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October 19, 2012

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Fl.
400 North Street
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RE: Petition of PECO Energy Company's For an Evidentiary Hearing on the
Energy Efficiency Benchmarks Established for the Period June 1, 2013
through May 31, 2016; Docket No. P-2012-2320334

Dear Secretary Chiavetta:

Enclosed for electronic filing is Converge, Inc.'s Main Brief in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Jeffrey J. Norton

JJN/jls
Enclosure

cc: Certificate of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Main Brief has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy for an :
Evidentiary Hearing on the Energy : Docket No. P-2012-2320334
Efficiency Benchmarks Established for :
the Period June 1, 2013 through May 31, :
2016 :

MAIN BRIEF OF COMVERGE, INC.

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I. INTRODUCTION AND PROCEDURAL HISTORY

A. Summary Of Comverge's Positions

Comverge, Inc. ("Comverge") is a leading provider of Demand Response ("DR")¹ products and services to various customers. Comverge is registered as a Conservation Service Provider ("CSP") on the Pennsylvania Public Utility Commission's ("Commission" or "PUC") Registry of CSPs,² and has been an active CSP in Pennsylvania and has been providing complex energy management programs and related services to electric distribution companies ("EDCs"), residential and small and large commercial and industrial customers throughout Pennsylvania, including the service territory of PECO Energy Company ("PECO" or "Company").

This case is simple. PECO's annual program spending must be less than the statutory ceiling. The Commission has stated that Act 129 funds may be used for energy efficiency programs **and** for DR programs. PECO's DR programs are prudent and cost-effective. Therefore, it should be obvious that PECO's DR programs (from Phase I) should be continued, and expanded, as interim DR programs in Phase II. The continuation, and expansion, of these programs in Phase II will require the allocation of a portion of PECO's available Act 129 resources. Without Act 129 funding, PECO's DR programs will fail.

Comverge recommends that the Commission continue to allocate adequate Act 129³ funds to continue and expand load management programs in order to provide stability in reliability planning, capture significant benefits, and to avoid waste. The consumer-focused load

¹ PECO, at times, refers to DR as "demand reduction." For purposes of this proceeding, Comverge's position is that demand response and demand reduction are considered the same.

² PUC Docket No. A-2009-2113604.

³ Act 129 of 2008, P.L. 1592 ("Act 129").

management programs will suffer harmful and disruptive breaks in service if the Act 129 programs are not continued or are interrupted. The allocation of funds for load management programs in PECO's service territory is necessary for the continued success of the program. Therefore, Converge recommends that the Commission adopt PECO's proposals, which seek (a) to continue the Phase I programs as interim demand response programs in Phase II and (b) to allocate a portion of PECO's available Act 129 resources for those programs.

B. Procedural History

On August 3, 2012, the Commission entered its *Phase II Implementation Order* regarding the Energy Efficiency and Conservation Program.⁴ The Commission established energy efficiency ("EE") (but not peak demand reduction ("PDR")) benchmarks for the period June 1, 2013 through May 31, 2016 ("Phase II period") for PECO and other EDCs with at least 100,000 customers. The Commission tentatively adopted the EDC specific consumption reduction targets set forth in Table 1 of that Order, subject to challenge by an EDC.⁵ The Phase II consumption reduction target set by the Commission for PECO is 2.9%.⁶

PECO filed a petition for an evidentiary hearing on August 20, 2012. The petition was assigned Docket No. P-2012-2320334. A Prehearing Conference was held on September 10, 2012 by Administrative Law Judge ("ALJ") Elizabeth H. Barnes. At that time, *inter alia*, a

⁴ *Energy Efficiency and Conservation Program*, Phase II Implementation Order at Docket No. M-2012-2289411, entered on August 3, 2012, reconsideration and clarification denied (on the merits) by the Reconsideration Order, entered September 27, 2012.

