

**THOMAS J. RUSSIAL**  
198 Stonewood Drive  
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**VIA FEDEX NEXT DAY**

November 14, 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**  
**Motion for Summary Judgment**

Dear Secretary Chiavetta:

Enclosed for filing are the original and three copies of the Motion for Summary Judgment of J3 Energy Group, Inc., in the above referenced matter. The Motion was served today upon Respondent, West Penn Power Company, and the Presiding Officer, Judge Barnes, by FEDEX Next Day Mail.

Please note that the Motion is filed in a public version and confidential version. Information included in the Motion are subject to three separate Protective Order issued by the Presiding Officer. The confidential version of the Motion contains copies of the Protective Orders and identifies which Order aligns with the specific confidential information.

Sincerely,



Thomas J. Russial  
Attorney for J3 Energy Group

Enclosures

cc w/enclosures:  
Elizabeth H. Barnes, Presiding Officer  
John L. Munsch, Esq., West Penn Power Company

**RECEIVED**

NOV 14 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU


**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>	)	

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §5.102(a), you are hereby notified that an answer or other responsive pleading to the enclosed Motion for Summary Judgment shall be filed within 20 days of service of the Motion.

Dated: November 14, 2011

  
\_\_\_\_\_  
Thomas J. Russial  
Attorney for Complainant  
198 Stonewood Drive  
Bethel Park, PA 15102  
Pa. I.D. Number 39730  
Phone: 412-389-2482

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION FOR SUMMARY JUDGMENT OF  
J3 ENERGY GROUP, INC.**

Pursuant to 52 Pa. Code §5.102, J3 Energy Group, Inc., (J3), through its attorney, Thomas J. Russial, hereby files this Motion for Summary Judgment (Motion) in the above referenced matter. This Motion is submitted in public (redacted) and confidential forms due to the inclusion of confidential information in the Motion and Exhibits. Public Exhibits are numbered sequentially starting with Public Exhibit 1. Confidential Exhibits are numbered sequentially starting with Confidential Exhibit 1. An Exhibit List is included as Attachment 1 to the Motion.

**I. Introduction**

1. This Motion requests that the relief sought by J3 in its Formal Complaint (Complaint) filed with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company d/b/a Allegheny Power (West Penn or Allegheny Power) be granted as there is no genuine issue as to a material fact to be determined by the Administrative Law Judge (ALJ), and J3 is entitled to judgment as a matter of law.

2. In its Complaint, J3 alleged serious error in the evaluation of J3's four separately priced bids submitted against West Penn's Request for Proposals (RFP) for Solar Photovoltaic Alternate Energy Credits (SPAECs) in that West Penn aggregated the price of the bids for evaluation purposes rather than treating them as the single bids that were proposed. *See Formal*

*Public (Redacted) Version*

*Complaint (Complaint), Attachment 1 ¶¶ 3, 14, and 18.* The fact that West Penn aggregated J3's submission into a single price offer for price evaluation purposes is not in dispute in this matter. *See Answer to Formal Complaint (Answer) ¶ 4-14.* Instead, the dispute centers on whether West Penn's action was allowed by the RFP rules. The facts clearly establish that it was not. J3 requested that the Commission direct a re-evaluation of the bids and revoke its approval of the evaluation results until such time as West Penn commits to award J3 the Tranches that J3 should have been awarded.

3. Summary judgment is appropriate in this matter because the controversy surrounds what should have been the straightforward and objective application of bid rules set forth in the RFP to the bids that were submitted. The RFP did not provide the evaluators discretion to change the rules during the bid evaluation process - at least not without providing the bidders notice and an opportunity to adjust their bids accordingly. However, the undisputed facts show that is what occurred. Bidders had only the RFP and supplemental guidance to rely upon.<sup>1</sup> To the extent that West Penn's intentions did not align with the RFP words and guidance, it was incumbent on West Penn to amend the RFP and provide the bidders an opportunity to conform their bids to the revised rules. As demonstrated herein, had the stated RFP rules been properly followed, the only conclusion that can be reached is that J3's two lowest priced bids should have been selected resulting in a lower total cost to West Penn and the default service ratepayers.<sup>2</sup>

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<sup>1</sup> J3's reference to supplemental guidance means information provided by West Penn during the Pre-Bid Webinar and Questions and Answers posted by West Penn to the RFP Webpage. These documents are incorporated into this Motion as *Public Exhibits 4, 5 and 6*. The Webinar presentation indicates that statements made during the Webinar or orally are not binding and that the RFP Process and Rules control and supersedes all other statements. *See Public Exhibit 6, Slide 6*. A nuance of Power Point is that the date in the footer updates each time the Presentation is opened. Hence the date on Public Exhibit 6 is the date that the Presentation was printed for this Motion.

<sup>2</sup> In *Complaint, Attachment 1, ¶ 18*, the Bid Tag Numbers assigned to J3's two lowest priced Bids were misidentified. The correct Bid Tag Numbers are RECTS630107111 and RECTS.20107111.

In addition to the two central issues of whether error occurred during the evaluation and whether but-for the error, J3's bids would have been selected, West Penn has raised collateral issues in its Answer and during the course of a discovery dispute. All issues are addressed herein.

**II. Standard of Review for Summary Judgment Motions**

4. The Commission's Regulations at 52 Pa. Code §102(d)(1) set forth the standard of review for summary judgment motions:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answer to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

5. When deciding on a motion for summary judgment, all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979).

6. However, once a motion for summary judgment is properly made and supported, it is generally accepted that the nonmoving party may not simply rest upon the mere allegations or denials of its pleading, but must set forth facts showing that there is a genuine issue for trial. *Fiffick v. GAF Corporation*, 603 A.2d 208 (Pa. Super. 1991) (Discussing the Pennsylvania Rules of Civil Procedure); *Anderson v. Liberty Lobby, Inc., Inc.*, 477 U.S. 242 (1986) (Discussing the Federal Rules of Civil Procedure).

**III. RFP Factual Background**

7. On July 29, 2010, West Penn petitioned the Commission for approval to modify its Retail Electric Default Service Program and Competitive Procurement Plan for Service in order to acquire SPAECs and other Tier I Alternate Energy Credits through long-term contracts rather than on the spot-market. The petition was docketed at Docket No. P-00072342. West

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Penn included the RFP documents it planned to use for acquisition of SPAECs in the petition.

*See Answer ¶ 4-6 and Answer Attachment 3 ¶ 15.*

8. The Commission granted the petition by Order entered September 8, 2010. *See Answer, Attachment 2.*

9. Boston Pacific Company, Inc. (Boston Pacific) was chosen as the independent third party evaluator for the procurement. The RFP uses the term Independent Procurement Manager or (IPM) when it references Boston Pacific. *See Public Exhibit 1, Article 1.2 .*

Boston Pacific's responsibilities during the RFP process included: (1) participation in the Pre-bid Webinar conference with West Penn; (2) participation on the proposal Evaluation Team with West Penn; and, (3) preparation of a confidential report to the Commission presenting the results of the RFP and summarizing the processing and evaluation of proposals. *See Public Exhibit 6, Slide 4; Public Exhibit 1, Article 9.1.*

10. West Penn released its RFP on September 24, 2010 and revised the RFP on November 3, 2010. *Public Exhibit 1.* The revision was issued to correct West Penn's misinterpretation of the credit exposure amount in Section 5.2.1 of the Purchase and Sale Agreement and to provide prospective bidders additional time to respond to the change. *See Public Exhibit 2.*

11. The RFP was conducted in two parts. Bidders who passed a Part 1 qualification stage were authorized to submit a Part 2 proposal with bid pricing. *Public Exhibit 1, Article 5.1.* Part 1 qualification requirements were detailed in RFP Article 6 and included providing contact information, financial information for a creditworthiness assessment, and representations to ensure that the bidder can perform under the terms of the SPAEC Purchase and Sale Agreement. *Public Exhibit 1, Article 6.*

12. West Penn determined that J3 was a qualified bidder and issued a notice to J3 dated October 22, 2010, stating that J3 “is Eligible to submit a Part 2 Form and Proposals for Solar Photovoltaic Alternate Energy Credits.” *Public Exhibit 3.*

13. Part 2 proposals from qualified bidders underwent another screening for compliance with Part 2 financial security, certification, and form requirements. *See Public Exhibit 1, Articles 7, and 9.* Bids that passed the screening were then to be evaluated for selection on a price-only basis. *See Public Exhibit 1, Articles 1.4, and 2.3.* Selection based on price-determinative bid evaluation criteria is required by the Commission’s Regulations. *See 52 Pa. Code §75.67(b) and (c); 52 Pa. Code §54.186.*

14. J3 was among the eight qualified Part 1 bidders whose Part 2 proposals passed screening and were considered during the price evaluation stage of the competition. *See Answer ¶ 4-17; [REDACTED]*

15. The remainder of the RFP Background Section will focus on the facts that are at the heart of the controversy – specifically the meaning of the term “Bid” as established in the RFP and how the RFP’s “All-or-Nothing” and “Up-To” concept applies to Bids.

16. West Penn sought to purchase five Tranches of SPAECs each at 200 SPAECs per reporting year. The RFP states that the product will consist of a term of 10-year and 5-month, and 10-year supply. *Public Exhibit 1, Article 1.1* The “Target Quantity” as defined in the RFP is comprised of a single Tranche for January 1, 2011 through May 31, 2021, and a maximum of 4 Tranches for the period June 1, 2011 through May 31, 2021. *Public Exhibit 1, Article 1.2.*

*Public (Redacted) Version*

The RFP also uses the defined term “Tranche Target” to mean the number of Tranches needed for the Target Quantity.<sup>4</sup> *Public Exhibit 1, Article 1.2*

17. The term “Bid” is defined in RFP Article 1.2 as a:

“Binding offer to supply a portion of the Tranche Target at a specified price per SPAEC. (Emphasis Added).

*See Public Exhibit 1, Article 1.2.* The term “Bid” is further explained in RFP Article 7.6:

A Bid consists of three elements: (i) a price in dollars per SPAEC in the format \$xx.xx or \$xxx.xx (rounded to the nearest cent) for each Delivery Year; (ii) a specification of the maximum number of Tranches offered with each Bid; and, (iii) an indication of whether the Bid is “All or Nothing” or an “Up-To” bid (as defined in Section 7.10 of the RFP Rules).

*Public Exhibit 1, Article 7.6.* These definitions informed the prospective bidders as to what constituted a Bid per the terms of the RFP. They are read together with the Bidform Spreadsheet structure that was mandated by the RFP. *See Public Exhibit 1, Articles 5.3 and 7.*

18. The RFP instructed bidders that they may submit one Part 2 proposal and between one (1) and five (5) Bidform Spreadsheets for the available Tranches. *Public Exhibit 1, Article 5.3.* The RFP further instructed bidders that they must exclusively use the Appendix 7, Part 2 Proposal and Appendix 8, Bid Form Spreadsheet. *Public Exhibit 1, Articles 5.3, and 7.5.* One spreadsheet was for the 10 year, 5-month term; a second sheet was for the 10-year term. *Public Exhibit 1, Appendix 8.*

For ease of reference, the Bidform Spreadsheets from Appendix 8 are inserted below:

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<sup>4</sup> In a Question and Answer, West Penn further explained that the Target Quantity was 5 Tranches. *See Public Exhibit 5, Q&A 5.*

**ALLEGHENY POWER SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT REQUEST FOR PROPOSALS RULES  
APPENDIX B - BID FORM SPREADSHEET**

PROPOSAL DUE DATE: December 3, 2010, between 9AM & 12PM EPT  
10 YEAR & 5 MONTH TERM: January 1, 2011 - May 31, 2021

**Bidder Information**  
 Company Name \_\_\_\_\_  
 Contact Name \_\_\_\_\_  
 Phone Number \_\_\_\_\_  
 Fax Number \_\_\_\_\_

**Tranche Information**  
 Maximum Tranches To Be Awarded: 1  
 SPAEC / Tranche / Reporting Year: 200

**Tranches Bid**  
 Number of Tranches Offered:  \* Required Field

1/1/2011 to 5/31/2011	6/1/2011 to 5/31/2012	6/1/2012 to 5/31/2013	6/1/2013 to 5/31/2014	6/1/2014 to 5/31/2015	6/1/2015 to 5/31/2016	6/1/2016 to 5/31/2017	6/1/2017 to 5/31/2018	6/1/2018 to 5/31/2019	6/1/2019 to 5/31/2020	6/1/2020 to 5/31/2021
Price / SPAEC										
Discount Factor										
5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%
0.9894	0.9542	0.9066	0.8614	0.8184	0.7776	0.7388	0.7019	0.6669	0.6337	0.6020

**Offer Type**  
 Enter 1 for "All Or Nothing Bid"; 2 for "Up To Bid"  \* Required Field

**Discounted Prices for Evaluation Purpose**  
 Discounted Average Term Price (\$ / MWh):  N/A \* Complete ALL Required Fields Above

Tag Number: \_\_\_\_\_  
 Pre-Bid Security: \$  0  
 Complete / Incomplete Flag:  (Incomplete)

Signature of Officer of the Bidder: \_\_\_\_\_ Date: \_\_\_\_\_

**ALLEGHENY POWER SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT REQUEST FOR PROPOSALS RULES  
APPENDIX B - BID FORM SPREADSHEET**

PROPOSAL DUE DATE: December 3, 2010, between 9AM & 12PM EPT  
20 YEAR: June 1, 2011 - May 31, 2021

**Bidder Information**  
 Company Name \_\_\_\_\_  
 Contact Name \_\_\_\_\_  
 Phone Number \_\_\_\_\_  
 Fax Number \_\_\_\_\_

**Tranche Information**  
 Maximum Tranches To Be Awarded: 4  
 SPAEC / Tranche / Reporting Year: 200

**Tranches Bid**  
 Number of Tranches Offered:  1

6/1/2011 to 5/31/2012	6/1/2012 to 5/31/2013	6/1/2013 to 5/31/2014	6/1/2014 to 5/31/2015	6/1/2015 to 5/31/2016	6/1/2016 to 5/31/2017	6/1/2017 to 5/31/2018	6/1/2018 to 5/31/2019	6/1/2019 to 5/31/2020	6/1/2020 to 5/31/2021
Price / SPAEC									
Discount Factor									
5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%
0.9747	0.9261	0.8799	0.8360	0.7943	0.7547	0.7171	0.6813	0.6473	0.6150

**Offer Type**  
 Enter 1 for "All Or Nothing Bid"; 2 for "Up To Bid"  \* Required Field

**Discounted Prices for Evaluation Purpose**  
 Discounted Average Term Price (\$ / MWh):  N/A \* Complete ALL Required Fields Above

Tag Number: \_\_\_\_\_  
 Pre-Bid Security: \$  0  
 Complete / Incomplete Flag:  (Incomplete)

Signature of Officer of the Bidder: \_\_\_\_\_ Date: \_\_\_\_\_

*Public (Redacted) Version*

19. Spreadsheet instructions were contained in RFP Article 7.12 and Appendix 7. All shaded areas were for completion by bidders. Bidders were also required to complete the Tranches Bid cell which RFP Article 7.12(iii) defines as "...the number of Tranches it [the bidder] is willing to supply at the prices offered in the Price/SPAEC section." The "Discounted Average Term Price" or DATP cell is computed automatically and per the RFP "is the single parameter that will be used to compare offers for the contract term." Both the 10 year, 5-month spreadsheets and the 10-year spreadsheets required the bidder to select either an "All-or-Nothing" or "Up-To" bid type for each spreadsheet submitted. *Public Exhibit 1, Article 7.12 and Appendix 7.*

20. Bidders wishing to submit a Part 2 proposal bidding more than one 10-year Tranche each with different pricing strategies would include multiple 10-year spreadsheets with the proposal. Bidders wishing to submit a proposal for multiple 10-year Tranches at the same Tranche price could use a single spreadsheet.

21. The All-or-Nothing and Up-To concepts were explained in RFP Article 7.6:

Recognizing that the magnitude of SPAEC sales to the Company may affect financing or other commercial considerations for Qualified Bidders, All-or-Nothing Bids will be allowed, such that Qualified Bidders will not be bound to supply SPAECs in quantities other than those Bid. Unless indicated as an All-or-Nothing Bid, Bids will be considered an offer to supply any quantity up to and including the number of Tranches specified in the Bid (an "Up-to Bid").

*Public Exhibit 1, Article 7.6.* Hence, the RFP allowed a bidder to condition a Bid, by selecting the All-or-Nothing option on the Bidform Spreadsheet, so that the Number of Tranches Offered could only be selected as a group. Article 7.6 contained illustrative examples of the All-or-Nothing and Up-To concept. West Penn has acknowledged the examples are not completely analogous to the J3 situation. *Answer ¶ 4-14.*

22. RFP Article 1.4 provided that the evaluation of Bids would be on a price-only basis. In the RFP, the winning Bids would be those that minimize the overall cost of satisfying the Target Quantity of five Tranches. *See Public Exhibit 1, Article 1.4.*

23. Prior to submission of Bids, West Penn received questions from prospective bidders seeking guidance on how to submit proposals with different pricing for individual Tranches. The following question and answer was published on West Penn's RFP website in a document identified as "October 6, 2010 Pre-Bid Questions and Answers":

**Q46. If a Bidder bids on more than one Tranche, can the bidder submit a separate price for each Tranche?**

A46. Yes.

*See Public Exhibit 4, Q&A 46. See also Complaint, Attachment 1 ¶ 13; Answer ¶ 4-13.*

24. Additional guidance on how to submit proposals with different pricing for individual Tranches was posted by West Penn to its RFP webpage in a Chronological Question and Answer document:

**10/15/ 2010**

**Q47. For a given auction (Tier-I non solar AEC or SPAEC), can a bidder submit a different bid sheet for each Tranche if they want to tier their bids, e.g. 5 different bid sheets with a sets of prices for each of the Tranches in the SPAEC auction? Would this require 5 different Part II forms, or could a single part 2 form be submitted with the 5 different bid sheets? Would the same hold true for the Tier-I non solar auction (1 Part 2 form with a maximum of 15 bid sheets)?**

A47. Per your example, one Part 2 Form for each RFP with up to 5 different Bid Form Spreadsheets for each is acceptable.

**11/3/2010**

**Q59. Can we submit two different bid sheets for either the 120 or 125 month terms with each outlining a different pricing strategy?**

A59. Please refer to Q&As #47 and #48.

**Q60. Can we submit a combined bid which would include both the 120 and 125 month terms?**

A60. No. Offers must be on the specific bid-form spreadsheet for each term.

**Q61. When bidding on a Tranche, is the price locked in? For example, if we were bidding on 8 Tranches, could we bid 7 at \$3.00 and 1 at \$6.00 for a particular year?**

A61. Yes, but the differing offer strategies would need to be done on separate bid form spreadsheets.

*See Public Exhibit 5, Q&As 47, 59, 60 and 61. See also Complaint, Attachment 1 ¶ 13; Answer ¶ 4-13*

25. J3's Part 2 proposal contained four Bidform Spreadsheets each with a different price specified for the single Tranche offered. On each spreadsheet, J3 indicated that the offer type was All-Or-Nothing. *See Confidential Exhibit 2.*

26. On December 10, 2010, J3 was notified by a West Penn representative that it was not selected for Award. *See Complaint, Attachment 1 ¶ 16; Answer ¶ 4-16.*

27. On December 23, 2010, West Penn posted a press release stating that Tier I solar credits were selected at a weighted average cost of \$240.27 per SPAEC. *See Complaint, Attachment 1 ¶ 1; Answer ¶ 4-17.*

28. On December 27, 2010, J3 submitted a question to West Penn asking how the bids were evaluated. *Complaint, Attachment 1 ¶ 18; Answer ¶ 4-18.* West Penn posted the following response to the RFP website the same day:

**Q68. Can you please provide a detailed explanation of how bids were evaluated?**

A68. For each of the four products offered under the RFPs (Solar and Tier I AECs for 120 and 125 month time frames) bidders were given the option to select an "Up-to" or "All-or-Nothing" bid. If a bidder selected the All-or-Nothing option their bids were combined into a single price "All-or-Nothing" offer for the given product. The winning bids were the bids which satisfied the need for each product at the lowest discounted average term price. (Emphasis added).

*See Public Exhibit 5, Q&A 68; Answer ¶ 4-18.*

29. J3 filed the Complaint on January 10, 2011. West Penn filed its Answer on February 2, 2011. By Order dated October 17, 2011, the Presiding Officer set a Procedural Schedule which at J3's request includes this Motion.

**IV. Argument**

***a. Based on the RFP Rules, J3's Two Lowest Priced Bids Should Have Been Selected.***

30. Part 2 proposal evaluation required the straightforward application of the rules set forth in the RFP to the Bids submitted with the proposals. That did not occur.

31. As mentioned earlier in this Motion, this dispute centers on the meaning of the term "Bid" and how the All-or-Nothing/Up-To concept was applied to Bids during Part 2 proposal evaluation.

32. Based on the RFP rules, as explained below, each Bidform Spreadsheet submitted with a Part 2 proposal is an individual Bid. Hence, bidders could submit one to five Bidform Spreadsheets for the available Tranches (*See Public Exhibit 1, Article 5.3*) amounting to one to five individual Bids.

33. As defined in RFP Article 1.2, a Bid is a:

Binding offer to supply a **portion** of the Tranche Target at **a specified price per SPAEC**. (Emphasis Added).

*See Public Exhibit 1, Article 1.2.* RFP Article 7.6 further explains a Bid as follows:

A Bid consists of three elements: (i) a price in dollars per SPAEC in the format \$xx.xx or \$xxx.xx (rounded to the nearest cent) for each Delivery Year; (ii) a specification of the maximum number of Tranches offered with each Bid; and, (iii) an indication of whether the Bid is "All or Nothing" or an "Up-To" bid (as defined in Section 7.10 of the RFP Rules).

*See Public Exhibit 1, Article 7.6.*

34. On each Bidform Spreadsheet submitted with a Part 2 proposal, the Bidder was required to: (1) identify the number of Tranches Bid by completing the Tranches Offered cell; (2) specify a price for the SPAECs offered on the spreadsheet; and, (3) designate whether the offer-type for that spreadsheet was All-or-Nothing or Up-To. Hence, each Bidform Spreadsheet

is an offer to supply a portion of the Tranche Target (identified on the spreadsheet) at a specified price on an All-or-Nothing or Up-To basis – which is precisely the RFP definition of a Bid.

35. When a Bidform Spreadsheet offers only one Tranche, the All-or-Nothing or Up-To designation results in the same conclusion. Each spreadsheet is a Bid for a single 200 SPAEC Tranche at the specified price. The All-or-Nothing result is clear and straightforward since the Bid is offering one Tranche on an All-or-Nothing basis. The Up-To result occurs because the RFP provides that a bidder may not bid on fractions, portions or parts of Tranches. *See Public Exhibit 1, Article 7.8.* Therefore, it is implicit that an Up-To Bid for a single Tranche must be for the full Tranche.

36. The RFP recognizes that a single bidder may submit multiple Bids. *See Public Exhibit 1, Article 2.2(A qualified Bidder submitting Bids...); Article 2.7 (A Bidder submitting Bids...).* We also note that in West Penn’s response to J3’s post-selection question about the bid evaluation process, West Penn described a Part 2 proposal with multiple spreadsheets as containing “bids” in the plural that were combined into a single price:

**Q68. Can you please provide a detailed explanation of how bids were evaluated?**

A68. For each of the four products offered under the RFPs (Solar and Tier I AECs for 120 and 125 month time frames) bidders were given the option to select an “Up-to” or “All-or-Nothing” bid. If a bidder selected the All-or-Nothing option their bids were combined into a single price “All-or-Nothing” offer for the given product. The winning bids were the bids which satisfied the need for each product at the lowest discounted average term price. (Emphasis added).

*See Public Exhibit 5, Q&A 68.* [REDACTED]

[REDACTED]

[REDACTED] After J3 filed its Complaint, West Penn began to rationalize the selection error by referring to J3’s four Bidform Spreadsheets as a single bid. *See e.g. Answer ¶¶ 4-2 and 4-14.*

37. Once it understood that individual Bidform Spreadsheets are Bids, the next question is how individual Bids should have been selected. The RFP selection methodology is defined in Article 1.4. Bids were to be evaluated on a price-only basis and the winning Bids would be those that minimize the overall cost of satisfying the Target Quantity of five Tranches taking into account All-or-Nothing and Up-To Bids. *See Public Exhibit 1, Articles 1.4 and 7.10.*

38. Importantly, the All-or-Nothing/Up-To concept is established in the RFP as a function of the defined term Bid not as a function of the Part 2 proposal as a whole:

Recognizing that the magnitude of SPAEC sales to the Company may affect financing or other commercial considerations for Qualified Bidders, All-or-Nothing Bids will be allowed, such that Qualified Bidders will not be bound to supply SPAECs in quantities other than those Bid. Unless indicated as an All-or-Nothing Bid, Bids will be considered an offer to supply any quantity up to and including the number of Tranches specified in the Bid (an “Up-to Bid”).

*See Public Exhibit 1, Article 7.10.* This is where the evaluation error occurred. The evaluators applied the All-or-Nothing concept to Part 2 proposals for the 10-year term as a whole rather than to the individual Bids submitted with the proposals. There is nothing in the RFP or supplemental guidance that can be cited by West Penn as authorizing this aggregation or putting bidders on notice that the aggregation would occur.

39. Inserted below are the [REDACTED]

*See Public Exhibit 1, Article 7.12 (vii).*

[REDACTED]

*Confidential Exhibits 2 and 3.*<sup>5</sup>

40. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>5</sup> J3's Bidform Spreadsheets were included as Appendix 6 to the Complaint and identified as Confidential Information. The Bidform Spreadsheets from the other Part 2 offerors were provided by West Penn during discovery and are subject to the Presiding Officer's Protective Order dated July 19, 2011.

41. As authorized by the RFP, the offerors [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*See Confidential Exhibits 2 and 3.*

42. Applying the RFP rules outlined above to the Bids, each of the J3, [REDACTED]

[REDACTED] Bids for the 10-year term should have been evaluated separately rather than aggregated.

The All-or-Nothing designation on each Bid does not change the outcome because the All-or-Nothing designation applied to the individual Bid rather than to the four Bids in the aggregate.

[REDACTED]

[REDACTED] Accordingly [REDACTED]

[REDACTED]

[REDACTED] *See Public Exhibit 1,*

*Article 1.4.* J3's two lowest priced Bids were first in line for the 10-year term since they were

the two lowest priced. [REDACTED] remaining two 10-year Tranches.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. J3 is not being hyper-technical in the foregoing analysis. The analysis is based on the plain language of the RFP that was approved by the Commission. Furthermore, there is nothing in the RFP or supplemental guidance that can be cited by West Penn as a contrary definition or interpretation of the term Bid, the All-or-Nothing Concept as it applies to Bids, and the evaluation and selection process described above. *See Public Exhibits 1, 4, 5 and 6.* The evaluators simply used rules not contained in the RFP when they aggregated the [REDACTED] [REDACTED] 10-year term Bids. West Penn may claim they had a different intent than what is reflected in the words, but if that is the case, it was incumbent on West Penn to amend the RFP, notify prospective bidders, and provide them an opportunity to conform their Bids to the revised Rules.

44. In its Answer, West Penn makes the point that All-or-Nothing is literal. *Answer ¶ 4-14.* J3 would agree - if the concept is applied appropriately in accordance with the terms of the RFP, which did not occur here. However, setting the Parties respective positions aside for the moment, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hence, the designation had no significance.

45. J3 notes that during evaluation, the 10-years, 5-month and 10-year contract terms were grouped into separate products. Evidence of this is found in West Penn's Answer which states that Bids were grouped by contract term and ranked according to DATP. *See Answer*, ¶ 4-14. Additional evidence is contained in West Penn's response to J3's post-selection question, which indicates that the Solar RFP was split into 2 products by term:

For each of the four products offered under the RFPs (Solar and Tier I AECs for 120 and 125 month time frames) bidders were given the option to select an "Up-to" or "All-or-Nothing" bid.

*See Public Exhibit 5, Q&A 68.* [REDACTED]

[REDACTED]

Contrary to West Penn's post-selection response in Q&A 68, there is nothing in the RFP or guidance stating that Up-To and All-or-Nothing is determined on a product or time-frame basis. Furthermore, this grouping of contract terms was not addressed in the RFP. In fact, the RFP states that the product (singular) will consist of a term of 10-year and 5-month, and 10-year supply. *See Public Exhibit 1, Article 1.1.* While these facts further illustrates that rules changed during evaluation, J3 nevertheless agrees that the treatment of the 10-year and 5-month Bidform Spreadsheets as individual Bids is completely consistent with the express language of the RFP and submits that is the only basis set forth in the RFP for evaluating the 10-year and 5-month Bids separately from the 10-year Bids.

