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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDEX

December 21, 2011

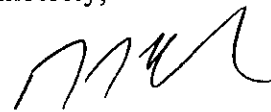
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

**Re: J3 Energy Group, Inc. v. West Penn Power Company
PA PUC Complaint Docket No. C-2011-2219920
Answer to Cross-Motion for Summary Judgment**

Dear Secretary Chiavetta:

Enclosed for filing are the original and three copies of the J3 Energy Group, Inc. Answer to Cross-Motion for Summary Judgment of West Penn Power Company in the above referenced matter. The Motion was served today upon Respondent, West Penn Power Company, and the Presiding Officer, Judge Barnes, by electronic mail and FEDEX delivery.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**J3 ENERGY GROUP, INC. ANSWER
TO CROSS-MOTION FOR SUMMARY JUDGMENT OF
WEST PENN POWER COMPANY.**

Pursuant to 52 Pa. Code §5.102, J3 Energy Group, Inc., (J3), through its attorney, Thomas J. Russial, hereby files this Answer to the Cross-Motion for Summary Judgment of West Penn Power Company (West Penn). Exhibits filed with J3’s Motion for Summary Judgment will be referenced in this Answer as “J3-SJM (Public or Confidential) Exhibit ___.”

I. Introduction

1. By Order dated October 17, 2011, the Presiding Officer set a Procedural Schedule which at J3’s request included the filing of a Motion for Summary Judgment (hereinafter “Motion”). J3 served the Motion on November 14, 2011. West Penn served its Answer on December 5, 2011 along with a West Penn Cross-Motion for Summary Judgment. By Order dated December 8, 2011, the Presiding Officer revised the Scheduling Order to allow J3 time to answer West Penn’s Cross-Motion.

2. In Section III (beginning on page 2) of its Cross-Motion, West Penn argues that J3’s Motion must be denied based on West Penn’s assertion that the procurement was conducted according to approved Commission procedures coupled with the Commission’s approval of the

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bid results. These assertions go to the question of whether error occurred during the evaluation process.

3. In Section III (beginning on page 3) and Section IV of the Cross-Motion, West Penn asserts, without analysis, an estoppel-based affirmative defense to the Complaint stating that West Penn “fully, reasonably and justifiably relied on the Commission’s approval of the bids through the Secretarial Letter when West Penn purchased the SPAECS.” It appears that West Penn contends that even if error occurred in the evaluation process, West Penn’s reliance on the Commission’s approval precludes the Commission from granting the relief requested by J3.

4. In that West Penn addresses both error and the defense of reliance in its Cross-Motion, both issues are addressed herein.¹

III. Standard of Review for Summary Judgment Motions

5. The Commission’s standard of review for summary judgment motions, set forth at 52 Pa. Code §102(d), has been cited by the parties in the Motion and Cross Motion. For the purposes of the Cross-Motion, all doubts as to the existence of a genuine issue of material fact must be resolved against West Penn, the moving party. *See Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979)

IV. Factual Background

6. J3 incorporates by reference the Factual Background from Section III of the Motion into this Answer.

¹ It is not clear from West Penn’s Cross-Motion if West Penn is seeking Summary Judgment based on both: (1) West Penn’s belief that no evaluation error occurred, and (2) the defense of reliance. Hence, J3 responds to both issues in this Answer.

V. Argument

a. Error Occurred During Proposal Evaluation Which Deprived J3 of Selection

7. J3's Complaint is based on West Penn's failure to follow the rules set forth in its Request for Proposals (RFP) for Solar Photovoltaic Alternate Energy Credits (SPAECs). Had the evaluation error not occurred, J3's two lowest priced tranches would have been selected resulting in a lower total cost for the Target Quantity.

8. In Section IV.a of its Motion, J3 set forth a detailed straightforward analysis of the RFP rules that were conveyed to the bidders and J3 explained how those rules should have been applied to the Bids received by West Penn during evaluation. Importantly, J3 has never suggested that the evaluators should have ignored the RFP rules but rather that the evaluators were required to follow the rules that were approved by the Commission and conveyed to the bidders. If West Penn did not want to follow the RFP rules, then West Penn had a duty to notify all bidders and give them an opportunity to respond to the changes. J3 incorporates the analysis from Section IV.a of the Motion into this Answer.