⁵ *Phase II Implementation Order* at 24 (Table 1). The Commission stated that the consumption reduction targets would become final for any EDC that did not petition the Commission for an evidentiary hearing by August 20, 2012. *Phase II Implementation Order* at 30 and 31.

⁶ *Id.*; PECO St. No. 1 at 8.

litigation schedule was established and Comverge's timely filed petition for intervention was granted.

The evidentiary hearing has held on Wednesday, October 3, 2012.

II. LEGAL STANDARDS

A. Burden Of Proof

Section 332(a) of the Public Utility Code ("Code") provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.⁷ It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."⁸ A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.⁹ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.¹⁰ More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹¹

⁷ 66 Pa. C.S. § 332(a).

⁸ *Samuel J. Lansberry, Inc. v. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁹ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹⁰ *Mill v. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

¹¹ *Norfolk and Western Ry. v. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

PECO has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable.

B. EE&C Programs

The Commission has been charged by the Pennsylvania General Assembly with establishing an energy efficiency and conservation program (“EE&C Program”). The EE&C Program requires each EDC with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory.¹² The Commission is also charged with the responsibility to evaluate the costs and benefits of the EE&C Program by November 30, 2013, and every five years thereafter.¹³ The Commission must adopt additional incremental reductions in consumption if the benefits of the EE&C Program exceed its costs.¹⁴

The Commission’s interpretation of Subsection 2806.1(d)(2)¹⁵ is that, in order to be required to prescribe specific peak demand reduction targets for subsequent phases of Act 129, the demand response programs must be proven to be cost-effective.¹⁶ In fact, the Commission encouraged EDCs to continue specific DR programs that are shown to be cost-effective as part of their Act 129 peak reduction programs:¹⁷

¹² 66 Pa. C.S. § 2806.1.

¹³ 66 Pa. C.S. § 2806.1(c)(3).

¹⁴ *Id.*

¹⁵ 66 Pa. C.S. § 2806.1(d)(2).

¹⁶ *Phase II Implementation Order* at 32.

¹⁷ *Phase II Implementation Order* at 42-43.

The Commission, however, does recognize that the EDCs and residential electric customers in particular have made significant strides in the implementation of residential curtailment measures, such as direct load control programs. Therefore, to minimize customer confusion or adverse customer reaction, EDCs may continue, under the Act 129 EE&C Program, residential demand response curtailment measures, such as direct load control programs, that will be cost effective if continued. Such specific measures, if continued, could be viewed as providing the interim demand response program suggested by some parties until the Commission determines whether or not there is a cost-effective Act 129 peak demand reduction program design. The Commission will not, however, set any reduction goals for an EDC choosing to voluntarily continue any DR programs.

Alternatively, the Commission encourages CSPs and all stakeholders to review the cost-effectiveness of particular demand response measures and their potential applicability to Pennsylvania electric customers outside the realm of the Act 129 EE&C Program. We note that EDCs seeking to establish new, or continue existing, load management programs that are prudent and cost-effective are free to file a petition with the Commission for approval of such programs under 66 Pa. C.S. §1505(b). All prudent and reasonable costs incurred with such programs are recoverable in accordance with 66 Pa. C.S. 1319.

III. ARGUMENT

Comverge supports PECO's position to continue and allocate adequate Act 129 funds to load management programs in order to provide stability in reliability planning, capture significant benefits, and to avoid waste. The allocation of adequate funds for load management programs in the service territory is necessary for the success of the program.

A. PECO's Interim Demand Response Programs

The Commission encouraged EDCs to continue specific DR programs that are shown to be cost-effective as part of their Act 129 peak reduction programs.¹⁸ Consistent with that encouragement, PECO has proposed to continue its existing DR programs on an interim basis in

¹⁸ *Phase II Implementation Order* at 42.

Phase II.¹⁹ Comverge agreed with PECO that the existing DR programs should be continued in Phase II.

