



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

October 12, 2011

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is an original and three copies of an Objection by the Bureau of Technical Utility Services to the Application for Subpoena submitted by J3 Energy Group, Inc. seeking documents prepared by Frank Mossburg, Managing Director of Boston Pacific Company, Inc., in the above-referenced matter. In the alternative, the Bureau of Technical Utility Services agrees to release the requested documents to West Penn, J3 counsel and eligible outside experts under a protective order issued in accordance with 52 Pa. Code § 5.423(d) (access to representatives of parties). Copies have been served according to the attached certification of service.

Sincerely,

Kriss E. Brown  
Law Bureau  
(Counsel for the Bureau of Technical Utility  
Services)

Enclosures

cc: Per Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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J3 ENERGY GROUP, INC. )  
Complainant, )  
 )  
v. )  
 )  
WEST PENN POWER COMPANY )  
Respondent. )

Complaint Docket No. C-2011-2219920

**Objections to the Application for Subpoena Submitted by J3 Energy Group, Inc. Seeking Documents Prepared by Frank Mossburg, Managing Director of Boston Pacific Company, Inc., Filed by the Law Bureau on Behalf of the Bureau of Technical Utility Services**

The Bureau of Technical Utility Services (TUS), through its counsel, Kriss E. Brown, file this objection to the application by J3 Energy Group, Inc. (J3) to subpoena Boston Pacific Company, Inc. (Boston Pacific) to produce a report prepared by Boston Pacific and submitted to the Pennsylvania Public Utility Commission (Commission) regarding the results of a Request for Proposal (RFP) solar photovoltaic alternative energy credits (SAECs) conducted by West Penn Power Company (West Penn). Specifically, TUS objects to the general release of the requested documents to the public, to include, but not limited to, the officers, directors, stockholders, partners, owners or employees of J3 Energy Group, Inc. TUS, however, does not object to the release of the requested documents to J3 counsel and eligible outside experts, as well as West Penn and its counsel and agrees to provide said documents under a Protective Order in accordance with 52 Pa. Code § 5.423(d).

**BACKGROUND**

1. On or about August 17, 2011, J3 submitted an application for issuance of a subpoena to Boston Pacific to produce documents and a request to Amend the July 19, 2011 Protective Order issued by Administrative Law Judge Elizabeth H. Barnes. Specifically, J3

requests that the subpoena order Frank Mossburg, Managing Director, Boston Pacific Company, Inc., to produce the following documents:

- a. The Independent procurement Manager Report that was prepared by Boston Pacific Company, Inc and submitted to the Pennsylvania Public Utility Commission reporting the results of the Request for Proposals for Solar Photovoltaic Alternative Energy Credits issued in 2010 by West Penn Power Company dba Allegheny Power. The Report is referenced in Article 9.19 of the Request for Proposal.
- b. All presentation materials, slides, and handouts (if any) used by Frank Mossburg, during Mr. Mossburg's oral presentation to the Pennsylvania Public Utility Commission staff on the Request for Proposal results.

2. On October 4, 2011, Administrative Law Judge Elizabeth H. Barnes provided notice of the J3 subpoena application, via electronic-mail, to the Law Bureau and directed Law Bureau to provide any objections by October 14, 2011.

### **DISCUSSION**

3. As indicated in J3's application, Boston Pacific was the Independent Procurement Manager for West Penn's December 3, 2010, procurement of SAECs and Tier I AECs. In that capacity, Boston Pacific provided to staff of the Commission's Bureau of Technical Utility Services (Commission staff), a confidential Memorandum, a confidential PowerPoint presentation, and confidential spreadsheets identifying the bidders and bid prices, as well as an analysis of the RFP process and results, and a recommendation. No person or entity outside of the Commission received a copy of these documents.

4. It has been and continues to be Commission policy that certain information related to competitive solicitations remain confidential. Specifically, in the Default Service and Retail Electric Markets Policy Statement, at 52 Pa. Code § 69.1807(7) (relating to competitive bid solicitation processes) the Commission states that

[t]he public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, 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 interest.

5. Consistent with this policy, Commission staff have not released to the public the *confidential reports and documents it receives from independent monitors of electric distribution company (EDC) competitive procurements*, such as those provided by Boston Pacific in the instant matter.

6. Commission staff believe that release of the information contained in the confidential documents provided to the Commission by Boston Pacific to J3, its officers, directors, stockholders, partners, owners or employees, as well as any other person or entity,<sup>1</sup> could impact supplier participation, bid prices and retail rates related to future competitive solicitations conducted by West Penn and other EDCs to obtain SAECs and non-solar Tier I AECs.

7. Commission staff, however, agrees to release the confidential documents provided to Commission staff by Boston Pacific to counsel for J3, eligible outside experts and West Penn under a protective order issued pursuant to 52 Pa. Code § 5.423(d). A draft protective order is attached.

## CONCLUSION

TUS objects to the release of the documents requested by J3 in its application for a subpoena to the public, to include, but not limited to, the officers, directors, stockholders, partners, owners or employees of J3 Energy Group, Inc. TUS, however, does not object to the release of the requested documents to counsel for J3 and eligible outside experts, as well as West

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<sup>1</sup> Other than counsel for J3, eligible outside experts and West Penn under a protective order issued in accordance with 52 Pa. Code § 5.423(d).

Penn and its counsel and agrees to provide said documents under a Protective Order issued in accordance with 52 Pa. Code § 5.423(d).

