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January 15, 2013

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Petition for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company; Docket Nos. M-2012-2334392, M-2012-2334387, M-2012-2334395 and M-2012-2334398

Dear Secretary Chiavetta:

On behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (the "Companies"), I have enclosed for electronic filing the Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company in Opposition to Comverge, Inc.'s Petition for Admission Nunc Pro Tunc of Direct Testimony and Request for Expedited Resolution filed in the above-captioned consolidated proceeding.

Please contact me if you have any questions regarding the forgoing matters. Copies have been served as indicated in the attached certificate of service.

Very truly yours,



John F. Povilaitis

JFP/kra

Enclosure

cc: The Honorable Elizabeth H. Barnes (via email and first class mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	:	:	Docket No. M-2012-2334392
Petition of Pennsylvania Electric Company For Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	:	:	Docket No. M-2012-2334387
Petition of Pennsylvania Power Company For Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	:	:	Docket No. M-2012-2334395
Petition of West Penn Power Company For Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan	:	:	:	Docket No. M-2012-2334398

**ANSWER OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC
COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER
COMPANY IN OPPOSITION TO COMVERGE, INC.'S PETITION FOR
ADMISSION *NUNC PRO TUNC* OF DIRECT TESTIMONY AND REQUEST FOR
EXPEDITED RESOLUTION**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively, the “Companies”), by their attorneys, and in accordance with 52 Pa. Code § 5.61, submit this Answer in Opposition and Request for Expedited Resolution to the Petition filed by Comverge, Inc. (“Comverge”) on January 14, 2013 seeking Admission *Nunc Pro Tunc* of Comverge’s Direct Testimony (“Petition”).

I. INTRODUCTION

Comverge’s Petition, which Comverge filed only yesterday at 4:00 pm, requests leave to submit direct testimony that was due a week ago, even though the Companies’ oral rebuttal outlines are due in less than 24 hours and hearings begin in less than 48 hours. Comverge’s

Petition offers no legitimate explanation for its delay and, for this reason alone, should be denied. The December 28, 2012 Scheduling Order (“Scheduling Order”) of Administrative Law Judge Elizabeth H. Barnes (“ALJ”) expressly set January 8, 2013 as the deadline for “Other Parties’ Direct Testimony.” No reasonable reading of the Scheduling Order permits comments in lieu of direct testimony, and Comverge’s assertion that prehearing orders issued in other electric distribution companies’ (“EDCs”) energy efficiency and conservation plan (“EE&C”) proceedings justify the inclusion of comments in the certified record, and therefore the inclusion of materially similar late-filed testimony as well, defies logic.

Further, the admission of Comverge’s testimony served at this late date would deny the Companies’ Due Process. These proceedings are following an expedited schedule, and the Companies have served discovery on the other intervenors that timely served direct testimony. In contrast, Comverge submitted its testimony yesterday, the Companies must circulate an outline of oral rebuttal tomorrow, and hearings begin in less than 48 hours. The Companies have no time to take discovery on Comverge’s testimony, much less prepare a meaningful rebuttal. Any attempts to cross examine Comverge’s witness would be similarly uninformed by discovery.

Because hearings begin on January 17, 2013, which is less than 48 hours from the filing of this answer, the Companies respectfully request expedited resolution of Comverge’s Petition. Alternatively, should Comverge’s request be granted, the Companies respectfully request a seven day extension of the procedural schedule in order to properly prepare for hearing. And because of the fact that the hearing is currently scheduled to commence in two days, the Companies further request an expedited ruling on this matter.

II. ANSWER IN OPPOSITION TO PETITION FOR ADMISSION NUNC PRO TUNC OF DIRECT TESTIMONY

A. Comverge Has No Valid Explanation for Serving Its Direct Testimony Late

Comverge has offered no valid excuse for submitting direct testimony 6 days late, less than 3 days prior to hearings, and less than 2 days before the Companies must circulate oral rebuttal outlines. The ALJ's December 28, 2012 Scheduling Order sets January 8, 2013 as the deadline for "Other Parties' Direct Testimony." Scheduling Order, Ordering Paragraph 1. The Office of Consumer Advocate ("OCA"), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA"), the Community Action Association of PA ("CAAP"), PennFuture and UGI Central Penn Gas, Inc. ("UGI") submitted Direct Testimony by the January 8 deadline.

Notwithstanding the Scheduling Order's January 8 deadline for "direct testimony," Comverge filed no direct testimony. The Petition suggests Comverge concluded that direct testimony is unnecessary, and that it could rely on comments it had filed on December 21, 2012, a conclusion lacking any support in the Scheduling Order and one made at their own peril. Thus, the Petition alleges that "Comverge has only recently learned that there may be an issue with admitting its comments into the record..." Petition ¶ 10. The only explanation of the "issue" offered by the Petition is a discussion of prehearing orders issued by a different presiding officer in other EDCs completely unrelated EE&C proceedings.¹ Comverge incorrectly states that these prehearing orders permit the inclusion of comments in the certified records of those proceedings under certain conditions, with the implication that very late but materially similar direct

¹ *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334388; *Petition of Duquesne Light Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334399; and *Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2333992.

testimony should be included in the record as well. To the contrary, the presiding officer clarified in the PPL Electric and Duquesne Light proceedings that comments offered by a party in lieu of testimony will not be accepted into the certified record.² Only in the PECO proceeding did the presiding officer indicate that His Honor would only consider including “comments” in the certified record if they are introduced at hearing by a party to the proceeding and an authenticating witness is made available for cross-examination.³ Notably, each of these prehearing orders states at the outset that its purpose is to clarify that particular presiding officer’s prior statements at each prehearing conference with respect to “comments.”

