texas RE determined that this violation posed a moderate risk to the reliability of the bulk power system (BPS), but did not pose a serious or substantial risk. Specifically, the ERCOT system had just declared an EEA3 (unable to maintain 59.8 Hz, firm load to be shed) condition, and all resources, including demand response, were necessary to keep the shedding of firm load to a minimum. The violation was mitigated by the fact that the resource was only 80 MW and was delayed from providing its curtailment service for three hours and fifteen minutes.

#### Regional Entity's Basis for Penalty

According to the Settlement Agreement, Texas RE has assessed a penalty of twenty-five thousand dollars (\$25,000) for the referenced violations. In reaching this determination, Texas RE considered the following factors:

1. the violations constituted EnerNOC's first occurrence of violations of the subject NERC Reliability Standards;<sup>8</sup>
2. Texas RE reported that EnerNOC was cooperative throughout the compliance enforcement process;
3. EnerNOC did not have a compliance program at the time of the violation; however, in response to a Compliance Audit of market activity in ISO New England and New York ISO by the FERC in 2011 (FERC Docket No. PA11-20-000), EnerNOC continues to improve its centralized compliance program. EnerNOC has engaged an external consultant to assist in developing this program consistent with FERC's guidelines. EnerNOC also has recently hired a Director of Regulatory Compliance to lead the company's efforts in this area, and has budgeted between \$500,000 and \$700,000 for compliance activities in 2013. At the time of the violations, EnerNOC was undertaking significant compliance-related activities throughout the enterprise within each of its respective functional organizations. This decentralized approach utilized numerous policies, manuals, and training materials to guide employee actions. While EnerNOC recognizes the

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<sup>8</sup> EnerNOC's compliance history includes a Find, Fix, Track and Report (FFT) informational filing addressing remediated issues for certain registered entities including instances of noncompliance with CIP-001-1 R1, R2, and R3 for EnerNOC, that was filed with FERC under Docket No. RC12-16-000 on September 28, 2012. On March 15, 2012, FERC issued an order stating it will consider an FFT matter closed sixty days after the FFT informational filing is submitted to the Commission. The 60-day review period passed on November 27, 2012. Texas RE did not consider the prior instances of noncompliance to be an aggravating factor in the penalty determination because they were not the same or similar to the instant violations and there was no indication of broader corporate issues.



benefits of standardizing and centralizing its approach to compliance, the company's efforts in 2011 did foster a compliance ethic that, among other things, resulted in a timely resolution to the missed dispatch in question;

4. EnerNOC paid \$45,000 to the Public Utility Commission of Texas to address the same incident that is the subject of this proceeding;
5. the estimated costs to EnerNOC to implement the agreed-upon actions beyond those necessary to come into compliance with the Standard, as discussed above, are \$45,000;
6. there was no evidence of any attempt to conceal a violation nor evidence of intent to do so;
7. Texas RE determined that the violations posed a moderate risk to the reliability of the BPS but did not pose a serious or substantial risk to the reliability of the BPS, as discussed above; and
8. Texas RE reported that there were no other mitigating or aggravating factors or extenuating circumstances that would affect the assessed penalty.

After consideration of the above factors, Texas RE determined that, in this instance, the penalty amount of twenty-five thousand dollars (\$25,000) is appropriate and bears a reasonable relation to the seriousness and duration of the violations.

### **Status of the Mitigation Plan<sup>9</sup>**

EnerNOC's Mitigation Plan to address its violation of IRO-001-1.1 R8 and TOP-001-1 R4 was submitted to Texas RE on September 25, 2012 stating it had been completed on July 22, 2011.<sup>10</sup> The Mitigation Plan was accepted by Texas RE on September 25, 2012 and approved by NERC on November 9, 2012. The Mitigation Plan for this violation is designated as TREMIT008095 and was submitted as non-public information to FERC on November 9, 2012 in accordance with FERC orders.<sup>11</sup>

EnerNOC's Mitigation Plan stated EnerNOC had completed the following mitigating activities:

1. The employee who was on duty but missed the initial "Non-Business Hours" dispatch was disciplined in accordance to EnerNOC's disciplinary policy;
2. All network operations center operators were retrained on ERCOT emergency procedures that trigger an EILS event. Notice of retraining went out on April 28, 2011 and training was completed on May 2, 2011;

<sup>9</sup> See 18 C.F.R § 39.7(d)(7).

<sup>10</sup> The Mitigation Plan was signed on July 30, 2012.

<sup>11</sup> The Disposition Document states the Mitigation Plan was approved by NERC and sent to FERC on November 8, 2012.

3. EnerNOC created an electronic call logging system (written) and procedures to ensure that all ERCOT calls are logged in the system. All messages received through the ERCOT phone are logged by network operations center operators. Call details, such as message type, time the message was received, and a brief description of the message, are recorded by the network operations center operator on duty. The new system was implemented on July 21, 2011;
4. EnerNOC developed redundancy in dispatch instructions by e-mailing the call log to appropriate network operations center team members as soon as a call log is saved. All messages received through the ERCOT phone and logged by network operations center operators are automatically distributed to the larger network operations team. This process ensures that all messages are distributed and that key alerts are triaged properly. This process was implemented on July 21, 2011;
5. EnerNOC developed a system to e-mail a link to a voice file for each phone call after each phone call ends to ensure that appropriate network operations center members have immediate access to the recorded call. All recorded calls are immediately distributed to members of the network operations team that are responsible for the ERCOT region. Once a call has been terminated, a link to the voice file is distributed by email, where it can be accessed through a secured server. This allows members of the network operations team to access and review these files remotely. This system was implemented on July 21, 2011; and
6. EnerNOC built a phone recording system to record all calls on the ERCOT phone line that enabled the ability to play-back the call. Every phone call received through the ERCOT phone is recorded in its entirety and saved on a secure server where it can be accessed and received. This enables members of the network operations team to review and validate past calls and instructions especially in cases where the message may be ambiguous. These actual recordings are also used for training purposes. This functionality was rolled out on July 22, 2011.

EnerNOC certified on December 20, 2012 that the above Mitigation Plan requirements were completed on July 22, 2011. As evidence of completion of its Mitigation Plan, EnerNOC submitted the following:

1. Seven completed ERCOT EILS training documents;
2. *ERCOT EILS Checklist.xls*;
3. *ERCOT EILS Dispatch Training.msg*;
4. *ERCOT STaT training logs.xlsx*;
5. ERCOT Wallboard Visual files;
6. File Stamped Copy of EnerNOC's Affidavit;



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7. *FW ERCOT Grid Conditions DL.msg;*
8. *FW ERCOT Phone Recordings.msg;*
9. *FW Introducing...the ERCOT Call Log.msg;*
10. *FW New Voice Recording from ERCOT System.msg;*
11. *FW Off-Boarding Request Approved effective 482011.msg;*
12. *New Operator Hotline Call Message received on line Taylor OPX.txt;*
13. *PUC Order and Settlement (Docket 40152).pdf;*
14. *HRB Screenshot.pdf;*
15. *EnerNOC - XML Testing.htm;* and
16. ERCOT version two training logs.

On January 10, 2013, after reviewing EnerNOC's submitted evidence, Texas RE verified that EnerNOC's Mitigation Plan was completed on July 22, 2011.

### **Statement Describing the Assessed Penalty, Sanction or Enforcement Action Imposed<sup>12</sup>**

#### **Basis for Determination**

Taking into consideration the Commission's direction in Order No. 693, the NERC Sanction Guidelines and the Commission's July 3, 2008, October 26, 2009 and August 27, 2010 Guidance Orders,<sup>13</sup> the NERC BOTCC reviewed the Settlement Agreement and supporting documentation on February 5, 2013. The NERC BOTCC approved the Settlement Agreement, including Texas RE's assessment of a twenty-five thousand dollar (\$25,000) financial penalty against EnerNOC and other actions to facilitate future compliance required under the terms and conditions of the Settlement Agreement. In approving the Settlement Agreement, the NERC BOTCC reviewed the applicable requirements of the Commission-approved Reliability Standards and the underlying facts and circumstances of the violations at issue.

<sup>12</sup> See 18 C.F.R. § 39.7(d)(4).

<sup>13</sup> *North American Electric Reliability Corporation*, "Guidance Order on Reliability Notices of Penalty," 124 FERC ¶ 61,015 (2008); *North American Electric Reliability Corporation*, "Further Guidance Order on Reliability Notices of Penalty," 129 FERC ¶ 61,069 (2009); *North American Electric Reliability Corporation*, "Notice of No Further Review and Guidance Order," 132 FERC ¶ 61,182 (2010).

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In reaching this determination, the NERC BOTCC considered the following factors:

1. the violations constituted EnerNOC's first occurrence of violations of the subject NERC Reliability Standards;
2. Texas RE reported that EnerNOC was cooperative throughout the compliance enforcement process;
3. EnerNOC did not have a compliance program at the time of the violation; however, in response to a Compliance Audit of market activity in ISO New England and New York ISO by FERC in 2011 (FERC Docket No. PA11-20-000), EnerNOC continues to improve its centralized compliance program. EnerNOC has engaged an external consultant to assist in developing this program consistent with FERC's guidelines. EnerNOC also has recently hired a Director of Regulatory Compliance to lead the company's efforts in this area, and has budgeted between \$500,000 and \$700,000 for compliance activities in 2013. At the time of the violations, EnerNOC was undertaking significant compliance-related activities throughout the enterprise within each of its respective functional organizations. This decentralized approach utilized numerous policies, manuals, and training materials to guide employee actions. While EnerNOC recognizes the benefits of standardizing and centralizing its approach to compliance, the company's efforts in 2011 did foster a compliance ethic that, among other things, resulted in a timely resolution to the missed dispatch in question;
4. EnerNOC paid \$45,000 to the Public Utility Commission of Texas to address the same incident that is the subject of this proceeding;
5. the estimated costs to EnerNOC to implement the agreed-upon actions beyond those necessary to come into compliance with the Standard, as discussed above, are \$45,000;
6. there was no evidence of any attempt to conceal a violation nor evidence of intent to do so;
7. Texas RE determined that the violations posed a moderate risk to the reliability of the BPS but did not pose a serious or substantial risk to the reliability of the BPS, as discussed above; and
8. Texas RE reported that there were no other mitigating or aggravating factors or extenuating circumstances that would affect the assessed penalty.