46. Because the RFP was open to alternate Bid pricing strategies (*See Public Exhibit 1, Article 5.3; Public Exhibit 4, Q&A 46; and, Public Exhibit 5, Q&As 47, 59, and 61*), J3's

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assessment of the RFP evaluation and selection methodology is the only way the RFP could have achieved its objectives. To illustrate, suppose an offeror is developing two solar photovoltaic projects each needing 400 SPAECs for a ten-year term. Also suppose that the offeror needs \$200/SPAEC to support financing for one project and \$300/SPAEC for the other and the offeror is willing to accept selection of one or both Bids submitted for the two projects. With these facts, the offeror would have to submit two Bidform Spreadsheets selecting two Tranches Bid in the Tranches Offered cell and All-or-Nothing as the bid-type on each spreadsheet. There is no other way for the offeror to structure the proposal to meet its needs and comply with the RFP instructions. If the offeror selected Up-To on either spreadsheet, it could not be assured of receiving the SPAECs needed to develop either project. However, under West Penn's concept that All-or-Nothing means aggregation, the Tranches bid on the two separate spreadsheets at different prices would have been combined for evaluation purposes thereby defeating the offeror's intent that the Bids could be selected separately. The offeror only wins any Tranches if the aggregate of the four Tranches is the low price. Other bid strategy permutations provide the same absurd consequences under the West Penn construct. Only if All-or-Nothing and Up-To is applied at the individual Bid level (i.e. Bidform Spreadsheet), could offerors model different bidding strategies, as permitted by the RFP.

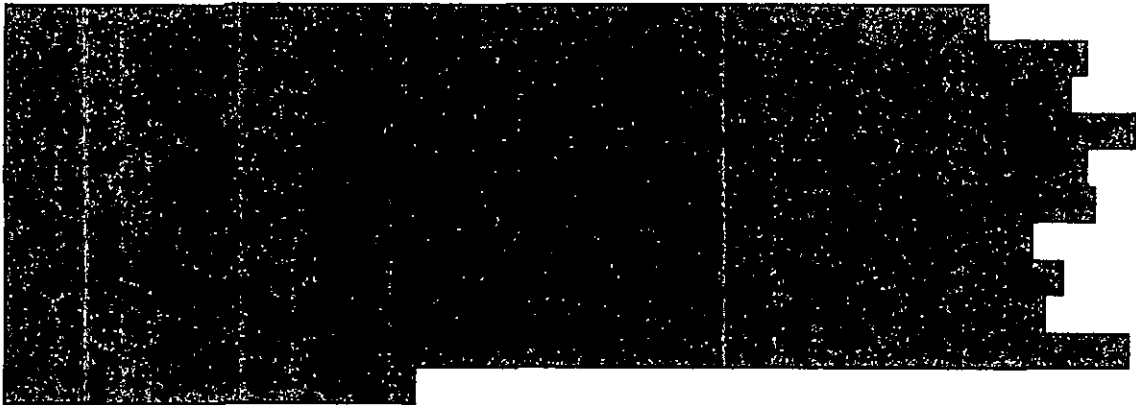
47. Through discovery, J3 asked West Penn if during evaluation clarification was sought from any bidder who submitted a Part 2 proposal containing multiple spreadsheets for the four 10-year term tranches where the offer type indicated "All-or-Nothing Bid" as to whether the Tranches could be selected independently or whether all tranches had to be selected together. West Penn answered no. *See Public Exhibit 8, Interrogatory No. 2.3.*

48. J3 also asked if during proposal evaluation, did anyone involved recommend or suggest seeking clarification from the 10-year bidders. The Interrogatory and Response are provided below:

QUESTION NO. 2.5

During the course of Part 2 Proposal evaluations, did anyone employed by Respondent, Boston Pacific, or the Commission recommend or suggest seeking clarification from bidders who submitted multiple spreadsheets with different pricing for the four 10-year tranches where the offer type indicated "All-Or-Nothing Bid" as to whether each tranche could be selected independently or whether all tranches had to be selected together?

RESPONSE:



*See Confidential Exhibit 4, Interrogatory No. 2.5.*

49. What can be discerned from the Response to Interrogatory No. 2.5 is that [REDACTED]



[REDACTED] Had they gone back and analyzed the RFP for what the rules actually said, as J3 has addressed above, they would have seen that "Bid" meant the offer contained in the individual Bidform Spreadsheet, and All-Or-Nothing applied to the individual Bid rather than to all the Bids submitted with a Part 2 proposal. Instead, selection pressed on based on the erroneous

assumption, not reflected anywhere in the RFP, that All-Or-Nothing crossed over the individual Bid.<sup>6</sup>

50. J3 has clearly demonstrated that application of the rules set forth in the RFP to the evaluation of the Bids submitted with Part 2 proposals should have resulted in the selection of J3's two lowest priced Bids for the 10-year term. The RFP rules were included in West Penn's petition seeking Commission approval of the competition. They were not discretionary and could not be changed without providing notice to the bidders and an opportunity to respond. However, that is what occurred resulting in J3's non-selection. Nothing in the RFP or West Penn's supplemental guidance can be cited as contradicting J3's analysis of the rules. Accordingly there is no genuine issue of material fact for the ALJ to determine on the central issues of whether error occurred and whether but for the error, J3 would have been selected. Hence, summary judgment should be granted to J3 as a matter of law on those issues.

***b. The Evaluation Error is not Superseded by the Commission Approval***

51. In its Answer, West Penn suggests that any error in the evaluation process was obviated by the Commission's role in the process:

Inasmuch as West Penn's procurement of SPAECs was carefully conducted according to approved Commission procedures, was carefully monitored by West Penn representatives, by the independent third party evaluator and by the Commission, and inasmuch as the bid results were approved by the Commission, West Penn denies that an error occurred in the evaluation process. (Emphasis added).

*Answer ¶ 4-3.*

52. Proposal evaluation was conducted by West Penn and the IPM (*See Public Exhibit 1, Article 9.1*) and monitored by Commission staff pursuant to the Commission's

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<sup>6</sup>

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authority under 52 Pa. Code. § 54.186(c). The IPM was additionally responsible for preparing and submitting a confidential report to the Commission, within two business days after the Part 2 proposal date, presenting the results of the RFP and summarizing the most recent processing and evaluation of proposals. The Commission had three business days after report submission to decide whether to approve the results. *See Public Exhibit 1, Article 9.19.*

53. Based on their respective roles, West Penn and the IPM had the duty to properly conduct the RFP in accordance with the RFP rules. The IPM also had the duty to deliver a report to the Commission that identifies the Bids that should have been selected under a properly conducted evaluation.

54. Assuming J3's analysis of the RFP rules in Section III(a) of this Motion is accepted, it is clear that West Penn and the IPM failed to conduct the evaluation properly. Furthermore, the IPM Report to the Commission (*Confidential Exhibit 1*) failed to present the slate of Bids that should have been selected under the RFP rules. Otherwise, the Report would have identified J3's two lowest priced Bids for selection. Hence, the Commission's approval of the results in its December 10, 2010 letter to West Penn (*Public Exhibit 6*) was based on erroneous information and cannot be binding on the Commission or a defense to J3's Complaint. J3 notes that the December 10<sup>th</sup> letter couched approval on the presumption that the procurement was conducted in accordance with the RFP rules – which it was not:

Further investigation does not appear to be warranted at this time, since this procurement appears to have been conducted in accordance with the RFP process and rules, filed pursuant to the Commission's Opinion and Orders. Therefore, we approve the bid results submitted for this AEC procurement.

*See Public Exhibit 6.*

55. There are no other material facts to be determined and therefore J3 is entitled to Summary Judgment as a matter of law on this issue to the extent the issue is accepted by the Commission.

*c. J3 was Damaged by the Evaluation Error*

56. In its First Set of Interrogatories and Requests for Production of Documents served on August 5, 2011, West Penn sought certain information concerning the source and placement of SPAECs that J3 bid against the RFP and damages suffered by J3 as a result of not being selected. J3 objected to the discovery requests based on relevancy and that production of the information would result in unreasonable annoyance and burden. A discovery dispute ensued and by Order dated October 17, 2011, the Presiding Officer directed J3 to respond to the interrogatories on the basis that the information may lead to admissible evidence. The Order stated that West Penn may wish to argue that J3 did not suffer any detriment from a possible miscalculation, and therefore a re-evaluation of the bidding process is unreasonable and unnecessary.

57. J3 has since produced the requested information.

58. The issues raised by West Penn during the discovery dispute (e.g. lack of damages) are not formally before the Commission. They are in the nature of affirmative defenses which, pursuant to Commission Regulations at 52 Pa.Code. § 5.62, should have been pled in the Answer (or other responsive pleading) as New Matter. Arguably, they are late as the Answer was filed in February and West Penn waited nearly seven months after filing of the Complaint to serve its first discovery request.

59. J3 continues to maintain that the issues raised by West Penn are not relevant to the matter before the Commission because: (1) the RFP was not unit specific - meaning the SPAECs could come from any source (*See Public Exhibit 5, Q&A Nos. 2 and 4; [REDACTED]* [REDACTED]) (2) bidders were not required to describe the source of credits in their proposals (*See Public Exhibit 1*); and, (3) the lost opportunity from not being selected is sufficient harm in

and of itself to support the Complaint (See Answer of J3 Energy Group, Inc. to West Penn Power Company Response to Objections to Interrogatories, Filed with the Commission August 26, 2011.). J3 respectfully reserves the right to object to the relevancy of West Penn's arguments should they be formally raised in this matter.

60. Notwithstanding the foregoing, and in the interest of resolving all potential issues with this Motion, J3 has incorporated as an attachment to the Motion, the Affidavit of Stephen C. Russial, President of J3 which clearly: (1) identifies the unit from which J3 planned to source the SPAECs; (2) establishes how J3 was damaged by the evaluation error; and, (3) demonstrates that J3 has capability to deliver solar photovoltaic installations. See *Confidential Exhibit 5*.

61. Since West Penn has not formally asserted the affirmative defenses suggested during the discovery dispute, there are no genuine issues of material fact before the Commission. Furthermore, the Affidavit of Mr. Stephen Russial establishes that if West Penn does assert such defenses, they are without merit and J3 is entitled to Summary Judgment on the issues as a matter of law.

#### **IV. Conclusion**

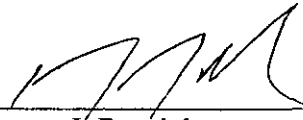
62. J3 recognizes that a Motion for Summary Judgment by the Complainant in a matter such as this might be considered presumptuous. However, this is a bidding controversy and the material facts are the procurement rules (as approved by the Commission and conveyed to the prospective bidders) and the proper application of those rules to the submitted Bids. It is a mechanical process. J3 has clearly demonstrated through analysis of the express language in the RFP that the rules were not followed and as a consequence J3's two lowest priced Bids were not selected when they should have been selected. Under the standard for review of summary judgment motions, the burden now shifts to West Penn to present facts (not undisclosed intent or conjecture) that are reflected in the RFP and Bids and contradict J3's analysis. If West Penn is

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unable to do so, which J3 believes will be the case, J3 is entitled to summary judgment as a matter of law and the relief requested in the Complaint should be granted.

Respectfully Submitted

Dated: November 14, 2011

  
\_\_\_\_\_  
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**ATTACHMENT 1  
EXHIBIT LIST**

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**PUBLIC EXHIBITS**

<b>Exhibit No.</b>	<b>Document</b>
1	Request for Proposals (RFP) for Solar Photovoltaic Alternate Energy Credits dated September 24, 2010 Revised November 3, 2010 (with Appendices 6-8)
2	West Penn Notices dated 11-2-2011 and 11-3-2011
3	Notice of J3 Part 1 Eligibility dated 10-22-2010
4	West Penn RFP October 6, 2010 Pre-Bid Questions and Answers
5	West Penn Chronological Question and Answer dated 12/27/2010
6	Pre-bid Webinar Power Point Presentation
7	Commission Ltr to West Penn dated 12/10/10
8	West Penn Response to J3's Second Set of Interrogatories #2.3

**CONFIDENTIAL EXHIBITS**

<b>Exhibit No.</b>	<b>Document</b>
1	Boston Pacific Technical Consultant Post-Bid Report to the Commission (Tier 1 non-solar tables are omitted)
2	Part 2 Bidform Spreadsheets of J3
3	Part 2 Bidform Spreadsheets of Other Offerors
4	West Penn Response to J3's Second Set of Interrogatories #2.5
5	Affidavit of Stephen C. Russial

*Public Exhibits are included with the public version of the Motion. Confidential Exhibits are included with the confidential version of the Motion.*

**PUBLIC EXHIBIT 1**

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SECRETARY'S BUREAU

**WEST PENN POWER COMPANY,  
dba ALLEGHENY POWER**

**REQUEST FOR PROPOSALS  
FOR  
SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY  
CREDITS**

**DATED**

**September 24, 2010**

**Revised November 3, 2010**

**RECEIVED**

NOV 14 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Request for Proposals  
For  
Solar Photovoltaic Alternative Energy Credits**

**TABLE OF CONTENTS**

Article 1.	Introduction and Overview .....	1
Article 2.	Products and RFP.....	4
Article 3.	Winning Bidder Obligations.....	4
Article 4.	Information and Schedule.....	5
Article 5.	General Requirements for Proposals.....	7
Article 6.	Part 1 Proposal Requirements.....	8
Article 7.	Part 2 Proposal Requirements.....	16
Article 8.	Instructions for Preparation of Proposals.....	24
Article 9.	Evaluation of Proposals.....	25
Article 10.	Reserved Rights.....	28
Appendix 1	Solar Photovoltaic Alternative Energy Credit Purchase and Sale Agreement	
Appendix 2	Confidentiality Statement	
Appendix 3	Standard Form of Pre-Bid Letter of Credit	
Appendix 4	Standard Form of Letter of Intent to Provide a Guaranty and Letter of Intent to Provide a Letter of Credit	
Appendix 5	Requirements for Attestation of Chief Financial Officer	
Appendix 6	Part 1 Form	
Appendix 7	Part 2 Form	
Appendix 8	Bid Form Spreadsheet	

## **Article 1 – Introduction and Overview**

- 1.1** West Penn Power Company, dba Allegheny Power (hereafter referred to as "Company") is seeking to procure a portion of its requirements for Solar Photovoltaic Alternative Energy Credits ("SPAEC") under the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8 ("AEPS Act"), as may be amended from time to time. The product will consist of a term of 10-year and 5-month, and 10-year supply. The Target Quantity will be comprised of a single Tranche for January 1, 2011 through May 31, 2021, and a maximum of four (4) Tranches for the period June 1, 2011 through May 31, 2021, with each Tranche consisting of 200 SPAECs.
- 1.2** Additional capitalized terms in this document, which are not defined explicitly herein, are defined in the Company's Solar Photovoltaic Alternative Energy Credit Purchase and Sale Agreement ("AGREEMENT"). The AGREEMENT is attached hereto as Appendix 1. Key defined terms include the following:

<b>Bid</b>	Binding offer to supply a portion of the Tranche Target at a specified price per SPAEC
<b>Bidder</b>	A prospective Supplier that submits any part of a Proposal for the RFP
<b>Evaluation Team</b>	Representatives of the Company and Independent Procurement Manager
<b>Independent Procurement Manager</b>	Boston Pacific Company, Inc.
<b>PaPUC</b>	Pennsylvania Public Utility Commission
<b>Part 1 Date</b>	November 12, 2010, date by which Part 1 Proposals must be submitted
<b>Part 2 Date</b>	December 3, 2010, date by which Part 2 Proposals, which include Bids, must be submitted
<b>Pre-Bid Security</b>	Security in the form of cash or a letter of credit required to be posted by Qualified Bidders upon submission of Part 2 Proposal
<b>Proposal</b>	A two-part process by which Bidders qualify and bid in the RFP

<b>Qualified Bidder</b>	Bidder whose Part 1 Proposal has been accepted by the Independent Procurement Manager and the Company
<b>Reporting Year</b>	Each reporting year begins June 1 and ends May 31.
<b>RFP</b>	Request for Proposal process, consisting of a single round of bids
<b>Tranche</b>	A block of 200 SPAECs per Reporting Year under the AEPS Act.
<b>Tranche Target</b>	Number of Tranches needed for Target Quantity, i.e. One (1) for the initial period of January 1, 2011 through May 31, 2011 and five (5) for each Reporting Year thereafter beginning June 1, 2011 and ending on May 31, 2021)
<b>Winning Bidders</b>	Those Qualified Bidders whose Bids minimize the overall cost of satisfying the Target Quantity.

**1.3** The Company will hold one (1) RFP to procure the Tranche Target to be supplied over a 10-year and 5-month period.

**1.4** This RFP was established through a petition by the Company to the Pennsylvania Public Utility Commission ("PaPUC" or "Commission"). The RFP consists of a single round of bids, in which Qualified Bidders state the prices at which they are willing to supply SPAECs, the number of Tranches that they are willing to supply, and whether their offers are All-or-Nothing, as described below. The evaluation of Bids is on a price-only basis. In the RFP, the winning Bids will be those that minimize the overall cost of satisfying the Target Quantity. The Winning Bidders will be paid the prices they Bid for the SPAEC Tranches they win.

**1.5** This document, entitled the RFP Process and Rules ("RFP Rules"), describes how the RFP will be conducted. The RFP will consist of two parts:

- (a) Part 1 - submission of an initial application in which prospective suppliers are qualified; and
- (b) Part 2 - the submission by Qualified Bidders of Bids to supply a portion of the Tranche Target at a specified price per SPAEC, accompanied by Pre-Bid Security.

**1.6** The following documents are appended to, and shall be considered integral parts of, these RFP Rules:

Appendix 1: West Penn Power Company, dba Allegheny Power Solar Photovoltaic Alternative Energy Credit Purchase and Sale Agreement

Appendix 2: Confidentiality Statement

Appendix 3: Standard form of Pre-Bid Letter of Credit

Appendix 4: Standard form of Letter of Intent to Provide a Guaranty and Letter of Intent to Provide a Letter of Credit

Appendix 5: Requirements for Attestation of Chief Financial Officer

Appendix 6: Part 1 Form

Appendix 7: Part 2 Form

Appendix 8: Bid Form Spreadsheet

**1.7** A Proposal consists of two parts. The first part of the Proposal ("Part 1 Proposal") is the Bidder's response to the qualification standards that are fully described in Article 6 of these RFP Rules. A Bidder that fulfills the qualification standards of the Part 1 Proposal becomes a Qualified Bidder, and therefore may submit the second part of the Proposal ("Part 2 Proposal"). The requirements for the Part 2 Proposal are fully described in Article 7 of these Rules. The requirements for the Part 2 Proposal include the submission of Bids and the posting of Pre-Bid Security. To submit their Part 1 and Part 2 Proposals, Bidders use the Part 1 Form and the Part 2 Form provided as Appendices 6 and 7 to these RFP Rules, respectively.

**1.8** The Company and the Independent Procurement Manager ("IPM") may advise the Commission to postpone or modify the schedule of the RFP when market conditions warrant or when extraordinary events arise, such as the advent of war, terrorism, or an act of God. The Company and the IPM may also advise the Commission to modify parameters of the RFP, as further explained in Article 10.

## **Article 2 - Products and RFP**

- 2.1** Qualified Bidders in the RFP can Bid for any number of Tranches up to the Tranche Target, however the bidders must bid for the same amount of Tranches for the entire applicable period. A Qualified Bidder may not Bid on less than a full Tranche. The Qualified Bidder may not Bid on fractions, portions or parts of Tranches.
- 2.2** A Qualified Bidder submitting Bids in the RFP must accept the obligations and associated rights to provide SPAECs as defined in the AGREEMENT.
- 2.3** A Qualified Bidder that presents a Bid will state the price or prices at which it is willing to supply one or more of the Tranches available in the RFP. Bids are evaluated on a price-only basis.
- 2.4** Upon receipt of Bids, the Company and IPM will rank all Bids from lowest to highest price. The Company and IPM will determine a portfolio of those Winning Bidders whose Bids minimize the overall cost of satisfying the Target Quantity. All Winning Bidders receive the price they Bid, expressed in \$/SPAEC rounded off to the nearest cent.
- 2.5** The results of the RFP will then be submitted to the PaPUC, who will then have three (3) business days to approve the RFP results. If the RFP results are approved by the PaPUC, each Winning Bidder will then execute the AGREEMENT accompanying this RFP.
- 2.6** If the PaPUC rejects the winning Bids in the RFP, or if some Tranches remain unfilled, the Company will implement contingency plans for the unfilled Tranche(s). The Company will consult with the IPM, Commission staff, and statutory parties to determine the appropriate alternative contingency plan for the remaining requirement.
- 2.7** A Bidder submitting Bids in this RFP are accepting the obligations and associated rights to provide SPAECs as defined in the AGREEMENT.

## **Article 3 – Winning Bidder Obligations**

- 3.1** This section contains a general description of each Winning Bidder's obligations. This is a summary only and is subject to and qualified in its entirety by the AGREEMENT.

- 3.2** Each Winning Bidder is responsible for providing 200 SPAECs per Tranche in each Reporting Year that it wins for the applicable term of either ten (10) years for up to four (4) of the Tranches for the term June 1, 2011 through May 31, 2021 or ten (10) years and five (5) months for one (1) Tranche for the term January 1, 2011 through May 31, 2021. These SPAECs may be from one project or represent the aggregated total number of smaller projects.
- Conforming Example: 1 Tranche for January 1, 2011 through May 31, 2021 and 3 Tranches for June 1, 2011 through May 31, 2021
  - Conforming Example: 0 Tranche for January 1, 2011 through May 31, 2021 and 4 Tranches for June 1, 2011 through May 31, 2021
  - Non-Conforming Example: 0 Tranche for January 1, 2011 through May 31, 2021, 3 Tranches for June 1, 2011 through May 31, 2015 and 0 Tranches for June 1, 2015 through May 31, 2021
- 3.3** Winning Bidders will be expected to deposit their SPAECs certificates quarterly with the Company throughout the life of their AGREEMENT. The combined quarterly deposits in each Reporting Year will equal 200 SPAECs times the number of Tranches they win.
- 3.4** The Company will only accept SPAECs from sources approved by the Commission's AEPS Program Administrator, and SPAEC certificates generated through PJM Environmental Information Services Inc.'s Generation Attributes Tracking System ("GATS"). GATS is a regional environmental information tracking system that assists load serving entities in complying with renewable standards and provides state agencies with the proper reporting and verification. This system creates certificates based on actual generation from renewable resource facilities. Under the AEPS Act the Commission has designated GATS as the registry for issuance of SPAEC certificates.
- 3.5** It will be incumbent on the Winning Bidder to open and maintain, at its own expense, a GATS account. A Winning Bidder must provide certificates generated by GATS for its SPAECs so that the Company may satisfy AEPS reporting requirements.

#### **Article 4 - Information and Schedule**

- 4.1** The Company and the IPM have established a webpage link "Solar Photovoltaic Alternative Energy Credits" located on the RFP website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp) that will be the main source of information for the RFP. Prospective Bidders are invited to use this webpage link for current

data and information about all aspects of the RFP and to access all essential RFP documents.

**4.2** The website will provide the following informational sections and corresponding file links:

**Announcements:** This link provides announcements of interest to prospective Bidders and to other interested parties regarding the RFP.

**Regulatory Information Section:** Links in this section provide presentations regarding the RFP prepared by the Company and the IPM, as well as the Orders from the PaPUC.

**Documents Section:** Links in this section provide RFP documents including the RFP Rules and the AGREEMENT. This section also provides all credit instruments necessary for prospective Bidders including the standard form for the Pre-Bid Letter of Credit; the sample Letters of Intent to Provide a Guaranty and/or a Letter of Credit; the standard form for the Guaranty, and the standard form for the Letter of Credit. Any approved modifications to these documents will also be posted in this section.

**Questions and Answers Section** In this section, all stakeholders, including prospective Bidders, will be able to ask questions via the "Submit a Question" link. The Company will provide an answer to the question via email to the questioner, and will post updates on the "Questions and Answers" file link. This will provide all stakeholders and Bidders access to the same information. Aspects of the question or answer that might identify the party asking the question will be removed before posting.

**Schedule:** This section provides prospective Bidders with all crucial dates in the RFP.

<b>Event</b>	<b>Date</b>
Default Service Plan modification request filed with the PaPUC	July 29, 2010
PaPUC Order approving modification	September 2, 2010
RFP website goes live / RFP issued	September 24, 2010
RFP informational webinar for suppliers	October 6, 2010
Part 1 Date (Bidders submit Part 1 Proposals)	November 12, 2010
Notice of Qualification Date (Bidders are notified of qualification status for submission of Part 2 Proposals)	November 19, 2010
Part 2 Date (Qualified Bidders submit Part 2 Proposals including Pre-Bid Security )	December 3, 2010
IPM submits RFP results report to PaPUC	December 7, 2010
PaPUC approves / denies RFP results	December 10, 2010
Approved Winning Bidders execute AGREEMENTs	December 15, 2010

## **Article 5 - General Requirements for Proposals**

- 5.1** A Proposal is a two-part process--the Part 1 Proposal and the Part 2 Proposal--by which Bidders qualify and bid in the RFP. A prospective supplier that submits a Part 1 Proposal for the RFP is a Bidder. A Qualified Bidder is a Bidder whose Part 1 Proposal has been accepted by the IPM and the Company and who is then eligible to submit a Part 2 Proposal.
- 5.2** A Bidder submits a maximum of one (1) Part 1 Proposal. The Bidder must use the Part 1 Form provided as Appendix 6 to these RFP Rules for this purpose. The requirements of the Part 1 Proposal are fully described in Article 6 of these RFP Rules.
- 5.3** A Qualified Bidder that fulfills the qualification standards of the Part 1 Proposal may submit one Part 2 proposal and between one (1) and five (5) Bidform Spreadsheets for the available Tranches. A Qualified Bidder must use the Part 2 Form provided as Appendix 7 to these RFP Rules for this purpose. The requirements for the Part 2 Proposal are fully described in Article 7 of these RFP Rules. The requirements for the Part 2 Proposal include the posting of Pre-Bid Security as well as the Bid.
- 5.4** Part 1 Proposals must be received by 12:00 PM (noon) on the Part 1 Date and Part 2 Proposals must be submitted between 9:00 AM and 12:00 PM (noon) on the Part 2 Date.

- 5.5** Proposals must adhere to the terms and conditions of these RFP Rules and must fulfill all requirements in Article 5, Article 6, Article 7, and Article 8 of these RFP Rules. Proposals that do not adhere to the terms and conditions of these RFP Rules or that do not fulfill all requirements set forth in Article 5, Article 6, Article 7, and Article 8 of these RFP Rules will not be considered.
- 5.6** It is the intention, but not the obligation, of the Company to enter into an AGREEMENT with each Winning Bidder to supply a portion of the Tranche Target, in accordance with these RFP Rules.
- 5.7** The Bidder, at its own cost and expense, shall defend the Company and their subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders, executors, administrators, successors and assigns, against any and all manner of past, present, or future claims, demands, disputes, controversies, complaints, suits, actions, proceedings, or allegations of any kind which in any manner relate to, arise out of, or result from any false statement in a Proposal or breach of any covenant by the Bidder set forth herein. The Bidder shall indemnify and hold harmless the Company, their parent Company, subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as the heirs, executors, administrators, successors and assigns against any and all liens, judgments, liabilities, losses, injuries, damages, fees, fines, costs or expenses which in any manner relate to, arise out of, or result from any false statement or misrepresentation in the Proposal or breach of any warranty by the Bidder as set forth herein.
- 5.8** The submission of a Proposal to the Company constitutes the Bidder's acknowledgement and acceptance of all the terms and conditions of these RFP Rules, regardless of the outcome of any RFP or the ultimate fate of such Proposal.
- 5.9** An Officer of the Bidder is an individual empowered to undertake contracts and bind the Bidder. The Bidder will be required to provide the name, title, and full contact information (address, phone number, fax number, email address) of the Officer of the Bidder who will be making the representations in the Proposal.
- 5.10** All information provided and certifications made in the Proposal must remain valid and remain in full force for no less than five (5) business days after Part 2 Date in the RFP. Regardless of the reason, if any provided information changes, or any previous certification fails to remain valid, it is the sole responsibility of the Bidder to notify the Company and IPM of such change at least three (3) business days before the Part 2 Date. Failing to do so may result in

disqualification of the Bidder and the Proposal. The Company and IPM reserves the right to vary the assessment of the Proposal based on the revised information provided by the Bidder.

## **Article 6 - Part 1 Proposal Requirements**

**6.1** To participate in the RFP, a Bidder must meet the qualification requirements as detailed in this Article. These qualification requirements include providing contact information, providing financial information for a creditworthiness assessment, as well as making representations to ensure that the Bidder can perform under the terms of the AGREEMENT.