Thus, Comverge’s purported explanation for offering direct testimony late defies logic and amounts to no explanation at all. Comverge has not alleged that the ALJ in these proceedings made similar statements, nor explained why the prehearing orders in the other EDCs’ EE&C proceedings should have any bearing on these proceedings and the Companies. Comverge’s claimed excuse for not filing direct testimony ignores the simple fact that the ALJ’s Scheduling Order in these proceedings set a deadline of January 8, 2013 for “Other Parties’ Direct Testimony.” Comverge’s purported reliance on prehearing orders of a different presiding officer in different proceedings is patently unreasonable and, as discussed below, no justification for allowing admission of the testimony to the prejudice of the Companies.

² *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334388 (Fourth Prehearing Order issued January 9, 2013) at 1; *Petition of Duquesne Light Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2334399 (Fourth Prehearing Order issued January 9, 2013) at 1.

³ *Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, Docket No. M-2012-2333992 (Fifth Prehearing Order issued January 2, 2013) at 3.

B. Admitting Comverge's Late Direct Testimony Would Deny the Companies Due Process

Comverge amazingly alleges that disregarding its failure to submit Direct Testimony for 6 days – until less than 2 days remained until the Companies must circulate oral rebuttal outlines and less than 3 days before hearings – would not adversely affect the substantive rights of the parties. Petition ¶¶ 8, 9. Quite the contrary, allowing Comverge to submit its direct testimony at this very late stage of the proceedings would violate the Companies' fundamental Due Process rights.

These proceedings are following an accelerated procedural schedule, in which intervenors have 7 days to answer discovery. December 28, 2012 Scheduling Order, Ordering Paragraph 4(a). The Scheduling Order further provides that “answers to discovery on Intervenor direct testimony should be served on a best effort basis by noon on January 14, 2013, but no later than January 15, 2013 [i.e., today].” December 28, 2012 Scheduling Order at 7. In addition, the December 28, 2012 Scheduling Order requires the Companies to circulate an outline of oral rebuttal on January 16, 2012 (i.e., tomorrow). The Companies promptly served discovery on all the Intervenor that timely submitted direct testimony, which include the OCA, CAUSE-PA, CAAP, PennFuture and UGI, and expect all responses to meet today's deadline.

In contrast, the Companies have no time even to formulate discovery to Comverge by noon today. With no time to take discovery, the Companies cannot prepare a meaningful rebuttal. Admitting Comverge's direct testimony would violate the Companies' fundamental Due Process rights. Also, because the Companies have had no time to examine Comverge's testimony, Comverge's late submittal undermines the Companies' efforts to settle these proceedings. These impacts are particularly unfair, and Comverge's delay is particularly egregious, because Comverge apparently knew all along what it wanted to say in these

proceedings. Comverge timely filed Comments in these proceedings on December 21, 2012, and its Petition alleges that “Comverge’s proposed direct testimony does not materially differ in substance from its comments to the First Energy [sic] Companies’ Phase II Plans....” Petition ¶ 11.

Any similarity of Comverge’s comments to its late-filed direct testimony is irrelevant because comments are not part of the evidentiary record for purposes of resolving disputed issues relating to the proposed plans. Therefore, when preparing its litigation strategy, the Companies did not factor in Comverge’s comments. Furthermore, all parties were on notice that the filing of direct testimony was a separate action Parties could elect to pursue or forego. Comverge elected to forego the filing of timely direct testimony. The Companies thus concluded that they did not have to prepare for purposes of addressing issues in litigation that were raised by Comverge in its comments.

Comverge offers that it is willing to agree to an extension of time to allow other parties to object to, cross examine and/or rebut Comverge’s late-served direct testimony. Petition ¶12 and n.1. However, extending or altering deadlines at this point of the proceedings is unrealistic, especially given the ALJ’s need to certify the record by February 7, 2013, as well as rebuttal testimony and briefing deadlines. The procedural schedule, which was developed through significant effort of the other parties, affords no room for extensions. Moreover, agreeing to allow the Companies to cross examine or rebut late-served direct testimony is of dubious value, since the Companies would have to cross-examine or rebut Comverge’s late-served direct testimony without the benefit of discovery. However, if Comverge’s request is granted, then the Companies respectfully ask that such a delay be granted and the procedural schedule be shifted one week in order to properly prepare for hearing.

C. Request for Expedited Resolution

Because hearings begin in less than 48 hours, the Companies respectfully request expedited denial of Comverge's Petition.

III. CONCLUSION

For all the foregoing reasons, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company request that Comverge, Inc.'s Petition for Admission *Nunc Pro Tunc* of Direct Testimony be denied.

Respectfully submitted,

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Dated: January 15, 2013

Counsel for:
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Pennsylvania Power Company and
West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition for Approval of its Act 129 :
Phase II Energy Efficiency and : **Docket Nos. M-2012-2334392**
Conservation Plans of Metropolitan Edison : **M-2012-2334387**
Company, Pennsylvania Electric Company, : **M-2012-2334395**
Pennsylvania Power Company Plan and : **M-2012-2334398**
West Penn Power Company :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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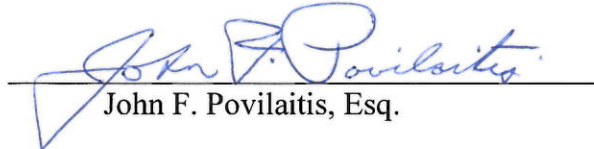
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Date: January 15, 2013


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