**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company :

for Approval of its Act 129 Phase II : M-2012-2333992

Energy Efficiency and Conservation Plan :

**FOURTH PREHEARING ORDER**

**GRANTING THE PETITION TO INTERVENE OF COMVERGE, INC.**

In accordance with the provisions of 52 Pa. Code § 5.483, the purpose of this Order is to address the Petition to Intervene filed by Comverge, Inc. (Comverge) at this docket on December 19, 2012. The relevant case history to this point may be summarized as follows.

On November 1, 2012, PECO Energy Company (PECO or Company) petitioned the Pennsylvania Public Utility Commission (Commission) for approval of the Company's Phase II Energy Efficiency and Conservation Plan (Phase II Plan). The Phase II Plan is intended to reduce energy consumption in accordance with the requirements of Act 129 of 2008, 66 Pa.C.S.

§ 2806.1 (Act 129) and the *Energy Efficiency and Conservation Program*, Docket No. M-2012-2289411 (Order entered August 3, 2012) (*Implementation Order*).

In its Petition, PECO requested that the Commission: (1) find that the Phase II Plan satisfies the requirements of 66 Pa.C.S. § 2806.1(b)(1) and the *Implementation Order*, including those provisions mandating the implementation of programs designed to achieve the energy savings target established for PECO and the savings carve-outs for the governmental, institutional and non-profit and low-income sectors; (2) approve tariff provisions to implement a Section 1307 surcharge to recover Phase II Plan costs; (3) approve Phase II Plan treatment for certain Phase I projects; and (4) approve the conservation service provider (CSP) contract between PECO and JACO Environmental, Inc.

The Notice of this proceeding was not published in the *Pennsylvania Bulletin* until December 1, 2012, with a twenty day comment/intervention period thereafter. Prior to the publication of the Notice, Petitions to Intervene or Notices of Appearance in this proceeding were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizens for Pennsylvania’s Future (PennFuture), the Philadelphia Area Industrial Energy Users Group (PAIEUG), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the City of Philadelphia, and Wal-Mart Stores East, L.P. and Sam’s East, Inc. (Walmart).[[1]](#footnote-1) Subsequent to the Prehearing Conference held in this case on November 30, 2012 and before the expiration of the twenty day intervention period on December 20, 2012, only one entity, Comverge, filed a Petition to Intervene.

On December 19, 2012, and given the compressed time frame of this proceeding, I issued an Order electronically to the parties asking that I be advised of any objection to Comverge’s Petition to Intervene by no later than the close of business on December 26, 2012. No objections were received.

DISCUSSION

The Commission's Rules of Practice and Procedure permit petitions to intervene. 52 Pa. Code §§ 5.71-5.76 The provision at 52 Pa. Code § 5.72 governs what entities are eligible to intervene in a proceeding and states as follows:

**§ 5.72. Eligibility to intervene.**

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) Commonwealth. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)-(3).

Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pennsylvania Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

Comverge’s eligibility to intervene in this proceeding is governed by 52 Pa. Code

§ 5.72(a)(2) since Comverge is not a Commonwealth agency pursuant to 52 Pa. Code § 5.72(b) and a statute of either the United States or the Commonwealth does not confer on Comverge a right to intervene pursuant to 52 Pa. Code § 5.72(a)(1). Comverge’s interests in this proceeding are of such a nature that intervention is necessary and appropriate to the administration of the statute under which the proceedings are brought.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to these proceedings. 66 Pa. C.S. §§ 1102, 1103.

2. Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pennsylvania Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

3. The Petition to Intervene of Comverge, Inc., at Docket No. M-2012-2333992 sets forth sufficient grounds for intervention in this proceeding. 52 Pa. Code § 5.72(a)(2).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene filed by Comverge, Inc. on December 19, 2012 at Docket No. M-2012-2333992 is granted.

2. That the e-service list in this proceeding is amended to include counsel for Comverge, Inc.:

Jeffrey J. Norton, Esquire

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3. That Comverge, Inc. is bound by the procedural schedule and the conditions set forth in all prior Prehearing Orders issued at this docket to date.

Date: December 27, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dennis J. Buckley

Administrative Law Judge

**P-2012-2333992 - Petition of Peco Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan.**

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1. All Petitions to Intervene filed prior to the November 30, 2012 Prehearing Conferences were granted, without opposition. [↑](#footnote-ref-1)