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VIA FEDEX NEXT DAY

March 14, 2011

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MAR 14 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU


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

Re: J3 Energy Group, Inc., v. West Penn Power Company
Complaint Docket No. C-2011-2219920

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of West Penn Power Company to the Motion to Compel Discovery filed by J3 Energy Group, Inc.

Very truly yours,


John L. Munsch
Attorney

JLM:sac

Enclosure

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAR 14 2011

J3 ENERGY GROUP, INC.
Complainant,

v.

WEST PENN POWER COMPANY,
Respondent.

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:
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:

Complaint Docket No. C-2011-2219920

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

WEST PENN POWER COMPANY'S ANSWER TO J3 ENERGY GROUP, INC.'S
MOTION TO COMPEL ANSWERS TO DISCOVERY REQUESTS

West Penn Power Company ("West Penn" or "Company") submits its Answer to the Motion to Compel filed by J3 Energy Group, Inc. ("J3") pursuant to Section 5.342(g) of the Rules and Regulations of the Pennsylvania Public Utility Commission ("Commission").

1. Background.

Complainant submitted bids pursuant to a default service procurement by West Penn for solar photovoltaic alternative energy credits ("SRECs"). Complainant contends in its Complaint that its bids for SRECs were incorrectly evaluated by West Penn and by West Penn's independent third party evaluator. J3 served its Complaint on West Penn on January 13, 2011.

West Penn filed its answer on February 2, 2011, denying the allegations of Complainant and asserting that West Penn and its third party evaluator correctly evaluated and interpreted the bids submitted by Complainant for SREC procurement. Complainant served discovery requests on West Penn on February 14, 2011. On February 24, 2011, West Penn submitted objections to

J3's interrogatories and documents request. A copy of West Penn's objections is attached hereto as **Attachment 1**.

2. Answer to Motion to Compel.

J3 points to Section 10.7 of the Request for Purchase ("RFP"), as approved by the Commission, which provides that absolute protection from public disclosure of bidders' data can not be provided. However, Section 10.7 is an exception to the broader rule stated in Section 10.6 of the RFP that all data and information provided by bidders is to be kept confidential. The Sections provide:

- 10.6 The Company and the IPM will consider all data and information provided by Bidders in response to the RFP to be confidential and will attempt to limit their disclosure to the public in accordance with the provisions of this Article. The Company will also take reasonable action to ensure that their employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. The Evaluation Team will be provided access to the Bidder's Proposals on a need-to-know basis.
- 10.7 However, absolute protection from public disclosure of the Bidders' data and information filed in response to the RFP cannot be provided and is not intended. For example, the Company will provide access to the Bidders' data and information to selected personnel/staff from the PaPUC in order to allow the PaPUC to accept or reject the RFP results. Moreover, the Company expects to publicly release the total number of Proposals received in response to this RFP, the amount of Tranches awarded and the average price per SPAEC for results accepted by the PaPUC. By submitting a Proposal in response to the RFP, a Bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

Pursuant to Section 10.6, the Company has an obligation to attempt to limit disclosure of information provided in the bids.

The Company also submits that Commission regulations and policy guidelines dictate the protection of bid information. Section 54.186(c)(5) provides:

The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission under § 54.185(d)(6). The DSP, the Commission and a third party involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.

52 Pa. Code §54.186(c)(5).

Commission Policy Guideline at Section 69.1807(7) provides:

The public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, bid prices and retail rates may be impacted by protecting certain information, including, the identity of winning and losing bidders, the number of bids submitted, bid prices, the allocation of load among winning bidders, and the like. At the same time, the Commission recognizes that there is a legitimate public interest in knowing some of this information when there is no possibility of any prejudice to ratepayer interests.

52 Pa. Code §69.1807(7).

West Penn submits that it has an obligation under both the RFP and under Commission rules to object to J3's discovery request.

J3 further contends that "bidders can not claim that disclosure is prejudicial or violates the confidentiality provisions of the RFP because the RFP anticipated public release of the information." West Penn responds that the RFP did not anticipate public release of the information but only anticipated that, in some instances, public release would be required by governmental authority. West Penn is undertaking its obligation under the RFP and under Commission rules to protect the confidentiality of bid procurement information.

J3 further contends that "the disclosure is occurring after bid closing and source selection and therefore has no impact on the competitive process conducted by West Penn." While West Penn's SRECs procurement has concluded, the regulations anticipate that the information shall

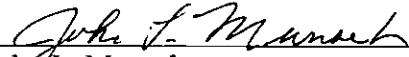
continue to be kept confidential because its release could impact broader competitive processes in PJM and elsewhere for procurement of default service including SRECs.

