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File #: 150887

September 9, 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 Second Prehearing Memorandum of UGI Development Company in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/jl
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
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John L. Munsch, Esquire
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Harrisburg, PA 17101-1357

Date: September 9, 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	:	

**SECOND 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 this Prehearing Conference Memorandum in the above-captioned matter pursuant to the Prehearing Conference Order issued on May 22, 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 and Clarification 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 May 8, 2014, Initial Prehearing Conference was held before the ALJ. Following the Initial Prehearing Conference, the ALJ issued a Prehearing Order on May 22, 2014, that, among other things, directed J3 Energy and West Penn to serve UGI Development with their testimony and discovery responses served prior to UGI Development being joined as an indispensable party, and granted UGI Development ninety days to review said testimony and discovery responses.

The May 22, 2014 Prehearing Order also scheduled a Second Prehearing Conference for August 27, 2014, to determine the appropriate procedural schedule involving discovery issues, deadlines for the submission of additional testimony and/or exhibits and the necessity for a further evidentiary hearing. The May 22, 2014 Prehearing Order also identified specific issues to be addressed in the Prehearing Conference Memoranda to be submitted by the parties. On August 21, 2014, a Hearing Notice rescheduled the Second Prehearing Conference for September 11, 2014.

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 Kent D. Murphy at murphyke@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 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. ISSUES

UGI Development has been diligently reviewing the record and discovery responses provided by J3 Energy and West Penn. Based upon its review of the existing record, and in an effort to avoid any further delay in the final resolution of this matter, UGI Development is willing to accept the record on the issue raised by J3 Energy's Formal Complaint -- how "All-or-Nothing" bids were to be evaluated under West Penn's 2010 competitive RFP. UGI Development therefore submits that no additional testimony, discovery, or hearings are necessary or appropriate on the issue of West Penn's evaluation of bids submitted in response to the 2010 RFP. However, to the extent that any other Party attempts to introduce additional

evidence on West Penn's evaluation of bids submitted in response to the 2010 RFP, UGI Development expressly reserves the right to raise and present any and all available issues and arguments on this issue.

In its October 31, 2013 Opinion and Order, the Commission directed the Parties to address the potential remedies the Commission has jurisdiction to provide to J3 Energy if the Commission were to sustain the Complaint. Based upon UGI Development's review of the existing record, it does not appear that the Parties have fully addressed the issue of potential remedies available to J3 Energy. Therefore, UGI Development intends to fully participate in this matter for the limited purpose of developing the factual and legal positions regarding what, if any, remedies may potentially be available to J3 Energy if the Commission were to sustain the Complaint.

As this proceeding develops, other Parties submit additional testimony or exhibits, and more information becomes available through discovery, UGI Development may expand or modify its issues of interest. UGI Development reserves the right to address additional issues that it identifies during the course of this proceeding.

IV. WITNESSES

UGI Development's final designation of witnesses and their areas of testimony will depend on the definitive list of issues that UGI Development identifies, as well as the hearing dates scheduled in this proceeding. UGI Development reserves the right to change its designation of witnesses and their areas of testimony as this proceeding develops, issues are identified, and hearing dates are scheduled. Subject to the foregoing, UGI Development has tentatively identified the following witness to submit testimony relating to the issues identified to date: Louis James, Director, Business Development, UGI Energy Services, LLC, One Meridian Blvd; Suite 2C01, Wyomissing, PA 19610.

V. LITIGATION SCHEDULE

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 Energy served its testimony and discovery responses on UGI Development on June 9, 2014, and West Penn served its testimony and discovery responses on UGI Development on June 20, 2014. UGI Development has been diligently reviewing the record and discovery responses provided by the parties.

Based upon its review of the existing record, and in an effort to avoid any further delay in the final resolution of this matter, UGI Development is willing to accept the record on the issue raised by J3 Energy's Formal Complaint -- how "All-or-Nothing" bids were to be evaluated under West Penn's 2010 competitive RFP. UGI Development therefore submits that no additional testimony, discovery, or hearings are necessary or appropriate on the issue of West Penn's evaluation of bids submitted in response to the 2010 RFP. However, recognizing that the Commission's October 31, 2013 Opinion and Order failed to address the merits of this issue when it vacated the Initial Decision, UGI Development recommends that all parties be permitted to submit briefs on the merits and to file exceptions to any Initial Decision entered on the merits.

In its October 31, 2013 Opinion and Order, the Commission also directed the Parties to address the potential remedies the Commission has jurisdiction to provide to J3 Energy if the Commission were to sustain the Complaint. Based upon UGI Development review of the existing record, it does not appear that the Parties have fully addressed the issue of potential remedies available to J3 Energy. Therefore, UGI Development submits that it is appropriate to open the record for the limited purpose of developing the factual and legal positions of the parties regarding what, if any, remedies may potentially be available to J3 Energy if the Commission were to sustain the Complaint.