For the foregoing reasons, the NERC BOTCC approved the Settlement Agreement and believes that the assessed penalty of twenty-five thousand dollars (\$25,000) is appropriate for the violations and circumstances at issue, and is consistent with NERC's goal to promote and ensure reliability of the BPS.

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Pursuant to 18 C.F.R. § 39.7(e), the penalty will be effective upon expiration of the 30 day period following the filing of this Notice of Penalty with FERC, or, if FERC decides to review the penalty, upon final determination by FERC.

**Attachments to be Included as Part of this Notice of Penalty**

The attachments to be included as part of this Notice of Penalty are the following documents:

- a) Settlement Agreement by and between Texas RE and EnerNOC executed February 22, 2013, included as Attachment a;
  - a. Disposition of Violation, included as Addendum A to the Settlement Agreement;
- b) Texas RE's Source Document for TRE2012009967, included as Attachment b;
- c) Texas RE's Source Document for TRE2012009968, included as Attachment c;
- d) EnerNOC's Mitigation Plan designated as TREMIT008095 submitted September 25, 2012, included as Attachment d;
- e) EnerNOC's Certification of Mitigation Plan Completion submitted December 20, 2012, included as Attachment e; and
- f) Texas RE's Verification of Mitigation Plan Completion dated January 10, 2013, included as Attachment f.

**A Form of Notice Suitable for Publication<sup>14</sup>**

A copy of a notice suitable for publication is included in Attachment g.

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<sup>14</sup> See 18 C.F.R § 39.7(d)(6).

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**Notices and Communications:** Notices and communications with respect to this filing may be addressed to the following:

<p>Gerald W. Cauley          President and Chief Executive Officer          North American Electric Reliability Corporation          3353 Peachtree Road NE          Suite 600, North Tower          Atlanta, GA 30326          (404) 446-2560</p> <p>Charles A. Berardesco*          Senior Vice President and General Counsel          North American Electric Reliability Corporation          1325 G Street N.W., Suite 600          Washington, DC 20005          (202) 400-3000          (202) 644-8099 – facsimile          charles.berardesco@nerc.net</p> <p>Susan Vincent*          General Counsel          Texas Reliability Entity, Inc.          805 Las Cimas Parkway          Suite 200          Austin, TX 78746          (512) 583-4922          (512) 233-2233 – facsimile          susan.vincent@texasre.org</p> <p>Rashida Caraway*          Manager, Compliance Enforcement          Texas Reliability Entity, Inc.          805 Las Cimas Parkway          Suite 200          Austin, TX 78746          (512) 583-4977          (512) 233-2233 – facsimile          rashida.caraway@texasre.org</p>	<p>Rebecca J. Michael*          Associate General Counsel for Corporate and          Regulatory Matters          Meredith Jolivert*          Attorney          North American Electric Reliability Corporation          1325 G Street N.W.          Suite 600          Washington, DC 20005          (202) 400-3000          (202) 644-8099 – facsimile          rebecca.michael@nerc.net          meredith.jolivert@nerc.net</p> <p>Thomas R. Birmingham*          Director of Regulatory Compliance          EnerNOC, Inc.          101 Federal Street, Suite 1100          Boston, MA 02110          (617) 692-2446          (617) 692-2757 – facsimile          tbirmingham@enernoc.com</p> <p>Michael J. Jewell*          Of Counsel          Haynes and Boone, LLP          600 Congress Avenue, Suite 1300          Austin, TX 78701          (512) 867-8513          (512) 867-8677 – facsimile          michael.jewell@haynesboone.com</p> <p>*Persons to be included on the Commission’s service list are indicated with an asterisk. NERC requests waiver of the Commission’s rules and regulations to permit the inclusion of more than two people on the service list.</p>
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**Conclusion**

NERC respectfully requests that the Commission accept this Notice of Penalty as compliant with its rules, regulations and orders.

Respectfully submitted,

/s/ Rebecca J. Michael

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and Regulatory Matters  
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Charles A. Berardesco  
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cc: EnerNOC, Inc.  
Texas Reliability Entity, Inc.

Attachments

## **Attachment a**

**Settlement Agreement by and between Texas RE and EnerNOC executed February 22, 2013**

**a-1. Disposition of Violation, included as Addendum A to the Settlement Agreement**





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**SETTLEMENT AGREEMENT**  
**OF**  
**TEXAS RELIABILITY ENTITY, INC.**  
**AND**  
**EnerNOC, Inc.**

**I. INTRODUCTION**

1. North American Electric Reliability Corporation (NERC) delegated authority to Texas Reliability Entity, Inc. to become the regional entity for the ERCOT region effective July 1, 2010, pursuant to Section 215(e)(4) of the Federal Power Act. NERC also delegated to Texas Reliability Entity, Inc. the authority and responsibility for the continuation of all compliance monitoring and enforcement activities that it had previously delegated to Texas Regional Entity (a division of Electric Reliability Council of Texas, Inc.). The term "Texas RE" is used herein to refer to both Texas Regional Entity and Texas Reliability Entity, Inc.
2. Texas RE and EnerNOC, Inc. ("EnerNOC") enter into this Settlement Agreement ("Settlement Agreement") to resolve all outstanding issues arising from a preliminary and non-public assessment resulting in Texas RE's determination and findings, pursuant to the North American Electric Reliability Corporation ("NERC") Rules of Procedure, of two alleged violations by EnerNOC. These violations are of NERC Reliability Standard IRO-001-1.1 R8 (NERC Violation ID No. TRE2012009967) and NERC Reliability Standard TOP-001-1 R4 (NERC Violation ID No. TRE2012009968).
3. EnerNOC acknowledges the violations of NERC Reliability Standards IRO-001-1.1 R8 and TOP-001-1 R4 and has agreed to the proposed penalty of \$25,000 to be assessed to EnerNOC, in addition to other remedies and mitigation actions set forth in Sections 11 and 12 of this Settlement Agreement to mitigate the instant violations and facilitate future compliance under the terms and conditions of the Settlement Agreement.

**II. STIPULATION**

4. The facts stipulated herein are stipulated solely for the purpose of resolving, between EnerNOC and Texas RE, the matters discussed herein and do not constitute stipulations or admissions for any other purpose. The attached Disposition Document is incorporated herein in its entirety. EnerNOC and Texas RE hereby stipulate and agree to the following:

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**Background**

5. See Section I of the Disposition Document for a description of EnerNOC.

**Violations of NERC Reliability Standards IRO-001-1.1 R8 and TOP-001-1 R4**

6. See Section II of the Disposition Document for the description of the violations.

**III. PARTIES' SEPARATE REPRESENTATIONS****STATEMENT OF TEXAS RE AND SUMMARY OF FINDINGS<sup>1</sup>**

7. Texas RE has found the following for each violation covered by this Settlement Agreement.
  - a. IRO-001-1.1, R8 & TOP-001-1, R4
    - i. EnerNOC failed to comply with a Reliability Coordinator / Transmission Operator (RC / TOP) directive, issued by ERCOT, to shed Emergency Interruptible Load Service (EILS) load within 10 minutes of ERCOT's request when such action would not have resulted in actions that would violate safety, equipment, regulatory or statutory requirements.
    - ii. The RC / TOP directive that EnerNOC did not comply with was issued by the RC / TOP on February 2, 2011 at 5:49 AM CST. This RC / TOP directive was a Verbal Dispatch Instruction to EnerNOC and the other Emergency Interruptible Load Service (EILS) customers to interrupt the Non-Business Hour load they had contracted with ERCOT to shed. Based on ERCOT recordings of the dispatch phone call, EnerNOC's NOC operator on duty at 5:43 AM CST on February 2, 2011, apparently did pick up the telephone for the dispatch call, but did not initiate dispatch actions in response to the RC / TOP directive.
    - iii. EnerNOC had contracted to interrupt 80 MW of load during Non-Business Hours, the time during which the reliability directive was issued. EnerNOC also contracted to have its load shed within 10 minutes of the issuance of the RC / TOP directive (by 5:59 AM CST) but did not shed it until the 15 minute interval ending at 9:15 AM CST.
    - iv. At 8:50 AM CST the RC / TOP issued another RC / TOP directive by way of a Verbal Dispatch Instruction calling for the shedding of an additional block of load available during the time frame designated Business Hours in the EILS contracts. EnerNOC was under contract to shed 43 MW of

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<sup>1</sup> For the purposes of this Settlement Agreement the Parties are consolidating the description and treatment of these violations since ERCOT is both the Reliability Coordinator and Transmission Operator and these two requirements are identical except for the distinction between Reliability Coordinator and Transmission Operator.

load in the Business Hours in addition to the 80 MW it was contracted to shed during the Non-Business Hours. The total load shed by EnerNOC after the second RC / TOP directive was 123 MW.