PECO's proposed interim demand response programs are prudent and cost-effective. PECO's Phase I Plan includes six DR programs.²⁰ Of these, two provide customers incentive payments in return for allowing PECO to control their equipment.²¹ The Residential Direct Load Control ("DLC") Program is a DR program through which PECO remotely controls a participating customer's central air conditioning and cycles it on and off during times of peak demand. PECO expects that this program will achieve an average peak demand reduction of 86 MW during the summer of 2013.²² With the Commercial and Industrial ("C&I") DLC Program, PECO remotely controls the customer's central air conditioning unit through a programmable communicating thermostat, which, unlike the Residential Program, allows PECO to control the temperature setting on the unit. As of the summer of 2013, this program is expected to yield an average peak demand reduction of 3 MW.²³

¹⁹ PECO St. No. 1 at 10.

²⁰ PECO St. No. 1 at 9.

²¹ PECO St. No. 1 at 9.

²² PECO St. No. 1 at 9-10.

²³ PECO St. No. 1 at 10.

Continuation of these DR programs on an interim basis is consistent with the Total Resource Cost (“TRC”) test established by the Commission.²⁴ The primary benefit of DLC is capacity savings rather than energy savings.²⁵ PECO's Residential DLC Program and C&I DLC Program (collectively, "Mass Market DLC Program") have a combined TRC score of 2.38 – i.e., the program saves \$2.38 for every \$1 spent, demonstrating significant net benefits to PECO's customers, over its ten-year measure life.²⁶ Based on its Phase I Plan experience, a switch operability study performed by Comverge, and legacy DR values referenced by PJM, PECO projected total net annual energy and capacity savings of 4,227 MWh and 91,000 kW, respectively, for the program based on 100,000 participants.²⁷

B. Allocation Of Funds For Direct Load Control (“DLC”) Programs

The Commission's *Phase II Implementation Order* does not specifically provide any available Act 129 resources or funding for the continuation of existing DR programs or the implementation of new ones.²⁸ Instead, the Commission's Order assumed that all resources

²⁴ PECO did not perform an avoided cost study. PECO St. No. 1 at 11-13. PECO used the same avoided T &D cost values provided to the SWE in connection with its Market Potential Study. *Id.*

²⁵ PECO St. No. 1 at 11.

²⁶ PECO St. No. 1 at 10; PECO Exhibit FJJ-1.

²⁷ PECO St. No. 1 at 11.

²⁸ *Phase II Implementation Order* at 42-43.

available to PECO under the 2% spending cap will be used on energy consumption reduction programs.²⁹

PECO has stated categorically that the DLC programs cannot be sustained as part of PECO's Act 129 peak demand reduction program without Act 129 funding.³⁰ Comverge submits that this position is entirely reasonable.

The failure to allocate any portion of PECO's available Act 129 resources to DR programs will, therefore, end the program. This, in turn, will undoubtedly lead to customer confusion and will produce stranded costs (e.g., DLC switches installed during PECO's Phase I Plan) that will impose burdens on customers with no attendant benefits.³¹ It follows that PECO will not have a reasonable opportunity to achieve an incremental and subsequently determined peak DR target by the statutory deadline without an appropriate level of funding during the Phase II period to develop and implement DR programs prior to the summer of 2016.³²

Simply put, unless the Commission permits an allocation of the total allowable spending cap of approximately \$256 million to the funding for DR during Phase II, the program will stop and it will be impossible to achieve targeted savings by the statutory deadline.³³ In turn, the consumer-focused load management programs will suffer harmful and disruptive breaks in

²⁹ PECO St. No. 1 at 9.

³⁰ PECO St. No. 1 at 9.

³¹ PECO St. No. 1 at 9.

³² PECO St. No. 1 at 9.

³³ PECO St. No. 1 at 14.

service. It follows that the continuation of load management programs will provide stability in reliability planning, capture significant benefits, and avoid waste. Comverge submits that not only would it be unreasonable and counter-productive to end the DR programs, but also would fly in the face of the goals and objectives of Act 129 to do so.