Respectfully submitted,



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Kriss E. Brown  
Assistant Counsel  
Law Bureau of the  
Pennsylvania Public Utility Commission  
Counsel for the Bureau of Technical Utility  
Services


P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000

Dated: October 12, 2011

**VERIFICATION**

I, Paul T. Diskin, Director, Bureau of Technical Utility Services, hereby state that the facts set forth in the attached Objection to the Application for Subpoena Submitted by J3 Energy Group, Inc. Seeking Documents Prepared by Frank Mossburg, Managing Director of Boston Pacific Company, Inc. are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsification to authorities.

Date: 10-12-11

  
Paul T. Diskin

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>J3 ENERGY GROUP, INC.</b>	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Complaint Docket No. C-2011-2219920</b>
	)	
<b>WEST PENN POWER COMPANY</b>	)	
<b>Respondent.</b>	)	

**PROTECTIVE ORDER**

Upon consideration of the Application of J3 Energy Group, Inc. (J3), for a Subpoena seeking documents prepared by Frank Mossburg, Managing Director of Boston Pacific Company, Inc. and Request to Amend the July 19, 2011 Protective Order, that was filed on August 17, 2011, and the objection to the subpoena by the Law Bureau, on behalf of the Bureau of Technical Utility Services;

IT IS ORDERED THAT:

1. This Protective Order applies to all materials and information identified in Paragraph 2 below, which will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding. All persons hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The material or information subject to this Protective Order are all correspondence, documents, data, information, and other materials that was produced by Boston Pacific Company, Inc. related to West Penn's December 3, 2010, competitive procurement of solar photovoltaic and non-solar photovoltaic Tier I alternative energy credits (AECs).

3. The Bureau of Technical Utility Services may designate as Protected Information the reports, memorandum, presentation and spreadsheet documents that are customarily treated by the Bureau of Technical Utility Services as confidential or proprietary, which are not available to the public and, which if disclosed freely, would subject West Penn and/or the bidders to risk of competitive disadvantage.

4. Protected Information produced in this proceeding shall be made available to the Commission and its Staff solely for use in this proceeding. For purposes of filing, to the extent that Protected Information is placed in the Commissions record, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order.

5. Protected Information shall be made available to counsel of record in this proceeding for J3 and West Penn Power Company pursuant to the following procedures:

(a) The Protected Information may be used only for and to the extent that it is necessary for participation in this proceeding.

(b) Any person obtaining Protected Information disclosed through this provision may not use that information to gain any commercial advantage and may not forward it to any person except as set forth herein.

(c) To the extent required for participation in this proceeding, J3 counsel may afford access to Protected Information to an eligible outside expert (or experts) provided any such expert is not an officer, director, stockholder, partner, owner or employee of J3 or a competitor of West Penn or the bidders who responded to West Penn's RFP.

(d) To the extent required for participation in this proceeding, West Penn counsel may afford access to Protected Information to officers, directors, owners, or employees of West Penn and eligible experts selected by West Penn, provided any such

expert is not an officer, director, stockholder, partner, owner or employee of J3 or a competitor of West Penn or the bidders who responded to West Penn's RFP.

(e) No other persons may have access to the Protected Information, including officers, directors, stockholders, partners, owners or employees of J3.

6. Any public reference to Protected Information shall be to the title or exhibit reference in sufficient detail to permit persons with access to the fully understand the reference and not more. The Protected Information shall remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

7. Bureau of Technical Utility Services staff shall designate documents as constituting or containing Protected Information by affixing a "Protected Information" stamp or typewritten designation on such documents. Where only a portion of a document constitutes Protected Information, Bureau of Technical Utility Services staff shall designate only the specific pages or information that constitutes Protected Information.

8. Portions of the record of this proceeding that contain Protected Information, including exhibits, writings, testimony, cross examination, argument and discovery responses, shall be sealed for all purposes, including administrative and judicial review, unless such Protected Data is released from the restrictions of this Order through agreement of the parties or pursuant to order of the Administrative Law Judge, the Commission or court.

9. Within 30 days after completion of this proceeding, including any administrative or judicial review, all Protected Information in the possession of J3 Counsel and experts and West Penn counsel, officers, directors, owners, or employees and experts shall be immediately returned to the Bureau of Technical Utility Services or in the alternative destroyed, at the election of the Bureau of Technical Utility Services. In the event, the Bureau of Technical

Utility Services directs J3 and West Penn Counsel to destroy the Protected Information, Counsel will provide an affidavit to the Bureau of Technical Utility Services affirming that the Protected Information has been destroyed.

Dated:

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Elizabeth H. Barnes  
Administrative Law Judge

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Bureau of Technical Services Objections to the Application for Subpoena submitted by J3 Energy Group, Inc. seeking documents prepared by Frank Mossburg, Managing Director of Boston Pacific Company, Inc., in accordance with the requirements of § 1.54 (relating to service by a party):

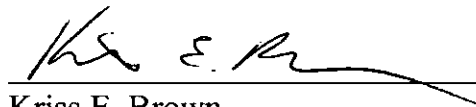
### Service by First Class Mail:

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

Mr. Frank Mossburg  
Managing Director  
Boston Pacific Company, Inc.  
1100 New York Ave., NW  
Suite 490 East  
Washington, DE 20005

Thomas J. Russial, Esquire  
198 Stonewood Drive  
Bethel Park, PA 15102

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



Kriss E. Brown  
Law Bureau  
Attorney ID #89036  
Pennsylvania Public Utility Commission  
Counsel for the Bureau of Technical Utility  
Services

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-4518

Dated: October 12, 2010

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