9. In neither its Answer to J3's Motion nor its Cross-Motion does West Penn provide an argument with citation to RFP provisions and/or supplemental guidance that aligns with the aggregation approach used during evaluation and contradicts J3's analysis. The reason for this is that the evaluation approach did not align with the RFP rules.

10. Instead of an RFP-based analysis, West Penn's discussion of error is largely conclusory. The discussion contains a recitation of bid day events, the process used by evaluators, the functions of the IPM and Commission, and credentials of the IPM, all leading to West Penn's assessment that the evaluation must have been proper. None of this discussion goes to the issue of whether actual error occurred.

11. West Penn also supports its position on error by claiming there was no discrimination in bid evaluation, mischaracterizing several arguments contained in J3's Motion, and providing West Penn's understanding of "All-or-Nothing." Each point is addressed below.

12. In Section VI of West Penn's Answer to J3's Motion (Pages 6&8), West Penn states that there was no discrimination in the bid evaluation and that all bidders were treated identically in accordance with Commission-approved RFP rules. The central issue in this matter is whether West Penn correctly followed the Commission-approved rules. J3 has set forth an analysis in its Motion that demonstrates that the rules were not followed. However, here West Penn is suggesting that application of the same process to all bidders somehow obviates the error in the evaluation of J3's Bids.

West Penn's suggestion is defective for several reasons. First, the RFP rules approved by the Commission were required to be applied correctly to all bidders in order to arrive at the slate of bids that minimize the overall cost of satisfying the Target Quantity of five Tranches taking into account All-or-Nothing and Up-To Bids. *See J3-SJM Public Exhibit 1, Articles 1.4 and 7.10*. Second, non-selection of J3's two lowest priced Bids due to evaluation error resulted in a higher overall cost to West Penn which will be passed on to the default service ratepayers and therefore J3's non-selection is prejudicial to the default service ratepayers. Third, as can be seen from the Confidential Version of J3's Motion and supporting Exhibits, J3 was the only offeror prejudiced by the error. All other offerors, including those who bid like J3, either were selected by West Penn for the award of tranches they deserved had the evaluation been conducted properly, were not selected when they did not deserve to be selected, or were selected for tranches that they did not deserve assuming a proper evaluation. *See J3 Confidential Summary Judgment Motion ¶¶ 39-42 and J3-SJM Confidential Exhibits 2&3.*

13. In Section VII of West Penn's Answer to J3's Motion (Pages 8&9), West Penn mischaracterizes the discussion found in ¶35 of J3's Motion and argues that J3 is saying the evaluators should have simply ignored the All-or-Nothing designation in bids. West Penn's misinterprets ¶35.

The RFP was structured so that each Bidform Spreadsheet was a single Bid and "All-or-Nothing" applied at the Bid level rather than to all Bids submitted with Part 2 proposals. *See J3 Summary Judgment Motion, Part IV.a.* In ¶35 of the Motion, J3 explains that for single tranche offers, the All-or-Nothing and Up-To designations arrive at the same result - each spreadsheet is a Bid for a single 200 SPAEC Tranche at the specified price. J3 also noted that the All-or-Nothing result is clear and straightforward since the Bid is offering one tranche on an All-or-Nothing basis but that the Up-To result is implicit because the RFP did not allow bidders to bid on fractions of a tranche. *See J3 Motion ¶35.*

West Penn argues that if it was clear to J3 that "Up-To" must be for the full tranche, then J3 should have marked its single tranche bids as "Up-To" bids. Contrary to West Penn's argument, J3 never said or implied that it was clear from the RFP that a bidder should bid single tranches on an Up-To basis. In fact, the implied Up-To result was a point first mentioned by West Penn in its Answer to the Formal Complaint. In the Complaint, J3 averred that it would make no sense for a bidder to offer linked bids with increasing prices if the bids were to be averaged for evaluation purposes because if selected, the payout would equal the average price. Hence, the bidder would simply have bid the average price rather than staged pricing. *See J3 Formal Complaint Attachment 1, ¶ 14.* West Penn countered by saying that during evaluation, the IPM considered the point but also considered the inverse question, i.e. why would a bidder offer a single block as an All-or-Nothing bid? Per West Penn's Answer, the IPM speculated that

