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May 20, 2022

Via Electronic Filing and Hand Delivery

Electronically Filed in TPUC Docket
Room on May 20, 2022 at 1:53 p.m.

Hon. Kenneth C. Hill, Chairman
c/o Ectory Lawless, Docket Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
tpuc.docketroom@tn.gov

***Re: Petition of Jackson Sustainability Cooperative to Determine if a Certificate of Convenience and Necessity Is Needed
Docket No. 21-00061***

Dear Chairman Hill:

Enclosed please find the following documents, which were filed electronically on May 20, 2022:

- Tennessee Electric Cooperative Association's Motion to Compel Discovery from Jackson Sustainability Cooperative
- Memorandum of Law in Support of Tennessee Electric Cooperative Association's Motion to Compel Discovery from Jackson Sustainability Cooperative, and exhibits thereto (Public Redacted Version)

Also enclosed is a usb drive containing electronic copies of these documents.

A CONFIDENTIAL version of the Memorandum, which was also filed electronically on May 20, 2022, will be sent under separate cover.

Should you have any questions concerning the enclosed, please do not hesitate to contact me.

Sincerely,



Matthew J. Sinback

Enclosure

cc: All Counsel of Record (letter only)

**BEFORE THE
TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF JACKSON)	
SUSTAINABILITY COOPERATIVE TO)	Docket No. 21-00061
DETERMINE IF A CERTIFICATE OF)	
CONVENIENCE AND NECESSITY IS)	
NEEDED)	

**TENNESSEE ELECTRIC COOPERATIVE ASSOCIATION’S MOTION TO COMPEL
DISCOVERY FROM JACKSON SUSTAINABILITY COOPERATIVE**

Pursuant to Tennessee Public Utility Commission Rule 1220-01-02-.11 and Tennessee Rule of Civil Procedure 37.01, Tennessee Electric Cooperative Association (“TECA”) hereby moves for an order compelling the Petitioner, Jackson Sustainability Cooperative (“JSC”), to comply with its discovery obligations and produce all documents responsive to TECA’s First Set of Discovery Requests, dated September 8, 2021 (“TECA’s First Requests”), and TECA’s Second Set of Discovery Requests, dated February 11, 2022 (“TECA’s Second Requests”).

Counsel for JSC has repeatedly stated that the parties have received all of the responsive documents of JSC and its affiliate, Community Development Enterprises – Jackson I (“CDE”). However, recent document productions made by non-party Northern Reliability, Inc. in response to a subpoena issued by TECA have revealed that this is untrue. These document productions include nearly 200 emails from, to, or copying senior leaders at JSC and CDE, as well as other CDE documents related to the solar project that is the focus of this docket. Thus, it has become apparent that JSC has not produced all responsive documents, has not conducted adequate searches

for responsive documents, and has picked and chosen which documents it wants to produce. Given that JSC and, effectively, CDE are seeking a declaration that the solar facility is completely exempt from regulation by the Tennessee Public Utility Commission, this docket cannot move forward until full compliance with the discovery rules is established. Moreover, the Petitioner's discovery failures have forced TECA to incur substantial expense, including attorneys' fees and expenses associated with this Motion and the subpoena issued to Northern Reliability, Inc. The Petitioner should be required to bear these fees and expenses.

Accordingly, TECA requests that the Motion to Compel be granted and that the following relief be ordered:

1. JSC, CDE and its principals and agents should be compelled to perform a thorough search of its records, provide details of the search performed, and produce all documents responsive to TECA's discovery requests.
2. To the extent JSC/CDE maintains its assertion that documents have been deleted or otherwise discarded, JSC/CDE should be compelled to answer the following interrogatory:
 - State whether any of the following categories of documents were discarded or destroyed during the period July of 2020 to Present and if any such documents were destroyed, for each, describe the contents of such document, in whose possession the document was, who destroyed or discarded it and the circumstances of the destruction of such document.
 - Legal structure of JSC and CDE
 - Communications with potential members of JSC
 - Membership requirements for JSC
 - JSC status as a non-profit cooperative
 - JSC status as a public utility
 - Financing of JSC, CDE, and/or the solar facility
 - Communications with Northern Reliability regarding the solar facility
 - Communications with iSun regarding the solar facility

- Documents or communications relating to the construction or operation of solar facilities, or the generation, transmission, or sale of electricity in the state of Tennessee by JSC, CDE, or any entity affiliated with JSC or CDE.
3. Sanctions in the form of TECA's reasonable attorney's fees and expenses associated with 1) this motion to compel, and 2) TECA's subpoena to Northern Reliability.

In support of this Motion, TECA relies on the Memorandum of Law and exhibits filed contemporaneously herewith.

DATED this 20th day of May, 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of May, 2022, the foregoing document was served on the following persons via email, hand delivery, overnight delivery and/or U.S. Mail, postage prepaid:

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BEFORE THE
TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

IN RE:)
)
PETITION OF JACKSON)
SUSTAINABILITY COOPERATIVE TO) Docket No. 21-00061
DETERMINE IF A CERTIFICATE OF)
CONVENIENCE AND NECESSITY IS)
NEEDED)

MEMORANDUM OF LAW IN SUPPORT OF TENNESSEE ELECTRIC
COOPERATIVE ASSOCIATION'S MOTION TO COMPEL DISCOVERY FROM
JACKSON SUSTAINABILITY COOPERATIVE

Pursuant to Tennessee Public Utility Commission (the "Commission") Rule 1220-01-02-.11 and Tennessee Rule of Civil Procedure 37.01, Tennessee Electric Cooperative Association ("TECA") has filed a motion asking that the Petitioner, Jackson Sustainability Cooperative ("JSC"), be compelled to comply with its discovery obligations and produce all documents responsive to TECA's First Set of Discovery Requests, dated September 8, 2021 (**Ex. 1**, "TECA's First Requests"), and TECA's Second Set of Discovery Requests, dated February 11, 2022 (**Ex. 2**, "TECA's Second Requests"). In further support of the Motion, TECA states as follows.

INTRODUCTION

JSC¹ proposes to invest nearly \$70 million in a combined solar and battery storage facility to generate, store and sell retail electricity to a yet-to-be-determined number of industrial and

¹ Based on information contained in the Petition and direct testimony filed by JSC, as well as information obtained in discovery, it is clear that the real party in interest here is Community Development Enterprises - Jackson I ("CDE"). CDE is identified as the developer of the solar facility, the entity responsible for obtaining funding for the project, and the signatory to the

commercial customers located within Jackson Energy Authority's ("JEA") service territory. (Petition at ¶¶ 2 & 30 and Petition Ex. 3.) The proposed solar project will have a nameplate capacity of 16.5 MW, and the accompanying storage facility will have 46 MWh of capacity. (Petition at ¶ 3.) To serve its customers, JSC/CDE plans to install underground distribution lines up to 3.5 miles from the solar project. (See Petition at ¶ 5.) JSC/CDE claims that these potential members include a group of "approximately 38 public and private operators" within JEA's service territory, including "4 to 8 suitable, heavy users of electricity." (Petition at ¶ 11 and Petition Ex. 3.) If successful, the JSC/CDE project would allow these users to "switch a major portion of their electricity usage to renewables." (Direct Test. of Dennis Emberling, filed May 24, 2021 ("Emberling Test." at 7.) [REDACTED]

[REDACTED] (Ex. 5, CONFIDENTIAL NRI001023-25.)

Despite the size, scope, scale, and description of this proposed project, JSC/CDE has produced minimal documentation in response to the discovery requests made by the Tennessee Electric Cooperative Association ("TECA"). In fact, although the Petition and the direct testimony filed by JSC/CDE make numerous specific representations about this \$70 million project,

contract with the prime contractor. (See, e.g., Petition ¶¶ 23, 24, 27.) Moreover, CDE and JSC share the same leadership: Dennis Emberling serves as the Chief Executive Officer of CDE and the President and Director of JSC, and David Shimon serves as the Chief Financial Officer of CDE and the Chief Financial Officer and Chairman of the Board of Directors of JSC. (See Petition at 4-5; Ex. 3, JSC CONFIDENTIAL – 500143-161 at Signature Block; Ex. 4, "About CDE – Community Development Enterprises" webpage capture.) Indeed, as discussed further below, during the parties' efforts to resolve discovery disputes, counsel for JSC has represented that all responsive documents from *both* JSC *and* CDE have been produced, and TECA relied on this representation when it assessed the necessity of issuing a subpoena to CDE. Accordingly, the entities will be commonly referred to herein as "JSC/CDE" where appropriate.

JSC/CDE has only produced just over 600 pages of documents.² This production includes some 420 pages of third-party documents, like IRS publications and journal articles, and only 200 or so pages of JSC/CDE’s project-specific documents. Importantly, to date, this production includes just *four* emails.

Since September of 2021, TECA has consistently voiced its concern about the paucity of the JSC/CDE production, has expressed its concern about the lack of e-mails and other written communications, and has asked JSC/CDE for an explanation of the discovery searches that were performed. In response, counsel for JSC (“JSC Counsel”) has repeatedly told counsel for TECA that JSC and CDE have produced all responsive documents and that no non-privileged documents have been withheld based on objections. In fact, JSC Counsel made the same representation to the Hearing Officer at the May 6, 2022 Status Conference—that JSC and CDE have produced all of their documents.

It has become apparent, however, that these representations are not accurate. If JSC Counsel did not know these representations were inaccurate, that is because he did not take his discovery obligations seriously and blithely trusted JSC/CDE to decide what was available and relevant without confirming anything for himself. Productions made by the project’s prime contractor, Northern Reliability, Inc. (“Northern Reliability”), in response to a subpoena TECA was forced to serve, make clear that JSC/CDE is withholding requested information, is unable or unwilling to search for the requested information and has failed to comply with its discovery obligations. While JSC/CDE produced just *four emails*, Northern Reliability produced nearly *200 emails* from, to, or copying Mr. Emberling or Mr. Shimon. Moreover, JSC Counsel recently

² This figure excludes documents filed before the commencement of discovery, including the Petition, the pre-filed testimony, and other filings.

informed TECA that Mr. Emberling has deleted or otherwise disposed of potentially relevant and responsive emails and documents, which raises serious concerns of spoliation of evidence. In short, JSC/CDE has failed to comply with the most basic obligations of Tennessee Rule of Civil Procedure 26.

Accordingly, pursuant to Commission Rule 1220-01-02-.11 and Tennessee Rule of Civil Procedure 37.01, TECA respectfully moves that JSC be compelled to fully comply with its discovery obligations, perform thorough searches for responsive documents, produce all documents responsive to TECA's discovery requests, and comply with the relief requested in the Motion, which is also set forth below. Simply put, the totality of JSC's discovery conduct would warrant the sanction of dismissal in any other forum. At a minimum, in this forum, JSC should be sanctioned and required to pay JEA and TECA's cost of having to bring these motions and obtain third-party discovery from Northern Reliability, virtually all of which should have been produced by JSC/CDE in the first instance.

BACKGROUND

I. The Jackson Solar Facility

JSC/CDE seeks to establish a competitive electric utility and provide retail electric service to various commercial and industrial customers in Jackson, Tennessee. On May 24, 2021, JSC filed an application petitioning the Commission to determine if it is exempt from regulation by the Commission or in the alternative seeking a certificate of convenience and necessity (the "Petition"). (*See* Petition at 1, 17.) In the Petition and supporting exhibits, JSC said that it had been formed under the Tennessee Electric G&T Cooperative Act (the "G&T Act"), Tenn. Code Ann. § 48-69-101, *et seq.*, but it also sought a declaratory ruling that it is exempt from regulation because it is not a "public utility" under Tenn. Code Ann. § 65-4-101(6). (*Id.*) In the alternative,

JSC asked for a certificate of convenience and necessity to offer electric service to retail customers in Jackson, Tennessee. (*Id.*)

In response to the Petition, JEA and the Tennessee Valley Authority (“TVA”) both filed briefs recommending the Commission deny the Petition because G&T cooperatives are explicitly prohibited from providing services to retail customers under the G&T Act. (*See* Statement of JEA in Opposition to Commencement of a Contested Case and Requesting the Denial of a Declaratory Order, filed June 25, 2021; Statement of the TVA Recommending that the Commission Not Issue a Declaratory Ruling and Decline to Open a Contested Case Proceeding, filed July 1, 2021.) In the Response By JSC to the Filed Statements, filed on July 13, 2021 (“Response”), JSC attached updates to its charter and bylaws that abandoned references to the G&T Act and added references to the Rural Electric and Community Services Cooperative Act, T.C.A. § 65-25-101, *et seq.* (*See* Response at 3, 6; Response Exs. 15, 16.)

On July 21, 2021, the Commission issued a Notice of Hearing indicating that it will determine two questions: (1) whether JSC is exempt from Commission regulation because it is a non-profit electric cooperative and covered by an express exemption under Tenn. Code Ann. § 65-4-101(6)(A)(v); and (2) if JSC is not exempt as an electric cooperative, whether JSC is not a public utility because it distributes supplemental electrical energy and is not “affected by and dedicated to the public use” as required under Tenn. Code Ann. § 65-4-101(6)(A). The Commission subsequently granted petitions to intervene that had been filed by JEA, TVA, TECA, and Tennessee Municipal Electric Power Association (“TMEPA”) (collectively, “Intervenors”), entered a Protective Order, and entered an Order Establishing a Procedural Schedule.

The Petition and discovery efforts to date have raised significant questions about the nature and scope of the project. Summarily, Intervenors have learned that CDE, a for-profit joint venture,

is the driving force behind the project.³ As indicated by the shifting positions taken to date in this docket, JSC/CDE has searched for ways to form and operate its solar project without oversight from the Commission, first by setting up JSC as a G&T cooperative and then by changing it into a purported rural electric cooperative. (*Compare* Petition at 1, 17 *with* Response at 6-8, 13.) The limited discovery produced by JSC/CDE has shown that JSC *has no full members*⁴ and that CDE and Northern Reliability will decide who is allowed to be a member.⁵ [REDACTED]

[REDACTED] (Ex. 3, JSC CONFIDENTIAL – 500143-161 at § 3.)

Members will be required to sign a 30-year membership agreement, in which they agree to all of the rules set forth therein. (*See* Petition Ex. 4 at JSC Full Member Agreement; Ex. 7, JSC Supplemental First TECA Responses at Response 22.) [REDACTED]

[REDACTED] the “members” of JSC will supposedly pay a small amount less (5%) for electricity than they are currently paying, [REDACTED]

[REDACTED]⁶ [REDACTED]

[REDACTED] (Ex. 11, JSC CONFIDENTIAL – 500057-87 at 500084-85.) [REDACTED]

³ See e.g., Ex. 6, JSC’s Responses and Objections to TECA’s First Requests (“JSC First TECA Responses”) at Responses 8, 9, 10, 37, 39; Ex. 7, JSC’s Supplemental Responses to TECA’s First Requests (“JSC Supplemental First TECA Responses”) at Response 37; Ex. 8, JSC CONFIDENTIAL – 500088-103 at § 15.

⁴ See e.g., Ex. 9, JSC Responses to JEA’s Second Set of Discovery Requests at Response 12. TECA notes that a JSC “conditional member” is no more than an applicant and has no rights other than to receive “a detailed analysis of electrical profile and *potentially* [receive] an offer to participate....” Petition Ex. 4 at Conditional Member Agreement (emphasis added).

⁵ See e.g., Ex. 10, Direct Test. of Dennis Emberling, Pt. II (“Emberling Test. Pt. II”) at 17.

⁶ See e.g., Ex. 3, JSC CONFIDENTIAL – 500143-161 at § 3; Petition Ex. 4 at JSC Full Member Agreement § 4; Ex. 6, JSC First TECA Responses at Response 26.

[REDACTED] (Id. at 500066; see also Ex. 12, CONFIDENTIAL NRI001389-92 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED].)

II. Discovery Efforts to Date

On September 8, 2021, in accordance with the Procedural Schedule, TECA served JSC with its First Discovery Requests and filed the same with the Commission. On September 22, 2021, JSC served responses to TECA’s discovery requests⁷—responses that were wholly deficient and have required seven months (and counting) of follow-up—as well as additional Direct Testimony by Dennis Emberling. Since receiving JSC’s responses, TECA has engaged in extensive efforts to notify JSC’s counsel of deficiencies in JSC’s discovery responses, to understand how JSC applied its general objections and request-specific objections and to understand the nature and extent of JSC’s search for responsive documents.

On September 29, 2021, TECA and JSC had a telephone conference to discuss deficiencies in JSC’s discovery responses. TECA followed up on this call by sending JSC a “discovery letter” detailing the deficiencies in JSC’s production on October 4, 2021. (Ex. 13, “First Letter.”) In the First Letter, TECA explained that JSC’s production does not include any of the types of documents commonly produced in litigation, including emails, letters, spreadsheets, notes, and other electronic and paper documents. (Id. at 2.) JSC/CDE was further asked to explain what search was performed for responsive documents, which persons’ electronic and paper files were searched,

⁷ Ex. 6, JSC First TECA Responses.

and what categories of documents were not searched (e.g., emails, letters, computer folders, etc.).
(*Id.*)

On October 26, 2021, JSC provided JSC’s Supplemental First TECA Responses, which did not correct JSC’s deficient discovery responses. (**Ex. 7.**) On November 2, 2021, TECA sent JSC a second discovery letter (**Ex. 14**, “Second Letter”), in which TECA explained, among other things, that JSC’s October 26, 2021 supplemental response and supplemental document production failed to address the issues raised in the First Letter. TECA specifically stated that “[t]he First Deficiency Letter identified numerous shortcomings in the production, including the complete absence of emails, letters, memoranda, voicemail, or other written or electronic communications, as well as the kinds of spreadsheets and other electronic files that are produced in virtually every case involving business entities” and that “[i]n the Supplemental Production, JSC only produced some 588 pages of additional documents, and most of these—some 421 pages—are publicly available third-party documents, like IRS publications and industry white papers. And, the Supplemental Production includes just *three* emails.” (*Id.* at 2.) Moreover, the Second Letter asked JSC to clarify whether any information or documents available from CDE had been withheld. And, throughout the Second Letter, TECA asked JSC to confirm that all documents responsive to TECA’s requests had been produced.

JSC Counsel responded by letter dated November 11, 2021, which stated “no documents or responses were held back based on [JSC’s] objections” and JSC had “made good faith inquiries and produced its documents and the documents of others in its possession that are responsive to the questions propounded by TECA. *At this time there are no other documents.*” (**Ex. 15**, JSC/CDE Nov. 11 Letter at 1, 2 (emphasis added).) On November 23, 2021, TECA and JSC Counsel engaged in a lengthy meet-and-confer call to discuss TECA’s discovery requests,

JSC/CDE's responses and objections, and issues raised in correspondence. TECA summarized the discussion in a letter to JSC Counsel dated December 15, 2021 (**Ex. 16**, "Third Letter.") During the call, JSC Counsel confirmed that no documents or information had been withheld based on JSC's general objections regarding relevance, breadth, or burden. JSC Counsel also stated that TECA had been given all responsive electronic and physical documents in the possession of each of JSC and CDE. On the call, TECA expressed concern that even for a project at an early stage of development, the absence of emails, internal analyses, notes, projected financials, spreadsheets and other documents seemed unusual, particularly given that the Petition and Mr. Emberling's testimony make many specific statements about the project, the status of the project, communications with potential funders, the projected operations of JSC and CDE and the benefits the project will create in Jackson. JSC Counsel assured TECA that no documents were being withheld on the basis of any of JSC's objections. And, JSC Counsel repeatedly assured TECA that all responsive documents in the possession, custody, or control of each of JSC and CDE had been produced. JSC Counsel noted, however, that Northern Reliability may have additional documents in its files. During the call, TECA advised that third-party discovery may be necessary.

TECA formally advised the Hearing Officer of JSC Counsel's assurances that all of JSC's and CDE's responsive documents had been located and produced. In the Update on Status of Discovery Issues by JEA, TECA, and TMEPA, filed on January 28, 2022, TECA explained: "Although JSC has produced a limited volume of discovery, JEA and TECA take JSC at its word that it has produced all responsive documents and information in the possession, custody and control of JSC and the project developer, [CDE], and has not withheld any non-privileged

documents or information based on JSC's general and specific objections. Based on JSC's representations, JEA and TECA do not contemplate filing motions to compel at this time."⁸

A telephone Status Conference was held on February 9, 2022, at which TECA advised of JSC Counsel's assurances and asked for permission to subpoena Northern Reliability, E A Solar, Hunt Solar, and SynEnergy. As explained more fully in TECA's March 18, 2022 Update on Status of Third-Party Discovery, in order to avoid the delay and expense associated with domesticating the Northern Reliability subpoena in Vermont, TECA accepted the offer made by JSC Counsel to attempt to arrange for Northern Reliability to accept service of process. (*See Ex. 18*, Feb. 9, 2022 email from J. Beam to B. Phillips et al. ("I believe I can arrange for Northern Reliability ... to accept service of process.")). On February 16, JSC Counsel advised that he had traded calls with his contact at Northern Reliability, and that he would follow up on whether they agreed to accept service. (*Ex. 19*, Feb. 16 email from J. Beam to M. Sinback et al. ("Northern Reliability and I have traded calls and missed each other. I will try to let you know whether they will accept service by agreement tomorrow or Friday.")). On February 28, counsel for JSC responded to a request for an update and stated that he had emailed Northern Reliability and would follow that email up with a telephone call. (*Ex. 20*, Feb. 28 email from J. Beam to M. Sinback et al.) When that effort did not yield a response, TECA retained counsel in Vermont, filed the subpoena in the Vermont Superior Court, asked the court to approve the subpoena, and arranged for the domesticated subpoena to be served. That process was completed on March 10, 2022.

[REDACTED]

[REDACTED]

⁸ TECA's discovery letter dated April 12, 2022 (*Ex. 17*, "Fourth Letter") focused only upon issues regarding JSC's responses to TECA's Second Requests, which pertained to Emberling Test. Pt. II.

[REDACTED]⁹ (Ex. 21, CONFIDENTIAL NRI001775 [REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰ (*Id.*)

Though the subpoena was served on March 10, Northern Reliability delayed its production and requested that TECA ask for amendments to the Protective Order. With the Protective Order modified to its satisfaction, Northern Reliability has now made three productions, each of which has been filed with the Commission. Northern Reliability produced 630 pages of documents on April 14, 2022, and produced an additional 319 pages of documents on April 25, 2022. Northern Reliability's initial production included a number of documents that, on their face, should have been produced by JSC/CDE. Accordingly, TECA sent a letter to JSC Counsel, dated April 21, 2022 (Ex. 22, "Fifth Letter"), asking for an explanation of why these documents were not produced by JSC/CDE in response to the discovery requests of TECA and/or JEA, and renewed the request for clarification on what search was performed for responsive documents, which persons' electronic and paper files were searched, and what categories of documents, if any, were not searched.

⁹ To be clear, JSC Counsel does not represent Northern Reliability.

¹⁰ [REDACTED]

By letter dated April 29, 2022, JSC/CDE responded that “[m]any of the documents for which you requested explanation were draft investigation or development working documents,” many of which “were discarded as they were superseded [sic] by later documents.” (Ex. 23, JSC/CDE April 29 Letter at 1-2.) And JSC/CDE once again represented that “[a]ll documents in possession of Jackson Sustainability Cooperative and Community Development Enterprises Jackson I have been produced.” (*Id.*) In essence, JSC/CDE conceded that it has been picking and choosing which documents it wants to produce, while telling TECA that it has produced everything.

As TECA explained at the Status Conference held on May 6, 2022, TECA continued to have concerns about the completeness of Northern Reliability’s production in light of the fact that only a handful of emails had been produced. TECA pressed Northern Reliability to explain the absence of emails and other written correspondence or to immediately produce these documents. On May 12, 2022, Northern Reliability sent TECA a pdf file that included **838 pages of emails** and a small number of attachments (“Northern Reliability’s Third Production”).¹¹

Northern Reliability’s Third Production reveals that JSC/CDE’s representation that it has produced all responsive documents is demonstrably false. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See generally Northern Reliability’s Third Production.) [REDACTED]

[REDACTED]

[REDACTED] (See e.g., Ex. 24, CONFIDENTIAL NRI001070-71.) Moreover, while

¹¹ This production was filed with the Commission on May 16, 2022.

