

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 11, 2008

IN RE:

PETITION OF JACKSON ENERGY AUTHORITY TO
EXPAND ITS CCN TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICES

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DOCKET NO.
07-00201

ORDER RESOLVING OBJECTIONS TO DISCOVERY REQUESTS

This matter came before the Hearing Officer during a Status Conference held on December 20, 2007, at which time the Hearing Officer heard arguments on objections filed December 14, 2007 by Jackson Energy Authority (“JEA”) to the discovery requests issued December 10, 2007 by the Tennessee Cable Telecommunications Association (“TCTA”) and Aeneas Communications, LLC (“Aeneas”).

BACKGROUND

According to the *Application*, JEA is a private act utility authority¹ created under Chapter 55 of the Private Acts of 2001.² JEA is currently authorized³ to provide services as a carriers’ carrier to competitive local exchange carriers (“CLECs”) within Madison County, Tennessee, and JEA desires to expand those services to include the provision of retail services to end use customers throughout the State of Tennessee, as business conditions warrant.⁴ JEA is requesting that the TRA modify its Certificate of Public Convenience and Necessity (“CCN”) and authorize

¹ In addition to Title 65, JEA is subject to Tenn. Code Ann. Sections 7-52-401 *et seq.*, and will be reviewed as a municipal electric plant, hereafter “municipal electric”.

² *Application*, p. 2 (August 31, 2007).

³ See Order Approving Application For Certificate of Public Convenience and Necessity, TRA Docket No. 03-00438 (March 5, 2004).

⁴ *Application* at 5.

it to provide retail telecommunications services throughout the State of Tennessee, except for those areas referenced in Tenn. Code Ann. § 7-52-403(b).⁵

To memorialize a status conference held on November 27, 2007, the Hearing Officer issued an *Order Granting Petitions for Intervention and Establishing a Procedural Schedule* on December 7, 2007. On December 14, 2007, JEA filed objections to certain discovery requests of TCTA's and certain of Aeneas's request for discovery and production of documents. In accordance with the procedural schedule, the Hearing Officer issued a *Notice of Status Conference* on December 18, 2007, to be held on December 20, 2007 for the sole purpose of addressing these discovery disputes. Aeneas filed its response to JEA's objections on December 19, 2007.

DECEMBER 20, 2007 STATUS CONFERENCE

The Hearing Officer convened the Status Conference on December 20, 2007. The following counsel were in attendance:

Mark Smith: Jackson Energy Authority ("JEA");

Henry Walker: Aeneas Communications, LLC ("Aeneas"); and

Jamie Hollin: Tennessee Cable Telecommunications Association ("TCTA").

When TCTA was queried by the Hearing Officer as to why it had not responded to JEA's objections, both TCTA and JEA informed the Hearing Officer that their discovery disputes had been resolved. Although JEA reported that it still had concerns regarding the scope of TCTA's discovery requests, the amount of information and documents requested were minimal, and therefore JEA agreed to respond to each of TCTA's discovery requests.

As for Aeneas, while JEA also expressed general concerns and objections to the scope of Aeneas' discovery requests, it agreed to respond to all requests except questions 4b, 6, 8, 9 and

⁵ *Id.* at 8.

11 and request for production 5. JEA's specific objections center on relevancy, as it contends that these requests are outside the scope of the current proceeding. JEA contends that it should be held in this proceeding to the same standard for obtaining a CCN as any other CLEC, whereas Aeneas contends that as a municipal electric expanding into the telecommunications market,⁶ JEA should be held to requirements usually imposed on incumbent local exchange carriers ("ILECs").

As this relevancy argument is at the core of the discovery disputes at issue before us, resolving this question will in effect resolve the discovery disputes. After hearing arguments of the parties and reviewing the applicable law, both in Title 65 and Title 7, this Hearing Officer finds that JEA should be held to the standards imposed on CLECs to obtain a CCN, and that Title 7 imposes sufficient additional requirements on municipal electrics to assure a fair and competitive market. JEA is not an ILEC, and Aeneas' attempt to broaden the scope of this proceeding is overruled.

As the Hearing Officer is aware of the ramifications of this ruling, permission is hereby granted for an interlocutory appeal of the discreet decision concerning the standard to which a municipal electric should be held; if the Authority makes the determination that JEA should be held to a higher standard than a traditional CLEC, the following rulings on discovery disputes should be remanded back to the Hearing Officer in order to conform them to the Authority's decision.