the bidder might be concerned with winning less than a single block which the IPM found to be a reasonable but unnecessary concern because the RFP allowed for the award of only full blocks. *See West Penn Answer to Formal Complaint ¶ 4-14.*² Hence, in ¶35 of the Motion, J3 was agreeing with the IPM's assessment that for a single tranche bid, Up-To arrives at a bid for the entire tranche albeit in a way that is implicit from, but not clearly expressed in, the RFP.

For a bidder who properly understood the RFP rules and viewed each Bidform Spreadsheet as an individual Bid and All-Or-Nothing applying at the Bid level, selection of All-or-Nothing on a single tranche Bidform Spreadsheet made logical sense. Up-To worked as well but with more round-about logic.

Furthermore, as J3 illustrates in ¶ 46 of its Motion, the Up-To safe harbor is a happenstance of single tranche bids and not an RFP rule that can be cited by West Penn. So while Up-To might protect the single tranche bidder from an evaluation error, it does not work in the 2x2 scenario discussed in ¶ 46 as well as other bidding strategies allowed by the RFP. *See J3 Summary Judgment Motion ¶46. See also J3-SJM Public Exhibit 1, Article 5.3; Public Exhibit 4, Q&A 46; and, Public Exhibit 5, Q&As 47, 59, and 61 (Related to Alternate Bidding Strategies permitted by the RFP).* For it to be a rule enforceable against bidders, it would have to apply to all possible pricing strategies that the RFP allowed offerors to model in their bids.

14. In Section VIII of West Penn's Answer to J3's Motion (Pages 9 and 10), West Penn claims J3 is arguing that West Penn's guidance on how to submit proposals was misleading. To the contrary, J3 believes the guidance was clear and had it been properly applied

² In J3's Second Set of Interrogatories served on August 26, 2011, Interrogatory 8 asked if West Penn could articulate a business reason for a bidder to propose different pricing strategies for the 4 tranches beginning June 1, 2011, if the bidder knew that the pricing would be averaged for evaluation purposes. West Penn's response did not articulate a reason. *See Exhibit 1 to this Answer.*

to the submitted bids, J3's two-lowest priced Bids would have been selected. That is why summary judgment for J3 is warranted in this matter.

West Penn focuses on certain references in J3's Motion and misinterprets J3's analysis going to the totality of the RFP and guidance. The RFP defined a flexible bidding process that allowed offerors to submit Part 2 proposals containing a Bid, or Bids with different pricing strategies if the offeror so chose, where the All-Or-Nothing and Up-To concept applied at the Bid level rather than the Part 2 proposal as a whole. *See J3 Summary Judgment Motion, Part IV.a.* J3 is arguing that the evaluators did not understand West Penn's RFP and supplemental guidance and therefore misapplied the rules when they conducted the evaluation process.³ If West Penn wanted to change the rules once evaluation began, it had a duty to advise offerors and give them an opportunity to adjust their bids accordingly.

In Section VIII and XI of the Answer to the Motion (Page 10), West Penn notes that J3 (and other bidders) had opportunities to ask clarifying questions about the RFP and their offers. The underlying presumption in these statements is that the offerors had reason to ask questions. However, based on the clear rules set forth in the RFP, offerors had no reason to suspect that the evaluators would aggregate individual bids marked as All-Or-Nothing and therefore no reason to ask questions.⁴

15. In Section VI of the Answer to the Motion (Page 8), West Penn makes the statement:

³ Although not necessarily indicative of error in the evaluation process, evidence in the record demonstrates that West Penn was not completely familiar with the provisions of its own RFP. *See J3-SJM Public Exhibit 2.*

⁴ In J3's Second Set of Interrogatories, Interrogatory 3 asked if 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. West Penn responded no. *See Exhibit 2 to this Answer.*

According to the RFP rules, then “All-or-Nothing” offers are exactly what the rules say: the Company must take the entire supply offered or take nothing which is how the bids for all bidders who made the “All-or-Nothing” designation on their bidform spreadsheets were evaluated.

