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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval to Cancel Schedule 194

DOCKET NO. 13-035-136

COMVERGE, INC.'S
COMMENTS ON PACIFICORP'S
APPLICATION

Pursuant to the Notice of Filing, Comment Period and Hearing issued by the Public Service Commission of Utah (“Commission”) on August 20, 2013 in the above referenced docket, Comverge, Inc. (“Comverge”) hereby files the following comments:

1. PacifiCorp’s Application.

On August 14, 2013, Rocky Mountain Power, a division of PacifiCorp (“PacifiCorp”) filed an Application for approval to cancel Schedule 194 – Demand Side Management Cost Adjustment in order to fund improvements to Electric Service Schedule 113 – Air Conditioner Direct LoadControl Program, also known as Cool Keeper.

2. Application – No Changes.

PacifiCorp states that it “is not seeking changes to the Cool Keeper program.” See Application, Paragraph 9.

3. PacifiCorp's Decision.

PacifiCorp announced in its Application, “[t]aking into consideration pricing, commercial risk, program performance, and the technical evaluation performed during the RFP process, the winning proposal was a Utility-owned two-way communicating air conditioning load control system.” See Application, Paragraph 21. The Application is silent on all issues related to the abandonment of the current Cool Keeper program.

4. Funding.

PacifiCorp forecasts that retaining the current Electric Service Schedule 193 charge and cancelling the remaining Electric Service Schedule 194 cost adjustment will fund the system transitional costs within 24 months. See Application, Paragraph 25.

5. Effect of Approval of Application.

PacifiCorp requests that the Commission approve the funding for PacifiCorp's decision to purchase, own and operate a new load control system. If the Commission approves the Application, it has the effect of approving PacifiCorp's decision to purchase, own and operate the new load control system, and abandoning the existing load control system.

6. Other Options Available to PacifiCorp.

Comverge maintains that PacifiCorp's decision to purchase, own and operate a new load control system is not a program that “could be procured at a reasonable cost compared to the Company's other options.” See Application, Paragraph 20. For example, PacifiCorp could purchase the existing direct load management system. Therefore, this proposal is not in the public interest.

7. Comverge – Leading Provider of Energy Management Products and Services.

Comverge is one of the nation's leading providers of energy management products and services including demand response and direct load control technologies. Comverge delivers a comprehensive suite of intelligent energy management solutions that enable utilities, grid operators, and commercial and industrial organizations to optimize their energy usage in order to reduce costs, meet regulatory requirements, and support sustainability initiatives. With 30 years of experience helping customers implement innovative demand-side management programs, Comverge has deployed more than five and a half million energy management devices, recruited over one million residential customers into mass market demand response programs, and served thousands of commercial and industrial customers. Comverge has a unique business model, and extensive experience in providing energy management solution services to all types of customers. Comverge has been the Program Administrator for the PacifiCorpCool Keeper Program since its inception in 2003, and as will be discussed further below, Comverge owns the load control devices, hardware and software that comprise the current Cool Keeper program.

8. Cool Keeper Program Provided by Comverge.

Cool Keeper is a 100 MW Virtual Peaking Capacity™ (“VPC”) air conditioning load reduction asset that includes direct load control of approximately 110,000 air conditioners. Approximately 14,000 additional customers have had direct load control devices installed on their air conditioners over the life of the program but for one reason or another are no longer active participants in the program. Participants include both residential and commercial customers with A/C units less than 5.4 tons and between 5.4 and 7.5 tons respectively.

VPC programs are an innovative product offered by Comverge that places all development and operational risk on Comverge, protecting the utility and its ratepayers from

performance risk. In a VPC program, Comverge owns all of the load control devices, installation equipment, trucks, subcontractors, software and any other materials required to make the system operational. (Collectively, the physical infrastructure of the VPC will be referred to as the “Asset”.)

As part of the existing VPC program, Comverge made capital investment to acquire and provide all hardware, software, installation service, marketing services, customer care, measurement and verification, Network Operations, inventory management, maintenance, communications infrastructure and quality control equipment. Comverge recruits customers into the program via various marketing channels. Customers are paid an annual incentive in the form of a PacifiCorp bill credit for participating. Under the current Cool Keeper agreement with Comverge, (“Agreement”) PacifiCorp pays Comverge for the available MW capacity that is called upon at PacifiCorp’s discretion up to 100 hours per control season. The control season runs from June through August of each year.

Communications with load control switches are achieved using one way paging signals. Measurement and verification of the load reduction is achieved through metering and two way communications devices on a representative sample of the total population.

The VPC provides PacifiCorp with approximately 100 MW of load reduction each time PacifiCorp calls on the program, offsetting the need to build a 100 MW peaking power plant. The Asset qualifies as a reliability resource (non-spin) for PacifiCorp.

9. Investment in Cool Keeper Program.

The VPC contract is structured such that Comverge owns the Asset. Comverge made the capital investment and PacifiCorp pays Comverge a price per avoided kw per year. In the ten years that Comverge has been the Program Administrator for the Cool Keeper program, it has

invested approximately \$13.5 million. PacifiCorp does not have any capital invested in the current system, so in that regard they have not paid a direct price per device.

