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April 4, 2014

**VIA ELECTRONIC FILING**

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

**Re: J3 Energy Group, Inc. v. West Penn Power Company and UGI Development Company  
PA PUC Complaint Docket No. C-2011-2219920  
Reply to New Matter of UGI Development Company**

Dear Secretary Chiavetta:

Enclosed for filing is J3 Energy Group, Inc.'s "*Reply to New Matter of UGI Development Company.*" The Reply has been served today as indicated on the enclosed Certificate of Service.

Sincerely,



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

Enclosures

cc: Honorable Elizabeth H. Barnes

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>J3 ENERGY GROUP, INC.</b>	)	
	)	
v.	)	
	)	
<b>WEST PENN POWER COMPANY</b>	)	<b>Complaint Docket No. C-2011-2219920</b>
	)	
And	)	
	)	
<b>UGI DEVELOPMENT COMPANY</b>	)	
<b>Indispensable Party</b>	)	

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**J3 ENERGY GROUP, INC., REPLY TO NEW MATTER  
OF UGI DEVELOPMENT COMPANY**

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Pursuant to 5 Pa. Code §5.63, J3 Energy Group, Inc. (J3 or Complainant) hereby files its Reply to the New Matter of UGI Development Company (UGI Development) filed by UGI Development on March 17, 2014. UGI Development's Answer and New Matter contains an introductory statement to which no responsive pleading is required. To the extent a responsive pleading is deemed required, any averments contained in the Introduction are denied.

**REPLY TO NEW MATTER AND AFFIRMATIVE DEFENSES**<sup>1</sup>

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. It is admitted that UGI Development owns unregulated electric generation assets in Pennsylvania including the Conemaugh Power Station

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<sup>1</sup> UGI Development's New Matter is found in Section III of its Answer and New Matter beginning on page 8. The numbered paragraphs in this Reply correspond to the numbered paragraphs in the New Matter.

and has an interest in the Crayola Solar Park. Complainant is without sufficient knowledge or information to form a belief as to the specific nature or number of UGI Development's solar project interests including projects under development and therefore all averments in paragraph 4 related to solar projects not expressly admitted are denied.

5. Admitted in part and denied in part. It is admitted that West Penn issued a Commission-approved Request for Proposals (RFP) for Solar Photovoltaic Alternative Energy Credits (SPAECs) on September 24, 2010 which was revised on November 3, 2010 - such RFP being the best evidence of its content. To the extent paragraph 5 interprets the RFP, the interpretations are denied. Answering further, the term "Tranche Target" was defined in Article 1.2 of the RFP to mean: *"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)." The term "Target Quantity" was defined in RFP Article 1.1 as follows: "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."*

6. Admitted in part and denied in part. It is admitted that UGI Development submitted bids for the four tranches for the ten-year period beginning June 1, 2011, and ending on May 31, 2021. Complainant is without sufficient knowledge or information to form a belief as to whether UGI Development's submission was in accordance with the rules established by the Commission-approved RFP and therefore averments in paragraph 6 not expressly admitted are denied.

7. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 7 and therefore paragraph 7 is denied.

8. Admitted in part and denied in part. It is admitted that Boston Pacific Company, Inc., was identified in the RFP as the Independent Procurement Manager. To the extent that paragraph 8 asserts that Boston Pacific Company independently managed the procurement and/or that Boston Pacific Company's role in the procurement in any way obviates or supersedes the errors in evaluation of J3's bids, paragraph 8 is denied.

9. Admitted in part and denied in part. It is admitted that a member of the Commission's staff was present in West Penn's Greensburg facility during some portion of time on bid day. It is denied that the staff member was present for and monitored the entire bid receipt, evaluation and selection process. To the extent that paragraph 9 asserts that the staff member's role as Commission representative or his presence in Greensburg any way obviates or supersedes the errors in evaluation of J3's bids, paragraph 9 is denied.

10. Admitted.

11. Admitted in part and denied in part. It is admitted that on December 10, 2010, the Commission issued a Secretarial letter approving the bid results such letter being the best evidence of its content. To the extent paragraph 11 interprets the letter, the interpretations are denied.

12. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 12 and therefore paragraph 12 is denied.

13. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 13 and therefore paragraph 13 is denied.

14. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 14 and therefore paragraph 14 is denied.

15. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 15 and therefore paragraph 15 is denied.

16. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 16 and therefore paragraph 16 is denied.

Answering further, UGI Development's Petition for Reconsideration and Clarification filed with the Commission on November 15, 2013 sought dismissal of J3's Complaint based on UGI Development's alleged reliance upon the Commission's approval of the RFP results – the same reasons alleged in paragraph 16 of the New Matter. Such relief was denied by the Commission's Order dated February 20, 2014 and hence is not appropriate for consideration on remand.

17. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 17 and therefore paragraph 17 is denied.

18. Paragraph 18 contains legal conclusions and as such no responsive pleading is required. To the extent a responsive pleading is deemed necessary, Paragraph 18 is denied.

19. Denied. J3's Complaint is authorized by Pennsylvania Law and Commission Regulation. Answering further, UGI Development's Petition for Reconsideration and Clarification sought dismissal of J3's Complaint for the same reasons alleged in paragraph 19 of the New Matter. Such relief was denied by the Commission's Order dated February 20, 2014 and hence is not appropriate for consideration on remand.

20. Paragraph 20 is an interpretation of a paragraph in a Commission Rulemaking Order – such Order being the best evidence of its content. To the extent a responsive pleading is

deemed required, Paragraph 20 is denied. Answering further, Complainant states that the Complaint is authorized by Pennsylvania Law and Commission Regulation. Additionally, UGI Development's Petition for Reconsideration and Clarification sought dismissal of J3's Complaint based on the same issues regarding the appropriateness of the Complaint and the Commission's authority as set forth in paragraph 20 of the New Matter. Such relief was denied by the Commission's Order dated February 20, 2014 and hence is not appropriate for consideration on remand.

21. Paragraph 21 is an interpretation of Article 6 of the RFP - such Article being the best evidence of its content. To the extent a responsive pleading is deemed required, Paragraph 21 is denied. Answering further, Complainant passed the RFP qualification criteria.

22. Admitted in part and denied in part. It is admitted that J3's Complaint requested re-evaluation of J3's four bids as the individual offers that were proposed and requested revocation of the Commission's approval of the RFP results until such time West Penn committed to award J3 the appropriate tranches – such Complaint being the best evidence of its content. To the extent UGI Development's averments in Paragraph 22 interpret the Complaint, they are denied. Answering further, during the course of the proceeding before the Presiding Officer it became clear that Complainant had submitted the two lowest priced bids, and hence, Complainant was entitled to a contract award for two tranches.

23. Admitted.

24. Paragraph 24 contains legal conclusions and as such no responsive pleading is required. To the extent a responsive pleading is deemed necessary, Paragraph 24 is denied.

25. Paragraph 25 contains legal conclusions and as such no responsive pleading is required. To the extent a responsive pleading is deemed necessary, Paragraph 25 is denied.

26. Admitted in part and denied in part. It is admitted that Article 10 of the SPAEC Purchase and Sales Agreement contains a list of events identified as events of default including “voluntary bankruptcy, insolvency or similar proceeding” – such Article being the best evidence of its content. To the extent paragraph 26 interprets the Article, the interpretations are denied. Answering further, Complainant does not have a Purchase and Sales Agreement with West Penn and in fact was improperly denied such an Agreement for two tranches in 2010 long before Complainant filed a bankruptcy petition.

27. Paragraph 27 contains legal conclusions and as such no responsive pleading is required. To the extent a responsive pleading is deemed necessary, Paragraph 27 is denied.

28. Paragraph 28 contains legal conclusions and as such no responsive pleading is required. To the extent a responsive pleading is deemed necessary, Paragraph 28 is denied.

29. Paragraph 29 contains legal conclusions and as such no responsive pleading is required. To the extent a responsive pleading is deemed necessary, Paragraph 29 is denied.

30. Denied. Answering further, Paragraph 30 contains a mischaracterization of Complainant’s “Answer to Petitions of West Penn Power Company for Reconsideration and UGI Development for Reconsideration and Clarification” – such Answer being the best evidence of its content. The Complaint sought award of a contract for the appropriate number of tranches to J3. The Complaint did not seek redress against UGI Development. In the Answer to the Petitions, Complainant explained why, based on the facts and law, granting the requested relief to Complainant did not satisfy the standard for determining UGI Development to be an indispensable party. Attempted termination or modification of the West Penn/UGI Development Purchase and Sales Agreement would be a completely discretionary act on West Penn’s part subject to whatever legal defenses would be available to UGI Development. The Commission

disagreed with Complainant's arguments and in turn found UGI Development to be indispensable and joinder necessary.

31. Admitted as stated. The Complaint did not seek relief from UGI Development. On remand, Complainant will follow the Commission's direction to the ALJ and Parties to address the potential remedies that the Commission has jurisdiction to provide to J3 Energy if the Commission were to sustain the Complaint. To the extent not admitted, paragraph 31 is denied.