As explained in J3’s Motion, based on the plain reading of the rules set forth in West Penn’s RFP, each Bidform Spreadsheet is a Bid, and All-Or-Nothing applies at the Bid level rather than the Part 2 proposal level as a whole. Aggregation of Bids was not mentioned in nor contemplated by the RFP.

It is useful to review the background for the All-Or-Nothing and Up-To concepts embodied in the West Penn RFP. West Penn borrowed from a format used for SPAEC solicitations conducted by Metropolitan Edison Company (Met-Ed) and Pennelec Electric Company (Pennelec). West Penn’s petition to the Commission for modification of its default service plan noted that it planned to use procurement documents similar to the documents approved by the Commission in Docket Nos. P-2009-2093035 and P-2009-2093054 which correspond to the Met-Ed and Pennelec RFP. *See Answer to Formal Complaint, Attachment 3 ¶¶ 10, 11 and 15, Footnote 2.*

The Met-Ed/Pennelec RFP was structured such that Bidders would submit a single Bid Submittal Sheet (a single Bid) that: (1) identified the maximum number of tranches bid, (2) offered a single price per SPAEC for all tranches, and (3) made an election as to whether the offer was on an All-Or-Nothing or Up-To Basis. All-Or-Nothing/Up-To applied to the single Bid. The Part 2 Bid Submittal Sheet from Appendix 8, Page 12 of the Met-Ed/Pennelec RFP is reproduced below:⁵

⁵ Appendix 8 to the Met-Ed/Pennelec RFP is available on First Energy’s SREC RFP Website: [https://www.firstenergycorp.com/content/dam/upp/files/pa/srec/solar/archive/Part_II_Revised_\(LOCKED\)_1-6-10.pdf](https://www.firstenergycorp.com/content/dam/upp/files/pa/srec/solar/archive/Part_II_Revised_(LOCKED)_1-6-10.pdf)

Name of Bidder

5. Bid Submittal Sheet

Maximum Number of Tranches Offered by Bidder (Maximum of 15): _____

Bid Price in \$/SPAEC (rounded to the nearest cent): _____

(SPAEC is Solar Photovoltaic Alternative Energy Credit)

Is this an All-or Nothing Bid:

Yes, it is all-or-nothing.

No, this bid applies to any quantity up to the maximum stated quantity.

Signature of Officer

Date

The All-Or-Nothing/Up-To instruction in Article V.2.8 of the Met-Ed/Pennelec RFP (reproduced below) was effectively identical to the language used in Article 7.10 of the West Penn RFP:

Recognizing that the magnitude of SPAEC sales to the Companies 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).⁶

⁶ The Met-Ed/Pennelec RFP Document is available on First Energy’s SREC RFP Website: [https://www.firstenergycorp.com/content/dam/upp/files/pa/srec/solar/archive/\(63988900\)_\(1\)_Met-Ed_-_Penelec_Solar_RFP_Rules.pdf](https://www.firstenergycorp.com/content/dam/upp/files/pa/srec/solar/archive/(63988900)_(1)_Met-Ed_-_Penelec_Solar_RFP_Rules.pdf)

In its RFP, West Penn substantially modified the Part 2 proposal requirements when compared to the Met-Ed/Pennelec RFP. In addition to evaluating bids on a discounted average term price basis, the RFP allowed offerors to submit Part 2 proposals containing alternate pricing strategies (i.e. Bids) for the Target Quantity using multiple Bidform Spreadsheets where each spreadsheet contains an All-Or-Nothing/Up-To election. This flexibility is illustrated in West Penn's response to Questions 47 and 61:

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.

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 J3-SJM Public Exhibit 5, Q&A 47 and 61.

