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May 6, 2014

VIA E-FILING


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

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

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, enclosed for electronic filing is the Prehearing Memorandum of West Penn Power Company for the Prehearing Conference scheduled for May 8, 2014. Copies have been served as indicated in the attached certificate of service.

Very truly yours,



John F. Povilaitis

JFP/kra
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PREHEARING MEMORANDUM OF
WEST PENN POWER COMPANY
UPON REMAND**

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. §333, and pursuant to the Presiding Officer’s Prehearing Conference Order dated April 8, 2014, West Penn Power Company (“West Penn”) submits the following information:

I. BACKGROUND

On or about January 10, 2011, J3 Energy Group, Inc. (“J3”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) contending that West Penn had incorrectly evaluated the bid that J3 had submitted to supply solar photovoltaic alternative energy credits (“SPAECs”) in response to a competitive Request for Proposals (“RFP”) issued by West Penn. J3’s bid was not selected in the RFP process.

The default service procurement on December 3, 2010, was monitored by the Commission and by an independent third party evaluator as required by Commission regulations. The Commission representative was Paul Diskin, Energy Manager of the Commission's Bureau of Fixed Utility Services. The independent third party evaluator was Boston Pacific Company, Inc. Boston Pacific was chosen as the independent third party evaluator in close consultation with the Commission. Boston Pacific has extensive experience in the independent evaluation and procurement monitoring in Pennsylvania and other states.

Both the Commission representative and the independent third party evaluator were on site during the bid submission process that occurred on December 3, 2010. The independent third party evaluator and the Commission representative concurred that the procurement process was conducted properly.

By Secretarial Letter issued December 10, 2010, at Docket No. P-00072342, the Commission approved the bid results of West Penn's competitive procurement of SPAECs. The Commission stated: "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."

West Penn answered J3's complaint on February 2, 2011, and stated that West Penn's evaluation of J3's SPAEC bid proposal was correct. West Penn stated that it followed its default service procurement process for SPAECs, as approved by the

Commission Order entered September 8, 2010, at Docket No. P-00072342,¹ and that West Penn's competitive bid solicitation was further conducted pursuant to Commission regulations at 52 Pa. Code §54.186.

J3 filed a Motion for Summary Judgment on November 15, 2011, and on December 5, 2011, West Penn filed an Answer and Cross-Motion for Summary Judgment. The parties requested a further amendment to the procedural schedule. On December 8, 2011, a Third Amended Scheduling Order was issued giving J3 until December 22, 2011 to file an answer to the cross-motion for summary judgment, and establishing a new deadline for direct testimony of January 24, 2012. This procedural order was suspended on January 20, 2012, pending a decision regarding the cross-motions for summary judgment.

The ALJ issued an Order Denying Cross Motions for Summary Judgment dated February 1, 2012. The ALJ's Order determined that there were issues of facts to be determined concerning the parties' different views on the procurement process, and that the proceeding could not be concluded based on the parties' pleadings, answers to interrogatories and admissions.

In an Order dated March 1, 2012, the ALJ issued a procedural schedule for written direct and rebuttal testimony, hearings on May 1 and, if necessary, on May 2, and briefs. J3 submitted an application for issuance of subpoena requesting that the ALJ approve a Subpoena directing that a Commission Staff member, Paul Diskin, Bureau

¹ *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period (Petition of Allegheny Power to Modify its Procurement of Solar Alternative Energy Credits and Alternative Energy Credits Under its Default Service Plan)*, P-00072342, Opinion and Order dated September 8, 2010. This Opinion and Order allowed West Penn to acquire solar and non-solar Tier 1 AECs through an RFP process utilizing long-term procurement contracts in lieu of AEC purchases related to spot market supply being acquired solely on the spot market.

Director, Bureau of Technical Utility Services, be available to testify at the hearing scheduled for May 1, 2012. The Subpoena request was approved by the ALJ and a Subpoena was issued dated March 1, 2012.

A hearing was held at the Commission's Harrisburg offices on Tuesday, May 1, 2012, resulting in a transcript of 216 pages, some of which were classified as proprietary as including information covered by Protective Orders.

J3 presented the written direct and written rebuttal testimony of Stephen C. Russial, President and Owner of J3.² Mr. Russial answered questions upon cross examination by West Penn's counsel. J3 also presented the written direct and written rebuttal testimony of Curtis W. McBride, an independent consultant who consults on procurement matters for TechSource, Inc., of Los Alamos, New Mexico. West Penn allowed the admission of Mr. McBride's written testimony by stipulation without cross examination. Mr. McBride also offered oral surrebuttal testimony at the May 1 hearing.

