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File #: 150887

May 6, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is the Prehearing Memorandum of UGI Development Company in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Wright', is written over the typed name.

Christopher T. Wright

CTW/skr
Enclosures

cc: Certificate of Service
Honorable Elizabeth Barnes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL AND/OR FIRST CLASS MAIL

Thomas J. Russial, Esquire
198 Stonewood Drive
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John L. Munsch, Esquire
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409 N. Second Street, Suite 500
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Date: May 6, 2014



Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

J3 Energy Group, Inc.	:	
	:	Docket No. C-2011-2219920
v.	:	
	:	
West Penn Power Company	:	
	:	
and	:	
	:	
UGI Development Company,	:	
Indispensable Party	:	

**PREHEARING CONFERENCE MEMORANDUM OF
UGI DEVELOPMENT COMPANY**

TO ADMINISTRATIVE LAW JUDGE
ELIZABETH H. BARNES:

AND NOW, comes UGI Development Company (“UGI Development”), by and through its attorneys, and files Prehearing Conference Memorandum in the above-captioned matter pursuant to the Prehearing Conference Order issued on April 8, 2014, and states as follows:

I. PROCEDURAL HISTORY

This matter was initiated by a Formal Complaint filed by J3 Energy Group, Inc. (“J3 Energy”) on January 10, 2011. J3 Energy’s Complaint was not served on UGI Development, nor was UGI Development named a party to the Complaint.

J3 Energy’s Complaint challenges West Penn Power Company’s (“West Penn”) evaluation of bids submitted in response to a Request for Proposal (“RFP”) for solar photovoltaic alternative energy credits (“SPAECs”) dated September 24, 2010, and revised on November 3,

2010. In its Complaint, J3 Energy requests that the Commission grant it the following relief: (1) direct West Penn to separately re-evaluate J3 Energy's four bids and submit the results to the Commission; (2) the Commission revoke its approval of the RFP results if J3 Energy should have been selected for one or more tranche based on the re-evaluation; and (3) West Penn award J3 Energy the appropriate tranche(s) if J3 Energy should have been selected for one or more tranche based on the re-evaluation. (J3 Energy Complaint ¶ 5.)

On August 16, 2012, the Honorable Administrative Law Judge Elizabeth H. Barnes ("ALJ") issued an Initial Decision dismissing the J3 Energy Complaint. J3 Energy filed Exceptions and a Request for Oral Argument on September 4, 2012, and West Penn filed Replies to Exceptions and Opposition to Request for Oral Argument on September 17, 2012.

On October 31, 2013, the Pennsylvania Public Utility Commission ("Commission") issued an Opinion and Order that declined to address the merits of the Complaint and, *sua sponte*, concluded that UGI Development was an indispensable party. The Commission therefore ordered that the Initial Decision be vacated, UGI Development be joined as an indispensable party, a copy of the Order be served on UGI Development, the caption be changed to add UGI Development as a party, UGI Development be added to the service list; and that the proceeding be remanded to the Office of Administrative Law Judge for such further proceedings as may be warranted.

On November 15, 2013, West Penn filed a Petition for Reconsideration, and UGI Development filed a Petition for Reconsideration and Clarification. J3 Energy filed an Answer on November 25, 2013. On February 20, 2014, the Commission entered an Opinion and Order denying the Petition for Reconsideration filed by West Penn and granting, in part, the Petition for Reconsideration filed by UGI Development. The Commission directed the Commission's

Secretary's Bureau to serve the J3 Energy Complaint on UGI Development, and that UGI Development shall have twenty days after the date of service to file an Answer to the Complaint, consistent with 52 Pa. Code § 5.61(a).

The J3 Energy Complaint was served on UGI Development on February 24, 2014. On March 17, 2014, UGI Development filed an Answer and New Matter. On April 4, 2014, J3 Energy filed a Reply to the UGI Development New Matter.

On March 21, 2014, a Notice of an Initial Prehearing Conference in the above referenced matters was issued. The Initial Prehearing Conference is scheduled for May 8, 2014, at 10:00 a.m. before the ALJ. On April 8, 2014, the ALJ issued a Prehearing Conference Order identifying specific issues to be addressed in the Prehearing Conference Memoranda to be submitted by the parties.

II. SERVICE OF DOCUMENTS

UGI Development requests that all documents be served on:

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UGI Development agrees to receive service of documents electronically in this proceeding. Further, to the extent that materials are available electronically, it is requested that copies be served upon Melanie El Atieh at Elatiehm@ugicorp.com and David B. MacGregor at dmacgregor@postschell.com.

