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August 6, 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
Motion of J3 Energy Group, Inc., to Dismiss the Objections of UGI Development
Company to J3 Discovery Set 1 and Compel an Answer.**

Dear Secretary Chiavetta:

Enclosed for filing is the Motion of J3 Energy Group, Inc., to Dismiss the Objections of UGI Development Company to J3 Discovery Set 1 and Compel UGI Development Company to Answer. The Motion has been served today as indicated on the enclosed Certificate of Service.

Sincerely,



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

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF J3 ENERGY GROUP, INC., TO DISMISS THE OBJECTIONS OF UGI
DEVELOPMENT COMPANY TO J3 DISCOVERY SET 1 AND COMPEL
UGI DEVELOPMENT COMPANY TO ANSWER**

Pursuant to 52 Pa. Code § 5.342(g), J3 Energy Group, Inc. (J3) hereby files this Motion to Dismiss the Objections of UGID Development Company (UGID) to certain interrogatories included in J3’s Discovery Set 1 propounded upon UGID and to compel UGID to answer the interrogatories.

I. BACKGROUND

By Order dated October 31, 2013, the Pennsylvania Public Utility Commission (Commission) vacated the Initial Decision in this matter, joined *sua sponte* UGID as an indispensable party, and remanded the matter to the Office of Administrative Law Judge for such further proceedings as may be warranted. West Penn Power Company (West Penn) filed a Petition for Reconsideration of the Commission’s Order and UGID Development filed a Petition for Reconsideration and Clarification of the Order. By Order dated February 20, 2014, the Commission denied the Petitions except to clarify UGID’s due process rights on remand. The Commission served J3’s Formal Complaint upon UGID on February 24, 2014. UGID served its

Answer and New Matter on March 17, 2014. J3 served its Reply to UGID's New Matter on April 4, 2014.

On July 17, 2014, J3 served its first discovery set (J3 Discovery Set 1) upon UGID consisting of 22 interrogatories, requests for documents, and requests for admission. UGID served Objections to J3 Discovery Set 1 on July 28, 2014. UGID's Objections are appended hereto as Attachment 1 and consist of general objections to all 22 interrogatories, requests for documents and requests for admission along with specific objections to J3's first three interrogatories. By e-mail dated August 1, 2014, UGID Counsel informed J3 Counsel that UGID would be providing responses to J3 questions 4-22. Hence, this Motion is limited to J3 Interrogatories 1-3.

II. APPLICABLE REGULATIONS

The permissible scope of discovery is set forth in the Commission's regulations at 52 Pa. Code. § 5.321(c):

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Commission regulations at 52 Pa. Code § 5.331(b) direct parties to initiate discovery as early in the proceedings as possible and states that the right to discovery commences when a complaint is filed:

(b) A party shall initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.

III. DISCUSSION

J3's first three interrogatories are set forth below:

1. Please identify all solar photovoltaic energy facilities that are the source(s) of the SPAECS that have been supplied by UGID to West Penn pursuant to the Purchase and Sale Agreement.
2. For each solar photovoltaic energy facility identified in response to Interrogatory Number 1, please describe UGID's financial interest in the facility (if any) including financial interest as an owner, investor or otherwise.
3. With respect to each solar photovoltaic energy facility in which UGID has a financial interest as described in response to Interrogatory Number 2 please state:
 - a. The date that UGID made its final investment decision for the facility.
 - b. UGID's after-tax net present value estimate for the facility at the time UGID made its final investment decision for the facility.
 - c. UGID's after-tax internal rate of return estimate at the time UGID made its final investment decision for the facility.
 - d. If applicable, the date that UGID entered into an agreement with the owner of the Host Site authorizing UGID to build (or have built for UGID) the solar photovoltaic energy facility.
 - e. The commercial operation date of the solar photovoltaic energy facility.

UGID General Objections

UGID generally objects to J3's Interrogatories on the grounds that they are unduly burdensome and untimely.¹ The objections are premised on UGID's belief that the Presiding Officer's Pre-hearing Conference Order of May 22, 2014, which granted UGID 90 days to review the full record, acted as a bar on discovery initiated by the other parties during the 90 day period. UGID argues that J3's discovery request is untimely because it is early rather than because it is late and that to require UGID to respond during the 90 day period would be unduly burdensome.