- v. During the course of the second RC / TOP directive, EnerNOC became aware that it had not shed the earlier 80 MW. EnerNOC then shed the load as directed by both RC / TOP directives at approximately 8:53 AM CST and was compliant from the 15 minute interval ending at 9:15 AM until it was allowed to restore the load 26 hours later at 10:00 AM on February 3, 2011. Therefore, the violation, which lasted approximately three hours, was due to operator error and affected 80 MWs of load.
8. Texas RE agrees that this agreement is in the best interest of the parties and in the best interest of bulk power system reliability.

#### **STATEMENT OF EnerNOC, Inc.**

9. EnerNOC acknowledges that the facts set forth and agreed to by the parties for purposes of this Agreement constitute possible violations of IRO-001-1.1 R8 and TOP-001-1 R4. EnerNOC does not, however, agree with the characterization of the discovery of this event in Addendum A (Disposition of Violation) as being through a Spot Check. EnerNOC worked hand-in-hand with ERCOT to identify the root causes of the possible violation starting in February 2011. EnerNOC proactively reported this possible violation to the Public Utility Commission of Texas (Texas PUC) in April 2011. The Texas PUC launched an investigation of this possible violation, and EnerNOC fully cooperated with the Texas PUC's investigation. EnerNOC did not wait for the results of that investigation to take corrective actions to prevent further possible violations, but instead took the steps outlined in the Settlement Agreement and the Mitigation Plan prior to the resolution of the Texas PUC's proceeding. The Texas PUC's investigation culminated in a Settlement Agreement signed by the parties on February 1, 2012. This Settlement Agreement approved the corrective actions taken by EnerNOC and resulted in a substantial administrative penalty payment by EnerNOC to the Texas PUC. Because ERCOT is a Reliability Coordinator and Transmission Operator under NERC purview, and because the Texas RE also is a contractor to the Texas PUC on reliability issues, EnerNOC acted under the assumption that it had self-reported this possible violation from NERC's perspective.

As noted in Section V 3 of the Disposition Document, at the time of the violations, EnerNOC had a significant level of compliance-related activity occurring throughout the enterprise. However, this effort was not being managed in a centralized, programmatic way. Therefore, EnerNOC has hired a Director of Regulatory Compliance to focus on, among other things, developing a centralized 2013 Compliance Plan for its ERCOT and Texas RE-covered activities. It is anticipated that this plan will address the following compliance-related activities: governance, risk management, rules, policies and procedures, communication and training, controls and monitoring, reporting, information management, and culture and performance management.

10. Although EnerNOC acknowledges the violation, EnerNOC has agreed to enter into this Settlement Agreement with Texas RE to avoid extended litigation with respect to the matters described or referred to herein, to avoid uncertainty, and to effectuate a complete and final resolution of the issues set forth herein. EnerNOC agrees that this agreement is in the best interest of the parties and in the best interest of maintaining a reliable electric infrastructure.

#### IV. MITIGATING ACTIONS, REMEDIES AND SANCTIONS

11. Texas RE and EnerNOC agree that EnerNOC has completed and Texas RE has verified completion of the mitigating actions captured in Section IV of the Disposition Document and detailed in Section D of the Mitigation Plan. The Mitigating Actions, Remedies and Sanctions are discussed in detail in both the Disposition Document and Mitigation Plan.
12. For purposes of settling any and all disputes arising from Texas RE's assessment into the matters determined by this Spot Check, Texas RE and EnerNOC agree that on or before the effective date of this Agreement, EnerNOC has taken the following actions beyond those referenced in Section 11. above<sup>2</sup>.

Activity	Dates to be completed
i. Paid to the Texas PUC the amount of \$45,000 pursuant to the Settlement Agreement with the Texas PUC to address the same incident that is the subject of this proceeding.	Completed 02/01/2012
ii. EnerNOC worked with ERCOT Staff to support expanded ERCOT communications of dispatch instructions to include an Extensible Markup Language (XML) notification. EnerNOC worked proactively with ERCOT Staff to support the development of NPRR 379 that was approved on September 20, 2011. EnerNOC provided, as part of stakeholder process, technical expertise to enhance ERCOT's ability to dispatch instructions using XML message notification, via the internet, in addition to the current voice dispatch instruction (VDI). This additional means of communication will help ensure that all entities receiving dispatch instructions from ERCOT will have an additional, automated means by which to receive those instructions and potentially initiate appropriate responses.	Completed 09/12/2012
iii. EnerNOC implemented the ability to receive XML messages from ERCOT in compliance with NPRR 379 and completed testing with ERCOT prior to October 1, 2012.	Completed 09/12/2012
iv. Regular employee training throughout the year: EnerNOC conducts regular employee training on NOC dispatch procedures following receipt of ERCOT EILS (now ERS) dispatch instructions. This training helps ensure ongoing	Ongoing

<sup>2</sup> Actions described here in Section 12 are also captured in Section IV of the Disposition Document and Section E of the Mitigation Plan.



compliance with ERCOT requirements.	
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13. It is understood that Texas RE staff shall audit the progress of mitigation plans and any other remedies of this Agreement, including, but not limited to site inspection, interviews, and request other documentation to validate progress and/or completion of the mitigation plans and any other remedies of this Agreement. Texas RE shall reasonably coordinate audits and information requests with EnerNOC related to this Agreement.
14. Texas RE staff also considered the specific facts and circumstances of the violations and EnerNOC's actions in response to the violations in determining a proposed penalty that meets the requirement in Section 215 of the Federal Power Act that "[a]ny penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner."<sup>3</sup> The factors considered by Texas RE staff in the determination of the appropriate penalty are set forth in Section V of the Disposition Document.
15. Based on the above factors, as well as the mitigation actions and preventative measures taken, EnerNOC shall pay the monetary penalty of \$25,000 to Texas RE within thirty days after the Agreement is either approved by the Federal Energy Regulatory Commission or by operation of law, and Texas RE shall notify NERC if the payment is not received.
16. The estimated costs to EnerNOC to implement the agreed to actions beyond those necessary to come into compliance with the Standard, as discussed above, are \$45,000. Texas RE may audit and inspect financial records to validate actual expenditures with estimates in this Settlement Agreement. Expenditures associated with other activities described in Paragraph 12 were incurred, but were not separately tracked during their implementation. Therefore, EnerNOC is not able to quantify these expenditures.
17. Failure to make a timely penalty payment or to comply with any of the terms and conditions agreed to herein, or any other conditions of this Settlement Agreement, shall be deemed to be either the same alleged violations that initiated this Settlement and/or additional violation(s) and may subject EnerNOC to new or additional enforcement, penalty or sanction actions in accordance with the NERC Rules of Procedure.
18. If EnerNOC does not make the monetary penalty payment above at the times agreed by the parties, interest payable to Texas RE will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above. EnerNOC shall retain all rights to defend against such additional enforcement actions in accordance with NERC Rules of Procedure.

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<sup>3</sup> 16 U.S.C. § 824o(e)(6).

**V. ADDITIONAL TERMS**

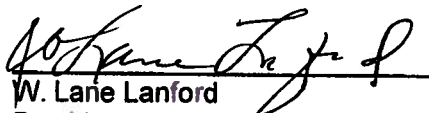
19. The signatories to the Settlement Agreement agree that they enter into the Settlement Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Texas RE or EnerNOC has been made to induce the signatories or any other party to enter into the Settlement Agreement.
20. Texas RE shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify Texas RE and EnerNOC of changes to the settlement that would result in approval. If NERC rejects the settlement, NERC will provide specific written reasons for such rejection and Texas RE will attempt to negotiate a revised settlement agreement with EnerNOC including any changes to the settlement specified by NERC. If a settlement cannot be reached, the enforcement process shall continue to conclusion. If NERC approves the settlement, NERC will (i) report the approved settlement to the Commission for the Commission's review and approval by order or operation of law and (ii) publicly post this Settlement Agreement.
21. This Settlement Agreement shall become effective upon the Commission's approval of the Settlement Agreement by order or operation of law as submitted to it or as modified in a manner acceptable to the parties.
22. EnerNOC agrees that this Settlement Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and EnerNOC waives its right to further hearings and appeal, unless and only to the extent that EnerNOC contends that any NERC or Commission action on the Settlement Agreement contains one or more material modifications to the Settlement Agreement. Texas RE reserves all rights to initiate enforcement, penalty or sanction actions against EnerNOC in accordance with the NERC Rules of Procedure in the event that EnerNOC fails to comply with the Mitigation Plan and compliance program agreed to in this Settlement Agreement. In the event EnerNOC fails to comply with any of the stipulations, remedies, sanctions or additional terms, as set forth in this Settlement Agreement, Texas RE will initiate enforcement, penalty, or sanction actions against EnerNOC to the maximum extent allowed by the NERC Rules of Procedure, up to the maximum statutorily allowed penalty. Except as otherwise specified in this Settlement Agreement, EnerNOC shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.
23. EnerNOC consents to the use of Texas RE's determinations, findings, and conclusions set forth in this Agreement for the purpose of assessing the factors, including the factor of determining the company's history of violations, in accordance with the NERC Sanction Guidelines and applicable Commission orders and policy statements. Such use may be in any enforcement action or compliance proceeding undertaken by NERC and/or any Regional Entity; provided, however, that EnerNOC



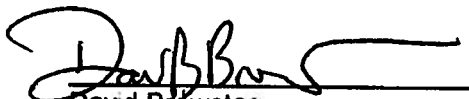
does not consent to the use of the specific acts set forth in this Settlement Agreement as the sole basis for any other action or proceeding brought by NERC and/or Texas RE, nor does EnerNOC consent to the use of this Settlement Agreement by any other party in any other action or proceeding.