JSC/CDE produced no emails with iSun, the production includes [REDACTED]

[REDACTED] (See generally Northern Reliability's Third Production.)

Simply stated, it is apparent that JSC/CDE is purposely withholding responsive, non-privileged information; is unable to produce documents that it has destroyed; or is unwilling to search for the requested information. While JSC/CDE has recently argued that JSC is just asking for declaratory relief, the Intervenor and the Commission must be permitted to understand the nature of this project and the consequences of granting the relief that has been requested. [REDACTED]

[REDACTED] (See Ex. 12, CONFIDENTIAL NRI001389-92.) [REDACTED]

[REDACTED] (Ex. 11, JSC CONFIDENTIAL – 500057-87 at 500066.)

TECA has worked for months and incurred significant expense—including the expense of drafting subpoenas, obtaining Vermont counsel, communicating with Northern Reliability's lawyers, and bringing this motion to compel—to obtain the discovery that is needed. But, it has become apparent that TECA's efforts have been thwarted and met with bad faith. Thus, an order compelling JSC/CDE to comply with the discovery rules is required.

ARGUMENT

Unlike a typical motion to compel, where the judge is asked to determine whether particular objections are valid or to rule upon a narrow dispute over a particular class of documents, the issue here is whether the Petitioner—who has come to the Commission seeking a broad exemption from regulation—may be excused from making basic discovery efforts. Here, JSC/CDE has told TECA that no documents were withheld based on its objections. JSC/CDE has told TECA that it has produced all non-privileged documents responsive to TECA's requests, while ignoring TECA's

multiple requests to describe what searches were performed. But, Northern Reliability's productions, and JSC/CDE's April 29 Letter, have revealed that there are hundreds, maybe thousands, of responsive documents that have not been produced. JSC/CDE is not allowed to pick and choose what it wants to produce. And, JSC/CDE is not allowed to avoid searching for emails and other written communications. Discovery does not work that way under Tennessee law.

I. Documents Sought by TECA Are Relevant and Must Be Produced.

Discovery in this matter is governed by the Tennessee Rules of Civil Procedure. *See* Commission R. 1220-01-02.11. Under these rules, 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 any other party...." Tenn. R. Civ. P. 26.02. "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401.

In the discovery context, relevancy is liberally construed and "the phrase 'relevant to the subject matter involved in the pending action' is synonymous with 'germane' or 'bearing on the subject matter.'" *G.G. ex rel. Johnson v. Boyd-Buchanan Sch.*, 588 S.W.3d 264, 270 (Tenn. Ct. App. 2019) (citations and annotations omitted); *see also State ex rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Grp. Tr.*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006) (stating "[t]he relevancy requirement is broadly construed to include any matter that bears on, or that reasonably could lead to other matters that could bear on any of the case's issues."). The Tennessee Supreme Court "has recognized that the subject matter of a case is not limited to the merits of the case

because a variety of fact-oriented issues may arise during litigation that are not related to the merits.” *West v. Schofield*, 460 S.W.3d 113, 125 (Tenn. 2015) (citations and quotations omitted).

JSC/CDE claims that no documents have been withheld based on relevance or any other general or specific objections (other than privilege). Nor could it. Each of TECA’s document requests seeks documents directly related to the Petition, Mr. Emberling’s testimony, and/or the solar project. Further, TECA’s discovery requests are broad enough to include documents relating to the history of the project, the funding of the project, and other matters relating to the project. For example, in Request No. 10, TECA requested “all documents, including requests for proposals and contracts, memoranda of understanding, or letters of intent to which JSC or CDE is a party, concerning the construction or operation of solar facilities, or the generation, transmission, or sale of electricity in the state of Tennessee by JSC, CDE, or any entity affiliated with JSC or CDE.” (See **Ex. 1**, TECA’s First Requests.) Request No. 11 requested “all documents concerning the financing of JSC, CDE, or the solar facility, including all documents provided to potential funders” (*Id.*) Request No. 5 sought “all documents, including studies, analyses, policies and plans, concerning JSC’s operations; market; competition; competitors; potential and current members, patrons, or other customers; and projected customer demand.” (*Id.*) And, the instructions made clear that the term “document” includes “drafts, ... electronic mail (“email”), text messages, ... and information stored in, or accessible through, computer or other information storage retrieval systems.” (*Id.*)

Thus, TECA’s requests are relevant and broad enough to require the production of the documents that JSC/CDE has failed to produce.

II. The Northern Reliability Productions Show that JSC/CDE Has Not Produced Responsive Documents.

As set forth above, TECA has consistently engaged JSC/CDE in good faith and has taken JSC Counsel at his word that all responsive documents of JSC and CDE had been produced. TECA stated as much to the Commission in the January 28, 2022 Update on Status of Discovery Issues by JEA, TECA, and TMEPA, and as recently as April 22 told JSC Counsel that “we want to make clear that the sincerity of the statements you made to us during the conversations and correspondence discussed herein is not in doubt. We understand that you, like all lawyers, must depend on the quality of the information you are given by your client.” (Ex. 22, Fifth Letter at 4.) The Northern Reliability productions, however, have made clear that JSC/CDE and its counsel are not taking its discovery obligations seriously.

A. Northern Reliability’s Productions Include Nearly 200 Emails that Should Have Been Produced by JSC/CDE.

Discovery in this matter has been ongoing for approximately eight months. Thus far, JSC/CDE has produced minimal responsive documentation, including just *four* emails, and it regularly asserts that all documents in the possession, custody, and control of JSC and CDE have been produced. Surprised at the lack of documentation produced for a project of this size, TECA and JEA have repeatedly asked for an explanation of what search was performed for responsive documents, which persons’ electronic and paper files were searched, and what categories of documents were not searched (e.g., emails, letters, computer folders, etc.), and why a search for responsive documents would be burdensome. To date, JSC/CDE has never disclosed this information or described its discovery efforts.

TECA’s discovery efforts with Northern Reliability have revealed that JSC/CDE is purposely withholding responsive, non-privileged information and/or is unable or unwilling to search for the requested information. As noted above, Northern Reliability’s Third Document

Production includes [REDACTED]

[REDACTED] These emails are highly relevant and plainly responsive to, among others, TECA's Request No. 10. They include emails relating to, among other things:

- [REDACTED]¹² (E.g., Ex. 25, CONFIDENTIAL NRI001417-18 [REDACTED])
- [REDACTED] (E.g., Ex. 26, CONFIDENTIAL NRI001261-62 [REDACTED])
- [REDACTED] (E.g., Ex. 27, CONFIDENTIAL NRI001338-43 [REDACTED])
- [REDACTED] (E.g., Ex. 28, CONFIDENTIAL NRI001720.)
- [REDACTED] (E.g., Ex. 29, CONFIDENTIAL NRI001237 [REDACTED])
- [REDACTED] (E.g., Ex. 12, CONFIDENTIAL NRI001389-92 [REDACTED]; Ex. 30, CONFIDENTIAL NRI001772 [REDACTED])

¹² [REDACTED] In its November 11, 2021 discovery letter, JSC gave an explanation for "why there are not more communications." (Ex. 15 at 3.) According to JSC, "[s]ince the list of potential members is small, [JSC] prefers to network and obtain personal introductions." (*Id.*) The letter references only two documents, one of which may not have been sent to potential members because JSC's "contacts are personal." (*Id.*; see also Ex. 36, JSC/CDE Nov. 9, 2021 Letter to JEA at 2 (stating "[b]ecause [JSC] networks to obtain a personal introduction, *there are no written communications* with these suitable manufacturers.")) (emphasis added).)

- [REDACTED] (E.g., Ex. 31, CONFIDENTIAL NRI001420-21 [REDACTED])
- [REDACTED] (E.g., Ex. 32, CONFIDENTIAL NRI001270-72 [REDACTED])

These are just a few examples. Of course, Northern Reliability would not have in its possession internal documents or communications shared among the principals of CDE, E A Solar, Hunt Solar, and SynEnergy. Nor would Northern Reliability have communications between Mr. Emberling, Mr. Shimon and other vendors, customers, or potential funders. It is unknown how many such responsive emails and other documents have not been produced. What is known is that JSC/CDE has thwarted discovery in this docket. While JSC/CDE has tried to blame the Intervenor for delays, discovery has dragged on in this matter due to JSC/CDE's actions. Simply put, this docket cannot move forward on the merits until JSC/CDE fully complies with its discovery obligations.

B. Northern Reliability's Third Production Includes [REDACTED]

[REDACTED] (Ex. 21, CONFIDENTIAL NRI 001775.) Indeed, JSC/CDE has downplayed the role iSun has played, vaguely stating "there is no contract with iSun" and "iSun was not selected as a vendor." (See e.g., Ex. 7, JSC Supplemental Response to TECA First Requests at Response 10; Ex. 23, JSC/CDE April 29 Letter at 3.)

[REDACTED] (See Ex. 33, CONFIDENTIAL

NRI000950-51.) [REDACTED]

[REDACTED] (Ex. 32, CONFIDENTIAL NRI001270-72 (emphasis added).)

Moreover, on March 22, 2021, there was a major press release issued regarding the selection of iSun,¹³ [REDACTED]

[REDACTED] (Ex. 25, CONFIDENTIAL NRI001417-18.) [REDACTED]

[REDACTED] (See e.g., Ex. 34, CONFIDENTIAL NRI001444-45.) Regardless of the ultimate relationship between JSC/CDE and iSun, Northern Reliability's Third Production reveals [REDACTED]

[REDACTED] At best, this is evidence that JSC/CDE views the discovery process ordered by the Hearing Officer as just some sort of check-the-box exercise in which a minimal level of diligence and effort will suffice. At worst, it is evidence of bad faith.

C. JSC/CDE Has Admitted to Selectively Producing Documents and Destroying Documents.

In its April 29 Letter to TECA regarding documents produced by Northern Reliability in its initial production, JSC/CDE admitted that it chose not to produce drafts and that it chose not to produce documents that it believed were not reflective of what it claims to be the current plan for the solar project. (See Ex. 23, JSC/CDE April 29 Letter.) Each of these documents, however, is

¹³ *iSun Selected by Northern Reliability and Community Development Enterprises for PV Installation of one of America's Largest Solar Plus Storage Microgrid Projects* (Mar. 22, 2021), available at <https://isunenergy.com/news/isun-selected-by-northern-reliability-and-community-development-enterprises-for-pv-installation-of-one-of-americas-largest-solar-plus-storage-microgrid-projects> (last visited May 19, 2022).

responsive to, among others, TECA's Document Request No. 10. In other words, JSC/CDE has admitted that it has not produced all responsive documents despite claiming otherwise.

Moreover, there is reason to be concerned about the spoliation of evidence by JSC/CDE. In its April 29 Letter to TECA, JSC/CDE admits that documents were discarded, thrown away, and not kept. (*Id.*) Destruction of documents relating to iSun are particularly concerning given that it was not "rejected as a subcontractor," (*id.*), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See **Ex. 25**, CONFIDENTIAL NRI001417-18; **Ex. 34**, CONFIDENTIAL NRI001444-45.) Further, during the May 6 Status Conference, when explaining why JSC/CDE had produced one of Mr. Emberling's emails by attaching a JSC bates stamp to a document containing a Northern Reliability bates stamp, (**Ex. 35**, JSC000872-79), JSC Counsel explained that Mr. Emberling had deleted his copy of that email. In light of its admissions to the destruction of potentially relevant evidence, JSC/CDE should be compelled to answer the supplemental interrogatory set forth in the Motion to Compel. See Tenn. R. Civ. P. 34A.02 ("Rule 37 sanctions may be imposed upon a party or an agent of a party who discards, destroys, mutilates, alters, or conceals evidence."); see also *Griffith Servs. Drilling, LLC v. Arrow Gas & Oil, Inc.*, 448 S.W.3d 376, 379–81 (Tenn. Ct. App. 2014) (citing Rule 34A.02 and recognizing the trial court's wide discretion to impose sanctions for spoliation of evidence).

In sum, it is indisputable that JSC/CDE has **not** produced all relevant, responsive documents. Northern Reliability's production and JSC/CDE's own admissions fully demonstrate that fact. Accordingly, the Hearing Officer should compel JSC/CDE to perform a thorough search

and produce all responsive documents, to provide a thorough accounting of the searches that were performed, and provide information on documents that have been deleted.

III. Fulsome Discovery Responses Are Necessary Given the Relief Requested.

In an effort to minimize the importance of discovery, JSC/CDE has recently taken to arguing that this is just a declaratory action. But, that minimizes the relief JSC seeks. JSC/CDE is not asking for a “building permit,” as it has previously suggested. Rather, JSC/CDE is seeking to be declared free from any and all regulatory oversight by the Commission. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 12, CONFIDENTIAL NRI001389-92 (emphasis added).) The Commission needs appropriate information to make such a sweeping determination.¹⁴ Because JSC/CDE is seeking complete exemption from regulation, the Commission can be assured that any decision made will guide JSC/CDE’s future operations. Although deemphasized in JSC/CDE’s discovery responses, the subject solar project appears to be a test case [REDACTED]

[REDACTED] (*Id.*)¹⁵ Some of the issues that are subject to the declaratory relief—like whether JSC/CDE is a public utility—are fact-intensive, and the Commission cannot simply take the Petitioner’s claims at face value.

¹⁴ [REDACTED]

[REDACTED] (Ex. 27, CONFIDENTIAL NRI001338-43.) [REDACTED]

¹⁵ [REDACTED]

However, there appear to be no documents supporting this assertion.

Given the ever-changing nature of the project, the Commission and Intervenors must know about the project's history. There is an even greater need here because of inconsistencies in statements made in the Petition, Mr. Emberling's testimony and the documents received to date. For example, regarding financing, Mr. Emberling has testified that "CDE has access to the financing necessary to fulfill any obligations it may undertake." (Emberling Test. at 7.) Further, JSC has stated "[n]umerous funders have made oral commitments to finance the Facility. The funders under consideration are major tax-equity investors." (Petition at 14.)

In truth, not a single document has been produced to support these statements. TECA requested all documents exchanged with potential funders but received only a handful of NDAs, and JSC/CDE claims there no other responsive documents. Further, in correspondence, JSC/CDE admitted that "[CDE] is currently seeking tax equity funders for the purchase and construction of the equipment forming the facility.... Once an acceptable tax equity funder commits to the project, this request will be supplemented. Current proposed legislation makes waiting until the new legislation passes the best choice for tax equity funders." (Ex. 36, JSC/CDE Nov. 9, 2021 Letter to JEA at 4.) JSC Counsel also explained that "the feasibility study is the only document that has been shared with potential funders." (Ex. 16, Third Letter.) It strains credulity that "commitments" to finance the solar facility have been made based on a single document.

With respect to the public benefits of the solar project, Mr. Emberling has testified that "JSC will provide training, internships, and educational programs in the renewable energy field to Jackson's high school and colleges at its own cost. JSC will contribute to the improvement and redevelopment of Jackson's infrastructure. JSC's partners and members will contribute various programs to Jackson's community in the areas of job training and community building." (Emberling Test. at 7.) Mr. Emberling also testified "[m]y talks with people in the solar and

storage industries led to discussions with foundations eager to help in Jackson. Some offered to bring free educational programs in the renewable energy field to Jackson’s high schools and its four colleges, along with internships to prepare students for careers in the industry. Others offered to bring job training and other services to the Jackson community. We and our partners committed to contribute a share of the project’s revenue to help redevelop East Jackson, upgrade its housing, and improve its dilapidated infrastructure.” (Ex. 10, Emberling Test. Pt. II at 12.) JSC/CDE, however, have not produced a single document reflecting any of these offers or commitments.

Finally, in an example regarding the membership of JSC, Mr. Emberling testified that “the coop is limited to allowing only a few manufacturers to participate in the project. Because the power must be distributed among the manufacturers according to their demand, the weather, the time of day, and the limits of our battery storage, we can only serve manufacturers whose electrical usage profiles fit effectively with each other and fall within the limits of what we can supply.” (*Id.* at 15.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See Ex.

37, JSC CONFIDENTIAL 500168–179.)¹⁶

IV. TECA Should Be Reimbursed for the Unnecessary Expenses Incurred in Seeking Discovery

The Commission “is a regulatory agency and, consequently, it may exercise only the authority that is given to it expressly by statute or which arises by necessary implication from an

¹⁶ [REDACTED]

express grant of authority.” *Consumer Advoc. & Prot. Div. of Off. of Atty. Gen. of Tenn. v. Tenn. Regul. Auth.*, 2012 WL 1964593, at *14 (Tenn. Ct. App. May 30, 2012) (citations omitted). By statute, the General Assembly has explicitly granted the Commission authority to conduct discovery in accordance with the Tennessee Rules of Civil Procedure. Specifically, the Tennessee Code provides that an “administrative judge or hearing officer, at the request of any party, shall ... effect discovery ... in accordance with the Tennessee Rules of Civil Procedure....” Tenn. Code Ann. § 4-5-311; *see also* Tenn. Code Ann. § 65-2-102 (empowering and compelling the Commission to adopt rules of practice); Commission R. 1220-01-02-.11 (stating “discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure”). “Moreover, Tennessee caselaw, in adherence to statutory mandates, directs the courts to give statutes related to the authority of the [Commission] ‘a liberal construction;’ it cautions that any doubts as to the existence or extent of a power conferred on the [Commission] ... shall be resolved in favor of the existence of the power.” *Consumer Advoc.* 2012 WL 1964593, at *14 (citations and quotations omitted). Tennessee Rule of Civil Procedure 37.01 mandates that, if a motion to compel is granted, “the court shall, after opportunity for hearing, require the party ... whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney’s fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.” Tenn. R. Civ. P. 37.01.

In *Mansfield v. Mansfield*, the court determined discovery abuses had occurred where a plaintiff “insisted that he did not have records that were actually in his possession” and concluded that plaintiff “was directly responsible for many of the discovery delays and that he was aware of his former lawyer’s inadequate responses to [defendant’s] discovery requests.” 1995 WL 643329,

*6 (Tenn. Ct. App. Nov. 3, 1995). The court upheld the lower court's order for the plaintiff to pay reasonable attorneys' fees to the defendant for legal expenses incurred in filing a motion to compel. *Id.* at 8.

In this case, there can be no doubt that JSC/CDE is **not** taking discovery obligations seriously. The evidence is clear that JSC/CDE has not been forthright with the Commission and the Intervenors; is withholding requested information; is unable or unwilling to search for the requested information; and has failed to produce relevant documents responsive to TECA's discovery requests. There is no legitimate excuse for JSC/CDE's discovery conduct. Indeed, its discovery misconduct falls squarely within the mandate in Tennessee Rule of Civil Procedure 37.01 requiring the party "whose conduct necessitated the motion or the party or attorney advising such conduct or both" to pay to TECA its reasonable expenses.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, TECA requests that the Motion to Compel be granted and that the following relief be ordered:

1. JSC, CDE and its principals and agents should be compelled to perform a thorough search of its records, provide details of the search performed, and produce all documents responsive to TECA's discovery requests.
2. To the extent JSC/CDE maintains its assertion that documents have been deleted or otherwise discarded, JSC/CDE should be compelled to answer the following interrogatory:
 - State whether any of the following categories of documents were discarded or destroyed during the period July of 2020 to Present and if any such documents were destroyed, for each, describe the contents of such document, in whose possession the document was, who destroyed or discarded it and the circumstances of the destruction of such document.
 - Legal structure of JSC and CDE
 - Communications with potential members of JSC
 - Membership requirements for JSC

- JSC status as a non-profit cooperative
 - JSC status as a public utility
 - Financing of JSC, CDE, and/or the solar facility
 - Communications with Northern Reliability regarding the solar facility
 - Communications with iSun regarding the solar facility
 - Documents or communications relating to the construction or operation of solar facilities, or the generation, transmission, or sale of electricity in the state of Tennessee by JSC, CDE, or any entity affiliated with JSC or CDE.
3. Sanctions in the form of TECA's reasonable attorney's fees and expenses associated with 1) this motion to compel, and 2) TECA's subpoena to Northern Reliability.

DATED this 20th day of May, 2022.

Respectfully submitted,



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*Attorneys for Tennessee Electric
Cooperative Association*

CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of May, 2022, the foregoing document was served on the following persons via email, hand delivery, overnight delivery and/or U.S. Mail, postage prepaid:

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Matthew J. Sinback

EXHIBIT 1

Matthew J. Sinback
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(615) 742-7910

September 8, 2021

Via Electronic Filing and U.S. Mail

Hon. Kenneth C. Hill, Chairman
c/o Ectory Lawless, Docket Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
tpuc.docketroom@tn.gov

Electronically Filed in TPUC Docket
Room on September 8, 2021 at 3:33 p.m.

***Re: Petition of Jackson Sustainability Cooperative to Determine if a Certificate of
Convenience and Necessity Is Needed
Docket No. 21-00061***

Dear Chairman Hill:

Enclosed please find a copy of Tennessee Electric Cooperative Association's First Set of
Discovery Requests to Jackson Sustainability Cooperative.

Should you have any questions concerning the enclosed, please do not hesitate to contact
me.

Sincerely,



Matthew J. Sinback

Enclosure

cc: All Counsel of Record

**BEFORE THE
TENNESSEE PUBLIC UTILITY COMMISSION**

NASHVILLE, TENNESSEE

THE APPLICATION OF JACKSON)	
SUSTAINABILITY COOPERATIVE)	
FOR A DETERMINATION OF)	
EXEMPTION AND IN THE)	Docket No. 21-00061
ALTERNATIVE, FOR A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

**TENNESSEE ELECTRIC COOPERATIVE ASSOCIATION’S FIRST SET OF
DISCOVERY REQUESTS TO JACKSON SUSTAINABILITY COOPERATIVE**

Tennessee Electric Cooperative Association (“TECA”) respectfully submits the following discovery requests to Petitioner Jackson Sustainability Cooperative (“JSC”), to be answered in writing in accordance with the parties’ agreed procedural schedule submitted to the Hearing Officer on August 20, 2021.

DEFINITIONS APPLICABLE TO ALL DISCOVERY REQUESTS

1. The terms “You,” and “Your,” shall include JSC, as well as any agent, employee, representative or other person or entity acting on behalf of or under the control of any such party.
2. “Person” means any natural person or entity including, but not limited to, any individual, firm, corporation, company, partnership, member, association, trade association, trust, public agency, department, bureau, board or any other form of public, private or legal entity.
3. “CDE” means Community Development Enterprises.
4. “Docket” means Tennessee Public Utility Commission Docket 21-00061.
5. “Petition” means the Petition for a Solar Facility for Supplemental Energy, and all exhibits thereto, filed on May 24, 2021.

6. "JSC's Response" means the Response by Jackson Sustainability Cooperative to the Filed Statements, filed on July 13, 2021.

7. When referring to a person, "Identify" means to state the person's full name, present or last known address.

8. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

9. The use of the singular form of any word includes the plural and vice versa.

10. "Concerning" means relating to, referring to, describing, evidencing or constituting.

11. "Communicate" or "communication" means any transmittal of information (in the form of facts, ideas, inquiries or otherwise).

12. The term "document" shall have the broadest meaning possible and includes every original (or copies if you do not have originals) and each non-identical copy, whether different from the original because of marginal notes or other material inserted or attached, and drafts and both sides of any written, printed, typed, recorded or graphic matter, however produced or reproduced, of any kind or description, including all attachments and appendices, whether sent or received or neither, including, but not limited to: communications of any kind, notes, books, memoranda, records, papers, pamphlets, brochures, circulars, advertisements, drawings, sketches, graphs, charts, plans, ledger accounts, audits, financial statements, reports, workpapers, studies, analyses, plans, policies, permits, calendars, appointment books, diaries, telephone bills and toll card records, expense reports, itineraries, agendas, checkbooks, canceled checks, receipts, contracts, agreements, instrument assignments, applications, offers,

acceptances, bids, proposals, requests for proposal, financing statements, documents of title, appraisals, purchase orders, invoices, bills of lading, work orders, statements of work, service orders, floor plans, written memorials of oral communications, recasts, photographs, photographic slides or negatives, films, filmstrips, tapes, recordings, voice mail, letters, facsimiles, correspondence, electronic mail ("email"), text messages, spreadsheets, calculations and information stored in, or accessible through, computer or other information storage or retrieval systems.

13. "Including" and "includes" means "including without limitation" or "including, but not limited to."

