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File #: 150887

August 11, 2014

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 Answer of UGI Development Company to Motion of J3 Energy Group, Inc. to Compel Answers to J3 Energy Group, Inc. (Set I) 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 printed 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
Bethel Park, PA 15102

John L. Munsch, Esquire
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800 Cabin Hill Drive
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409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357

Date: August 11, 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 | : | |

**ANSWER OF UGI DEVELOPMENT COMPANY
TO MOTION OF J3 ENERGY GROUP, INC. TO COMPEL
ANSWERS TO J3 ENERGY GROUP, INC. (SET I)**

TO HONORABLE ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

UGI Development Company (“UGI Development”) hereby files this Answer to the Motion to Compel Answers 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(g). For the reasons explained below, J3’s Motion should be denied because the information sought in J3 Set I, Numbers 1 through 3 are premature, 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. BACKGROUND

This matter was initiated by a Formal Complaint filed by J3 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'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.

On August 16, 2012, the Honorable Administrative Law Judge Elizabeth H. Barnes ("ALJ") issued an Initial Decision dismissing the J3 Complaint. J3 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 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 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 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 filed a Reply to the UGI Development New Matter.

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.

On July 17, 2014, J3 served J3 Set I discovery requests on UGI Development. A true and correct copy of the J3 Set I discovery requests is attached hereto as "Appendix A." On July 28, 2014, 2014, UGI Development served objections to the J3 Set I discovery requests. A true and correct copy of UGI Development's objection to J3 Set I are attached hereto as "Appendix B." Therein, UGI Development objected generally to J3 Set I in its entirety on the basis that the requests are unduly burdensome and untimely. UGI Development also specifically objected to J3 Set I, Numbers 1 through 3 on the basis that the information sought is irrelevant, immaterial, unduly burdensome, and not likely to lead to admissible evidence. Notwithstanding the foregoing, on August 6, 2014, UGI Development served responses to J3 Set I, Numbers 4 through 22.

On August 6, 2014, J3 served its Motion to Compel answers to J3 Set I, Numbers 1 through 3. For the reasons more fully explained below, UGI Development's objections to J3 Set I, Numbers 1 through 3 should be sustained because the information sought premature, 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.

II. ARGUMENT

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.

See Appendix A. 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 absolutely no impact whatsoever on the issue to be decided in this case. The only issue to be decided in this proceeding is how “All-or-Nothing” bids were to be evaluated under West Penn’s 2010 competitive RFP. Indeed, J3 has conceded that the issue to be decided is the meaning of “All-or-Nothing” bids in West Penn’s 2010 competitive RFP. *See* J3 Main Brief, p. 14.

It cannot be reasonably argued that UGI Development’s solar photovoltaic energy facilities that are the source of the SPAECS that have been supplied West Penn will have any impact on how “All-or-Nothing” bids were to be evaluated under West Penn’s 2010 competitive RFP. Similarly, it cannot be reasonably argued that UGI Development’s financial interest in the solar photovoltaic energy facilities will have any impact on how “All-or-Nothing” bids were to be evaluated under West Penn’s 2010 competitive RFP. Clearly, J3 did not believe that such information was relevant to the issue to be decided in this case because it failed to join UGI Development as an indispensable party to its cause of action and it fully litigated the case for over three years without the requested information. J3 cannot credibly argue on one hand that UGI Development is not an indispensable party¹ and, on the other hand, argue that the highly

¹ *See* J3’s Answer to Petitions of West Penn Power Company for Reconsideration and UGI Development Company for Reconsideration and Clarification.

confidential financial information of UGI Development is relevant to the issues to be decided in the case.²

Despite UGI Development raising the lack of relevancy in its objections, J3 has failed to even attempt to offer any explanation as to how the requested information is relevant to the issue of how “All-or-Nothing” bids were to be evaluated under West Penn’s 2010 competitive RFP. Rather, J3 contends that the information requested in J3 Set I, Numbers 1 through 3 is relevant because UGI Development stated in its Petition for Reconsideration and its Answer to the J3 Complaint that UGI Development 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. However, J3 contention completely ignores that it has conceded that the information requested in J3 Set I, Numbers 1 through 3 is entirely irrelevant to any remedies that J3 is seeking in this proceeding.

In response to discovery, J3 has affirmatively stated as follows:

UGID to J3-I-3: Admit or deny whether J3 Energy is requesting the Commission to terminate any existing contracts between UGI Development and West Penn Power Company. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response: Denied. J3 has not requested the Commission to terminate any existing contracts between UGI [D]evelopment and West Penn Power Company, and does not believe it is necessary for the Commission to direct termination in order to grant J3 its requested relief....

