

THOMAS J. RUSSIAL  
198 Stonewood Drive  
Bethel Park, PA 15102  
412-389-2482

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AUG 2 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**VIA FEDEX NEXT DAY**

August 2, 2011

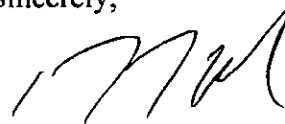
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing is The Prehearing Conference Memorandum of J3 Energy Group, Inc., for the conference scheduled for August 8, 2011. The Memorandum was served on Counsel for West Penn Power Company and the Presiding Administrative Law Judge by first class mail on August 2, 2011.

Sincerely,



Thomas J. Russial  
Counsel for J3 Energy Group, Inc.

Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**J3 ENERGY GROUP, INC.**  
**Complainant,**

v.

**WEST PENN POWER COMPANY**  
**Respondent.**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Complaint Docket No. C-2011-2219920**

**PREHEARING CONFERENCE MEMORANDUM OF J3 ENERGY GROUP, INC.**

TO THE HONORABLE ELIZABETH H. BARNES, PRESIDING OFFICER

In accordance with 52 Pa. Code § 5.222 and the July 6, 2011 Order of the Presiding Officer, J3 Energy Group Inc., (J3) respectfully files this Prehearing Conference Memorandum in anticipation of the August 8, 2011 prehearing conference.

**1. INTRODUCTION**

By Formal Complaint, dated January 10, 2011, J3 alleged that West Penn Power Company (West Penn) failed to properly evaluate J3's proposal submitted in response to West Penn's competitive Request for Proposals (RFP) for Solar Photovoltaic Alternate Energy Credits (SPAECs).<sup>1</sup> J3 further alleged that proper evaluation of J3's proposal may have resulted in an overall lower cost than the bid(s) selected by West Penn. In such case, one or both of J3's lower priced bids should have been selected. J3 asserts that the error in the evaluation process violates the intent of the Commission's Order entered on September 8, 2010, approving a modification to West Penn's Default Service Plan to allow West Penn to acquire SPAECs through long-term competitively placed contracts. J3 further asserts that the error violates the competitive procurement standards for alternate energy credits established by 52 Pa. Code § 75.67(b) and (c) and 52 Pa. Code. § 54.186 which require the Default Service Provider or third party evaluator to

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<sup>1</sup> The RFP was issued by West Penn Power Company dba Allegheny Power.

review and select winning bids procured through a competitive bid solicitation process in a nondiscriminatory manner based on price determinative bid evaluation criteria.

## **2. PRESENTLY IDENTIFIED ISSUES**

J3 anticipates addressing the following issues in this proceeding and such other issues as may be raised during the development of this matter:

**(a) Was the aggregation and averaging of J3's 4 bids during bid evaluation in accordance with the RFP approved by the Commission and guidance issued by West Penn during the RFP process?**

J3 will show that: (1) J3 prepared its 4 bids in accordance with the RFP instructions and guidance provided by West Penn; (2) each of J3's bids was intended to stand alone; (3) nothing in the RFP or subsequent guidance issued by West Penn authorized West Penn to aggregate and average the 4 bids; and, (4) West Penn's evaluation approach was inconsistent with the RFP and guidance and was unreasonable.

**(b) Would the proper evaluation of bids by West Penn have resulted in the selection of one or more of the J3 bids?**

Due to the nature of the RFP source selection scheme and the limited information that has been released to the public concerning selection, J3 cannot determine if one or more of its bids would have been selected without access to bid information from the other bidders. That information has been authorized for release to J3 Counsel pursuant to a Protective Order issued by the Presiding Officer. Production of the documents is pending as of the date of this memorandum. J3 will assess whether to proceed with this matter after receipt of the documents by J3 Counsel.

**3. WITNESSES**

Should a hearing be deemed necessary, at this time J3 has identified the following witness and subject of testimony:

Stephen Russial, President  
J3 Energy Group, Inc.  
950 East Main Street – Suite 104  
Schuylkill Haven, Pa 17972  
570-449-3935

Mr. Russial will testify, among other things, as to the intent of his bids and his understanding of the RFP instructions and guidance.

If West Penn asserts as a defense the approval by the Commission of the RFP results, then it may be necessary to obtain testimony from Commission staff involved in the review as to their knowledge and understanding of the aggregation and averaging process used to evaluate J3 bids.

Depending upon the results of discovery, it may be necessary to obtain testimony from one or more of the other bidders in the RFP competition.

J3 reserves the right to identify additional witnesses and the subject of their testimony as the proceeding develops and issues are identified.

**4. ADDITIONAL MATTERS IDENTIFIED IN THE PREHEARING CONFERENCE ORDER**

**(a) The possibility for settlement of the proceeding, subject to the Commission's approval.**

J3 is willing to pursue settlement discussions with West Penn to resolve the complaint and submit a settlement to the Commission for approval if necessary.