It can be assumed that each installed load control device yields approximately 0.95 kw of load reduction on average. If the load is not delivered, PacifiCorp does not pay for it.

10. Current Cool Keeper Program – Reliable and Working.

PacifiCorp utilized the Cool Keeper asset nine (9) times during this 2013 control season (June 1 through August 31). The asset operated as intended with at least one event called within minutes of its initiation. Communications and device quality are monitored regularly and continue to see average paging reception results of greater than 95%. Comverge inspects 20% of the installed devices each year to ensure they are operating as designed. In the event a device is found to be inoperable upon inspection, Comverge repairs it or replaces it. Test results from 2012 showed that approximately 8% of the devices were in need of repair. Only a small fraction (less than 1%) of the devices “failed” as a result of operational issues. The vast majority (over 6%) of the devices “failed” because they were physically disconnected from the air conditioning unit. These results are consistent with other Comverge programs similar to the Cool Keeper program.

It should be noted that customer satisfaction with the program has ranged between 96% and 100% over the years of the program.

11. Comverge’s Proposal to Provide Cool Keeper.

On March 10, 2013, in response to PacifiCorp’s RFP-DOC 226900381 solicitation, Comverge submitted a proposal for maintenance of the existing Asset, with options for further program expansion / device replacement if desired.

The Comverge proposal included a fully-supported VPC contract structure for ten years with an option to extend an additional three years. Comverge also indicated that we would consider an alternative VPC structure of a five year term. In either contract structure, the VPC program continued maintenance and support of the greater than 100 MW resource and provided seamless integration of new two-way devices to enable cost-effective expansion of the program.

The pricing in the Comverge proposal was structured to provide PacifiCorp predictability in the maintenance cost of the existing resource and provide a fixed incremental cost of expanding the program. We proposed maintaining the existing capacity at a minimum level of 100 MW of reliable DR capacity for a blended average of \$46.75 per kW-yr over the ten (10) year base period of the agreement, with an optional three year extension at \$49 per kW-yr. This pricing included all equipment and services required to retain existing participants and recruit new participants as necessary, provide field installation, maintenance and service, Call Center services, load control equipment, and inventory management.

In addition, Comverge offered three options to the pricing described above:

- a. Same as above with a five-year term.
- b. Program Expansion beyond 100MW – First-Year Capacity Charge of \$125/kW for new one-way communicating device capacity and \$200/kW for new two-way communicating device capacity. After the first year of participation, the new capacity would be added to the base capacity and maintained at the same blended average of \$46.75 base maintenance price for the remainder of the term.
- c. The following devices were also offered as options for new customers to the program.

- i. Two-way Digital Control Units (DCUs) – IntelliPEAK DirectLink™.
- ii. Two-way Programmable Communicating Thermostats (PCTs) – IntelliTEMP DirectLink.

12. Evaluation of PacifiCorp’s Decision.

a. Lack of Information: It is not possible from the publicly available information to determine the cost-effectiveness or value of the decisions PacifiCorp has made with regard to the Cool Keeper program. Presumably, PacifiCorp has made these decisions considering rate impacts to customers, risk to ratepayers, reliability benefits and perhaps some technological considerations. It is logical also that they have considered shareholder risk and return.

b. Rate Payer Impact: It is improbable that PacifiCorp could provide this service for less than what Comverge has proposed. Comverge believes that it simply not possible for any curtailment vendor to offer a similar service to PacifiCorp for a comparable or lower price. The Comverge Asset has already been deployed and is functioning. A replacement system requires a total re-build of the asset. A similar situation would be if PacifiCorp decided to replace a 10 year old functioning power plant with a new one. However, that power plant would not be additive to the capacity on the system. It is just a replacement. Absent some anomalous circumstance, it is not likely that type of investment by the utility would pass regulatory scrutiny. Comverge understands well that price is not always the ultimate determinant in deciding a contract award, but it should always be a major consideration because that is the element that has the biggest impact on ratepayers. Based on publicly available data, regulatory policies and

financial logic, it appears that the new PacifiCorp program will undoubtedly cause an increase in rates to customers.

c. Rate Payer Risk: The Comverge Agreement provides a unique protection to PacifiCorp ratepayers. Comverge has taken all of the performance risk under the Agreement. In other words, if the program didn't (doesn't) work as contracted, then no payments are made to Comverge. Under the proposed program, PacifiCorp intends to bring the new program onto its own books, placing all performance risk with ratepayers.

d. Reliability Risk: PacifiCorp is generally a purchaser of power during peak demand periods. PacifiCorp has decided to replace the Asset which currently provides approximately 100 MW of load reduction when needed. The current plan for which PacifiCorp is seeking transitional funding is not additive to the general utility asset portfolio. It is a replacement. So, in the best case, it is reliability-neutral. In no case can it offer PacifiCorp or its customers increased reliability. Overall, it increases reliability risk in the near term and possibly the long term, because the replacement system is not yet built, nor is it proven. In the scenario that PacifiCorp is building for itself and its customers, it is quite possible that the Comverge Asset will be decommissioned and the new system will not be fully deployed, ultimately reducing reliability for rate payers.

e. Technology Risk: It is possible that the new program offers some type of technological advantage. However, it is not readily clear what that might be as the Comverge Asset has proven to be reliable. That technological advantage should be quite extraordinary to overcome the rate payer impact and the reliability risks moving forward under the current PacifiCorp plan.

f. Shareholder Risk: Because little data is available about program costs for the proposal, it is not clear what the shareholder impacts will be. Presumably, the shareholder risk-return calculation is positive for the shareholders. Certainly adding any additional amount to rate base would benefit shareholders.