² The courts have long held that the integrity of adjudications must be protected by preventing litigants from “playing fast and loose” with the judicial system by switching positions to suit their own ends. *Sunbeam Corporation v. Liberty Mutual Insurance Company*, 566 Pa. 494, 781 A.2d 1189, 1192 (Pa. 2001), *reargument denied*, 2001 Pa. LEXIS 2597 (Pa. Dec. 5, 2001); *Ligon v. Middletown Area Sch. Dist.*, 584 A.2d 376, 380 (Pa.Cmwlth. 1990).

UGID to J3-I-4: Admit or deny whether J3 Energy is requesting that the Commission modify any existing contracts between UGI Development and West Penn Power Company. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response: Denied. J3 has not requested the Commission to modify any existing contracts between UGI [D]evelopment and West Penn Power Company, and does not believe it is necessary for the Commission to direct modification in order to grant J3 its requested relief....

UGID to J3-I-5: Admit or deny whether J3 Energy is requesting that the Commission amend any existing contracts between UGI Development and West Penn Power Company. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response: Denied. J3 has not requested the Commission to amend any existing contracts between UGI [D]evelopment and West Penn Power Company, and does not believe it is necessary for the Commission to direct amendment in order to grant J3 its requested relief....

UGID to J3-I-6: Admit or deny whether J3 Energy is seeking any relief from UGI Development in this or any other proceeding. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response: Denied.

A true and correct copy of J3 Responses to UGID to J3 Set I, Numbers 3 through 6 is attached hereto as "Appendix C." Clearly, 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.

Based on J3's own admission in discovery, it cannot be reasonably argued that UGI Development's solar photovoltaic energy facilities that are the source of the SPAECS that have been supplied West Penn will have any impact on the relief requested by J3 in this proceeding. Similarly, it cannot be reasonably argued that UGI Development's financial interest in the solar photovoltaic energy facilities will have any impact on the relief requested by J3 in this proceeding.

Further, even though UGI Development stated in its Petition for Reconsideration and its Answer to the J3 Complaint that UGI Development 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, it is entirely unclear at this point whether the production of the information requested in J3 Set I, Numbers 1 through 3 would lead to the discovery of admissible evidence. J3's argument is premised on the assumption that UGI Development will attempt to introduce evidence into the record that demonstrates that UGI Development 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. However, 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, exhibits, or evidentiary hearings will be required. At a minimum, UGI Development's objection to J3 Set I, Numbers 1 through 3 should be sustained because the discovery requests are premature. To the extent that UGI Development

submits testimony and/or exhibits in this proceeding, J3 will have a full opportunity to engage in discovery regarding any issue(s) actually raised by UGI Development in this proceeding.

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, such as J3, that compete with UGI Development during competitive procurements of SPAECS or otherwise. 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 and should not be condoned by the Commission, particularly when the requesting party has conceded it is entirely irrelevant and not likely to lead to the discovery of admissible evidence, as explained above.

Given the highly confidential nature of the information sought in J3 Set I, Numbers 1 through 3, the lack of relevancy, the improper purpose for which the information is being sought, and the fact that J3 and UGI Development are direct competitors, it would be inappropriate for such information to be distributed to J3 or its counsel. However, to the extent that Your Honor concludes that such discovery requests are timely, relevant, and sought for an appropriate purpose, which UGI Development denies for the compelling reasons stated above, UGI Development requests that it only be required to make such information available for inspection by counsel at the offices of UGI Development and/or its counsel, subject to the terms and conditions of the existing Protective Order. UGI Development submits that such precautions are appropriate and necessary to avoid inadvertent dissemination of such confidential information,

particularly where the only apparent reason the information is being sought is to try and obtain a competitive advantage.


Based on the foregoing, J3's Motion should be denied because the information sought in J3 Set I, Numbers 1 through 3 are premature, 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 seek highly confidential proprietary information for an improper purpose.

III. CONCLUSION

WHEREFORE, UGI Development respectfully requests that the Honorable Administrative Law Judge Elizabeth H. Barnes deny the generally J3's Motion to Compel and sustain UGI Development's Objections to J3 Set I, Numbers 1 through 3.