Notwithstanding the changes, the West Penn RFP retained the language and concept that All-Or-Nothing/Up-To applied to the individual Bid and nothing in the RFP suggests that the concept applied to Part 2 proposals as a whole. As J3 has explained herein and in the Motion, since the RFP allowed alternate offer strategies, the RFP could only work if All-Or-Nothing and Up-To applies at the Bid (Bidform Spreadsheet) level. Perhaps it was due to the complexity of the modifications made by West Penn to the Met-Ed/Pennelec Part 2 format, but it is clear that

West Penn's evaluators did not understand their own RFP and supplemental guidance when they conducted the evaluation resulting in the error that deprived J3 of selection.

b. West Penn's Reliance Defense is Both Untimely and Unwarranted

16. In Section IV of the Cross-Motion West Penn asserts the estoppel-based defense of justifiable reliance as a defense to J3's Complaint:

Following the Commission's approval of the bid procurement, West Penn Purchased the SPAECS. West Penn fully, reasonably and justifiably relied on the Commission's approval of the bids through the Secretarial letter when West Penn purchased the SPAECS.

Per the Commission's Regulations at 52 Pa.Code § 5.62(b), an affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of "New Matter." Facts which would support this defense (if any) would have been known to West Penn at the time West Penn filed the Answer to J3's Formal Complaint on February 2, 1011. The defense was not raised in the Answer. Accordingly, West Penn's assertion of the defense should now be deemed untimely and dismissed. Timeliness notwithstanding, West Penn's reliance defense is unwarranted.

17. Although West Penn provides no analysis in Section IV to support or explain the defense, it appears West Penn asserts that even if error occurred during evaluation that deprived J3 of selection, the Commission is estopped from granting the relief requested by J3 because West Penn relied on the December 10, 2010 Secretarial Letter approving the RFP results. This logic suffers from multiple defects as discussed below.

18. The doctrine of estoppel may be applied to a Commonwealth agency in cases in which: (1) it has intentionally or negligently misrepresented some material fact, (2) knowing, or having reason to know, that another person will justifiably rely on that misrepresentation, and (3) where that other person has been induced to act to his detriment because he did justifiably rely

on that misrepresentation. See Cicchiello v. Bloomsburg Zoning Hearing Board and Town of Bloomsburg, 617 A.2d 835, 151 Pa. Commw. 506 (1992); Hauptmann v. Department of Transportation, 429 A.2d 1207, 59 Pa. Commonwealth Ct. 277, (1981). The one who asserts estoppel must establish the essential elements by clear, precise and unequivocal evidence. See Commonwealth of Pennsylvania v. Venesky, 516 A.2d 445, 101 Pa. Commw. 456 (1986).

19. West Penn has not and cannot demonstrate that the Commission intentionally or negligently misrepresented material facts in its approval of the RFP results. The Commission's December 10, 2010 letter relied on information and bid evaluation results provided by the West Penn evaluators. Hence, there could be no intentional or negligent misrepresentation of material facts by the Commission and West Penn's reliance defense fails on this point alone.⁷

20. "Clean hands" is also required for assertion of an estoppel defense. See In re Land use Appeal of Cooke, 2009 Pa. Commw. Unpub LEXIS 140 ("The Township has gleaned these additional requirements from vested rights and variance by estoppel cases, rather than equitable estoppel cases. Nevertheless, it is clear that theories grounded in equity require a moving party to have clean hands."); Strunk v. Zoning Hearing Board, 684 A.2d 682, 1996 Pa. Commw. LEXIS 457 ("To invoke the doctrine of equitable estoppel, Owners must also show "clean hands," which they have not done."). West Penn, as owner of the RFP, was in the best position to know that an error occurred during bid evaluation and was required to report the correct results to the Commission. Therefore, reliance on Commission approval of results that were not in accordance with the RFP does not qualify as clean hands and was not justifiable on West Penn's part.

⁷ J3 notes that the Commission letter couched approval on the presumption that the procurement was conducted in accordance with the RFP rules.

