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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
| Public Meeting held June 30, 2011 |
| Commissioners Present:Robert F. Powelson, ChairmanJohn F. Coleman, Jr. , Vice ChairmanTyrone J. ChristyWayne E. GardnerJames H. Cawley |
| Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan**(Petition for Approval of Modifications to its Demand Response Programs)** | Docket No. M-2009-2093217  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of Duquesne Light Company (Duquesne

or Company) for Approval of its Energy Efficiency and Conservation and Demand Response Plan (Petition), filed on May 9, 2011. As discussed further herein, the

Petition proposes modifications to Duquesne’s Demand Response Programs (DR Program), which, by prior Order entered January 28, 2011, at this docket number, was approved by this Commission. Also, before the Commission is the Petition to Intervene filed by Comverge, Inc. (Comverge) on May 25, 2011. Answers to Duquesne’s Petition were filed by the Office of Consumer Advocate (OCA) and the Duquesne Industrial Intervenors (DII) on May 19, 2011. Responses to the OCA’s and DII’s Answers were

filed by Duquesne on May 25, 2011. Duquesne filed its Answer to Comverge’s Petition to Intervene on June 3, 2011.

# I. Background

 A description of: (1) Act 129; (2) the Commission’s various Act 129 proceedings; (3) Duquesne’s previous Energy Efficiency and Conservation (EE&C) Plans, including its DR Plans; and (4) the Commission’s review and approval of Duquesne’s EE&C Plan was set forth in our Opinions and Orders at this Docket entered October 27, 2009, December 23, 2009, February 2, 2010, February 17, 2010, and January 28, 2011.

 Governor Edward G. Rendell signed Act 129 of 2008 (Act or Act 129) into law on October 15, 2008. The Act took effect thirty days thereafter on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Among other things, the Act amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Commission to develop and adopt an Energy Efficiency and Conservation Program (EE&C Program) by January 15, 2009. The Commission’s EE&C Program includes the following:

* A procedure for approving EE&C plans submitted by electric distribution companies (EDCs).
* A process to evaluate and verify the results of each plan and the program as a whole.
* A process through which recommendations can be made for the employment of additional consumption reduction measures.
* A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

66 Pa. C.S. § 2806.1(a).

 By Opinion and Order entered January 16, 2009, at Docket No.

M-2008-2069887, *In re: Energy Efficiency and Conservation Program* (*Implementation Order*), the Commission established the standards that EE&C plans must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EE&C plans.

 On June 30, 2009, Duquesne filed a Petition for Approval of its Energy Efficiency and Conservation and Demand Response Plan (June 2009 Plan). The matter was referred to the Office of Administrative Law Judge (OALJ) for Public Input and evidentiary hearings. On August 31, 2009, Duquesne filed a Joint Petition for Partial Settlement (Settlement).

 On September 2, 2009, ALJ Nene certified the record to the Commission for consideration and disposition. By Commission Order entered on October 27, 2009 (*October 2009 Order*), Duquesne’s June 2009 Plan was approved in part, and rejected, in part. The Commission required Duquesne to submit a revised Plan within sixty days. On December 24, 2009, Duquesne filed a revised Plan (December 2009 Plan). Comments and Reply Comments were filed. By order entered February 17, 2010 (*February 2010 Order*), the Commission approved Duquesne’s December 2009 Plan.

 By Secretarial Letter issued June 24, 2010, the Commission provided updated guidance to EDCs regarding the Act 129 annual reporting requirement for 2010. Specifically, for the EE&C plan year ending May 31, 2010, the Commission required EDCs to submit their annual report and any proposed EE&C plan revisions by September 15, 2010. The Commission would accept recommendations for plan improvements, or objections to proposed changes in the plans, for thirty days. Interested parties could then submit replies to plan recommendations or objections to proposed changes during the next twenty days. At that time, the Secretarial Letter stated, the Commission would decide whether to refer the proceeding to the OALJ for hearing.

 By Secretarial Letter issued September 1, 2010, the Commission provided guidance to EDCs regarding the format of revised EE&C plans, including a requirement that all changes to text and tables be reflected in a black-lined version of the EE&C Plan.