**6.2** The exclusive method for submitting information related to the Part 1 Proposal is to use the Part 1 Form. One (1) copy of the documents required for the Part 1 Proposal must be received no later than 12:00 p.m. Eastern Prevailing Time (noon) on the Part 1 Date. Except as otherwise explicitly indicated, documents may be submitted by mail, courier service, or electronic file via e-mail. Contact information for document submission is:

Helen L. Taylor, RFP Coordinator  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601  
e-mail [RFPCoordinator@alleghenypower.com](mailto:RFPCoordinator@alleghenypower.com)  
Phone: 724.838.6180

**6.3** Per each AGREEMENT the Bidder must clearly select one of the following three options:

- (a) seek an unsecured line of credit by relying on its own financial standing for purposes of submitting to the creditworthiness standards of the AGREEMENT;
- (b) seek an unsecured line of credit by relying on the financial standing of a guarantor (the "Guarantor") for purposes of submitting to the creditworthiness standards of the AGREEMENT;
- (c) elect not to apply for an unsecured line of credit and instead stand ready to post cash or a letter of credit acceptable to the Company for the entire amount of the security due under each AGREEMENT.

- 6.4** Per each AGREEMENT, if Bidder is posting cash collateral, Bidder is instructed to use the following account, and provide a FedRef number to facilitate tracking the wire transfer.

PNC Bank, N.A.  
ABA: 043 000 096  
Account # 102 885 5814  
Name: West Penn Power Bid Assurance Account

- 6.5** A Bidder that selects option (a) in 6.3 above must submit the following information and documents in its Part 1 Proposal:

- (i) The Bidder's most recent Securities and Exchange Commission ("SEC") Form 10-K; if unavailable, the most recent audited annual financial information (including a balance sheet, income statement, and cash flow statement, and any accompanying notes and schedules);
- (ii) The Bidder's most recent SEC Form 10-Q; if unavailable, the most recent quarterly or monthly financial data accompanied by an attestation by the Bidder's Chief Financial Officer, satisfying the requirements set out in Appendix 5, that the information submitted fairly presents in all material respects the financial condition and results of the operations of the Bidder;
- (iii) Any SEC Form 8-K filings by the Bidder, as well as any other public financial disclosures made by the Bidder since the release of the Bidder's most recent financial statements for any matters that are material to the Bidder's financial condition;
- (iv) A statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the Bidder that have had a material impact on the entity's financial status since the release of the Bidder's most recent financial data or most recent public financial disclosure;
- (v) The Bidder's senior unsecured debt rating from at least two of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch") along with documentation for each rating agency showing the name of the rating agency, the type of rating, and the rating of the Bidder; and

- (vi) The name, title, and full contact information (address, phone number, fax number, email address) of a credit representative from the Bidder who will be able to answer questions on the documentation provided.

**6.6** The Bidder that selects option (b) in Paragraph 6.3 must submit the following information and documents in its Part 1 Proposal:

- (i) The name of the entity serving as Guarantor;
- (ii) The Guarantor's most recent SEC Form 10-K; if unavailable, the most recent audited annual financial information (including a balance sheet, income statement, and cash flow statement, and any accompanying notes and schedules);
- (iii) The Guarantor's most recent SEC Form 10-Q; if unavailable, the most recent audited quarterly financial information (including a balance sheet, income statement, and cash flow statement, and any accompanying notes and schedules); if both the SEC Form 10-Q and audited quarterly financial information are unavailable, the most recent quarterly or monthly financial data accompanied by an attestation by the Guarantor's Chief Financial Officer, in the form of Appendix 5, that the information submitted is true, correct and a fair representation of the Guarantor's financial condition;
- (iv) Any SEC Form 8-K filings by the Guarantor, as well as any other public financial disclosures made by the Guarantor, since the release of the Guarantor's most recent financial statements for any matters that are material to the entity's financial condition;
- (v) A statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the Guarantor that have had a material impact on its financial status since the release of the entity's most recent financial data or most recent public financial disclosure;
- (vi) The Guarantor's senior unsecured debt rating from at least two of the following rating agencies: S&P, Moody's, or Fitch along with documentation for each rating agency showing the name of the rating agency, the type of rating, and the rating of the entity;
- (vii) The name, title, and full contact information (address, phone number, fax number, email address) of a credit representative from the Guarantor who will be able to answer questions on the documentation provided;

(viii) The standard form for the Letter of Intent to Provide a Guaranty, provided as Appendix 4, is acceptable to the Company. The required amount that must be specified in Appendix 4 is equal to 100% of the security required under the AGREEMENT for the maximum number of Tranches that a Bidder is proposing to supply in its Bid. A Bidder who wishes to modify Appendix 4 must submit with its Part 1 Proposal any and all modifications to Appendix 4 for evaluation. The Bidder must submit a Draft Appendix 4 electronically in MS-Word format, and sent via email to the RFP Coordinator. The Draft Appendix 4 must indicate clearly each and every modification from the standard form requested by the Bidder or its Guarantor. The IPM and the Company will assess, in their sole and exclusive discretion, whether such modifications are acceptable. All modifications proposed by a Bidder and found to be acceptable will be posted to the RFP website for the benefit of all Bidders. A Bidder, in its Part 2 Proposal, must provide an executed Appendix 4 that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Company upon evaluation of the Part 1 Proposals.

**6.7** A Bidder that selects option (c) in Paragraph 6.3 must submit all the following information and documents in its Part 1 Proposal:

- (i) A statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the Bidder that have had or may have a material impact on its financial status;
- (ii) The name, title, and full contact information (address, phone number, fax number, email address) of a credit representative from the Bidder who will be able to answer questions on the documentation provided;
- (iii) The standard form for the Letter of Intent to Provide a Letter of Credit, provided as Appendix 4, is acceptable to the Company. The required amount that must be specified in Appendix 4 is equal to 100% of the security required under the AGREEMENT for the maximum number of Tranches that a Bidder is proposing to supply in its Bid. A Bidder who wishes to modify Appendix 4 must submit with its Part 1 Proposal any and all modifications to Appendix 4 for evaluation. The Bidder must submit a Draft Appendix 4 electronically in MS-Word format, sent via email to the RFP Coordinator. The Draft Appendix 4 must indicate clearly each and every modification from the standard form requested by the Bidder or its Guarantor. The IPM and the Company will assess, in their sole and exclusive discretion, whether such modifications are acceptable. All modifications proposed by a Bidder and found to be acceptable will be

posted to website for the benefit of all Bidders. A Bidder, in its Part 2 Proposal, must provide an executed Appendix 4 that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Company upon evaluation of the Part 1 Proposals.

- 6.8** For all Bidders, the Part 2 Proposal requires cash or an executed Pre-Bid Letter of Credit established for the account of the Bidder and acceptable to the Company. The required amount for the Pre-Bid Letter of Credit or cash is specified in Article 7. The standard form for the Pre-Bid Letter of Credit, provided as Appendix 3, is acceptable to the Company. A Bidder who wishes to modify Appendix 3 with its Part 2 Proposal must submit with its Part 1 Proposal any and all modifications to the standard Appendix 3 for evaluation. The Bidder must submit a Draft Appendix 3 electronically in MS-Word format, sent via email to the Company. The Draft Appendix 3 must indicate clearly each and every modification from the standard form requested by the Bidder or its financial institution. The Company and IPM will assess, in its sole and exclusive discretion, whether such modifications are acceptable. All modifications proposed by a Bidder and found to be acceptable will be posted to the website for the benefit of all Bidders. A Bidder, in its Part 2 Proposal, must provide cash or an executed Appendix 3 that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Company upon evaluation of the Part 1 Proposals.
- 6.9** A Bidder that is not incorporated or otherwise formed under the laws of the United States must provide the following additional information:
- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Bidder is incorporated or otherwise formed that the applicable AGREEMENT will become, upon the completion of execution formalities, the binding obligation of the Bidder in the jurisdiction in which it has been incorporated or otherwise formed;
  - (ii) The sworn certificate of the corporate secretary (or similar officer) of the Bidder that the person who will be executing the applicable AGREEMENT on behalf of the Bidder has the authority to execute the applicable AGREEMENT and that the governing board of the Bidder has approved the execution of the applicable AGREEMENT;
  - (iii) The sworn certificate of the corporate secretary (or similar officer) of the Bidder that the Bidder has been authorized by its governing board to enter into agreements of the same type as the applicable AGREEMENT.

**6.10** The Bidder whose Guarantor is not incorporated or otherwise formed under the laws of the United States must provide the following additional information:

- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that the standard Guaranty of the applicable AGREEMENT will become, upon the completion of execution formalities, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed;
- (ii) The sworn certificate of the corporate secretary (or similar officer) of the Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of the Guarantor has approved the execution of the Guaranty;
- (iii) The sworn certificate of the corporate secretary (or similar officer) of the Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the standard Guaranty of the applicable AGREEMENT.

**6.11** An Officer of the Bidder is an individual empowered to undertake contracts and bind the Bidder. The Bidder must provide the name, title, and full contact information (address, phone number, fax number, email address) of an Officer of the Bidder who will be making the representations in the Part 1 Proposal and in the Part 2 Proposal.

**6.12** The Officer of the Bidder must, in the Part 1 Proposal, certify the following:

- (i) The Bidder is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania or, if another jurisdiction, that the Bidder is duly registered and authorized to do business and is in good standing in such other jurisdiction;
- (ii) All information provided in the Part 1 Proposal is true and accurate to the best of the Officer's knowledge and belief;
- (iii) The Officer is authorized to submit the Part 1 Proposal on behalf of the Bidder and is authorized to bind the Bidder;
- (iv) The Officer or an authorized representative of the Officer has read the AGREEMENT and that the Bidder accepts all of the terms of the AGREEMENT without modifications;

- (v) Its Part 1 Proposal will remain in full force until: (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed AGREEMENTs, and the Bidder has satisfied the creditworthiness standards of AGREEMENTs; or (iii) the PaPUC has rejected the results of the RFP; but (iv) in no event less than five (5) business days after the Part 2 Date;
- (vi) That if for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any certification fails to remain valid, the Bidder will notify the Company and the IPM of such changes at least three (3) business days before the Part 2 Date and will provide the updated information at least one (1) business day before the Part 2 Date;
- (vii) That the Bidder is not acting and will not act through a partnership, joint venture, limited liability partnership, or other association, organization, or any other arrangement with respect to its Proposal. If unable to make such a certification, the Officer of the Bidder must disclose the members of the partnership, joint venture, or other joint action with respect to its Proposal, as well as the nature of the association, agreement or joint action. A Bidder acting in concert with another Bidder may be disqualified by the IPM or the Company in their sole and exclusive discretion;
- (viii) That there are no actions at law, suits in equity, proceedings or claims pending or, to such Bidder's knowledge, threatened against the Bidder before any federal, state, foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the Bidder's performance of its obligations under the terms of any AGREEMENT;
- (ix) The Bidder has not had any permit or authority to do business in any jurisdiction revoked or suspended;
- (x) The Bidder and its corporate officers have never been barred from public bidding or sanctioned for unauthorized disclosure of confidential information; and
- (xi) That if the Bidder qualifies to participate in the RFP, the Bidder will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as Qualified Bidder to another entity.

**6.13** The Officer of the Bidder must, in the Part 1 Proposal, certify that the Officer or an authorized representative of the Officer has read these RFP Rules and that

the Bidder accepts all terms of the RFP Rules and agrees to comply with the RFP Rules, including;

- (i) agreement that if Bidder becomes winner, Bidder will execute the AGREEMENT within three (3) business days of approval of the procurement results by the PaPUC;
- (ii) agreement that if they become winners, Bidders will comply with the financial security requirements set forth in the AGREEMENT; and
- (iii) certification that Bidders will abide by the protocol associated with the RFP.

**6.14** All information provided and certifications made in the Part 1 Proposal must remain valid and remain in full force no less than five (5) business days after the Part 2 Date. Regardless of the reason, if any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the Bidder to notify the Company and the IPM of such change at least three (3) business days before the Part 2 Date and to provide the updated information at least one (1) business day before the Part 2 Date. The Company and the IPM reserve the right to vary the assessment of the Part 1 Proposal based on the revised information provided by the Bidder.

## **Article 7 - Part 2 Proposal Requirements**

**7.1** A Bidder that has satisfied the qualification requirements of the Part 1 Proposal will be deemed a Qualified Bidder and may submit a Part 2 Proposal. To submit a Part 2 Proposal, a Qualified Bidder must meet all requirements detailed in this Article 7. These requirements include providing a Bid, providing Pre-Bid Security to support that Bid, and making a number of certifications to ensure that the Qualified Bidder is bidding independently and is maintaining the confidentiality of information.

**7.2** The Part 2 Form is the exclusive method for submitting information required by the Part 2 Proposal. Except as otherwise explicitly indicated, a Qualified Bidder includes in its Part 2 Proposal one (1) copy of the documents required in this Article 7 via fax for each available Tranche. All materials for the Part 2 Proposal must be received in the Part 2 Date Window.

**7.3** A Qualified Bidder that is associated with another Bidder, as further detailed in Appendix 7, may be subject to additional requirements in its Part 2 Proposal. A Qualified Bidder is "associated with" another Bidder if the two Bidders have ties

that could allow them to act in concert or that could prevent them from competing actively against each other.

- 7.4** Bids in the RFP are to be submitted by fax.
- 7.5** Bids must be submitted between 9:00 AM and 12:00 PM (noon) Eastern Prevailing Time on the Part 2 Date exclusively using the Appendix 7, Part 2 Proposal and Appendix 8, Bid Form Spreadsheet.
- 7.6** A Bid consists of three elements: (i) a price in dollars per SPAEC in the format \$xx.xx or \$xxx.xx (rounded to the nearest cent) for each Delivery Year; (ii) a specification of the maximum number of Tranches offered with each Bid; and, (iii) an indication of whether the Bid is "All or Nothing" or an "Up-To" bid (as defined in Section 7.10 of the RFP Rules).
- 7.7** A Bid that is not expressed in dollars per SPAEC will automatically be rejected.
- 7.8** A Qualified Bidder may not Bid on less than a full Tranche. The Qualified Bidder may not Bid on fractions, portions or parts of Tranches.
- 7.9** Every Bid is a binding obligation to provide the supply for SPAECs at the price at which the Bid was made. By placing its Bid, the Qualified Bidder is declaring that it stands ready, willing and able to supply the SPAECs represented by the Tranches that it Bid, at the prices indicated.
- 7.10** Recognizing that the magnitude of SPAEC sales to the Company may affect financing or other commercial considerations for Qualified Bidders, All-or-Nothing Bids will be allowed, such that Qualified Bidders will not be bound to supply SPAECs in quantities other than those Bid. Unless indicated as an All-or-Nothing Bid, Bids will be considered an offer to supply any quantity up to and including the number of Tranches specified in the Bid (an "Up-to Bid").

Illustrative outcomes of allowing All-or-Nothing Bids are shown below. In each scenario, four Qualified Bidders are assumed to Bid quantities that aggregate to an amount exceeding the Tranche Target of 20 Tranches. Therefore, to result in a low-cost combination corresponding to the Tranche Target, one or more Bids must be excluded. Additionally, all Bids are on an Up-to Bid basis with the exception of Bid 3, which is an All-or-Nothing Bid.

***Illustrative All-Or-Nothing Bid Scenarios***

Bidder	Bid Type	Scenario A All-or-Nothing included in low-cost combination	Scenario B All-or-Nothing excluded from low- cost combination
1	Up To	Quantity 10 Price 50	Quantity 10 Price 50
2	Up To	Quantity 5 Price 99	Quantity 5 Price 75
3	All-Or-Nothing	Quantity 10 Price 100	Quantity 10 Price 100
4	Up To	Quantity 5 Price 150	Quantity 5 Price 105
<b>Low Cost</b>		<b>Quantity 20 Price 75</b>	<b>Quantity 20 Price 70</b>

In scenario A, the combination of bids that minimizes the cost of satisfying the Tranche Target includes the All-or-Nothing Bid, but excludes Up-to Bid 2 and Up-to Bid 4 (where excluded Bids are shaded in gray). Conversely, in scenario B, the combination of bids that minimizes the cost of satisfying the Tranche Target excludes the All-or-Nothing Bid.

**7.11** In the event of tied Up-to Bids (i.e., bids with the same offer price) that cannot be accepted up to their maximum Tranche offers, the available Tranches will be divided on a pro-rata basis based on each Qualified Bidder's maximum Tranche offer, after first subtracting out the Tranches requested in any All-or-Nothing Bids that are part of the tied Bids.

**For example,** consider a situation where six (6) Tranches are to be allocated to two (2) tied Qualified Bidders, where one Bid is Up-to four (4) Tranches and the other Bid is Up-to eight (8) Tranches. In this case, two (2) Tranches will be assigned to the Up-to four (4) Tranche Qualified Bidder, and 4 tranches will be assigned to the Up-to eight (8) Tranche Qualified Bidder.

**7.12** Bidders shall submit their proposals using the Bid Form Spreadsheets attached to this RFP as Appendix 8. The Bid Form Spreadsheets contain sections of information labeled Bidder Information, Tranche Information, Tranches Bid, Reporting Period, Price / SPAEC, Discount Factors, Discounted Price for Evaluation Purposes, Tag Number, Bid Assurance Collateral Amount, Offer Type and Complete/Incomplete Flag. The Bid Form Spreadsheets contain shaded cell areas in which bidders provide information and their offers. In order to prevent any misunderstanding of a bidder's offer, all shaded cells within a Bid Form Spreadsheet must be completed by the bidder. A Bid Form Spreadsheet

submitted by a bidder that contains blank shaded cells will be deemed a non-conforming bid, and will be eliminated from further consideration. Therefore, if it is the intent of a bidder to submit a zero price for any component of the pricing structure, the bidder must enter the numerical value of zero in that specific cell. The non-shaded cells are read-only cells containing either fixed or computed amounts. All formulas in cells in which computations are performed can be viewed by simply placing the cursor on the cell.

- (i) Bidder Information - These cells are bidder input cells and include Company Name, Contact Name, Phone Number and Fax Number and must be provided by the bidder.
- (ii) Tranche Information - The content of these cells are provided by the Company and include the Maximum Tranches To Be Awarded and number of SPAEC / Tranche / Reporting Year.
- (iii) Tranches Bid - This cell is a bidder input cell for the number of Tranches it is willing to supply at the prices offered in the Price / SPAEC section.
- (iv) Reporting Years - The content of these cells are provided by the Company and represent the periods for which the bidder's price quotes apply.
- (v) Price / SPAEC - These cells are bidder input cells for the Bidders price offer in each Reporting Year for each of the SPAEC to be delivered in that Reporting Year.
- (vi) Discount Factors - The content of these cells are provided by the Company or computed and include the Discount Rate and the Mid-Year Discount Factor used in the calculation of the discounted prices. The Discount Rate is equal to two percent (200 basis points) over the Prime Rate as published in The Wall Street Journal under "Money Rates". Assumed within the mid-year discounting convention, cash flows occur in the middle of each Reporting Year and are discounted back to the start of the term.
- (vii) Discounted Price for Evaluation Purposes - The content of this cell is computed and is the single parameter that will be used to compare all offers for the contract term.
- (viii) Offer Type - These cells are bidder input cells for the Bidder to notify the Company whether its bid is "All-Or-Nothing" or an "Up-To" bid as discussed in Section 7.10.

- (ix) Tag Number - The content of this cell will be provided by the Company and will represent a unique identification for each Bid Form Spreadsheet submitted by the bidders.
- (x) Pre-Bid Security - The content of this cell is computed. The amount of the Pre-Bid Security must be equal to 10% of the security required under the AGREEMENT relevant to the maximum number of Tranches that Qualified Bidders are proposing to supply in the Bids. According to the terms of the AGREEMENT, security requirements per Tranche equal 200 SPAECs (representing the annual SPAEC obligation per Tranche) multiplied by twice the price offer made by the Bidder. The form of the deposit must be consistent with the acceptable forms of security specified in the Part 1 Notice of Qualification letter issued by the Company.

***Example: Pre-Bid Security required upon submission of Bid***

A Qualified Bidder submits a Bid of Up-to 5 Tranches at \$100 per SPAEC. The Bid must be accompanied by Pre-Bid Security equal to 10% of its security requirements under the AGREEMENT at its maximum Tranche offer. In this case, those security requirements are  $5 \times 200 \times (2 \times \$100) \times 10\% = \$20,000$ .

- (xi) Complete/Incomplete Flag - The content of this cell is computed and indicates whether or not the Bid Form Spreadsheet has been fully completed in accordance RFP Rules.
- 7.13** All Qualified Bidders that win Tranches and are authorized as Winning Bidders receive the price they Bid.
  - 7.14** The number of Tranches stated by the Qualified Bidder in its Bid for the RFP determines the amount of Pre-Bid Security that a Qualified Bidder must provide with its Part 2 Proposal.
  - 7.15** The Qualified Bidder, in its Part 2 Proposal, must provide cash or an executed Pre-Bid Letter of Credit, Appendix 3 that either uses the standard form as provided in Appendix 3, or that incorporates only those modifications to the standard form accepted by the Company as a result of the evaluation of the Part 1 Proposals.
  - 7.16** A Bidder that selects option (b) in Paragraph 6.3 must provide, in its Part 2 Proposal, an executed Letter of Intent to Provide a Guaranty, Appendix 4, that either uses the standard form as provided in Appendix 4, or that incorporates only those modifications to the standard form accepted by the Company as a

result of the evaluation of the Part 1 Proposals. All modifications to the standard form of the Appendix 4 accepted for the benefit of a single Bidder will be posted to the RFP website and made available to all Bidders on an optional basis.

- 7.17** A Bidder that selects option (c) in Paragraph 6.3 must provide, in its Part 2 Proposal, an executed Letter of Intent to Provide a Letter of Credit, Appendix 4, that either uses the standard form as provided in Appendix 4, or that incorporates only those modifications to the standard form accepted by the Company as a result of the evaluation of the Part 1 Proposals. All modifications to the standard form of Appendix 4 accepted for the benefit of a single Bidder will be posted to the RFP website and made available to all Bidders on an optional basis.
- 7.18** The Pre-Bid Letter of Credit or cash for the RFP must be provided no later than on the Part 2 Date for the RFP.
- 7.19** If the Pre-Bid Letter of Credit submitted by the Bidder does not conform to the standard form provided in Appendix 4 or incorporates modifications to the standard form other than those accepted by the Company as a result of the evaluation of the Part 1 Proposals, that Bidder's Part 2 Proposal will be automatically deficient. The Bidder may not be permitted to submit Bids in the RFP. If a Bidder selects option (b) in Paragraph 6.3 and the Letter of Intent to Provide a Guaranty does not conform to the sample provided in Appendix 4 or incorporates modifications to that sample other than those accepted by the Company as a result of the evaluation of the Part 1 Proposals, that Bidder's Part 2 Proposal will be automatically deficient. If a Bidder selects option (c) in Paragraph 6.3 and the Letter of Intent to Provide a Letter of Credit does not conform to the sample provided in Appendix 4 or incorporates modifications to that sample other than those accepted by the Company as a result of the evaluation of the Part 1 Proposals, that Bidder's Part 2 Proposal will be automatically deficient. The Company and IPM may disregard the Bidder's Part 2 Proposal or may reduce the Bidder's eligibility to an amount supported by its acceptable Pre-Bid Security.
- 7.20** Payment under the Pre-Bid Letter of Credit or cash will be demanded by the Company if:
- (i) the Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal;
  - (ii) the Bidder discloses information relating to its Proposal or its Bids publicly or to any other party before the PaPUC has disclosed the names of the winning suppliers and the winning Bid prices of the RFP;

- (iii) the Bidder wins one or more Tranches and fails to execute the AGREEMENT within three (3) business days of the PaPUC's approval of the results of the RFP; or
  - (iv) the Bidder wins one or more Tranches and fails to meet the creditworthiness requirements of the AGREEMENT at the time of execution.
- 7.21** If the PaPUC rejects the results of the RFP, Company will release the Pre-Bid Letters of Credit or cash as soon as practicable. If the PaPUC accepts the results of the RFP, the Pre-Bid Letter of Credit of a Bidder will be released:
- (i) the business day after the PaPUC decision if the Bidder does not win any Tranches; or
  - (ii) the business day after the Bidder executes the AGREEMENT and meets the creditworthiness requirements under the AGREEMENT if the Bidder wins Tranches in the RFP.
- 7.22** An Officer of the Bidder is an individual empowered to undertake contracts and bind the Bidder. The Bidder, in its Part 2 Proposal, must confirm that the Officer of the Bidder who will be making the representations in the Part 2 Proposal is the same individual who made the representations in the Part 1 Proposal.
- 7.23** The Officer of the Bidder must, in the Part 2 Proposal, certify that all information provided in the Part 2 Proposal is true and accurate to the best of the Officer's knowledge and belief.
- 7.24** The Officer of the Bidder must, in the Part 2 Proposal, certify that the Officer is authorized to submit the Part 2 Proposal on behalf of the Bidder and is authorized to bind the Bidder.
- 7.25** An Officer of the Bidder must, in the Part 2 Proposal, certify that any Bid submitted for in the RFP creates a binding and irrevocable offer to provide SPAEC under the terms set forth in the applicable AGREEMENT. An Officer of the Bidder must further certify that if the PaPUC approves the results of the RFP, a binding and enforceable contract to provide service with respect to the number of Tranches for which the Bidder is a winner will arise under the applicable AGREEMENT at the final RFP prices.
- 7.26** The Officer of the Bidder must, in the Part 2 Proposal, certify that its Part 2 Proposal will remain in full force and effect until the earliest to occur of:

- (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or
- (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed the AGREEMENT, and the Bidder has satisfied the creditworthiness standards of the AGREEMENT; or
- (iii) the PaPUC has rejected the results of the RFP; but
- (iv) in no event less than five (5) business days after the Part 2 Date for the RFP.

**7.27** The Officer of the Bidder must, in the Part 2 Proposal, certify that Bidder is bidding independently and that Bidder does not have information concerning a Proposal or Bid being submitted by another Bidder in the RFP. Such information includes, but is not limited to: the fact that another Bidder is submitting a Proposal to participate in the RFP; another Bidder's Bids in the RFP; the quantities that another Bidder wishes to serve; another Bidder's estimation of the value of a Tranche; another Bidder's estimation of the risks associated with serving Tranches; and another Bidder's contractual arrangements for SPAECs with a party to serve Tranches if the Bidder is a winner of the RFP. This certification must be binding and in effect until the Commission has rendered a decision on the RFP results.

**7.28** An Officer of the Bidder must, in the Part 2 Proposal, certify that, except for any communication with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit, the Bidder has not disclosed and will not disclose publicly or to any other party any information relating to its Proposal or its Bids, which could have an effect on whether another party submits a Proposal to participate in the RFP, on whether another party submits Bids in the RFP, or on the contents of the Proposal that another Bidder would be willing to submit to participate in the RFP. Such information includes, but is not limited to: the fact that the Bidder is submitting a Proposal to participate in the RFP; the Bidder's Bids in the RFP; the number of tranches that a Bidder wishes to supply; the Bidder's estimation of the value of a Tranche; the Bidder's contractual arrangements for SPAECs with a party to serve Tranches; and, the Bidder's estimation of the risks associated with serving Tranches under the AGREEMENT. Such certification must hold until the PaPUC has disclosed the names of the winning suppliers and the winning Bid prices of that particular RFP.

**7.29** An Officer of the Bidder must, in its Part 2 Proposal, certify that it will hold confidential any results or data from the RFP, until such time that the results or

data are released by the PaPUC or the Company and are no longer confidential. Such information includes any information that a Bidder acquires as a result of participating in the RFP Process, whether in writing or verbally, and that has not made public by the IPM, Company or the PaPUC. Such information also includes, but is not limited to the status of the Bidder's participation in the RFP, all reports of results and announcements made by the Company or IPM to all or any one Bidder during the RFP.

- 7.30** An Officer of the Bidder must, in the Part 2 Proposal, certify that if the Bidder wins Tranches in the RFP, the Bidder will demonstrate compliance with the creditworthiness requirements set forth in the AGREEMENT within three (3) business days of the PaPUC approval of the results for the RFP.
- 7.31** An Officer of the Bidder must, in the Part 2 Proposal, certify that the Bidder will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as a Bidder to another entity.
- 7.32** The Officer of the Bidder must agree that the submission of a Part 1 Proposal or a Part 2 Proposal to the Company constitutes the Bidder's acknowledgement and acceptance of all the terms and conditions of these RFP Rules, regardless of the outcome of the RFP or the ultimate fate of such Proposal.
- 7.33** All information provided and certifications made in the Part 2 Proposal must remain valid and remain in full force until: (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed the AGREEMENT, and the Bidder has satisfied the creditworthiness standards of AGREEMENT; or (iii) the PaPUC has rejected the results of the RFP; but (iv) in no event less than five (5) business days after the Part 2 Date for the RFP. Regardless of the reason, if any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the Bidder to notify the Company and IPM of such change at least at least three (3) business days before the Part 2 Date and to provide the updated information at least one (1) business day before the Part 2 Date. The Company and IPM reserve the right to vary the assessment of the Part 1 Proposal based on the revised information provided by the Bidder.

## **Article 8 - Instructions for Preparation of Proposals**

- 8.1** A Bidder must submit its Proposal in various parts, using the Part 1 and Part 2 Forms attached as Appendices 6 and 7 hereto, including the Bid Form Spreadsheet attached as Appendix 8 provided for the RFP.