PECO projected that a total level of spending of approximately \$30 million³⁴ is necessary to provide PECO the opportunity to achieve additional peak DR requirements by the statutory deadline.³⁵ To achieve reductions in peak demand during the summer of 2016, PECO must implement programs prior to the summer of 2016. PECO estimates that it will spend approximately \$17.4 million to achieve reductions for that summer.³⁶ These start-up costs include program design, the development of a request for proposals to solicit CSPs,

³⁴ PECO St. No. 1 at 15. The estimated annual cost of the Mass Market DLC Program is approximately \$12 million. PECO St. No. 1 at 13. Accordingly, a total level of spending of approximately \$36 million is necessary to continue the existing, cost-effective Mass Market DLC Program on an interim basis in Phase II. PECO St. No. 1 at 13-14.

³⁵ PECO Witness Mr. Jiruska testified that this \$30 million spending level is \$5.2 million higher than the estimated Phase I budget for two reasons. First, PECO projected a higher acquisition cost for peak DR in subsequent phases of Act 129 because PECO's actual dispatchable DR performance in Phase I was, in most cases, less than the contracted amount under the terms of PECO's CSP agreements. Second, uncertainty regarding the amount of resultant DR that will be generated by energy efficiency programs in Phase II will increase the amount of peak demand curtailment that PECO must acquire. Comverge submits that PennFuture's comparisons should be rejected, and that PECO's acquisition costs should be accepted for this proceedings. PECO St. No. 1 at 15. PECO St. No. 1 at 15.

³⁶ PECO St. No. 1 at 15-16.

administration of the competitive bidding process, TRC calculations and infrastructure upgrades.³⁷ Other payments to CSPs are estimated to be \$16.2 million.³⁸

Citizens for Pennsylvania's Future ("PennFuture") argued that the costs used to determine PECO's Phase II consumption reduction target are "inflated."³⁹ Comverge disagrees, and so does the Commission. In the *Phase II Implementation Order*, the Commission considered and rejected those arguments on the ground that the Statewide Evaluator's ("SWE") findings and conclusions in the Market Potential Study were based on national trends in energy efficiency programs, Pennsylvania-specific circumstances and forward-looking cost estimates.⁴⁰ PECO did not challenge the Commission's acquisition cost finding in this evidentiary hearing proceeding,⁴¹ and PennFuture should not be able to revisit this issue as part of this limited proceeding.⁴²

That being said, PennFuture's opinion of an "inflated cost" is based on a comparison of PECO's estimated costs with the cost for programs in the Southwest and Midwest.⁴³ The SWE assumed an acquisition cost of \$227.55 per first year MWh savings for Phase II, which is a 61%

³⁷ PECO St. No. 1 at 16.

³⁸ PECO St. No. 1 at 16.

³⁹ PennFuture St. No. 1 (Glenn Reed) at 15.

⁴⁰ *Phase II Implementation Order* at 14-19; PECO St. No. 1-R at 3.

⁴¹ PECO St. No. 1-R at 3.

⁴² The ALJ denied PECO's motion in limine which attempted to limit Penn Future's witness Glenn Reed's testimony about PECO's acquisition costs for PECO's Phase II EE&C program.

⁴³ PennFuture St. No. 1 (Glenn Reed) at 10-11.

increase over PECO's Phase I acquisition costs.⁴⁴ PECO used that number in its calculations.⁴⁵ Nevertheless, based on comparisons with the experience of other states, PennFuture opined that a different number⁴⁶ is justified because there are still plenty of low cost energy savings to be captured and PECO has not fully realized the benefits of the programs.⁴⁷ As the Commission noted, in determining the acquisition costs for each EDC, the SWE used actual costs incurred by the EDCs in the first two years of Phase I and increased those costs by 25%: "One of the primary reasons for the 25% increase was to account for the fact that the SWE found that the program potential savings are less than currently expected for Phase I implementation."⁴⁸ Therefore, the alleged "unaccounted for" factors that PennFuture relied upon in seeking an unspecified different number were actually estimated by the SWE and integrated into the SWE's calculations. Without specifics, there is no reason to depart from the SWE's calculations (which were accepted by the Commission in the *Phase II Implementation Order*).