INSTRUCTIONS FOR REQUESTS FOR PRODUCTION

1. Each request for production below encompasses and includes all responsive electronically stored information within Your possession or control. Such electronically stored information may be produced in the form most convenient and economical to You, including, for example, .pdf, .tiff or native formats.

2. All documents responsive to these requests should be produced to the attention of Brant Phillips or Matt Sinback at Bass, Berry & Sims PLC, 150 Third Avenue South, Suite 2800, Nashville, TN 37201.

3. If You have produced a responsive document in response to another party's discovery requests, you do not need to separately produce it in response to these requests.

REQUESTS FOR PRODUCTION

1. Produce all documents upon which You intend to rely in support of Your Petition or JSC's Response in this Docket.

RESPONSE:

2. Produce all documents referenced or relied upon in Your answers to TECA's interrogatories to JSC in this Docket.

RESPONSE:

3. Produce all documents that support Your position that JSC is a non-profit cooperative entity subject to the Rural Electric and Community Services Cooperative Act, as codified at T.C.A. § 65-25-101 *et seq.*

RESPONSE:

4. Produce all documents that support Your position that JSC is not a public utility.

RESPONSE:

5. Produce all documents, including studies, analyses, policies, and plans, concerning JSC's operations; market; competition; competitors; potential and current members, patrons, or other customers; and projected customer demand.

RESPONSE:

6. Produce all documents, including studies, analyses, policies, and plans, concerning the benefits JSC may deliver to members, patrons, and the community, including documents relating to the document titled "Economic Impact of the Jackson Solar Facility," attached as Exhibit 13 to the Petition.

RESPONSE:

7. Produce all documents concerning the impact of JSC's solar facility on JEA with respect to that entity's finances, facilities, future costs, and sales of electricity.

RESPONSE:

8. With respect to JSC's solar facility, produce all contracts, draft contracts, letters of intent, and memoranda of understanding to which JSC is, or is contemplated to be, a party, as well as communications concerning each of the foregoing.

RESPONSE:

9. Produce all documents concerning the relationship between JSC and CDE.

RESPONSE:

10. Produce all documents, including requests for proposals and contracts, memoranda of understanding, or letters of intent to which JSC or CDE is a party, concerning the construction or operation of solar facilities, or the generation, transmission, or sale of electricity in the state of Tennessee by JSC, CDE, or any entity affiliated with JSC or CDE.

RESPONSE:

11. Produce all documents concerning the financing of JSC, CDE, or the solar facility, including all documents provided to potential funders, as referenced on page 14 of the Petition.

RESPONSE:

INTERROGATORY INSTRUCTIONS

1. The following interrogatories seek information available to JSC, or the agents, attorneys, consultants, investigators and/or employees of either. If the answer to an interrogatory is not within the personal knowledge of the signatory to the interrogatory answer, state the name, address and title of the person from whom the information was obtained.

2. If any interrogatory, including subparts thereof, cannot be answered after exercising due diligence to secure the information necessary to respond, state with respect to each interrogatory subpart that you have answered to the fullest extent possible, specifying in detail your inability to answer the remainder of the interrogatory and stating whatever information, material, or knowledge you have concerning the unanswered portion, and further stating that efforts were made, and by whom, to obtain the information requested in those unanswered portions.

3. These interrogatories are continuing in character and require you to provide additional responsive information if such additional information is obtained by you after the time of your original response to these interrogatories.

4. If any interrogatory is deemed to call for the disclosure of privileged information and such privilege is asserted, please provide the following information: (a) a statement of the basis for the claim of privilege, work product or other ground of nondisclosure; (b) the author(s), recipient(s) and general nature of the information for which privilege or protection from disclosure is claimed; and (c) any other information necessary to establish the privilege or protection claimed.

INTERROGATORIES

12. Identify each person that You reasonably believe may possess knowledge of facts or information relevant to this Docket.

RESPONSE:

13. Identify each person who provided information or otherwise participated in creating the documents submitted by JSC in this Docket, including the Petition, the Direct Testimony of Dennis Emberling, filed on May 24, 2021, JSC's Bylaws and Amendment to the Bylaws, JSC's Charter and the Articles of Amendment to the Charter, JSC's Conditional Member Agreement, and JSC's Full Member Agreement.

RESPONSE:

14. Identify all facts that support Your position that JSC is a non-profit cooperative entity subject to the Rural Electric and Community Services Cooperative Act, as codified at T.C.A. § 65-25-101 *et seq.*

RESPONSE:

15. Identify all facts that support Your position that JSC is not a "public utility" as defined by T.C.A. § 65-4-101 *et seq.*

RESPONSE:

16. Identify all facts that support Your position that JSC's proposed solar facility is not "affected by and dedicated to the public use," as stated on page 17 of the Petition and page 8 of JSC's Response.

RESPONSE:

17. Identify all facts that support Your position that JSC "does not hold itself out to the general public," as stated on page 10 of JSC's Response.

RESPONSE:

18. Identify all facts that support Your position that JSC's proposed solar facility project does not violate the Geographic Territories of Electric Utility Systems act, as codified at T.C.A. § 65-34-101 *et seq.* (the "GTL").

RESPONSE:

19. Identify all language in the GTL that supports the statement "the legislature did not intend to prevent this kind of Solar Facility project," which appears on page 12 of JSC's Response.

RESPONSE:

20. Identify all facts that support Your position that JSC's proposed solar facility project does "not 'duplicate' the local distribution system except in a very minor way," as stated on page 11 of JSC's Response.

RESPONSE:

21. Explain whether and how JSC will adhere to the seven cooperative principles, as adopted by the International Co-operative Alliance, available at: <https://www.ica.coop/en/cooperatives/cooperative-identity>.

RESPONSE:

22. Explain whether and how JSC will accept requests for its services.

RESPONSE:

23. Identify the maximum number of users that may be served by JSC's solar facility as members, patrons, or in any other capacity.

RESPONSE:

24. Explain whether and how JSC will operate the solar facility on an area coverage basis.

RESPONSE:

25. Explain whether JSC members, patrons, and other customers will draw power from the solar facility only during outages on the JEA distribution system and, if not, explain when JSC members, patrons, and other customers will draw power from the solar facility, the person who decides when to draw power from the solar facility, and the standards that govern such decisions.

RESPONSE:

26. Explain whether full members will be obligated to purchase “supplemental electric energy generated by JSC’s solar facility” under Section 2 of the Full Member Agreement, attached as Exhibit 4 to the Petition, and whether there is any contractual cap on the amount of electricity that a member, patron, or other customer can purchase from the JSC solar facility.

RESPONSE:

27. Explain whether and how JSC members will benefit from the “[f]ederal tax credits and accelerated depreciation benefits” referenced on page 14 of the Petition.

RESPONSE:

28. Explain whether and how JSC will be in competition with JEA or any other local power company once JSC’s solar facility is operational.

RESPONSE:

29. Explain whether and how JEA or TVA is a “competing enterprise that distributes electric energy” under Section 5.3.2. of the Bylaws of Jackson Sustainability Cooperative, attached as Exhibit 2 to the Petition.

RESPONSE:

30. Identify all facts that support Your statement that JEA and TVA “have frequent outages that result in sending employees home and lengthy restart protocols,” as stated on page 10 of JSC’s Response.

RESPONSE:

31. For the period January 1, 2019 through June 30, 2021, specify by date and duration each instance in which a member, prospective member, patron, prospective patron, or other customer or prospective customer of JSC: (a) lost electric power; and (b) was required to “send employees home as they begin lengthy restart protocols,” as stated on page 7 of the Petition.

RESPONSE:

32. Specify the “peak demand profile[]” for each member or prospective member of JSC, as referenced on page 8 of the Petition.

RESPONSE:

33. Explain how JSC will provide “supplemental electric service” to its members through “advanced metering,” “load control,” and “equipment monitoring,” as stated on page 5 of JSC’s Response.

RESPONSE:

34. Identify all facts that support the statements made on pages 11-12 of JSC’s Response about the benefits of JSC’s proposed solar facility project, including that it:

“positively supports ... the local distribution system,” “lowers costs of the local distribution system,” will defer “capital costs associated with growth demand,” will lengthen “service life of system components,” and will reduce “costs associated with meeting peak system demands.”

RESPONSE:

35. Identify all facts that support the purported community benefits of JSC’s proposed solar facility project, as listed on pages 14 and 15 of the Petition and in the document titled “Economic Impact of the Jackson Solar Facility,” attached as Exhibit 13 to the Petition.

RESPONSE:

36. Describe the “long working relationship” that JSC’s officers/directors have with the Community Redevelopment Agency, as stated on page 15 of the Petition.

RESPONSE:

37. Identify all venture participants in CDE and, for CDE and each venture participant, state whether the entity is a non-profit entity.

RESPONSE:

38. According to a press release issued by iSun, Inc., available at <https://isunenergy.com/news/isun-selected-by-northern-reliability-and-community-development-enterprises-for-pv-installation-of-one-of-americas-largest-solar-plus-storage-microgrid-projects>, JSC’s solar facility is “phase one of one of the nation’s largest solar plus storage microgrid

projects underway in Jackson, TN” and “Phase one of the multi-phase project” Explain in detail all current and future “phases” of JSC’s solar facility.

RESPONSE:

39. Identify all facts that support CDE’s public statements, available at <https://communitydevelopmententerprises.com/>, that: “JSC will get all its power from CDE’s solar facility, so around half of Members’ power will come from renewables”; “CDE will pay for the entire solar facility, underground wiring to Members’ buildings, and smart meters in each building”; “Guaranteed to lower your total cost of electricity for 30 years”; “Higher quality, tightly regulated solar power improves reliability and extends the life of costly machinery”; and “This 17 MW solar facility will be the most productive per acre in the entire world.”

RESPONSE:

VERIFICATION

I swear and affirm that the answers to interrogatories contained herein are true, complete and accurate to the best of my knowledge. I also understand it is my duty to promptly notify my attorney should I later learn that any of these answers are incomplete, inaccurate or misleading.

STATE OF TENNESSEE)
COUNTY OF _____)

Subscribed and sworn to before me
on this ____ day of _____,
20____.

Notary Public

My Commission Expires:_____

Respectfully submitted,



W. Brantley Phillips, Jr. (18844)

Matthew J. Sinback (23891)

BASS, BERRY & SIMS PLC

150 Third Avenue South, Suite 2800

Nashville, TN 37201

(615) 742-6200

bphillips@bassberry.com

msinback@bassberry.com

*Counsel for Tennessee Electric Cooperative
Association*

CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of September, 2021, the foregoing document was served on the following persons via email, hand delivery, overnight delivery and/or U.S. Mail, postage prepaid:

John A. Beam, III
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P.O. Box 280240
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beam@equituslaw.com

Henry Walker
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CUMMINGS, LLP**
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Kimberly Bolton
Office of the General Counsel
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Jeremy L. Elrod
Director of Government Relations
**TENNESSEE MUNICIPAL ELECTRIC
POWER ASSOCIATION**
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mark.smith@millermartin.com

Teresa Cobb, General Counsel
JACKSON ENERGY AUTHORITY
P.O. Box 68
Jackson, Tennessee 38302
tcobb@jaxenergy.com



EXHIBIT 2

BASS BERRY SIMS

Matthew J. Sinback
msinback@bassberry.com
(615) 742-7910

February 11, 2022

Via Electronic Filing and U.S. Mail

Electronically Filed in TPUC Docket Room on
February 11, 2022 at 1:06 p.m.

Hon. Kenneth C. Hill, Chairman
c/o Ectory Lawless, Docket Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
tpuc.docketroom@tn.gov

***Re: Petition of Jackson Sustainability Cooperative to Determine if a Certificate of
Convenience and Necessity Is Needed
Docket No. 21-00061***

Dear Chairman Hill:

Enclosed please find a copy of Tennessee Electric Cooperative Association's Second Set of Discovery Requests to Jackson Sustainability Cooperative.

Should you have any questions concerning the enclosed, please do not hesitate to contact me.

Sincerely,



Matthew J. Sinback

Enclosure

cc: All Counsel of Record

**BEFORE THE
TENNESSEE PUBLIC UTILITY COMMISSION**

NASHVILLE, TENNESSEE

THE APPLICATION OF JACKSON)	
SUSTAINABILITY COOPERATIVE)	
FOR A DETERMINATION OF)	
EXEMPTION AND IN THE)	Docket No. 21-00061
ALTERNATIVE, FOR A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

**TENNESSEE ELECTRIC COOPERATIVE ASSOCIATION’S SECOND SET OF
DISCOVERY REQUESTS TO JACKSON SUSTAINABILITY COOPERATIVE**

Tennessee Electric Cooperative Association (“TECA”) respectfully submits the following discovery requests to Petitioner Jackson Sustainability Cooperative (“JSC”), to be answered in writing in accordance with the parties’ agreed schedule.

DEFINITIONS APPLICABLE TO ALL DISCOVERY REQUESTS

1. The terms “You,” and “Your,” shall include JSC, as well as any agent, employee, representative or other person or entity acting on behalf of or under the control of any such party.
2. “Person” means any natural person or entity including, but not limited to, any individual, firm, corporation, company, partnership, member, association, trade association, trust, public agency, department, bureau, board or any other form of public, private or legal entity.
3. “CDE” means Community Development Enterprises.
4. “Docket” means Tennessee Public Utility Commission Docket 21-00061.
5. “Petition” means the Petition for a Solar Facility for Supplemental Energy, and all exhibits thereto, filed on May 24, 2021.

6. "JSC's Response" means the Response by Jackson Sustainability Cooperative to the Filed Statements, filed on July 13, 2021.

7. When referring to a person, "Identify" means to state the person's full name, present or last known address.

8. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

9. The use of the singular form of any word includes the plural and vice versa.

10. "Concerning" means relating to, referring to, describing, evidencing or constituting.

11. "Communicate" or "communication" means any transmittal of information (in the form of facts, ideas, inquiries or otherwise).

12. The term "document" shall have the broadest meaning possible and includes every original (or copies if you do not have originals) and each non-identical copy, whether different from the original because of marginal notes or other material inserted or attached, and drafts and both sides of any written, printed, typed, recorded or graphic matter, however produced or reproduced, of any kind or description, including all attachments and appendices, whether sent or received or neither, including, but not limited to: communications of any kind, notes, books, memoranda, records, papers, pamphlets, brochures, circulars, advertisements, drawings, sketches, graphs, charts, plans, ledger accounts, audits, financial statements, reports, workpapers, studies, analyses, plans, policies, permits, calendars, appointment books, diaries, telephone bills and toll card records, expense reports, itineraries, agendas, checkbooks, canceled checks, receipts, contracts, agreements, instrument assignments, applications, offers,

acceptances, bids, proposals, requests for proposal, financing statements, documents of title, appraisals, purchase orders, invoices, bills of lading, work orders, statements of work, service orders, floor plans, written memorials of oral communications, recasts, photographs, photographic slides or negatives, films, filmstrips, tapes, recordings, voice mail, letters, facsimiles, correspondence, electronic mail ("email"), text messages, spreadsheets, calculations and information stored in, or accessible through, computer or other information storage or retrieval systems.

13. "Including" and "includes" means "including without limitation" or "including, but not limited to."

INSTRUCTIONS FOR REQUESTS FOR PRODUCTION

1. Each request for production below encompasses and includes all responsive electronically stored information within Your possession or control. Such electronically stored information may be produced in the form most convenient and economical to You, including, for example, .pdf, .tiff or native formats.

2. All documents responsive to these requests should be produced to the attention of Brant Phillips or Matt Sinback at Bass, Berry & Sims PLC, 150 Third Avenue South, Suite 2800, Nashville, TN 37201.

3. If You have produced a responsive document in response to another party's discovery requests, you do not need to separately produce it in response to these requests.

INTERROGATORY INSTRUCTIONS

1. The following interrogatories seek information available to JSC, or the agents, attorneys, consultants, investigators and/or employees of either. If the answer to an interrogatory

is not within the personal knowledge of the signatory to the interrogatory answer, state the name, address and title of the person from whom the information was obtained.

2. If any interrogatory, including subparts thereof, cannot be answered after exercising due diligence to secure the information necessary to respond, state with respect to each interrogatory subpart that you have answered to the fullest extent possible, specifying in detail your inability to answer the remainder of the interrogatory and stating whatever information, material, or knowledge you have concerning the unanswered portion, and further stating that efforts were made, and by whom, to obtain the information requested in those unanswered portions.

3. These interrogatories are continuing in character and require you to provide additional responsive information if such additional information is obtained by you after the time of your original response to these interrogatories.

4. If any interrogatory is deemed to call for the disclosure of privileged information and such privilege is asserted, please provide the following information: (a) a statement of the basis for the claim of privilege, work product or other ground of nondisclosure; (b) the author(s), recipient(s) and general nature of the information for which privilege or protection from disclosure is claimed; and (c) any other information necessary to establish the privilege or protection claimed.

REQUESTS FOR PRODUCTION AND INTERROGATORIES

40. Produce—or if publicly available, identify—all sustainability policies and other documents supporting Your contention that national companies’ sustainability policies “prevent national companies from expanding in cities where renewable energy is not available” or “could eventually force companies to leave such cities altogether,” which “bodes ill for Jackson,” as

referenced on page 10 of the Direct Testimony of Dennis Emberling, Part II (“Emberling Part II”) (JSC-000426).

RESPONSE:

41. Identify the “electrical contractors who service the heavy machinery of these manufacturers in Jackson” who told You that “they suffer from poor power quality from the grid,” as stated on page 11 of Emberling Part II (JSC-000427) and produce all communications with these electrical contractors.

RESPONSE:

42. State all facts supporting Your contention that “[f]or Jackson manufacturers, installing their own renewable generation, such as solar, is impractical and uneconomical,” as stated on page 11 of Emberling Part II (JSC-000427) and produce all documents concerning this contention. As a part of your response, identify all “Jackson manufacturers” about whom you contend “installing their own renewable generation, such as solar, is impractical and uneconomical.”

RESPONSE:

43. State all facts supporting Your contention that a major reason TVA’s resellers, including JEA, are refusing to sign TVA’s new long-term agreements and considering not renewing their current TVA contracts is “so that they can look elsewhere for renewables,” as stated on page 11 of Emberling Part II (JSC-000427) and produce all documents concerning this contention.

RESPONSE:

44. Produce all documents concerning the feasibility research performed by David Shimon and/or “large solar developers,” as referenced on page 12 of Emberling Part II (JSC-000428).

RESPONSE:

45. Produce all documents concerning the efforts and analysis performed by Dennis Emberling and/or his “friends and colleagues in the solar industry” to “make it work,” as referenced on page 12 of Emberling Part II (JSC-000428) and identify these “friends and colleagues in the solar industry.”

RESPONSE:

46. Identify the “foundations eager to help in Jackson” referenced on page 12 of Emberling Part II (JSC-000428) and produce all documents, including communications, with or concerning these foundations.

RESPONSE:

47. Identify all facts concerning your contention that “We and our partners committed to contribute a share of the project’s revenue to help redevelop East Jackson, upgrade its housing, and improve its dilapidated infrastructure,” as referenced on page 12 of Emberling Part II (JSC-000428) and produce all documents concerning such commitments.

RESPONSE:

48. Identify the “companies, organizations, individuals, advocacy groups, and governmental agencies” that “have been so eager to help with this project,” and the people and businesses that are “so enthusiastic,” as stated on page 13 of Emberling Part II (JSC-000429) and produce all documents concerning such entities’ support for and help with the project.

RESPONSE:

49. State all facts that support Your contention that “[t]he only way right now for businesses that need a lot of electricity to get uninterrupted, high-quality, renewable energy is to share a facility with other similar companies,” as stated on page 14 of Emberling Part II (JSC-000430), including whether You are aware of businesses that need a lot of electricity that have gotten uninterrupted, high-quality, renewable energy without sharing a facility with similar companies, and, if so, identify these businesses.

RESPONSE:

50. Explain how a co-operative, as opposed to some other corporate form, “serves its members as a useful nonprofit vehicle to contribute in many ways to the redevelopment and economic improvement of their community,” as referenced on page 14 of Emberling Part II (JSC-000430).

RESPONSE:

51. Identify all persons and entities included in the term “we,” as used in the sentence, “[s]ince all these goals fit perfectly with what we and our partners want to do for Jackson, we launched the co-operative,” as stated on page 15 of Emberling Part II (JSC-000431).

RESPONSE:

52. Explain how “our engineers” will choose the group of companies that will be served, as referenced on page 15 of Emberling Part II (JSC-000431) and produce all documents concerning the criteria for membership and the process for choosing members (*e.g.*, checklists, criteria lists, scoring sheets, analysis of existing conditional members or potential members).

RESPONSE:

53. Produce all documents concerning the award received by the Jackson Solar Project, as referenced on page 19 of Emberling Part II (JSC-000435).

RESPONSE:

VERIFICATION

I swear and affirm that the answers to interrogatories contained herein are true, complete and accurate to the best of my knowledge. I also understand it is my duty to promptly notify my attorney should I later learn that any of these answers are incomplete, inaccurate or misleading.

STATE OF TENNESSEE)
COUNTY OF _____)

Subscribed and sworn to before me
on this ____ day of _____,
20__.

Notary Public

My Commission Expires:_____

Respectfully submitted,



W. Brantley Phillips, Jr. (18844)
Matthew J. Sinback (23891)
Caleb H. Hogan (37412)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200
bphillips@bassberry.com
msinback@bassberry.com

*Counsel for Tennessee Electric Cooperative
Association*

CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of February, 2022, the foregoing document was served on the following persons via email, hand delivery, overnight delivery and/or U.S. Mail, postage prepaid:

John A. Beam, III
EQUITUS LAW ALLIANCE, PLLC
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Henry Walker
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CUMMINGS, LLP**
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hwalker@bradley.com

Kimberly Bolton
Office of the General Counsel
TENNESSEE VALLEY AUTHORITY
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kabolton@tva.gov

Jeremy L. Elrod
Director of Government Relations
**TENNESSEE MUNICIPAL ELECTRIC
POWER ASSOCIATION**
212 Overlook Circle, Suite 205
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Larry L. Cash
Mark W. Smith
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larry.cash@millermartin.com
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Teresa Cobb, General Counsel
JACKSON ENERGY AUTHORITY
P.O. Box 68
Jackson, Tennessee 38302
tcobb@jaxenergy.com



EXHIBIT 3
FILED UNDER SEAL

EXHIBIT 4



About CDE

CDE is managed by Dennis Emberling, CEO. His forty-year career as an internationally-known management consultant has included engagements with companies from small to Fortune 100. His innovations in management science and organizational development are in use all over the world, including the United Nations Development Program. He is also an authority on distributed solar, having consulted for solar companies in California for seven years. He is a member of the California Intergovernmental Task Force on Consumer Protection and regularly advises the California Public Utility Commission. He was trained as a mathematician, and he has decades of experience in all aspects of business finance.



CDE's Chief Financial Officer is David Shimon, a founder and former owner of a commercial bank in Maryland, serving on its loan committee and board of directors. He also founded a \$60 M technical company and served as its board chairman. He has had many years of experience in guiding young companies to success. In recent years, he has owned and operated Florida solar company. David is very active in and a regular speaker for many community groups that feed the elderly and provide services in under-developed empowerment zones in Florida.



The Chief Operating Officer of CDE is Michael D. Miner of Jackson, Tennessee. He served 24 years in the US Army and retired as a Lieutenant Colonel. He is a disabled veteran. He is an expert on quantitative analysis, statistics, decision making, and strategic planning. He recently retired from the U. S. Customs and Border Protection Agency as Director of enterprise Reporting and Data Systems. Michael holds a Master of Arts in Applied Mathematics from the University of Maryland and a Master of Science in Business Administration from Boston University. His undergraduate degree (general engineering with a concentration in Mathematics and Economics) was obtained from the United States Military Academy, West Point, NY. He also serves as an Assistant Professor of Mathematics for American Military University/American Public University. He established and operates a real estate development company in Jackson, Tennessee that builds quality, affordable, energy-efficient, and accessible homes for aging adults and Americans with disabilities.



Our Vice President of Planning is John C. Meyer, Jr., senior partner of SynEnergy, a consulting firm engaged in strategic planning, business management, and business case analysis for commercial and government clients. Last year, his firm contracted to redesign the Air Force's largest command, the Air Combat Command. The previous year, he conducted an economic impact analysis that resulted in governmental approval for over \$560M of residential construction projects. He was chairman of the Gloucester County, Virginia Board of Supervisors, so is able to contribute knowledge and insight into the operations of local governments. John is a combat veteran and former Air Force Colonel.