- 8.2** The Part 1 Proposal consists of the Part 1 Forms as well as all documents required by Article 6. A Bidder must deliver any information or document related to its Part 1 Proposal to the Company at the following address:

Allegheny Power  
c/o Helen Taylor, RFP Coordinator  
Electric Supply Department  
800 Cabin Hill Drive  
Greensburg, PA 15601

or by email at [RFPCoordinator@alleghenypower.com](mailto:RFPCoordinator@alleghenypower.com).

- 8.3** The Part 2 Proposal consists of Part 2 Forms as well as all documents required by Article 7. A Bidder must deliver the Part 2 Proposal by fax to 724-830-7805 between 9:00 AM and 12:00 PM (noon) Eastern Prevailing Time on the Part 2 Date. The Pre-Bid Letter of Credit or cash must also be received prior to 12:00 PM (noon) Eastern Prevailing Time on the Part 2 Date. Pre-Bid Letters of Credit are to be sent to:

Allegheny Power  
c/o Helen Taylor, RFP Coordinator  
Electric Supply Department  
800 Cabin Hill Drive  
Greensburg, PA 15601

If Bidder is posting cash collateral, please use the following account, and provide a FedRef number to facilitate tracking the wire transfer.

PNC Bank, N.A.  
ABA: 043 000 096  
Account # 102 885 5814  
Name: West Penn Power Bid Assurance Account

- 8.4** A Bidder must assume full responsibility for timely delivery in the manner and to the location specified in these RFP Rules.
- 8.5** Proposals must be submitted in the complete legal name of the party that will execute the AGREEMENT should the party be a Winning Bidder and should the PaPUC approve the RFP results.

## **Article 9 - Evaluation of Proposals**

- 9.1** The Evaluation Team will consist of representatives of the Company and IPM.
- 9.2** The Evaluation Team will review Part 1 Proposals upon receipt. The Evaluation Team will assess the Part 1 Proposals for completeness and compliance with the terms and conditions of Article 6 of these RFP Rules.
- 9.3** A Part 1 Proposal is complete and compliant with the terms and conditions of Article 6 if: (i) all financial information specified has been provided; (ii) all certifications and other requirements have been provided and are signed by an Officer of the Bidder. Further, unless the Bidder is using the standard format for the Pre-Bid Letter of Credit or cash, the Bidder must submit a draft Pre-Bid Letter of Credit. If the Bidder is relying on the financial standing of a Guarantor, and the Guarantor is not using exactly the standard form of the Letter of Intent to Provide a Guaranty, the Bidder must provide a draft Letter of Intent to Provide a Guaranty. If the Bidder is relying on a Letter of Credit, and the Bidder is not using exactly the standard form of the Letter of Intent to Provide a Letter of Credit, the Bidder must provide a draft Letter of Intent to Provide a Letter of Credit. The Bidder includes, in its Part 1 Proposal, a certification that the Bidder is bidding independently and is not acting in concert with another Bidder. The Company or IPM may request additional information to ascertain that the Bidder is bidding independently of other Bidders. A Bidder that is not bidding independently of another Bidder may fail to qualify.
- 9.4** If the Company and IPM determines that any aspect of the Bidder's Part 1 Proposal is deficient because the Bidder's submission is incomplete or is not compliant with the terms of these RFP Rules, the Company or IPM will issue a deficiency notice requesting that the Bidder complete or provide additional information with respect to that particular aspect of its Part 1 Proposal. A Bidder will have until 6:00 PM Eastern Prevailing Time on the business day following the business day during which such a notice was provided to the Bidder to respond to the deficiency notice. If the response is not sufficient to cure the deficiency, the Company or IPM may request additional information and provide another opportunity for the Bidder to provide the required clarification or additional information to cure the deficiency.
- 9.5** The Evaluation Team will review the draft Pre-Bid Letters of Credit, draft Letters of Intent to Provide a Guaranty, and draft Letters of Intent to Provide a Letter of Credit. Early submission of draft Pre-Bid Letter of Credit and/or Letters of Intent are encouraged to allow appropriate review of the requested modifications...The Company or IPM will notify the Bidder whether modifications incorporated in the draft Pre-Bid Letter of Credit and/or Letters of Intent are acceptable.

- 9.6** If the Company or IPM issues a deficiency notice to a Bidder and the Bidder does not respond by the deadline established herein, or if the Bidder does not address the deficiency in a manner compliant with the requirements of these RFP Rules, the Bidder's Part 1 Proposal will be rejected.
- 9.7** When the evaluation of the Part 1 Proposals is complete, Bidders will be either qualified or disqualified. A Bidder is qualified if the Bidder submitted a Part 1 Proposal [as supplemented or amended in response to deficiency notices issued by the Company or IPM] that is complete and compliant with the requirements of these RFP Rules. In all other circumstances, the Bidder will be disqualified. Only Qualified Bidders will be invited to submit Part 2 Proposals.
- 9.8** The Company or IPM will notify a Bidder of whether it has qualified on the fifth business day after the Part 1 Date.
- 9.9** The Evaluation Team will consist of representatives of the Company and IPM. Representatives from the PaPUC may be present when Part 2 Proposals and Bids are evaluated. Information regarding the content or status of any Part 2 Proposal will not be released to any Bidder during the evaluation process.
- 9.10** Part 2 Proposals will only be considered for those Bidders that have met the qualification requirements of Article 6.
- 9.11** The RFP format considers Bids from Bidders that have met all qualification requirements on a price-determinative basis.
- 9.12** The PaPUC Staff will have access to all Bids and will be provided with a report from the IPM.
- 9.13** Part 2 Proposals must be received by the Company between 9:00 AM and 12:00 PM (noon) Eastern Prevailing Time on the Part 2 Date. The Company and IPM will assess the Part 2 Proposal for completeness and compliance with the terms and conditions of Article 7 of these RFP Rules.
- 9.14** The Company and IPM will assess whether all certifications required in the Part 2 Proposal, as specified in Article 7, have been submitted. If they have not, the Part 2 Proposal will be rejected.
- 9.15** The Company or IPM will assess whether the Bidder has provided cash or an executed Pre-Bid Letter of Credit for the account of the Bidder that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Company upon evaluation of the Part 1 Proposals. If the Pre-Bid Letter of Credit is not acceptable to the Company, or if it is not for the account of the Bidder, the Part 2 Proposal may be rejected.

- 9.16** For a Bidder relying on the financial standing of a Guarantor, the Company and IPM will assess whether the Bidder has provided an executed Letter of Intent to Provide a Guaranty that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Company upon evaluation of the Part 1 Proposals. If the Letter of Intent to Provide a Guaranty is not acceptable to the Company, the Company or IPM may reject the Part 2 Proposal.
- 9.17** For a Bidder relying on a Letter of Credit, the Company and IPM will assess whether the Bidder has provided an executed Letter of Intent to Provide a Letter of Credit that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Company upon evaluation of the Part 1 Proposals. If the Letter of Intent to Provide a Letter of Credit is not acceptable to the Company, the Company or IPM may reject the Part 2 Proposal.
- 9.18** Proposals received from a Bidder may be eliminated from further consideration at any point, in the IPM's and the Company's sole and exclusive discretion, for any of the following reasons including (but not limited to):
- (i) Failure to provide clarification of, or additional information relating to, any aspect of the Proposal as requested by the Company or IPM;
  - (ii) Attempts or the appearance of attempts to improperly influence the consideration of the Proposals;
  - (iii) Failure to honor representations made in a Part 1 Proposal or a Part 2 Proposal; and
  - (iv) Illegal conduct, including a Bidder acting in concert with another Bidder.
- 9.19** The IPM will prepare a report two (2) business days after the Part 2 Date. The IPM's report will present the results of the RFP and will also summarize the most recent processing and evaluation of Proposals. The PaPUC will have three (3) business days after report submission to decide whether to approve the results. The Company or IPM will notify all Bidders of the PaPUC's decision. There is no minimum number of bids that must be received in order for the PaPUC to approve the bid results. However, it is the Company's preference that it receives Bids from at least three (3) Qualified Bidders.
- 9.20** The report of the IPM submitted to the PaPUC will also include a state of the market (i.e., benchmarking) report on the SPAEC market. This benchmarking report will have been provided to the Office of Consumer Advocate ("OCA") and

Office of Small Business Advocate ("OSBA") on a confidential basis at least five (5) business days prior to the Part 2 Date. The OCA and OSBA will have three (3) business days to review the benchmarking report and provide comments to the IPM on a confidential basis. The IPM will append any comments provided by the OCA and OSBA to the report that the IPM provides to the PaPUC.

- 9.21** The Winning Bidders will have three (3) business days from the date of the PaPUC's approval to execute the AGREEMENT without modifications. If a Winning Bidder fails to execute the AGREEMENT with the Company within three (3) business days from the PaPUC's approval, the Winning Bidder will forfeit its Pre-Bid Letter of Credit or posted cash.

### **Article 10 - Reserved Rights**

- 10.1** At any time prior to the execution of the AGREEMENT, the PaPUC has the exclusive right to withdraw and terminate the RFP without any liability or responsibility to any Bidder or any other party, for reasonable cause including, but not limited to, adverse statutory changes or interpretations, issuance of new PaPUC orders and/or regulations, market conditions, or any other extraordinary circumstances that preclude these RFP Rules from being implemented in substantially the manner described herein.
- 10.2** Subject to PaPUC approval, the Company reserves the right to withdraw or terminate the RFP at least two (2) days before the Part 2 Date and with notice to Qualified Bidders, without any liability or responsibility to any Bidder or any other party, for reasonable cause including, but not limited to, adverse statutory changes or interpretations, issuance of new PaPUC orders and/or regulations, market conditions, or any other extraordinary circumstances that preclude these RFP Rules from being implemented in substantially the manner described herein.
- 10.3** The Company will not be liable to any Bidder or any other party for failure to execute an AGREEMENT. Nothing herein may be construed to bind the Company unless and until the PaPUC has approved winning Bid(s), and each AGREEMENT with a Winning Bidder has been executed and is effective. Once effective, the AGREEMENT will govern the relationship between and the responsibilities of the parties to that agreement and not the RFP Rules or any documents relating thereto.
- 10.4** The Company and the IPM reserve the right to reject Proposals submitted in response to the RFP that are incomplete, or do not conform to the requirements of these RFP Rules, or are submitted beyond the deadline for submission.

- 10.5** All Proposals submitted by Bidders in response to the RFP will become the exclusive property of the Company upon the receipt of such document(s).
- 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.
- 10.8** In addition, the Bidders' data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the PaPUC) or by a court of competent jurisdiction. However, the Company will notify the Bidder in advance of such disclosure and cooperate with such Bidder, to the extent deemed reasonable by the Company, and at the expense of the Bidder, to prevent the disclosure of such materials. In any event, the Company, their employees, and agents will not be responsible to the Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to the RFP. Notwithstanding the above, the Company reserves the right to use and *communicate publicly and/or* to third parties any and all information/data submitted in any Proposal in all proceedings before the PaPUC and the courts, if necessary, without the prior consent/approval of, or notice to, any such Bidder.

Name of Bidder: \_\_\_\_\_

**APPENDIX 6**

**WEST PENN POWER COMPANY, dba ALLEGHENY POWER  
SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS  
REQUEST FOR PROPOSALS RULES  
PART 1 FORM**

**REVISED 11/3/2010**

**RECEIVED**

NOV 14 2011

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

Name of Bidder: \_\_\_\_\_

## **INSTRUCTIONS FOR PART 1 PROPOSAL**

Bidders must submit the Part 1 Form and all documents required therein to respond to the qualification standards for the RFP. A Bidder that is qualified after complying with all qualification standards of the Part 1 Proposal (“Qualified Bidder”) may submit a Part 2 Proposal for the RFP.

### **I. Part 1 Proposal Submission**

*Part 1 Proposals must be submitted in the complete legal name of the party that will execute the AGREEMENT should the party be a winning Bidder and should the PaPUC approve the RFP results.*

Bidders must:

- Submit a completed Part 1 Form;
- Submit the documents required to support the Part 1 Form as set forth in Article 6 of the RFP Rules; and,
- Manually insert the name of the Bidder **on every page** of the Part 1 Form

*The completed Part 1 Proposal can be submitted any time prior to the Part 1 Date, but **MUST** be received by the Company no later than 12:00 p.m. Eastern Prevailing Time on the Part 1 Date at:*

Allegheny Power  
c/o Helen Taylor, RFP Coordinator  
Electric Supply Department  
800 Cabin Hill Drive  
Greensburg, PA 15601

or by email at [RFPCoordinator@alleghenypower.com](mailto:RFPCoordinator@alleghenypower.com)

**Oral, telephonic, or faxed Part 1 Proposals will not receive consideration under any circumstances.**

Questions and inquiries may be directed to the RFP Coordinator by:

- Telephone 724.838.6180; or
- Via the “Submit a Question” link on the Solar Photovoltaic Alternative Energy Credits webpage located on the RFP website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp).

Name of Bidder: \_\_\_\_\_

**PART 1 FORM**  
**WEST PENN POWER COMPANY, dba ALLEGHENY POWER**  
**SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS**  
**REQUEST FOR PROPOSALS**

**PART 1 DATE: NOVEMBER 12, 2010**

This Part 1 Form is the form to submit the Part 1 Proposal for the West Penn Power Company, dba Allegheny Power ("Company") Solar Photovoltaic Alternative Energy Credits Request for Proposals ("RFP").

Before completing this Part 1 Form, please review the Company Solar Photovoltaic Alternative Energy Credits RFP Rules ("RFP Rules") and the Solar Photovoltaic Alternative Energy Credit Purchase and Sale Agreement ("AGREEMENT"), so that Bidder fully understands the conditions under which the RFP will be conducted. These documents are posted at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp).

The submission of a Part 1 Proposal to the Company constitutes Bidder's acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the RFP or the ultimate fate of such Proposal.

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*Any information that Bidder provides in this Part 1 Proposal is provided on a confidential basis to the Company and the Independent Procurement Manager, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission. Information regarding the content or status of any Part 1 Proposal will not be released publicly or to any individual Bidder during the evaluation process.*

**RECEIVED**

NOV 14 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Name of Bidder: \_\_\_\_\_

## **II. Part 1 Proposal Review**

### Timing of Part 1 Proposal Review

The Part 1 Proposal is due no later than noon (12:00 PM EPT) on the Part 1 Date (“Part 1 Deadline”), which is expected to be fifteen (15) business days from RFP Issuance. Bidders are encouraged to submit Part 1 Proposals any time prior to the Part 1 Deadline. All Part 1 Proposals received by the Part 1 Deadline will be reviewed by the Evaluation Team upon receipt.

### Late Part 1 Proposals

Part 1 Proposals received after the Part 1 Deadline are late Part 1 Proposals and will not be processed. No late Part 1 Proposals will be accepted under any circumstances. A Bidder must assume full responsibility for timely delivery in the manner and to the location specified in the previous section, Part I Proposal Submission.

### Incomplete Part 1 Proposals

If the Company or Independent Procurement Manager determines that any aspect of a Bidder’s Part 1 Proposal is incomplete or requires clarification, the Company or Independent Procurement Manager will issue a deficiency notice to Bidder. A Bidder will have until 6:00 PM on the business day following the business day during which the deficiency notice was provided to the Bidder to respond to the deficiency notice. If the response is not sufficient to cure the deficiency, the Company or Independent Procurement Manager may request additional information and provide another opportunity for the Bidder to provide the required clarification or additional information to cure the deficiency. If a deficiency notice is issued and the Bidder does not respond by the deadline established by the Company or Independent Procurement Manager, or does not address the deficiency in a manner that is deemed satisfactory in the Company or Independent Procurement Manager’s sole discretion, the Bidder’s Part 1 Proposal will be rejected.

### Modifications to Credit Documents

Unless the Bidder is using the standard format for the Pre-Bid Letter of Credit, the Bidder must submit a draft Pre-Bid Letter of Credit clearly showing all requested modifications. If the Bidder is relying on the financial standing of a Guarantor or a Letter of Credit to comply with AGREEMENT requirements, and the Guarantor is not using the standard forms of the Letter of Intent to Provide a Guaranty or a Letter of Intent to Provide a Letter of Credit (“Letters of Intent”), the Bidder must provide the appropriate draft Letters of Intent with Bidder’s Part 1 Proposal, clearly showing all requested modifications. The Evaluation Team will review draft Pre-Bid Letters of Credit and draft Letters of Intent, and will notify the Bidder which modifications to the draft Pre-Bid Letter of Credit and the draft Letters of Intent are acceptable. Early submission of draft Pre-Bid Letter of Credit and/or Letters of Intent are encouraged to allow appropriate review of the requested modifications.

Name of Bidder: \_\_\_\_\_

Notification of Qualification

Each Bidder that submits a Part 1 Proposal will be notified no later than five (5) business days after the Part 1 Date whether Bidder has qualified to submit a Part 2 Proposal for the RFP. A Bidder who submits a Part 1 Proposal and who is qualified pursuant to its Part 1 Proposal is deemed to be a Qualified Bidder and may submit a Part 2 Proposal.

Name of Bidder: \_\_\_\_\_

## **PART 1 FORM**

**Please complete all sections.**

### **1. Contact Information**

**COMPLETE ALL INFORMATION IN THIS SECTION 1 OF THIS PART 1 FORM.**

Name and Address of the Bidder

\_\_\_\_\_  
*Name of Bidder*

\_\_\_\_\_  
*Legal Name of Bidder (If Different from Above)*

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City State Zip Code*

*If the legal or trade name provided above for the Bidder is not expected to change from now until the Commission renders a decision on the results of the RFP, please check here and please proceed to the next section. Otherwise, please provide the following information:*

\_\_\_\_\_  
*New Name of Applicant*

\_\_\_\_\_  
*Expected Date of Name Change*

***Please be advised*** that if Bidder becomes a Qualified Bidder, Qualified Bidder will be required to advise the Company when the change to its name, as disclosed above, has been effected, and to provide evidence of the change. The Qualified Bidder is also required to advise the Company if the change to the Bidder's name, as disclosed above, does not occur on the expected date.

Name of Bidder: \_\_\_\_\_

Officer of the Bidder

The information in this section is the contact information for an individual who is an officer, director or an individual otherwise empowered to undertake contracts and bind the Bidder. The Officer of the Bidder named below must make all representations required in the Part 1 Proposal.

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Company*

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State, Zip Code*

\_\_\_\_\_  
*Telephone No.*

\_\_\_\_\_  
*Fax No.*

\_\_\_\_\_  
*Email Address*

Name of Bidder: \_\_\_\_\_

Representative of the Bidder

The Officer of the Bidder must name a Representative of the Bidder. *The Officer of the Bidder may name himself or herself as the Representative.* The Representative is the point of contact if the Company or Independent Procurement Manager has questions on the documentation provided by the Bidder in response to this RFP or requires additional information. The Company or Independent Procurement Manager will send all correspondence related to the procurement event to the Representative, including confidential information required to submit Part 2 Proposals on the Part 2 Date. The Company or Independent Procurement Manager, for the purposes of this RFP, will communicate exclusively with the Representative or the Officer.

_____ (the Officer of the Bidder named above) hereby designates _____, whose contact information is immediately below, to serve as the Representative of the Bidder.	
_____ Signature of Officer	_____ Date
_____ Printed Name	

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Company*

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State, Zip Code*

\_\_\_\_\_  
*Telephone No.                      Fax No.                      Email Address*

Name of Bidder: \_\_\_\_\_

## 2. Creditworthiness Information

**PROVIDE ALL INFORMATION REQUESTED IN THIS SECTION 2 OF THIS PART 1 FORM.**

Name of Entity on Whose Financial Standing the Bidder Relies

The party, called the "Entity" below, upon whose financial standing the Bidder is relying is (check one):

Option (a)

\_\_\_\_\_, the Bidder is the Entity and is seeking an unsecured line of credit

Option (b)

\_\_\_\_\_, the Guarantor is the Entity

Option (c)

\_\_\_\_\_, the Bidder is the Entity. The Bidder elects not to apply for an unsecured line of credit and stands ready to post cash or a Letter of Credit for the entire amount of the security due under the AGREEMENT

Name of Bidder: \_\_\_\_\_

Credit Representative

The contact information in this section is for a credit representative from the Entity named above who will be able to answer questions on the documentation provided.

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Company*

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State, Zip Code*

\_\_\_\_\_  
*Telephone No.*                      *Fax No.*                      *Email Address*

Name of Bidder: \_\_\_\_\_

### Financial Information

If the Bidder has selected **Option (a) or Option (b)** above, please provide the following financial information for the Entity named on page 9:

- (1) Most recent SEC Form 10-K; if unavailable, please provide the most recent audited annual financial information (including a balance sheet, income statement, and cash flow statement, and any accompanying notes and schedules).
- (2) Most recent SEC Form 10-Q; if unavailable, please provide the most recent quarterly or monthly financial information accompanied by an attestation by the Entity's Chief Financial Officer, in the form of Appendix 6, that the information submitted fairly presents in all material respects the financial condition and results of the operations of the Entity.
- (3) Any SEC Form 8-K filings made by the Entity, as well as any other public financial disclosures made by the Entity since the release of the Entity's most recent financial statements, for any matters that are material to the Entity's financial condition.

### Credit Ratings

If the Bidder has selected **Option (a) or Option (b)** above, please submit credit ratings for the Entity from at least two of the following agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), or Fitch, Inc. ("Fitch"), along with the specified documentation.

1. Is the Entity rated by S&P?

yes                       no

**If yes**, please provide:

- The Entity's senior unsecured debt rating; and
- A print out from S&P's web site or other documentation from the agency providing the name of the rating agency, **the type of rating**, and the rating of the Entity.

2. Is the Entity rated by Moody's?

yes                       no

**If yes**, please provide:

- The Entity's senior unsecured debt rating; and
- A print out of Moody's web site or other documentation from the agency providing the name of the rating agency, **the type of rating**, and the rating of the Entity.

Name of Bidder: \_\_\_\_\_

3. Is the Entity rated by Fitch?

yes                       no

**If yes**, please provide:

- The Entity's senior unsecured debt rating; and
- A print out of Fitch's web site or other documentation from the agency providing the name of the rating agency, **the type of rating**, and the rating of the Entity.

Statement of Matters Related to Financial Status of the Entity

**All Bidders must submit the following information for the Entity named in Section II.2:**

A statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the Entity that have had a material impact on the Entity's financial status. If the Bidder has selected Option (a) or Option (b) above, this statement need only apply to matters impacting the Entity's financial status since the release of the Entity's most recent financial data or most recent public financial disclosure.

Draft Pre-Bid Letter of Credit

***For all Bidders***, the Part 2 Proposal requires the posting of cash or an executed Pre-Bid Letter of Credit established for the account of the Bidder and acceptable to the Company. The standard form for the Pre-Bid Letter of Credit provided as Appendix 3 to the RFP Rules is acceptable to the Company. **A Bidder that will not use exactly the standard Pre-Bid Letter of Credit, with its Part 2 Proposal must submit with its Part 1 Proposal any and all modifications to the standard Pre-Bid letter of Credit for evaluation. Approved modifications will be posted on the website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp) and may be incorporated into Bidder's draft Pre-Bid Letter of Credit.**

Each Bidder who is using a Pre-Bid Letter of Credit must check **one** of the following options:

- The Bidder will use the **standard form** of the Pre-Bid Letter of Credit for the RFP provided as Appendix 3 to the RFP Rules document,
- The Bidder is submitting electronically in MS-Word format to the RFP Coordinator a draft Pre-Bid Letter of Credit for the RFP **indicating clearly each and every modification** from the standard form, and which may include approved modifications as posted on the website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp).

The Independent Procurement Manager and the Company will assess, in their sole and exclusive discretion, whether any modifications to the standard form, other than those posted on the RFP website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp) are acceptable.

Name of Bidder: \_\_\_\_\_

Draft Letter of Intent to Provide a Guaranty/ Letter of Credit to comply with AGREEMENT

A Bidder who selects **Options (b) or (c)** above must submit an executed Letter of Intent to Provide a Guaranty or Letter of Intent to Provide a Letter of Credit, as applicable, with its Part 2 Proposal that is acceptable to the Company. The standard forms for the Letters of Intent provided as Appendix 4 to the RFP Rules document are acceptable to the Company. **A Bidder that will not use exactly the standard forms of the Letters of Intent with its Part 2 Proposal must submit with its Part 1 Proposal any and all modifications to the standard Letters of Intent for evaluation. Approved modifications will be posted on the website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp) and may be incorporated into Bidder's draft Letters of Intent.**

The Bidder that has selected **Options (b) or (c)** above, must check one of the following:

- The Bidder will use the standard form of the Letter of Intent to Provide a Guaranty or Letter of Intent to Provide a Letter of Credit, as applicable, for the RFP, as provided in Appendix 4 to the RFP Rules
- The Bidder is submitting electronically in MS-Word format to the RFP Coordinator a draft Pre-Bid Letter of Credit for the RFP **indicating clearly each and every modification** from the standard form, and which may include approved modifications as posted on the website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp).

The Independent Procurement Manager and the Company will assess, in their sole and exclusive discretion, whether such modifications are acceptable.

Name of Bidder: \_\_\_\_\_

### 3. Additional Requirements

**THESE CERTIFICATIONS MUST BE SIGNED BY THE OFFICER OF THE BIDDER.**

Representations of the Officer of the Bidder

I certify that:

- (1) the Bidder is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania or, if another jurisdiction, that the Bidder is duly registered and authorized to do business and is in good standing in such other jurisdiction.
- (2) all information provided in the Part 1 Proposal is true and accurate to the best of my knowledge and belief. I certify that I am authorized to submit the Part 1 Proposal on behalf of the Bidder and am authorized to bind the Bidder.
- (3) I have read the AGREEMENT for the products in the RFP and I certify that the Bidder accepts all of the terms of such AGREEMENT without modifications.
- (4) I have read the RFP Rules and I certify that the Bidder accepts all of the terms of the RFP Rules and agrees to comply without modifications.
- (5) the Bidder's Part 1 Proposal will remain in full force and effect until: (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed the AGREEMENT, and the Bidder has satisfied the creditworthiness standards of the AGREEMENT; or (iii) the PaPUC has rejected the results of the RFP; but (iv) in no event less than five (5) business days after the RFP Part 2 Date.
- (6) if the Bidder qualifies to participate in the RFP, the Bidder will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as Qualified Bidder to another entity.
- (7) if for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any certification fails to remain valid, the Bidder will notify the Company and Independent Procurement Manager of such changes at least three (3) business days before the Part 2 Date and will provide the updated information at least one (1) business day before the Part 2 Date.

\_\_\_\_\_  
Signature of Officer of the Bidder

\_\_\_\_\_  
Date

Name of Bidder: \_\_\_\_\_

Certification of Non-Association

The Officer of the Bidder must sign the following certification, or provide the requested information.

I certify that the Bidder is not acting and will not act through a partnership, joint venture, limited liability partnership, or other association, organization, or any other group with respect to its Part I Proposal.

\_\_\_\_\_

\_\_\_\_\_

Signature of Officer of the Bidder

Date

**OR**

If the Officer is unable to make the above certification, the Officer of the Bidder must disclose the members of the partnership, joint venture, or other joint action with respect to its Part I Proposal, as well as the nature of the association, agreement or joint action. A Bidder acting in concert with another Bidder may be disqualified by the Company or Independent Procurement Manager in its sole and exclusive discretion.

\_\_\_\_\_  
\_\_\_\_\_

Certification Regarding Ability to Perform

I certify that:

- (1) there are no actions at law, suits in equity, proceedings or claims pending or, to such Bidder's knowledge, threatened against the Bidder before any federal, state, foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the Bidder's performance of its obligations under the terms of any AGREEMENT;
- (2) the Bidder has not had any permit or authority to do business in any jurisdiction revoked or suspended; and
- (3) the Bidder and its corporate officers have never been barred from public bidding or sanctioned for unauthorized disclosure of confidential information.

\_\_\_\_\_

\_\_\_\_\_

Signature of Officer of the Bidder

Date

Name of Bidder: \_\_\_\_\_

#### **4. Entities Not Incorporated Under the Laws of the United States**

**A Bidder that is not incorporated or otherwise formed under the laws of the United States must provide the following additional information in its Part 1 Proposal:**

- 1) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Bidder is incorporated or otherwise formed that the applicable AGREEMENT will become, upon the completion of execution formalities, the binding obligation of the Bidder in the jurisdiction in which it has been incorporated or otherwise formed;
- 2) The sworn certificate of the corporate secretary (or similar officer) of the Bidder that the person who will be executing the applicable AGREEMENT on behalf of the Bidder has the authority to execute the applicable AGREEMENT and that the governing board of the Bidder has approved the execution of the applicable AGREEMENT;
- 3) The sworn certificate of the corporate secretary (or similar officer) of the Bidder that the Bidder has been authorized by its governing board to enter into agreements of the same type as the applicable AGREEMENT(s).