13. End of Term – Purchase Option for PacifiCorp.

a. While Comverge does not want to abandon the PacifiCorp program, it understands that the decision is not theirs. It also recognizes that like any long-term program, abandonment is not simply achieved. With one exception, the Agreement is generally silent on about what happens at the end of the term of contract. The Agreement has no provisions for transition services or termination scenarios at the end of ten years. However, the Agreement includes in-term default provisions. Given the inclusions of in-term default provisions, it appears that it was never considered that if the Asset functioned for ten years that it would be abandoned or transitioned.

b. The exception to the end-of-term silence is the inclusion of a purchase option granted to PacifiCorp at the conclusion of the 10 year contract life cycle. Exhibit B to the Agreement, the Price Schedule, includes an explicit purchase option for PacifiCorp to purchase the entire DCU project. The option price is \$4.5 million. PacifiCorp's decision to not exercise this option creates tremendous complications in the abandonment scenario. If PacifiCorp were to exercise its purchase option, they would have a utility-owned program that would be reliable for at least five years, with little to no maintenance expense. Of course, that Asset could be reliable for many more years with adequate maintenance. It is highly improbable that any vendor proposed a newly built program for less than the \$4.5M purchase option price currently available to PacifiCorp.

14. Transition Opportunities.

Comverge believes that, at a minimum, it will be highly risky for PacifiCorp to assume that it will be able to replace the Asset prior to the 2014 summer control season. Simply, from a logistics perspective, it will be difficult to reach the approximately 124,000 customers with existing load control devices and replace them with new devices. Recognizing this transition difficulty, Comverge has reviewed the Agreement to see how the transition could be smoothed to minimize performance shortfall risks. Comverge has offered to PacifiCorp to keep the current system up and running through the transition to the new provider. Comverge has also discussed the purchase option with PacifiCorp. PacifiCorp is seemingly not concerned about the transition and has declined to even consider any type of transition services.

15. Liability Issues – Not Resolved.

a. The Asset is currently owned by Comverge. The asset includes direct load control devices installed at approximately 124,000 homes, other hardware, software, contractual obligations and potentially other pieces. PacifiCorp does not have the right to remove or in any way interfere with the Asset or any piece of the Asset in its existing form. If PacifiCorp or its vendor choose to remove, replace or build over the asset, it will devalue the Asset and create significant risk to legal risk to itself and its ratepayers, liability risk to Comverge and health and safety risks to any customers that participate or have participated in the program.

b. The Comverge load control devices are physically attached to the outside of the house and electrically attached to the air conditioner compressor, which is typically the highest single electric load in any residence. The Comverge devices were installed by professionals and are maintained by professionals on an on-going basis. If PacifiCorp builds over the existing system and puts a second load control device on the home, it would not be evident that they

could do so in a safe manner. Comverge is not aware of any experience anywhere in the country where existing load control devices have been duplicated resulting in two load control devices on one air conditioning unit. It is not clear that the new device will work or the old device won't work, or vice versa. It is not clear whether the location of the physical attachment matters and it is not clear that if the location matters, whether or not that needed location is physically available, for the Comverge device would be located in that location.

c. Long-term abandonment also puts risk on customers from issues such as unqualified air conditioner repairs, customer apathy toward maintaining the shrubbery and other wildlife around the device, and other physical risks.

16. PacifiCorp's Application – Not in Public Interest.

PacifiCorp's decision to transition to a new direct load control is puzzling and troubling. Transitioning the program to a new provider is certain to increase customers' rates, decrease reliability and impose new financial risks on rate payers and physical health and safety risks to current and past program participants. It is possible that the program may offer some new technological advantage, but that is not clear. It is certainly not clear from PacifiCorp's current Application that any technological improvement can justify the increased burden. The proposal clearly is not in the public interest.

WHEREFORE, Comverge respectfully requests that the Commission deny PacifiCorp's Application and review PacifiCorp's decision to purchase a new load control system. Comverge believes that hearings are warranted so that this Commission can better understand the costs and benefits of the alternative systems, the health and safety risks caused by the abandonment of the Comverge Asset, the rights of PacifiCorp to modify the Comverge Asset, and any other issues that may arise during the course of this investigation. Comverge maintains that there is nothing

in the record that justifies the abandonment of a fully functional 100 MW load reduction asset and that utilizing the Comverge system is in the public interest.

DATED this 29th day of August, 2013.

CALLISTER NEBEKER & McCULLOUGH

/s/ Brian W. Burnett

Brian W. Burnett

Attorneys for Comverge, Inc.

CERTIFICATE OF SERVICE

I CERTIFY that on 29th day of August, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

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