Our VP of Logistics is Nissim Levy, Ret. Brigadier General, Israel Police. Nissim graduated from Haifa University with a bachelor's degree in Political Science, and a Master's Degree in National Security from Haifa University and Israel National Defense College (INDC) in collaboration with Israel Defense Forces (IDF). He has an extensive background in management and logistics. Nissim dealt with the development of various projects, research and development, and logistics operations.



COMMUNITY
DEVELOPMENT
ENTERPRISES

Email: Info@ComDevEnt.com
1100 Whitehall St., Jackson, TN 38301

EXHIBIT 5
FILED UNDER SEAL

EXHIBIT 6

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**IN RE: THE APPLICATION OF JACKSON)
SUSTAINABILITY COOPERATIVE) DOCKET NO. 21-00061
FOR A DETERMINATION OF EXEMPTION)
AND IN THE ALTERNATIVE, FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY)**

**PETITIONER'S RESPONSES TO TENNESSEE ELECTRIC COOPERATIVE
ASSOCIATION'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

INSTRUCTIONS

These responses are made solely for the purpose of this action. These Responses are covered under the Protective Order issued in this matter. Petitioner Jackson Sustainability Cooperative has not completed preparation for the hearing and has not completed its investigation into some of the issues raised in by these interrogatories and request for documents. The following Responses are thus given without prejudice to Petitioner to produce subsequently discovered information and material.

By these responses Petitioner Jackson Sustainability Cooperative does not admit the relevance of any matter or document and reserves the right to object to the admission into evidence of any response or any document that is produced. Except for facts that may be explicitly admitted herein, no admission of any nature whatsoever is to be implied or inferred from these Responses.

Petitioner Jackson Sustainability Cooperative specifically reserves its right to assert privilege for any privileged matter or document that is inadvertently disclosed or produced in

response to these Interrogatories and Requests for Production. In the event such a matter or documents are inadvertently disclosed or produced, the inadvertent disclosure/production by Petitioner of any matter or of a document containing attorney-client communication, attorney work-product, or otherwise privileged information shall not constitute a waiver of privilege and such matter or document(s) shall be returned to the Petitioner immediately upon such request. Included in this reservation are not only matters and documents promulgated by Petitioner, but also any matter or document disclosed/produced by Petitioner that may have been promulgated by others.

GENERAL OBJECTIONS

Petitioner Jackson Sustainability Cooperative' undersigned counsel objects to each and every Interrogatory Request for Production to the extent it calls for the production of privileged information or documents, including information or documents protected by the attorney-client privilege, investigative privilege, consulting expert exemption, information or documents containing or pertaining to work product, and documents prepared in anticipation of the hearing in this matter. Petitioner Jackson Sustainability Cooperative' counsel further objects to each and every Interrogatory to the extent it seeks the disclosure of the identities of, or any work generated by, non-testifying consulting experts retained by or at the direction of Petitioner Jackson Sustainability Cooperative' attorneys in anticipation or preparation for the hearing in this matter, or in connection with the rendering of legal advice to the Petitioner Jackson Sustainability Cooperative. No restatement of, or failure to restate, any specific objection in the context of these answers shall be construed to imply a waiver of any unstated privilege objections addressed by this General Objection.

2. Petitioner Jackson Sustainability Cooperative' counsel objects to each and every Interrogatory and Request for Production to the extent it attempts to impose a duty on Petitioner Jackson Sustainability Cooperative to disclose information or to produce documents that is/are available from other entities not parties in this litigation and to the extent it seeks matter or materials that is/are available to the public.

3. Petitioner Jackson Sustainability Cooperative' counsel objects to each and every Interrogatory and Request for Production to the extent it is overly broad, burdensome, and/or oppressive, or seeks information or documents neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner Jackson Sustainability Cooperative' counsel preserves its objection to each such Interrogatory and Request for Production to the extent it calls for the disclosure/production of such information/documents.

4. Petitioner Jackson Sustainability Cooperative' counsel objects to every Interrogatory and Request for Production that uses language such as "all" or "each and every" or similarly broad language. Such an Interrogatory or Request for Production is onerous, burdensome, harassing, prejudicial, and overly broad. Each Interrogatory asking "any" and "all" or "each and every" is objectionable in that such an inquiry, in essence, is a request for evidence, and not discoverable information. Moreover, Petitioner has no possible means of making the all encompassing identification such a broadly worded Interrogatory or Request for Production requires.

5. Petitioner Jackson Sustainability Cooperative is contacting those persons who have knowledge of the location and/or existence of information that may be responsive. To the

extent that the Interrogatories or Requests for Production or any portion thereof seek to require Petitioner Jackson Sustainability Cooperative to take any actions other than those enumerated above, such as identifying "all persons" having knowledge or identifying "all documents" concerning the subject of the Interrogatory or Request for Production, Petitioner Jackson Sustainability Cooperative's counsel objects to said Interrogatory or Request for Production on the grounds that it is unduly burdensome and oppressive.

6. Petitioner Jackson Sustainability Cooperative's counsel objects to each and every Interrogatory and Request for Production to the extent that it requires Petitioner Jackson Sustainability Cooperative to produce documents created for it by other parties in that such an Interrogatory or Request for Production is vague, ambiguous, and overly broad. Additionally, such an Interrogatory or Request for Production is broad enough to include information protected by the attorney-client privilege, the attorney work product doctrine, investigative privilege, and the consulting expert exemption.

7. Each Response herein below is subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections and grounds to which the same statement would be subject if delivered through live testimony. All such objections and grounds are expressly reserved by Petitioner Jackson Sustainability Cooperative and may be interposed at the time of hearing or in conjunction with other uses of the Responses.

REQUESTS FOR PRODUCTION

1. Produce all documents upon which You intend to rely in support of Your Petition or JSC's Response in this Docket.

RESPONSE:

Objection. This Request is overly broad and burdensome, and not likely to produce relevant evidence. Without waiving this objection, attached please find Bate Stamped JSC 000001 through JSC 000440 and Bate Stamped JSC CONFIDENTIAL 500001 through JSC CONFIDENTIAL 500087. Any other documents located will be supplemented as described in the instructions.

2. Produce all documents referenced or relied upon in Your answers to TECA's interrogatories to JSC in this Docket.

RESPONSE:

Objection. This Request is overly broad and burdensome, and not likely to produce relevant evidence. Without waiving this objection, attached please find Bate Stamped JSC 000001 through JSC 000440, and Bate Stamped JSC CONFIDENTIAL 500001 through JSC CONFIDENTIAL 500087. Any other documents located will be supplemented

3. Produce all documents that support Your position that JSC is a non-profit cooperative entity subject to the Rural Electric and Community Services Cooperative Act, as codified at T.C.A. § 65-25-101 et seq.

RESPONSE:

Please see attached the Charter (Bate Stamped JSC 000024 to JSC 000026), Charter Amendment (Bate Stamped JSC 000400 to JSC 000401), Bylaws (Bate Stamped JSC 000028 to JSC 000026), and Bylaw Amendment (Bate Stamped JSC 000403 to JSC 000407). See a detailed discussion on formation at the Direct Testimony of Dennis Emberling, Part II (Bate Stamped JSC 000426 to JSC 000429), which discusses other documents that may be responsive in showing the purpose of the Petitioner in operating for the mutual benefit of its members in

sharing supplemental energy from the shared equipment the Petitioner proposes to lease.

4. Produce all documents that support Your position that JSC is not a public utility.

RESPONSE:

Objection. This Request is overly broad and burdensome, and not likely to produce relevant evidence. Second, this Request calls for a legal conclusion. The correct legal conclusion is a non-profit membership cooperatives like the Petitioner exists to serve the mutual benefit of its members and not the general public. Caney Fork Electric Cooperative., Inc. v. Tennessee State Board of Equalization, Case No. M2016-00316-COA-R12-CV (Tenn. App. 2016) Municipal corporations like Jackson Energy Authority represent the public. See Allmand v. Pavletic, 292 S.W. 3d 618, 626 (Tenn. 2009) Without waiving these objections, please see the Petition filed in this matter as document 2100061, the Direct Testimony of Dennis Emberling (Part I) filed as document 2100061a, and the Response to TVA and JEA filed as document 2100061j. Additionally, please see the response to Request 3 above, and other documents produced that demonstrate the use of the property for the mutual benefit of members.

5. Produce all documents, including studies, analyses, policies, and plans, concerning JSC's operations; market; competition; competitors; potential and current members, patrons, or other customers; and projected customer demand.

RESPONSE:

Objection. This question as phrased is argumentative because it references customers, competitors, and projected customer demand. These concepts are not applicable to a membership cooperative that shares a solar facility for supplemental renewable energy. The members desire for all their energy to be from renewable sources. Jackson Sustainability

Cooperative will share its supplemental energy from renewable sources among its members. Second, this Request necessitates the preparation of a compilation of documents, abstracts, or summaries from documents which may be equally available to Tennessee Electric Cooperative Association. Because such preparation would be burdensome and/or expensive to the propounding party and responding party, Petitioner offers for review certain documents related to the projected future operation of the solar facility from which members share supplemental solar energy as described in the Petition. As the status of the final design nears completion, more documents may be responsive this request. Without waiving this objection, please see the feasibility study Bate Stamped document JSC CONFIDENTIAL500057 to JSC CONFIDENTIAL 500087.

6. Produce all documents, including studies, analyses, policies, and plans, concerning the benefits JSC may deliver to members, patrons, and the community, including documents relating to the document titled "Economic Impact of the Jackson Solar Facility," attached as Exhibit 13 to the Petition.

RESPONSE:

Exhibit 13 to the Petition, Economic Impact of the Jackson Solar Facility, is an analysis of how the construction and operation of the Solar Facility has a significant economic impact and benefit to Jackson and Madison County, Tennessee. Exhibit 13 states its modeling assumptions. See Bate Stamped JSC 000372 through JSC 000374.

7. Produce all documents concerning the impact of JSC's solar facility on JEA with respect to that entity's finances, facilities, future costs, and sales of electricity.

RESPONSE:

See Direct Testimony of Dennis Emberling Part II, Bate Stamped JSC 000426 to JSC 000440 together with the articles on demand charges cited in his testimony.

8. With respect to JSC's solar facility, produce all contracts, draft contracts, letters of intent, and memoranda of understanding to which JSC is, or is contemplated to be, a party, as well as communications concerning each of the foregoing.

RESPONSE:

Jackson Sustainability Cooperative is prepared to enter into an equipment lease for the solar facility with a purchase option substantially in the form of the document at Bate Stamped JSC CONFIDENTIAL 500034 to JSC CONFIDENTIAL 500052

9. Produce all documents concerning the relationship between JSC and CDE.

RESPONSE:

Jackson Sustainability Cooperative will lease its generation and deliver equipment from Community Development Enterprises - Jackson I (Petition, ¶¶23 and 31, Bate Stamped JSC 000013, and JSC 000016). Also, Community Development Enterprises - Jackson I may provide start up funds as a Patron of Jackson Sustainability Cooperative. (see Exhibit 2, Bylaws, Section 9.2, Bate Stamped JSC 000050) See response to Request 8 above.

10. Produce all documents, including requests for proposals and contracts, memoranda of understanding, or letters of intent to which JSC or CDE is a party, concerning the construction or operation of solar facilities, or the generation, transmission, or sale of electricity in the state of Tennessee by JSC, CDE, or any entity affiliated with JSC or CDE.

RESPONSE:

Objection. Request No. 10 as phrased is argumentative. It requires the adoption of an

assumption concerning the role of Community Development Enterprises - Jackson I and possible inferences which are improper and reserved for the hearing. Without waiving this objection, Community Development Enterprises - Jackson I is the solar developer who will coordinate the design, procurement and construction of the solar facility for the Petitioner. Northern Reliability, Inc. will oversee construction as discussed in the Petition (§ 27, Bate Stamped 000015). The equipment is selected (but not ordered) and is described in Northern Reliability, Inc. contract, Bate Stamped document JSC CONFIDENTIAL 500001 through JSC 500033.

11. Produce all documents concerning the financing of JSC, CDE, or the solar facility, including all documents provided to potential funders, as referenced on page 14 of the Petition.

RESPONSE:

The Petitioner sent a nondisclosure agreement to several prospective funders at Bate Stamped JSC 000413 through JSC 000414. Once signed, the parties exchange information, including the project description found in the confidential feasibility study, Bate Stamped JSC CONFIDENTIAL 500057 through JSC CONFIDENTIAL 500087.

INTERROGATORIES

12. Identify each person that You reasonably believe may possess knowledge of facts or information relevant to this Docket.

RESPONSE:

All persons described in the Petition or who are associated with the vendors described in the Petition. Richard Donnell replaced Dr. Ann Keyl as a Director of the Petitioner. Other persons with knowledge include David Hunt, John C. Meyer Jr., Michael Miner, Michael Kahn,

Ken Sanders, and Greg Noble.

13. Identify each person who provided information or otherwise participated in creating the documents submitted by JSC in this Docket, including the Petition, the Direct Testimony of Dennis Emberling, filed on May 24, 2021, JSC's Bylaws and Amendment to the Bylaws, JSC's Charter and the Articles of Amendment to the Charter, JSC's Conditional Member Agreement, and JSC's Full Member Agreement.

RESPONSE:

Objection. Interrogatory 13 seeks information covered by the attorney-client privilege. Without waiving this objection, the Documents listed in Interrogatory 13 were created by counsel for the Petitioner to reflect the requests of the Petitioner. The Direct Testimony of Dennis Emberling was created by Mr. Emberling. The parties to contracts and agreements all provided information for those documents. The site plan identifies the civil engineer. The bylaw amendment was signed by all board members of Jackson Sustainability Cooperative. Jackson Sustainability Cooperative will further assist in identifying persons who contributed to specific documents identified by TECA.

14. Identify all facts that support Your position that JSC is a non-profit cooperative entity subject to the Rural Electric and Community Services Cooperative Act, as codified at T.C.A. § 65-25-101 et seq.

RESPONSE:

Objection. Interrogatory 14 is overly broad by asking for “all” facts. Without waiving this objection, see response to Request for Production No. 3 above with all controlling formation and essential operation documents. Additionally, in the case of Caney Fork Electric

Cooperative., Inc. v. Tennessee State Board of Equalization, Case No. M2016-00316-COA-

R12-CV (Tenn. App. 2016)(challenge to constitutionality of property tax exemption), the

Tennessee Court of Appeals described a membership electric cooperative as follows:

In 1939, the Tennessee legislature first created the statutes allowing electric cooperatives. 1939 TENN. PUB. ACTS, ch. 176, § 2.

...

Electric cooperatives were originally conceived as "cooperative, non-profit, membership corporations . . . organized . . . for the purpose of supplying electric energy and promoting and extending the use thereof." 1939 TENN. PUB. ACTS, ch. 176, § 2. Today's statutes identify them as "ideal business organizations in providing adequate and reliable electric services at reasonable rates throughout the rural communities of Tennessee." Tenn. Code Ann. § 65-25-101(b)(1).

...

Electric cooperatives are membership based. See Tenn. Code Ann. § 65-25-102(4). Each member is entitled to vote for the directors and upon other matters. Tenn. Code Ann. §§ 65-25-102(6), 106(a). Members and nonmember patrons must agree to pay for the electric cooperative's services and abide by its terms and conditions of service. Tenn. Code Ann. § 65-25-111(a)(1). **Electric cooperatives are organized for the mutual benefit of their members, not the general public.** (emphasis added)

...

There is no element of charity associated with electric cooperatives. Members and nonmember patrons pay for the services they receive. ... While no doubt exists that the conditions of the communities where these cooperatives were established improved because of access to electricity, there is no charitable purpose or activity involved.

Once the leased equipment is installed and operational, Jackson Sustainability Cooperative acts for the mutual benefit of its members. It promotes the use of renewable energy consistent with the sustainability goals of its commercial and industrial members.

15. Identify all facts that support Your position that JSC is not a "public utility" as defined by T.C.A. § 65-4-101 et seq.

RESPONSE:

Objection. Interrogatory 15 calls for a legal conclusion. Without waiving this objection, Petitioner Jackson Sustainability Cooperative has two alternative legal theories based on facts,

assumptions, and inferences as expressed in the Petition and in the Applicant's Response to TVA and JEA (Bate Stamped JSC 000384 through JSC 000412). First, Jackson Sustainability Cooperative requests that the Commission look at its proposed Solar Facility under T.C.A. §65-4-101(6)(A)(v) and T.C.A. §65-25-123 to determine that Jackson Sustainability Cooperative is not a public utility subject to regulation. T.C.A. §65-4-101(6)(A)(v) expressly provides that a nonprofit coop subject to the Rural Electric and Community Services Cooperative Act is not a public utility in Tennessee. Public utility is defined by statute as an entity that owns, operates, manages or controls power services that are "dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision." T.C.A. 65-4-101(6)(A)

Jackson Sustainability Cooperative relies on the fact that it is organized with the intent to operate under the Rural Electric and Community Services Cooperative Act. Therefore, Jackson Sustainability Cooperative is "deemed to be not-for-profit cooperative[] and nonutilit[y], and, except as provided in § 65-25-122, exempt in all respects from the jurisdiction and control of the Tennessee Public Utility Commission. T.C.A. §65-25-123

Under the second theory, even if Jackson Sustainability Cooperative were not organized with the intent to operate under the Rural Electric and Community Services Cooperative Act (and it is under the Act), it is still not a public utility because it is not "dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision." T.C.A. 65-4-101(6)(A) Jackson Sustainability Cooperative provides supplemental energy to its members from renewable sources. It intends to operate for the benefit of its members, and therefore, cannot operate for the general public. Moreover, it is not

franchised by the state.

16. Identify all facts that support Your position that JSC's proposed solar facility is not "affected by and dedicated to the public use," as stated on page 17 of the Petition and page 8 of JSC's Response.

RESPONSE:

Objection. Interrogatory 16 calls for a legal conclusion. Without waiving this objection, see the response to Interrogatory 15 above. In a closely analogous context, for personal property tax purposes, property is required to be classified based on its use. Specifically, tangible personal property is put into one of three possible classifications: (1) public utility property to be assessed at 55% of its value; (2) industrial and commercial property to be assessed at 30% of its value and (3) all other tangible personal property to be assessed at 5% of its value. See Article II, Section 28 of the Constitution of Tennessee. The definition of property in each class is determined by the legislature. T.C.A. §67-5-501(8) provides that "Public utility property" is hereby defined to include all property of every kind, whether owned or leased, and use or held for use, directly or indirectly in the operation of a public utility, which shall include but not necessarily be limited to the following business entities, whether corporate or otherwise: ... (E) Power companies, whether hydroelectric, steam, atomic, or other kinds for the transmission of power; ... [and] (I) Electric light companies. The focus is not on what property is owned, but how the property is used. In this case, Jackson Sustainability Cooperative works for the mutual benefit of its members to provide supplemental energy from renewable sources. It does not work "in the operation of a public utility" because the shared energy is only available to its members who have common goals to increase the use of energy from renewable sources. Jackson Sustainability

Cooperative does not make this supplemental energy available to the general public. Jackson Energy Authority remains the franchised municipal provider who is required to provide energy to the public.

17. Identify all facts that support Your position that JSC "does not hold itself out to the general public," as stated on page 10 of JSC's Response.

RESPONSE:

Objection. Interrogatory 17 calls for a legal conclusion. Without waiving this objection, please see the responses to Interrogatories 15 and 16 above. Jackson Sustainability Cooperative will provide is supplemental energy from its Solar Facility to a limited number of manufacturers and commercial users located along the West Tennessee Railroad. (See Petition ¶ 11, Bate Stamped JSC 000010) Jackson Sustainability Cooperative provides a supplemental service for the mutual benefit of its members. This is in stark contrast to a public service where the entity provides an essential service to the general public, which has a legal right to demand or receive this good or service. In this case, Jackson Sustainability Cooperative has ability to provide supplemental energy. Not all persons expressing an interest are suitable to share in the cost of supplemental energy. No person expressing an interest has a right to demand access to the solar service that is shared among neighboring manufacturers and commercial users.

18. Identify all facts that support Your position that JSC's proposed solar facility project does not violate the Geographic Territories of Electric Utility Systems act, as codified at T.C.A. § 65-34-101 et seq. (the "GTL").

RESPONSE:

Objection. Interrogatory 18 is overly broad by asking for "all" facts. Second, it calls for a

legal opinion. Without waiving these objections, the GTL provides the municipal utility service with a territory and limits the ability of other non-consumer owned entities to sell electric power within the boundaries of that territory. However, the GTL states that non-consumer owned entities expressly excludes electric and community service cooperatives. T.C.A. 65-34-102(4) Please see responses to Requests 3, 4, and 14 above that discuss why Jackson Sustainability Cooperative intends to operate as a cooperative. Each member can put solar panels on their roof. This is an consumer-owned activity that falls outside of the GTL. The members of Jackson Sustainability Cooperative are seeking to work collectively for their own benefit to accomplish a project that is difficult for any one member to do on its own. Ultimately, the members will have ownership of the Jackson Sustainability Cooperative. For a more complete discussion, please see the Applicant's Response to TVA and JEA, Bate Stamped JSC 000384 through JSC 000412.

19. Identify all language in the GTL that supports the statement "the legislature did not intend to prevent this kind of Solar Facility project," which appears on page 12 of JSC's Response.

RESPONSE:

Objection. Interrogatory 19 calls for a legal opinion. Without waiving this objection, please see response to Request 18 above.

20. Identify all facts that support Your position that JSC's proposed solar facility project does "not 'duplicate' the local distribution system except in a very minor way," as stated on page 11 of JSC's Response.

RESPONSE:

The local JEA distribution system consists of substations, transformers, other equipment,

poles, and wiring to tens of thousands of buildings. JSC's distribution system consists of one trunk line and approximately 2 to 4 drop-off wires to 2-4 buildings. That is why JSC's system is very minor by comparison to JEA's.

Further, underground, trenched wiring in conduit does not at all in any way duplicate existing overhead distribution wiring on poles. It is an entirely different form of distributing electricity - one that is proof against storms, fires, sabotage, and most other causes of grid failure.

Still further, the electricity carried on our underground wiring to our members does not duplicate the transmission of electricity carried on JEA's distribution system. It carries an entirely different type of electricity (solar), at entirely different voltages and current levels. It is not a duplication of the electricity sent across JEA's wires at all. It merely supplements it.

21. Explain whether and how JSC will adhere to the seven cooperative principles, as adopted by the International Co-operative Alliance, available at:
<https://www.ica.coop/en/cooperatives/cooperative-identity>.

RESPONSE:

The ICA's Cooperative Principles are aspirational in nature. Jackson Sustainability Cooperative will train its board members on the 2016 Guidance Notes on the Cooperative Principles published by the ICA that are applicable to a membership coop serving the mutual benefit of its members in sharing a solar facility. This training will assist the Board in applying the Principles in governing the Petitioner as it transitions from design into operations, and from community representatives on the Board to member representatives.

22. Explain whether and how JSC will accept requests for its services.

RESPONSE:

Objection. Request 22 is argumentative and makes the false inference that once the membership is finally determined Jackson Sustainability Cooperative will be selling services to those who request it. Without waiving this objection, Jackson Sustainability Cooperative is a membership cooperative organization that facilitates the sharing of supplementary energy among a few neighboring members. Jackson Sustainability Cooperative will invoice members for their share of the available supplemental energy produced by the leased equipment. Treatment of requests for membership would depend on the timing of the request. If Jackson Sustainability Cooperative has already admitted sufficient members to share energy from the solar facility, such requests will be rejected. If the request for membership is prior to this point, the requesting entity may, at JSC's discretion, be considered according to the minimum qualifications. If the requesting entity meets those qualifications and JSC decides to consider its request, it must submit its historical electrical profiles and other relevant usage information for analysis by engineers. If it is finally selected as one of entities to be offered membership, it will be given a membership agreement to sign. If it is not so selected, it will be rejected.

23. Identify the maximum number of users that may be served by JSC's solar facility as members, patrons, or in any other capacity.