West Penn presented written direct and written rebuttal testimony of Frank Mossburg, Managing Director of Boston Pacific Company, Inc., which was the IPM for West Penn's procurement for SPAECs held December 3, 2010.³ Mr. Mossburg's written direct testimony was identified and admitted as West Penn Statement No. 2, and Mr. Mossburg's written rebuttal testimony was identified and admitted as West Penn Statement No. 2-R. Mr. Mossburg answered questions upon cross examination by J3's counsel. West Penn also presented written direct and written rebuttal testimony of Robert B. Reeping, Manager of Regulated Commodity Sourcing for Allegheny Energy

² Mr. Russial submitted written direct testimony in confidential version and a public (redacted) version. Mr. Russial's written rebuttal testimony was submitted in public form only.

³ The written direct and rebuttal testimony of Mr. Mossburg was submitted in both a confidential version and a public (redacted) version, pursuant the ALJ's Protective Orders.

Service Corporation a subsidiary of West Penn's parent corporation, FirstEnergy Corp. Mr. Reeping's written direct testimony was identified and admitted as West Penn Statement No. 1, and Mr. Reeping's written rebuttal testimony was identified and admitted as West Penn Statement No. 1-R. Mr. Reeping answered questions upon cross examination by J3's counsel.

Mr. Diskin of the Commission Staff appeared at the May 1, 2012, hearing pursuant to subpoena and answered questions upon examination by J3 and by West Penn. Mr. Diskin was represented by counsel from the Commission's Law Bureau.

On August 17, 2012, the ALJ issued an Initial Decision that denied and dismissed the Complaint of J3. J3 filed Exceptions and on September 17, 2012, West Penn filed Replies to Exceptions. On October 31, 2013, the Commission issued its Opinion and Order vacating the I.D. and remanding the proceeding to the Office of Administrative Judge to add UGI Development Company ("UGI Development") as an Indispensable Party. UGI Development was a winning bidder in the 2010 procurement of SPAECs conducted by West Penn.

West Penn and UGI Development filed Petitions for Reconsideration which were denied by the Commission in an Order entered February 20, 2014. UGI Development filed an Answer and New Matter on March 17, 2014, and J3 filed a Reply to New Matter on April 4, 2014.

II. ISSUES

The primary substantive issue in the proceeding appears to be whether or not West Penn, the third party evaluator Boston Pacific, and the Commission representative

misevaluated the bid of J3 on December 3, 2010, that J3 made in response to West Penn's RFP for SPAECs.

A procedural issue is whether or not an additional evidentiary proceeding is necessary or warranted in the proceeding, or in the interest of time and administrative resources, should the proceeding be determined on the basis of the existing record.

III. WITNESSES

West Penn called the following witnesses in the original 2011 proceeding:

- Robert Reeping, Manager Regulated Commodity Sourcing, FirstEnergy Corp.
- Frank Mossburg, Managing Director, Boston Pacific Company

IV. PROPOSED SCHEDULE

West Penn suggests that a hearing schedule is not necessary as the matter may be determined on briefs submitted on the extensive and well-developed existing record of the proceeding. West Penn also suggests that UGI Development enter into a Confidentiality Agreement for any review of the record or discovery. Section 54.186(c)(5) and 69.1807(7) of the Commission's regulations and guidelines require that bid information of parties be kept confidential. West Penn does not oppose the establishment of a period of time during which UGI Development may review the existing record and determine whether it will request an opportunity to submit evidence in this proceeding. At the end of that period, a determination can be made as to whether a hearing is necessary or if the case can be decided on the basis of briefs.

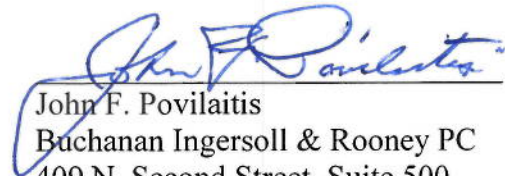
V. OTHER ISSUES

In the Prehearing Conference Order the Presiding Officer requested that the parties comment on several specific items outlined in Paragraph 7 of the Prehearing Order.

- a) Settlement possibilities: West Penn is open to settlement discussions with attorneys and principals.
- b) Procedural schedule: West Penn believes that an extensive, well-developed record already exists for the determination of an Initial Decision by the Presiding Officer and that such decision should be made on the basis of briefs to be submitted by the parties. However, should UGI Development seek an opportunity to submit additional evidence, West Penn would consider and respond to any such request.

Respectfully submitted,

Date: May 6, 2014


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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

J3 ENERGY GROUP, INC.	:	
	:	
v.	:	
	:	
WEST PENN POWER COMPANY	:	Docket No. C-2011-2219920
	:	
and	:	
	:	
UGI DEVELOPMENT COMPANY,	:	
Indispensable Party	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

VIA FIRST CLASS AND ELECTRONIC MAIL

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Date: May 6, 2014



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