24. 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 Settlement Agreement on the entity's behalf.
25. The undersigned representative of each party affirms that he or she has read the Settlement Agreement, that all of the matters set forth in the Settlement Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Settlement Agreement is entered into by such party in express reliance on those representations, provided, however, that such affirmation by each party's representative shall not apply to the other party's statements of position set forth in Section III PARTIES' SEPARATE REPRESENTATIONS of this Settlement Agreement.
26. Texas RE reserves all rights to initiate enforcement, penalty or sanction actions against EnerNOC in accordance with the NERC Rules of Procedure in the event that EnerNOC fails to comply with the terms of this Settlement Agreement. EnerNOC shall retain all rights to defend against such enforcement actions in accordance with the NERC Rules of Procedure.
27. EnerNOC consents to the use of Texas RE's determinations, findings, and conclusions set forth in this Settlement Agreement for the purpose of assessing EnerNOC's history of violations of the NERC Reliability Standards in accordance with the NERC Sanction Guidelines and applicable Commission orders and policy statements. Such use may be in any enforcement action or compliance proceeding undertaken by NERC and/or any Regional Entity involving the Reliability Standards described herein, provided, however, that EnerNOC does not consent to the use of the specific acts set forth in this Settlement Agreement or the Texas RE's determinations, findings, and conclusions set forth in this Settlement Agreement as the sole basis for any other action or proceeding brought by NERC and/or Texas RE, nor does EnerNOC consent to the use of this Settlement Agreement by any other party in any other action or proceeding.
28. The Settlement Agreement may be signed in counterparts.
29. This Settlement Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

  
W. Lane Lanford  
President and CEO  
Texas Reliability Entity, Inc.

2/22/13  
Date

  
David Brewster  
President  
EnerNOC, Inc.

2/21/2013  
Date



## Addendum A

### DISPOSITION OF VIOLATION<sup>1</sup>

<b>NERC TRACKING NO.</b> TRE2012009967 (IRO-001-1.1 R8); TRE2012009968 (TOP-001-1 R4)	<b>REGIONAL ENTITY TRACKING NO.</b>	<b>NOC#</b>  NOC-1825
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<b>REGISTERED ENTITY</b> EnerNOC, Inc.	<b>NERC REGISTRY ID.</b> NCR11021
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**REGIONAL ENTITY**  
 Texas Reliability Entity, Inc. ("Texas RE")

### I. REGISTRATION INFORMATION

**ENTITY IS REGISTERED FOR THE FOLLOWING FUNCTIONS (BOTTOM ROW INDICATES REGISTRATION DATE):**

BA	DP	GO	GOP	IA	LSE	PA	PSE	RC	RP	RSG	TO	TOP	TP	TSP
					X									
					4/12/2010									

\* Violation applies to shaded functions

#### DESCRIPTION OF THE REGISTERED ENTITY

EnerNOC is a leading demand response, energy efficiency, emissions management, and energy advisory services provider. As of June 30, 2012, EnerNOC managed over 8,300 megawatts of demand response capacity across a commercial, institutional and industrial customer base of approximately 5,600 accounts and approximately 13,000 sites throughout multiple electric power grids. EnerNOC actively participates in a range of capacity, energy, and ancillary services markets, and is an active Aggregator of Retail Customers (ARC) in the demand response programs of ISO New England, New York ISO, ERCOT and PJM. In

<sup>1</sup> For purposes of this document and attachments hereto, each violation at issue is described as a "violation," regardless of its procedural posture and whether it was a possible, alleged or confirmed violation.

addition, EnerNOC partners with utilities both inside ISO/RTO regions and in bilateral markets to provide cost effective and reliable demand side management services to utilities and their customers.

EnerNOC is registered as a Qualified Scheduling Entity (QSE), as defined by ERCOT Protocol § 2.1, and registered as an Entity B Load Serving Entity (LSE) per Attachment A of TRE's LSE Coordinated Functional Registration Declaration. On February 2-3, 2011, EnerNOC was interconnected to ERCOT's system via participation in the Emergency Interruptible Load Service's ("EILS") program, and had 123 MW of EILS in ERCOT during the period of the violation. In its role as QSE in ERCOT, EnerNOC was responsible at that time for complying with the applicable NERC CIP requirements set forth in Texas RE's LSE Coordinated Functional Registration (CFR) List.<sup>2</sup>

## II. VIOLATION INFORMATION

RELIABILITY STANDARD	REQUIREMENT(S)	SUB-REQUIREMENT(S)	VRF(S)	VSL(S)
IRO-001-1.1	R8		HIGH	Severe
TOP-001-1	R4		HIGH	Severe

The purpose of IRO-001-1.1, as stated in the Standard is:

Reliability Coordinators must have the authority, plans, and agreements in place to immediately direct reliability entities within their Reliability Coordinator Areas to re-dispatch generation, reconfigure transmission, or reduce load to mitigate critical conditions to return the system to a reliable state. If a Reliability Coordinator delegates tasks to others, the Reliability Coordinator retains its responsibilities for complying with NERC and regional standards. Standards of conduct are necessary to ensure the Reliability Coordinator does not act in a manner that favors one market participant over another.

The purpose of TOP-001-1, as stated in the Standard is:

To ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency.

### **TEXT OF RELIABILITY STANDARD AND REQUIREMENT(S)/SUB-REQUIREMENT(S)**

IRO-001-1.1, R8:

**R8. Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load-Serving Entities, and Purchasing-Selling Entities shall comply**

<sup>2</sup> The following is a list of NERC CIP requirements that EnerNOC was responsible for complying with at the time of the incident: CIP-001-1 R1; CIP-001-1 R2; CIP-001-1 R3; CIP-001-1 R4; IRO-001-1 R8; IRO-004-1 R4; MOD-020-0 R1; TOP-001-1 R4; and TOP-002-2 R3

with Reliability Coordinator directives unless such actions would violate safety equipment, or regulatory or statutory requirements. Under these circumstances, the Transmission Operator, Balancing Authority, Generator Operator, Transmission Service Provider, Load-Serving Entity, or Purchasing-Selling Entity shall immediately inform the Reliability Coordinator of the inability to perform the directive so that the Reliability Coordinator may implement alternate remedial actions.

TOP-001-1, R4:

**R4.** Each Distribution Provider and Load Serving Entity shall comply with all reliability directives issued by the Transmission Operator, including shedding firm load, unless such actions would violate safety, equipment, regulatory or statutory requirements. Under these circumstances, the Distribution Provider or Load Serving Entity shall immediately inform the Transmission Operator of the inability to perform the directive so that the Transmission Operator can implement alternate remedial actions.

### **VIOLATION DESCRIPTION<sup>3</sup>**

IRO-001-1.1, R8 & TOP-001-1, R4:

EnerNOC failed to comply with a Reliability Coordinator / Transmission Operator (RC / TOP) directive, issued by ERCOT, to shed Emergency Interruptible Load Service (EILS) load within 10 minutes of ERCOT's request when such action would not have resulted in actions that would violate safety, equipment, regulatory or statutory requirements.

The RC / TOP directive that EnerNOC did not comply with was issued by the RC / TOP on February 2, 2011 at 5:49 AM CST. This RC / TOP directive was a Verbal Dispatch Instruction to EnerNOC and the other Emergency Interruptible Load Service (EILS) customers to interrupt the Non-Business Hour load they had contracted with ERCOT to shed. Based on ERCOT recordings of the dispatch phone call, the EnerNOC Network Operations Center ("NOC") operator on duty at 5:43 AM CST on February 2, 2011, apparently did pick up the telephone for the dispatch call, but did not initiate dispatch actions in response.

EnerNOC had contracted to interrupt 80 MW of load during Non-Business Hours, the time during which the reliability directive was issued. EnerNOC also had contracted to have its load shed within 10 minutes of the issuance of the RC / TOP directive (by 5:59 AM CST) but did not shed it until the 15 minute interval ending at 9:15 AM CST.

At 8:50 AM CST the RC / TOP issued another RC / TOP directive by way of a Verbal Dispatch Instruction calling for the shedding of an additional block of load available during the time frame designated Business Hours in the EILS contracts. EnerNOC was under contract to shed 43 MW of load in the Business Hours in addition to the 80 MW it

<sup>3</sup> For the purposes of this Settlement Agreement, the Parties are consolidating the description and treatment of these two violations, given ERCOT is both the Reliability Coordinator and Transmission Operator and these two requirements are identical except for the distinction between Reliability Coordinator and Transmission Operator.



was contracted to shed during the Non-Business Hours. The total load shed by EnerNOC after the second RC / TOP directive was 123 MW.

During the course of the second RC / TOP directive EnerNOC became aware that it had not shed the earlier 80 MW. EnerNOC then shed the load as directed by both RC / TOP directives at approximately 8:53 AM CST, and was compliant from the 15 minute interval ending at 9:15 AM until it was allowed to restore the load 26 hours later at 10:00 AM on February 3, 2011. Therefore, the violation, which lasted approximately three hours, was due to operator error, and affected 80 MWs of load.