 On September 15, 2010, Duquesne filed a Petition proposing modifications to its December 2009 Plan. On October 18, 2010, Pennsylvania Communities Organizing for Change (PCOC) filed a Petition to Intervene as well as Comments on Duquesne’s proposed Plan modifications. Also on October 18, 2010, the Association of Community Organizations for Reform Now (ACORN) filed a Petition to Withdraw from this proceeding. On November 4, 2010, Duquesne filed Reply Comments.

 On December 15, 2010, Duquesne filed a clarification to its Petition. No Party responded to the Company’s clarification. By Commission Order entered January 28, 2011, Duquesne’s September 15, 2010, Petition was granted and the Petitions filed by ACORN and PCOC on October 18, 2010, were also granted.

 We note that, on June 9, 2011, the Commission established by Final Order, an expedited review process to approve minor EE&C Plan changes. *See,* Docket No.
M-2008-2069887 (Order entered June 9, 2011) (*June 2011 Order*). The *June 2011 Order* establishes that certain Minor EE&C Plan changes may be reviewed under the expedited process. *June 2011 Order* at 19, 20. The instant Petition was not reviewed under the expedited process because it was filed before the *June 2011 Order* was entered.

**II. Procedural History**

 As stated above, on May 9, 2011, Duquesne filed the instant Petition for Approval of Modifications to its DR Plan that previously was approved by Commission Order entered January 28, 2011, at Docket No. M-2009-2093217 (*January 2011 Order*). The OCA and the DII separately filed Answers to the instant Petition on May 19, 2011. On May 25, 2011, Comverge filed a Petition to Intervene, including its concerns about Duquesne’s proposed modifications as contained in the instant Petition. Also on

May 25, 2011, Duquesne filed its Response to the Answers of the OCA and DII, and on June 3, 2011, Duquesne filed its Answer to the Comverge Petition and concerns.

We note that the instant Petition seeks to modify a prior Commission Order, pursuant to 52 Pa. Code § 5.572. Our Regulations provide for Answers to such a Petition, but do not provide for Responses to Answers. Thus, we will not consider Duquesne’s Responses to the Answers of the OCA and DII here.

# III. Description of Duquesne’s DR Plan

## A. The Existing DR Plan

 Duquesne’s approved Plan includes the following DR programs with a total estimated DR reduction of approximately 37 MW:

* Residential Direct Load Control for Air Conditioners and Electric Water Heaters Program (estimated DR reduction of 18.6 MW);
* Commercial and Industrial Direct Load Control Program for Small and Mid-sized Accounts (less than 300 kW) (estimated DR reduction of 7.8 MW); and
* Commercial and Industrial Curtailable Load Program for Large Accounts (greater than 300 kW) (estimated DR reduction of 10.8 MW).

*January 28 Order* at 7.

The overall demand response reduction to be met by Duquesne is

113 MWs.[[1]](#footnote-1) Petition at ¶ 11. In its original July 2009, filing, Duquesne projected approximately 199 MWs of demand reductions providing an 86 MW buffer to ensure the goal is met.[[2]](#footnote-2) *Id.* Duquesne’s projected 162 MWs demand reductions were to be achieved from its energy efficiency programs and 37 MWs from the three demand response programs listed above. *Id.* Duquesne now believes that its energy efficiency programs will produce only 56 MWs, or approximately thirty-five percent of the estimated 162 MWs initially projected for demand reduction. *Id.* As a result, Duquesne is requesting to modify its current DR Plan programs to further its ability to achieve the required reduction of 113 MWs including an appropriate buffer, using ratepayer funds prudently to implement cost effective DR Plan programs. *Id.*

## B. Description of the Proposed DR Plan Changes

 Duquesne seeks Commission approval to implement two changes to its DR Plan. The first change involves elimination of the residential and small/midsized commercial and industrial (C&I) air conditioning cycling (ACC) DR Plan programs. Petition at ¶ 20. These two programs were estimated to achieve a 26.4 MW reduction in demand. *See,* Modified Plan at 14 of 181. Duquesne asserted that these programs are not cost effective, producing only a 5 MW reduction at a cost of $3.9 million. *Id.* Duquesne’s proposal is to eliminate the current ACC program and reallocate the remaining residential group DR Plan funds of $2.9 million to the residential group energy efficiency programs. Petition at ¶ 22. Duquesne further proposes to hold those funds in reserve until the most prudent use is identified and Commission approval is granted to expend the reserved funds and implement those specific program(s). *Id.*

 The second change for which Duquesne is seeking Commission approval is to move the remaining $892,000 of small/midsized C&I DR Plan program funds into the large C&I DR Plan program. Petition at ¶ 21*.* Duquesne states that the large C&I DR Plan program is over-performing with the potential to exceed its originally anticipated DR Plan reductions. *Id.* Consequently, Duquesne seeks to increase the expected reductions from this program to 60 MW. *Id.*

# IV. Discussion

**A. Burden of Proof**

 In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence.

*Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

 In this case, Duquesne is asking the Commission for approval to make changes to the DR Plan segment of its approved EE&C/DR Plan. Duquesne therefore bears the burden of proving, by a preponderance of the evidence, that the proposed modifications will outperform the measures currently approved by the Commission and will satisfy the requirements of Act 129 and all prior related Orders of the Commission.

 We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**B. Petition to Intervene**

 As previously mentioned, on May 25, 2011, Comverge filed a Petition to Intervene. Comverge also provided a description of its concerns regarding the modifications proposed by Duquesne’s Petition and stated that it has a direct interest in the instant Petition due to its status as a DR provider of direct load control devices and services within the PECO and PPL Act 129 EE&C programs. Petition at 2. Additionally, Comverge, through its wholly owned subsidiary, Enerwise Global Technologies, is a registered Curtailment Service Provider (CSP) in the PJM market. Petition at 2, 3.

 In its June 3, 2011, Answer, Duquesne stated that it does not object to Comverge’s Petition to Intervene, however, according to Duquesne, Comverge has a direct financial interest in the issues presented by the instant Petition. Duquesne Answer at ¶ 7. Duquesne states that Comverge is the CSP that would have been granted a contract to operate the residential and small/midsized C&I DR programs. *Id.*

The criteria for intervention are set forth in 52 Pa. Code § 5.72. On review of the Petition to Intervene and Duquesne’s Answer, we find that Comverge has demonstrated an interest of such nature that participation may be in the public interest. 52 Pa. Code § 5.72(a)(3). As a result, we will grant the Petition to Intervene.

**C. Proposed Modifications to Duquesne’s EE&C Plan**

As previously described, Duquesne is proposing two modifications to the DR portion of its Act 129 EE&C Plan. First, elimination of the Residential and Small/Midsized Commercial and Industrial ACC Programs with reallocation of the remaining funds associated with those programs and, second, increasing the large C&I DR curtailment programs.

**1. ACC-Program Elimination**

 **a. Duquesne’s Position**

 Duquesne proposes to terminate the residential and small/midsized C&I DR Plan programs because, as explained below, Duquesne avers that they have become very expensive one-year programs. Petition at ¶ 20. Reflected at pages 35 and 36 of its modified EE&C/DR Plan, Duquesne has indicated that while estimated residential household participation was 4,991, there was no residential participation in the DR Plan in 2010. Duquesne has also reduced the anticipated participation projections for 2011 and 2012 to zero.[[3]](#footnote-3) *See,* Duquesne’s Modified Program at Section 3.2-d.

 The Residential ACC Program envisioned the installation of over 15,000 load cycling switches from 2010 to May 2012 on air conditioners and possibly electric water heaters. Petition at ¶ 13. The total budget for this program, including incentives, was $2.9 million. *Id.* The small/midsized C&I ACC Program anticipated the installation of approximately 4,800 load cycling switches, with a total budget, including incentives, of $992,200. *Id.* The combined budget for these two ACC Programs was $3,920,271. *Id.* At the time of Duquesne's initial 2009 filing, the estimated MW DR reduction for these programs was approximately 26.4 MWs at a cost of approximately $150,000 per MW. Figure 4: Portfolio Objectives, at 14 of 181.