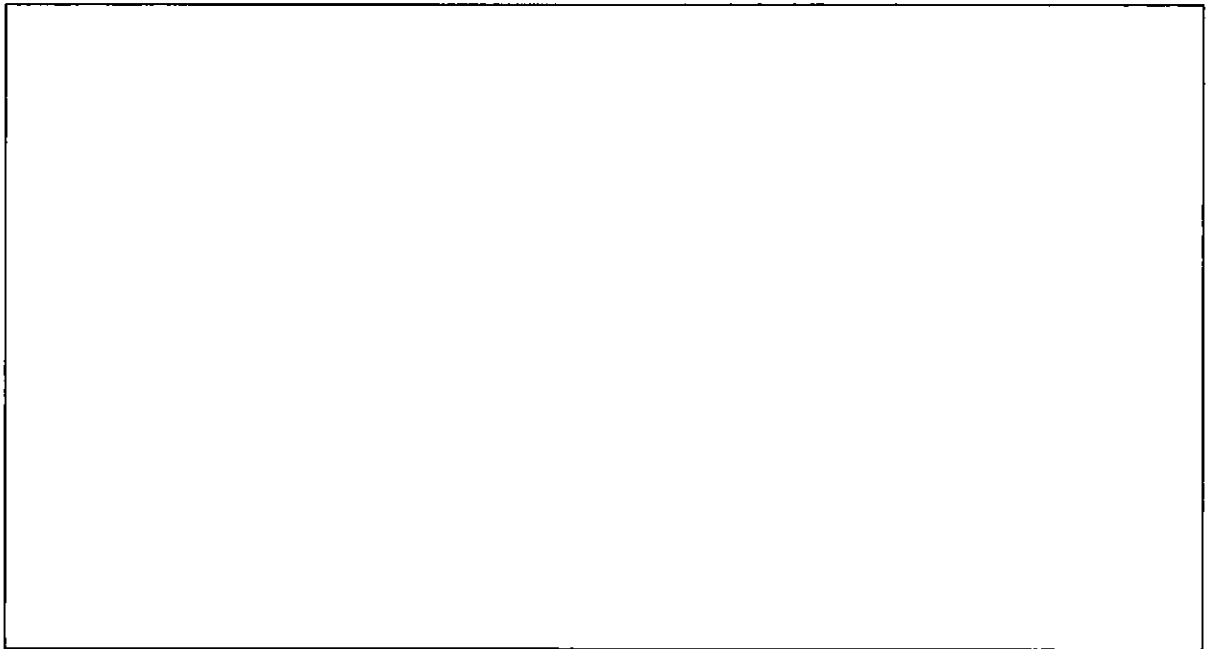
**A Bidder whose Guarantor is not incorporated or otherwise formed under the laws of the United States must provide the following additional information in its Part 1 Proposal:**

- 1) A legal opinion of counsel qualified to practice in the foreign jurisdiction in the which the Guarantor is incorporated or otherwise formed that the standard Guaranty of the applicable AGREEMENT will become, upon the completion of execution formalities, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed;
- 2) The sworn certificate of the corporate secretary (or similar officer) of the Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of the Guarantor has approved the execution of the Guaranty;
- 3) The sworn certificate of the corporate secretary (or similar officer) of the Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the standard Guaranty of the applicable AGREEMENT.

Name of Bidder: \_\_\_\_\_

**5. Explanation of Omissions**

If Bidder is unable to provide all documents or information required in the Part 1 Proposal, please provide a full explanation of any omissions in the space provided below. Additional pages may be attached if more space is needed.

A large, empty rectangular box with a thin black border, intended for the bidder to provide a full explanation of any omissions from the Part 1 Proposal. The box is currently blank.

Name of Bidder: \_\_\_\_\_

## 6. Checklist

This is a checklist of documents to be enclosed in the Part 1 Proposal.

- Completed Part 1 Form (with original signatures) *[Section 1]*
- If the Bidder will not use exactly the standard Pre-Bid Letter of Credit, a draft Pre-Bid Letter of Credit for the RFP in MS-Word format must be provided to the RFP Coordinator indicating clearly each and every modification from the standard form. *[Section 2]*
- If the Bidder has selected Options (b) or (c) and will not use exactly the standard form for the Letter of Intent to Provide a Guaranty or Letter of Credit, with its Part 2 Proposal, an appropriate draft Letter of Intent for the RFP in MS-Word format must be provided to the RFP Coordinator indicating clearly each and every modification from the standard form. *[Section 2]*
- The Representations of the Officer of the Bidder, Certification of non-Association, and Certification Regarding Ability to Perform (with original signatures). *[Section 3]*
- For Entities not incorporated under the laws of the United States, the necessary documents for the Bidder and/or the Guarantor *[Section 4]*

**The following documents of the Entity (the Bidder or the Guarantor) that will be fulfilling the credit and financial requirements:**

- If the Bidder has selected Option (a) or Option (b) in Section 2, Credit Worthiness Information, each of the following: *[Section 2]*
  - (1) Most recent SEC Form 10-K; if unavailable, the most recent audited annual financial information (including a balance sheet, income statement, and cash flow statement, and any accompanying notes and schedules).
  - (2) Most recent SEC Form 10-Q; if unavailable, the most recent quarterly or monthly financial data accompanied by an attestation by the Entity's Chief Financial Officer, in the form of Appendix 5, that the information submitted is true, correct and a fair representation of the Entity's financial condition.
  - (3) Any SEC Form 8-K filings made by the Entity, as well as any other public financial disclosures made by the Entity since the release of the Entity's most recent financial statements, for any matters that are material to the Entity's financial condition.
- If the Bidder has selected Option (a) or Option (b) in Section 2, Credit Worthiness Information, documentation showing the name of the rating agency, the type of rating, and the rating of the Entity *[Section 2]*
- Statement of Matters Related to the Financial Status of the Entity *[Section 2]*
- If Bidder is unable to certify to any of the representations required in the Part 1 Proposal, please fully explain any omissions in the space provided. *[Section 5]*

Name of Bidder: \_\_\_\_\_

**APPENDIX 7  
WEST PENN POWER COMPANY, dba ALLEGHENY POWER  
SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS  
REQUEST FOR PROPOSALS RULES  
PART 2 FORM**

**REVISED 11/3/2010**

**RECEIVED**

NOV 14 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Name of Bidder: \_\_\_\_\_

## **PART 2 FORM**

### **WEST PENN POWER COMPANY, dba ALLEGHENY POWER SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS REQUEST FOR PROPOSALS**

**PART 2 DATE: DECEMBER 3, 2010**

This Part 2 Form is the form to submit the Part 2 Proposal for the RFP in the West Penn Power Company, dba Allegheny Power (“Company”)’ Solar Photovoltaic Alternative Energy Credits Request for Proposals (“RFP”).

Before completing this Part 2 Form, please review the Company Solar Photovoltaic Alternative Energy Credits RFP Rules (“RFP Rules”) and the Company’s Solar Photovoltaic Alternative Energy Credit Purchase and Sale Agreements (“AGREEMENT”), so that Bidder fully understands the conditions under which the RFP will be conducted. These documents are posted at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp).

The submission of a Part 2 Proposal to the Company constitutes Qualified Bidder’s acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the RFP or the ultimate fate of such Proposal.

*Any information that Qualified Bidder provides in this Part 2 Proposal is provided on a confidential basis to the Company and Independent Procurement Manager, and may be provided on a confidential basis to the Staff of the Pennsylvania Public Utility Commission. Information regarding the content or status of any Part 2 Proposal will not be released to any Bidder during the evaluation process.*

**RECEIVED**

NOV 14 2011

**PA PUBLIC UTILITY COMMISSION  
SECRETARY’S BUREAU**

Name of Bidder: \_\_\_\_\_

## **INSTRUCTIONS FOR PART 2 PROPOSAL**

*Bidders must have submitted the Part 1 Form and all documents required therein to respond to the qualification standards for the RFP. Only a Bidder that is qualified after complying with all qualification standards of the Part 1 Proposal “(Qualified Bidder” or “Bidder”) may submit a Part 2 Proposal for the RFP.*

**This Part 2 Form must be used to submit a Part 2 Proposal for the RFP.**

### **I. Part 2 Proposal Submission**

*Part 2 Proposals must be submitted in the complete legal name of the party that will execute the AGREEMENT should the party be a winning Bidder and should the PaPUC approve the RFP results.*

Bidders must:

- **Submit completed Part 2 Forms (with original signatures);**
- **Submit documents required to support the Part 2 Form as specified in Section 2;**
- **Submit cash or Pre-Bid Letters of Credit and submit any additional Pre-Bid Security (e.g., Letter of Intent to Provide a Guaranty or Letter of Intent to Provide a Letter of Credit), as necessary; and,**
- **Manually insert the name of the Bidder on every page of the Part 2 Form.**

*The completed Part 2 Form MUST be received by the Company and Independent Procurement Manager between 9:00 a.m. and 12:00 p.m on the Part 2 Date by fax to:*

Fax: 724-830-7805

Inquiries may be directed to the RFP Coordinator by:

- Telephone 724.838.6180; or
- Via the “Submit a Question” link on the Solar Photovoltaic Alternative Energy Credits webpage located on the RFP website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp).

**Oral, telephonic or electronic Part 2 Proposals will not receive consideration under any circumstances.**

Name of Bidder: \_\_\_\_\_

## **II. Part 2 Proposal Review**

### Timing of Part 2 Proposal Review

The Part 2 Proposal must be submitted between 9:00 AM and 12:00 PM EPT on the Part 2 Date (“Part 2 Proposal Deadline”), which is expected to be ten (10) business days from the Part 1 Notice of Qualification Date. When the Part 2 Proposal is received, the Evaluation Team will review the Part 2 Proposal for completeness. Proposals received after the Part 2 Proposal Deadline are late Part 2 Proposals and will not be processed.

### Incomplete Part 2 Proposal

If the Company or Independent Procurement Manager determines that any aspect of Qualified Bidder’s Part 2 Proposal is incomplete or requires clarification, the Company or Independent Procurement Manager will issue a deficiency notice to Qualified Bidder. If the Pre-Bid Letter of Credit submitted by the Qualified Bidder does not conform to the standard form provided in Appendix 3 or incorporates modifications to the standard form other than those accepted by the Company as a result of the evaluation of the Part 1 Proposal, that Qualified Bidder’s Part 2 Proposal will be automatically deficient. If a Qualified Bidder selected Options (b) or (c) in its Part 1 Proposal and submits a Letter of Intent to Provide a Guaranty or Letter of Intent to Provide a Letter of Credit, as appropriate, that does not conform to the samples provided in Appendix 4 of the RFP Rules, or incorporates modifications to those samples other than those accepted by the Company as a result of the evaluation of the Part 1 Proposal, that Bidder’s Part 2 Proposal will be automatically deficient.

### Late Part 2 Proposal

No late Part 2 Proposals will be accepted under any circumstances. A Bidder must assume full responsibility for timely delivery in the manner and to the location specified in this Part 2 Form.

Name of Bidder: \_\_\_\_\_

**PART 2 FORM**

**Please complete all sections.**

**1. Basic Applicant Information**

\_\_\_\_\_  
*Name of Applicant*

\_\_\_\_\_  
*Name of Authorized Representative*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State, Zip Code*

\_\_\_\_\_  
*Telephone No.*

\_\_\_\_\_  
*Fax No.*

\_\_\_\_\_  
*Email Address*

Name of Bidder: \_\_\_\_\_

## 2. Bid Security

### RFP Pre-Bid Letter of Credit:

The Qualified Bidder who is submitting a Part 2 Proposal must provide cash or an executed Pre-Bid Letter of Credit that either uses the standard form as provided in Appendix 3 to the RFP Rules, or that incorporates only those modifications to the standard form accepted by the Company as a result of the Part 1 Proposal evaluation.

The Bidder is submitting an executed Pre-Bid Letter of Credit for the RFP: (check **one**):

using the standard form; or

incorporating only approved modifications.

### Amount of the RFP Pre-Bid Letter of Credit

The amount of the Pre-Bid Letter of Credit must be equal to 10% of the security required under the AGREEMENT relevant to the maximum number of Tranches that Bidder is proposing to supply in this Part 2 Proposal. See Section 7.12 of the RFP Rules for an example of the calculation.

### Wiring Instructions for Cash Bid Security

***PNC Bank, N.A.***

***ABA: 043 000 096***

***Account # 102 885 5814***

***Name: West Penn Power Bid Assurance Account***

If submitting cash bid security, please provide a FedRef number to expedite confirmation of the wire transaction.

Name of Bidder: \_\_\_\_\_

Release of the RFP Pre-Bid Letter of Credit

If the PaPUC rejects the results of this RFP, Company will release the cash or RFP Pre-Bid Letter of Credit as soon as practicable. If the PaPUC accepts the results of the RFP and the Qualified Bidder has won Tranches in the RFP ("Winning Bidder"), the cash or Pre-Bid Letter of Credit of a Winning Bidder will be released the business day after the Winning Bidder executes the AGREEMENT and meets the creditworthiness requirements under the AGREEMENT. If the PaPUC accepts the results of the RFP and the Qualified Bidder has not won Tranches in the RFP, the cash or Pre-Bid Letter of Credit will be released the business day after the PaPUC decision.

Please provide any special instructions for returning the cash or RFP Pre-Bid Letter of Credit in the space below.

**RECEIVED**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Name of Bidder: \_\_\_\_\_

**RFP Letter of Intent to Provide a Guaranty or a Letter of Credit**

A Qualified Bidder that selected **Options (b) or (c)** in Section 2 (Creditworthiness Information) of its Part 1 Proposal must provide, in its Part 2 Proposal, an executed Letter of Intent to Provide a Guaranty or a Letter of Intent to Provide a Letter of Credit, as appropriate, that either uses the standard form as provided in Appendix 4, or that incorporates only those modifications to the standard form accepted by the Company as a result of the evaluation of the Part 1 Proposals.

The Qualified Bidder is submitting an executed RFP Letter of Intent to Provide a Guaranty or a Letter of Intent to Provide a Letter of Credit (check one):

- using the standard form; or
- incorporating only approved modifications.

**Amount of the RFP Letter of Intent to Provide a Guaranty or Letter of Credit**

The amount of the RFP Letter of Intent to Provide a Guaranty or Letter of Intent to Provide a Letter of Credit must be equal to the security required under the AGREEMENT relevant to the maximum number of Tranches that Qualified Bidder is proposing to supply in the Part 2 Proposal.

Name of Bidder: \_\_\_\_\_

### **3. Additional Requirements**

**THESE CERTIFICATIONS MUST BE SIGNED BY THE OFFICER OF THE BIDDER**

Representations of the Officer of the Bidder

- (1) I certify that I am authorized to submit the Part 2 Proposal on behalf of the Bidder and I am authorized to bind the Bidder. I am the same individual who made the representations in the Part 1 Proposal.
- (2) I certify that all information provided in the Part 2 Proposal is true and accurate to the best of my knowledge and belief.
- (3) I certify that any Part 2 Proposal submitted in the RFP creates a binding and irrevocable offer to provide service under the terms set forth in the AGREEMENT. If the PaPUC approves the results of the RFP, a binding and enforceable contract to provide service with respect to the number of Tranches for which the Bidder is a winner will arise under the AGREEMENT at the final RFP prices.
- (4) I certify that the Bidder's Part 2 Proposal will remain in full force and effect until: (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed the AGREEMENT, and the Bidder has satisfied the creditworthiness standards of the AGREEMENT; or (iii) the PaPUC has rejected the results of the RFP; but (iv) in no event less than five (5) business days after the Part 2 date for the RFP.
- (5) I certify that the Bidder is bidding independently and does not have information concerning a Proposal or Bids being submitted by another Bidder in the RFP. I acknowledge that this certification must be binding and in effect until the Commission has rendered a decision on the RFP results.
- (6) I certify that except for any communication with its financial institution for the purpose of preparing security for the RFP, the Bidder has not disclosed and will not disclose publicly or to any other party any information relating to its Part 2 Proposal or its bids, which could have an effect on whether another party submits a Proposal to participate in the RFP, on whether another party submits bids in the RFP, or on the contents of the Proposal that another Bidder would be willing to submit to participate in the RFP.
- (7) I certify that the Bidder will hold confidential any results or data from the RFP, until such time that the results or data are released by the PaPUC and are no longer confidential. Such information includes any information that a Bidder acquires as a result of participating in the RFP Process, whether in writing or verbally, and that has not been made public by the Company, Independent Procurement Manager or the PaPUC.

Name of Bidder: \_\_\_\_\_

- (8) I certify that if the Bidder wins Tranches in the RFP, the Bidder will demonstrate compliance with the creditworthiness requirements set forth in the AGREEMENT within three (3) business days of the PaPUC approval of the results for the RFP.
- (9) I certify that the Bidder will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as a Bidder to another entity.
- (10) I certify that, if for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any certification fails to remain valid, the Bidder will notify the Company and Independent Procurement Manager of such changes at least three (3) business days before the Part 2 Date and will provide the updated information at least one (1) business day before the Part 2 Date.
- (11) I certify that I have read the RFP Rules and I certify that the Bidder accepts all of the terms of the RFP Rules and agrees to comply without modifications.

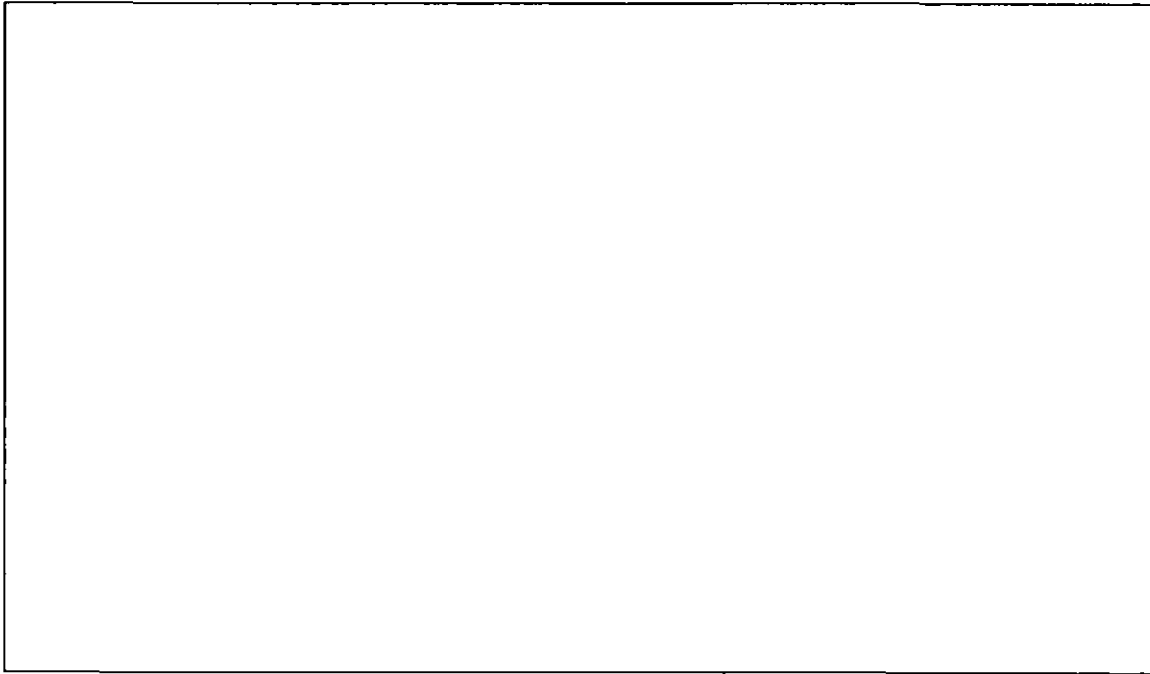
\_\_\_\_\_  
Signature of Officer of the Bidder

\_\_\_\_\_  
Date

Name of Bidder: \_\_\_\_\_

**4. Explanation of Omissions**

If Qualified Bidder is unable to certify to any of the representations required in the Part 2 Proposal, please fully explain any omissions in the space provided below. Additional pages may be attached if more space is needed.

A large, empty rectangular box with a thin black border, intended for the bidder to provide a detailed explanation of any omissions from the Part 2 Proposal. The box is currently blank.

Name of Bidder: \_\_\_\_\_

## 5. Part 2 Proposal - Bid Form Spreadsheet

Bidders shall submit their Tranche and price proposals using the Bid Form Spreadsheets attached to the RFP as Appendix 8. The Bid Form Spreadsheets contain sections of information labeled Bidder Information, Tranche Information, Tranches Bid, Reporting Period, Price / SPAEC, Discount Factors, Discounted Price for Evaluation Purposes, Tag Number, Bid Assurance Collateral Amount, Offer Type and Complete/Incomplete Flag. The Bid Form Spreadsheets contain shaded cell areas in which bidders provide information and their offers. In order to prevent any misunderstanding of a bidder's offer, all shaded cells within a Bid Form Spreadsheet must be completed by the bidder. A Bid Form Spreadsheet submitted by a bidder that contains blank shaded cells will be deemed a non-conforming bid, and will be eliminated from further consideration. Therefore, if it is the intent of a bidder to submit a zero price for any component of the pricing structure, the bidder must enter the numerical value of zero in that specific cell. The non-shaded cells are read-only cells containing either fixed or computed amounts. All formulas in cells in which computations are performed can be viewed by simply placing the cursor on the cell.

- (i) Bidder Information - These cells are bidder input cells and include Company Name, Contact Name, Phone Number and Fax Number and must be provided by the bidder.
- (ii) Tranche Information - The content of these cells are provided by the Company and include the Maximum Tranches To Be Awarded and number of SPAEC / Tranche / Reporting Year.
- (iii) Tranches Bid - This cell is a bidder input cell for the number of Tranches it is willing to supply at the prices offered in the Price / SPAEC section.
- (iv) Reporting Years - The content of these cells are provided by the Company and represent the periods for which the bidder's price quotes apply.
- (v) Price / SPAEC - These cells are bidder input cells for the Bidders price offer in each Reporting Year for each of the SPAEC to be delivered in that Reporting Year.
- (vi) Discount Factors - The content of these cells are provided by the Company or computed and include the Discount Rate and the Mid-Year Discount Factor used in the calculation of the discounted prices. The Discount Rate is equal to two percent (200 basis points) over the Prime Rate as published in The Wall Street Journal under "Money Rates". Assumed within the mid-year discounting convention, cash flows occur in the middle of each Reporting Year and are discounted back to the start of the term.
- (vii) Discounted Price for Evaluation Purposes - The content of this cell is computed and is the single parameter that will be used to compare all offers for the contract term.
- (viii) Offer Type - These cells are bidder input cells for the Bidder to notify the Company whether its bid is "All-Or-Nothing" or an "Up-To" bid as discussed in section 7.10.

Name of Bidder: \_\_\_\_\_

- (ix) Tag Number - The content of this cell will be provided by the Company and will represent a unique identification for each Bid Form Spreadsheet submitted by the bidders.
  
- (x) Pre-Bid Security - The content of this cell is computed. The amount of the Pre-Bid Security must be equal to 10% of the security required under the AGREEMENT relevant to the maximum number of Tranches that Qualified Bidders are proposing to supply in the Bids. According to the terms of the AGREEMENT, security requirements per Tranche equal 200 SPAECs (representing the annual SPAEC obligation per Tranche) multiplied by twice the price offer made by the Bidder. The form of the deposit must be consistent with the acceptable forms of security specified in the Part I Notice of Qualification letter issued by the Company.
  
- (xi) Complete/Incomplete Flag - The content of this cell is computed and indicates whether or not the Bid Form Spreadsheet has been fully completed in accordance RFP Rules.

Name of Bidder: \_\_\_\_\_

## 6. Checklist

This is a checklist of documents to be enclosed in the Part 2 Proposal.

- Completed Part 2 Form (with original signatures) [*Section 1*]
- If not posting cash, original Executed RFP Pre-Bid Letter of Credit for the account of the Qualified Bidder that either uses the standard form as provided in Appendix 3 of the RFP Rules, or a RFP Letter of Credit that incorporates only those modifications to the standard form accepted by the Company as a result of the evaluation of Part 1 Proposals. [*Section 2*]
- Original RFP Letter of Intent to Provide a Guaranty or Letter of Intent to Provide a Letter of Credit that either uses the sample provided in Appendix 4 to the RFP Rules, or that incorporates only those modifications to the sample accepted by the Company as a result of the Part 1 Proposal evaluation. (Required if the Qualified Bidder selected Options (b) or (c) in its Part 1 Proposal) [*Section 2*]
- Additional Requirements. These Certifications must be signed by the Officer of the Bidder. [*Section 3*]
- If Qualified Bidder is unable to certify to any of the representations required in the Part 2 Proposal, please fully explain any omissions in the space provided. [*Section 4*]
- Bid Form Spreadsheet Sheet [*Section 5*]

**ALLEGHENY POWER SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT REQUEST FOR PROPOSALS RULES**

**APPENDIX 8 - BID FORM SPREADSHEET**

**PROPOSAL DUE DATE: December 3, 2010, between 9AM & 12PM EPT**

**10 YEAR & 5 MONTH TERM: January 1, 2011 - May 31, 2021**

**Bidder Information**

Company Name  
Contact Name  
Phone Number  
Fax Number


**Tranche Information**

Maximum Tranches To Be Awarded  
SPAEC / Tranche / Reporting Year

1  
200

**Tranches Bid**

Number of Tranches Offered

\* Required Field

**Reporting Years**

<b>1/1/2011</b>	<b>6/1/2011</b>	<b>6/1/2012</b>	<b>6/1/2013</b>	<b>6/1/2014</b>	<b>6/1/2015</b>	<b>6/1/2016</b>	<b>6/1/2017</b>	<b>6/1/2018</b>	<b>6/1/2019</b>	<b>6/1/2020</b>
to	to	to	to	to	to	to	to	to	to	to
<b>5/31/2011</b>	<b>5/31/2012</b>	<b>5/31/2013</b>	<b>5/31/2014</b>	<b>5/31/2015</b>	<b>5/31/2016</b>	<b>5/31/2017</b>	<b>5/31/2018</b>	<b>5/31/2019</b>	<b>5/31/2020</b>	<b>5/31/2021</b>

**Price / SPAEC**

--	--	--	--	--	--	--	--	--	--	--

**Discount Factors**

Discount Rate (%)  
Mid-Year Discount Factor  
Discounted Average Price (\$ / SPAEC)

5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%
0.9894	0.9542	0.9066	0.8614	0.8184	0.7776	0.7388	0.7019	0.6669	0.6337	0.6020

**Offer Type**

Enter 1 for "All-Or-Nothing Bid"; 2 for "Up-To Bid"

\* Required Field

**Discounted Price for Evaluation Purposes**

Discounted Average Term Price (\$ / MWh)

\* Complete ALL Required Fields Above

**Tag Number**

Pre-Bid Security

Complete / Incomplete Flag

\_\_\_\_\_  
Signature of Officer of the Bidder

\_\_\_\_\_  
Date

**ALLEGHENY POWER SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDIT REQUEST FOR PROPOSALS RULES**

**APPENDIX 8 - BID FORM SPREADSHEET**

**PROPOSAL DUE DATE: December 3, 2010, between 9AM & 12PM EPT**

**10 YEAR: June 1, 2011 - May 31, 2021**

**Bidder Information**

Company Name  
Contact Name  
Phone Number  
Fax Number


**Tranche Information**

Maximum Tranches To Be Awarded  
SPAEC / Tranche / Reporting Year

4  
200

**Tranches Bid**

Number of Tranches Offered

1

**Reporting Years**

<b>6/1/2011</b>	<b>6/1/2012</b>	<b>6/1/2013</b>	<b>6/1/2014</b>	<b>6/1/2015</b>	<b>6/1/2016</b>	<b>6/1/2017</b>	<b>6/1/2018</b>	<b>6/1/2019</b>	<b>6/1/2020</b>
to	to	to	to	to	to	to	to	to	to
<b>5/31/2012</b>	<b>5/31/2013</b>	<b>5/31/2014</b>	<b>5/31/2015</b>	<b>5/31/2016</b>	<b>5/31/2017</b>	<b>5/31/2018</b>	<b>5/31/2019</b>	<b>5/31/2020</b>	<b>5/31/2021</b>

**Price / SPAEC**

--	--	--	--	--	--	--	--	--	--

\* Required Field

**Discount Factors**

Discount Rate (%)  
Mid-Year Discount Factor  
Discounted Average Price (\$ / SPAEC)

5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%	5.25%
0.9747	0.9261	0.8799	0.8360	0.7943	0.7547	0.7171	0.6813	0.6473	0.6150

**Offer Type**

Enter 1 for "All-Or-Nothing Bid"; 2 for "Up-To Bid"

\* Required Field

**Discounted Price for Evaluation Purposes**

Discounted Average Term Price (\$ / MWh)

N/A

\* Complete ALL Required Fields Above

**Tag Number**

Pre-Bid Security

\$ 0

Complete / Incomplete Flag

Incomplete

Signature of Officer of the Bidder

Date

**PUBLIC EXHIBIT 2**

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PUBLIC EXHIBIT 2

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## West Penn Power Company, dba Allegheny Power Pennsylvania Solar Photovoltaic and Tier I Non-Solar Alternative Energy Credit RFPs - IMPORTANT NOTICE

**From :** Robert B. Reeping <rreepi3@alleghenypower.com>

Tue, Nov 02, 2010 08:34 PM

**Subject :** West Penn Power Company, dba Allegheny Power Pennsylvania Solar Photovoltaic and Tier I  
Non-Solar Alternative Energy Credit RFPs - IMPORTANT NOTICE

**To :** "undisclosed-recipients:"

This e-mail is being sent to attendees of the West Penn Power Company, dba Allegheny Power - Solar Photovoltaic and Tier I Alternative Energy Credits RFP Pre-Bid Webinar held on October 6, 2010.