**(b) Whether the matter should be decided upon legal briefs, or whether a hearing is necessary.**

Having not yet received information subject to the Protective Order, J3 cannot express a definitive opinion at this time as to whether the matter should be decided on briefs without the need for a hearing. Depending upon the results of discovery, and the narrowing of issues, it may be possible to decide the matter without a hearing through admissions and briefs.

**(c) If a hearing is required, a procedural schedule will be discussed including the amount of hearing time necessary to dispose of the proceeding.**

If a hearing is required, J3 would expect that the hearing could be conducted within 1-2 days. J3 suggests the following schedule:

|           |   |
|-----------|---|
| Aug 8     | Prehearing Conference   |
| Aug 10    | West Penn production of information subject to Protective Order |
| Sept 20   | Completion of discovery   |
| Sept 30   | Exchange/acceptance of exhibits                                 |
| Oct 7     | Submission of witness lists                                     |
| Oct 17-18 | Hearing   |
| Nov 1     | Post hearing briefs   |
| Nov 15    | Reply briefs  |

**(d) Arrangements for the submission of direct testimony of witnesses in writing in advance of the hearing to the extent practicable, and for the submission in advance of hearing of written requests for information which a party contemplates asking another party to present at hearing.**

Submission of written direct testimony and written requests for information in advance of the hearing could substantially reduce the time required for a hearing. J3 is prepared to submit written direct testimony of Mr. Russial and provide West Penn with written requests for information which J3 contemplates asking West Penn to address at the hearing.

**(e) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including, but not limited to the following:**

- (i) The exchange and acceptance of exhibits proposed to be offered into evidence.**

J3 believes the exchange and acceptance of exhibits prior to the hearing will expedite the proceeding and has incorporated such exchange in the schedule proposed in 4(c).

**(ii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.**

(ii) After responses are received to J3 interrogatories and document requests, J3 anticipates seeking admissions from West Penn. Furthermore, J3 believes mutually agreeable stipulations of fact could shorten the time required for a hearing and will work with West Penn toward that goal.

**(iii) The need for public input hearing(s).**

(iii) J3 does not believe a public input hearing is required to resolve this matter. Furthermore, the confidential nature of certain information that will be presented in this matter would make a public input hearing difficult to manage.

**(iv) The discovery or production of data or other material.**

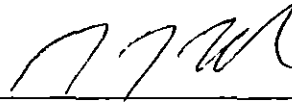
(iv) J3 has requested the production of certain documents from West Penn that are necessary to proceed with this matter. J3 reserves the right to serve additional interrogatories and an additional document request.

In its first Request for Documents J3 requested a copy of the Independent Procurement Manager report to the Commission presenting the results of the RFP and summarizing the processing and evaluation of proposals. J3 has been informed by West Penn that West Penn is not privy to the report and that the report is confidential. J3 believes the report could inform the Presiding Officer and the Parties in this matter. Accordingly, at the Prehearing conference, J3 would like to discuss the options for

obtaining the report from either the Independent Procurement Manager or the Commission subject to the terms of an appropriate Protective Order.

Date: August 2, 2011

Respectfully Submitted



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Thomas J. Russial  
Counsel for J3 Energy Group Inc.  
198 Stonewood Drive  
Bethel Park, PA 15102  
Phone: 412-389-2482

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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CERTIFICATE OF SERVICE

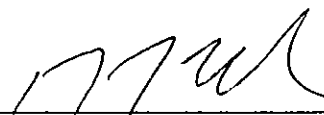
I hereby certify that I have this day served a true and correct copy of The Prehearing Conference Memorandum of J3 Energy Group, Inc., by first class mail, postage pre-paid, upon Respondent, West Penn Power Company and the Presiding Officer at the addresses below:

John L. Munsch, Esq.  
West Penn Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601

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

Date: August 2, 2011

Counsel for J3 Energy Group, Inc.

  
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Thomas J. Russial  
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Bethel Park, PA 15102  
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HARRISBURG, PA 17120

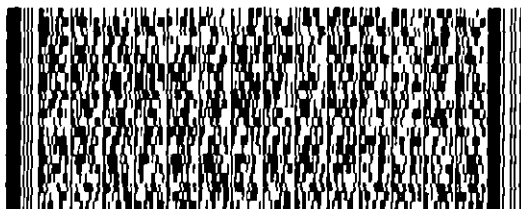
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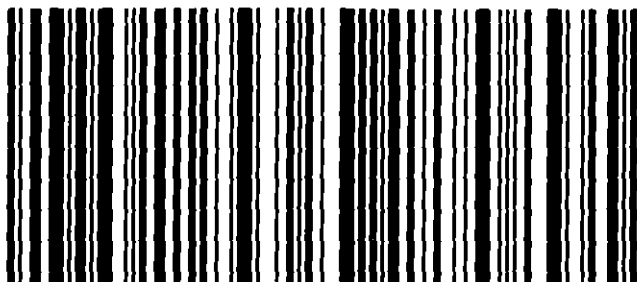
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