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September 9, 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
Prehearing Conference Memorandum**

Dear Secretary Chiavetta:

Enclosed for filing is the "*Prehearing Conference Memorandum of J3 Energy Group, Inc. for the September 11, 2014, Conference.*" The Memorandum has been served today as indicated on the enclosed Certificate of Service.

Sincerely,



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

Enclosures

cc: Honorable Elizabeth H. Barnes

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PREHEARING CONFERENCE MEMORANDUM OF J3 ENERGY GROUP, INC.,
FOR THE SEPTEMBER 11, 2014 CONFERENCE**

In accordance with the May 22, 2014 Prehearing Order, J3 Energy Group Inc., (J3) respectfully files this Prehearing Conference Memorandum.

1. INTRODUCTION

On May 8, 2014, J3, West Penn Power Company, Inc., (West Penn) and UGI Development Company (UGID) participated in the initial prehearing conference held after UGID was joined by the Pennsylvania Public Utility Commission (Commission) as an indispensable party. 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 requested that:

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.

UGID's request for the 90-day review period was granted and a number of issues typically addressed at a prehearing conference pursuant to 52 Pa. Code § 5.222 were reserved including UGID's listing of presently identified issues, witnesses, and the proposed area of testimony of each witness.

On June 5, 2014, an updated Protective Order was issued that was applicable to all Parties. J3 served its record documents and discovery documents upon UGID on June 9, 2014, and West Penn served its documents on June 20, 2014. On June 12, 2014, UGID served its initial discovery request upon J3. J3 filed objections to certain interrogatories on June 23, 2014, and responded to the balance on July 2, 2014. UGID did not file a Motion to Compel. J3 served its initial discovery request upon UGID on July 17, 2014. UGID filed objections to the entire discovery set on July 28, 2014 and subsequently responded to all but J3's first 3 interrogatories. J3 filed a Motion to Compel on August 6, 2014. UGID answered the Motion on August 11, 2014. By Order dated August 21, 2014, the Presiding Officer denied J3's Motion to Compel, granted West Penn's unopposed motion for continuance of the second prehearing conference, and rescheduled the prehearing conference for September 11, 2014 with prehearing memorandums due September 9th. UGID served a second discovery set upon J3 on August 18, 2014 and J3 served its response on September 8, 2014.

In J3's Prehearing Memorandum for the May 8 conference, J3 identified the following presently identified issues:

- (a) Was the aggregation and averaging of J3's 4 bids during bid evaluation in accordance with the RFP approved by the Commission and guidance issued by West Penn during the RFP process?

(b) Would the proper evaluation of bids by West Penn have resulted in the selection of one or more of the J3 bids?

(c) What potential remedies does the Commission have jurisdiction to provide to J3 if the Commission were to sustain the Complaint?

In the earlier Memorandum, J3 also submitted that issues raised by UGID and West Penn in their Petitions for Reconsideration of the Commission's October 31, 2013 Order, and denied by the Commission in the Order of February 20, 2014, are not appropriate for consideration on remand.

2. MATTERS TO BE CONSIDERED AT THE SECOND CONFERENCE

The May 22nd Prehearing Order directed that certain matters be considered at the second conference. Each is addressed below.

(a) The possibility for settlement of the proceeding, subject to the Commission's approval.

J3 continues to be willing to pursue settlement discussions with West Penn and UGID subject to the Commission approval if necessary. Since J3 is currently the debtor in possession pursuant to a Chapter 11 bankruptcy petition, J3's Attorney (serving as special counsel for the estate) and J3's President are authorized to engage in settlement discussions. At present, a proposed settlement must be presented to the creditors for review and the Bankruptcy Court for approval. If the parties can reach agreement on a tentative settlement J3, suggests that the settlement first be presented to the Bankruptcy Court for approval prior to the filing of a formal settlement petition with the Commission.

(b) Whether the matter should be decided upon legal briefs, or whether a hearing is necessary.

J3 believes a hearing is required.

UGID has raised new issues in its Answer and New Matter to the Complaint filed on March 17, 2014. Depending upon the issues UGID and/or West Penn seek to take forward, and that are accepted on remand, testimony with cross-examination may be required.

The passage of time from the date of Complaint filing has resulted in the need to update certain factual background information presented in the earlier written testimony of Stephen Russial including information related to the facility where J3 had planned to source the solar photovoltaic alternative energy credits had J3 been awarded a Purchase and Sales Agreement in 2010.

