May 20, 2011

KENNETH L. MICKENS, ESQUIRE LLC
LEGAL CONSULTING

VIA HAND DELIVERY
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Re: Implementation of Act 129 of 2008-Total Resource Cost (TRC) Test 2011 Revisions Docket No. M-2009-2108601

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are an original and fifteen (15) copies of the Comments of Comverge, Inc. in the above-cited proceeding. Please contact me if you have any questions.

Sincerely,

Kenneth L. Mickens, Esquire
Attorney for Comverge, Inc.

KLM/bls

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Implementation of Act 129 of 2008 - Total Resource Cost (TRC) Test

2011 Revisions

Docket No. M-2009-2108601

Tentative Order entered May 6, 2011

Comments of Comverge, Inc.

III. A. 2. Treatment of DR Payments To CSPs And EDCs from PJM

On May 6, 2011, the Pennsylvania Public Utility Commission issued a Tentative Order regarding the Act 129 Total Resource Cost (TRC) Test at Docket No. M-2009-2108601. Among several issues addressed, the Commission proposes differing treatment for PJM energy payments that flow directly to EDCs as opposed to payments to CSPs providing services to EDCs under Act 129. First, Comverge, Inc. (Comverge) expresses its appreciation for the Commission's effort to provide an open process through which stakeholders can provide recommendations and comments. Comverge is a demand response provider providing direct load control (DLC) devices and services through PECO and PPL Act 129 programs. In addition, Comverge provides demand response aggregation of megawatts in the PJM open market.[1] Consequently, Comverge has a direct

[1] Comverge, through its wholly owned subsidiary Enerwise Global Technologies, is a registered Curtailment Service Provider in the PJM market.

interest in the Commission's policies regarding Act 129 and specifically in the determination proposed in this Tentative Order. Comverge urges the Commission to modify the proposed treatment of PJM payments to CSPs for the reasons discussed below.

The Commission proposes at p. 9 of the Tentative Order that "i. PJM payments to CSPs for DR market participation in all PJM programs ... be excluded from the TRC test calculation." In contrast, "PJM payments to EDCs for DR market participation in economic programs would be allowed as a benefit for purposes of the TRC test." Comverge believes that the benefits received from these energy payments are fundamentally equivalent regardless of who is performing the demand response service. In this regard, Comverge suggests that the proposed different treatment results in the inappropriate devaluation of PJM payments to CSPs and may result in inefficient TRC outcomes. Ignoring these payments may lead to lower TRC scores simply because a CSP is providing services, where those services would be comparable or identical to EDC-operated programs. In fact, these payments represent a benefit to customers because they serve to reduce customer costs for program operations. Accordingly, Comverge proposes that all PJM payments be treated identically, as benefits, regardless of whether the programs are performed by the EDC or by a third-party vendor for that EDC.

The Commission supports its proposal by stating that PJM payments to EDCs are transparent, while such payments to CSPs are not. In doing this, the Commission recognizes that PJM payments to CSPs "support costs for developing and implementing DR programs." (Tentative Order, pp.10-11) However, the Commission then proposes to not take such contributions into consideration in the TRC calculations. In doing so, the Commission is not taking into account the fact that the EDC has an arms-length contractual relationship with that third-party vendor, who happens to be a CSP. In fact, Comverge offers Act 129 services to the EDC at a discount from its typical price because the price is partly balanced by the anticipated revenue stream from PJM. Moreover, the EDCs are sophisticated in negotiating contracts. If a benefit is flowing to the CSP from PJM payments, this will be noted by the EDC during the course of bargaining over prices, contract structure and related terms and conditions.

In conjunction with the argument that "benefits are benefits" regardless of whether the EDC or CSP performs the services, the issue of comparable risk needs to be considered by the Commission as well. For CSPs there is an element of risk in anticipating energy revenues as an offset to program costs. For example, an EDC's prudently incurred Act 129 program costs will be recovered as a matter of law and Commission regulation. This is true regardless of which proportion of cost recovery comes from ratepayers or from PJM payments to the EDC. In contrast, a CSP provides services at a cost that is determined through a competitive process. The CSP is at risk to the extent that PJM revenues fall short of anticipated levels.

Comverge submits that the Commission's reliance on the observation that PJM payments to CSPs are not transparent is not sufficient to justify differing TRC treatment for EDC vs. CSP programs. Supporting this position is the fact that benefits to customers are similar regardless of which entity receives the payments. The competitive context within which CSPs secure contracts for Act 129 services places a natural pressure on the CSP, requiring the bid and services to include a reasonable expectation of PJM revenues. This is analogous to many competitive contexts, including the PJM energy market, where competition forces push competitors' offers toward actual cost. Thus, CSPs have a risk of loss and a strong incentive to price services reasonably. This is a benefit to customers. Accordingly, Comverge suggests that when considering the benefits under the TRC test, ignoring PJM payments to CSPs is unreasonable. In fact, the CSP contract shifts performance risk from the ratepayer (through the EDC's) to the CSP. Comverge urges the Commission to examine this balance and to recognize that the TRC calculation ought to include PJM payments to CSPs, since such payments directly benefit customers in practice.

Comverge also points to its role as a technology developer and an innovator in systems for conducting demand reduction. For example, Comverge's services to PECO and PPL involve complete packages of hardware, software and installation. In a more general sense, Comverge's investors provide the capital needed to create this technology and are at risk if the technology fails to gain a foothold in the DR marketplace. In contrast, EDCs purchase Comverge's services at competitive prices, since technology companies compete to provide the DR products and services. Were EDCs to develop the technology themselves, or pay for technology to be developed, the cost would be higher than is paid under contracts with CSPs. Instead, EDCs can use CSPs who are able to spread their R&D costs across multiple customers throughout the United States, and in turn, offer more compelling pricing for better technology. Absent these economies of scale benefits, the EDC's costs for operating Act 129 programs would be substantially higher. Again, the total program offered by CSPs should be considered, benefits as well as costs, in order to properly evaluate the TRC of those services.

Accordingly, Comverge urges the Commission to revise its recommended solution regarding PJM payments to CSPs. Equal treatment of these payments, regardless of whether EDCs or CSPs operate Act 129 programs, will produce outcomes that best ensure that customers receive effective demand reduction programs at the most reasonable price.

Comverge thanks the Commission for creating the opportunity to comment on its proposed solutions. This open process helps to bring in the widest possible diversity of information and preferences. Comverge appreciates the Commission's careful consideration of its comments.

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