RESPONSE:

Based on current knowledge and assumptions of the peak demand and usage of neighboring manufacturers, it is anticipated that Jackson Sustainability Cooperative will share energy from renewable sources between two to four members. Based on reasonable assumptions, it is highly unlikely Jackson Sustainability Cooperative could exceed ten members. To the extent the questions implies that a Patron is a user who is not a member, there will not be any sharing of

supplemental energy with entities that are not members.

24. Explain whether and how JSC will operate the solar facility on an area coverage basis.

RESPONSE:

Objection. Interrogatory 24 calls for a legal conclusion based on the inference that a few industrial neighbors working together to have supplemental energy from renewable sources forms a coverage area. Without waiving this objection, the Petitioner provides supplemental electricity from renewable sources to its members. The members continue to draw their primary electrical energy from the municipal provider who services them on an area coverage basis. The supplemental energy available is limited to the output of the solar facility.

25. Explain whether JSC members, patrons, and other customers will draw power from the solar facility only during outages on the JEA distribution system and, if not, explain when JSC members, patrons, and other customers will draw power from the solar facility, the person who decides when to draw power from the solar facility, and the standards that govern such decisions.

RESPONSE:

Jackson Sustainability Cooperative members will draw power from the solar facility whenever their instantaneous demand rises sufficiently for Jackson Sustainability Cooperative's supplementary power to them to be worthwhile to them and feasible for Jackson Sustainability Cooperative to supply. This is not limited to grid outages. No one makes such decisions. They are the responsibility of the computerized controller which electronically monitors production, storage, and demand and shares or optimizes power delivery among members.

26. Explain whether full members will be obligated to purchase "supplemental electric energy generated by JSC's solar facility" under Section 2 of the Full Member Agreement, attached as Exhibit 4 to the Petition, and whether there is any contractual cap on the amount of electricity that a member, patron, or other customer can purchase from the JSC solar facility.

RESPONSE:

Full members are not required to purchase any electricity at all from Jackson Sustainability Cooperative. They are only required to pay a monthly invoice to Jackson Sustainability Cooperative that, added to that month's invoice from JEA, is guaranteed to be less than 5% lower than what they would have paid JEA for that month's electricity, had they not been connected to Jackson Sustainability Cooperative's solar facility. The more electricity they use from Jackson Sustainability Cooperative's solar facility, the lower their JEA bill will be for that month, and the higher their Jackson Sustainability Cooperative bill will be for that month. There is neither a floor nor a cap on either the amount of electricity they draw from Jackson Sustainability Cooperative or that they pay Jackson Sustainability Cooperative for. If they use no Jackson Sustainability Cooperative electricity, their Jackson Sustainability Cooperative bill for that month is zero. The limitation on how much electricity they draw from Jackson Sustainability Cooperative's solar facility at any one instant is a function of the facility's ability to supply electricity and the demand from Jackson Sustainability Cooperative's other members. The smart microgrid controller optimizes these factors, as previously explained.

27. Explain whether and how JSC members will benefit from the "federal tax credits and accelerated depreciation benefits" referenced on page 14 of the Petition.

RESPONSE:

Jackson Sustainability Cooperative leases the equipment that forms the solar facility with an option to purchase. The solar facility is financed through the lessor using tax equity investments which pair the federal tax credits and other tax benefits generated by a qualifying physical investment with the capital financing associated with the solar facility. Typically, the buyer assigns the rights to claim the tax credits to a lender in exchange for an equity investment. The transfer of federal tax credits usually occurs within a contractual agreement that legally binds the two parties. There are two energy-related tax credits—the renewable electricity production tax credit (PTC) and energy investment tax credit (ITC). A third category of tax credit is the new markets tax credit (NMTC). In general, the federal government provides tax credits as an economic rationale for subsidizing the activities targeted by these tax credits.

In general, Jackson Sustainability Cooperative and its members benefit because use of tax equity markets is an efficient and effective means of delivering federal financial support for the increase of energy from renewable sources. The best tax equity investor, in addition to providing financing, will evaluate the quality of the project and provide continuing oversight and compliance monitoring.

Solar renewable energy certificates (SRECs) are a performance-based solar incentive that allows users to earn additional income from solar electricity generation. SRECs exist because of state regulations known as renewable portfolio standards (RPS). Tennessee does not have RPS. States with RPS encourage power generation utilities to produce a specific percentage of their electricity from renewable resources. SRECs are a type of renewable energy credit that are specific to electricity that comes from solar technologies. For example, the laws of some states may provide one megawatt-hour of solar produces one SREC. Members of Jackson

Sustainability Cooperative whose principal offices are out of state may be able to count the Tennessee SREC in the state of their principal residence, but not in Tennessee because Tennessee currently has no enabling legislation. States with this legislation have the public policy of carving out a set portion of a state's renewable portfolio standard for solar technologies, and mandate that a set amount of electricity generation needs to be met by just solar energy.

28. Explain whether and how JSC will be in competition with JEA or any other local power company once JSC's solar facility is operational.

RESPONSE:

Objection. The term "local power company" is argumentative. Jackson Sustainability Cooperative is not a "local power company." Jackson Sustainability Cooperative allows its industrial members to share in supplemental energy from renewable sources. Jackson Energy Authority will continue to provide electrical service to these members.

29. Explain whether and how JEA or TVA is a "competing enterprise that distributes electric energy" under Section 5.3.2. of the Bylaws of Jackson Sustainability Cooperative, attached as Exhibit 2 to the Petition.

RESPONSE:

Section 5.3 is the qualification of directors of the Jackson Sustainability Cooperative. The qualification standards are to identify conflicts of interest. For example, if a prospective director has a financial interest in another solar farm, like the one that exists at the airport in Jackson, Tennessee, the potential conflict of interest would require examination. If a TVA employee were nominated to serve on the board of directors, his employment at TVA would not be considered a conflict since Jackson Sustainability Cooperative provides only supplemental

energy.

30. Identify all facts that support Your statement that JEA and TVA "have frequent outages that result in sending employees home and lengthy restart protocols," as stated on page 10 of JSC's Response.

RESPONSE:

It is common knowledge in Jackson that power outages occur from time to time, often due to severe weather events. JEA has an entire section on its website dedicated to power outages. See

<https://www.jaxenergy.com/learning-center-articles/outages-faq>
<https://www.jaxenergy.com/learning-center-articles/causes-of-outages>
<https://www.jaxenergy.com/learning-center-articles/restoration-process>

As JEA states on its Causes of Outages webpage cited above, “animals are one of the top causes of electric outages? Despite the barriers and protective equipment in place, small animals can climb onto or inside certain pieces of equipment causing it to shut down, thus interrupting the flow of power to customers. During storms, high winds and lightning are common causes of outages. High winds may cause power lines to touch. Lightning may strike electrical equipment or nearby objects causing them to fall onto lines or poles. Freezing rain or sleet can create a buildup of ice on power lines and trees eventually causing lines to break. During storms, high winds and lightning are common causes of outages. High winds may cause power lines to touch. Lightning may strike electrical equipment or nearby objects causing them to fall onto lines or poles. Freezing rain or sleet can create a buildup of ice on power lines and trees eventually causing lines to break. Trees and tree limbs are a major cause of outages in all weather conditions. Whether it’s windy, stormy, icy or sunny outside, tree limbs can fall on power lines

and poles. Vehicle accidents involving utility poles may cause an outage. Poles may be damaged, causing power lines to break or touch. Also, accidental contact with underground or overhead power lines at construction sites can cause power outages.”

It is also common knowledge among manufacturers that power outages of more than a few minutes require sending employees home and implementing lengthy restart protocols. See

“Power Outage”, from madesafe.ca, attached as Bate Stamped JSC 000418)
www.plantengineering.com/articles/seven-steps-for-a-successful-shutdown

JEA does not restore power to manufacturers first. As its FAQ web page states, “ We work to restore transmission lines, substations, and critical system loads such as hospitals, fire, police and other services vital to public welfare. Then we work our way across the system, first repairing problems serving larger groups of the customer than to smaller groups.” See JEA’s “Steps to Restoring Power Following a Major Outage” attached.

Power outages also can damage expensive heavy machinery. As JEA states in its FAQ webpage cited above, “ If the electrical equipment that serves your home or business is damaged, a licensed electrician must complete certain repairs before power can be safely restored. Once the necessary repairs have been made and the work has passed inspection, the Jackson Energy Authority can safely restore power.” Obviously, this is more costly to manufacturers, who lose production time, than to other types of businesses.

31. For the period January 1, 2019 through June 30, 2021, specify by date and duration each instance in which a member, prospective member, patron, prospective patron, or other customer or prospective customer of JSC: (a) lost electric power; and (b) was required to "send employees home as they begin lengthy restart protocols," as stated on page 7 of the

Petition.

RESPONSE:

At this time, Jackson Sustainability Cooperative has no specific information about grid power outages in East Jackson. Jackson Sustainability Cooperative does not have specific information about the dates or durations for which neighboring companies sent employees home and later conducted restart protocols. That manufacturing plants regularly engage in restart protocols is common knowledge. See, for example,

<https://madesafe.ca/wp-content/uploads/2016/09/POWER-OUTAGE.pdf> (JSC 000418)
<https://www.plantengineering.com/articles/seven-steps-for-a-successful-shutdown/>
https://www.epa.gov/sites/production/files/2019-11/documents/191126-incidentactionchecklist-p-o-form_508c.pdf

32. Specify the "peak demand profile" for each member or prospective member of JSC, as referenced on page 8 of the Petition.

RESPONSE:

For a more detailed explanation of peak-demand, please see the Direct Testimony of Dennis Emberling, Part II, at Bate Stamped JSC 000429 to JSC 000436). JEA customers pay “usages charges” for the energy they use at varying rates per kilo-Watt-hour (kWh) of energy. In addition, they pay “peak-demand charges” based on the highest amount of power in kilo-Watts (kW) they draw from JEA during a billing period.

Similarly, JEA pays TVA a monthly peak-demand charge based on JEA’s maximum power demand from TVA for that month. This is theoretically justified by TVA as reimbursing it for its high costs of building, maintaining, and operating reserve power generation plants that usually sit idle, producing no energy and earning no revenues. These are required by law to be

able to supply 30% more power than the highest instantaneous power ever demanded of TVA.

This way of making stand-by reserve power available is highly inefficient and expensive. It is an artifact of our ancient and wasteful centralized energy system.

Modern energy systems use renewables to generate the electricity and various types of storage to build up these needed reserves. This is far more economical than the old-fashioned fossil-fuel systems. But TVA has steadfastly refused to modernize its systems and switch over to renewables. Therefore its retailers, like JEA, and their customers are stuck with all the drawbacks of this foolish configuration.

The Jackson Sustainability Cooperative's solar + storage facility solves this problem for its members by sharing renewable generation and battery storage. No additional generation reserves need be built, maintained, or operated. The battery storage with smart hardware and software controller meets demand surges at no additional cost.

If TVA's policies and Tennessee's laws permitted and encouraged commercial heavy users of electricity to acquire their own, individual, solar + storage systems, they could meet their demand themselves. But since TVA's policies and Tennessee's laws make this exceedingly uneconomical, they are forced to share solar + storage resources through a nonprofit cooperative.

33. Explain how JSC will provide "supplemental electric service" to its members through "advanced metering," "load control," and "equipment monitoring," as stated on page 5 of JSC's Response.

RESPONSE:

Jackson Sustainability Cooperative will install new smart meters and electric panels at each of its members' buildings, connected to its supplementary electricity service. These will

monitor and record all electrical usage of the building, broken down by individual circuit. This allows members to see the usage profiles of each major piece of machinery, enabling members to adjust their schedules and practices so as to conserve energy.

34. Identify all facts that support the statements made on pages 11-12 of JSC's Response about the benefits of JSC's proposed solar facility project, including that it: "positively supports ... the local distribution system," "lowers costs of the local distribution system," will defer "capital costs associated with growth demand," will lengthen "service life of system components," and will reduce "costs associated with meeting peak system demands."

RESPONSE:

Obviously, to the degree Jackson Sustainability Cooperative's solar facility reduces peak demand by its customers to JEA, JEA has that much less need to spend capital to expand its facilities to meet increased peak demand. The reduced peak demand gives JEA exactly that much additional peak-demand reserve to draw on as it expands its customer base, without having to build additional peak-demand capability. The same is true of the reduced usage of JEA electricity by Jackson Sustainability Cooperative's customers.

Any reduction of usage, and especially high peak demand, on JEA's local power system and TVA's regional power system, obviously reduces wear and tear on these systems. High peak demand is especially damaging to these systems, as attested by many studies. See, for example, "Methods for Analyzing the Benefits and Costs of Distributed Photovoltaic Generation to the U.S. Electric Utility System," NREL Technical Report, September 2014.

35. Identify all facts that support the purported community benefits of JSC's proposed solar facility project, as listed on pages 14 and 15 of the Petition and in the document titled

"Economic Impact of the Jackson Solar Facility," attached as Exhibit 13 to the Petition.

RESPONSE:

Please attached the Supplemental Testimony of Dennis Emberling on how the proposed Project benefits Jackson, Tennessee, Bates Stamped JSC 000426 through JSC 000431.

36. Describe the "long working relationship" that JSC's officers/directors have with the Community Redevelopment Agency, as stated on page 15 of the Petition.

RESPONSE:

The officers of Jackson Sustainability Cooperative have a good working relationship with Michael D. Miner. Mr. Miner, a native of Jackson, Tennessee, is a West Point graduate and a retired Lieutenant Colonel in the U.S. Army, and he has worked closely with the Community Redevelopment Agency for years. In addition to his involvement with the Petitioner's solar facility, he is CEO of Mound City Redevelopment, LLC (a/k/a The Mound City Foundation. He has applied his training as a research statistician for the military into creating affordable housing and economic development in Jackson, Tennessee. The initial focus was on housing for seniors citizens and Vets to make the community stronger. A recent project for 48 housing units has a long waiting list.

37. Identify all venture participants in CDE and, for CDE and each venture participant, state whether the entity is a non-profit entity.

RESPONSE:

Community Development Enterprises - Jackson I is a joint venture with three venture partners: E A Solar, LLC, Hunt Solar, LLC, and SynEnergy, Inc.

38. According to a press release issued by iSun, Inc., available at <https://isunenergy.com/news/isun-selected-by-northern-reliability-and-community-development-enterprises-for-pv-installation-of-one-of-americas-largest-solar-plus-storage-microgrid-projects>, JSC's solar facility is "phase one of one of the nation's largest solar plus storage microgrid projects underway in Jackson, TN" and "Phase one of the multi-phase project" Explain in detail all current and future "phases" of JSC's solar facility.

RESPONSE:

Jackson Sustainability Cooperative has no plans for further phases of our solar facility. iSun is merely referring to other business it may or may not have with on projects that are related to Mr. Shimon and Mr. Emberling's projects through related entities in other states or countries in the future.

39. Identify all facts that support CDE's public statements, available at <https://communitydevelopmententerprises.com/>, that: "JSC will get all its power from CDE's solar facility, so around half of Members' power will come from renewables"; "CDE will pay for the entire solar facility, underground wiring to Members' buildings, and smart meters in each building"; "Guaranteed to lower your total cost of electricity for 30 years"; "Higher quality, tightly regulated solar power improves reliability and extends the life of costly machinery"; and "This 17 MW solar facility will be the most productive per acre in the entire world."

RESPONSE:

Objection. Interrogatory 39 as phrased is argumentative. Jackson Sustainability Cooperative is leasing equipment for its solar project from Community Development Enterprises - Jackson I (see confidential lease at Bate Stamped JSC CONFIDENTIAL 500034 through JSC

CONFIDENTIAL 500052). The Petitioner will use the leased equipment for the benefit of its members who cooperatively share the supplemental electric energy from renewable sources. Community Development Enterprises - Jackson I is a solar developer charged with design of the solar facility, procurement of the equipment, and construction of the site. The current design and selected equipment includes the most efficient solar panels available in America. Though the number will be refined with the final design, 17 MW is a good faith estimate of the total output of the equipment leased by Jackson Sustainability Cooperative.

VERIFICATION

I, Dennis Emberling, as President of Jackson Sustainability Cooperative, swear and/or affirm that the foregoing Interrogatory Responses are true and accurate to the best of my knowledge, information, or belief.

Jackson Sustainability Cooperative

By: Dennis Emberling
Dennis Emberling, President

STATE OF TENNESSEE)
) SS
COUNTY OF DAVIDSON)

Before me, Dennis Emberling, of the state and county aforesaid, personally appeared Dennis Emberling, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the authorized representative of Jackson Sustainability Cooperative, and that he/she executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as the duly authorized representative.

WITNESS my hand at office, this 21 day of September, 2021.

Ambra Barnes
NOTARY PUBLIC

My commission expires: 3/23/2025

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Respectfully submitted,



John A. Beam, III, BPR #11796
EQUITUS LAW ALLIANCE, PLLC
709 Taylor Street
P.O. Box 280240
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Telephone: (615) 251-3131
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2021, I filed Responses To
Discovery with the parties named below and filed a true and correct copy with the Tennessee
Public Utility Commission within three days, and I emailed and sent by U.S. mail copies to
the following parties:

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John A. Beam, III

EXHIBIT 7

EQUITUS
LAW ALLIANCE
—PLLC—
ATTORNEYS AT LAW

Electronically Filed in TPUC Docket Room on January 5, 2022 at 12:25 p.m.

January 5, 2022
Via Email

Ectory Lawless, Esq.
Docket & Records Manager
Tennessee Public Utility Commission
Andrew Jackson State Office Building
502 Deaderick Street, Floor
Nashville, TN 37243-0001

Re: Application of Jackson Sustainability Cooperative for a Determination of Exemption
Docket No. 21-00061

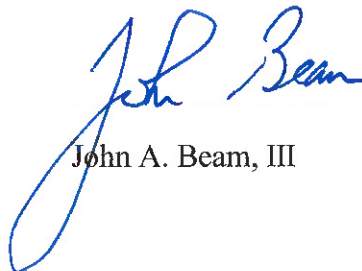
Dear Ms. Lawless:

Attached are electronic copies of the Petitioner's Supplemental Responses to the Discovery Requests from Jackson Energy Authority and to Tennessee Electric Cooperative Association. The electronic documents are in two sets. One set is bated stamped "JSC" and is available for public disclosure. A second electronic set of documents includes redacted documents marked "JSC CONFIDENTIAL." The attached documents are for the public record.

Next week when you are in, the applicant will hand deliver hard copies as well as documents on a USB flash drive. Additionally, a sealed envelope labeled CONFIDENTIAL for storage under lock and key with the TPUC will be hand delivered to you next week.

This letter confirms that supplemental discovery was served on all counsel of record, and confidential documents served on requesting counsel of record under the terms of the existing protective order. Let me know if you have any questions.

Sincerely,



John A. Beam, III

enclosure

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE: THE APPLICATION OF JACKSON)	
SUSTAINABILITY COOPERATIVE)	DOCKET NO. 21-00061
FOR A DETERMINATION OF EXEMPTION)	
AND IN THE ALTERNATIVE, FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY)	

**PETITIONER'S SUPPLEMENTAL RESPONSES TO TENNESSEE ELECTRIC
COOPERATIVE ASSOCIATION'S DISCOVERY REQUESTS**

Petitioner Jackson Sustainability Cooperative is supplementing its responses to discovery from Tennessee Electric Cooperative Association in response to the October 4, 2021 letter requesting more detailed responses.

Jackson Sustainability Cooperative seeks a declaratory ruling from the Commission that its proposed solar facility is not subject to regulation under T.C.A. 65-4-101(6)(A)(v) because it is a non-profit cooperative that is, therefore, deemed not a public utility subject to regulation under the statutory exception found in T.C.A. §65-25-123.

Tennessee Electric Cooperative Association has questioned the objections to discovery requests based on the basis the request was overly broad. The comments by the Advisory Commission on Tenn. R. Civ. P. Rule 34.02 provide that “[a] responding party may object to a Rule 34 request as overly broad on the grounds that the time period covered is too long, or that the breadth of sources from which documents are sought is unduly burdensome, providing the specific bases therefore, and further making clear whether the objection is being made in whole or in part. (In re Amendments to the Tenn. Rules of Civil Procedure, 2019 Tenn. LEXIS 3,

*11-12.) The analysis of whether the inquiry is overly broad first looks to whether it relates to a claim of the party. Johnson v. Nissan N. Am., Inc., 146 S.W.3d 600, 605 (Tenn. App. 2004) In addition to relevancy, the analysis is on whether the inquiry invades a privilege or the necessity of protecting a privacy interest, especially from annoyance, embarrassment, oppression, or undue burden or expense." Cyc. Fed Proc. § 25.34 3rd Ed. (2001) Id. at § 25.34. When parties go too far, the court may whittle down their discovery request, "taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." Tenn. R. Civ. P. 26.02(1); Reid v. State, 9 S.W.3d 788, 793 (Tenn. App. 1999)

Without admitting that any existing response is deficient, Jackson Sustainability Cooperative provides supplemental responses as follows:

REQUESTS FOR PRODUCTION

1. Produce all documents upon which You intend to rely in support of Your Petition or JSC's Response in this Docket.

RESPONSE:

Invoking all prior objection and limitations, the Petitioner intends to rely on documents it files, documents referenced in the filings, the documents filed by others in this matter, and rebuttal documents. The Petitioner is not stopping the development of its solar facility pending a declaratory ruling on whether it is not subject to regulation under T.C.A. 65-4-101(6)(A)(v) because it is a non-profit cooperative as described in T.C.A. §65-25-123. The Petitioner will supplement its responses as the development of the solar facility continues toward the financing and construction phase. See Response to Request 2 for a reference to the documents.

2. Produce all documents referenced or relied upon in Your answers to TECA's interrogatories to JSC in this Docket.

RESPONSE:

Invoking all prior objections and limitations, Jackson Sustainability Cooperative relies on Bate Stamped JSC 000001 through JSC 000869, and Bate Stamped JSC CONFIDENTIAL 500001 through JSC CONFIDENTIAL 500167. Any other documents located or produced as the solar facility develops will be supplemented.

4. Produce all documents that support Your position that JSC is not a public utility.

RESPONSE:

Invoking all prior objection and limitations, Jackson Sustainability Cooperative requests that the Commission look at its proposed Solar Facility under T.C.A. §65-4-101(6)(A)(v) and T.C.A. §65-25-123 to determine that Jackson Sustainability Cooperative is not a public utility subject to regulation. T.C.A. §65-4-101(6)(A)(v) expressly provides that a nonprofit community cooperative subject to the Rural Electric and Community Services Cooperative Act is not a public utility in Tennessee. Jackson Sustainability Cooperative relies on the fact that it is organized with the intent to operate under the Rural Electric and Community Services Cooperative Act. Therefore, the answer to the request for production of documents 4 requires the preparation or the making of a compilation of documents that contain the express intent of Jackson Sustainability Cooperative to act as a community cooperative. Jackson Sustainability Cooperative seeks a prospective ruling that its plan to share supplemental energy among a small number of members as a community cooperative that exempt from characterization as a “public

utility” as a matter of law. Several material documents that manifest this intent to operate as an exempt nonprofit cooperative include the Charter (Bate Stamped JSC 000024 to JSC 000026), Charter Amendment (Bate Stamped JSC 000400 to JSC 000401), Bylaws (Bate Stamped JSC 000028), and Bylaw Amendment (Bate Stamped JSC 000403 to JSC 000407). A discussion on formation of the nonprofit in throughout the Petition and at the Direct Testimony of Dennis Emberling, Part II (Bate Stamped JSC 000426 to JSC 000429).

Public utility is defined by statute as an entity that owns, operates, manages or controls power services that are "dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision." T.C.A. 65-4-101(6)(A) In this case, a prospective member is eligible for consideration as a conditional Membership if its plant and facility (1) annually requires or is expected to annually require at least 100,000 kilowatt-hours (kWh) of electric energy; and, (2) uses electric energy on a demand curve consistent with the Cooperative's requirements.” (Bylaws, Article II, Section 2.1, Bate Stamped JSC 000034). Therefore, there are no documents that show the Petitioner’s proposed facility for solar energy from renewable sources is “dedicated to the public use” because it is limited to members with certain energy profiles. Additionally, there is no document such as a franchise granted by the state to the Petitioner that requires the Petitioner to serve all public needs in an assigned geographic territory. Those agreements are reserved for public utilities. Jackson Sustainability Cooperative is not a public utility as defined in the statute.

