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VIA FEDEX NEXT DAY

June 22, 2011

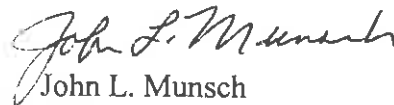
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing please find an original and three (3) copies of the Petition of West Penn Power Company for Interlocutory Review of Discovery Ruling in the above-captioned matter.

Very truly yours,


John L. Munsch
Attorney

JLM:jss

Enclosure

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES PRESIDING**

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

**PETITION OF WEST PENN POWER COMPANY
FOR INTERLOCUTORY REVIEW OF DISCOVERY RULING**

West Penn Power Company (“West Penn”) respectfully requests that the Presiding Officer grant interlocutory review of a discovery matter pursuant to Section 5.304 of the Rules and Regulations of the Pennsylvania Public Utility Commission. 52 Pa. Code §5.304. The request for interlocutory review concerns the Order dated July 13, 2011, issued by the Presiding Officer in the above-captioned proceeding.¹

The proceeding involves West Penn’s Request for Proposals (RFP) of solar photovoltaic alternative energy credits (SPAECs). The Complainant, J3Energy Group, Inc. (“J3 Energy”), along with other bidders, submitted a bid in the RFP process for the purchase by West Penn of SPAECs. The procurement process was conducted by West Penn in accordance with a Commission-approved process. In accordance with 52 Pa. Code §52.186, the procurement process was monitored in person by a Commission representative. The Commission representative was Paul Diskin, Energy Manager of the Commission’s Bureau of Fixed Utility Services. The independent third-party evaluator was Boston Pacific Company. The Secretarial Letter dated December 10, 2010, at Docket No. P-00072342, states that the Commission approved the bid results of West

¹ West Penn is within the three-day time limit of Section 5.304 for requesting interlocutory review. The Order was dated June 13, 2011. West Penn received the Order by U.S. Mail on June 20, 2011, and West Penn is requesting review within three days of receipt.

Penn's competitive procurement of SPAECs: "Further investigation does not appear to be warranted at this time, since this procurement appears to have been in accordance with the RFP process and rules."

J3 Energy filed its Complaint on January 10, 2011, contending that West Penn's process misconstrued J3 Energy's bid for SPAECs, and that J3 Energy should have been awarded the bid for West Penn's purchase of SPAECs. In ensuing discovery J3 Energy requested information concerning the bids of other bidders. In particular, in its Request for Documents No. 5, J3 Energy requested: "All Part 2 proposals submitted by bidders in response to the RFP." In other words, J3 is requesting that West Penn disclose all other bids and bid information submitted by other bidders in the RFP process.

The ALJ's Order recognizes that the parties should enter a Protective Order and that "J3 shall not disseminate the information it receives from West Penn to the public." Order page 4. Unfortunately, merely protecting bid information from release to the public is insufficient protection to maintain the validity of the bid process. With knowledge of the other bidders' information, J3 Energy will have a distinct unfair advantage in its future bids. It would also contravene other bidders' reasonable expectation of confidentiality of their bid information. Future RFPs for SRAECs will occur in the PJM region and release of other bidders' information will taint the validity of future procurements and could open other bid processes to allegations of unfairness should J3 Energy bid in future RFPs. The disclosure of other bidders' information will have other deleterious consequences on the competitive procurement of SPAECs:

- Disclosure of bidders' names would provide J3 Energy with information on J3 Energy's competition, bidder names, prices and quantities offered, and pricing strategies; an asset for J3 Energy not available to the other suppliers.
- J3 Energy will see the bidding strategy (prices offered, products offered, quantities offered, year-on-year price escalations) of each of other suppliers and will be able to

adjust its bidding strategy accordingly for future procurements without the same opportunity being available to the other bidders.

- J3 Energy would also be able to see the spread of bids between high and low which may affect its future bidding strategy to the disadvantage of customers as well as the other bidders.

It is for these reasons that RFPs routinely protect bid information and do not allow it to be disclosed.

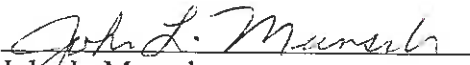
Interlocutory review and resolution by the Commission as requested by West Penn will prevent substantial prejudice to the bidding process. West Penn submits that release of other bidders' information to J3 Energy is not necessary for the resolution of its Complaint. Should the matter proceed to a hearing an explanation of the evaluation of J3 Energy's bid can be presented so as to determine the validity of the process.

WHEREFORE, West Penn Power Company requests that the Presiding Officer grant West Penn's certification to the Commission of the following question: Should West Penn disclose to J3 Energy, a bidder in West Penn's RFP for solar photovoltaic alternative energy credits, the information submitted by other bidders in the RFP?

Respectfully submitted,

Date: June 22, 2011

By:


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

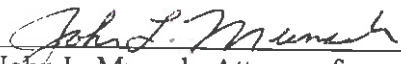
CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first-class mail, postage prepaid, the foregoing **Answer** addressed as follows:

Elizabeth H. Barnes
Administrative Law Judge
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Date: June 22, 2011


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