Nothing in the May 22nd Prehearing Order states or suggests that J3 (or West Penn) is prohibited from initiating discovery on UGID during the 90 day period. Interpreting it as such is

¹ Attachment 1, pp 1-2.

inconsistent with 52 Pa. Code § 5.331(b) which instructs the parties to initiate discovery as soon as possible. Furthermore, UGID did not request a bar on discovery by the other parties during the 90 day period. In its Prehearing Memorandum dated May 6, 2014, UGID stated that it would not know the appropriate and agreeable procedural schedule until it has a full and fair opportunity to review the existing record and discovery responses. UGID specifically requested:

1. West Penn and J3 Energy be directed to serve UGI Development with complete copies of the entire record and 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.²

Hence it is clear that UGID was seeking a delay in commitment to a procedural schedule rather than a bar on J3’s discovery rights otherwise authorized by Commission Regulations.

UGID also claims that J3’s Discovery Set 1 essentially asks UGID to explain its litigation position in this proceeding and that until UGID has had the opportunity to fully review the entire record, it is entirely unknown what UGID’s litigation position will be on these issues.

Interrogatories 1-3 seek factual information contained in UGID’s records. They do not ask UGID to explain its litigation position. Furthermore, UGID’s argument fails as there is nothing in the Commission’s discovery rules that require one party to wait until another party has formulated its litigation position before initiating discovery. To the contrary, 52 Pa. Code § 5.331(b) authorizes the complainant to initiate discovery upon filing of a complaint which generally occurs before the other party or parties have formulated their litigation positions.

² UGID Prehearing Conference Memorandum, May 6, 2014, pp 4-5.

Accordingly, J3 could have initiated discovery on UGID as early as February 24, 2014 when the Commission served UGID with the Formal Complaint.

The information sought by Interrogatories 1-3 is purely factual and should be readily accessible to UGID. As explained below in J3's discussion of UGID's specific objections, the interrogatories seek information related to an averment of fact made by UGID in its Answer and New Matter filed in response to J3's Formal Complaint and therefore the information is relevant to this proceeding. Accordingly, since Interrogatories 1-3 are neither untimely nor burdensome, J3 respectfully requests that UGID's general objections to Interrogatories 1-3 be dismissed.

UGID Specific Objections

UGID objects to Interrogatories 1-3 on the basis that they are irrelevant, immaterial, unduly burdensome and not likely to lead to admissible evidence. UGID contends that the information sought is not relevant to the issues to be addressed in the proceeding nor likely to lead to the discovery of admissible evidence. UGID further contends that the information sought is highly confidential proprietary information.

UGID's objections are based in large part on the mistaken assumption that J3's right to discovery is limited to claims asserted by J3 in the proceeding. In doing so, UGID ignores J3's right to discovery related to the claims and defenses of another party as authorized by 52 Pa. Code § 5.321(c)

In UGID's Answer to the Formal Complaint, under the heading of New Matter and Affirmative Defenses, Paragraph 16 avers that "*UGI Development has relied upon West Penn's administration of the RFP process, the Commission's approval of the RFP process and bid*

results, and the SPAEC Agreement.”³ Earlier in its Petition for Reconsideration, when seeking to have J3’s Formal Complaint dismissed, UGID claimed that in reliance on the Commission’s approval of the RFP process and bid results, UGID made significant capital investments in anticipation that it would fully perform its obligations for the full 10-year term of the SPAEC Agreement.⁴ Both the Answer and New Matter and the Petition for Reconsideration were signed under verification by an officer or employee of UGID indicating that the facts set forth are true and correct to the best of their knowledge, information and belief and that they expect UGID to be able to prove the same at a hearing held in this matter. UGID apparently believes that its alleged reliance on the RFP process and the Commission’s approval of the results contributes to UGID’s defense of J3’s Formal Complaint. Otherwise, UGID would not have included the averment in its New Matter and Affirmative Defenses.⁵