### Important Notice

This notice is to inform you that West Penn Power Company, dba Allegheny Power ("AP"), per the request of several bidders, has reviewed Section 5.2.1 of the Solar Photovoltaic and Tier I Non-Solar Alternative Energy Credit Purchase and Sale Agreements as to whether AP was requiring more collateral than was intended in the approved RFP documents. Per AP's July 29, 2010, petition to the Pennsylvania Public Service Commission ("PaPUC"), AP stated that for ease of use by Alternative Energy Credit ("AEC") suppliers and review of the petition by the PaPUC, AP proposed to use a procurement process and documents similar to those approved by the PaPUC in Docket Nos. P-2009-2093035 and P-2009-2093054 (Metropolitan Edison Company and Pennsylvania Electric Company). Upon review and confirmation with Metropolitan Edison Company and Pennsylvania Electric Company officials, AP has determined that it has misinterpreted the provisions of Section 5.2.1 of the Solar Photovoltaic and Tier I Alternative Energy Credit Purchase and Sale Agreements as it relates to the Credit Exposure Amount or maximum credit limit of a supplier delivering AECs under an executed Agreement. The Credit Exposure Amount should be equal to the current reporting year AEC price \* the current reporting year AEC volume \* 200% \* the amount of tranches won (one year only at a time). This is as opposed to the sum of all of the years to be served under the Agreement as was the original interpretation. In cases where delivery has not started, the next closest reporting year will be used to set the Credit Exposure Amount. The attached Excel files are updated examples of the Credit Exposure Amount and pre-bid collateral requirements.

Based upon the updated interpretation of the of the Credit Exposure Amount and Pre-Bid Collateral requirements AP and the Independent Procurement Manager, Boston Pacific Company, are trying to ascertain whether or not there is any additional interest from bidders who did not submit their Part 1 qualification materials by the Part 1 due date (October 15, 2010) who may now be interested in participating in this RFP based upon this new information. AP will accept responses to this inquiry until 1pm eastern time on November 3, 2010 to the <mailto:RFPCoordinator@alleghenypower.com> RFPCoordinator@alleghenypower.com mailbox. AP and Boston Pacific will review these responses with the Pennsylvania Public Utility Commission Staff and determine at that time whether or not to modify the RFP schedule in accordance with Section 1.8 of the RFP Process and Rules.

Thank you for your time and attention.

Sincerely,

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Bob Reeping

General Manager, Electric Supply

Allegheny Power

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## West Penn Power Company, dba Allegheny Power Pennsylvania Solar Photovoltaic and Tier I Non-Solar Alternative Energy Credit RFPs - IMPORTANT NOTICE

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**From :** Robert B. Reeping <rreepi3@alleghenypower.com>

Wed, Nov 03, 2010 07:12 PM

**Subject :** West Penn Power Company, dba Allegheny Power Pennsylvania Solar Photovoltaic and Tier I Non-Solar Alternative Energy Credit RFPs - IMPORTANT NOTICE

 2 attachments

**To :** "undisclosed-recipients:"

West Penn Power Company, dba Allegheny Power

Solar Photovoltaic and Tier I Alternative Energy Credits RFP

Registered Participants and Pre-Bid Webinar Attendees

Important Notice - RFP Schedule Modification

In consultation with the RFP Independent Procurement Manager (Boston Pacific Company) and the Pennsylvania Public Utility Commission, and in accordance with Section 1.8 of the RFP Rules and Process, Allegheny Power is hereby notifying your Company that it is modifying the RFP Schedule. The modification is due to the notification that was provided to you on Tuesday, November 2, 2010, concerning a change of the interpretation of Section 5.2.1 of the Solar Photovoltaic and Tier I Non-Solar Alternative Energy Credit Purchase and Sale Agreements as it relates to the Credit Exposure Amount. The updated schedule in a clean and redline version is attached for your review. Under the modified schedule bidders who have not yet submitted their Part 1 Form documents or bidders who currently have incomplete Part 1 Form documents will have until Friday, November 12, 2010, to submit the required documentation. Bidders who have already been qualified as eligible bidders in the process DO NOT need to resubmit their Part 1 Form for the RFP in which they are already qualified. Allegheny Power will then review all received Part 1 Forms and will notify such bidders of their qualification status for submission of Part 2 proposals by Friday, November 19, 2010. Part 2 proposals will then be accepted between 9am and 12pm eastern prevailing time on Friday, December 3, 2010. All remaining dates in the RFP process can be found in the attached files.

Should you have any questions please feel free to contact the RFP Coordinator by email at RFPCoordinator@alleghenypower.com or by phone at 724.838.6180.

Thank you for your time and attention to this matter.

Sincerely,

Bob Reeping

General Manager, Electric Supply

Allegheny Power

<<Schedule for Process 11-3-2010 clean.doc>> <<Schedule for Process 11-3-2010 redline.doc>>

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 **Schedule for Process 11-3-2010 clean.doc**  
45 KB

 **Schedule for Process 11-3-2010 redline.doc**  
46 KB

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REVISED 11/3/2010

Crucial Dates in the RFP Process

<b>Event</b>	<b>Date</b>
Default Service Plan modification request filed with the PaPUC	July 29, 2010
PaPUC Order approving modification	September 2, 2010
RFP website goes live / RFP issued	September 24, 2010
RFP informational webinar for suppliers	October 6, 2010
Part 1 Date (Bidders submit Part 1 Proposals)	November 12, 2010
Notice of Qualification Date (Bidders are notified of qualification status for submission of Part 2 Proposals)	November 19, 2010
Part 2 Date (Qualified Bidders submit Part 2 Proposals including Pre-Bid Security )	December 3, 2010
IPM submits RFP results report to PaPUC	December 7, 2010
PaPUC approves / denies RFP results	December 10, 2010
Approved Winning Bidders execute AGREEMENTs	December 15, 2010

**PUBLIC EXHIBIT 3**

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SECRETARY'S BUREAU**

Notice of Eligibility  
Associated with  
West Penn Power Company, dba Allegheny Power  
**ALTERNATIVE ENERGY CREDITS  
REQUEST FOR PROPOSALS**

October 22, 2010

Eligibility

Based upon the criteria for applicant eligibility of the RFP Process and Rules, J3 Energy Group (Applicant) is:

✓ Eligible

to submit a Part 2 Form and Proposals in West Penn Power Company, dba Allegheny Power's procurement for

Solar Photovoltaic Alternative Energy Credits

As an Eligible Bidder, this confirms that you have provided the following:

Complete Part 1 form

Representations of the Officer of the Bidder, Certification of non-Association, and Certification Regarding Ability to Perform

Statement of Matters Related to the Financial Status of the Entity

Selected Option (c) for providing bid and Agreement security

Revisions to Standard Pre-bid Letter of Credit, Standard Letter of Intent to Provide a Letter of Credit, or Standard Letter of Intent to Provide a Guaranty

All requested modifications have been approved as per the attached.

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**WEST PENN POWER COMPANY, dba ALLEGHENY POWER  
PENNSYLVANIA ALTERNATIVE ENERGY CREDIT  
REQUEST FOR PROPOSALS  
OCTOBER 6, 2010 PRE-BID QUESTIONS AND ANSWERS**

**Q1: Is the LC posted on the web site in word format for redlining and review by the banks?**

A1: Yes, the Standard Form of Pre-Bid Letter of Credit is Appendix 3 and the Standard Form of Letter of Credit is Appendix B to the Purchase and Sale Agreement. Both can be found on the Allegheny Power website.

**Q2: Will West Penn be posting all acceptable modifications to the pre bid LC's on the website for banks consideration?**

A2: Yes

**Q3: If we have modifications to the documents what method can we submit...fax and/or email?**

A3 Requested modifications to the LC must be submitted via email, in Word document format, with all changes red-lined.

**Q4: When will the Guaranty form be posted?**

A4 The Guaranty is now posted on the websites.

**Q5: Will the presentation slides and questions & answers be posted to the website?**

A5: The presentation slides and Q&A's are now posted to the website.

**Q6: Are AECs required to be sourced from a specific project or can they be sourced from various projects?**

A6: AECs can be sourced and aggregated from multiple projects.

**Q7: Is there risk to bidder that AP will not purchase AECs due to change in law?**

A7: Article 9 of the Agreement discusses the change in law procedures under the Agreement.

**Q8: What quantity needs to be delivered quarterly? Is it equal volumes per quarter?**

A8: The "SPAEC Quantity per Quarter" and "TIER I AEC Quantity per Quarter" means with respect to a Reporting Year one quarter (1/4) of the SPAEC or TIER I AEC Quantity as applicable.

**Q9: With respect to the Agreement Section 12.2, can a limitation of liability be added to limit these damages to direct damages only - no consequential, punitive, special, damages, etc.**

A9: No.

**Q10: Is it possible that winners may be notified prior to PUC approval?**

A10: No.

**Q11: With respect to the Agreement, Section 3.6, what if the SPAEC defect is discovered at a time when the SPAEC's of the same vintage are no longer available on the market? Can the supplier satisfy its compliance obligation to the Company through payment of the ACP (alternative compliance payment)?**

A11: Per Section 3.6 of the Agreements "Supplier shall be responsible to reimburse Company for any costs or penalties incurred by Company with respect any [insert appropriate product here] delivered hereunder, which Company is unable to use for compliance with the Act as of the Delivery Date." This would include the ACP.

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**Q12: With respect to the Agreement, Section 9.2, is it intended that such an early termination would be subject to an early termination payment? If so, the language "subject to Article 11" should be inserted between "may" and "terminate" in the penultimate line of this section.**

A12: No. Termination under Section 9.2 would not be subject to an early termination payment under Article 11.

**Q13: With respect to Section 10.1.4 of the Agreement, shouldn't this section be mutual between the Company and Bidder? The way it is currently written has it going from company-> bidder, but is not reciprocal**

A13: No. The language is designed as intended.

**Q14: With respect to the Agreement, Section 8.1, if a force majeure prevents generation of the SPEAC's, is supplier relieved of its supply obligation to the extent the supplier's shortfall is due to the force majeure?**

A14: No. Please see the definition of Force Majeure in the Agreement.

**Q15: Can we get extra delivery time at the end of each quarter? AECs aren't placed into GATS until the following month. This does not leave adequate time to transfer them.**

A15: Allegheny Power is willing to change this to 45 days in Section 3.2.1.

**Q16: With respect to the AGREEMENT, Section 6.1.3., does this representation and warranty apply to projects yet to be developed?**

A16: No. This warranty is not project specific, but is instead based upon the Suppliers ability to perform under the Agreement.

**Q17 Is there a reason the RFP states that you are looking for 1 tranche of 200 SPAECs from Jan 2011-May 2021 and 4 tranches of 200 SPAECs each from June 2011 - May 2021 rather than simply stating that you are looking for 5 tranches from Jan 2011-May 2021?**

A17: Yes. Pennsylvania reporting years do not correspond with calendar years. Since Allegheny's capped rate period expires on 12/31/2010 Allegheny will have a 5-month requirement for AECs in 2011. The one SPAEC and five Tier I AEC for 125-months is to address additional compliance time period.

**Q18: Are you weighting residential projects vs. commercial? Some states weight residential SPAECs higher.**

A18: No.

**Q19: You will not consider any alternate deliver schedules? For example, one annual delivery vs. quarterly?**

A19: No.

**Q20: Has the PAPUC established a max price for SPAECs above which the bid will be voided?**

A20: No, there will be no maximum price for SPAECs. However, the PaPUC has the right to withdraw or terminate the RFP for any reasonable cause, including market conditions. See Article 10.1 of the RFP rules.

**Q21: What happens if an officer reps for performance and then its bank cannot get comfortable with the LC requirements/documentation?**

A21: The Bidder may withdraw from the qualification process and / or not participate in the Part 2 process.

**Q22: Is the prebid security due prior to Part 1 or prior to Part 2?**

A22: Prebid security is due at the same time as the Part 2 Form.

**Q23: Would you also look at the ability to deliver unequal quarterly amount given that SPAECs are typically not generated on equal quarterly amounts?**

A23: No.

**Q24: How long will the pre-bid security be held?**

A24: If the PaPUC rejects the results of the RFP, AP will release the Pre-Bid Letters of Credit or cash as soon as practicable. If the PaPUC accepts the results of the RFP, the Pre-Bid Letter of Credit of a Bidder will be released: (1) the business day after the PaPUC decision if the Bidder does not win any Tranches; or (2) the business day after the Bidder executes the Agreement and meets the creditworthiness requirements under the Agreement if the Bidder wins Tranches in the RFP

**Q25: Are we submitting the actual letter of credit/guarantee in Part II submission or only the letters of intent to provide such security?**

A25: Cash or an approved pre-bid letter of credit must be submitted for any Part 2 proposal to be considered conforming. In addition, any bidder not seeking an unsecured line of credit under their own financial standing must submit a letter of intent to provide a guarantee/letter of credit.

**Q26: Do we know the discount rate you will be using to compare prices which change over the term?**

A26: The discount rate is equal to two percent (200 basis points) over the Prime Rate as published in The Wall Street Journal under "Money Rates". See the RFP, Section 7.12. The discount rate will be updated for bid day; however the current rate posted in the bid form spreadsheets is 5.25%.

**Q27: Must you own the facilities that generate the AECs?**

A27: No.

**Q28: Are we taking any risk that your spot requirement for AECs turns out less than you currently anticipate?**

A28: No. Any excess AECs purchased by AP will be banked initially and then sold on the spot market if necessary.

**Q29: But within an "up-to" block, could you be awarded something less than the full block?**

A29: No, only full blocks will be awarded.

**Q30: Can you aggregate AECs from multiple projects?**

A30: Yes

**Q31: Is there an obligation to deliver AECs periodically during a year or is the contractual obligation solely to meet the annual block requirement?**

A31: Please see Q&A #8.

**Q32: Will you be paying for SPAECs as they are delivered?**

A32: Yes. Please see Article 3 in the Agreement.

**Q33: What is your expectation of a competitive Discount Average Term Price (\$ / MWh) for SPAECs? It says 5.25% in spreadsheet.**

A33: The final discount rate will most likely be similar to the current rate shown in the bid form spreadsheet.

**Q34: In the 10 year 5 month solicitation, are you buying 200 SPAECs in 1/1/2011 to 5/31/2011 or is it a request for 5/12 of 200 (about 83 SPAECs) in that reporting period?**

A34: 200 SPAECs

**Q35: In calculating Credit Exposure Amount, as time passes and deliveries are being made, are you recalculating the Credit Exposure Amount to reflect only the remaining obligations**

A35: Yes. A recalculation will be done quarterly after deliveries for each quarter have been made from the Supplier to the Company.

**Q36: What is a Qualified Bidder?**

A36: A Qualified Bidder is a bidder whose Part 1 Proposal has been accepted by the Independent Procurement Manager and Allegheny Power.

**Q37: Can the RFP include a price schedule that increases over the 10-year term?**

A37: Yes. A separate price for each delivery year is acceptable.

**Q38: Would AP consider a parent guarantee as an acceptable form of pre-bid security?**

A38: No. Cash or letter of credit are the only acceptable forms of pre-bid security.

**Q39: What are the requirements for receiving unsecured credit?**

A39: Please review Article 5 in the Agreements.

**Q40: What are penalties for non-delivery or shortfalls?**

A40: Please review Articles 10 and 11 in the Agreements.

**Q41: Is a bid block limited to 200?**

A41: Yes for the SPAEC RFP, although bidders may bid on more than one bid block. For the Tier I AECs the bid block size is 5,000 AECs.

**Q42: Do you have to bid for the full 10-year or 10- year 5-month term, or can you bid for 5 years?**

A42: You must bid for the full 10-year or 10-year and 5-month term. Please see Section 3.2 of the RFP documents for further examples of conforming and non-conforming bids.

**Q43: Does Slide 14 represent minimum volumes or max volumes or both?**

A43: Slide 14 represents both the minimum and maximum volumes subject to PaPUC approval.:

**Q44: Any chance the RFP dates will slip?**

A44: No, it is not anticipated that the RFP dates will slip.

**Q45. I believe the calculation for Security on page 14 of the Agreement does not include the Term. Is this a typo?**

A45. No. The term is contemplated in the phrase "per Reporting Year". Under the agreement each Bidder will be submitting a price per Reporting Year for the 200 SPAEC or 5,000 Tier I AECs. As per Section 5.2, the Credit Exposure Amount is equal to two times the price of each REC, summed over all remaining quantities to be delivered in the remainder of the contract term.

**Q46. If a Bidder bids on more than one tranche, can the bidder submit a separate price for each tranche?**

A46. Yes.

**PUBLIC EXHIBIT 5**

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SECRETARY'S BUREAU**

**UPDATED 12/27/2010**  
**PLEASE REVIEW ALL HIGHLIGHTED Q&A'S AS THEY PERTAIN TO THE**  
**CALCULATION OF AGREEMENT AND PRE-BID COLLATERAL**  
**WEST PENN POWER COMPANY, dba ALLEGHENY POWER**  
**REQUEST FOR PROPOSALS FOR**  
**SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS AND**  
**TIER I NON-SOLAR ALTERNATIVE ENERGY CREDITS**

**QUESTIONS AND ANSWERS**

Date Posted	Question	Answer
9/27/2010	<p>1. The rules of the RFP clearly preclude any small developer of renewable energy from participating, particularly if that developer is required to post such a high surety. Why have you chosen to not allow for such companies?</p>	<p>No company has been excluded from participation. Any company that can meet the solicitation requirements will be eligible to participate.</p> <p>Additionally, West Penn Power Company, dba Allegheny Power ("AP"), per the request of several bidders, has reviewed Section 5.2.1 of the Solar Photovoltaic and Tier I Non-Solar Alternative Energy Credit Purchase and Sale Agreements as to whether AP was requiring more collateral than was intended in the approved RFP documents. Per AP's July 29, 2010, petition to the Pennsylvania Public Service Commission ("PaPUC"), AP stated that for ease of use by Alternative Energy Credit ("AEC") suppliers and review of the petition by the PaPUC, AP proposed to use a procurement process and documents similar to those approved by the PAPUC in Docket Nos. P-2009-2093035 and P-2009-2093054 (Metropolitan Edison Company and Pennsylvania Electric Company). Upon review and confirmation with Metropolitan Edison Company and Pennsylvania Electric Company officials, AP has determined that it has misinterpreted the provisions of Section 5.2.1 of the Solar Photovoltaic and Tier I Alternative Energy Credit Purchase and Sale</p>

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		<p><b>Agreements as it relates to the Credit Exposure Amount or maximum credit limit of a supplier delivering AECs under an executed Agreement. The Credit Exposure Amount should be equal to the current reporting year AEC price * the current reporting year AEC volume * 200% * the amount of tranches won (one year only at a time). This is as opposed to the sum of all of the years to be served under the Agreement as was the original interpretation. In cases where delivery has not started, the next closest reporting year will be used to set the Credit Exposure Amount.</b></p>
9/27/2010	<p><b>2. How can you attract bids for AECs with firm requirements and penalties when all TIER 1 renewables have variable energy sources?</b></p>	<p>This solicitation is not unit specific. Bidders are free to aggregate from various resources to construct their bids for this solicitation.</p>
9/27/2010	<p><b>3. We have projects coming on line over the next 4 years starting 4Q2011 through 4Q2013. Should we bid in as we can supply or wait for a later RFP?</b></p>	<p>Whether a supplier chooses to participate in this solicitation is completely up to their discretion. Allegheny envisions that it will request permission to conduct future renewable procurements for additional alternative energy credits however there is no set schedule for such potential solicitations.</p>
9/29/2010	<p><b>4. I am working with a Virginia company to develop an 8-10 MW solar array. As far as I can tell, the REC's from that system can be used in Pennsylvania.</b></p> <p><b>If everything lines up perfectly, construction would begin in December with a "go live" date right around June 1, 2011.</b></p> <p><b>Do either of these facts preclude my customer from submitting bid information for your RFP? I can't find reference to either point in the docs posted on</b></p>	<p>No. This solicitation is not unit specific. As long as a bidder can meet the terms and conditions of the RFP and agreements, such as credit and delivery obligations, Allegheny is indifferent how a winning supplier delivers the qualifying AECs.</p>

	the internet.	
10/5/2010	5. It appears that the SPAEC target quantity is 20 tranches. Is this correct? If so, exactly how many SPAECs does that amount to?	For the solar credits we are looking for a total of five (5) tranches. One (1) tranche for 200 SPAECs per reporting year for the term 1/1/2011 through 5/31/2021 and four (4) tranches for 200 SPAECs per tranche per reporting year for the term 6/1/2011 through 5/31/2021. The following table also depicts the deliveries for reference.

Term	Tranche 1 SPAECs	Tranche 2 SPAECs	Tranche 3 SPAECs	Tranche 4 SPAECs	Tranche 5 SPAECs
1/1/11 - 5/31/11	200	0	0	0	0
6/1/11 - 5/31/12	200	200	200	200	200
6/1/12 - 5/31/13	200	200	200	200	200
6/1/13 - 5/31/14	200	200	200	200	200
6/1/14 - 5/31/15	200	200	200	200	200
6/1/15 - 5/31/16	200	200	200	200	200
6/1/16 - 5/31/17	200	200	200	200	200
6/1/17 - 5/31/18	200	200	200	200	200
6/1/18 - 5/31/19	200	200	200	200	200
6/1/19 - 5/31/20	200	200	200	200	200
6/1/20 - 5/31/21	200	200	200	200	200

Date Posted	Question	Answer
10/5/2010	6. If a Winning Bidder wins one tranche from January 1, 2011 through May 31, 2021, is the SPAEC requirement for January 1, 2011 through May 31, 2011 pro-rated?	Please refer the schedule above. There is no proration for delivery year one for Tranche 1. We are looking for 200 SPAECs in that reporting year also.
10/5/2010	7. If a Bidder is seeking a Parental Guarantee, but the Guarantor is not rated by Fitch, Moody's, or S&P, and does not have a credit rating; can Allegheny Power calculate the tangible net worth in lieu of providing a credit rating in the event that all other requirements under Article 6.6 of the Process and Rules document is available?	No – a Parent Guarantor must have a credit rating to qualify for unsecured credit.
10/5/2010 Revised 11/1/2010	8 (a). I want to make sure I understand the Maximum Unsecured Credit Limit and Credit Exposure Amount concept, it's a little unclear to me. I will use an example and would like you to	(a) Correct

	<p>confirm if I am correct.  <b>Suppose I am a BBB rated company (lowest rating) with tangible net worth of \$1 Billion. According to the chart I could get up to \$80,000,000 in unsecured credit.</b></p> <p><b>8 (b) However, the Unsecured Credit Limit is capped to the Credit Exposure Amount, which is 200% of SPAEC Price times SPAEC quantity per reporting year. So if we won 1,000 SPAEC's per reporting year (5 tranches) at \$250/SPAEC. The Credit Exposure Amount would be: <math>2 \times \\$250 \times 1,000 = \\$500,000</math>.</b></p> <p><b>8 (c) So our limit would be \$500,000 and so would the credit exposure.</b></p> <p><b>8 (d) The only time we could be called for collateral is if we go below BBB-? Is this correct?</b></p>	<p><del>(b) Incorrect. The Credit Exposure Amount would be <math>(\\$250 / \text{SPAEC} * 1,000 \text{ SPAEC} / \text{year} * 10 \text{ Years (we will assume a 10 year agreement for the example)}) * 200\%</math> or \$5,000,000</del></p> <p><b>(b) REVISED: Your example is correct.</b></p> <p><del>(c) No. Both values would be \$5,000,000 based on the example.</del></p> <p><b>(c) REVISED: Your example is correct.</b></p> <p><del>(d) At BBB- you would still have a potential UCL of up to \$6,000,000 thus you are correct under this example you would not be requested to post collateral unless your credit limit slipped below BBB- or you were no longer rated by the rating agencies.</del></p>
<p><b>10/5/2010</b></p>	<p><b>9. Must a bidder participate and submit a Part 2 proposal if they submit a Part 1 proposal? Where can this be found in the rules?</b></p>	<p>The Part 1 proposal only qualifies the bidder to be able to submit a Part 2 proposal should they choose; it does not obligate them to do so.</p> <p>From RFP Section 7.1:  A Bidder that has satisfied the qualification requirements of the Part 1 Proposal will be deemed a Qualified Bidder and <b>MAY</b></p>

		submit a Part 2 Proposal. (emphasis added)
10/5/2010	10. Just to confirm from Question 5, Allegheny is seeking 2,200 SPAECs for the period January 1, 2011 through May 31, 2021; and 8,000 SPAECs for the period June 1, 2011 through May 31, 2021, correct?	Correct, Tranche 1 which covers the period January 1, 2011 through May 31, 2011 is for a total of 2,200 SPAEC. Tranches 2 through 5 which covers the period June 1, 2011 through May 31, 2011 is for a total of 2,000 SPAEC / tranche or 8,000 SPAEC total for tranches 2 through 5.
10/5/2010	11. Section 7.22 of the RFP rules indicates that the Officer of the Bidder must be the same for both the Part I and Part II Proposal submission. Must the Bidder's signatory on the purchase and sale AGREEMENT be the same as the Officer of the Bidder specified in Parts I and II?	No, however the signatory must be authorized to enter the Supplier into the agreement.
10/5/2010	12. Articles 5 and 9 discuss the timeline of events from Part II Date (11/5) to approved winning bidders executing AGREEMENTs. The language suggests that the days specified in Article 9 for the milestones after the Part II date (IPM submitting results to PaPUC – 2 business days, PaPUC review and approval/denial -3 business days, approved winning bidder execution – 3 business days) are maximums. If any one of the first two milestones is executed in an amount of time shorter than the maximum, e.g. PaPUC only takes 1 day for review and approval, would the clock for the subsequent milestone begin early? Or will the example schedule displayed on Page 8 of the rules (just before Article 5) be strictly adhered to?	The only milestone on the schedule that could trigger the schedule to move up is if the PUC were to approve the results prior to 11/15. Should this event occur then the contract execution phase would move up also. With that said, however we don't expect the schedule to be different than has been documented in the RFP.  Revised. However, as per the RFP rules, the Company and the Independent Procurement Manager ("IPM") may advise the Commission to postpone or modify the schedule of the RFP when market conditions warrant or when extraordinary events arise.
10/5/2010	13. If a Bidder chooses to post cash or a Letter of Credit as specified under Section 2 'Creditworthiness Information' of the Part 1 Form, please verify that the security calculation is correct in the example below:  Bid Tranches Won: 2	Assuming the two tranches were for the 10-year period and did not include the 10 year and 5 month period: SPAEC per reporting year 200 Tranches won

