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October 31, 2012

**VIA FEDERAL EXPRESS**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Bldg., 2<sup>nd</sup> Fl.  
400 North Street  
Harrisburg, PA 17105-3265

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 filing is the original of Comverge, Inc.'s Reply Brief in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jeffrey J. Norton'.

Jeffrey J. Norton

JJN/jls  
Enclosure

cc: Certificate of Service (w/enc)

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**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** :

**REPLY BRIEF OF COMVERGE, INC.**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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Date: October 31, 2012

Attorneys for Comverge, Inc.

## I. ARGUMENT

Comverge, Inc. (“Comverge”) is a leading provider of demand response products and services to various customers, including customers in the PECO service territory. This Reply Brief is submitted in response to the main briefs of several of the parties to the above-captioned proceeding. While Comverge anticipated and responded to many of the arguments set forth in the main briefs and incorporates those arguments herein, Comverge offers this Reply Brief to respond to several specific points of the parties.

In its initial Brief, PECO proposed adjustments to the energy consumption reduction target tentatively adopted by the Pennsylvania Public Commission (“Commission”) for the period June 1, 2013 to May 2016 (“Phase I”) in order to continue to fund demand reduction programs within the total funding cap imposed by Act 129. Comverge fully supports the PECO proposals.

All parties appear to agree that residential direct load control (“DLC”) and other demand reduction (“DR”) programs are important and provide material benefits to both the PECO and the ratepayers.<sup>1</sup> Moreover, there does not appear to be disagreement that PECO’s proposed interim demand response programs are prudent and cost-effective. However, what seems to be lost on the other parties (other than PECO) is the obvious fact that if PECO’s DR programs (from Phase I) are going to be continued in Phase II, PECO must be permitted to allocate a portion of its available Act 129 resources to the DR programs. Without Act 129 funding, PECO’s DR programs will not go forward. Since the Commission established PECO’s consumption reduction target for Phase II by simply dividing the total 3-year funding cap of \$

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<sup>1</sup> See *Phase II Implementation Order* at 38-42; OCA Brief at 1, 4 and 9; PECO Brief at 6; PennFuture Brief at 6-7.

256 million by the amount of energy efficiency reduction the Statewide Evaluator predicted PECO should be able to realize if it spends all of those funds on energy efficiency,<sup>2</sup> allocating a relatively small portion of this spend to DR will mean that PECO's resulting consumption reduction target must be slightly lower; it's just arithmetic.

Comverge recommends that the Commission continue to allocate adequate Act 129 funds as PECO proposes to continue and expand load management programs that provide stability in reliability planning, and consumer benefits, and avoid waste. The consumer-focused load management programs will suffer harmful and disruptive breaks in service if the Act 129 programs are not continued or are interrupted. But, it should be clear that the proper and adequate allocation of funds for load management programs in PECO's service territory is necessary for the continued success of the program. PECO has neither a legal nor policy reason to fund these programs outside the context of Act 129. It would be improper and arguably illegal to force PECO to continue such programs without providing the Company with an established right to recover the costs of the programs from its distribution ratepayers. PECO has presented evidence that demonstrates that the DLC programs cannot be sustained as part of PECO's Act 129 peak demand reduction program without Act 129 funding.<sup>3</sup> 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 not only rob customers of the benefits of demand reduction – more efficient use of existing generation facilities, lower generation costs overall and less fossil fuel plant emissions – but will also undoubtedly lead to

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<sup>2</sup> *Id.*

<sup>3</sup> PECO St. No. 1 at 9.

customer confusion and will produce stranded costs that will impose burdens on customers with no attendant benefits.<sup>4</sup> 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.<sup>5</sup>

Unless the Commission permits an adequate allocation of the total allowable spending cap 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.<sup>6</sup> In turn, the consumer-focused load management programs will suffer harmful and disruptive breaks in service.

Therefore, Comverge 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; (b) reduce PECO's Phase II consumption reduction target from 2.9% to 2.5%, and then to 2.3% which would better allocate an appropriate level of funding to DR Programs; (c) to allocate an adequate portion of PECO's available Act 129 resources for the DR programs; and (d) to use 2011 revenue data to establish the allowable spending limit for its Phase II consumption reduction target.

PECO has clearly met its burden of proof by establishing that the opposing parties (CAC/Sierra, the OCA and PennFuture) have misinterpreted the Phase II Implementation Order and have not factually supported their assertions. These parties appear to be disputing the PUC's own *formula* for determining the percentage consumption reduction that can be achieved from a

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<sup>4</sup> PECO St. No. 1 at 9.

<sup>5</sup> PECO St. No. 1 at 9.

<sup>6</sup> PECO St. No. 1 at 14.

particular spending level. More importantly, none of these parties has provided any data to prove that PECO could simultaneously allocate the required amount of funds to DR in order to maintain that program while still reaching the 2.9% consumption level stated in the Order. Considering the universal agreement that the DR program should go forward, it is crucial that the Commission clearly state that PECO should continue the program AND that it will be able to recover the costs of such continuation from customers. While it would appear irrefutable that the allocation of funds to DR will mean that the amount of consumption reduction activities will be reduced slightly, and, in turn the resulting consumption reduction will be reduced, those issues are secondary to insuring the continuation of the program and a clear assurance to PECO that it will be able to recover its costs for the DR programs from ratepayers. In addition, in its Brief, PECO also effectively explained why it will need to allocate \$17.4 million of its Phase II allowable spending for DR administrative and development costs. The Commission has not given EDCs permission to spend Phase III funds during Phase II and be assured that those expenditures could be recovered from customers. See PECO Brief at 13-14.<sup>7</sup>

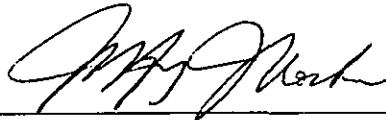
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<sup>7</sup> See also PECO Statement No. 1, at 18-19.

## II. 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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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document 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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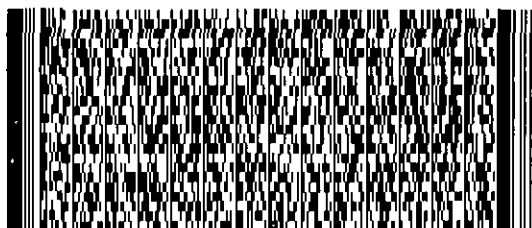
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