J3 Interrogatories 1-3 seek the factual basis for the UGID’s reliance averment. Identification of the source of the SPAECS, the timing of UGID’s commitment to the facilities, and the economic benefit of the facilities to UGID, all inform the issue of UGID’s alleged reliance and are essential to J3’s understanding and defense of the issue. UGID argues that the fact that J3 has not sought relief against UGID somehow makes J3’s discovery irrelevant. UGID goes on to claim that J3 has conceded that the requested information is “*entirely irrelevant and not likely to lead to the discovery of admissible information.*” UGID’s arguments do not align with the facts or the regulations. J3 has never conceded the relevance or admissibility of the requested information. Moreover, the fact that J3 has not sought relief against UGID does

³ UGID Answer and New Matter, p.10

⁴ UGID Petition for Reconsideration, p.5, ¶ 13; p.10, ¶ 33; p.11, ¶¶ 35 and 36

⁵ J3 maintains that issues decided by the Commission in its Order on the Petitions for Reconsideration are not proper for reconsideration on remand. Such issues include UGID’s alleged reliance as a basis for dismissal of J3’s Formal Complaint. See J3 Prehearing Conference Memorandum dated May 6, 2014, p.4. However, UGID has not conceded this point and the matter was not resolved at the May 8, 2014 Prehearing Conference. See May 8, 2014, Prehearing Conference Transcript, pp.251-252.

not mean that UGID will not seek to assert its alleged reliance on West Penn's administration of the RFP process and the Commission's approval of the RFP process as a defense in this proceeding – the best evidence of which is found in UGID's New Matter and Affirmative Defenses. Hence, UGID cannot reasonably seek to deny J3 discovery on an issue that UGID itself has presented. Such an outcome would be inconsistent with 52 Pa. Code § 5.321(c) which allows a party (J3) to pursue discovery related to the claims and defenses of another party.

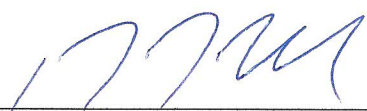
UGID also argues that the information sought is highly confidential. The confidential nature of the information is not a bar to discovery. UGID joined West Penn and J3 in a Joint Motion for Entry of a Protective Order dated June 4, 2014. UGID is free to mark the requested information as Protected Information or Confidential Information subject to the Presiding Officer's Protective Order of June 5, 2014 which limits access to counsel of record and eligible outside experts.

IV. CONCLUSION

For the reasons stated above, and in the interest of avoiding additional delay, J3 respectfully requests that UGID's objections to J3 Interrogatories 1-3 be dismissed and UGID be ordered to answer.

Date: August 6, 2014

Respectfully Submitted



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Phone: 412-389-2482


CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2014, I served a true copy of the foregoing document, "Motion of J3 Energy Group, Inc., to Dismiss the Objections of UGI Development Company to J3 Discovery Set 1 and Compel UGI Development Company to Answer" upon 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):

First Class Mail and E-Mail	E-Mail
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Date: August 6, 2014

Attorney for Complainant



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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	:	

**OBJECTIONS OF UGI DEVELOPMENT COMPANY
TO CERTAIN INTERROGATORIES, REQUESTS FOR ADMISSIONS,
AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY
J3 ENERGY GROUP, INC. (SET I)**

UGI Development Company (“UGI Development”) hereby files these Objections to certain Interrogatories, Requests for Admissions, and Requests for Production of Documents Propounded by J3 Energy Group, Inc. (“J3) Set I, pursuant to 52 Pa. Code § 5.342. As explained below, UGI Development objects to certain discovery requests set forth in J3 Set I because they are not relevant to the issues raised in the above-captioned matter, not likely to lead to the discovery of relevant or admissible evidence in the above-captioned matter, and improperly seek highly confidential proprietary information. In support thereof, UGI Development states as follows:

I. GENERAL OBJECTIONS

UGI Development herein files these general objections to J3 Set I in its entirety. As explained below, J3 Set I is unduly burdensome and untimely.

This matter was initiated by a Formal Complaint filed by J3 on January 10, 2011. J3's Complaint was not served on UGI Development, nor was UGI Development named a party to the Complaint. 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. Until UGI Development has had the opportunity to fully 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.