### **RELIABILITY IMPACT STATEMENT- POTENTIAL AND ACTUAL**

This violation occurred during a time that the ERCOT system was stressed. Reserve margins in ERCOT fell during the morning of February 2, 2012 due to cold weather related generating unit forced outages and de-ratings. This resulted in ERCOT declaring an Energy Emergency Alert - 3 (EEA-3) at 05:43 that morning and making a hot-line call to inform entities in ERCOT of the EEA-3 and on-line reserve levels. An EEA-3 is declared when ERCOT has difficulty maintaining a system frequency of 59.8 Hz and firm load will need to be shed. During the call, ERCOT issued the first directive to shed 1000 MW of firm load. ERCOT also issued the directive to EILS providers (including EnerNOC) at 05:49 to interrupt their non-business hour load. Per the regional ERCOT Protocols and Operating Guides, the firm load had 30 minutes to meet their load shed obligation and the EILS providers had 10 minutes to meet their load shed obligation. At 06:04, 21 minutes after issuing its first order for 1000 MW of firm load shed, ERCOT issued another directive shedding an additional 1000 MW of firm load. At 06:23, 19 minutes after issuing the second order for 1000 MW of firm load shed, ERCOT issued a third load shed directive for an additional 2000 MW firm load (4000 MW total). ERCOT issued orders from 07:57 to 13:07 that gradually restored the firm load. At 08:50 ERCOT issued a directive for EILS providers to shed their business hours load in addition to the earlier non-business hours load shed. ERCOT had the EILS providers hold their load shed until the next day at 10:00.

Texas RE determined that these violations did not pose a serious or substantial risk to the bulk power system, but did have a moderate impact because the ERCOT system had just declared an EEA3 (unable to maintain 59.8 Hz, firm load to be shed) condition and all resources were necessary to keep the curtailment of firm load to a minimum. However, this resource was only 80 MW and was delayed from service for three hours and fifteen minutes.

**IS THERE A SETTLEMENT AGREEMENT**

Yes  No

**WITH RESPECT TO THE ALLEGED/CONFIRMED VIOLATION, REGISTERED ENTITY**

Neither admits nor denies it (settlement only)   
Acknowledges it   
Does not contest it (Including within 30 days)



**WITH RESPECT TO THE ASSESSED PENALTY OR SANCTION, REGISTERED ENTITY**

 Accepts it 
**III. DISCOVERY INFORMATION**
**METHOD OF DISCOVERY**

Self-Report	<input type="checkbox"/>
Self-Certification	<input type="checkbox"/>
Compliance Audit	<input type="checkbox"/>
Compliance Violation Investigation	<input type="checkbox"/>
Spot Check	<input checked="" type="checkbox"/>
Complaint	<input type="checkbox"/>
Periodic Data Submittal	<input type="checkbox"/>
Exception Reporting	<input type="checkbox"/>

**DURATION DATE(S)** 02/02/2011

**DATE DISCOVERED BY OR REPORTED TO REGIONAL ENTITY** 03/30/2012

**Is the violation still occurring** Yes  No 
**Explain if yes**
**Remedial Action Directive issued** Yes  No 
**IV. MITIGATION INFORMATION**
**MITIGATION PLAN NO.** TREMIT008095

**Date Submitted to Regional Entity** 09/25/2012

**Date Accepted by Regional Entity** 09/25/2012

**Date approved by NERC** 11/08/2012

**Date provided to FERC** 11/08/2012

**Identify and explain all prior versions that were accepted or rejected, if applicable**  
 N/A

**MITIGATION PLAN COMPLETED** Yes  No 
**Date of Certification Letter** 1/10/2013

**Certified as complete by Registered Entity as of** 7/22/2011

**Date of Verification Letter**

**Verified actually complete by Regional Entity as of** 1/10/2013

**Actions taken to mitigate the issue and prevent recurrence**

EnerNOC was able to end the violation by dispatching the NBH EILS resources at 8:53 am CST on February 2, 2011. EnerNOC was in the process of determining whether it had received ERCOT's request to deploy its Non-Business Hours demand response resources when EnerNOC received the order to deploy its Business Hours 1 resources. At that time, EnerNOC deployed its non-Business resources as well as its Business Hours 1 resources. EnerNOC also took the tasks and actions described below to prevent similar failures in the future. Below is the list of remediation/mitigation steps put in place following the February 2nd dispatch failure. These will be listed separately as milestones in Section D.3 of EnerNOC's Mitigation Plan.

- All NOC operators were retrained on ERCOT emergency procedures that trigger an EILS event.
- EnerNOC created an electronic call logging system (written) and procedures to ensure that all ERCOT calls are logged in the system.
- EnerNOC developed redundancy in dispatch instructions by emailing the call log to appropriate NOC team members as soon as a call log is saved
- EnerNOC built a phone recording system to record all calls on the ERCOT phone line that enabled the ability to play back the call.
- EnerNOC developed a system to email a link to the voice file after each phone call ends to ensure that appropriate NOC members have immediate access to the recorded call.
- EnerNOC built better tools to continually monitor grid conditions as reported on the ERCOT website and display this information in the NOC 24/7. Displayed information includes the ERCOT Energy Price Map, Physical Responsive Capability, and Frequency.

**List of evidence reviewed by Regional Entity to evaluate completion of Mitigation Plan or Milestones (for cases in which mitigation is not yet completed, list evidence reviewed for completed milestones)**

Completed ERCOT EILS training (1).msg  
Completed ERCOT EILS training (2).msg  
Completed ERCOT EILS training (3).msg  
Completed ERCOT EILS training (4).msg  
Completed ERCOT EILS training (5).msg  
Completed ERCOT EILS training (6).msg  
Completed ERCOT EILS training (7).msg  
ERCOT EILS Checklist.XLS  
ERCOT EILS Dispatch Training.msg  
ERCOT STaT training logs.xlsx

ERCOT Wallboard Visuals.htm  
ERCOT Wallboard Visuals.msg  
[ERCOT Wallboard Visuals\_files]  
ERCOT Wallboard.jpg  
File Stamped Copy of EnerNOC's Affidavit pdf  
FW ERCOT Grid Conditions DL.msg  
FW ERCOT Phone Recordings.msg  
FW Introducing...the ERCOT Call Log.msg  
FW New Voice Recording from ERCOT System.msg  
FW Off-Boarding Request Approved for Sherwyn Moodley effective 482011.msg  
ERCOT Wallboard Visuals\_files - image001.jpg  
ERCOT Wallboard Visuals\_files - image002.jpg  
ERCOT Wallboard Visuals\_files - image003.png  
ERCOT Wallboard Visuals\_files - image004.jpg  
ERCOT Wallboard Visuals\_files - image005.jpg  
New Operator Hotline Call Message received on line Taylor OPX.txt  
PUC Order and Settlement (Docket 40152).pdf  
Sherwyn Moodley - HRB Screenshot.pdf  
EnerNOC - XML Testing.htm  
ERCOT STaT training logs v2.pdf

## V. PENALTY INFORMATION

**ASSESSED PENALTY OR SANCTION**

**\$25,000**

### **(1) Registered Entity's compliance history**

**Previous filed violations of any of the Reliability Standard(s) or Requirement(s) thereunder**

Yes  No

**List violations and status**

**Additional comments**

**Previously filed violations of other Reliability Standard(s) or Requirement(s) thereunder**

Yes  No

**List violations and status**

**Additional comments**

**(2) The degree and quality of cooperation by the Registered Entity**Full cooperation Yes  No 

If no, explain

**(3) The presence and quality of the Registered Entity's Compliance Program**Is there a documented compliance program  
Yes  No  Undetermined **Explain**

At the time of the violations, EnerNOC did not have a centralized compliance program. However, in response to a compliance audit of market activity in ISO-New England and New York ISO by the Federal Energy Regulatory Commission in 2011 (FERC Docket No. PA11-20-000), EnerNOC continues to improve its centralized compliance program. EnerNOC has engaged an external consultant to assist in developing this program consistent with FERC's guidelines. EnerNOC also has recently hired a Director of Regulatory Compliance to lead the company's efforts in this area, and has budgeted between \$500,000-\$700,000 for compliance activities in 2013.

At the time of the violations, EnerNOC was undertaking significant compliance-related activities throughout the enterprise within each of its respective functional organizations. This decentralized approach utilized numerous policies, manuals, and training materials to guide employee actions. While EnerNOC recognizes the benefits of standardizing and centralizing its approach to compliance, the company's efforts in 2011 did foster a compliance ethic that, among other things, resulted in a timely resolution to the missed dispatch in question.

Examples of compliance-related materials in use by EnerNOC's Network Operations Center during February 2011, include:

- ERCOT EILS Deviations. Process Manual
- Event Checklist Process Manual
- Event Management Process Manual
- Action Management Process Manual
- Program Dry Runs
- Skills Testing and Training

**Explain Senior Management's Role and involvement with respect to the Registered Entity's Compliance Program, including whether senior management takes actions that support the compliance program, such as training, compliance as factor in employee evaluations, or otherwise.**

Per above, Senior Management historically has supported compliance-related activities at EnerNOC. Currently, Senior Management fully supports the centralization and improvements to the compliance program at EnerNOC.