21. To the extent West Penn claims detriment in reliance on the Commission's approval, West Penn had multiple opportunities within its own power to avoid the detriment. First, West Penn should have understood the terms of the RFP and conveyed those terms to the evaluators. Second, during the bid evaluation process questions arose in the mind of the evaluators about the interpretation of the RFP and bids. Evidence of this is contained in Paragraph 4-14 of West Penn's Answer to the Formal Complaint (discussed in ¶ 13 above) and West Penn's discovery response. *See J3-SJM Confidential Exhibit 4.* This was notice and a second opportunity for West Penn to go back and understand the RFP rules before results were presented to the Commission. Finally, after J3 filed the Formal Complaint on January 10, 2011, which laid out the proper interpretation of the RFP, West Penn could have minimized impact to all parties by notifying the Commission of a mistake. Although West Penn may have executed the 10-year contracts in December 2010, the term of the contracts did not begin until June 2011. *See J3-SJM Public Exhibit 1, Article 3.2; Answer to Formal Complaint, Attachment 3, Appendix 1, (SPAEC Purchase and Sale Agreement), Article 2.1 "Term."* Article 9.2 of the SPAEC Purchase and Sale Agreement approved by the Commission permitted West Penn to terminate the agreement if any permits or authorizations are amended or revoked which have the effect of changing the recovery of costs. *See Answer to Formal Complaint, Attachment 3, Appendix 1, Article 9.2 "Recovery of SPAEC Costs."* Had West Penn notified the Commission of the mistake and requested an amendment to the approval, West Penn could have taken quick action to avoid or minimize impact to all parties including itself. Accordingly, to the extent that West Penn suffered any detriment as a result of reliance on the Commission's approval, it was self imposed and is not a basis for an estoppel defense.

IV. CONCLUSION

22. It is not clear if West Penn's Cross-Motion seeks summary judgment on the issue of error. If so, West Penn has offered conclusions without any fact-based analysis or supporting evidence to contradict the analysis and evidence contained in J3's Motion. Accordingly, under the Commission's standard for Summary Judgment, West Penn has not met its burden and the Cross-Motion on this issue should be denied and J3's Motion should be granted.

23. On the issue of justifiable reliance, in its Cross-Motion West Penn has asserted an affirmative defense that is not properly pleaded and untimely under Commission's rules and should therefore be dismissed. Furthermore, West Penn has not and cannot present the facts that are needed to support an estoppel-based reliance defense and any detriment that West Penn may suffer as a result of the evaluation error is its own doing. Accordingly, if accepted as timely by the Commission, West Penn's request for summary judgment on the point should be denied.

Respectfully Submitted

Dated: December 21, 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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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2011, I served the foregoing J3 Energy Group, Inc. Answer to Cross-Motion for Summary Judgment of West Penn Power Company by electronic mail and FEDEX delivery 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

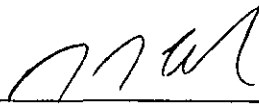
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SECRETARY'S BUREAU

Date: December 21, 2011

Attorney for Complainant



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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. 2.8

Are you able to articulate a business reason as to why a bidder would propose different pricing for the 4 tranches beginning June 1, 2011, if the bidder knew that the pricing would be averaged for evaluation purposes?

RESPONSE:

It is up to each bidder as to how they wish to respond to the RFP in accordance with the RFP rules. After the bids are submitted Boston Pacific and West Penn Power evaluated those bids in accordance with the RFP rules and selected recommended winners for the Pennsylvania Public Utility Commission's review and approval.

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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.

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

STONEWOOD DRIVE
L PARK PA 15102

From: THOMAS J. RUSSIAL Phone (412) 389-2482

Address: 198 STONEWOOD DRIVE

City: BETHEL PARK State PA ZIP 15102

To: ROSEMARY CHIAVETTA Phone ()

Company: PENNSYLVANIA PUBLIC UTILITY COMMISSION

Address: COMMONWEALTH KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET

City: HARRISBURG, PA State PA ZIP 17120

HOLD at Location
FedEx Office address REQUIRED.

Part # 156297-435

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1 of 1

From: Rosemary Chiavetta, Secretary
PA PUBLIC UTILITY COMMISSION
400 NORTH ST
KEYSTONE BUILDING 2ND FLOOR
HARRISBURG, PA 17120

Dest:

Ref: INV: PO:

(9612019) 4686991 15115107

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ROSEMARY CHIAVETTA, SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING, 2ND FLOOR
400 NORTH STREET
HARRISBURG, PA 17120

TO: CHIAVETTA, R. PUC (CHIAVETTA)

Agency: PUC

Floor:

External Carrier: FEDEX GND

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