UGI Development's attorneys are authorized to accept service on behalf of the Company in this proceeding. UGI Development requests that the Pennsylvania Public Utility Commission

("Commission") and all parties of record serve copies of all discovery requests and answers, correspondence, Commission Orders, and any other documents issued in this proceeding on its attorneys in Harrisburg, Pennsylvania.

III. LITIGATION SCHEDULE

This case was initiated by a Complaint filed by J3 Energy on January 10, 2011. The record in this litigated complaint proceeding has been developed for over three years without any opportunity for UGI Development to participate and assert or otherwise protect its interests. Importantly, to date, UGI Development has not been provided with copies of the existing record and discovery responses, nor has UGI Development had the opportunity to engage in meaningful discovery. As a party to the proceeding, UGI Development should, as a matter of due process, be entitled to fully participate in this proceeding to the full extent permitted by law.

Further, UGI Development notes there were three Protective Orders entered in this case that limit the disclosure of certain information only to signatories to the Protective Orders. It is entirely unknown at this time whether the existing Protective Orders will be acceptable to UGI Development. In any event, UGI Development is not a signatory to any of the Protective Order and, therefore, confidential discovery responses, confidential record evidence and exhibits, and other confidential materials currently cannot be provided to UGI Development.

Until UGI Development has the opportunity to review the entire record and all discovery responses, it is entirely unknown at this time what, if any, additional discovery, motions, testimony, or evidentiary hearings will be required. Simply stated, UGI Development will not know the appropriate and agreeable procedural schedule for this remanded proceeding until it has had the full and fair opportunity to review the existing record and discovery responses. Accordingly, UGI Development respectfully requests that: (1) West Penn and J3 Energy be directed to serve UGI Development with complete copies of the entire record and all discovery

responses; (2) UGI Development be permitted to review the existing record and discovery responses for ninety days from the date the entire record is received (“ninety-day review period”); (3) UGI Development be permitted to engage in discovery and to file dispositive motions, as appropriate and necessary, within the ninety-day review period described above; and (4) a subsequent Prehearing Conference be scheduled after the ninety-day review period to establish an appropriate procedural schedule that ensures all parties have a full and fair opportunity to participate and assert or otherwise protect their respective interests.

IV. RESPONSE TO ISSUES IN THE PREHEARING CONFERENCE ORDER

In Paragraph 7 of the Prehearing Conference Order, the ALJ identified the following topics to be addressed by the parties in their Prehearing Conference Memoranda:

- (a) The possibility for settlement of the proceeding, subject to the Commission’s approval.
- (b) Whether the matter should be decided upon legal briefs, or whether a hearing is necessary.
- (c) If a hearing is required, a procedural schedule will be discussed including the amount of hearing time necessary to dispose of the proceeding.
- (d) Arrangements for the submission of direct testimony of witnesses in writing in advance of the hearing to the extent practicable, and for the submission in advance of hearing of written requests for information which a party contemplates asking another party to present at hearing.
- (e) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including, but not limited to the following:
 - (i) The exchange and acceptance of exhibits proposed to be offered into evidence.
 - (ii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

- (iii) The need for public input hearing(s).
- (iv) The discovery or production of data or other material.

UGI Development will briefly respond below to each of the topics identified in the Prehearing Conference Order.

A. POSSIBILITY OF SETTLEMENT

As explained above, UGI Development has not been provided with copies of the existing record and discovery responses, nor has UGI Development had the opportunity to engage in meaningful discovery. Until UGI Development has the opportunity to review the entire record and all discovery responses and engage in discovery, it is entirely unknown at this time whether a settlement among the parties may be achieved.

UGI Development notes, however, that on or about February 7, 2014, J3 Energy filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Middle District of Pennsylvania, at Docket No. 5:14-00532 JJT, pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101, *et seq.* (See J3 Energy Reply to New Matter, p. 5, ¶ 23.) Pursuant to Rule 9019 of the Federal Rules of Bankruptcy, any settlement reached in this proceeding must be approved by the United States Bankruptcy Court for the Middle District of Pennsylvania after notice and a hearing. *See* Fed. R. Bankr. P. 9019(a). The policy behind Rule 9019, as articulated by several courts, is to prevent debtors from entering into secret agreements and to provide interested creditors the right to weigh and review the proposed settlement and, if necessary, object. *See, e.g., Columbia Gulf Transmission Co. v. Louisiana Natural Gas Pipeline, Inc.*, 1994 WL 693361 at * 3 (E. D. La. 1994); *In re Masters, Inc.*, 141 B.R. 13 (Bankr. E.D.N.Y. 1992) (stating that the “clear purpose of Rule 9019 is to prevent the making of concealed agreements which are unknown to the creditors and unevaluated by the court”). Accordingly,

any settlement reached among the parties to this proceeding must first be approved by the Bankruptcy Court after notice and a hearing.