Respectfully submitted,

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Date: August 11, 2014

Counsel for UGI Development Company

Appendix A

THOMAS J. RUSSIAL
198 Stonewood Drive
Bethel Park, PA 15102
412-389-2482

July 17, 2014

VIA FIRST CLASS MAIL AND E-MAIL

Christopher T. Wright, Esq.
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601

**Re: J3 Energy Group, Inc. v. West Penn Power Company and UGI Development Company
PA PUC Complaint Docket No. C-2011-2219920
Complainant's First Set of Interrogatories, Request for Admissions and Request for
Documents Propounded on UGI Development Company**

Dear Mr. Wright:

Enclosed is J3 Energy Group, Inc.'s First Set of Interrogatories, Request for Admissions and Request for Documents Propounded on UGI Development Company.

Sincerely,



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

Enclosures

cc: Service List.
Honorable Elizabeth H. Barnes and Kriss E. Brown, Esq. (Letter and Certificate of Service Only)

**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 |) | |

**COMPLAINANT'S FIRST SET OF INTERROGATORIES, REQUEST FOR
ADMISSIONS AND REQUESTS FOR DOCUMENTS PROPOUNDED ON UGI
DEVELOPMENT COMPANY**

J3 Energy Group, Inc. (J3) through its Attorney, Thomas J. Russial, requests that UGI Development Company (UGID) answer the interrogatories and requests for admissions contained herein within 20 days from the date of service. Instructions for answering and objecting to interrogatories are set forth in 52 Pa. Code. §5.342. Instructions for answering and objecting to requests for documents are set forth in 52 Pa. Code §5.349. Instructions for answering and objecting to Requests for Admissions are set forth in 52 Pa. Code. §5.350.

DEFINITIONS

“Bid Form Spreadsheets” means the Excel spreadsheet found at Appendix 8 of the West Penn Request for Proposals.

“Boston Pacific Company” means Boston Pacific Company, Inc.

“Commission” means the Pennsylvania Public Utilities Commission.

“Communication” or “Communications” means any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, interviews, telephone conversations, letters, correspondence, notes, telegrams, facsimiles, electronic mail, memoranda, or other forms of communications oral or written.

“Formal Complaint” means the Formal Complaint filed by J3 Energy Group, Inc., with the Pennsylvania Public Utility Commission against West Penn Power Company docketed at C-2011-2219920.

“Host site” means the location where a solar photovoltaic energy system is located.

“J3” means J3 Energy Group, Inc., or Complainant.

“Part 2 Proposal” means the proposal described in Article 7 of the West Penn Request for Proposals.

“Purchase and Sale Agreement” means the contract or contracts entered into by West Penn Power Company and UGID on or about December 15, 2010 whereby UGID agreed to sell and West Penn agreed to purchase four tranches of solar photovoltaic alternative energy credits for the 10-year period beginning June 1, 2011 and ending May 31, 2021.

“Request for Proposals” or “RFP” means the competitive solicitation issued by West Penn Power Company on September 24, 2010 and revised on November 3, 2010, seeking proposals for the sale of Solar Photovoltaic Alternative Energy Credits.

“SPAEC” means Solar Photovoltaic Alternative Energy Credits.

“UGID” means UGI Development Company.

“West Penn” means West Penn Power Company or Respondent.

“Writing” means any form of written communication including letters, e-mails, text-messaging, and facsimile.

INTERROGATORIES, REQUESTS FOR ADMISSIONS, REQUESTS FOR DOCUMENTS

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.

4. Please state the name, title, address and telephone number of the individual who made the decision to designate the Offer Type as an Up-To Bid on each of UGID's Bid Form Spreadsheets that were submitted to West Penn with UGID's Part 2 Proposal.
5. Please explain why UGID designated the Offer Type as an Up-To Bid on each of UGID's Bid Form Spreadsheets submitted with UGID's Part 2 Proposal.
6. Please admit or deny that the RFP Process and Rules required West Penn to combine multiple individual Bid Form Spreadsheets submitted with a Part 2 Proposal into a single All-Or-Nothing offer for evaluation purposes when each Bid Form Spreadsheet identified the Offer Type as an All-Or Nothing Bid.
7. If your response to the Request for Admission in Number 6 is an admission, please explain in detail, with citation to the applicable RFP provisions, how you reached the conclusion that the RFP required West Penn to combine multiple individual Bid Form Spreadsheets submitted with a Part 2 Proposal into a single All-Or-Nothing offer for evaluation purposes when each Bid Form Spreadsheet identified the Offer Type as an All-Or Nothing Bid.
8. Please admit or deny that the RFP allowed a bidder to submit more than one Bid Form Spreadsheet and have each Spreadsheet treated as a separate offer for evaluation purposes.
9. If your response to the Request for Admission in Number 8 is an admission, please explain how a bidder seeking to offer 2 tranches on each of 2 Bid Form Spreadsheets would make the "Up-To Bid" or "All-Or-Nothing Bid" election on each Spreadsheet if the bidder was not willing to accept award of less than two tranches on either Spreadsheet.
10. Please admit or deny that, on or before December 3, 2010, UGID sought guidance or clarification either formally or informally from West Penn or Boston Pacific Company related to the "Offer Type" designation contained in the RFP.
11. If the response to the Request for Admission in Number 10 is an admission, for each Communication please:
 - a. Provide the name, address and phone number of the UGID employee, consultant, or representative that communicated with West Penn
 - b. Provide the name of the West Penn or Boston Pacific Company employee, consultant or representative with whom the Communication occurred.
 - c. State the date of the Communication.
 - d. Describe the substance of the Communication.
 - e. State how the Communication occurred (e.g. in person, telephone, writing).
12. If the response to the Request for Admission in Number 10 is an admission and the Communication was in writing please provide a copy of the Writing(s).