 Duquesne avers that since the Commission approved its original 2009 Plan, the costs and effectiveness of the residential and small/midsized C&I DR reduction programs described above have deteriorated significantly. Petition at ¶ 16. For example, Duquesne now only expects to achieve a 5 MW of peak shaving reduction at a cost of $3.9 million, increasing the cost per MW to approximately $780,000. *Id.* Duquesne states that the result of a competitive bid for the residential and small/midsized C&I DR reduction programs was $3.7 million plus $.2 million for administrative costs. *Id.* Accordingly, Duquesne claims that the Total Resource Cost (TRC) has dropped to 0.05 for these DR reduction programs due to higher than anticipated costs, lower benefits due to lower capacity costs, and lower predicted results. *Id*. Additionally, the 0.05 TRC is below the solar program Duquesne proposed in 2009 which was rejected by the Commission for having too low of a TRC of 0.3. *Id.* Duquesne believes it would be wasteful of ratepayer funds to continue these residential and small/midsized C&I DR programs. Petition at ¶ 20.

 Based upon the performance of the ACC programs, as described above, Duquesne is requesting that the remaining residential DR program funds of $2.9 million be transferred to the residential energy efficiency programs. After analysis of demonstrated program performances, Duquesne will then Petition the Commission for approval to fund those programs. Petition at ¶ 22.

 **b. The** **OCA’s Position**

 In its Answer, the OCA requests that, as part of any approval of the instant Petition, Duquesne be directed to consult with interested stakeholders prior to seeking Commission approval to reallocate the Residential ACC Program funds. OCA Answer at 5. The OCA also recommends that such process continue to consider other forms of residential direct load control programs under an appropriate time frame. *Id.* Further, the OCA states that it understands and supports Duquesne’s objective of achieving its Act 129 compliance goals in as cost effective and prudent manner as possible and therefore does not oppose the modifications presented by Duquesne’s Petition. OCA Answer at 3.

 **c. DII’s Position**

 DII opposes the elimination of the residential and small/midsized C&I ACC Programs. DII Answer at 5. DII contends that the Commission’s *January 2011 Order* requires Duquesne to provide a diverse cross section of alternatives for customers of all rate classes. DII Answer at 5; *January 2011 Order* at 14; *see also,* 66 Pa. C.S.
§ 2806.1(b)(1)(i)(I). Additionally, DII asserts that Duquesne has not provided sufficient explanation or justification for its proposal to eliminate the only DR Plans available to the residential and small/midsized C&I class, and further averred that if such elimination is allowed Duquesne’s EE&C/DR Plan will not be in compliance with the Commission’s *January 2011 Order.* DII Answer at 5.

 **d. Comverge’s Position**

 In its Petition, Comverge opposes Duquesne’s proposal to eliminate the residential and small/midsized C&I ACC Programs because virtually identical programs have proven cost effective in other EDC Act 129 programs. Comverge Petition at ¶ 5. Comverge also contends that Duquesne’s reported TRC of 0.05 for these programs is due to only the short term benefit being considered and that Duquesne has not conducted a reasonable TRC test of the residential program. *Id.* at ¶ 6. Comverge also asserts that 0.05 TRC factor is the result of Duquesne’s erroneous TRC calculation. *Id*. It is Comverge’s contention that the initial costs for these DR reduction programs are largely concentrated on substantial, up-front investments in technology and infrastructure while the durability and reliability of these installations is enduring with benefits accruing over many years. *Id.* at ¶ 7. In this regard, Comverge is requesting the Commission to require Duquesne to perform a TRC analysis to compare costs to actual, long-term benefits which, Comverge asserts, will produce a radically different result. *Id.*

 Comverge also states that Duquesne’s analysis fails to recognize that a snapshot over one year obscures both the ongoing benefits from the residential and small/midsized C&I ACC Programs and Comverge suggests that this should be of concern to the Commission. Comverge Petition at ¶ 9. Comverge believes that the residential ACC Program should be considered for continued development because Duquesne has already notified[[4]](#footnote-4) all potentially eligible residential customers of the program’s availability and has enrolled hundreds of those who are eligible. *Id.* If Duquesne is permitted to rescind its residential ACC Program the result will lead to significant customer confusion and will also represent a waste of ratepayer funds already expended to publicize the program and enroll participants. *Id.*

 Comverge states its concern that Duquesne will not be able to achieve the desired and needed results from an, as yet, unnamed residential program. *Id.* at ¶ 11. Since notification and customer selection into the program is under way, Comverge believes that implementation measures could begin quickly. *Id.* Additionally, Comverge is of the opinion that it is not possible to predict the viability of an unnamed replacement energy efficiency program and whether it will be able to satisfy the requirements of Act 129. *Id.* Comverge concludes by stating its recommendation that the Commission should reject Duquesne’s Petition and should order that the residential and small/midsized C&I ACC Programs be implemented in accordance with the currently effective Commission approved plan. Comverge Petition at ¶ 12.