Rulings on Specific Requests

Question 4b: This question asks JEA to estimate the interest rate on its bonds if those bonds were not guaranteed by JEA's Electric Division and the City of Jackson. JEA's objection

⁶ In addition to Title 65, JEA is subject to Tenn. Code Ann. Sections 7-52-401 *et seq.*, through which the legislature has statutorily imposed additional requirements (such as constraints on cross-subsidization) on municipal electrics prior to their entrance into the telecommunications market.

states that it does not have such information and would have to speculate on any answer it would provide. The Hearing Officer agrees with JEA. JEA would have to survey proxies to estimate a bond rating for similarly situated CLECs -- information that is not exclusively within the control of JEA and that Aeneas could obtain for itself with the same amount of effort. Therefore, JEA's objection is sustained and it is not required to answer question 4b.

Questions 6 and 8: Aeneas' discovery requests numbers 6 and 8 ask JEA for TELRIC cost data required of ILECs. JEA contends that it is applying for a CCN as a CLEC and should not be subject to ILEC requirements simply because it is a municipal electric. At the status conference, Aeneas conceded that the information requested was not necessary for evaluation of the request for an expanded CCN, but could be necessary if the Authority placed additional requirements on JEA as a condition for granting the expanded CCN. Aeneas stated that it did not want to be precluded from discovery if the Authority ordered TELRIC cost studies as Atmos Intervention Group ("AIG") was denied discovery in a recent rate case.⁷ The Hearing Officer sees no similarities between that rate case and the instant docket. As demonstrated in previous telecommunications dockets, the Authority allows for additional discovery when TELRIC rates are ordered at the conclusion of a proceeding.⁸ In the Atmos Energy Corporation rate case referenced by Aeneas, AIG requested data to support previously filed testimony one week before the hearing and after a settlement had been filed.

While concerns regarding JEA's potential anticompetitive behavior should not be treated lightly, JEA is not an ILEC and the information requested is not relevant to evaluating JEA's compliance with Tenn. Code Ann. Sections 65-4-201 or 7-52-401 *et. seq.* Furthermore, if the Authority places any additional conditions or requirements on JEA, the relevant information can

⁷ See Docket No. 07-00105.

⁸ See Docket No. 03-00585.

be gathered at that time. Therefore, JEA's objections are sustained and it is not required to answer questions 6 and 8.

Question 9: In this discovery request, Aeneas asks for documentation regarding JEA's decision to apply for a CCN as a carriers' carrier in 2004. Aeneas argues that in order to determine the validity of the current decision to become a retail provider it must evaluate the validity of the 2004 decision. While certificating municipal electrics raises cross subsidization concerns not present when evaluating most CLEC CCN applications, the business plans and analysis requested by Aeneas far surpass the information required of other CLEC applicants, without contributing information relevant to evaluating the additional requirements for municipal electrics. Additionally, four year old market conditions and the decisions based on them should have no relevance for evaluating a current decision. Therefore, JEA's objections are sustained and it is not required to answer question 9.

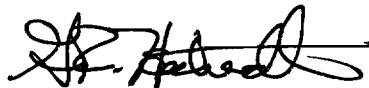
Question 11: This question asks JEA to "[p]rovide all documents and explanation concerning JEA's decision to become a retail provider of telephone service rather than remaining a solely wholesale provider." As discussed above, this request far surpasses the information required of other CLEC applicants without contributing information relevant to evaluating the additional requirements for municipal electrics. JEA has committed to provide a compilation of the primary strategic planning documents regarding the decision to become a retail provider. The Hearing Officer agrees with JEA that this is sufficient. Therefore, JEA's objections are sustained and it is not required to produce any additional material relative to question 11.

Request for Production 5: The Hearing Officer is sympathetic to JEA's concerns regarding the scope of the docket. JEA opines that some of Aeneas' requests allege violations of conditions placed on JEA, allegations that should be filed as separate complaints rather than as

discovery requests in this docket. However, ability to comply with CPNI rules and requirements is relevant to a CCN application in as much as companies do commit to comply with both TRA and FCC rules and regulations. If Aeneas attempts to use the discovered information in a manner outside the scope of this proceeding, the Authority can address that issue at that time. Therefore, JEA's objections are overruled and JEA is required to produce any existing requested documents pursuant to request for production 5.

IT IS THEREFORE ORDERED THAT:

1. Jackson Energy Authority's objections to Aeneas' discovery requests, questions 4b, 6, 8, 9 and 11, are sustained.
2. Jackson Energy Authority's objection to Aeneas' request for production 5 is overruled.
3. Permission is hereby granted for an interlocutory appeal of this Hearing Officer's determination that a municipal electric such as JEA is not an ILEC, and therefore JEA should be held to the same standard as a typical CLEC when applying for a CCN, subject to any additional conditions imposed on municipal electrics by Title 7.
4. If an interlocutory appeal is taken, the December 7, 2007 procedural schedule in this docket is suspended pending the Authority's disposition of such appeal.



Gary Hotvedt, Hearing Officer