At the prehearing conference on May 8, 2014, UGI Development requested and was granted ninety days from the date of receipt to review the entire record and all discovery responses. J3 served its testimony and discovery responses on UGI Development on June 9, 2014, and West Penn Power Company served its testimony and discovery responses on UGI Development on June 20, 2014. Therefore, the ninety-day review period granted to UGI Development has not expired. UGI Development is continuing its review of the record and discovery responses provided by the parties. Forcing UGI Development to responding to J3 Set I during the ninety-day review period is unduly burdensome.

Further, the discovery requests set forth in J3 Set I essentially ask UGI Development to explain its litigation position in this proceeding. However, until UGI Development has had the opportunity to fully review the entire record and all discovery responses, it is entirely unknown what UGI Development's litigation position will be on these issues, which previously have been fully developed and litigated by the parties over the course of three years.

Based on the foregoing, UGI Development hereby objects to J3 Set I in its entirety, which is unduly burdensome and untimely.

II. SPECIFIC OBJECTIONS

J3 Set I, Numbers 1 through 3 provide as follows:

1. Please identify all solar photovoltaic energy facilities that are the source(s) of the SPAECS that have been supplied by UGID to West Penn pursuant to the Purchase and Sale Agreement.
2. For each solar photovoltaic energy facility identified in response to Interrogatory Number 1, please describe UGID's financial interest in the facility (if any) including financial interest as an owner, investor or otherwise.
3. With respect to each solar photovoltaic energy facility in which UGID has a financial interest as described in response to Interrogatory Number 2 please state:
 - a. The date that UGID made its final investment decision for the facility.
 - b. UGID's after-tax net present value estimate for the facility at the time UGID made its final investment decision for the facility.
 - c. UGID's after-tax internal rate of return estimate at the time UGID made its final investment decision for the facility.
 - d. If applicable, the date that UGID entered into an agreement with the owner of the Host Site authorizing UGID to build (or have built for UGID) the solar photovoltaic energy facility.
 - e. The commercial operation date of the solar photovoltaic energy facility.

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The information sought in J3 Set I, Numbers 1 through 3 are not relevant to the issues to be addressed in this proceeding, and are not likely to lead to the discovery of admissible evidence.

The information requested in J3 Set I, Numbers 1 through 3 is entirely unrelated to and would have no impact whatsoever on the issue to be decided in this case. Indeed, J3 has conceded that the issue to be decided in this proceeding is how "All-or-Nothing" bids were to be

evaluated under West Penn's 2010 competitive Request for Proposals ("RFP"). *See* J3 Main Brief, p. 14.

Further, the information requested in J3 Set I, Numbers 1 through 3 is entirely irrelevant to any remedies that J3 is seeking in this proceeding. Indeed, J3 has conceded in response to discovery that it is not seeking any relief in any form as against UGI Development in this proceeding or any other proceeding. *See* J3 Responses to UGID to J3 Set I, Numbers 3 through 6.

Finally, the information sought in J3 Set I, Numbers 1 through 3 is highly confidential, proprietary information. If such information were to be disclosed, it could give a significant advantage to other suppliers competing with UGI Development in during competitive procurements of SPAECS. Given the fact that the requested information is not relevant to the issue to be decided or the remedy sought by J3 in this proceeding, it is entirely unclear why such highly sensitive information would be sought by J3 other than to try and obtain a competitive advantage. UGI Development submits that this is not the proper purpose of discovery, particularly when the requested party has conceded it is entirely irrelevant and not likely to lead to the discovery of admissible evidence, as explained above.

Based on the foregoing, UGI Development objects to J3 Set I, Numbers 1 through 3, which seek information that is irrelevant, immaterial, unduly burdensome, and not likely to lead to admissible evidence.

III. CONCLUSION


WHEREFORE, UGI Development Company generally objects to J3 Set I in its entirety and specifically objects to J3 Set I, Numbers 1 through 3, which seek information that is irrelevant, immaterial, unduly burdensome, and not likely to lead to admissible evidence. UGI Development Company reserves the right to object to future interrogatories, requests for

admissions, and requests for production of documents including any instructions and definitions contained therein.

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Date: July 28, 2014



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