 **e. Duquesne’s Answer to Comverge’s Petition**

 Regarding the TRC calculation, Duquesne states that the resulting ratios may vary significantly among EDCs due to factors included in the TRC denominator (costs) and TRC numerator variations in the value of avoided capacity and energy (benefits). Duquesne Answer at ¶ 8. Duquesne further states that its residential and small/midsized C&I ACC Programs were only intended to operate from June through September 2012 since the overall plan ends on May 31, 2013. *Id.* at ¶ 12. Therefore, all savings and the majority of the costs of the program are contained in one year. *Id.* In further defense of its unfavorable TRC ration, Duquesne states that the original 0.05 TRC is overstated because the 2013 capacity pricing number was used when the 2012 capacity pricing number should have been entered into the formula. *Id.* at ¶ 13.

 At Paragraph 6 of the Comverge Petition, it is asserted that Duquesne did not fully explain the implications of elimination of the residential ACC Program. Duquesne’s response is that there would be much greater harm by not eliminating the program and charging ratepayers for an inefficient program. Duquesne Answer at ¶ 14. Lastly, Duquesne believes that its future Time of Use (TOU) programs, which would allow customers to moderate their entire load, not just their air conditioning, could be more beneficial to residential and small/midsized C&I customers than an ACC Program run by the utility. *Id.* at ¶ 15.

 **2. Large C&I DR Plan**

 **a. Duquesne’s Position**

 Duquesne's large C&I DR Plan, as presented in 2009, was expected to achieve a reduction of 10.8 MWs for the budget amount of $556,656, or approximately $51,500 per MW. Petition at ¶ 17. The DR Plan is now expected to achieve 40 MWs of peak saving without a budget increase, which will equate to approximately $14,000 per MW. The TRC for the large C&I DR Plan is now 1.37. *Id*.

 Regarding the large C&I DR Plan, Duquesne (1) proposes to increase the expected reductions to 60 MW, which Duquesne believes is needed to achieve the overall required DR reduction of 113 MWs in 2012; and (2) requests Commission approval to shift the $892,000 from the small/midsized C&I DR Plan to the large C&I DR Plan to achieve additional DR reductions, above the anticipated peak saving of 40 MWs, of at least 20 MWs. Petition at ¶ 21. Duquesne states that, in all other respects, the Large C&I DR Plan remains the same. *Id.* Duquesne also states that it will spend only that amount of the $892,000 transferred funds necessary to meet the demand reduction obligation, with an appropriate buffer. *Id.* Currently, Duquesne believes it will cost approximately $300,000 for the additional 20 MWs to bring the program’s total to 60 MWs. This would equate to approximately $14,300 per MW. *Id.*

 **b. DII’s Position**

 DII opposes Duquesne’s proposals to use the remaining amount of the originally budgeted $556,656 for this large C&I program to achieve an anticipated DR curtailment load of 40 MWs in lieu of the 10.8 MW originally expected. DII Answer at 5, 6. DII believes that Duquesne should have addressed maintaining the original 10.8 MW DR reduction at the reduced cost of $150,000 rather than increasing the anticipated DR reduction to 40 MW and using the original total budgeted amount of $556,656. DII Answer at 6. DII also opposes Duquesne’s proposal to increase the total Large C&I DR up to 60 MWs at an additional cost of $300,000 to $892,000. *Id.*

Accordingly, DII’s position is that Duquesne’s proposals to increase the Large C&I DR from the 10.8 MW originally expected, to 40 MW by using the original budget amount of $556,656, and then to 60 MW by spending an additional $300,000 to $892,000, are unreasonable because the result would not be a balanced and reasonable mix of programs as required by Act 129. DII Answer at 5, 6.

 DII believes that Duquesne has not justified the proposed expansion of the Large C&I curtailable load program targets. DII Answer at 7. DII notes that Duquesne designed its portfolio with an 86 MW or 75% cushion to compensate for any underperforming programs. *Id.* Missing from Duquesne’s Petition is identification of which energy efficiency programs are expected to underperform. *Id.* The currently expected industrial sector reduction objective other than DR is 17 MW. *See,* Petition Figure 4 at 14 of 181.