Based on the foregoing, and recognizing that J3 Energy as the complainant bears the burden of proof on both the merits and the remedies, UGI Development proposes the following procedural schedule in the above-referenced matter:

Merits of the Complaint

UGI Development accepts the existing record on the issue raised by J3 Energy's Formal Complaint -- how "All-or-Nothing" bids were to be evaluated under West Penn's 2010 competitive RFP.

No additional testimony, discovery, exhibits, or hearings will be introduced on the issue of West Penn's evaluation of bids submitted in response to the 2010 RFP.

All parties are permitted to submit briefs on the merits and to file exceptions to any Initial Decision entered on the merits.

Remedies if the Complaint is Granted

<u>Event</u>	<u>Proposed Date</u>
Second Prehearing Conference	Thursday, September 11, 2014
J3 Energy Direct Testimony on Remedies	Monday, October 27, 2014
Other Parties' Rebuttal Testimony on Remedies	Wednesday, November 26, 2014
Evidentiary Hearings	December 10-11, 2014
Initial Briefs on Merits and Remedies	Monday, January 12, 2015
Reply Briefs on Merits and Remedies	Monday, January 26, 2015

UGI Development submits that the above-proposed schedule recognizes the discrete issue to be decided, accounts for the fact that J3 Energy as the complainant bears the burden of proof, accommodates the upcoming holiday season, and avoids any unnecessary delay in the final resolution of this proceeding.

VI. RESPONSE TO ISSUES IN THE PREHEARING CONFERENCE ORDER

In Paragraph 2 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 status of J3's Bankruptcy Petition.
 - (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

UGI Development does not perceive any need to include specific dates for settlement conferences in the procedural schedule. 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

Based upon its review of the existing record, it appears that J3 Energy and West Penn have developed an extensive record on the issue raised by J3 Energy’s Formal Complaint -- how “All-or-Nothing” bids were to be evaluated under West Penn’s 2010 competitive RFP. As explained above, UGI Development submits that no additional testimony, discovery, or hearings are necessary or appropriate on the issue of West Penn’s evaluation of bids submitted in response to the 2010 RFP. Therefore, UGI Development believes that it is reasonable and prudent to decide the merits of this issue on briefs.

Based upon UGI Development review of the existing record, it does not appear that the Parties have fully addressed the issue of potential remedies available to J3 Energy. Therefore, as

explained above, UGI Development submits that it is appropriate to open the record for the limited purpose of developing the factual and legal positions of the parties regarding what, if any, remedies may potentially be available to J3 Energy if the Commission were to sustain the Complaint.

C. PROCEDURAL SCHEDULE IF A HEARING IS REQUIRED

As explained above, UGI Development submits that it is appropriate to open the record for the limited purpose of developing the factual and legal positions of the parties regarding what, if any, remedies may potentially be available to J3 Energy if the Commission were to sustain the Complaint. UGI Development submits that the above-proposed schedule recognizes the discrete issue to be decided, while at the same time avoids any unnecessary delay in the final resolution of this proceeding.

D. WRITTEN TESTIMONY

As explained above, UGI Development submits that it is appropriate to open the record for the limited purpose of developing the factual and legal positions of the parties regarding what, if any, remedies may potentially be available to J3 Energy if the Commission were to sustain the Complaint. UGI Development submits that the above-proposed schedule recognizes the discrete issue to be decided and that J3 Energy as the complainant bears the burden of proof, while at the same time avoids any unnecessary delay in the final resolution of this proceeding.

E. OTHER MATTERS THAT MAY AID IN EXPEDITING THIS PROCEEDING

With respect to the exchange and acceptance of exhibits proposed to be offered into evidence, UGI Development submits that the above-proposed schedule recognizes the discrete issue to be decided, while at the same time avoids any unnecessary delay in the final resolution of this proceeding.

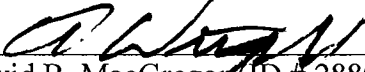
UGI Development remains open and available to discuss the possibility of obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

With respect to the status of J3's Bankruptcy Petition, UGI Development believes that this is an important issue that not only affects any potential settlement that might be reached in this proceeding, as explained above, but also may affect the issue of what remedies, if any, are available to J3 Energy if the Complaint is sustained. UGI Development submits that this is an important issue that may materially affect the outcome of this proceeding. Therefore, UGI Development suggests that J3 Energy be required to submit periodic status updates to ensure that the Parties and the ALJ are aware of any changes that could potentially impact this proceeding.

To date, UGI Development and J3 Energy have engaged in limited discovery. Given the limited and discrete issue that remains to be address -- what, if any, remedies may potentially be available to J3 Energy if the Commission were to sustain the Complaint -- UGI Development does not believe that any change or modification in the standard timelines for discovery set forth in the Commission's regulations is necessary or appropriate.

Respectfully submitted,

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Date: September 9, 2014

Counsel for UGI Development Company