J3 further contends that “there is nothing to be learned from the disclosure that would discourage competition on future solicitations and/or lead to higher prices for the ratepayer.” West Penn submits that whether or not competition would be discouraged by disclosure of the bidding information as requested by J3 is a factual determination. The regulations and the RFP anticipate that the confidential information should remain confidential.

West Penn hereby incorporates as if set forth fully the limited objections to Complainant’s discovery request as filed by West Penn on February 24, 2011.

Respectfully submitted,

Date: March 14, 2011

By: 
John L. Munsch
Pa. I.D. No. 31489

Jennifer L. Petrisek
Pa. I.D. No. 83411

Attorneys for
WEST PENN POWER COMPANY,
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MAR 14 2011
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Pennsylvania Public Utility Commission;
Re: J3 Energy Group, Inc., v. West Penn Power Company; Docket No. C-2011-2219920**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first-class mail, postage prepaid, the foregoing
Answer to J3 Energy Group, Inc.'s Motion to Compel Answers Discovery Requests addressed
as follows:

Thomas J. Russial, Esq.
198 Stonewood Dr.
Bethel Park, PA 15102

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MAR 14 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Date: March 14, 2011


John L. Munsch, Attorney for
WEST PENN POWER COMPANY,

800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210

Attachment 1



LEGAL SERVICES

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jmunsch@alleghenyenergy.com

VIA FEDEX NEXT DAY

February 24, 2011


Thomas J. Russial, Esq.
198 Stonewood Dr.
Bethel Park, PA 15102

Re: J3 Energy Group, Inc., v. West Penn Power Company
Complaint Docket No. C-2011-2219920

Dear Mr. Russial:

Enclosed please find Objections of West Penn Power Company to Discovery of J3 Energy Group, Inc.

Very truly yours,


John L. Munsch
Attorney

JLM:sac

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

J3 ENERGY GROUP, INC.	:	
Complainant,	:	
	:	
v.	:	Complaint Docket No. C-2011-2219920
	:	
WEST PENN POWER COMPANY,	:	
Respondent.	:	

**WEST PENN POWER COMPANY'S LIMITED OBJECTIONS
TO COMPLAINANT'S DISCOVERY REQUESTS**

West Penn Power Company ("West Penn" or "Company") objects to certain discovery requests presented by J3 Energy Group, Inc. ("Complainant") and served on West Penn on February 14, 2011, in the above-captioned matter. Complainant's Complaint was served on West Penn on January 13, 2011. The substance of the Complaint is that Complainant submitted bids pursuant to a default service procurement by West Penn for solar photovoltaic alternative energy credits ("SRECs"). Complainant now contends that its bids were improperly evaluated by West Penn. West Penn filed its Answer on February 2, 2011. West Penn's objection is presented pursuant to Section 5.342 of the Pennsylvania Public Utility Commission's regulations, 52 Pa. Code §5.342.

Objection to Interrogatory No. 4 (4)

Interrogatory Nos. 3 and 4 are related questions, stating as follows:

QUESTION NO. 3

Please state whether Respondent or Boston Pacific communicated with any bidder after submission of Part 2 proposals for the purpose of clarifying and/or confirming any aspect of a bidder's Part 2 proposal.

QUESTION NO. 4

If the answer to Interrogatory Number 3 is in the affirmative, please explain the nature of the communication in full including: (1) who initiated the communication, (2) the date of the communication, (3) whether the communication was oral or written, (4) to whom was the communication directed, (5) what was the clarification or confirmation requested, and, (6) what was the response to the requested clarification or confirmation.

Objection:

Inasmuch as West Penn and Boston Pacific Company, Inc., which was the Independent procurement Manager under the RFP, may have communicated with bidders during the RFP process, a response to Question No. 4(4) would require West Penn to list the bidders that made bids in response to West Penn's request for purchase of SRECs. The identity of the bidders and their bid information is confidential. The disclosure of any bid information would violate the confidentiality provisions of the Commission's default service regulations, would violate the Company's Commission-approved Request for Proposal ("RFP"), and would violate the confidentiality agreement entered by West Penn and the Complainant.