 DII offers that, if the Commission approves Duquesne’s proposal regarding the incremental 20 MW of DR, the cost should be capped at $13,900 per MW, reflecting the average cost anticipated by Duquesne for the MW of DR curtailment load at the original budget of $556,656. DII Answer at 8. DII believes that its proposal to cap the cost per MW would ensure CSP bids were not inflated and that the TRC would remain above 1 for the large C&I Curtailable Load Program. *Id.*

 **c. Comverge’s Position**

 Comverge states in its Petition that a close examination of the large C&I program indicates that the TRC result claimed by Duquesne is overstated. Comverge Comments at 4-5. Comverge explains that to reallocate funds from the small/midsized C&I DR program to the Large C&I DR program, which operates through direct incentives for performance, will have an impact upon demand in only one year. *Id.* at 5. This type of incentive for performance program can only survive with continued annual incentive payments. *Id.* Thus, Comverge asserts that if Act 129 mandates are increased or extended, Duquesne will need to spend significant funds for the Large C&I program in each of the years after 2013 to continue achieving mandated goals. *Id.* Further, Comverge states that Duquesne’s analysis fails to recognize that a snapshot over one year obscures both the ongoing benefits from the residential, small/midsized C&I DR programs compared to the one-time benefit from the large C&I DR programs. *Id.* Comverge believes that if Act 129 goals remain in force at current statutory levels Duquesne’s reliance on large C&I curtailment to meet those goals should be of concern to the Commission. *Id.*

 **d. Disposition**

We understand that expanding the Large C&I DR program may achieve higher usage reductions and may allow Duquesne to reach its target goal of demand response reduction. However, we cannot disregard two important points that give us pause. First, Duquesne has not demonstrated that its small/midsized C&I DR program is under-performing so as to justify the reallocation of its funding to the large C&I DR program. Second, Duquesne has not demonstrated that its requested modification, which will most likely have a negative effect on the small/mid-sized C&I DR program, will not disturb the balanced and reasonable mix of programs in Duquesne’s Plan as was required by Act 129.

Based on our review of the Petition, as well as the Answers thereto, we are concerned that the proposed modifications to the Residential and small/mid-sized C&I DR programs, and the proposed transfer of funds from the small/mid-sized C&I DR program to the large C&I DR program, may not result in an EE&C DR Plan that continues to satisfy the requirements of Act 129 and the prior related Orders of the Commission. The pleadings before us raise significant questions of fact that simply are not resolved by the record. We believe the Parties should be given an opportunity to present evidence on these issues before we approve or deny Duquesne’s Petition. Consequently, we will refer this matter to the OALJ for expedited evidentiary hearings and the issuance of a Recommended Decision.

**V. Conclusion**

Based on the foregoing, we will refer this matter to the Office of Administrative Law Judge for further proceedings, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Duquesne Light Company for Approval of Modifications to its Energy Efficiency and Conservation and Demand Response Plan, filed on May 9, 2011, is referred to the Office of Administrative Law Judge for expedited evidentiary hearings and the issuance of a Recommended Decision.

 2. That the Petition to Intervene filed by Comverge, Inc. is granted.

 **BY THE COMMISSION,**

Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: June 30, 2011

ORDER ENTERED: June 30, 2011

1. *See,* *Energy Consumption and Peak Demand Reduction Targets Order,* Docket No. M-2008-2069887 (Order entered March 30, 2009) at 5. *See also*, Duquesne’s May 9, 2011, filing regarding Portfolio Objectives, Figure 4 at 14 of 181. [↑](#footnote-ref-1)
2. *See,* Duquesne’s June 2009 EE&C Plan, Figure 4 at 13 of 184. [↑](#footnote-ref-2)
3. Section 3.3.7 of Duquesne’s Modified Plan indicates the same level of participation for the small/midsized C&I group and has also reduced its estimated participation rates for this group to zero for all Program years. *See,* Modified Plan at

56-58. [↑](#footnote-ref-3)
4. This notification process was not fully addressed by Duquesne. [↑](#footnote-ref-4)