Jackson Sustainability Cooperative provides supplemental energy to its members from renewable sources. It intends to operate for the benefit of its members. It does not serve the general public as public utility. Internal documents used to analyzing financing or analyzing

fundes are attached as Bate Stamped JSC 000441 to JSC 000863).

5. Produce all documents, including studies, analyses, policies, and plans, concerning JSC's operations; market; competition; competitors; potential and current members, patrons, or other customers; and projected customer demand.

RESPONSE:

Invoking all prior objections and limitations, the analysis of potential members and plans to include members is limited to neighbors to the proposed solar facility who operate manufacturing facilities in the Roosevelt Parkway neighborhood in Jackson are heavy users of electricity. (Petition, Bate Stamped JSC 00005; List of Operators, Bate Stamped JSC CONFIDENTIAL 5000136) Many of these manufacturers have corporate sustainability goals and policies that require use of renewable energy. They cannot economically justify building their own renewable-energy generation facilities in Jackson. Manufacturers can join together as members to take advantage of economies of scale by constructing and sharing the power a solar facility generates to supplement their demand for electricity and accomplish corporate goals of using renewable energy. The solar facility will reduce electricity costs incurred at peak demand. (Bate Stamped JSC 000429) The municipal utility continues to provide primary usage requirements. The solar facility supplements by meeting the increased demands from time to time for higher amounts of power. In this way, energy from the solar facility reduces the level and duration of high demand on the municipal utility, its distribution system, its substations, and TVA's entire system.

The solar facility also provides reliable, high-quality, stable power that can withstand

major storms and lengthens the life of machinery. (Bate Stamped JSC 000427) Newly installed “smart” meters will monitor precisely monitor electric energy consumption, making significant improvements in energy efficiency and conservation possible. (Bate Stamped JSC 000431)

The Members of the cooperative also desire to be good corporate citizens of Jackson and contribute to its development, environment, and quality of life. (See benefits in response to Request No. 6 below) The cooperative’s purposes therefore include doing research into various means of conserving energy, bringing Jackson into national prominence with its innovations in solar energy. The cooperative will also bring internships and training programs to Jackson’s colleges and high schools, as well as other training to increase and improve the skilled-labor pool in Jackson, Tennessee.

The planned benefits to the Member who share supplemental energy from renewable sources are summarized in Paragraph 41 of the Petition. (Bate Stamped JSC 000018) The planned benefits include (1) improving the resiliency and reliability of electric service to key manufacturing employers in Jackson, Tennessee. (See Bate Stamped JSC 000417 to JSC 420) The Applicant's Facility for supplemental renewable energy is a modern solution that allows participants to continue using local energy from the municipal provider while having a local renewable generation and storage facility that reduces the risk of outages with real savings to the participants who have expensive restart-protocols (Bate Stamped JSC 000427); (2) assisting major manufacturing facilities in Jackson in making substantial progress toward their stated corporate goals by switching some of their peak energy consumption from fossil-fuel based to fully clean, green, renewable energy from solar sources stored in lithium batteries (Bate Stamped JSC 000426 to JSC 000433); (3) facilitating energy conservation through smart meter technology

that allows customers to receive solar power and to prioritize and monitor their electrical usage down to the individual circuit level, giving them previously unavailable information and enabling them to increase efficiency in their facilities (Bate Stamped JSC 000431 and JSC 000435); (4) reducing manufacturers' maintenance and replacement expenses for their expensive machinery as a result of improved power quality and minimizing outages such as brownouts and blackouts; and (5) enabling Members to acquire supplemental energy to operate with better efficiency in the hopes that they choose Jackson, Tennessee as the place to expand their business operations in the future. (Bate Stamped JSC 000426)

6. Produce all documents, including studies, analyses, policies, and plans, concerning the benefits JSC may deliver to members, patrons, and the community, including documents relating to the document titled "Economic Impact of the Jackson Solar Facility," attached as Exhibit 13 to the Petition.

RESPONSE:

Invoking all prior objections and limitations, there are no documents that mention benefits to the patron(s). In addition to the Petition and filed exhibits, other places where benefits to members and the Jackson community are mentioned include website maintained by the solar developer Community Development Enterprises - Jackson I; the invitation letter that was sent to some potential participants (Bate Stamped JSC CONFIDENTIAL 5000134); the power point presentation (Bate Stamped JSC CONFIDENTIAL 5000124); the unpublished press release given to the Jackson Sun (Bate Stamped JSC CONFIDENTIAL 5000135); Aims of the Co-op (Bate Stamped JSC 0000416); How the Co-op Works (Bate Stamped JSC 0000415); and

Feasibility Study (Bate Stamped JSC CONFIDENTIAL 500057), Minutes of Board Meeting (Bate Stamped JSC 000864).

Certain of these documents were provided or made available to those with manufacturing facilities in the Roosevelt Parkway neighborhood in Jackson. Many of these manufacturers have corporate sustainability goals that require use of renewable energy. These prospective members cannot economically justify building their own renewable-energy generation facilities in Jackson. However, manufacturers can join together to take advantage of economies of scale by participating in the construction of and sharing of the power a solar facility generates to supplement their demand for electricity and accomplish corporate goals of using renewable energy. (See more detail as part of Response to No. 5 above)

These documents show how the Jackson community benefits by a cooperative solar facility where the members contribute to its development, environment, and quality of life. The cooperative's purposes include doing research into various means of conserving energy, and bringing Jackson into national prominence with its innovations in solar energy. The cooperative will also bring internships and training programs to Jackson's colleges and high schools, as well as other training to increase and improve the skilled-labor pool in Jackson, Tennessee.

7. Produce all documents concerning the impact of JSC's solar facility on JEA with respect to that entity's finances, facilities, future costs, and sales of electricity.

RESPONSE:

Invoking all prior objections and limitations, the Petitioner avers that its proposed solar facility as described in the Petition and supporting documents presents a number of likely

impacts on Jackson Energy Authority (“JEA”), including the following:

The Petitioner’s solar facility will lower JEA’s total monthly demand peak. Therefore, it reduces the capacity charge from TVA to JEA for peak demand. (see Petition, Schedule of Terms, p. 7, Bate Stamped JSC 000108 to JSC 000110; Contract, Bate Stamped JSC 000098 and JSC 000101; Petition, ¶ 10, Bate Stamped JSC 000010) Lowering peak demand reduces wear and tear on JEA’s substations, lines, and equipment. Demand spikes followed by drops are hard on JEA’s system. Reducing these spikes lowers JEA’s maintenance, repair, and replacement costs.

Offering backup power to some manufacturers when the grid fails reduces pressure on JEA to restore power. Backup power also makes the overall process of bring the grid back up easier to manage. It also reduces manufacturers' complaints to JEA about power failures, and improves their satisfaction with JEA's service.

Supplying higher quality power (more tightly regulated frequency and voltage) to manufacturers reduces manufacturers' demands for JEA to reduce the incidence of spikes, surges, and fades in frequency and voltage, which is very hard on the manufacturers' expensive machinery. This saves JEA money by avoiding having to install equipment to regulate frequency and voltage more tightly for these manufacturers.

Providing supplemental solar-generated power to manufacturers reduces their pressure on JEA to switch to renewable energy sources.

The availability of solar power to a small group of members in Jackson will encourage these members to expand their existing businesses and will attract new business to come to Jackson. All these will become JEA's customers, not just for electricity, but for all the utilities

JEA offers the public. This will increase JEA's profits.

Overall, these benefits, taken together, should substantially outweigh the loss of a small percentage of JEA's revenue for demand charges from a few manufacturers. The net result should be an increase in JEA's profitability and satisfaction rating from its customer base.

8. With respect to JSC's solar facility, produce all contracts, draft contracts, letters of intent, and memoranda of understanding to which JSC is, or is contemplated to be, a party, as well as communications concerning each of the foregoing.

RESPONSE:

Jackson Sustainability Cooperative has approved and entered into a confidential equipment lease for the solar facility with a purchase option. Bate Stamped JSC CONFIDENTIAL 500143 to JSC CONFIDENTIAL 500161) Jackson Sustainability Cooperative has entered into three confidential conditional member agreements. (Bate Stamped JSC CONFIDENTIAL 500162 to JSC CONFIDENTIAL 500167)

9. Produce all documents concerning the relationship between JSC and CDE.

RESPONSE:

Jackson Sustainability Cooperative will lease its generation and delivery equipment from Community Development Enterprises - Jackson I, a solar developer. (Petition, ¶¶23 and 31, Bate Stamped JSC 000013, and JSC 000016) Also, Community Development Enterprises - Jackson I may provide start up funds as a Patron of Jackson Sustainability Cooperative. (see Exhibit 2, Bylaws, Section 9.2, Bate Stamped JSC 000050) See response to Request 8 above for the

confidential equipment lease where Jackson Sustainability Cooperative is the lessee of all equipment forming the solar facility.

10. Produce all documents, including requests for proposals and contracts, memoranda of understanding, or letters of intent to which JSC or CDE is a party, concerning the construction or operation of solar facilities, or the generation, transmission, or sale of electricity in the state of Tennessee by JSC, CDE, or any entity affiliated with JSC or CDE.

RESPONSE:

Invoking all prior objections and limitations, there is no contract with iSun. iSun was being considered for a role in the engineering, procurement, and construction of the solar Project for the Petitioner. Northern Reliability, Inc. will work in conjunction with a local contractor to secure vendors once the designs are finalized and equipment ordered for delivery to the site.

11. Produce all documents concerning the financing of JSC, CDE, or the solar facility, including all documents provided to potential funders, as referenced on page 14 of the Petition.

RESPONSE:#

The Petitioner has signed nondisclosure agreements with several prospective funders at Bate Stamped JSC CONFIDENTIAL 5000110 through JSC CONFIDENTIAL 5000122. Jackson Sustainability Cooperative is financing its equipment through a confidential lease with a purchase option. (Bate Stamped JSC CONFIDENTIAL 500143).

INTERROGATORIES

12. Identify each person that You reasonably believe may possess knowledge of facts or information relevant to this Docket.

All persons described in the Petition or who are associated with the vendors described in the Petition, including the joint venture parties in Community Development Enterprises - Jackson I and their members and shareholders. Richard Donnell replaced Dr. Ann Keyl as a Director of the Petitioner. Other persons with knowledge include David Hunt, John C. Meyer Jr., Michael Miner, Michael Kahn, and Greg Noble. This response will be supplemented as development of the solar facility continues.

13. Identify each person who provided information or otherwise participated in creating the documents submitted by JSC in this Docket, including the Petition, the Direct Testimony of Dennis Emberling, filed on May 24, 2021, JSC's Bylaws and Amendment to the Bylaws, JSC's Charter and the Articles of Amendment to the Charter, JSC's Conditional Member Agreement, and JSC's Full Member Agreement.

RESPONSE:#

Invoking all prior objections and limitations, the Petitioner, through counsel, circulated all or part of the Petition and supporting documents among several persons for comment, including Dennis Emberling, David Shimon, John C. Meyer Jr., Michael Miner, David Hunt, and Greg Noble, prior to approval. The Board of Directors approved the Petition. (Bate Stamped JSC 000866)

14. Identify all facts that support Your position that JSC is a non-profit cooperative entity subject to the Rural Electric and Community Services Cooperative Act, as codified at T.C.A. § 65-25-101 et seq.

RESPONSE:

Facts that establish Jackson Sustainability Cooperative as an incorporated non-profit cooperative are found throughout the Petition, beginning with the second paragraph of the Petition. (Bate Stamped JSC 000005 to JSC 000007). The Charter establishes the purpose of providing supplemental energy from renewable sources to members. (Bate Stamped JSC 000024) Jackson Sustainability Cooperative has A board of directors. (Bate Stamped JSC 000006; Bate Stamped JSC 000864). Members have voting rights. (Bylaws, Bate Stamped JSC 000044). There Petitioner currently has three conditional members. (Bate Stamped JSC CONFIDENTIAL 500162 to JSC CONFIDENTIAL 500167). The Petitioner has a website for members only. The Petitioner has a bank account. The Petitioner has transacted business. (Bate Stamped JSC CONFIDENTIAL 500143 TO JSC CONFIDENTIAL 500161) Most of the documents filed in this matter identify Jackson Sustainability Cooperative as a non-profit cooperative that provides supplemental solar energy to a few members.

15. Identify all facts that support Your position that JSC is not a "public utility" as defined by T.C.A. § 65-4-101 et seq.

RESPONSE:

Invoking all prior objections and limitations, the common English definition of "public utility" is an entity that provides goods or services to the general public. Under the statutory

definition, a “public utility” is an entity that operates power services dedicated to the public use under a franchise agreement with government. T.C.A. 65-4-101(6)(A) Jackson Sustainability Cooperative provides supplemental energy from renewable sources. It does not replace the municipal provider who operates under an agreement with government as a public utility that generally must meet the needs of all citizens for electric power. Jackson Sustainability Cooperative allows sharing energy from renewable sources among a small group, likely 2 to 5 users. The municipal provider only has energy from one supply source, TVA, who provides electricity from sources that are not as environmentally friendly as the proposed solar facility of Jackson Sustainability Cooperative. Unlike the municipal provider who is a public utility under any definition, Jackson Sustainability Cooperative provides supplemental energy that the public is not permitted or entitled to use. Jackson Sustainability Cooperative is a non-profit corporation as defined and restricted in its formation documents. Jackson Sustainability Cooperative will transition from community leadership to leadership voted on by a few members who share the common objective of increasing the amount of energy used from renewable sources. The minimum qualifications for membership eliminate the general public from obtaining solar energy from this shared solar facility that exists to serve its members. These members are also neighboring businesses with a common objective in increasing energy from renewable sources.

In Tennessee “public use” is a synonym with “public utility.” (Attorney General Opinion 17-25, f.n. 3, Bate Stamped JSC 000411) A service dedicated to public use is where the public “has a right to demand such service so long as it is continued with reasonable efficiency under proper charges.” (Id.) In this context, Jackson Sustainability Cooperative electric energy is not useful to the public because it is not available to most persons.

After a severe snow storm if a grocery store and adjoining pharmacy lease a portable diesel generator, the owner of the generator does not become a public utility. Just because two companies share a diesel generator does not make them utilities either. Jackson Sustainability Cooperative is a solar facility, a generator, shared by a few compatible companies. Sharing a generator does not make the members or the cooperative a public utility.

16. Identify all facts that support Your position that JSC's proposed solar facility is not "affected by and dedicated to the public use," as stated on page 17 of the Petition and page 8 of JSC's Response.

RESPONSE:

See response to Interrogatory 15 above. Public use and public utilities are synonyms in Tennessee. (Attorney General Opinion 17-25, f.n. 3, Bate Stamped JSC 000411)

17. Identify all facts that support Your position that JSC "does not hold itself out to the general public," as stated on page 10 of JSC's Response.

RESPONSE:

See response to Interrogatory 15 above. Additionally, Jackson Sustainability Cooperative is not deemed to hold itself out to the public for the following reasons: Participation with the Petitioner is not available to the public. There are minimum qualification standards as well as compatibility with the energy generated by the solar facility. No business can buy energy from the leased equipment just because they desire to use renewable energy. Only the few participants expressly invited into membership will participate in sharing the capabilities of

the solar facility. Jackson Sustainability Cooperative is prepared to serve only particular neighbors with supplemental energy. The Petitioner conducts its activities by making offers directly to a few companies selected that meet the minimum standard and have energy profiles that fit the capabilities of the solar facility. There are no general offers to the public. The Petitioner's web site can only be assessed by members.

The bylaws and charter provide a not for profit corporation organized for the benefit of its members to who will receive supplemental electrical energy. Members will also contribute to redevelopment of neighborhoods, promote energy efficiency of its members, provide research and development into energy efficiency, and provide job training and education for Jackson residents.

Jackson Sustainability Cooperative does not replace the municipal provider. The public has an interest in demanding service from its municipal provider. The general public does not pay the demand charges for capacity in the system. The Petitioner is focused on the charges for providing capacity, not charges for power consumed. Qualification to share in the solar facility eliminates the general public. The general public requires more than supplemental energy to meet its needs. A public utility must accept substantially all requests for its services. Participation with Jackson Sustainability Cooperative is by invitation. The Full Member Agreement spells out the restrictions for membership and the terms for receiving supplemental energy.(see Bate Stamped JSC 000063)

Jackson Sustainability Cooperative is not in direct competition with the municipal provider because in only provides supplemental electricity. All members remain connected to the JEA/TVA grid and receive full services from JEA. A competitor would be an alternative to

JEA, not a supplement to it. For example, when the grid fails, Jackson Sustainability Cooperative continues to provide power. It is not competing with JEA, which at such times is not providing electricity at all, it is supplementing JEA. Though the Petitioner may reduce JEA's revenue from a few of its customers, it will increase the number of JEA's customers in Jackson, allow them to expand, and ultimately increase JEA's revenue. Equally important, the supplemental solar energy will relieve JEA of peak demand, lowering its cost of energy supplied by TVA. Thus, short term revenue may decrease, while profits increase for JEA. The municipal provider should have lower costs for upgrades and repairs to its distribution system among the members of the Petitioner.

Jackson Sustainability Cooperative plans on servicing a very limited number of members who are in a very small area of adjacent and nearly adjacent premises. The Petitioner does not hold itself out to the general public because it does not and cannot afford to operate a distribution system like JEA and TVA to convey electricity from its facility. The Petitioner provides supplemental energy from renewable sources to its neighbors in and among a very small community of businesses. The Petitioner also cannot go beyond providing supplemental solar energy that helps meet peak demand where users pay for capacity rather than consumption of electricity. The Petitioner's solar facility has limited capacity and can only serve a few users. The cost of connecting each member with smart meters and underground connections makes serving the general public economically infeasible.

18. Identify all facts that support Your position that JSC's proposed solar facility project does not violate the Geographic Territories of Electric Utility Systems act, as codified at

T.C.A. § 65-34-101 et seq. (the "GTL").

RESPONSE:

Invoking all prior objections and limitations, Jackson Sustainability Cooperative is a Tennessee non-profit corporation. Under its bylaws, the board of the cooperative will transition from supportive members of the community to the members. Once the solar facility is operational the members who consume the supplemental energy will operate the cooperative. Please see responses to Requests 3, 4, and 14 above that discuss why Jackson Sustainability Cooperative intends to operate as a cooperative.

There are exceptions in the Geographic Territories of Electric Utility Systems Act (G&T) that applies to Jackson Sustainability Cooperative, as follows:

(b) No G&T cooperative shall provide telephony, cable television, video programming, Internet access or other telecommunications services to retail customers in the TVA area; provided, however, that **nothing in this section shall preclude or prevent a G&T cooperative from owning, leasing, operating and maintaining equipment or facilities for its own purposes or for the purpose of enabling one (1) or more members to provide or utilize advance metering infrastructure, load control, appliance monitoring, power exchange, billing, electric services or functions or any other similar or component service now or hereafter developed in connection with the provision of electricity to end-use customers.**

Tenn. Code Ann. § 48-69-118(b)(emphasis added)

Jackson Sustainability Cooperative will operate a solar facility with battery storage. Its members will use advanced metering, load control, and equipment monitoring for the supplemental electric energy it receives from the solar facility. The solar facility is operated "in connection with the provision of electricity to end-use [members]." See Response to Request 19 below.

19. Identify all language in the GTL that supports the statement "the legislature did

not intend to prevent this kind of Solar Facility project," which appears on page 12 of JSC's Response.

RESPONSE:

Invoking all prior objections and limitations, However, the Geographic Territories of Electric Utility Systems Act (G&T) states that non-consumer owned entities expressly excludes electric and community service cooperatives. T.C.A. 65-34-102(4)

The Petitioner's solar facility is an "electric and community service cooperative." The G&T explains this form of organization as follows:

(4) Non-consumer owned electric system means any public electric system **other than electric and community service cooperatives** and municipal electric systems;

T.C.A. 65-34-102(4)(emphasis added)

The Petitioner does not operate a public electric system (see Response to Request 17 above). The G&T defines public electric systems as follows:

(5) Public electric system includes electric and community service cooperatives, municipal electric systems, and every individual, co-partnership, association, corporation or joint stock company, their lessees, trustees or receivers, appointed by any court whatsoever, that own, operate, manage, or control any electric power system, plant, or equipment within Tennessee **affected by and dedicated to public use.**

T.C.A. 65-34-102(5)(emphasis added)

Additionally, the Petition relies on Section 118(b) of the G&T, stated as follows:

(b) No G&T cooperative shall provide telephony, cable television, video programming, Internet access or other telecommunications services to retail customers in the TVA area; **provided, however, that nothing in this section shall preclude or prevent a G&T cooperative from owning, leasing, operating and maintaining equipment or facilities for its own purposes or for the purpose of enabling one (1) or more members to provide or utilize advance metering infrastructure, load control, appliance monitoring, power exchange, billing, electric services or functions or any other similar or component service now or hereafter developed in connection with the provision of electricity to end-use customers.**

T.C.A. § 48-69-118(b)(emphasis added)

The proposed Solar Facility provides supplemental electric service to its members through advanced metering, load control, and equipment monitoring, as part of the components of providing efficient, high quality, supplemental energy from renewable sources. The municipal provider is not replaced. The exception offered under 118(b) states that nothing “in this section” prevents these component services. Jackson Sustainability Cooperative avers that quality supplemental solar energy is a “component service” that is consistent with the legislative purpose of developing renewable, clean generation sources of electricity. (see T.C.A. § 48-69-102(a)) The Tennessee legislature suggests use of the Petitioner’s model for its proposed facility as follows:

(b) The general assembly finds that because of economies of scale needed for many forms of electrical energy supply resources, there are opportunities to acquire and operate these additional sources of energy on a cooperatively owned basis from owned or leased facilities to fulfill growing needs in and around this state.

T.C.A. § 48-69-102(b)

22. Explain whether and how JSC will accept requests for its services.

RESPONSE:

Invoking all prior objections and limitation, the prior response to Interrogatory 22 provides the steps for a typical potential members who wants to participate in sharing a solar facility to accomplish their corporate sustainability goals and policies that require a transition to the use of renewable energy. By joining together, members who cannot economically justify building their own renewable-energy generation facilities, can join together to take advantage of economies of scale by sharing supplemental power from a solar facility. In addition to

accomplishing corporate goals of using renewable energy, the prospective member may be interested in obtaining reliable, high-quality, stable power for critical equipment or processes. Other prospects may want to participate because of the contributions to the environment and the community, through conservation initiatives and education and training.

The Petitioners have a process for new members, summarized as follows:

A business become a Conditional Member.

The Conditional Member provides electricity information to the Petitioner who prepares a customized analysis of electricity usage.

If the Petitioner selects the Condition Member, the Petitioner invites the Conditional Member to become a Full Member.

The Full Member Agreement is signed.

The Petitioner will install underground wiring to the member's building(s).

In the member building, the Petitioner installs a smart meter, control panel, transformer, and fiber modem communication system.

The member shares in the renewable solar energy under the terms of the Full Member Agreement.

The prior response to Interrogatory 22 was focused on minimum standards for members who typically have high levels and/or long durations of high demand on the municipal utility and its distribution system.

24. Explain whether and how JSC will operate the solar facility on an area coverage basis.

RESPONSE:

Invoking all prior objections and limitations, no information was withheld from the prior response to Interrogatory 24.

27. Explain whether and how JSC members will benefit from the "federal tax credits and accelerated depreciation benefits" referenced on page 14 of the Petition.

RESPONSE:

Jackson Sustainability Cooperative does not directly benefit from accelerated depreciation on the equipment the cooperatively leases. The Petitioner indirectly benefits because the tax equity financing party benefits from taking accelerated depreciation. This was explained in the original response to Interrogatory 27.

28. Explain whether and how JSC will be in competition with JEA or any other local power company once JSC's solar facility is operational.

RESPONSE:

Invoking all prior objections and limitations, Jackson Sustainability Cooperative does not consider itself in competition with the municipal provider in the sense of being a rival for the same customer or for a fixed pool of profits or striving to attain a victory. In fact, the efforts of the Petitioner are very likely to increase the profits of the municipal provider. Specifically, it will lower the municipal provider's monthly charges from TVA for peak demand, by lowering the municipal provider's overall system demand peak each month. This is an expensive charge from TVA. Lowering it saves substantial cost-of-sales to the municipal provider. In the 12 months

ending June 30, 2020, the municipal provider's 2020 Annual Report shows annual charges from TVA of \$109M, and it is likely that half of that is for demand, or about \$55M. The same report shows the municipal provider's peak demand for that year as 354,569kW.