**(4) Any attempt by the Registered Entity to conceal the violation(s) or information needed to review, evaluate, or investigate the violation**

Yes  No

Explain if Yes

**(5) Any evidence the violation(s) were intentional**

Yes  No

Explain if Yes

**(6) Any other mitigating factors for consideration**

Yes  No

Explain if Yes

**(7) Any other aggravating factors for consideration**

Yes  No

Explain if Yes

**(8) Any other extenuating circumstances**

Yes  No

Explain if Yes

**OTHER RELEVANT INFORMATION**

**Notice of Alleged Violation issued**

Date

Or N/A

**Settlement discussions commenced**

Date

Or N/A

04/17/2012

**Notice of Confirmed Violation issued**

Date

Or N/A

**Supplemental Record information**

Date(s)

Or N/A

**Registered Entity response contested**

Findings

Penalty

Both

Did not contest

**Hearing Requested**

Date

Outcome

Appeal Requested

Yes

No

**EXHIBITS**

Violation Detail Report (OATI)

Mitigation Plans TRE2012009967, TRE2012009968

Certificate of Completion of Mitigation Plans TRE2012009967, TRE2012009968 Verification of Mitigation Plans TRE2012009967, TRE2012009968

**Attachment b**

**Texas RE's Source Document for  
TRE2012009967**



## Violation - Discovery Record

Registered Entity: EnerNOC, Inc.  
NERC Registry ID: NCR11021

NERC Violation ID: TRE2012009967  
Discovery Method: Spot Check

Date Submitted: March 30, 2012  
Region Contact:

Phone: N/A Email: N/A

Standard: IRO-001-1.1 - Reliability Coordination - Responsibilities and Authorities

Purpose: Reliability Coordinators must have the authority, plans, and agreements in place to immediately direct reliability entities within their Reliability Coordinator Areas to re-dispatch generation, reconfigure transmission, or reduce load to mitigate critical conditions to return the system to a reliable state. If a Reliability Coordinator delegates tasks to others, the Reliability Coordinator retains its responsibilities for complying with NERC and regional standards. Standards of conduct are necessary to ensure the Reliability Coordinator does not act in a manner that favors one market participant over another.

Requirement: R8

Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load-Serving Entities, and Purchasing-Selling Entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements. Under these circumstances, the Transmission Operator, Balancing Authority, Generator Operator, Transmission Service Provider, Load-Serving Entity, or Purchasing-Selling Entity shall immediately inform the Reliability Coordinator of the inability to perform the directive so that the Reliability Coordinator may implement alternate remedial actions.

Violated Sub-Req(s):

Violated Function(s): LSE

Init Determ a Vltn: March 30, 2012

Begin Date of Vltn: February 02, 2011

End Date: February 02, 2011

Notified of Vltn on: March 30, 2012

Potential Impact to BES: The potential impact to the BES was material because EnerNOC did not adequately respond to the directive from ERCOT ISO (Reliability Coordinator) to deploy Emergency Interruptible Load Service (EILS), and thus ERCOT ISO did not receive the full benefits of the EILS.

Brief Vltn Descr. & Finding:

Cause: On 02/02/2011, EnerNOC did not adequately respond to the Reliability Coordinator's initial directive (05:49 Verbal Dispatch Instruction) to deploy Emergency Interruptible Load Service (EILS).

Time Frame of Possible Violation:

02/02/11, from 05:59 until interval ending at 09:15.

Alleged Violation:

Registered Entity  
Report/Response:

Risk Factor: High

Severity Level: VSL - Severe

Factual Basis:

**Attachment c**

**Texas RE's Source Document for  
TRE2012009968**

## Violation - Discovery Record

Registered Entity: EnerNOC, Inc.  
NERC Registry ID: NCR11021

NERC Violation ID: TRE2012009968

Discovery Method: Spot Check

Date Submitted: March 30, 2012

Region Contact:

Phone: N/A Email: N/A

Standard: TOP-001-1 - Reliability Responsibilities and Authorities

Purpose: To ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency.

Requirement: R4

Each Distribution Provider and Load Serving Entity shall comply with all reliability directives issued by the Transmission Operator, including shedding firm load, unless such actions would violate safety, equipment, regulatory or statutory requirements. Under these circumstances, the Distribution Provider or Load Serving Entity shall immediately inform the Transmission Operator of the inability to perform the directive so that the Transmission Operator can implement alternate remedial actions.

Violated Sub-Req(s):

Violated Function(s): LSE

Init Determ a Vltn: March 30, 2012

Begin Date of Vltn: February 02, 2011

End Date: February 02, 2011

Notified of Vltn on: March 30, 2012

Potential Impact to BES: The potential impact to the BES was material because EnerNOC did not adequately respond to the directive from ERCOT ISO (Transmission Operator) to deploy Emergency Interruptible Load Service (EILS), and thus ERCOT ISO did not receive the full benefits of the EILS.

Brief Vltn Descr. & Finding:

Cause: On 02/02/2011, EnerNOC did not adequately respond to the Transmission Operator's initial directive (05:49 Verbal Dispatch Instruction) to deploy Emergency Interruptible Load Service (EILS).

Time Frame of Possible Violation:

02/02/11, from 05:59 until interval ending at 09:15.

Alleged Violation:

Registered Entity  
Report/Response:

Risk Factor: High

Severity Level: VSL - Severe

Factual Basis:

## **Attachment d**

**EnerNOC's Mitigation Plan designated as  
TREMIT008095 submitted September 25,  
2012**

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## Mitigation Plan

Registered Entity: EnerNOC, Inc.

Mit Plan Code	NERC Violation ID	Requirement	Violation Validated On	Mit Plan Version
TREMIT008095	TRE2012009967	IRO-001-1.1 R8	04/16/2012	1
TREMIT008095	TRE2012009968	TOP-001-1 R4	04/16/2012	1

Mitigation Plan Submitted On: September 25, 2012

Mitigation Plan Accepted On: September 25, 2012

Mitigation Plan Proposed Completion Date: July 22, 2011

Actual Completion Date of Mitigation Plan:

Mitigation Plan Certified Complete by ENRNOC001

Mitigation Plan Completion Verified by TRE On:

Mitigation Plan Completed? (Yes/No): No

## Section A: Compliance Notices

Section 6.2 of the NERC CMEP sets forth the information that must be included in a Mitigation Plan. The Mitigation Plan must include:

- (1) The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section B.
  - (2) The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
  - (3) The cause of the Alleged or Confirmed Violation(s).
  - (4) The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
  - (5) The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed violation(s).
  - (6) The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
  - (7) A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
  - (8) Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined or recommended to the applicable governmental authorities for not completing work associated with accepted milestones.
  - (9) Any other information deemed necessary or appropriate.
  - (10) The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self Certification or Self Reporting submittals.
  - (11) This submittal form may be used to provide a required Mitigation Plan for review and approval by regional entity(ies) and NERC.
- The Mitigation Plan shall be submitted to the regional entity(ies) and NERC as confidential information in accordance with Section 1500 of the NERC Rules of Procedure.
  - This Mitigation Plan form may be used to address one or more related alleged or confirmed violations of one Reliability Standard. A separate mitigation plan is required to address alleged or confirmed violations with respect to each additional Reliability Standard, as applicable.
  - If the Mitigation Plan is accepted by regional entity(ies) and approved by NERC, a copy of this Mitigation Plan will be provided to the Federal Energy Regulatory Commission or filed with the applicable governmental authorities for approval in Canada.
  - Regional Entity(ies) or NERC may reject Mitigation Plans that they determine to be incomplete or inadequate.
  - Remedial action directives also may be issued as necessary to ensure reliability of the bulk power system.
  - The user has read and accepts the conditions set forth in these Compliance Notices.



Section B: Registered Entity Information

B.1 Identify your organization:

Entity Name: EnerNOC, Inc.

NERC Compliance Registry ID: NCR11021

Address: 101 Federal St., Suite 1100  
Boston MA 02110

B.2 Identify the individual in your organization who will serve as the Contact to the Regional Entity regarding this Mitigation Plan. This person shall be technically knowledgeable regarding this Mitigation Plan and authorized to respond to Regional Entity regarding this Mitigation Plan:

Name: Thomas R. Birmingham

Title: Director, Regulatory Compliance

Email: tbirmingham@enernoc.com

Phone: 617-692-2446

**Section C: Identification of Reliability Standard Violation(s) Associated with this Mitigation Plan**

C.1 This Mitigation Plan is associated with the following violation(s) of the reliability standard listed below:

Violation ID	Date of Violation	Requirement
Requirement Description		
TRE2012009967	02/02/2011	IRO-001-1.1 R8
Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load-Serving Entities, and Purchasing-Selling Entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements. Under these circumstances, the Transmission Operator, Balancing Authority, Generator Operator, Transmission Service Provider, Load-Serving Entity, or Purchasing-Selling Entity shall immediately inform the Reliability Coordinator of the inability to perform the directive so that the Reliability Coordinator may implement alternate remedial actions.		
TRE2012009968	02/02/2011	TOP-001-1 R4
Each Distribution Provider and Load Serving Entity shall comply with all reliability directives issued by the Transmission Operator, including shedding firm load, unless such actions would violate safety, equipment, regulatory or statutory requirements. Under these circumstances, the Distribution Provider or Load Serving Entity shall immediately inform the Transmission Operator of the inability to perform the directive so that the Transmission Operator can implement alternate remedial actions.		

C.2 Brief summary including the cause of the violation(s) and mechanism in which it was identified above:

1. EnerNOC is a Qualified Scheduling Entity (QSE), as defined by ERCOT Protocol Â§ 2.1 and a Load Serving Entity (LSE).
2. EnerNOC was under contract with ERCOT to provide Emergency Interruptible Load Service (EILS) on February 2-3, 2011.
3. ERCOT Protocols require a QSEâ€™s portfolio to curtail its load within 10 minutes of ERCOTâ€™s request.
4. At 5:43 am CST on February 2, 2011, ERCOT declared an Energy Emergency Alert Level 3 (EEA3) and ordered the dispatch of Non-Business Hours (NBH) EILS.
5. Staff in EnerNOCâ€™s Boston Network Operations Center (NOC) failed to deploy NBH EILS within 10 minutes of ERCOTâ€™s request.
6. The initial identification of the potential violation occurred when ERCOT dispatched its Business Hours (BH) EILS at 8:50 am CST. During that BH dispatch phone call from ERCOT, EnerNOC ascertained that it should have dispatched NBH previously. As a result, EnerNOC dispatched both NBH and BH EILS resources at 8:53 am CST. EnerNOC did not fully meet its load reduction obligation until the interval ending at 9:15 am CST. Therefore, the violation lasted approximately three hours.
7. The cause of the potential violation was operator error. Based on ERCOT recordings of the dispatch phone call the NOC operator on duty at 5.43 am CST on February 2, 2011 apparently did pick up the telephone for the dispatch call, but did not initiate dispatch actions in response.
8. The potential violation affected 80 MWs of load that should have been dropped but were not dropped, thus depriving the ERCOT operators of 80 MWs of load reduction.

