**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :

for Approval of its Act 129 Phase II : M-2012-2334399

Energy Efficiency and Conservation Plan :

**FIFTH 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 e-filed by Comverge, Inc. (Comverge) at this docket on December 21, 2012. The relevant case history to this point may be summarized as follows.

On November 15, 2012, Duquesne Light Company (Duquesne 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*).

The Notice of this proceeding was not published in the *Pennsylvania Bulletin* until December 1, 2012, with a twenty day comment/intervention period thereafter. On December 21, 2012, Comverge e-filed a Petition to Intervene, by and through its corporate counsel, Ms. Tracy Caswell, Esquire. However, it does not appear that Ms. Caswell is licensed to practice law in the Commonwealth of Pennsylvania, and the Petition was not served on the Office of Administrative Law Judge (OALJ).

On December 28, 2012, Jeffrey J. Norton, Esquire and Carl R. Schultz, Esquire, both of whom are licensed Pennsylvania attorneys, filed a Notice of Appearance in this case on behalf of Comverge. That Notice was sent to Chief ALJ Charles Rainey, Jr., but was not received by the undersigned.

On January 11, 2013, Attorney Norton asked that I rule on Comverge’s Petition to Intervene. There followed an exchange of e-mails attempting to clarify this situation and alerting counsel to the other parties in this case, all of whom had been served with the Petition to Intervene.

Given the compressed time frame of this proceeding, I asked the other parties via e-mail to advise me of any objection to Comverge’s Petition to Intervene. No objections were received.

DISCUSSION

From the outset, I am concerned that Comverge’s Petition to Intervene was filed by an attorney who is not licensed to practice law in the Commonwealth of Pennsylvania. See 52 Pa. Code § 1.22. However, Comverge will be represented throughout the remainder of this proceeding by attorneys licensed to practice law in the Commonwealth. The very tight time frame in this case substantially precludes correction of what I am sure was an error made in good faith. Thus, under the Commission’s regulations at 52 Pa. Code 1.2(a), relative to liberal construction of the Commission’s procedural rules, and under 52 Pa. Code § 5.483(a), which grants wide discretionary powers to presiding officers to regulate the course of a proceeding, I will rule on the Petition as filed, understanding that all further representation of Comverge will be by attorneys licensed to practice in the Commonwealth or who have been admitted by Motion *pro hac vice*.

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-2012-2334399 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 21, 2012 at Docket No. M-2012-2334399 is granted.

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

Jeffrey J. Norton, Esquire

jnorton@eckertseamans.com

Carl R. Schultz, Esquire

cschultz@eckertseamans.com

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: January 11, 2013 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dennis J. Buckley

Administrative Law Judge

**M-2012-2334399- PETITION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS ACT 129 PHASE II ENERGY EFFICIENCY AND CONSERVATION PLAN**

***REVISED 12/31/12***

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