13. Please describe how UGID first learned, either formally or informally, of J3's Formal Complaint against West Penn. In the description, please include the date on which UGID first learned of J3's Formal Complaint.
14. Please admit or deny that West Penn or Boston Pacific Company informed UGID of J3's Formal Complaint.
15. If the response to the Request for Admission in Number 14 is an admission, for each Communication between UGID and West Penn or UGID and Boston Pacific please:
 - a. State the date UGID was informed.
 - b. Identify who at West Penn or Boston Pacific Company made the Communication with UGID.
 - c. Identify who at UGID received the Communication.
 - d. Describe the substance of the Communication.
 - e. State how the Communication was made (e.g. in person, telephone, writing)
16. If the response to the Request for Admission in Number 14 is an admission and UGID was informed of J3's Formal Complaint in writing, please provide a copy of the Writing(s).
17. Please admit or deny that West Penn informed UGID that through discovery J3 was seeking Part 2 Proposals submitted in response to the West Penn RFP and that UGID's Part 2 Proposal was within the scope of the Request.
18. If the response to the Request for Admission in Number 17 is an admission please:
 - a. State the date UGID was informed.
 - b. Identify who at West Penn made the Communication with UGID.
 - c. Identify who at UGID received the Communication.
 - d. Describe the substance of the Communication.
 - e. State how the Communication was made (e.g. in person, telephone, writing).
19. If the response to the Request for Admission in Number 17 is an admission and the Communication from West Penn was made in writing, please provide a copy of the Writing.
20. Please admit or deny that West Penn informed UGID that West Penn intended to terminate or partially terminate the Purchase and Sale Agreement between West Penn and UGID if the Commission granted J3's requested relief in this matter.
21. If the response to the Request for Admission in Number 20 is an admission, please:
 - a. State the date UGID was informed.
 - b. Identify who at West Penn made the Communication with UGID.
 - c. Identify who at UGID received the Communication.
 - d. Describe the substance of the Communication
 - e. State how the Communication was made (e.g. in person, telephone, writing).

22. If the response to the Request for Admission in Number 20 is an admission and the Communication from West Penn was in writing, please provide a copy of the Writing.

**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 |) | |

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2014, I served a true and correct copy of Complainant's First Set of Interrogatories, Request for Admissions and Request for Documents Propounded on UGI Development Company as indicated below. Service is made in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a Party).

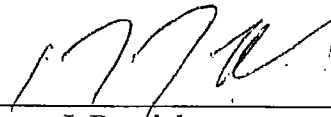
| First Class Mail and E-Mail | |
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| | David B. MacGregor, Esq. Post & Schell, P.C. Four Penn Center 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2808 dmacgregor@postschell.com |

**Certificate of Service
First Class Mail and E-Mail**

| | |
|--|--|
| Elizabeth H. Barnes Administrative Law Judge Pennsylvania Public Utility Commission PO Box 3265 Harrisburg, PA 17105-3265 <u>EBARNES@pa.gov</u> | Kriss E. Brown, Esq. Pennsylvania Public Utility Commission Law Bureau PO Box 3265 Harrisburg, PA 17105-3265 <u>kribrown@pa.gov</u> |
|--|--|

Date: July 17, 2014

Attorney for Complainant



Thomas J. Russial
198 Stonewood Drive
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Phone: 412-389-2482
Pa. I.D. No. 39730

Appendix B



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Christopher T. Wright

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File #: 150867

July 28, 2014

VIA E-MAIL & REGULAR MAIL

Thomas J. Russial, Esquire
198 Stonewood Drive
Bethel Park, PA 15102

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

Dear Mr. Russial:

Enclosed for filing are the 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) in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/skr
Enclosures

cc: Certificate of Service
Rosemary Chiavetta, Secretary (*letter and certificate of service only*)

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

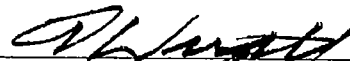
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Date: July 28, 2014



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 | : | |

**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

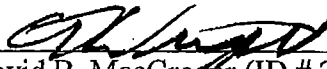
WHEREFORE, UGI Development Company generally objects to J3 Set I in its entirety and specifically objects to J3 Set I, Numbers 1 through 3, which seek information that is irrelevant, immaterial, unduly burdensome, and not likely to lead to admissible evidence. UGI Development Company reserves the right 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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Of Counsel:
Post & Schell, P.C.

Date: July 28, 2014



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Counsel for UGI Development Company

Appendix C

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July 2, 2014

VIA FEDERAL EXPRESS AND E-MAIL

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**Re: J3 Energy Group, Inc. v. West Penn Power Company and UGI Development Company
PA PUC Complaint Docket No. C-2011-2219920
J3 Energy Group, Inc. Response to UGID Discovery Set 1.**

Dear Mr. Wright:

Enclosed is the Response of J3 Energy Group, Inc., to UGID's Interrogatories, Requests for Production of Documents, and Requests for Admissions - Set 1. Please note that Attachment 4 contains Protected Information subject to the Protective Order issued on June 5, 2014. Attachment 4 is being sent only in hardcopy.

Sincerely,



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

Enclosure

cc: Service List
Honorable Elizabeth H. Barnes and Kriss E. Brown, Esq. (Certificate of Service and Verification Only)

that J3 cannot deliver credits that satisfy the vintage requirements of the contract going back to 2011. This was through no fault of J3 since J3 diligently pursued correction of the error immediately after West Penn's announcement of the results. J3 will investigate the availability of credits and make a recommendation to the Commission on remand as to when the contract should begin and for what compliance year.

Response Provided by: Stephen C. Russial, President J3 Energy Group, Inc.

UGID to J3-I-2

Please see J3 Energy's response to UGID to J3-I-1. Explain in detail how J3 Energy's requested relief should be implemented if granted by the Commission.

Response

Please see J3's Response to J3-I-1.

Response Provided by: Stephen C. Russial, President J3 Energy Group, Inc.

UGID to J3-I-3

Admit or deny whether J3 Energy is requesting the Commission to terminate any existing contracts between UGI Development and West Penn Power Company. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response

Denied. J3 has not requested the Commission to terminate any existing contracts between UGI development and West Penn Power Company, and does not believe it is necessary for the Commission to direct termination in order to grant J3 its requested relief. Per the Commission's direction to the Parties and the ALJ in its Order of October 31, 2013, J3 will address the potential remedies that the Commission has jurisdiction to provide to J3 if the Commission were to sustain the Complaint.

Response Provided by: Stephen C. Russial, President J3 Energy Group, Inc.

UGID to J3-I-4

Admit or deny whether J3 Energy is requesting that the Commission modify any existing contracts between UGI Development and West Penn Power Company. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response

Denied. J3 has not requested the Commission to modify any existing contracts between UGI development and West Penn Power Company, and does not believe it is necessary for the Commission to direct modification in order to grant J3 its requested relief. Per the Commission's direction to the Parties and the ALJ in its Order of October 31, 2013, J3 will address the potential remedies that the Commission has jurisdiction to provide to J3 if the Commission were to sustain the Complaint.

Response Provided by: Stephen C. Russial, President J3 Energy Group, Inc.

UGID to J3-I-5

Admit or deny whether J3 Energy is requesting that the Commission amend any existing contracts between UGI Development and West Penn Power Company. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response

Denied. J3 has not requested the Commission to amend any existing contracts between UGI development and West Penn Power Company, and does not believe it is necessary for the Commission to direct amendment in order to grant J3 its requested relief. Per the Commission's direction to the Parties and the ALJ in its Order of October 31, 2013, J3 will address the potential remedies that the Commission has jurisdiction to provide to J3 if the Commission were to sustain the Complaint.

Response Provided by: Stephen C. Russial, President J3 Energy Group, Inc.

UGID to J3-I-6

Admit or deny whether J3 Energy is seeking any relief from UGI Development in this or any other proceeding. If your response to this discovery request is anything other than a categorical denial, please explain your response in detail.

Response

Denied.

Response Provided by: Stephen C. Russial, President J3 Energy Group, Inc.