More specifically, the municipal provider's published annual revenues for 2020 from 3 of their 10 largest customers totaled \$4,824,495. If the supplemental renewable energy from the Petitioner to those 3 businesses cut the municipal provider's revenue from them in half (a rough estimate), that would cost the municipal provider approximately \$2.4M per year in lost revenues. The same annual report shows their peak demand for that year to total 15,576kW, which = 4.4% of the municipal provider's annual peak demand. Although this is a much simplified estimate (the municipal provider can supply the exact figures), a 4.4% reduction in demand charges from TVA would be about \$2.4M. Therefore the lower cost the municipal provider would have to pay TVA would exactly offset the loss of revenue. However, the municipal provider's charges from TVA would decrease even further, because that 50% reduction in demand from the solar energy supplied by the Petitioner would also greatly reduce the municipal provider's usage in kWh from these 3 manufacturers, which would in turn lower the municipal provider's charges from TVA for usage. Jackson Sustainability Cooperative might (at most) supply these manufacturers with 25,000,000 kWh/yr, which is approximately 32% of their 77,625,919kWh annual usage as stated in the annual report. The municipal provider would get a reduction in usage charges from TVA for this 25,000,000 kWh/yr.

Presumably, Jackson Energy Authority makes a small gross profit margin on the electricity it buys from TVA and resells to its customers in Jackson. If that margin were 10%, the municipal provider would lose about \$220,000 per year profit from having Jackson Sustainability

Cooperative supplement their electricity (10% of half of their \$4,385,905/year revenue from these 3). This represents 4.9% of the municipal provider's annual profit of \$4,484,526. However, this would be offset by relieving the municipal provider's system, substations, lines, and equipment of some demand surges and spikes, which will lower the municipal provider's maintenance, repair, and replacement costs for those components. In the 12 months ending June 30, 2020, the municipal provider's 2020 Annual Report shows annual costs of \$2,569,964 for distribution expenses for this equipment, plus \$41,789 for its maintenance, \$27,859 for overhead line expense and \$1,187,449 for related distribution expenses. These total \$3,827,061. A reduction of a mere 6% in these costs would exceed the \$220,000 per year lower profit from the 3 manufacturers.

Business expansion due to availability of solar and the better reputation it gives Jackson will result in more revenues for the municipal provider, not just for electricity service, but for all its utility services to these expanded and new customers. More than enough revenue to offset any small losses in profits on demand charges to a few manufacturers.

And the availability of supplementary electricity from JSC will inevitably reduce The municipal provider's capital expenditures for expanding its system as businesses expand and move into Jackson.

All in all, the municipal provider's revenues might go down by about \$2.4M from the Petitioner's supplementing electricity for these 3 manufacturers. But its costs of sales from TVA for demand and usage charges will go down nearly that much (if not more, due to the high cost of peak demand from TVA). And its expenses for maintenance, repair, and replacement of its system will also go down by perhaps several hundred thousand dollars per year. Plus its new

profits from electrical and other services to expanded and new businesses in Jackson due to the availability of solar and the good publicity attendant on it could easily be hundreds of thousands of dollars per year more. Further savings to the municipal provider come in the form of reduced capital expenditures to expand its capacity. All in all, the municipal provider is very likely to come out substantially ahead as a result of the Petitioner's providing supplementary electricity. Therefore, far from competing with the municipal provider for profits, the Petitioner is actually helping the municipal provider increase its profits. It is a win-win, rather than a win-lose, which is the definition of competition.

Next, the Petitioner is no a rival for the same customers. Jackson Sustainability Cooperative and the municipal provider will continue to serve a few persons together. Jackson Sustainability Cooperative is not taking any customers away from the municipal provider. They continue to purchase all their other utility services, plus about half or more of their electricity, from the municipal provider.

29. Explain whether and how JEA or TVA is a "competing enterprise that distributes electric energy" under Section 5.3.2. of the Bylaws of Jackson Sustainability Cooperative, attached as Exhibit 2 to the Petition.

RESPONSE:

Section 5.3 is the qualification of directors of the Jackson Sustainability Cooperative. The qualification standards are to identify conflicts of interest. For example, if a prospective director has a financial interest in another solar farm, like the one that exists at the airport in Jackson, Tennessee, the potential conflict of interest would require examination. If a TVA

employee were nominated to serve on the board of directors, his employment at TVA would not be considered a conflict since Jackson Sustainability Cooperative provides only supplemental energy.

32. Specify the "peak demand profile" for each member or prospective member of JSC, as referenced on page 8 of the Petition.

RESPONSE:

For a more detailed explanation of peak-demand, please see the Direct Testimony of Dennis Emberling, Part II, at Bate Stamped JSC 000429 to JSC 000436). Jackson Energy Authority customers pay "usage charges" for the energy they use at varying rates per kilo-Watt-hour (kWh) of energy. In addition, they pay "peak-demand charges" based on the highest amount of power in kilo-Watts (kW) they draw from Jackson Energy Authority during a billing period.

Similarly, Jackson Energy Authority pays TVA a monthly peak-demand charge based on Jackson Energy Authority's maximum power demand from TVA for that month. This is theoretically justified by TVA as reimbursing it for its high costs of building, maintaining, and operating reserve power generation plants that usually sit idle, producing no energy and earning no revenues. These are required by law to be able to supply 30% more power than the highest instantaneous power ever demanded of TVA.

This way of making stand-by reserve power available is highly inefficient and expensive. It is an artifact of our ancient and wasteful centralized energy system.

Modern energy systems use renewables to generate the electricity and various types of storage to build up these needed reserves. This is far more economical than the old-fashioned

fossil-fuel systems. But TVA has steadfastly refused to modernize its systems and switch over to renewables. Therefore its retailers, like Jackson Energy Authority, and their customers are stuck with all the drawbacks of this foolish configuration.

The Jackson Sustainability Cooperative's solar facility with batter storage solves this problem for its members by sharing renewable generation and battery storage. No additional generation reserves need be built, maintained, or operated. The battery storage with smart hardware and software controller meets demand surges at no additional cost to the member.

If TVA's policies and Tennessee's laws permitted and encouraged commercial heavy users of electricity to acquire their own, individual, solar facility and battery storage systems, they could meet their demand themselves. But since TVA's policies and Tennessee's laws make this exceedingly uneconomical, they are sharing solar energy resources through a nonprofit cooperative.

35. Identify all facts that support the purported community benefits of JSC's proposed solar facility project, as listed on pages 14 and 15 of the Petition and in the document titled "Economic Impact of the Jackson Solar Facility," attached as Exhibit 13 to the Petition.

RESPONSE:

The Petitioner has received a commitment from Community Development Enterprises - Jackson I, the solar developer, and Northern Reliability, the solar contractor, to employ local person whenever possible, and to purchase goods and services from Tennessee providers. (see Petit., ¶¶34, 35, JSC 000017) Since there is little renewable energy generation in Tennessee, Jackson will likely become known as a renewable energy leader. (see Petit. ¶36, JSC 000017)

Jackson's solar facilities will make it stand out in an uncrowded field.

Many companies have embraced environmental and sustainability goals. As part of their efforts to become green, these companies will commit to moving away from areas without renewable energy and into areas that offer it. By offering shared solar energy, economic development will be attracted to the Roosevelt Parkway area. Hopefully, this will encourage Tennessee to adopt renewable energy standards at the state level. (see Petit. ¶40, JSC 000018)

The Petitioner is committed to helping local schools and colleges introduce new training, career programs, and internships in the solar and storage fields. This will lead to increased job opportunities for the entire community. The solar developer and its contractors have committed to bringing these educational programs to Jackson. The Petitioner is also committed to getting its Members to join these objectives that benefit the community. (see Petit. ¶2, JSC 000005)

The Petition also references numerous benefits to the community, including reduced risk from power outages and power quality and stability features. (see Petit. ¶5 - 7, JSC 000008 to JSC 000009) The Petition summarizes the benefit at paragraph 41, JSC 000018)

The Economic Impact of the Jackson Solar Facility is a study developed using the University of Minnesota's IMPact analysis for PLANning (IMPLAN®) economic assessment and projection tool. IMPLAN is a sophisticated economic tool used to estimate impacts of changes in regional economies and is nationally recognized as the leading standard for economic impact analysis software. IMPLAN is based on the input-output analysis economic model that examines the interdependencies between economic sectors. IMPLAN assesses the performance of 546 different industries to estimate the impact of "shocks," in this case the construction and operation of a solar facility to a local economy and to analyze its resulting ripple effects.

Please attached the Supplemental Testimony of Dennis Emberling on how the proposed Project benefits Jackson, Tennessee, Bates Stamped JSC 000426 through JSC 000431.

37. Identify all venture participants in CDE and, for CDE and each venture participant, state whether the entity is a non-profit entity.

RESPONSE:

Community Development Enterprises - Jackson I is a joint venture with three venture partners: E A Solar, LLC, Hunt Solar, LLC, and SynEnergy, Inc. The venture partners of the solar developer are all for-profit entities. These entities may be contacted through counsel.

39. Identify all facts that support CDE's public statements, available at <https://communitydevelopmententerprises.com/>, that: "JSC will get all its power from CDE's solar facility, so around half of Members' power will come from renewables"; "CDE will pay for the entire solar facility, underground wiring to Members' buildings, and smart meters in each building"; "Guaranteed to lower your total cost of electricity for 30 years"; "Higher quality, tightly regulated solar power improves reliability and extends the life of costly machinery"; and "This 17 MW solar facility will be the most productive per acre in the entire world."

RESPONSE:

Jackson Sustainability Cooperative is leasing its solar equipment from Community Development Enterprises - Jackson I for its solar facility. (see confidential Equipment Lease, Bate Stamped JSC CONFIDENTIAL 500034 to JSC CONFIDENTIAL 500052) The number of members and the particular members selected are, in part, determined by the capacity of the

leased solar equipment and storage facility. Depending on the members selected, the estimate made by the solar developer is that members will receive approximately half their power from Jackson Sustainability Cooperative.

The solar developer, Community Development Enterprises - Jackson I, pays equipment, including solar panels, underground wiring, and smart meters installed in each building. This equipment is leased by Community Development Enterprises - Jackson I to Jackson Sustainability Cooperative. (Bate Stamped JSC CONFIDENTIAL 500034 to JSC CONFIDENTIAL 500052)

Guaranteed to lower your total cost of electricity for 30 years. This is promised when Jackson Sustainability Cooperative signs a Full Member Agreement with a member for a term of 30 years. (JSC CONFIDENTIAL 500065) Jackson Sustainability Cooperative represents in the Full Member Agreement that the member will always save at least 5% on its electricity during the term. (JSC CONFIDENTIAL 500064)

The representation that higher quality, tightly regulated solar power improves reliability and extends the life of costly machinery is explained on page 8 in "Using Distributed Energy Resources," as published by the Federal Energy Management Program of the U. S. Department of Energy's Office of Energy Efficiency and Renewable Energy, <https://www.nrel.gov/docs/fy02osti/31570.pdf>. Likewise, the causes and effects of poor power quality are explained.

SunPower is providing the solar panels for use in the solar facility. SunPower makes this assertion as a result of using the solar industry's highest-efficiency solar modules as well as an unusual, highly efficient configuration for the ground-mounted panels. This makes the 17 MW

solar facility among the most productive per acre in the entire world.

VERIFICATION

I, Dennis Emberling, as President of Jackson Sustainability Cooperative, swear and/or affirm that the foregoing supplemental Interrogatory Responses are true and accurate to the best of my knowledge, information, or belief.

Jackson Sustainability Cooperative

By: Dennis Emberling
Dennis Emberling, President

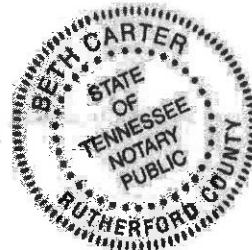
STATE OF TENNESSEE)
) SS
COUNTY OF DAVIDSON)

Before me, BETH CARTER, of the state and county aforesaid, personally appeared Dennis Emberling, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the authorized representative of Jackson Sustainability Cooperative, and that he/she executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as the duly authorized representative.

WITNESS my hand at office, this 26th day of October, 2021.

Beth Carter
NOTARY PUBLIC

My commission expires: 5/18/2024



Respectfully submitted,



John A. Beam, III, BPR #11796
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Telephone: (615) 251-3131
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2021, I filed Responses To
Discovery with the parties named below and filed a true and correct copy with the Tennessee
Public Utility Commission within three days, and I emailed and sent by U.S. mail copies to
the following parties:

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John A. Beam, III

EXHIBIT 8
FILED UNDER SEAL

EXHIBIT 9

EQUITUS
LAW ALLIANCE
—PLLC—
ATTORNEYS AT LAW

March 10, 2022
Via Electronic Filing and Via Hand Deliver

Chairman Kenneth C. Hill
Attn: Ectory Lawless, Esq.
Docket & Records Manager
Tennessee Public Utility Commission
Andrew Jackson State Office Building
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Nashville, TN 37243-0001

Electronically filed in TPUC Docket
Room on March 10, 2022 at 9:50 a.m.

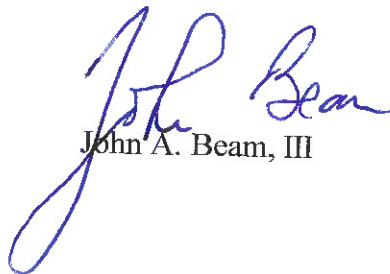
Re: Application of Jackson Sustainability Cooperative for a Determination of Exemption and
in the Alternative, for a Certificate of Public Convenience and Necessity
Docket No. 21-00061

Dear Chairman Hill:

Enclosed is a copy of the Petitioner's Responses to the Discovery Requests from Jackson Energy Authority and to Tennessee Electric Cooperative Association. One document is bated stamped "JSC - 000871" and is available for public disclosure. There are no CONFIDENTIAL documents in this filing.

This letter confirms that discovery was served on all counsel of record. Let me know if you have any questions.

Sincerely,


John A. Beam, III

enclosure

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE: THE APPLICATION OF JACKSON)	
SUSTAINABILITY COOPERATIVE)	
FOR A DETERMINATION OF EXEMPTION)	DOCKET NO. 21-00061
AND IN THE ALTERNATIVE, FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY)	

**PETITIONER’S RESPONSES TO JACKSON ENERGY AUTHORITY’S SECOND SET
OF DISCOVERY REQUESTS**

INSTRUCTIONS

These responses are made solely for the purpose of this action. These Responses are covered under the Protective Order issued in this matter. Petitioner Jackson Sustainability Cooperative has an ongoing project under development, and therefore, will supplement materials as they are developed for the solar facility. Petitioner has not completed its investigation into some of the issues raised in by these interrogatories and request for documents. The following Responses are thus given without prejudice to Petitioner to produce subsequently discovered information and material.

By these responses (and production, where applicable) Petitioner Jackson Sustainability Cooperative does not admit the relevance of any matter or document and reserves the right to object to the admission into evidence of any response or any document that is produced. Except for facts that may be explicitly admitted herein, no admission of any nature whatsoever is to be implied or inferred from these Responses.

Petitioner Jackson Sustainability Cooperative specifically reserves its right to assert

privilege for any privileged matter or document that is inadvertently disclosed or produced in response to these Interrogatories and Requests for Production. In the event such a matter or documents are inadvertently disclosed or produced, the inadvertent disclosure/production by Petitioner of any matter or of a document containing attorney-client communication, attorney work-product, or otherwise privileged information shall not constitute a waiver of privilege and such matter or document(s) shall be returned to the Petitioner immediately upon such request. Included in this reservation are not only matters and documents promulgated by Petitioner, but also any matter or document disclosed/produced by Petitioner that may have been promulgated by others.

GENERAL OBJECTIONS

Petitioner Jackson Sustainability Cooperative' undersigned counsel objects to each and every Interrogatory Request for Production to the extent it calls for the production of privileged information or documents, including information or documents protected by the attorney-client privilege, investigative privilege, consulting expert exemption, information or documents containing or pertaining to work product, and documents prepared in anticipation of the hearing in this matter. Petitioner Jackson Sustainability Cooperative' counsel further objects to each and every Interrogatory to the extent it seeks the disclosure of the identities of, or any work generated by, non-testifying consulting experts retained by or at the direction of Petitioner Jackson Sustainability Cooperative' attorneys in anticipation or preparation for the hearing in this matter, or in connection with the rendering of legal advice to the Petitioner Jackson Sustainability Cooperative. No restatement of, or failure to restate, any specific objection in the context of these answers shall be construed to imply a waiver of any unstated privilege objections addressed by

this General Objection.

2. Petitioner Jackson Sustainability Cooperative' counsel objects to each and every Interrogatory and Request for Production to the extent it attempts to impose a duty on Petitioner Jackson Sustainability Cooperative to disclose information or to produce documents that are available from other entities not parties in this litigation and to the extent it seeks matter or materials that are available to the public.

3. Petitioner Jackson Sustainability Cooperative' counsel objects to each and every Interrogatory and Request for Production to the extent it is overly broad, burdensome, and/or oppressive, or seeks information or documents neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner Jackson Sustainability Cooperative' counsel preserves its objection to each such Interrogatory and Request for Production to the extent it calls for the disclosure/production of such information/documents.

4. Petitioner Jackson Sustainability Cooperative' counsel objects to every Interrogatory and Request for Production that uses language such as "all" or "each and every" or similarly broad language. Such an Interrogatory or Request for Production is onerous, burdensome, harassing, prejudicial, and overly broad. Each Interrogatory asking "any" and "all" or "each and every" is objectionable in that such an inquiry, in essence, is a request for evidence, and not discoverable information. Moreover, Petitioner has no possible means of making the all encompassing identification such a broadly worded Interrogatory or Request for Production requires.

5. Petitioner Jackson Sustainability Cooperative is contacting those persons who

have knowledge of the location and/or existence of information that may be responsive. To the extent that the Interrogatories or Requests for Production or any portion thereof seek to require Petitioner Jackson Sustainability Cooperative to take any actions other than those enumerated above, such as identifying "all persons" having knowledge or identifying "all documents" concerning the subject of the Interrogatory or Request for Production, Petitioner Jackson Sustainability Cooperative's counsel objects to said Interrogatory or Request for Production on the grounds that it is unduly burdensome and oppressive.

6. Petitioner Jackson Sustainability Cooperative's counsel objects to each and every Interrogatory and Request for Production to the extent that it requires Petitioner Jackson Sustainability Cooperative to produce documents created for it by other parties in that such an Interrogatory or Request for Production is vague, ambiguous, and overly broad. Additionally, such an Interrogatory or Request for Production is broad enough to include information protected by the attorney-client privilege, the attorney work product doctrine, investigative privilege, and the consulting expert exemption.

7. Each Response herein below is subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections and grounds to which the same statement would be subject if delivered through live testimony. All such objections and grounds are expressly reserved by Petitioner Jackson Sustainability Cooperative and may be interposed at the time of hearing or in conjunction with other uses of the Responses.

RESPONSES TO SECOND SET OF DISCOVERY REQUESTS FROM INTERVENING
PARTY JACKSON ENERGY AUTHORITY

1. Beginning on page 11 of Emberling - Part II, Mr. Emberling refers extensively to manufacturers. Is membership in JSC exclusively limited to manufacturers? If so, please identify all sources of that limitation and provide copies of all documents relating to such limitation.

ANSWER:

Objection. Membership eligibility requirements were previously asked and answered in JEA question 4. The response to Question 4 is incorporated by reference as if it were stated in full in this answer. Without waiving this objection, beginning on page of 11 of Part II of Mr. Emberling's direct testimony, he describes how Jackson Sustainability Cooperative's proposed solar facility not only helps national companies meet their existing corporate sustainability goals, but meets practical problems such as frequency and voltage fluctuations or grid failures. These existing problems are reasons that those who operate heavy duty or expensive equipment need supplemental solar energy. Though manufacturers typically own and operate heavy duty equipment, Mr. Emberling's discussion beginning on page 11 does not, and is not intended to, limit membership eligibility to manufacturers. Membership eligibility is described in the Bylaws filed as Exhibit 2 to the Petition. Specifically, the membership eligibility provides that "[a]n applicant is eligible for conditional Membership if its plant and facility

- a. annually requires or is expected to annually require at least 100,000 kilowatt-hours (kWh) of electric energy; and,
- b. uses electric energy on a demand curve consistent with the Cooperative's requirements.

(Bylaws, Sect. 2.1, Bate Stamped JSC - 000034)

Jackson Sustainability Cooperative will invite only a small group of entities to become members whose electrical profiles fit well with the solar facility in terms of consumption and peak demand. (See Resp. to JEA No. 4) In addition to the initial screen at least 100,000 kilowatt-hours (kWh) of electric energy and a compatible demand curve, there will be a more detailed power analysis, as well as practical considerations like location, number of buildings, number of meters, site wiring, building wiring, maintenance and repair costs for machinery caused by voltage or frequency surges or dips, historical costs associated with power outages, shut down processes, sending workers home, lost productivity, and restart protocols, as well as publically stated corporate goals for use of energy from renewable sources. (Id.) Manufacturers will likely meet this criteria.

2. On page 13 of Emberling - Part II, Mr. Emberling states: "We reached out to TVA and JEA when first researching the project. ... They totally refused." Please state the name and job title of any such TVA and/or JEA representative which JSC contacted or with whom JSC otherwise discussed these matters. Please also state the date or dates of such contact and provide copies of all documents provided to or received from TVA and/or JEA relating to each such communication.

ANSWER:

Mr. Emberling communicated with TVA employee Antonio Eugene Jones, Sr., Program Manager, Origination & Renewables, Mid-Scale Renewables. The communications began around March 25, 2020. Afterward, they spoke 4 to 5 times. The calls primarily explored general information, including TVA's solar programs, what TVA would pay for electricity, TVA's

regulatory and contracting requirements, and TVA's attitude towards a solar project in Tennessee.

Mr. Emberling and others met with Jackson Energy Authority. John Nanny and Monte Cooper were present. Prior to that meeting there were numerous calls with John Nanny and others at Jackson Energy Authority.

3. Has JSC discussed with TVA or JEA the possibility of providing solar power through TVA programs that are available in Jackson or has JSC evaluated the possibility of providing solar power through such programs? If so, please provide copies of any documents provided to or received from TVA and/or JEA relating to each such communication and provide copies of all documents relating to such evaluations.

ANSWER:

At the time the Petition was filed, as of December 31, 2019, TVA had ended its Green Connect Program that allows customers to sell power from qualified facilities to TVA. (Petition, ¶ 21; Ex. 8, Bate Stamped JSC - 000317) The stated purpose of the former program was to help consumers support renewable energy generated within the Tennessee valley. There were no available programs after the Green Connect Program ended. Mr. Emberling discussed the Green Connect Program with TVA employee Antonio Eugene Jones, Sr., Program Manager, Origination & Renewables, Mid-Scale Renewables.

4. On page 14 of Emberling - Part II, Mr. Emberling refers to JSC as a "nonprofit co-operative corporation." Does JSC claim a federal tax exemption under Section 501(c)(12) or

any other provision under Section 501(c) of the Internal Revenue Code? If so, please state which exemption JSC claims and provide copies of all documents relating to such exemption. If not, please state why JSC either has not claimed such an exemption or does not plan to claim such an exemption and provide copies of all documents relating to JSC's federal tax status.

ANSWER:

Once Jackson Sustainability Cooperative receives acknowledgment of its exemption from the Tennessee Public Utility Commission and construction of its solar facility is underway so that it is foreseeable that it will have income from members, it will file seeking exemption from federal income tax under I.R.C. Section 501(c)(12). Section 501(c)(12) provides federal income tax exemption for cooperative electric companies or "like organizations" who receive 85 percent or more of its income each year from members. Jackson Sustainability Cooperative expects to receive 85 percent or more of its annual income from members.

5. On page 15 of Emberling - Part II, Mr. Emberling indicates that all wiring for the JSC project will be underground. Will this wiring be located in or cross federal, state or local streets or property, public rights of way, or utility or other similar easements? If so, please identify which of the foregoing streets, property, rights of way or utility or other easements that these underground facilities will cross or be located within and provide all documents relating to such underground facilities.

ANSWER:

Objection. Page 15 on Part II of Mr. Emberling's testimony does not discuss wiring traveling underground. Easements and public rights of way are not discussed in Part II of Mr.