	<p><b>Bid Price for both Tranches: \$100</b>  <b>Required Security: (\$100 x 2) x (200 x 2) = \$80,000</b></p> <p><b>In this case, the Bidder would be required to post cash or a Letter of Credit in the amount of \$80,000, correct?</b></p>	<p><del>2</del>  <del>Years</del>  <del>10</del>  <del>Price per SPAEC</del>  <del>\$100</del></p> <p><del>Performance Assurance for Awarded Bids = (200 SPAEC * 10 years * \$100 / SPAEC * 2 Tranches Won) * 200% = \$800,000</del></p> <p><del>Pre Bid Security = Performance Assurance for Awarded Bids * 10% or \$800,000 * 10% = \$80,000</del></p> <p><b>Revised. Your calculation is correct.</b></p>
10/8/2010	<p><b>14. How long will the Company have to exercise the optionality section 3.6 gives them? It appears the Company will be able to look-back on already delivered SPAECs for an undetermined period of time</b></p>	<p>Under the Agreements it is the Suppliers obligation to deliver qualifying AECs. Should the Supplier fail to do so the provisions of Section 3.6 and 15.12 will then apply.</p>
10/8/2010	<p><b>15. Regarding Section 3.6, how will you decide whether or not the SPAEC was able to be used for compliance by the Delivery date?</b></p>	<p>The qualification of AECs will be in accordance with the Pennsylvania Alternative Energy Portfolio Standard ("AEPS"). As long as an AEC is qualifying under the AEPS it will be a qualifying AEC under the Agreements. Should an AEC that is delivered later be found to be non-qualifying then the provisions of Section 3.6 will then apply. It is the Suppliers obligation to make sure that AECs delivered under the Agreements meet the qualification standards of the AEPS and are legally the Suppliers to convey to AP under the Agreement.</p>
10/8/2010	<p><b>16. Regarding Section 3.6, will the unusable SPAECs be returned to the</b></p>	<p>Yes. Any SPAEC that is not able to be used by AP will either not be</p>

	supplier?	accepted by AP or, if accepted, will be returned to the Supplier.
10/8/2010	17. If the Company ends up not needing the SPAECs due to lower than anticipated AEPS compliance demand, will they utilize the option allowed under 3.6?	No. Lower demand for AECs is not a trigger under Section 3.6. AP will purchase all AECs contracted for under the Agreements regardless of its demand position
10/8/2010	18. Are bidders entitled to propose modifications to the Solar and Non-Solar AEC PSA's?	No. The contracts are non-negotiable. However if there is an obvious error or omission any Supplier is welcome to notify the Company for investigation. Any changes from such investigation would apply to all prospective bidders.
10/8/2010	19. Will a standard form of Guaranty be posted on the RFP website for bidders to use as a sample? Or should we go forward with our own standard form of Guaranty as an exhibit to our proposal?	A standard Form of Guaranty is now posted to the website.
10/8/2010	20 (a). I had a little time-zone confusion situation and missed today's webinar for the Allegheny Power SPAEC RFP. I see the presentation itself is available but was the presentation recorded as transcript? (b) If not, would you consider the instructions in the RFP itself sufficient for a successful bid?	(a) There is not a transcript of the pre-bid webinar presentation; however, the pre-bid questions and answers will be posted soon on the websites. (b) Suppliers should continue to refer to the Q&A file on the websites, and also submit additional clarification questions throughout the process to ensure compliance with the bidding process.
10/8/2010	21. There may be an error on the Appendix 8 Bid Form Spreadsheet for the upcoming Tier-I Non Solar AEC RFP. Cells C-D 40 calculate the necessary Pre-Bid security, based on the calculation provided in Section 7.12 (x) of the Rules. The calculation in Section 7.12(x) is (# tranches)*(AEC's/tranche)*(undiscounted bid Price/tranche)*2*10 years. The calculation embedded in Cells C-D40 uses 200 AEC's/tranche (which is the	Upon checking this calculation, we confirm that there was a problem in the original Bid Form Spreadsheet posted on the RFP website. A revised Bid Form Spreadsheet has been posted on each website

	<p>number for the SPAEC's). According to the auction format, for Tier-I non-solar, the number should be 5000 AEC's/tranche. Hence, I believe that the calculation is wrong and that the spreadsheet undercalculates the necessary Pre-bid security for the Tier-I non-solar AEC's by a factor of (5000/200) or 25. Please check and correct if this is a problem.</p>	
10/8/2010	<p>22. If we are required to post 100% of the performance assurance in cash, would Allegheny refund 10% of that performance assurance at the end of each contract year?</p>	<p><del>Collateral will be re-determined on a quarterly basis after AECs have been delivered from the Supplier to the Company.</del></p> <p><b>Revised. Collateral requirements will be determined on an annual basis in accordance with 5.2.1. Any cash posted will be updated (refunded or requested) based upon the next years Credit Exposure Amount.</b></p>
10/8/2010	<p>23. With regard to section 10.1.1 of the AGREEMENT, the agreement currently states:</p> <p>“...provided, however, that in the event of a billing dispute, the failure to pay the <u>undisputed</u> portion of such payment when due shall not constitute an Event of Default so long as the Parties are engaged in good faith efforts to resolve such dispute under Section 3.2.6 hereunder”</p> <p>Is this a typo? Should “undisputed” actually be “disputed”?</p>	<p>You are correct; there is a typographical error in Section 10.1.1 of the AGREEMENT. This has been corrected, and posted to the websites.</p>
	<p>24. If the formula for Credit Exposure Amount (CEA) equals the product of A) Tranches Offered, B) Price Offered (per AEC), C) Term (in years), D) AEC per Tranche (per year), and E) 200% as indicated in the materials, then what Price Offered should be used for purposes of calculating the Pre-Bid Security? Should it be, for example, the Price Offered in Reporting Year 1, the Price Offered in Reporting Year 11,</p>	<p><del>The example provided in the webinar was a simple one assuming the same price for each year offered. For offers that have varying prices by year the calculation will be the sum of the annual values for the entire transaction. The following is a</del></p>

<p>or some average price over the Term?</p>	<p>more complicated SPAEC example:</p> <p>Revised. The table has been updated to show a collateral example for a 120-month SPAEC agreement. The pre-bid collateral is 10% of the first reporting years annual Credit Exposure Amount.</p>
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Reporting Year	SPAECs Per Year	Bid Blocks Offered	Offer Price	Annual Value
6/1/11 - 5/31/12	200	1	350	\$ 70,000
6/1/12 - 5/31/13	200	1	340	\$ 68,000
6/1/13 - 5/31/14	200	1	330	\$ 66,000
6/1/14 - 5/31/15	200	1	320	\$ 64,000
6/1/15 - 5/31/16	200	1	310	\$ 62,000
6/1/16 - 5/31/17	200	1	300	\$ 60,000
6/1/17 - 5/31/18	200	1	290	\$ 58,000
6/1/18 - 5/31/19	200	1	280	\$ 56,000
6/1/19 - 5/31/20	200	1	270	\$ 54,000
6/1/20 - 5/31/21	200	1	260	\$ 52,000
<b>Total Value for the 10-Year Period</b>				<b>\$ 610,000</b>
<b>Credit Exposure Amount</b>				<b>\$ 1,220,000</b>
<b>Pre-Bid Security</b>				<b>\$ 122,000</b>

Reporting Year	AECs Per Bid Block	Bid Blocks Offered	Offer Price Per AEC	Annual Value	Annual Credit Exposure Amount
6/1/11 - 5/31/12	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/12 - 5/31/13	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/13 - 5/31/14	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/14 - 5/31/15	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/15 - 5/31/16	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/16 - 5/31/17	200	1	\$ 240.00	\$48,000.00	\$ 96,000.00
6/1/17 - 5/31/18	200	1	\$ 230.00	\$46,000.00	\$ 92,000.00
6/1/18 - 5/31/19	200	1	\$ 220.00	\$44,000.00	\$ 88,000.00
6/1/19 - 5/31/20	200	1	\$ 210.00	\$42,000.00	\$ 84,000.00
6/1/20 - 5/31/21	200	1	\$ 200.00	\$40,000.00	\$ 80,000.00
<b>Pre-Bid Security</b>				<b>\$10,000.00</b>	

<p>10/8/2010</p>	<p>25. Section 5.2 of the contract states "The Company shall calculate the maximum credit limit (the "Credit Exposure Amount") for the TIER I AEC Supplier in connection with the delivery of Product under this Agreement by multiplying the product of 200% of the TIER I AEC Price by the TIER I AEC</p>	<p>An example of the Credit Exposure Amount is provided in the answer to Q1. Section 5.2 states the Credit Exposure Amount is calculated "by</p>
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	Quantity per Reporting Year (as set forth in the TIER I AEC Transaction Confirmation).” Given that there is no mention of multiplying by the number of Reporting Years in the Term, or summing CRE for each remaining Reporting Year in the Term, is CEA calculation for purposes of the Agreement meant to be different than the Pre-Bid Security.	<p><del>multiplying the product of 200% of the SPAEC Price by the SPAEC Quantity per Reporting Year”. Since there are up to 11 reporting years all need to be summed to come up with the total Credit Exposure Amount. To make this fact crystal clear AP will look to add some clarifying language to 5.2.</del></p> <p><b>Revised. Please refer to Q&amp;A #1 and #24.</b></p>
10/8/2010	26. Is it possible that Line 40 (Pre-Bid Security) of the Tier 1 Appendix 8 Bid Form Spreadsheet is incorrect? It appears to be assuming 200 AEC per Tranche, rather than 5,000 AEC per Tranche.	Upon review of the calculation per a previous Q&A, AP has confirmed that there was a problem in the original Bid Form Spreadsheet posted on the RFP website. A revised Bid Form Spreadsheet has been posted on each website.
10/8/2010	<p>27. Section 7.12 (x) of the Tier 1 Non-Solar RFP Process and Rules document provides the following example for calculation of the Pre-Bid Security. Is this example correct?</p> <p>Example: Pre-Bid Security required upon submission of Bid</p> <p>A Qualified Bidder submits a Bid of Up-to 5 Tranches at \$10 per TIER I AEC. The Bid must be accompanied by Pre-Bid Security equal to 10% of its security requirements under the AGREEMENT at its maximum Tranche offer. In this case, those security requirements are <math>5 \times 5,000 \times (2 \times \\$10) \times 10\% = \\$50,000</math>.</p>	<p><del>For the simple example in 7.12 no term was assumed thus the calculation is for a one year period for 5 tranches at a flat rate of \$10 / AEC. For a more robust example of calculating the Credit Exposure Amount and Pre-Bid Security please refer Q&amp;A 24.</del></p> <p><b>Revised. Correct</b></p>
10/8/2010	28. Is there any allowance for a bidder whose parent has no debt and substantial cash equivalents to qualify for using parent guarantees for both the pre-bid collateral and the term security provisions under the contract? The parent is not rated by any of the rating agencies because they have no debt.	The only acceptable forms of Pre-Bid Security are cash or letter of credit posted either by the bidder or its guarantor. Alternative credit arrangements for bidders or guarantors who do not meet the standard creditworthiness requirements can be requested under Section 5.1.3 of the Agreements. Approval of any

		alternative credit arrangements is at the sole discretion of AP.
10/8/2010	29. In the Purchase and Sale Agreement, the damage calculations in sections 3.3.1 (failure to deliver) and 11.2.2 (remedies on default) allow the Buyer to charge Seller the full amount of the ACP, and not the actual damages which would be ACP minus the Contract Price. Was this intentional or an error in the contract that will be corrected.	Both sections are correct as written.
10/8/2010	30. If a Bidder chooses to post a Letter of Credit for the entire amount of the security in lieu of providing credit information, should this Letter of Credit should be the same as the Pre-Bid Letter of Credit? In other words, the Bidder in this case would not be required to submit a Letter of Credit in addition to the Pre-Bid Letter Credit, correct?	If the Bidder chooses to post an LOC for the total Credit Exposure Amount as part of the Part 2 process, yes this would cover the required amount for the Pre-Bid Security.
10/8/2010	31. Will the results of the RFP process be made public at any point in time? Does this include winning offer prices for Tier 1 Non-Solar AECs?	Generic data from the solicitation will be made available to the public. No individual bid data will be made public by Allegheny Power.
10/8/2010	32. What electronic format would you like the Part I submittals? Is a multi-attachment e-mail acceptable, i.e 3 .pdfs and a word document? Can the submission be one collated .pdf with all of the documents?	Part I submittals should be separate files for each document, and may be either Word or .pdf format..
10/8/2010	33. Do you identify in Part 1 (before submitting Part 2) the bid quantity and price or is this part simply a credit approval process?	The Part 1 process is simply a bidder qualification process including credit. Qualified Bidders will then be able to provide their bids as part of the Part 2 process.
10/11/2010	34. In the first paragraph of the Sample Letter of Intent, it states:  "Our senior unsecured debt rating meets the Minimum Rating as defined in the Alternative Energy Credit Purchase and Sale Agreement"  Presumably, the Minimum Rating is fulfilled by the definition in Article 5 section 5.1.1 (b) of the Agreement. However, it appears that this definition	Suppliers who do not apply for an Unsecured Credit Limit may provide a letter of credit or cash to meet the Credit Exposure Amount. In this case no Minimum Ratings are required.

	is geared towards Bidders who opt to satisfy the credit requirements with an Unsecured Line of Credit or a Guarantor. What would be the Minimum Rating for a Bidder who opts to post the entire amount of the security?	
10/11/2010	35. The proposal states the agreement has to be executed within 3 days of the award. If the bidder has to post the full cash security, does this cash have to be received within 3 days of the PA PUC approval? Does this apply even for the tranches that don't start until June, 2011?	Yes to both.
10/11/2010	36. We are currently building a 30 MW solar PV generation facility in West Texas. We wanted to know if we could sell the AECs (RECs) to West Penn under the current RFP?	In accordance with the RFP Bidders will be required to provide qualifying SPAECs. Qualifying SPAECs must comply with all Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1 requirements. Qualification information can be found on the Pennsylvania Public Utility Commission website at <a href="http://paaeps.com/credit/">http://paaeps.com/credit/</a> .
10/12/2010	37. If a Bidder is posting an Irrevocable Letter of Credit for the entire amount of security, is the "Statement of Matters Related to the Financial Status of the Entity" per Section 2 of the Part 1 Form still required?	Yes, completion of this section is still required.
10/12/2010	38. Are you looking for a particular vintage in this RFP? For example, the RECs can be banked for 3 years, therefore is it possible to deliver vintages from 2008-2009 for the 2011 compliance year.	The vintage of credits provided must correspond with the Reporting Year under the Transaction Confirmation. For example, AECs delivered for the Transaction Confirmation Reporting Year of 6/1/2011 through 5/31/2012 must be produced / have the vintage of 6/1/2011 through 5/31/2012. Prior year production will not be acceptable.
10/12/2010	39. If a Bidder is posting an Irrevocable Letter of Credit for the entire amount of security, then	The bank is assuring performance on behalf of the

	<p>Allegheny is receiving a guarantee from a bank meeting the qualifications set forth in Article 5.1.3 (d) of the Agreement. Could you please explain the rationale of the Bidder providing a Statement of Matters Related to the Financial Status of the Entity in this case? It would seem Allegheny would be more interested in the bank's financial status, which is addressed in it's debt rating.</p>	<p>issuer. The information provided by the bidder under this section provides Allegheny an understanding of the financial status of the entity that is ultimately responsible for performance under the Agreements</p>
10/12/2010	<p>40. Please explain why there are no Buyer credit protections in each proposed form of PSA. In other regulatory RFPs of this nature, there typically are minimum Buyer creditworthiness standards.</p>	<p>The credit standards in this solicitation are consistent with our solicitations for full-requirements service in Allegheny multiple jurisdictions. Credit requirements in those solicitations are also only one way.</p>
10/12/2010	<p>41. Would the following weekly payment provision be able to be inserted into each PSA, which is consistent with the Energy FSA of a recent contract:</p> <p><b>“Weekly Payments. If at any time and from time to time during the term of this Agreement, a Buyer Downgrade Event occurs, notwithstanding the provisions of Article 3 (DELIVERY, BILLING AND PAYMENT), Seller shall have the right to require Buyer to pay for delivered [SPAEC Quantity][TIER 1 AEC Quantity] on a weekly basis for so long as the Buyer Downgrade Event continues. A “weekly basis” as referred to in the preceding sentence means that for a given Monday through Sunday period in a delivery period. Seller shall notify Buyer who shall be required to make payment for such period no later than the first Wednesday following such period (or if such day is not a Business Day, on the next Business Day). Buyer’s failure to make such accelerated payments shall be deemed an Event of Default under Article 10 (Events of Default) of the Agreement.”</b></p> <p><b>“Buyer Downgrade Event” means that Buyer’s (or Buyer’s Guarantor’s) Credit Rating is less than BBB- by S&amp;P, BBB- by Fitch or Baa3 by Moody’s.</b></p>	<p>These provisions assume delivery is occurring on a continuous basis as is the case of the full requirements agreements. However, under these AEC agreements delivery is only occurring quarterly and payment is made after delivery is confirmed and the utility is invoiced by the Supplier thus these requested changes are not consistent with the product and agreements in this solicitation.</p>
10/12/2010	<p>42. Is it correct to view our only protections in respect of Buyer’s creditworthiness are remedies exercisable upon Events of Default (namely, uncured non-payment and bankruptcy-related events)?</p>	<p>Under these Agreements the Buyer is not posting any collateral. Article 11, “Remedies Upon Default”</p>

		define the remedies of a non-defaulting party in the case of an event of default which are defined in Article 10.
10/12/2010	43. Section 9.2 of each of the PSA's states that West Penn Power's obligations under such PSA "are contingent on, and limited by [its] ability to recover all costs incurred by it under [such PSA] from its retail customers in full and on a current basis." How do the payment provisions under each PSA work in the event of less than such full and current basis recovery? Do you expect pricing differentials to result from Buyer's proposed assumption of this risk?	The current AEPS allows utilities to recover their cost of compliance on a full and current basis. As stated in the 2 <sup>nd</sup> part of Section 9.2, "(i) if any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the recovery of costs, the Company may terminate this Agreement upon thirty (30) days written notice." Payment for any delivered AECs up and until the time of the Agreement termination will be at the rates agreed to under the transaction confirmations.
10/12/2010	44. Please confirm whether or not there are any impacts on calculation of the Credit Exposure Amount in Section 5.2 of the PSAs and on the calculation of the UCL's in Section 5.1 of the PSAs in the event that one bidder wins both of the PSAs.	Each solicitation is separate thus each credit section will operate independently of the other Agreement.
10/13/2010	45. I have 2 questions with respect to the Tier 1 AEC ;  (a) Based on the language in the proposal letter (below) I am not clear on how many AEC's are required and if they need to be supplied per year?  The TIER I AEC product will consist of a term of 10-year and 5-month, and 10-year supply. The Target Quantity will be comprised of five (5) Tranches for January 1, 2011 through May 31, 2021, and a maximum of ten (10) Tranches for the period June 1, 2011 through May 31, 2021, with each Tranche consisting of 5,000 TIER I AECs.  (b) If the AEC's are offered at an increasing price per year, then how will the pre-bid security amount be determined?	(a) See Tables on following page.  Revised. (b) The pre-bid collateral is 10% of the first reporting years annual Credit Exposure Amount. Please also see Q&A #24 for additional information.

<b>125 Month Term</b>			
<b>Reporting Year</b>	<b>AECs Per Bid Block</b>	<b>Bid Blocks Requested</b>	<b>Total AECs Per Reporting Year</b>
1/1/11 - 5/31/11	5,000	5	25,000
6/1/11 - 5/31/12	5,000	5	25,000
6/1/12 - 5/31/13	5,000	5	25,000
6/1/13 - 5/31/14	5,000	5	25,000
6/1/14 - 5/31/15	5,000	5	25,000
6/1/15 - 5/31/16	5,000	5	25,000
6/1/16 - 5/31/17	5,000	5	25,000
6/1/17 - 5/31/18	5,000	5	25,000
6/1/18 - 5/31/19	5,000	5	25,000
6/1/19 - 5/31/20	5,000	5	25,000
6/1/20 - 5/31/21	5,000	5	25,000

<b>120 Month Term</b>			
<b>Reporting Year</b>	<b>AECs Per Bid Block</b>	<b>Bid Blocks Requested</b>	<b>Total AECs Per Reporting Year</b>
6/1/11 - 5/31/12	5,000	10	50,000
6/1/12 - 5/31/13	5,000	10	50,000
6/1/13 - 5/31/14	5,000	10	50,000
6/1/14 - 5/31/15	5,000	10	50,000
6/1/15 - 5/31/16	5,000	10	50,000
6/1/16 - 5/31/17	5,000	10	50,000
6/1/17 - 5/31/18	5,000	10	50,000
6/1/18 - 5/31/19	5,000	10	50,000
6/1/19 - 5/31/20	5,000	10	50,000
6/1/20 - 5/31/21	5,000	10	50,000

<b>Reporting Year</b>	<b>AECs-Per Bid-Block</b>	<b>Bid-Blocks Offered</b>	<b>Offer-Price Per-AEC</b>	<b>Annual Value</b>
<del>6/1/11 - 5/31/12</del>	<del>5,000</del>	<del>4</del>	<del>\$ 2.00</del>	<del>\$ 10,000.00</del>
<del>6/1/12 - 5/31/13</del>	<del>5,000</del>	<del>4</del>	<del>\$ 3.00</del>	<del>\$ 15,000.00</del>
<del>6/1/13 - 5/31/14</del>	<del>5,000</del>	<del>4</del>	<del>\$ 4.00</del>	<del>\$ 20,000.00</del>
<del>6/1/14 - 5/31/15</del>	<del>5,000</del>	<del>4</del>	<del>\$ 5.00</del>	<del>\$ 25,000.00</del>
<del>6/1/15 - 5/31/16</del>	<del>5,000</del>	<del>4</del>	<del>\$ 6.00</del>	<del>\$ 30,000.00</del>
<del>6/1/16 - 5/31/17</del>	<del>5,000</del>	<del>4</del>	<del>\$ 7.00</del>	<del>\$ 35,000.00</del>
<del>6/1/17 - 5/31/18</del>	<del>5,000</del>	<del>4</del>	<del>\$ 8.00</del>	<del>\$ 40,000.00</del>
<del>6/1/18 - 5/31/19</del>	<del>5,000</del>	<del>4</del>	<del>\$ 9.00</del>	<del>\$ 45,000.00</del>
<del>6/1/19 - 5/31/20</del>	<del>5,000</del>	<del>4</del>	<del>\$ 10.00</del>	<del>\$ 50,000.00</del>
<del>6/1/20 - 5/31/21</del>	<del>5,000</del>	<del>4</del>	<del>\$ 11.00</del>	<del>\$ 55,000.00</del>
<b>Total Value for the 120-Month Period</b>			-	<b>\$325,000.00</b>
<b>Credit Exposure Amount</b>			-	<b>\$650,000.00</b>
<b>Pre-Bid Security</b>			-	<b>\$ 65,000.00</b>

Date Posted	Question	Answer
10/14/2010	<p>46. Is this a correct statement? If I have a 1 MW solar facility, and I generate 1 MWH of electricity on a given day, I have created 1 SPAEC. Furthermore, with that same facility, I generate 2 MWH on the following day, therefore creating 2 additional SPAEC's. Over the two the days then, 3 SPAEC's have been created.</p>	<p>Your statement is correct. Please also remember the SPAECs provided under the Agreement must also be registered and comply with the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8 ("AEPS Act"). Additional information on the AEPS Act can be found on the Pennsylvania Public Utility Commission website at <a href="http://paaeps.com/credit/">http://paaeps.com/credit/</a>.</p>
10/15/2010	<p>47. For a given auction (Tier-I non solar AEC or SPAEC), can a bidder submit a different bid sheet for each tranche if they want to tier their bids, e.g. 5 different bid sheets with a sets of prices for each of the tranches in the SPAEC auction? Would this require 5 different Part II forms, or could a single part 2 form be submitted with the 5 different bid sheets? Would the same hold true for the Tier-I non solar auction (1 Part 2 form with a maximum of 15 bid sheets)?</p>	<p>Per your example, one Part 2 Form for each RFP with up to 5 different Bid Form Spreadsheets for each is acceptable.</p>
10/20/2010	<p>48. Question #47 states that for the SPAEC RFP, a bidder can submit a separate bid sheet for each tranche (up to 5 bid sheets) but needs only submit 1 Part 2 form. For the Tier I (non-solar) auction, can a bidder submit up to 15 bid sheets (one per tranche), as there</p>	<p>For the non-solar Tier I RFP a supplier can submit one (1) Part 2 form and up to fifteen (15) bidform spreadsheets.</p>

	<p>are 15 tranches for that product? If not, what is the maximum? As well, I assume that only 1 part 2 application would be necessary for the Tier I (non-solar) auction, regardless of the number of bid sheets submitted?</p>	
<p>10/25/2010</p>	<p>49. Someone on the phone the other day asked "at what rate will be paid on the cash credit collateral?" The answer was, I think 6%, but I did not see that question or answer anywhere in the Q&amp;A information online. Can you confirm that interest is paid on the cash collateral and the rate?</p>	<p>A. Per Section 5.2.4 of the Agreement, "The Company shall pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement." Per Article 1, Definitions, of the Agreement, "Interest Index" means the average Federal Funds Effective Rate for the period of time that funds are held on deposit by Company under Section 5.2.4 hereof. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<a href="http://www.federalreserve.gov/releases/h15/update/">http://www.federalreserve.gov/releases/h15/update/</a>)</p>
	<p>50. Please post another example of the collateral calculation.</p>	<p>See chart on following page.</p>

Below is a further collateral example as reference for a Solar AEC bid. It assumes a 10-year agreement with a solar AEC price of \$300.

## Collateral Example for a 120-Month Offer

Reporting Year	AECs Per Bid-Block	Bid-Blocks Offered	Offer-Price Per AEC	Annual Value	Annual Collateral Requirement
6/1/11 - 5/31/12	200	1	\$ 300.00	\$ 60,000.00	\$ 1,200,000.00
6/1/12 - 5/31/13	200	1	\$ 300.00	\$ 60,000.00	\$ 1,080,000.00
6/1/13 - 5/31/14	200	1	\$ 300.00	\$ 60,000.00	\$ 960,000.00
6/1/14 - 5/31/15	200	1	\$ 300.00	\$ 60,000.00	\$ 840,000.00
6/1/15 - 5/31/16	200	1	\$ 300.00	\$ 60,000.00	\$ 720,000.00
6/1/16 - 5/31/17	200	1	\$ 300.00	\$ 60,000.00	\$ 600,000.00
6/1/17 - 5/31/18	200	1	\$ 300.00	\$ 60,000.00	\$ 480,000.00
6/1/18 - 5/31/19	200	1	\$ 300.00	\$ 60,000.00	\$ 360,000.00
6/1/19 - 5/31/20	200	1	\$ 300.00	\$ 60,000.00	\$ 240,000.00
6/1/20 - 5/31/21	200	1	\$ 300.00	\$ 60,000.00	\$ 120,000.00
<b>Total Value for the 120-Month Period</b>				<b>\$ 600,000.00</b>	
<b>Credit Exposure Amount</b>				<b>\$1,200,000.00</b>	
<b>Pre-Bid Security</b>				<b>\$ 120,000.00</b>	

The example shows what the collateral requirement will be at the beginning of each delivery year, however under the terms of the Agreement collateral will actually be re-determined quarterly after the qualifying solar AECs have been delivered to the Company. At the time of such collateral re-determination any cash posted will be returned with appropriate interest and if secured by an LOC the LOC may be reduced to the new quarterly amount at the Suppliers discretion.

Revised.