In its Order of October 31, 2013, joining UGID as an indispensable party and remanding the matter, the Commission directed the Parties and the Administrative Law Judge to address the potential remedies the Commission has jurisdiction to provide to J3 if the Commission were to sustain the Complaint. The legal aspects of the Commission's request may be addressed on briefs. However, testimony is necessary to support a proposed implementation schedule for a contract award to J3 (if the Complaint is sustained) including when delivery of credits under the contract should begin and for what compliance year.

- (c) If a hearing is required, a procedural schedule will be discussed including the amount of hearing time necessary to dispose of the proceeding.**

J3 believes a hearing can be conducted in less than one day and recommends the following procedural schedule:

Written Testimony Served	October 20, 2014
Rebuttal Testimony Served	November 4, 2014
Evidentiary Hearing in Harrisburg	November 2014
Main Brief Deadline	20 days after hearing
Reply Brief Deadline	20 days after main briefs

(d) Witness lists.

J3 requests that the previously admitted written and oral testimony of Stephen Russial (J3 Statements 1 and 1-R) and Curtis McBride (J3 Statements 2 and 2-R) along with admitted J3 exhibits be accepted on remand. In general, Mr. Russial testified concerning J3 business activities, his understanding of the RFP and guidance, errors in the procurement, and in rebuttal of West Penn testimony. Mr. McBride testified as to the proper interpretation of the RFP and guidance, errors in the procurement, and in rebuttal of West Penn testimony.

On remand, Mr. Russial's testimony will update factual information from his earlier testimony and address a proposed implementation schedule for a contract award in the event J3's Complaint is sustained. J3 will also present the testimony of James Miller, President of MBC Development, LP, who will testify about MBC Development's work with J3 on solar photovoltaic projects and willingness to collaborate with J3 on a project or projects that would be the source of credits for the West Penn Purchase and Sales Agreement if the Commission grants J3's relief.

The addresses of the witnesses are:

Stephen Russial, President
J3 Energy Group, Inc.
950 East Main Street – Suite 104
Schuylkill Haven, Pa 17972

James W. Miller, Jr. President
MBC Development, LP
950 East Main Street
Schuylkill Haven, PA 17972

Expert Procurement Witness
Curtis W. McBride
3016 Kelly Creek Avenue
Moody, Alabama, 35004

J3 reserves the right to identify additional witnesses and the subject of their testimony as the proceeding develops and issues are identified.

(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.**

To the extent it becomes necessary to offer additional exhibits into evidence, J3 supports prior exchange and will cooperate with the parties concerning prior acceptance.

- (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.**

J3 reserves the right to seek admissions of, or stipulations of, facts not remaining in dispute, or as to the authenticity of documents.

- (iii) The status of J3's Bankruptcy Petition.**

On September 5, 2014, the Federal Bankruptcy Court for the Middle District of Pennsylvania established a schedule requiring J3 to file a plan of reorganization within 30 days with plan confirmation determined within 75 days.

- (iv) The discovery or production of data or other material.**

UGID and J3 have initiated discovery. J3 reserves the right to seek additional discovery as the proceeding develops.

Date: September 9, 2014

Respectfully Submitted



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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2014, I served a true copy of the foregoing document, *“Prehearing Conference Memorandum of J3 Energy Group, Inc., for the September 11, 2014 Conference”* to the individuals listed below by First Class Mail and/or e-mail in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a Party):

First Class Mail and E-Mail	E-Mail
Elizabeth H. Barnes Administrative Law Judge Pennsylvania Public Utility Commission PO Box 3265 Harrisburg, PA 17105-3265 EBARNES@pa.gov	Kent D. Murphy, Group Counsel UGI Corporation 460 North Gulph Road King of Prussia, PA 19406 E-mail: murphyke@ugicorp.com
Christopher T. Wright Post & Schell, P.C. 17 North Second Street, 12th Floor Harrisburg, PA 17101-1601 cwright@postschell.com	David B. MacGregor Post & Schell, P.C. Four Penn Center 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2808 dmacgregor@postschell.com
John F. Povilaitis Buchanan, Ingersoll & Rooney, P.C. 409 North Second Street Suite 500 Harrisburg, PA 17101-1357 John.povilaitis@bipc.com	John L. Munsch, Esq. West Penn Power Company 800 Cabin Hill Drive Greensburg, PA 15601 jmunsch@firstenergycorp.com
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Date: September 9, 2014

Attorney for Complainant



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