B. WHETHER THE MATTER SHOULD BE DECIDED ON BRIEFS

As explained above, UGI Development has not been provided with copies of the existing record and discovery responses, nor has UGI Development had the opportunity to engage in meaningful discovery. Until UGI Development has the opportunity to review the entire record and all discovery responses and engage in discovery, it is entirely unknown at this time whether this matter may be decided on briefs or if additional record evidence will be required to ensure that all parties have a full and fair opportunity to participate and assert or otherwise protect their respective interests.

C. PROCEDURAL SCHEDULE IF A HEARING IS REQUIRED

As explained above, UGI Development has not been provided with copies of the existing record and discovery responses, nor has UGI Development had the opportunity to engage in meaningful discovery. Until UGI Development has the opportunity to review the entire record and all discovery responses and engage in discovery, it is entirely unknown at this time what procedural schedule will be required, including whether a hearing will be necessary, to ensure that all parties have a full and fair opportunity to participate and assert or otherwise protect their respective interests.

D. WRITTEN TESTIMONY

As explained above, UGI Development has not been provided with copies of the existing record and discovery responses, nor has UGI Development had the opportunity to engage in meaningful discovery. Until UGI Development has the opportunity to review the entire record and all discovery responses and engage in discovery, it is entirely unknown at this time whether UGI Development can accept the existing record as is or whether additional written testimony

will be required to ensure that all parties have a full and fair opportunity to participate and assert or otherwise protect their respective interests.

E. OTHER MATTERS THAT MAY AID IN EXPEDITING THIS PROCEEDING

As explained above, UGI Development has not been provided with copies of the existing record and discovery responses, nor has UGI Development had the opportunity to engage in meaningful discovery. Until UGI Development has the opportunity to review the entire record and all discovery responses and engage in discovery, it is entirely unknown at this time what, if any, additional discovery, motions, testimony, or evidentiary hearings will be required to ensure that all parties have a full and fair opportunity to participate and assert or otherwise protect their respective interests. However, UGI Development notes that it does not intend to unduly delay this proceeding.

In an effort to avoid unduly delaying this proceeding, UGI Development respectfully requests that it be permitted ninety days from the date of receipt to review the entire record and all discovery responses. UGI Development believes that its requested ninety-day review period is both reasonable and equitable given that the other parties have fully participated and developed the record for over three years. The requested ninety-day review period will allow UGI Development the opportunity to fully review the record and discovery responses, engage in discovery, and file dispositive motions as necessary and appropriate, while at the same time not unduly delaying the resolution of this proceeding.

UGI Development also notes that there were three Protective Orders entered in this case that limit the disclosure of certain information only to signatories to the Protective Orders. It is entirely unknown at this time whether the existing Protective Orders will be acceptable to UGI Development. UGI Development therefore requests that: (1) the Protective Orders be served on

UGI Development; (2) UGI Development be provided with the opportunity to review, accept, or object the Protective Order; and (3) if necessary, UGI Development be provided with the opportunity to negotiate a new Protective Order that is mutually acceptable to all parties. UGI Development submits that the prompt resolution of the scope of an appropriate Protective Order will facilitate expediting this proceeding.

UGI Development requests that a subsequent Prehearing Conference be scheduled after the ninety-day review period to establish an appropriate procedural schedule, including any measures that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice.

V. CONCLUSION

For the above-stated reasons, UGI Development submits that until it has the opportunity to review the entire record and all discovery responses, it is entirely unknown at this time what, if any, additional discovery, motions, testimony, or evidentiary hearings will be required to ensure that all parties have a full and fair opportunity to participate and assert or otherwise protect their respective interests. Therefore, UGI Development respectfully requests that the Honorable Administrative Law Judge Elizabeth H Barnes adopt a prehearing order that:

- (1) Orders the Protective Orders to be served on UGI Development, and that UGI Development be provided with the opportunity to review, accept, or object the Protective Order, and, if necessary, UGI Development be provided with the opportunity to negotiate a new Protective Order that is mutually acceptable to all parties;
- (2) Directs West Penn and J3 Energy to serve UGI Development with complete copies of the entire record and all discovery responses;

- (3) Grants UGI Development ninety days from the date the entire record and all discovery responses are received to review the existing record and discovery responses;
- (4) Permits UGI Development to engage in discovery and to file dispositive motions, as appropriate and necessary, within the ninety days from the receipt of the entire record and all discovery responses; and
- (5) Order that a subsequent Prehearing Conference be scheduled after the ninety-day review period to establish an appropriate procedural schedule that ensures all parties have a full and fair opportunity to participate and assert or otherwise protect their respective interests.

Respectfully submitted,



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Date: May 6, 2014

Counsel for UGI Development Company