32. Admitted as stated. Complainant has not requested that the Commission modify, amend, or terminate the existing contract between West Penn and UGI Development. On remand, Complainant will follow the Commission's direction to the ALJ and Parties to address the potential remedies that the Commission has jurisdiction to provide to J3 Energy if the Commission were to sustain the Complaint. To the extent not admitted, paragraph 32 is denied.

33. Denied. Complainant has sought and continues to seek award of a contract for the number of tranches that should have been awarded to J3 in 2010. Complainant has not sought monetary damages against West Penn.

34. Paragraph 34 contains legal conclusions and as such no responsive pleading is required. To the extent a responsive pleading is deemed necessary, Paragraph 34 is denied.

35. Admitted in part and denied in part. It is admitted that the proceeding was initiated on January 10, 2010. Complainant is without sufficient knowledge or information to form a belief as to the truth of UGI Development's averment that it had no notice or other knowledge of the proceeding until it was served with a copy of the Commission's October 31, 2013 Order. Therefore, such averment is denied.

36. Denied. Answering further, UGI Development's Petition for Reconsideration and Clarification sought dismissal of J3's Complaint based on Complainant's alleged failure to join

UGI Development as an indispensable party and the Commission's lack of jurisdiction. Such relief was denied by the Commission's Order dated February 20, 2014 and hence is not appropriate for consideration on remand.

37. Denied. Complainant is without sufficient knowledge or information to form a belief as to the truth of UGI Development's averment that it had no notice of the proceeding and therefore paragraph 37 is denied. Answering further, the existing record below was developed from January 10, 2011 through the date of the Initial Decision on August 17, 2012.

38. Denied. Answering further, UGI Development's Petition for Reconsideration and Clarification sought dismissal of J3's Complaint based on UGI Development's alleged reliance on the Commission's approval of the RFP process and bid results. Such relief was denied by the Commission's Order dated February 20, 2014 and hence is not appropriate for consideration on remand.

WHEREFORE, J3 Energy Group, Inc., for the foregoing reasons, respectfully requests that the Commission dismiss UGI Development's New Matter and Affirmative Defenses and grant such other relief as it deems appropriate.

RESPECTFULLY SUBMITTED




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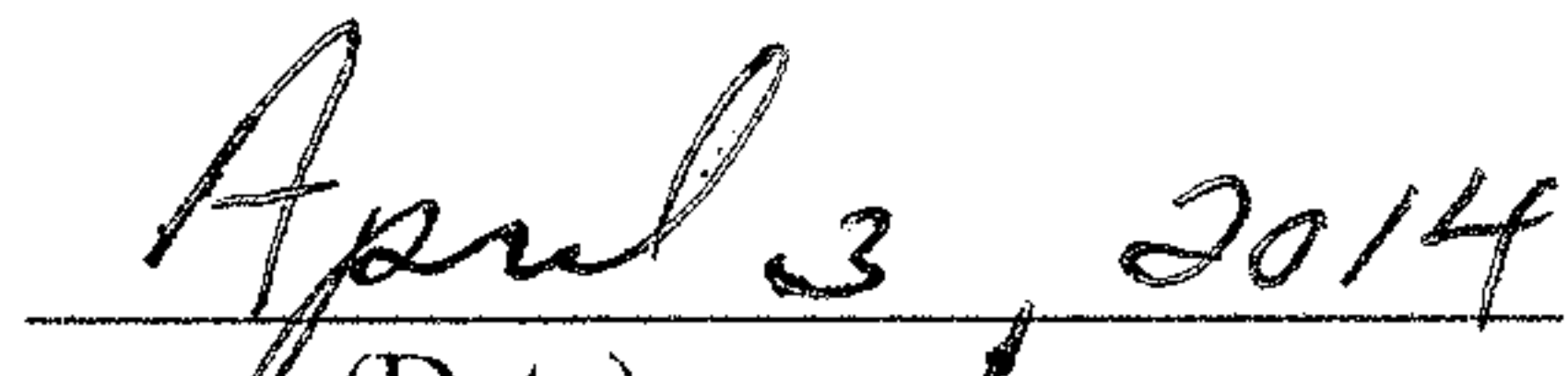
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Date: April 4, 2014

**VERIFICATION**

I, Stephen C. Russial, President of J3 Energy Group, Inc., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Date)

### CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2014, I served a true copy of the foregoing document, "*J3 Energy Group, Inc., Reply to the New Matter of UGI Development Company*" to the individuals listed below by First Class Mail and/or e-mail in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a Party):

<b>First Class Mail and E-Mail</b>	<b>E-Mail</b>
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Date: April 4, 2014

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