The confidential provisions surrounding the default service procurement process, including solar procurement, are numerous and strict. West Penn's Solar Procurement program was approved by the Commission by Order entered September 8, 2010, at Docket No. P-00072342. The Solar Program is a modification of West Penn's previously approved Retail Electric Default Service Program and, as such, is subject to Commission regulations concerning default service procurement at Chapter 54 (52 Pa. Code §54.181 et seq.) and Commission Guidelines at Chapter 69 (52 Pa. Code §69.1801 et seq.). Section 54.186(c)(5) of the Commission's regulations provides that competitive bids for default service shall be confidential. Section 54.186(c)(5) provides:

The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission under § 54.185(d)(6). The DSP, the Commission and a third party involved

in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.

52 Pa. Code §54.186(c)(5).

The Commission's Policy Statement and Guideline concerning default service procurement contains an even more-extensive confidentiality provision and recognizes that the identity of bidders and bid information is confidential. Guideline Section 69.1807(7) provides:

The public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, bid prices and retail rates may be impacted by protecting certain information, including the identity of winning and losing bidders, the number of bids submitted, bid prices, the allocation of load among winning bidders, and the like. At the same time, the Commission recognizes that there is a legitimate public interest in knowing some of this information when there is no possibility of any prejudice to ratepayer interests.

52 Pa. Code §69.1807(7) (emphasis added).

The RFP agreements used by West Penn in its SREC RFP were approved by the Commission and contain numerous provisions to maintain the confidentiality of information. Article 10.6 of the RFP Rules provides that West Penn will "consider all data and information provided by Bidders in response to the RFP to be confidential and will attempt to limit their disclosure...." The RFP Agreement, approved by the Commission and entered by the Complainant as a bidder in the SREC RFP, provides similar extensive confidentiality provisions.

The Commission's policy guidelines and regulations concerning the Company's obligation to keep bidders' identity and information confidential are based on common sense. Bids for SRECs and other items for default service occur frequently through the PJM area, as well as nationwide. Information concerning bidders and their identity would allow a bidder with such information to structure a bid based on the information. It is common understanding in the RFP process that bid information should remain confidential.

Thus, for numerous reasons, based on Commission regulation, on the RFP and the RFP Agreement, West Penn objects to providing the identity and number of bidders, as requested in Complainant's Interrogatory No. 4(4).

Objection to Request for Documents No. 5.

Document Request No. 5

All Part 2 proposals submitted by bidders in response to the RFP.

Objection:


The document request basically asks that West Penn release to Complainant all bid information obtained by West Penn from bidders in their responses to West Penn's RFP. This would include bidders' identities and bid prices. This request for information is even broader than the preceding request in Interrogatory No. 4 and is similarly objectionable. This information is absolutely confidential and would provide Complainant preferential information in violation of Commission regulations at Sections 54.186 and 69.1807 and the RFP rules and agreements.

The objection to Interrogatory No. 4(4) is incorporated herein.

West Penn reserves the right to object to other interrogatories and requests for documents where its responses, to be provided at a later date, may be that no responsive documents exist.

Respectfully submitted,

Date: February 24, 2011

By: 
John L. Munsch
Pa. I.D. No. 31489

Jennifer L. Petrisek
Pa. I.D. No. 83411

Attorneys for
WEST PENN POWER COMPANY,
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210

Pennsylvania Public Utility Commission;
Re: J3 Energy Group, Inc., v. West Penn Power Company; Docket No. C-2011-2219920


CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first-class mail, postage prepaid, the foregoing **Limited Objections to Complainant's Discovery Requests** (Interrogatory No. 4(4) and Data Request No. 5) addressed as follows:

Thomas J. Russial, Esq.
198 Stonewood Dr.
Bethel Park, PA 15102

A copy of this certificate of service is filed with the Secretary of the Pennsylvania Public Utility Commission.

Date: February 24, 2011


John L. Munsch, Attorney for
WEST PENN POWER COMPANY,

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Greensburg, PA 15601
(724) 838-6210

From: (724) 838-6738
Shirley Christian
Allegheny Power
800 Cabin Hill Drive

Origin ID: CVAA



J1110101220225

SHIP TO: (724) 838-6738

BILL SENDER

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commiss
400 NORTH ST
COMMONWEALTH KEYSTONE BLDG
HARRISBURG, PA 17120

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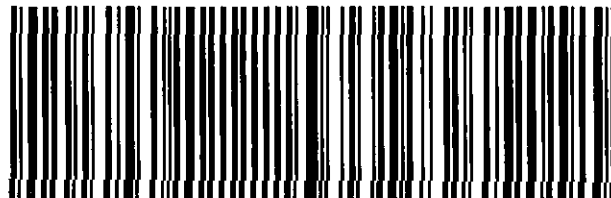
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