C.3 Provide any relevant information regarding the identification of the violation(s) associated with this Mitigation Plan:

EnerNOC identified the potential violation at 8:50 am CST on February 2, 2011 when ERCOT called to dispatch BH EILS resources. At that time, EnerNOC dispatched both NBH and BH EILS resources, thereby ending the potential violation.

EnerNOC worked diligently with the staff of ERCOT to determine the cause of the missed dispatch. Relying on the sworn statement of its operator on duty at the time the NBH dispatch came out, EnerNOC initially believed that there was a malfunction in the phone lines or communication technology such that EnerNOC never received the original dispatch call. However in a subsequent meeting between EnerNOC and ERCOT staff at ERCOT headquarters on March 29, 2011, ERCOT provided and played recordings of the dispatch calls that demonstrated someone had signed on and responded for EnerNOC, thereby indicating that it was not a communication system error but an operator error. EnerNOC immediately began working with ERCOT to put in place measures to prevent a reoccurrence (see mitigation plan

details below).

In addition, immediately after determining that there was an operator error that caused the missed dispatch, EnerNOC voluntarily reached out to the Public Utility Commission of Texas (PUCT) to report to their enforcement division that EnerNOC had missed the dispatch order. EnerNOC subsequently met with PUCT Enforcement Staff on July 14, 2011 to discuss the cause of the missed dispatch and the mitigation measures EnerNOC had implemented to avoid a recurrence. That was well in advance of the PUCT opening its own inquiry into the matter on September 16, 2011.

On February 1, 2012, EnerNOC reached a settlement agreement with the PUCT whereby it acknowledged missing the dispatch order and agreed to pay a \$45,000 administrative penalty. The PUCT approved the Settlement Agreement on February 23, 2012, and EnerNOC paid the administrative penalty on February 27, 2012.

**Section D: Details of Proposed Mitigation Plan**

D.1 Identify and describe the action plan, including specific tasks and actions that your organization is proposing to undertake, or which it undertook if this Mitigation Plan has been completed, to correct the violation(s) identified above in Section C.1 of this form:

Strictly speaking, there is no way to mitigate the missed dispatch; the bell cannot be unrung. EnerNOC was able to end the potential violation by dispatching the NBH EILS resources at 8:53 am CST on February 2, 2011, but that deployment did not undo the failure during the previous 3 hours. Therefore, EnerNOC took the tasks and actions described below to prevent similar failures in the future.

Below is the list of remediation/mitigation steps put in place following the Feb 2nd dispatch failure. These will be listed separately as milestones in the Mitigation Plan.



All NOC operators were retrained on ERCOT emergency procedures that trigger an EILS event. EnerNOC created an electronic call logging system (written) and procedures to ensure that all ERCOT calls are logged in the system. EnerNOC developed redundancy in dispatch instructions by emailing the call log to appropriate NOC team members as soon as a call log is saved. EnerNOC built a phone recording system to record all calls on the ERCOT phone line that enabled the ability to play back the call. EnerNOC developed a system to email a link to the voice file after each phone call ends to ensure that appropriate NOC members have immediate access to the recorded call. EnerNOC built better tools to continually monitor grid conditions as reported on the ERCOT website and display this information in the NOC 24/7. Displayed information includes the ERCOT Energy Price Map, Physical Responsive Capability, and Frequency.

D.2 Provide the timetable for completion of the Mitigation Plan, including the completion date by which the Mitigation Plan will be fully implemented and the violations associated with this Mitigation Plan are corrected:

Proposed Completion date of Mitigation Plan: July 22, 2011

D.3 Milestone Activities, with completion dates, that your organization is proposing for this Mitigation Plan:

Milestone Activity	Description	*Proposed Completion Date (Shall not be greater than 3 months apart)	Actual Completion Date
[Redacted]	[Redacted]	[Redacted]	[Redacted]

Milestone Activity	Description	*Proposed Completion Date (Shall not be greater than 3 months apart)	Actual Completion Date
	██████████		
Employee retraining	All NOC operators were retrained on ERCOT emergency procedures that trigger an EILS event. Notice on retraining went out on April 28, 2011. Training was completed on May 2, 2011.	05/02/2011	05/02/2011
Call Logging	Created an electronic call logging system (written) and procedures to ensure that all ERCOT calls are logged in the system. All messages received through the ERCOT phone are logged by NOC operators. Call details such as message type, time the message was received and a brief description of the message, are recorded by the NOC operator on duty. This new system was implemented on July 21, 2011.	07/21/2011	07/21/2011
Dispatch Redundancy	Developed redundancy in dispatch instructions by emailing the call log to appropriate NOC team members as soon as a call log is saved. All messages received through the ERCOT phone and logged by NOC operators are automatically distributed to the larger Network Operations team. This process ensures that all messages are distributed and that key alerts are triaged properly. This process was implemented on July 21, 2011.	07/21/2011	07/21/2011
Voice Recording Email	Developed system to email a link to voice file after each phone call ends to ensure that appropriate NOC members have immediate access to the recorded call. All recorded calls are immediately distributed to members of the Network Operations team that are responsible for the ERCOT region. Once a call has been terminated, a link to the voice file is distributed by email, where it can be accessed through a secured server. This allows members of the Network Operations team to access and review these files remotely. This system was implemented on July 21, 2011.	07/21/2011	07/21/2011

Milestone Activity	Description	*Proposed Completion Date (Shall not be greater than 3 months apart)	Actual Completion Date
Call recording	Built a phone recording system to record all calls on the ERCOT phone line that enabled the ability to play back the call. Every phone call received through the ERCOT phone is recorded in its entirety and saved on a secure server where it can be accessed and reviewed. This enables members of the Network Operations team to review and validate past calls and instructions especially in cases where the message may be ambiguous. These actual recordings are also used for training purposes. This functionality was rolled out on July 22, 2011.	07/22/2011	07/22/2011

## D.4 Additional Relevant Information (Optional)

Section E: Interim and Future Reliability Risk

## E.1 Abatement of Interim BPS Reliability Risk

While your organization is implementing the Mitigation Plan proposed in Section D of this form, the reliability of the Bulk Power System may remain at higher risk or be otherwise negatively impacted until the plan is successfully completed. To the extent they are, or may be, known or anticipated: (i) identify any such risks or impacts; and (ii) discuss any actions that your organization is planning to take or is proposing as part of the Mitigation Plan to mitigate any increased risk to the reliability of the bulk power system while the Mitigation Plan is being implemented:

No risks remain outstanding since the mitigation plan is complete. All subsequent dispatches by ERCOT have been successful.

Since February 2, ERCOT has dispatched 4 mandatory tests and 1 real event. In all 5 deployments, EnerNOC has received the dispatch message and dispatched its resources within the required time frame. Those five dispatch events are:

Date	Type	Dispatch Instruction	Start Time	Dispatch Instruction	End Time
6/21/2011	Test	8:03	8:30		
12/23/2011	Test	16:31	17:00		
8/4/2011	Event	15:44	16:09		
2/15/2012	Test	8:27	9:15		
2/17/2012	Test	16:02	16:47		

## E.2 Prevention of Future BPS Reliability Risk

Describe how successful completion of the Mitigation Plan as laid out in Section D of this form will prevent or minimize the probability that your organization incurs further violations of the same or similar reliability standards requirements in the future:

The mitigation steps described above should prevent, and have prevented a re-occurrence of the missed dispatch event. Subsequent dispatches by ERCOT have all been successfully carried out by EnerNOC.

## E.3 Your organization may be taking or planning other action, beyond that listed in the Mitigation Plan, as proposed in Section D.1, to prevent or minimize the probability of incurring further violations of the same or similar standards requirements listed in Section C.1, or of other reliability standards. If so, identify and describe any such action, including milestones and completion dates:

1.

Texas PUC settlement

EnerNOC settled an enforcement action concerning this missed dispatch that was brought by the Texas PUC and paid an administrative penalty in the amount of \$45,000

See attached Public Utility Commission of Texas document Control # 40152 which includes the settlement and the PUC order adopting the settlement.

2.

EnerNOC worked with ERCOT Staff to Support NPRR 379. NPRR 379 (approved Sept. 20, 2011) expanded the communication of the ERCOT dispatch instruction to include an Extensible Markup Language (XML message) notification, via the internet, in addition to the current voice dispatch instruction (VDI). This, in many ways, is the ultimate answer to reducing dispatch errors because the XML message is both redundant to the phone message and is machine readable. Receipt of the XML message can be made to automatically trigger alarms, send out notifications within the QSE and send notifications to customers of the QSE, all without the intervention of human resources. All other ISOs in the country use some sort of machine readable messaging to dispatch their Demand Response (DR) programs. ERCOT was the only one solely relying on verbal dispatch orders at the time of the February 2, 2011 event. EnerNOC technical staff informally discussed different electronic dispatch options with ERCOT staff and supported this protocol revision during the stakeholder process.

3.