PennFuture further argued that PECO failed to take into account the level of "excess savings" from Phase I that it can use for Phase II compliance.⁴⁹ PennFuture's argument is based on the portion of the Phase II Implementation Order that allows "those EDCs that have achieved their Phase I three percent target before the end of Phase I to continue their programs and credit

⁴⁴ PennFuture St. No. 1 (Glenn Reed) at 10.

⁴⁵ PECO St. No. 1 at 6, 8, 19.

⁴⁶ PennFuture did not calculate what the adjusted acquisition cost should be for PECO.

⁴⁷ PennFuture St. No. 1 (Glenn Reed) at 10-11.

⁴⁸ *Phase II Reconsideration Order* at 25.

⁴⁹ PennFuture St. No. 1 (Glenn Reed) at 12-13.

all of those savings above the three percent Phase I target towards Phase II targets, so long as those EDCs still have Phase I funds available.⁵⁰ PennFuture, however, did not present any analysis (a) of the amount of Phase I funds that would be available to PECO in Phase II or (b) comparing the amount of those available funds, if any, to the amount of funds required in Phase II to achieve additional peak DR requirements. In comparison, PECO did present evidence on these points: PECO anticipated carrying into Phase II approximately 83,000 MWh of excess savings from Phase I of Act 129, and concluded that those excess savings would not be sufficient to fully fund Phase II DR programs (which PECO estimated at \$30 million). Therefore, PennFuture's position on using the available of excess savings in Phase II appears to be nothing more than wishful thinking.

PennFuture's Witness Glenn Reed opined that PECO will be able to meet its Phase II consumption target of 2.9% **and** continue existing direct load control program in Phase II **without** the need to set aside any portion of PECO's Phase II Act 129 funding for DR programs in the summer of 2016.⁵¹ Comverge disagrees. PennFuture is not directly opposing the implementation of DR programs, but it does not want PECO to use its Phase II Act 129 funding for it. PennFuture believes that PECO will have excess Phase I savings to help meet its Phase II consumption reduction targets⁵² and that PECO can "begin spending Phase III funds in Phase II to start laying the administrative and procedural ground work to achieve peak demand goals if

⁵⁰ *Phase II Implementation Order* at 58-59 (emphasis added); PennFuture St. No. 1 (Glenn Reed) at 12.

⁵¹ PennFuture St. No. 1 (Glenn Reed) at 3.

⁵² PennFuture St. No. 1 (Glenn Reed) at 13.

needed in the summer of 2016.”⁵³ These are unrealistic and unsustainable positions that do not have any actual numbers to back them up. Adopting PennFuture’s position would force PECO to fund these DR programs without charging for them. That is contrary to 66 Pa. C.S. § 1319.

Plainly, the DR programs are not going to go forward unless PECO is guaranteed that it will be fully compensated by ratepayers for the costs of the program. Without such an ability to recover the costs of the program, PECO will not go forward with DR – and rightfully so. Comverge strongly supports PECO’s position that of the total amount it is permitted to spend on energy efficiency under Act 129 a portion of those dollars should be allocated to maintaining and expanding its DLC programs. These programs have been proved to be cost-effective, are in place, and are providing benefits. PECO and its customers would be wasting assets and efforts if these programs were not continued, and expanded, in Phase II.

⁵³ PennFuture St. No. 1 (Glenn Reed) at 15.

IV. CONCLUSION

Comverge respectfully requests that the Administrative Law Judge issue a Recommended Decision consistent with Comverge's positions and recommendations in this proceeding.

Respectfully submitted,



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