## Collateral Example for a 120-Month Offer

Reporting Year	AECs Per Bid Block	Bid Blocks Offered	Offer Price Per AEC	Annual Value	Annual Credit Exposure Amount
6/1/11 - 5/31/12	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/12 - 5/31/13	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/13 - 5/31/14	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/14 - 5/31/15	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/15 - 5/31/16	200	1	\$ 250.00	\$50,000.00	\$ 100,000.00
6/1/16 - 5/31/17	200	1	\$ 240.00	\$48,000.00	\$ 96,000.00
6/1/17 - 5/31/18	200	1	\$ 230.00	\$46,000.00	\$ 92,000.00
6/1/18 - 5/31/19	200	1	\$ 220.00	\$44,000.00	\$ 88,000.00
6/1/19 - 5/31/20	200	1	\$ 210.00	\$42,000.00	\$ 84,000.00
6/1/20 - 5/31/21	200	1	\$ 200.00	\$40,000.00	\$ 80,000.00
<b>Pre-Bid Security</b>				<b>\$10,000.00</b>	

<p><b>11/2/2010</b></p>	<p><b>Q51. Will a fax of the executed LC received by noon on Friday, November 5, 2010, with an original to follow via fedex, be sufficient to meet the submission deadline?</b></p>	<p><b>A.</b> Yes, that would be acceptable, as long as the fax is received by noon on November 5.</p>
<p><b>11/3/2010</b></p>	<p><b>Q52. In response to the 11/2/2010 collateral notice , are you requesting all pre-bid materials submitted by 1:00 PM 11/3/2010, or simply a response indicating interest in bidding as a result of the notice. Please confirm.</b></p>	<p><b>A.</b> For today's 1:00 deadline, we are only looking for responses from suppliers that they are now interested in participating in this RFP. The deadline to provide Part 1 forms will be determined after consultation with the PaPUC Staff and the Independent Procurement Monitor today, and suppliers will be notified of the schedule.</p>
<p><b>11/3/2010</b></p>	<p><b>Q53. Just to confirm the bid security will equal 10% of the Credit Exposure Amount for the Solar AEC auction. In your attached example, \$10K bid security would be required Friday and if the bid was successful, then \$100K security would be required upon execution of the Purchase &amp; Sale Agreement</b></p>	<p><b>A.</b> Yes, that is the correct amount of bid and Agreement collateral. The bid collateral would be due on the bid due date, currently November 5, and the Agreement collateral would be required upon execution of the Purchase and Sale Agreement.</p>
<p><b>11/3/2010</b></p>	<p><b>Q54. Can you please provide details regarding the process for returning cash if it is provided as pre-bid collateral?</b></p>	<p><b>A.</b> Bidders providing cash collateral must provide return wire instructions to the RFP Coordinator. If the PaPUC rejects the results of the RFP, AP will release the Pre-Bid Letters of Credit or cash as soon as practicable. If the PaPUC accepts the results of the RFP, the Pre-Bid Letter of Credit or cash of a Bidder will be released: (1) the business day after the PaPUC decision</p>

		if the Bidder does not win any Tranches; or (2) the business day after the Bidder executes the Agreement and meets the creditworthiness requirements under the Agreement if the Bidder wins Tranches in the RFP.
<b>11/3/2010</b>	<b>Q55. Please confirm that the interest is paid quarterly upon us calculating the interest and adding it to the quarterly SREC bill?</b>	A. Interest will be handled in accordance with Section 5.2.4 of the Purchase and Sales Agreements which say: The Company shall pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement. Each Quarter, the Company shall prepare a statement of interest amounts due to the SPAEC Supplier. The statement shall be sent to the SPAEC Supplier within three (3) Business Days after the end of the Quarter via overnight mail or other expeditious means in order for the SPAEC Supplier to include such amount in its invoice in accordance with Section 3.2.3 hereof.
<b>11/3/2010</b>	<b>Q56. How is the reduced collateral value returned to us and at what time in the contract year – beginning or end?</b>	A. Collateral amounts will be evaluated annually up until the final reporting year. Refunds between reporting years will be issued after the last AEC delivery has been made by Seller and confirmed by Buyer. Any collateral increases between reporting years will be due prior to the start of such new reporting year. For the last reporting

		year collateral amounts will be adjusted down quarterly after AEC delivery has been made by Seller and confirmed by Buyer.
11/3/2010	Q57. Do we know what the new timetable is? Is there a new deadline for us to respond?	A. We are collecting feedback from our communications yesterday up until 1pm today and will be discussing our options with the PUC at that time. Allegheny will let the entire group know shortly after our 1pm meeting what are course of action will be.
11/3/2010	Q58. If we have chosen Option (c) in our Part I application, and initially post cash collateral, are we allowed to replace the cash with an LC in the future as long as the LC meets your requirements?	A. Yes.
	Q59. Can we submit two different bid sheets for either the 120 or 125 month terms with each outlining a different pricing strategy?	A. Please refer to Q&As #47 and #48.
	Q60. Can we submit a combined bid which would include both the 120 and 125 month terms?	A. No. Offers must be on the specific bid-form spreadsheet for each term.
	Q61. When bidding on a tranche, is the price locked in? For example, if we were bidding on 8 tranches, could we bid 7 at \$3.00 and 1 at \$6.00 for a particular year?	A. Yes, but the differing offer strategies would need to be done on separate bid form spreadsheets.
	Q62. Is the full bid security always 2x the annual amount – ie: even in the last couple years	A. Yes and no. As provided earlier, collateral amounts will be evaluated annually up until the final reporting year. Refunds between reporting

		years will be issued after the last AEC delivery has been made by Seller and confirmed by Buyer. Any collateral increases between reporting years will be due prior to the start of such new reporting year. For the last reporting year collateral amounts will be adjusted down quarterly after AEC delivery has been made by Seller and confirmed by Buyer
<b>11/30/2010</b>	<b>Q63. For the Part II submission on Friday, can you please clarify how the pre-bid security is submitted? If a bidder chooses to post a LOC and submits and executed LOC and the Intent to Provide a Letter of Credit on December 3rd, is this in addition to the Pre-bid security?</b>	A. The executed LOC you submit on Friday must include the Pre-bid Security amount. If you are providing an executed LOC in the full amount of the AGREEMENT collateral and the Pre-Bid collateral, then you do not need a Letter of Intent to Provide a Letter of Credit. The Letter of Intent to Provide a Letter of Credit refers to the AGREEMENT collateral that your company would be required to post if you are a successful bidder.
<b>11/30/2010</b>	<b>Q64. In Appendix 8, are values supposed to be calculated in cell C30 and C36 related to the discounted average price?</b>	A. Yes, once all grayed cells are populated, calculated values will appear on row 30 and in C36. These values will not appear unless all required cells have been properly populated.
<b>11/30/2010</b>	<b>Q65. This notice references that "original signatures" are required and then later states that submissions should be made via fax. Typically "original signatures" means you want the actual documents,</b>	A. The "original signatures" language simply refers to the fact that bidders must have an official original signature on the form. At time of bid submission, the forms are to

	<p>but unless I missed it, there does not seem to be reference to needing to send the originals into your office.</p> <p>Is fax only satisfactory or do we have to fax and then send in original after the fact?</p>	<p>be sent via fax, and the "original" documents do not need to be mailed.</p>
	<p><b>Q66. West Penn has indicated that it will not consider alternate delivery schedules including one annual delivery. Would you consider the ability to deliver unequal quarterly amounts? If for example, delivery of 25 RECS the first quarter, 50 the second quarter, 50 the third and then 75 the fourth so long as West Penn was made whole by delivering the total amount required (200) before the end of the Reporting Year.</b></p>	<p>A. It has been established in Pre-bid Q&amp;As #19 and #23 that Allegheny will not allow for alternative delivery schedules or unequal quarterly amounts. Please refer to the following link to review Q&amp;As #19 and #23.</p> <p><u>October 6, 2010, Pre-bid Questions and Answers</u></p>
12/27/2010	<p><b>Q67. Is the number reported in the press release the weighted "Discounted Average Term Price" (row 36 in AP's auction Bid Sheet)? Or is the auction result that has been reported the weighted Straight average of all the bids?</b></p>	<p>A. The reported price per the web announcement is the weighted straight average of all winning bids.</p>
	<p><b>Q68. Can you please provide a detailed explanation of how bids were evaluated?</b></p>	<p>A. For each of the four products offered under the RFPs (Solar and Tier I AECs for 120 and 125 month time frames) bidders were given the option to select an "Up-to" or "All-or-Nothing" bid. If a bidder selected the All-or-Nothing option their bids were combined into a single-price "All-or-Nothing" offer for the given product. The winning bids were the bids which satisfied the need for each product at the lowest discounted average term price.</p>

**PUBLIC EXHIBIT 6**

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SECRETARY'S BUREAU**

Pennsylvania Default Service Plan  
Solar Photovoltaic & Tier I Non-Solar  
Alternative Energy Credit Solicitations

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October 6, 2010

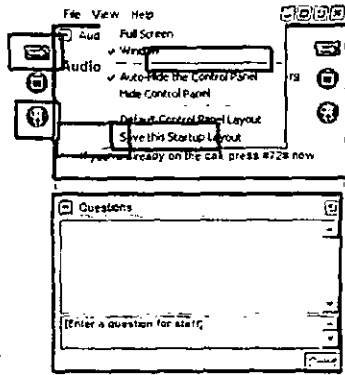
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3

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We will address Q&A at the end of today's session, and as a final reminder, today's Webinar is being recorded, and everyone will receive an email within 24 hours with a link to view a recording of today's event.



## Webinar Panel

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- Bob Reeping – General Manager,  
Electric Supply
- Helen Taylor – Specialist
- Melanie Mancuso – Trader / Scheduler
- Frank Mossburg – Independent  
Procurement Manager (Boston Pacific)

11/11/2011

4



## Webinar Objectives

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**We are here to:**

- Gain a better understanding of the context in which the Request for Proposals (RFPs) are being conducted
- Inform interested suppliers of the RFP process
- Review the bid structure
- Review some key areas of the Alternative Energy Credit Purchase and Sale Agreements which will govern the terms and conditions of all transactions resulting from these RFPs
- Answer questions

11/11/2011

5



## Webinar Disclaimer

- This presentation is not meant to be a fully comprehensive description of every aspect of the RFP process, but rather a summary of the key features. No statements made in this presentation, or made orally, are intended to be binding in any way. In all cases, the RFP Process and Rules and Alternative Energy Credit Purchase and Sale Agreements control and supersede all other statements

11/11/2011

6

## West Penn Power dba Allegheny Power ("AP")

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- AP operates an electric transmission and distribution system in twenty-three counties in southwestern, south central and north central Pennsylvania
- AP serves approximately 703,000 customers with a population of approximately 1.5 million

11/11/2011

7




## Default Service Program

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- On October 25, 2007, AP filed a Petition for Approval of its Retail Electric Default Service Plan and Competitive Procurement Plan ("DSP") for Service at the Conclusion of the Restructuring Transition Plan
- After a fully litigated proceeding, the PUC approved the Petition, as modified through the litigated proceeding, by Order entered July 25, 2008
- AP's DSP encompasses a period of twenty-nine months beginning January 1, 2011, and ending May 31, 2013

11/11/2011

8



## Original DSP Alternative Energy Portfolio Standard ("AEPS") Requirements

- AP's approved DSP provided that AP would purchase alternative energy credits on a current or spot basis for the required load that must be served from the PJM spot market
- AP's approved DSP also requires that the wholesale suppliers who have won (or who will win) the obligation to serve load through AP's competitive full requirements RFP also have the responsibility to meet that loads' AEPS obligations as part of that full requirements service, including SPAECs, Tier I Non-Solar AECs and Tier II AECs

11/11/2011

9



## Modification Filing

- On July 29, 2010, AP filed with the Commission a request to modify how the alternative energy credits associated with the PJM spot market load could be purchased under the DSP
- AP proposed to purchase a portion of its Tier I Non-Solar and SPAEC spot market requirements using ten-year (120-months) and ten-year and five-month (125-months) agreements beginning January 1, 2011
- AP expects to purchase 200 SPAECs per AEPs reporting year for the period January 1, 2011 through May 31, 2021 (125 months) and 800 SPAECs per AEPs reporting year for the period June 1, 2011 through May 31, 2021 (120 months)
- AP also expects to purchase 25,000 Tier I Non-Solar RECs per AEPs reporting year for the period January 1, 2011 through May 31, 2021 (125 months) and 50,000 Tier I Non-Solar RECs per AEPs reporting year for the period June 1, 2011 through May 31, 2021 (120 months)

11/11/2011

10



## Modification Filing

- AP will run two distinct RFPs; one for SPAECs and one for Tier I Non-Solar AECs
- Bidders will have the opportunity to participate in either or both solicitations which will be held concurrently
- AP's modification request to the PUC to modify its DSP regarding the purchase of SPAECs and other Tier I Non-Solar AECs only applies to PJM spot market load and does not affect the obligations under the awarded, or to be awarded, full-requirements contracts

11/11/2011

11



## Modification Filing

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- To expedite the modification filing approval process AP proposed using procurement documents that had already recently been through the Commission approval process
- First Energy's documents that had been recently used for their Met Ed and Penelec service territories are the baseline documents for both the SPAEC and Tier I Non-Solar RFPs

11/11/2011

12



## Product

- "Solar Photovoltaic Alternative Energy Credit" or "SPAEC" means an Alternative Energy Credit corresponding to the production of solar photovoltaic electricity as set forth in the AEPS Act
- "Tier I Non-Solar Alternative Energy Credit" or "TIER I AEC" means an Alternative Energy Credit corresponding to the production of Tier I non-solar electricity as set forth in the AEPS Act

11/11/2011

13

Tier 1 - Energy derived from:

- Solar photovoltaic energy
- Solar thermal
- Wind power
- Low-impact hydropower
- Geothermal energy
- Biologically derived methane gas (including landfill gas)
- Fuel cells
- Biomass energy
- Coal mine methane
- Black Liquor (PA only)
- Large-scale hydropower (certain restrictions apply)

Tier 2 - Energy derived from:

- Waste coal
- Distributed generation systems
- Demand-side management
- Large-scale hydropower
- Municipal solid waste
- Generation of electricity utilizing by-products of the pulping process and wood
- Integrated combined coal gasification technology

# Product

Term	SPAEC Per Reporting Year	SPAEC Bid Blocks	Tier I AEC Per Reporting Year	Tier I AEC Bid Blocks
1/1/2011 through 5/31/2021	200	1	25,000	5
6/1/2011 through 5/31/2021	800	4	50,000	10

11/11/2011

14



## RFP

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- The RFP Process and Rules describes how the RFP will be conducted and is located for each product under the "Pennsylvania Alternative Energy Credit RFP Information" links on the Allegheny Power RFP website at [www.alleghenypower.com/rfp](http://www.alleghenypower.com/rfp)
- Under the RFP each bidder will be required to respond to two parts for each product it plans to submit bids for:
  - Part 1 - submission of an initial application in which prospective suppliers are qualified; and
  - Part 2 - the submission by Qualified Bidders of Bids to supply a portion of the Tranche Target at a specified price per SPAEC and / or Tier I Non-Solar AEC, accompanied by Pre-Bid Security

11/11/2011

15

## Part 1 Proposal (Article 6 & Appendix 6)



- Bidders must submit the Part 1 Form and all documents required therein to respond to the qualification standards for the RFPs
- A Bidder that is qualified after complying with all qualification standards of the Part 1 Proposal ("Qualified Bidder") may submit a Part 2 Proposal for the RFPs



## Part 1 Proposal

- Part 1 Proposal requirements include:
  - Contact Information
    - Company
    - Authorized Officer
    - Authorized Representative
    - Credit Contact
  - Credit Information
    - Entity who is requesting unsecured credit (if applicable)
    - Financial information (10-K, 10-Q, 8-K, credit ratings)
    - Statement of financial status
  - Notification of bid security and requested changes to the LOC / Guaranty (where applicable)
  - Officer representations for performance under the RFP


11/11/2011

17

### **Statement of Matters Related to Financial Status of the Entity**

All Bidders must submit the following information for the Entity named in Section II.2:

A statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the Entity that have had a material impact on the Entity's financial status. If the Bidder has selected Option (a) or Option (b) above, this statement need only apply to matters impacting the Entity's financial status since the release of the Entity's most recent financial data or most recent public financial disclosure.




## Part 1 Proposal

- The Part 1 Proposal is due no later than noon (12:00 PM EPT) on October 15, 2010
- Bidders are encouraged to submit their Part 1 Proposals as soon as possible
- Part 1 Proposals received after the Part 1 Deadline will be considered late and will not be processed
- If AP or the Independent Procurement Manager determines that any aspect of a Bidder's Part 1 Proposal is incomplete or requires clarification, AP or Independent Procurement Manager will issue a deficiency notice to Bidder
  - A Bidder will have until 6:00 PM on the following business day to respond to the deficiency notice
  - If a deficiency notice is issued and the Bidder does not respond by the deadline established by AP or Independent Procurement Manager, or does not address the deficiency in a manner that is deemed satisfactory in AP or Independent Procurement Manager's sole discretion, the Bidder's Part 1 Proposal will be rejected
- Bidders will be notified of their qualification status no later than COB on October 22, 2010

11/11/2011

18



## Part 1 Proposal

- Unless the Bidder is using the standard format for the Pre-Bid Letter of Credit, the Bidder must submit a draft Pre-Bid Letter of Credit clearly showing all requested modifications
- If the Bidder is relying on the financial standing of a Guarantor or a Letter of Credit to comply with agreement requirements, and the Guarantor is not using the standard forms of the Letter of Intent to Provide a Guaranty or a Letter of Intent to Provide a Letter of Credit ("Letters of Intent"), the Bidder must provide the appropriate draft Letters of Intent showing all requested modifications
- The Evaluation Team will review draft Pre-Bid Letters of Credit and draft Letters of Intent and will notify the Bidder which modifications to the draft Pre-Bid Letter of Credit and the draft Letters of Intent are acceptable
- Early submission of draft Pre-Bid Letter of Credit and/or Letters of Intent are encouraged to allow appropriate review of the requested modifications

11/11/2011

19


## Part 2 Proposal (Article 7 & Appendix 7)



- Only a Bidder that is qualified after complying with all qualification standards of the Part 1 Proposal "(Qualified Bidder" or "Bidder") may submit a Part 2 Proposal for the RFP
- The completed Part 2 Form MUST be received by AP and Independent Procurement Manager between 9:00 a.m. and 12:00 p.m on November 5, 2010 by fax along with the Bidder's pre-bid security
- If AP or Independent Procurement Manager determines that any aspect of Qualified Bidder's Part 2 Proposal is incomplete or requires clarification, AP or Independent Procurement Manager will issue a deficiency notice to Qualified Bidder prior to finding it deficient

11/11/2011

20



## Part 2 Proposal

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- If the Pre-Bid Letter of Credit or Letter of Intent to Provide a Guaranty or Letter of Intent to Provide a Letter of Credit, as appropriate, submitted by the Qualified Bidder does not conform to the standard form provided in the applicable appendices or incorporates modifications to the standard form other than those accepted by AP as a result of the evaluation of the Part 1 Proposal, that Qualified Bidder's Part 2 Proposal will be automatically deficient
- No late Part 2 Proposals will be accepted under any circumstances

11/11/2011

21



## Part 2 Proposal

- Bidders shall submit their Tranche and price proposals using the Bid Form Spreadsheets attached to the RFP as Appendix 8
- The Bid Form Spreadsheets contain shaded cell areas in which Bidders provide information and their offers. In order to prevent any misunderstanding of a Bidder's offer, all shaded cells within a Bid Form Spreadsheet must be completed by the Bidder
- A Bid Form Spreadsheet submitted by a Bidder that contains blank shaded cells will be deemed a non-conforming bid, and will be eliminated from further consideration. Therefore, if it is the intent of a Bidder to submit a zero price for any component of the pricing structure, the Bidder must enter the numerical value of zero in that specific cell
- The non-shaded cells are read-only cells containing either fixed or computed amounts. All formulas in cells in which computations are performed can be viewed by simply placing the cursor on the cell

11/11/2011

22

## Part 2 Proposal

- Every Bid is a binding obligation to provide the supply for SPAECs or Tier I Non-Solar AECs at the price at which the Bid was made
- A Bid consists of three elements:
  - a price in dollars per SPAEC or Tier I Non-Solar AEC in the format \$xx.xx (rounded to the nearest cent) for each Delivery Year;
  - a specification of the maximum number of Tranches offered with each Bid; and
  - an indication of whether the Bid is "All or Nothing" or an "Up-To" bid (as defined in Section 7.10 of the RFP Rules)



## Part 2 Proposal

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- Recognizing that the magnitude of SPAEC or Tier I Non-Solar AEC sales to AP may affect financing or other commercial considerations for Qualified Bidders, All-or-Nothing Bids will be allowed, such that Qualified Bidders will not be bound to supply SPAECs or Tier I Non-Solar AECs in quantities other than those Bid
- Unless indicated as an All-or-Nothing Bid, Bids will be considered an offer to supply any quantity up to and including the number of Tranches specified in the Bid (an "Up-to Bid")

11/11/2011

24

## Part 2 Proposal

*Illustrative All-Or-Nothing Bid Scenarios*

Bidder	Bid Type	Scenario A All-or-Nothing included in low-cost combination		Scenario B All-or-Nothing excluded from low-cost combination	
		Quantity	Price	Quantity	Price
1	Up To	10	50	10	50
2	Up To	5	99	5	75
3	All-Or-Nothing	10	100	10	100
4	Up To	5	150	5	105
<b>Low Cost</b>		<b>20</b>	<b>75</b>	<b>20</b>	<b>70</b>

11/11/2011

25

- Discounted Price for Evaluation Purposes - The content of this cell is computed and is the single parameter that will be used to compare all offers for the contract term.

- In scenario A, the combination of bids that minimizes the cost of satisfying the Tranche Target includes the All-or-Nothing Bid, but excludes Up-to Bid 2 and Up-to Bid 4 (where excluded Bids are shaded in gray). Conversely, in scenario B, the combination of bids that minimizes the cost of satisfying the Tranche Target excludes the All-or-Nothing Bid.

- A without the All or Nothing averages \$87.25 whereas with the All or Nothing = \$75 as shown.



## Pre-Bid Security

- The amount of the Pre-Bid Security is equal to 10% of the security required under the Agreement relevant to the maximum number of Tranches that a Qualified Bidder is proposing to supply in the Bids for the first reporting year
- Simple SPAEC Example:
  - a. Tranches Offered 1
  - b. Price Offer / Year / SPAEC \$250.00
  - c. SPAECs per year 200
  - d. Credit Exposure Amount( $a*b*c*2$ ) or \$100,000
  - e. Pre-Bid Security ( $e*10\%$ ) or \$10,000

11/11/2011

26



## Pre-Bid Security


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- Pre-Bid security can be provided as cash or an executed Pre-Bid Letter of Credit
  - The standard form LOC is provided as Appendix 3;
  - Modifications to the standard form LOC may be requested, but are subject to review and approval by AP in its sole discretion



## Pre-Bid Security

- Payment under the Pre-Bid Letter of Credit or cash will be demanded by AP if:
  - the Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal;
  - the Bidder discloses information relating to its Proposal or its Bids publicly or to any other party before the PaPUC has disclosed the names of the winning suppliers and the winning Bid prices of the RFP;
  - the Bidder wins one or more Tranches and fails to execute the Agreement within three (3) business days of the PaPUC's approval of the results of the RFP; or
  - the Bidder wins one or more Tranches and fails to meet the creditworthiness requirements of the Agreement at the time of execution



## Pre-Bid Security

- If the PaPUC rejects the results of the RFP, AP will release the Pre-Bid Letters of Credit or cash as soon as practicable
- If the PaPUC accepts the results of the RFP, the Pre-Bid Letter of Credit of a Bidder will be released:
  - the business day after the PaPUC decision if the Bidder does not win any Tranches; or
  - the business day after the Bidder executes the agreement and meets the creditworthiness requirements under the agreement if the Bidder wins Tranches in the RFP



## Performance Assurance

- AP will determine whether the Supplier will be provided unsecured credit throughout the Term of the Agreement as follows:
  - the Supplier must be rated by at least two of the rating agencies (S&P, Moody's or Fitch), and
  - the Supplier must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer debt rating discounted one notch) of at least "BBB-" from S&P, "Baa3" from Moody's, or "BBB-" from Fitch (a "Minimum Rating")
    - In case of split ratings, the lowest rating will be used; and
    - in all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer debt rating discounted one notch) will be used
- AP may also consider alternative credit arrangements with the Supplier if the Supplier is unable to demonstrate creditworthiness as described above. Such alternative credit arrangements are more fully described in Section 5.1.3

11/11/2011

30

## Performance Assurance

- For so long as the Supplier or its Guarantor satisfies the unsecured credit criteria during the Agreement Term the Supplier will be granted an Unsecured Credit Limit ("UCL").
- The UCL sets the Supplier's, or its Guarantor's, maximum level of credit exposure up to, but not in excess of, the Credit Exposure Amount

S&P	Moody's	Fitch	Max UCL
A- & above	A3 & above	A- & above	16% of TNW
BBB+	Baa1	BBB+	10% of TNW
BBB	Baa2	BBB	8% of TNW
BBB-	Baa3	BBB-	6% of TNW
Below BBB-	Below Baa3	Below BBB-	0

11/11/2011

31

If a Supplier is determined to be creditworthy under the alternative review, the Supplier will be granted a maximum UCL of 6% of TNW, and the Supplier's already posted cash security or letter of credit will be returned or cancelled as applicable with the exposure amount

# RFP Schedule

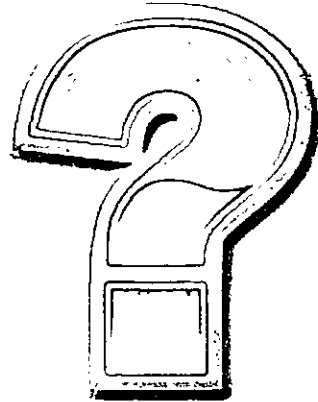
Event	Date
Default Service Plan modification request filed with the PaPUC	July 29, 2010
PaPUC Order approving modification	September 2, 2010
RFP website goes live / RFP issued	September 24, 2010
RFP informational webinar for suppliers	October 6, 2010
Part 1 Date (Bidders submit Part 1 Proposals)	October 15, 2010
Notice of Qualification Date (Bidders are notified of qualification status for submission of Part 2 Proposals)	October 22, 2010
Part 2 Date (Qualified Bidders submit Part 2 Proposals including Pre-Bid Security )	November 5, 2010
IPM submits RFP results report to PaPUC	November 9, 2010
PaPUC approves / denies RFP results	November 15, 2010
Approved Winning Bidders execute AGREEMENTs	November 18, 2010

11/11/2011

32



# Questions



11/11/2011

33

**PUBLIC EXHIBIT 7**

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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**



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

IN REPLY PLEASE  
REFER TO OUR FILE

December 10, 2010

Docket No. P-00072342

JOHN L MUNSCH  
ALLEGHENY POWER  
800 CABIN HILL DRIVE  
GREENSBURG PA 15601

Re: West Penn Power Company d/b/a Allegheny Power  
Default Service Program and Competitive Procurement Plan  
Results of Request for Proposals Process and Rules – AEC Procurement

Dear Mr. Munsch:

On December 7, 2010, West Penn Power Company d/b/a Allegheny Power (West Penn) filed the results of its Request for Proposals (RFP) process and rules, including the proposed bid results for the procurement of long-term supply for a portion of West Penn's needs for Alternative Energy Credits (AECs), in connection with provider of last resort service for all customers electing to receive default service from West Penn during the period January 1, 2011, through May 31, 2021. This procurement was held in conformance with West Penn's RFP rules relating to the procurement of Solar Photovoltaic Alternative Energy Credits (SPAECs), and Tier I Non-Solar Alternative Energy Credits (Tier I AECs) approved by the Commission in its Order entered September 8, 2010 at Docket No. P-00072342, granting West Penn's Petition to modify its Default Service Program and Competitive Procurement Plan to permit the acquisition of SPAECs and other Tier I AECs through long-term contracts rather than on the spot market. This procurement solicited SPAECs and Tier I AECs for both a 10-year time frame (June 1, 2011, through May 31, 2021), and a 10-year, 5-month time frame (January 1, 2011 through May 31, 2021).

West Penn requested that the Commission approve the bid results from this AEC procurement on or before December 10, 2010.

Further investigation does not appear to be warranted at this time, since this procurement appears to have been conducted in accordance with the RFP process and rules, filed pursuant to the Commission's Opinion and Orders. Therefore, we approve the bid results submitted for this AEC procurement.

In addition, we direct West Penn to disclose the results of this AEC procurement in accordance with the Commission's Secretarial Letter in Re: Disclosure of Default Service Solicitation

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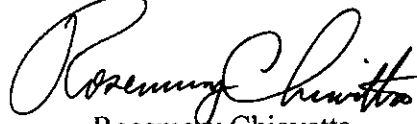
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SECRETARY'S BUREAU

Results and Creation of a Default Service Rate Calculation Model, issued October 12, 2010 at Docket No. M-2009-20082042.

Please direct any questions to Paul Diskin, Energy Manager, Bureau of Fixed Utility Services, at (717) 214-5558.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being significantly larger and more stylized.

Rosemary Chiavetta  
Secretary

cc: All Parties of Record  
Elaine McDonald, Bureau of Fixed Utility Services  
Kathy Aunkst, Secretary's Bureau

**PUBLIC EXHIBIT 8**

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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**



800 Cabin Hill Dr.  
Greensburg, PA 15601

John L. Munsch  
Attorney

724-838-6210  
Fax: 724-830-7737

October 20, 2011

**VIA FEDEX NEXT DAY**

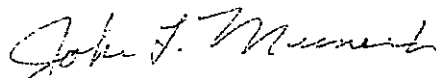
Thomas J. Russial, Esq.  
198 Stonewood Dr.  
Bethel Park, PA 15102

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

Dear Mr. Russial:

Enclosed please find West Penn Power Company's responses to J3 Energy Group's Second Set of Interrogatories.

Very truly yours,

  
John L. Munsch  
Attorney

JLM:jss

Enclosures

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**COMPLAINANT'S SECOND SET OF INTERROGATORIES  
J3 ENERGY GROUP, INC. V. WEST PENN POWER COMPANY  
COMPLAINT DOCKET NO. C-2011-2219920**

**QUESTION NO. 2.3**

During the course of Part 2 Proposal evaluations, did Respondent or Boston Pacific seek or receive a clarification either orally or in writing from any bidder who submitted multiple spreadsheets with different pricing for the four 10-year tranches where the offer type indicated "All-Or-Nothing Bid" as to whether each tranche could be selected independently or whether all tranches had to be selected together? .

**RESPONSE:**

No.

**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>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2011, I served the foregoing Motion for Summary Judgment of J3 Energy Group, Inc., by FEDEX Next Day Mail 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  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

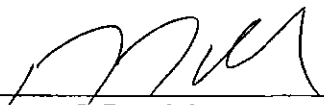
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NOV 14 2011

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

Date: November 14, 2011

Attorney for Complainant

  
\_\_\_\_\_  
Thomas J. Russial  
198 Stonewood Drive  
Bethel Park, PA 15102  
Pa. I.D. No. 39730  
Phone: 412-389-2482

TO: CHIAVETTA, R. PUC (CHIAVET  
Agency: PUC  
Floor:  
External Carrier: FEDEX GND



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**CMPC**



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ICE

From:	Ship Date: 14NOV11 ActWgt: 12.8 LB CAD: 9612/OFFC1242	Part 0 100297-450
TO Secretary Chivetta PA PUBLIC UTILITY COMMISSION  400 NORTH ST FL 2 COMMONWEALTH BUILDING HARRISBURG, PA 17120	(724) 933-2674 <b>FedEx</b> Ground <b>G</b> PA PUBLIC UTILITY COMMISSION HARRISBURG, PA 17120	NOV 14 2011 <b>RECEIVED</b>
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(9612019) 4686991 15102718

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