System Implementation by 10/1. Starting October 1, 2012, all QSEs offering Emergency Response Service (ERS) will be required by ERCOT to have the ability to receive XML messages. EnerNOC has implemented the ability to receive XML messages from ERCOT in compliance with NPRR 379, and on September 12, 2012, by e-mail from Len Nowicki, ERCOT informed EnerNOC that EnerNOC had successfully completed the XML testing with ERCOT. See referenced email.

4.

EnerNOC conducts regular employee training on NOC dispatch procedures following receipt of a ERCOT EILS (now ERS) dispatch instruction. This training occurs throughout the year. See sample training logs from December 13, 2011 to August 16, 2012.

## Section F: Authorization

An authorized individual must sign and date the signature page. By doing so, this individual, on behalf of your organization:

(a) Submits the Mitigation Plan, as laid out in Section D, to the Regional Entity for acceptance and approval by NERC, and

(b) If applicable, certifies that the Mitigation Plan, as laid out in Section D of this form, was completed (i) as laid out in Section D of this form and (ii) on or before the date provided as the 'Date of Completion of the Mitigation Plan' on this form, and

(c) Acknowledges:

1. I am Director of Regulatory Compliance of EnerNOC, Inc.
2. I am qualified to sign this Mitigation Plan on behalf of EnerNOC, Inc.
3. I have read and understand EnerNOC, Inc.'s obligations to comply with Mitigation Plan requirements and ERO remedial action directives as well as ERO documents, including, but not limited to, the NERC Rules of Procedure and the NERC CMEP currently in effect or the NERC CMEP-Province of Manitoba, Schedule B currently in effect, whichever is applicable.
4. I have read and am familiar with the contents of the foregoing Mitigation Plan.
5. EnerNOC, Inc. Agrees to be bound by, and comply with, this Mitigation Plan, including the timetable completion date, as accepted by the Regional Entity, NERC, and if required, the applicable governmental authorities in Canada.

Authorized Individual Signature: \_\_\_\_\_

(Electronic signature was received by the Regional Office via CDMS. For Electronic Signature Policy see CMEP.)

Authorized Individual

Name: Thomas R. Birmingham

Title: Director of Regulatory Compliance

Authorized On: July 30, 2012

## **Attachment e**

**EnerNOC's Certification of Mitigation Plan  
Completion submitted December 20, 2012**

### Certification of Mitigation Plan Completion

Submittal of a Certification of Mitigation Plan Completion shall include data or information sufficient for the Regional Entity to verify completion of the Mitigation Plan. The Regional Entity may request additional data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard. (CMEP Section 6.6)

Registered Entity Name: EnerNOC, Inc.

NERC Registry ID: NCR11021

NERC Violation ID(s): TRE2012009967,TRE2012009968

Mitigated Standard Requirement(s): IRO-001-1.1 R8,TOP-001-1 R4,

Scheduled Completion as per Accepted Mitigation Plan: July 22, 2011

Date Mitigation Plan completed: July 22, 2011

TRE Notified of Completion on Date: December 20, 2012

Entity Comment:

Additional Documents			
From	Document Name	Description	Size in Bytes
Entity	TRE Post Audit - Supporting Documents.zip	Zip Archive of supporting documents	5,305,316
Entity	EnerNOC - XML Testing.htm	09.12.2012 ERCOT Confirmation Email RE: XML Testing	26,642
Entity	ERCOT STaT training logs v2.pdf	EnerNOC EILS Training Log 12.13.2011-08.16.2012 SUPPLEMENT	78,332
Entity	Obillo Executed Affidavit_Feb 2 Deployment Final_2012_12_21.pdf		35,695
Entity	Over And Above - DSWG_Chair_Slides_080911.pptx	PowerPoint presentation of ERCOT Demand Side Working Group's meeting agenda for September 2011, showing "Bob Peck", who was an EnerNOC employee at the time of these discussions, leading ERCOT's efforts to facilitate move toward XML.	567,526
Entity	Over And Above - DSWG_Chair_Slides_080911.pptx	PowerPoint presentation of ERCOT Demand Side Working Group's meeting agenda for August 2011, showing "Bob Peck", who was an EnerNOC employee at the time of these discussions, leading ERCOT's efforts to facilitate move toward XML.	567,526
Entity	Over And Above - DSWG_Chair_Slides_092911.pptx	CORRECTION TO DOC ID 170113 - Including September 2011 version of PowerPoint presentation of ERCOT Demand Side Working Group's meeting agenda showing "Bob Peck", who was an EnerNOC employee at the time of these	576,784

Additional Documents			
From	Document Name	Description	Size in Bytes
Entity	Over And Above - DSWG_Chair_Slides_092911. pptx	discussions, leading ERCOT's efforts to facilitate move toward XML. DOC ID 170113 is a duplicate to DOC ID 170112.	576,784

I certify that the Mitigation Plan for the above named violation(s) has been completed on the date shown above and that all submitted information is complete and correct to the best of my knowledge.

Name: Thomas R. Birmingham

Title: Director, Regulatory Compliance

Email: tbirmingham@enernoc.com

Phone: 1 (617) 692-2446

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

(Electronic signature was received by the Regional Office via CDMS. For Electronic Signature Policy see CMEP.)

## **Attachment f**

**Texas RE's Verification of Mitigation Plan  
Completion dated January 10, 2013**

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**January 10, 2013**

Thomas Birmingham  
EnerNOC, Inc.  
Director of Regulatory Compliance  
[tbirmingham@enernoc.com](mailto:tbirmingham@enernoc.com)

**The following Mitigation Plan has been verified as completed by Texas RE.**

NERC Mitigation Plan ID: TREMIT008095  
NERC Violation IDs: TRE2012009967 and TRE2012009968  
Standard Requirements: IRO-001-1.1 R4 and TOP-001-1 R4  
Mitigation Plan submitted on: 09/25/2012 (Version 1, for Program Year 2012)  
Proposed Completion Date: 07/22/2011  
Actual Completion Date: 07/22/2011  
Verification Date: 01/10/2013  
Region Reviewer: Calvin Daniels

**Below is the list of remediation/mitigation steps:**

[REDACTED]

- (2) All NOC operators were retrained on ERCOT emergency procedures that trigger an EILS event.
- (3) EnerNOC created an electronic call logging system (written) and procedures to ensure that all ERCOT calls are logged in the system.
- (4) EnerNOC developed redundancy in dispatch instructions by emailing the call log to appropriate NOC team members as soon as a call log is saved.
- (5) EnerNOC built a phone recording system to record all calls on the ERCOT phone line that enabled the ability to play back the call.
- (6) EnerNOC developed a system to email a link to the voice file after each phone call ends to ensure that appropriate NOC members have immediate access to the recorded call.
- (7) EnerNOC built better tools to continually monitor grid conditions as reported on the ERCOT website and display this information in the NOC 24/7. Displayed information includes the ERCOT Energy Price Map, Physical Responsive Capability, and Frequency.

**To verify completion of the mitigation plan, Texas RE reviewed the following documents provided by the Registered Entity:**

[REDACTED]



- (2) See 4/28/2011 e-mail from Nick Chory to the NetworkOps-DREventsTeam and NetworkOps-ServiceDesk list serves entitled ERCOT EILS Dispatch Training which requires operators to review an EILS powerpoint and vote electronically that they have completed and/or completed with questions. See also attached completed confirmation emails in the ERCOT EILS Disptch Training Completion Confirmations sub-folder All these items are saved in the M2 - ERCOT EILS Dispatch Training folder.
- (3) See 3/4/2011 e-mail from Nick Chory to the NetworkOps-DREventsTeam and NetworkOps-ServiceDesk list serves entitled Introducing...the ERCOT Call Log which requires each ERCOT call to be logged in an electronic archive that automatically call stamps the entry. A copy of the email is saved in the M4 - Call Log folder.
- (4) See New Operator Hotline Call Message received on line Taylor OPX . A copy of a sample email is saved in the M5 - Call Log Email Receipt folder.
- (5) See New Voice Recording from ERCOT System email on July 22, 2011 for a sample notification of a recording of a new ERCOT phone call. A copy of the message is saved in the M7 - Voice Recording folder.
- (6) See August 16, 2011 e-mail from Nick Chory to NetworkOps-DREventsTeam and NetworkOps-ServiceDesk list serves entitled ERCOT Phone Recordings which describes the phone recording feature and how to use it. A copy of the email is saved in the M6 - ERCOT Phone Recordings folder.
- (7) See the June 22, 2012 email from Matt Tierney to Joel Obillo showing the ERCOT Wallboard Visuals and the May 29, 2012 Email from Nick Chory to NetworkOps-DREventsTeam; NetworkOps-ServiceDesk showing the distribution of the ERCOT Grid Conditions DL. Also included are pictures in the M8 - NOC Wallboard Screenshots directory of the wallboard screen shots of the ERCOT information being displayed as part of the mitigation plan.

Based on evidence presented by EnerNOC, Inc. and reviewed by Texas RE, this email confirms the above mentioned mitigation plan is complete. If you have any questions, please feel free to contact Calvin Daniels directly or through [mitigation@texasre.org](mailto:mitigation@texasre.org).

**Attachment g**  
**Notice of Filing**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

EnerNOC, Inc.

Docket No. NP13-\_\_\_\_-000

NOTICE OF FILING  
February 28, 2013

Take notice that on February 28, 2013, the North American Electric Reliability Corporation (NERC) filed a Notice of Penalty regarding EnerNOC, Inc. in the Texas Reliability Entity, Inc. region.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: [BLANK]

Kimberly D. Bose,  
Secretary