Emberling's testimony. Underground wiring was discussed in response to TECA's interrogatory 20. JEA previously asked this same question in Interrogatory 11 when it asked for "documentation relating to the design, location, and configuration of the underground distribution system" "and/or any distribution or other facilities for the delivery of electricity from JSC's solar and/or storage facility to JEA and/or a member or customer of JSC." See the response to Interrogatory 11. Without waiving this objection, Jackson Sustainability Cooperative will acquire private easements or seek permission to run cable in the public right of way once all of its full members are selected. Many prospective members can be accessed without "crossing federal, state or local streets or property." If an entity desires membership that requires the underground wire to enter the public right of way, Jackson Sustainability Cooperative will seek approval prior to construction.

6. Has JSC applied for or otherwise requested a franchise from the City of Jackson? If so, please provide copies of all documents relating to any such application or request. If not, please state why JSC has not applied for other otherwise requested a franchise from the City of Jackson.

ANSWER:

Objection. This questions was previously asked and answered in Question 12 in the written discovery on Part I. The National Renewable Energy Laboratory, a division of the U.S. Department of Energy, describes how many communities use the franchise agreement to achieve clean energy objectives. (see "Municipal Franchise Agreements and Clean Energy Objectives" NREL report, December 4, 2019) Jackson Sustainability Cooperative is offering the community

supplemental clean energy, to those who can benefit the most.

7. On pages 15-16 of Emberling - Part II, Mr. Emberling refers to commercial entities that "may be a suitable fit with those of other potential members." Please identify all such commercial entities and provide copies of all documents relating to such entities, including without limitation, communications with such entities.

ANSWER:

Objection. This questions was previously asked and answered in Question 5 in the written discovery on Part I. Without waiving that objection, please see conditional member agreements previously produced at Bate Stamped JSC Confidential 500162 through JSC Confidential 500211. This request will be supplemented as additional information becomes available or is identified.

8. On page 16 of Emberling - Part II, Mr. Emberling indicates that, once an entity referred to in Request 8, above, is identified, "Jackson Sustainability Cooperative initiates a discussion with that entity." Please identify all entities with whom JSC has initiated such a discussion and provide copies of all documents relating to such discussion or discussions.

ANSWER:

See response to Part II Interrogatory No. 7 above. As development of the proposed facility continues, this request will be supplemented as additional information becomes available or is identified.

9. On page 16 of Emberling - Part II, Mr. Emberling indicates that "[if] the entity indicates a desire to become a member, it is given a Conditional Member Agreement to sign and required to provide Jackson Sustainability Cooperative with all the electricity usage information needed to evaluate its suitability for membership." Please identify all entities that have been given a Conditional Member Agreement and provide copies of all documents relating to each proposed Conditional Member Agreement and each executed Conditional Member Agreement, including without limitation, all documents provided to evaluate each entity's suitability for membership and all analysis done regarding each entity's suitability for membership.

ANSWER:

See response to Part II Interrogatory No. 7 above. As development of the proposed facility continues, this request will be supplemented as additional information becomes available or is identified.

10. On page 16 of Emberling - Part II, Mr. Emberling references Section 2.1 of the JSC bylaws and indicates that JSC "will analyze the energy profile and energy demands of the conditional Member to see if the conditional Member's electricity needs are a suitable fit with the other members and the Solar project." Has JSC undertaken or caused to be undertaken such an analysis? If so, please provide all documents related to each such analysis.

ANSWER:

Objection. This was previously asked and answered in Question 4 on the eligibility requirements for members of JSC. At this time, there are no documents responsive to this request. As development of the proposed facility continues, this request will be supplemented as

additional information becomes available or is identified.

11. On page 16 of Emberling - Part II, Mr. Emberling references Section 2.1 of the JSC bylaws and indicates that "Qualifying conditional members may be invited to become full Members who receive supplemental energy after they sign a Full Member Agreement" Has JSC invited any such conditional members to become full Members of JSC? If so, provide all documents relating to each such invitation of full membership.

ANSWER:

Jackson Sustainability Cooperative has not invited any conditional member to become a full member as of this time. As development of the proposed facility continues, this request will be supplemented as additional information becomes available or is identified.

12. Referring to Request 12, above, please identify all full Members of JSC and provide all documents relating to each such member's membership in JSC.

ANSWER:

Jackson Sustainability Cooperative has not invited any conditional member to become a full member as of this time. As development of the proposed facility continues, this request will be supplemented as additional information becomes available or is identified.

13. On page 17 of Emberling - Part II, Mr. Emberling indicates that "Once Northern Reliability informs Jackson Sustainability Cooperative that sufficient electrical usage information from a sufficient number of Conditional Members has been received, Northern Reliability begins

to analyze all relevant information submitted by all Conditional Members." Has Northern Reliability informed JSC that it has received sufficient information to perform its analysis? If so, please provide all documents relating to Northern Reliability's analysis. Please also provide all documents relating to communications with Northern Reliability, irrespective of whether Northern Reliability has completed such an analysis.

ANSWER:

Jackson Sustainability Cooperative has not provided electrical usage information to Northern Reliability at this time. As development of the proposed facility continues, this request will be supplemented as additional information becomes available or is identified.

14. On page 17 of Emberling - Part II, Mr. Emberling indicates that, following Northern Reliability's analysis referenced above, "Northern Reliability then selects a set of Conditional Members whose electrical usage patterns form a good fit for the capabilities of the solar facilities." Has Northern Reliability selected such a set of Conditional Members? If so, please identify each such Conditional Member and provide all documents relating to Northern Reliability's analysis as well as all documents relating to communications with such Conditional Members.

ANSWER:

Jackson Sustainability Cooperative has not provided electrical usage information to Northern Reliability at this time. As development of the proposed facility continues, this request will be supplemented as additional information becomes available or is identified.

15. On page 17 of Emberling - Part II, Mr. Emberling indicates that if all of the selected Conditional Members sign Full Member Agreements, "they become the only Full Members." Has JSC completed this process? If so, please identify all Full Members, provide copies of all Full Member Agreements and provide all documents relating to such Full Member Agreements. If JSC does not have a "complete set of Full Members," please describe the status of JSC's efforts to complete its set of Full Members and provide all documents relating to the identification and selection of such members.

ANSWER:

See response to Part II Question 11 above. Jackson Sustainability Cooperative has not invited any conditional member to become a full member as of this time. Once Jackson Sustainability Cooperative completes financing commitments for the solar facility, it will work to complete its initial group of members. As development of the proposed facility continues, this request will be supplemented as additional information becomes available or is identified.

16. On page 17 of Emberling - Part II, Mr. Emberling states "When the grid fails and Jackson Sustainability Cooperative continues to provide power, it is not competing with JEA" Does JSC plan to limit its operations to times when the "grid" has failed (i.e., will JSC only provide power when JEA is unable to do so because of a system outage)?

ANSWER:

The questions was previously asked and answered in Tennessee Electric Cooperative Association interrogatory 25. The response has not changed. The response was as follows:

Jackson Sustainability Cooperative members will draw power from the solar

facility whenever their instantaneous demand rises sufficiently for Jackson Sustainability Cooperative's supplementary power to them to be worthwhile to them and feasible for Jackson Sustainability Cooperative to supply. This is not limited to grid outages. No one makes such decisions. They are the responsibility of the computerized controller which electronically monitors production, storage, and demand and shares or optimizes power delivery among members.

VERIFICATION

I, Dennis Emberling, as President of Jackson Sustainability Cooperative, swear and/or affirm that the foregoing Interrogatory Responses are true and accurate to the best of my knowledge, information, or belief.

Jackson Sustainability Cooperative

By: Dennis Emberling
Dennis Emberling, President

STATE OF TENNESSEE)
) SS
COUNTY OF DAVIDSON)

Before me, Brandee Perrin, of the state and county aforesaid, personally appeared Dennis Emberling, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the authorized representative of Jackson Sustainability Cooperative, and that he/she executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as the duly authorized representative.

WITNESS my hand at office, this 7th day of March, 2022.

Brandee Perrin
NOTARY PUBLIC

My commission expires: 9th July 2024



Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2022, I filed Responses To
Discovery with the parties named below and filed a true and correct copy with the Tennessee
Public Utility Commission within three days, and I emailed and sent by U.S. mail copies to
the following parties:

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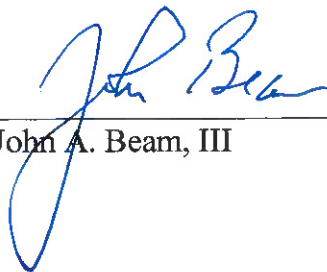
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John A. Beam, III

EXHIBIT 10

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

IN RE: THE APPLICATION OF JACKSON) SUSTAINABILITY COOPERATIVE) FOR A DETERMINATION OF EXEMPTION) AND IN THE ALTERNATIVE, FOR A) CERTIFICATE OF PUBLIC CONVENIENCE) AND NECESSITY)	DOCKET NO. 21-00061
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DIRECT TESTIMONY OF DENNIS EMBERLING, PART II

Part I of the direct testimony of Dennis Emberling was filed with the Petition. This is a continuation of Mr. Emberling's direct testimony.

Q. How was Jackson, Tennessee selected for the Solar Project?

A. In late 2019, two people from Jackson came up with an idea for a way to help the city redevelop and improve the lives of its citizens. One, a retired, disabled Army Lieutenant Colonel, West Point graduate, and professor of mathematics, has been working for some time on building affordable housing in East Jackson for other veterans and seniors. The other is the owner of several small businesses in Jackson who knows the area's problems first hand.

Both these Jacksonians were particularly focused on the plight of East Jackson. Although it is home to many businesses that employ thousands of people, the area is in the worst shape of any of Jackson's redevelopment districts. It is the only one classified as "deteriorated." The population is 88% black, and the median household income in 2019 was under \$19,000 per year. It is the 24th poorest census tract in Tennessee. Its housing and infrastructure are extremely poor.

Q. Is Jackson, Tennessee at risk of losing national manufacturers? Why?

A. Many national companies have manufacturing facilities in East Jackson. Most of these national companies either already have or will soon have mandatory sustainability goals that require them to switch all or in large part to renewable energy by a date certain. These corporate goals represent corporate responsibility to change the impact on the environment and play a significant role in diverting an obvious future environmental crisis, and lead federal and state government into recognizing the need for legislative action to create supporting policies for the inevitable move to renewable energy sources.

These sustainability policies prevent national companies from expanding in cities where renewable energy is not available. They could eventually force companies to leave such cities altogether, taking advantage of offers from cities where renewable energy is available. Other companies looking for locations to build facilities are unlikely to consider cities without renewable energy. All this bodes ill for Jackson.

Q. Other than accomplishing corporate sustainability goals, do manufacturers in Jackson, TN have other reasons they need solar energy?

A. We are told by electrical contractors who service the heavy machinery of these manufacturers in Jackson that they suffer from poor power quality from the grid. Fluctuations in frequency and voltage, which are especially common when demand surges, increase maintenance and repair costs and shorten the life of expensive machinery. See “Using Distributed Energy Resources,” by the Federal Energy Management Program of the U. S. Department of Energy’s Office of Energy Efficiency and Renewable Energy, page 8, for the causes and effects of poor power quality, <https://www.nrel.gov/docs/fy02osti/31570.pdf>. When the grid fails, manufacturers must send workers home, wait for the grid to be restored, then go through lengthy restart protocols and recall workers. This is very expensive for such businesses. Naturally, having reliable, uninterruptible power is very important to them, but presently unavailable. See “Seven Steps for a Successful Shutdown,” www.plantengineering.com/articles/seven-steps-for-a-successful-shutdown.

Right now, Jackson has little to offer manufacturers to cope with these problems. As of July 15, 2021, only 16% of TVA’s electricity generation came from renewables (EIA). For Jackson manufacturers, installing their own renewable generation, such as solar, is impractical and uneconomical for many reasons: lack of incentives from TVA or the state of Tennessee (not even net metering), inadequate suitable land or roof space, sub-optimal weather, capital costs, inability to take advantage of tax benefits, and lack of experience with acquiring, operating, and maintaining solar and storage facilities. That’s why there is so little individually-owned commercial solar in Tennessee. And manufacturers have no good solution to the problems of frequency and voltage fluctuations or grid failures.

This is partly why Jackson, which desperately needs more good-paying jobs, decent housing, and infrastructure improvements, isn’t growing, isn’t attracting new businesses, and isn’t seeing present businesses expand. Worse, it means Jackson is in danger of losing some of the businesses it has if it can’t help major employers meet their corporate sustainability goals and offer reliable, high-quality, uninterruptible power. Other cities will be glad to offer these companies large incentives to relocate, bringing thousands of jobs with them.

Q. How is the local municipal service provider limited in its ability to respond to these issues?

A. The City of Jackson is an economically distressed community. It cannot afford to pay for building renewable energy generation facilities for its municipally-owned utility, Jackson Energy Authority (“JEA”). Additionally, TVA’s contracts with its resellers such as JEA forbid resellers from buying electricity from anyone besides TVA or using their distribution systems to conduct non-TVA electricity to customers. This means JEA cannot buy significant amounts of renewable energy from anyone else either. That’s a major reason why some of TVA’s resellers, including JEA, are refusing to sign TVA’s new long-term agreements and considering not renewing their current TVA contracts - so that they can look elsewhere for renewables.

Like all utilities, JEA’s electric service to its customers suffers from frequent voltage sags,

swells, and spikes, as well as frequency variations, momentary outages, harmonic distortion, and unbalanced voltages and currents between the three phases of the system. These are unavoidable for a large power utility, for well-known reasons within the energy industry, such as changes in load, changes in generation source (e.g., from suddenly bringing a new fossil-fuel generator on line to meet higher demand, equipment switching, and electronically-controlled loads.

These power-quality events make motors vibrate, overheat, or stall. They occur without warning. Power quality is not commonly warranted by utilities to their customers. Customers have to install uninterruptible power systems, battery systems, other storage technologies, motor-generator sets, isolation transformers, voltage regulators, line conditioners, filters, shielding and grounding techniques, and surge suppressors to forestall and cope with these power-quality problems. All these are expensive to the customer. Because they do not address the power-quality issues at their source (the input of electricity to the building), they cannot fully prevent excess wear and tear on expensive machinery or shortening its lifespan.

Nor can JEA provide uninterruptible power to all its customers. It would be cost prohibitive. Thus, it is economically impossible under current contracts for JEA to offer significant percentages of renewable energy to its customers, provide consistently high-quality power, or avoid power outages. To a manufacturer, this means Jackson is not a very desirable place to locate or expand, especially as corporate sustainability goals take effect.

Q. What steps did the concerned citizens take to bring solar energy to manufacturers in Jackson, Tennessee?

- A. For all these reasons, the two Jacksonians came up with the idea of bringing solar to Jackson. They asked my partner, David Shimon, a solar dealer in Florida they knew through mutual acquaintances, to investigate Jackson's potential for solar. He brought in several large solar developers to research feasibility, and they concluded it was economically impossible because of the opposition of TVA and JEA and the lack of incentive programs.

He then asked me to look into it, and, with help from my friends and colleagues in the solar industry, I discovered a way to make it work, with no interconnection to JEA's grid, no violation of Tennessee law, and no capital cost to the city of Jackson, the manufacturers who would use the renewable energy, JEA or TVA. So David and I set up a joint venture partnership with our Jackson friends called Community Development Enterprises - Jackson I to develop the project on vacant land located close to several manufacturers in East Jackson.

Q. How does benefitting manufacturing citizens help all citizens in Jackson?

- A. My talks with people in the solar and storage industries led to discussions with foundations eager to help in Jackson. Some offered to bring free educational programs in the renewable energy field to Jackson's high schools and its four colleges, along with internships to prepare students for careers in the industry. Others offered to bring job training and other services to the Jackson community. We and our partners committed to contribute a share of the project's revenue to help redevelop East Jackson, upgrade its housing, and improve its dilapidated infrastructure.

We commissioned a professional Economic Impact Study from SynEnergy, Inc. which showed the project having a total impact of \$231M on the area, with 678 temporary full-time equivalent jobs and 28 permanent full-time-equivalent jobs.

This is why so many companies, organizations, individuals, advocacy groups, and governmental agencies have been so eager to help with this project, and why the people and businesses of Jackson are so enthusiastic: because it is so worthwhile for everyone. It makes solar possible in East Jackson where it is presently unobtainable. It offers tremendous benefits to manufacturers and the local community. And its is privately financed, with no out of pocket cost to the city.

Q. Were the Tennessee Valley Authority (“TVA”) and Jackson Energy Authority (“JEA”) willing to work with you?

- A. We reached out to TVA and JEA when first researching the project. We offered to collaborate with them, help them move into solar in the future, help them meet their difficult peak demand needs, and work cooperatively with them in many ways, all without cost to them. They totally refused.

In fact, the project’s only opponents are TVA and its affiliates. They seem to think the project competes with them and diminishes their profits. In this, they are totally wrong. It does exactly the opposite.

H. We discussed benefits to manufacturers, are there ways JSC benefits JEA and TVA?

First, meeting peak demand for electricity is very costly for utilities. As the generator of electricity for JEA, TVA must maintain expensive stand-by reserves to kick in quickly when demand spikes. The rest of the time, that generation capacity sits idle. If peak demand from its retailers rises, TVA must build additional power facilities, as it is doing now, to be able to meet this demand, plus satisfy legal reserve requirements. The higher the peak demand, the more ancillary and transmission equipment TVA needs, and the higher its fixed costs for this equipment.

TVA tries to cover these costs by charging its retailers, like JEA, a heavy surcharge for peak demand. But whether these surcharges fully cover the costs to TVA of higher peak demand is uncertain. It is a complicated calculation. It is likely that only TVA knows the answer. We have demanded from TVA its actual profit margin on demand charges.

In turn, the higher the peak demand from its customers, the higher JEA’s monthly peak demand is from TVA, so the higher TVA’s surcharges to JEA for that month’s peak demand. These are heavy costs to JEA each month. If JEA’s monthly demand peak is lowered, so are these costs it must pay TVA. JEA tries to recover these costs by charging its customers a heavy surcharge for their peak demand each month. Whether these surcharges fully cover the costs it must pay TVA for this peak demand is something only JEA knows. We have demanded from JEA its actual profit margin on demand charges.

But at the very least, lowering the monthly peak demand of a few of JEA’s manufacturing

customers will lower JEA's total monthly peak demand, and therefore lower its peak demand surcharges from TVA. Whether that alone will increase or decrease JEA's net profits is to be determined, but it is clear that the effect cannot be large. We have the potential to help JEA meet its other peak demand as well. See <https://www.enertiv.com/resources/faq/what-is-peak-demand>; <https://www.forbes.com/sites/baininsights/2017/05/01/can-utilities-profit-from-distributed-energy-resources/?sh=31263f6f1dbf>; <https://www.seia.org/initiatives/utility-rate-design-complementary-policies>

Second, demand surges are very hard on transmission and distribution equipment. TVA and JEA both incur significant expenses for maintenance and repair of their systems. JEA alone spent over \$3.2M last year on maintenance expenses. These peak demands and surges will be reduced by the new solar facility, thereby reducing losses on peak demand and lessening their repair, maintenance, and replacement costs for power lines and equipment. Overall, JEA's and TVA's revenue will decrease slightly, but their expenses decrease by even more, improving their profitability.

Third, the manufacturers who belong to the co-op remain customers of JEA/TVA, not just for electricity but for all other utility services. If solar encourages them not to leave Jackson, that prevents a reduction of profits for JEA/TVA. If solar encourages them to expand, JEA/TVA's profits go up. If solar encourages new businesses to locate in Jackson, they will become new JEA/TVA customers as well.

Taking all these benefits to JEA/TVA into account, it is clear that our supplementing electricity to members for their mutual benefit, is a net benefit to JEA/TVA, and far from a drag on their profits. Any perceived negative effects are short-sighted, and fail to put the benefits in context.

Q. How can a manufacturer participate in the benefits of renewable energy?

- A. The only way right now for businesses that need a lot of electricity to get uninterruptible, high-quality, renewable energy is to share a facility with other similar companies. This solves the problem of optimal siting and brings the costs way down through economies of scale and making many more tax benefits available.

The most natural way in Tennessee for organizations to collaborate is through cooperatives, because they are offered many advantages in Tennessee law. Exemption from Public Utilities Commission regulation and monopolistic utility restrictions are only some of them. Therefore, it makes sense for manufacturers who want to share the renewable, uninterruptible power from a solar facility to form a nonprofit co-operative corporation for this purpose.

Such a co-operative also serves its members as a useful nonprofit vehicle to contribute in many ways to the redevelopment and economic improvement of their community, which in turn benefits the member companies. As the labor pool expands and gains more skills, they can expand their businesses, knowing they can find the workers they need. As the quality of the community improves, their working environment and amenities improve, all to the benefit of the companies as well.

Since all these goals fit perfectly with what we and our partners want to do for Jackson, we launched the co-operative, to be controlled by its members. It will lease the entire solar facility, on-site and off-site, from the developer, Community Development Enterprises. It will distribute the electricity generated to its members through a smart controller that directs the flow to members according to their immediate demand, as well as to and from battery storage.

Q. How will the Co-op's system exist with JEA's grid?

- A. Because Jackson is subject to severe storms, the entire facility will be storm-hardened, with all wiring underground. In this way, it will be able to continue to supply power when the grid fails. Its electricity is tightly regulated for frequency and voltage, so the members will no longer experience surges, spikes, or dips that damage their equipment. The power will supplement electricity they continue to receive from JEA's grid, coming on only when their demand rises. They will pay the co-operative for the electricity they use at rates guaranteed always to be lower than what they would have paid JEA had the solar not been available.

They will receive new smart meters and electrical panels that allow them to monitor their usage by individual circuit, enabling them to make improvements in energy efficiency. They can also prioritize their circuits to make sure the most important ones get power first in case the grid fails and there isn't sufficient sunlight or battery capacity to power all their circuits. All this without any capital expense to the manufacturers.

The electricity from the solar facility will be completely isolated from JEA's grid, so it can never backflow onto their grid when it is down. Nor can any power from JEA's grid ever flow onto the solar facilities system. It will come on and off seamlessly to the users just when they need it.

Q. Is membership in Jackson Sustainability Cooperative limited?

Because their site can only support so much solar power, the coop is limited allowing only a few manufacturers to participate in the project. Because the power must be distributed among the manufacturers according to their demand, the weather, the time of day, and the limits of our battery storage, we can only serve manufacturers whose electrical usage profiles fit effectively with each other and fall within the limits of what we can supply.

Therefore, our engineers must carefully consider all the circumstances that affect each manufacturer's electrical usage and select from the candidates just those few that form a workable set of users that fit our facility's capability. That is why co-op membership is not open to the public, or even to all nearby companies. The requirements for membership in the co-op are very severe, and only our engineers can choose the group of companies that we can serve.

Q: How does Jackson Sustainability Cooperative determine whether an entity is eligible to participate as a member of the cooperative?

- A. When initial research by Jackson Sustainability Cooperative indicates that a commercial

entity's characteristics may be a suitable fit with those of other potential members, Jackson Sustainability Cooperative initiates a discussion with that entity. If the entity indicates a desire to become a member, it is given a Conditional Member Agreement to sign and required to provide Jackson Sustainability Cooperative with all the electricity usage information needed to evaluate its suitability for membership. This Conditional Member Agreement is non-binding, and provides for confidentiality of the electrical information supplied.

Q: When you review a conditional member's electric bills and energy profile, what elements are essential to allow discussions to continue on possible membership?

A. As stated in the Jackson Sustainability Cooperative Bylaws, Article II, Section 2.1, "An Entity becomes a conditional member of the Cooperative if it signs a Conditional Member Agreement. The Cooperative will analyze the energy profile and energy demands of the conditional Member to see if the conditional Member's electricity needs are a suitable fit with the other members and the Solar project. Qualifying conditional Members may be invited to become full Members who receive supplemental energy after they sign a Full Member Agreement (such person being a "Member" and the Member being in a "Membership"). An applicant may be eligible for conditional Membership if its plant and facility (1) annually requires or is expected to annually require at least 100,000 kilowatt-hours (kWh) of electric energy; and, (2) uses electric energy on a demand curve consistent with the Cooperative's requirements."

No entity is entitled to become a member of Jackson Sustainability Cooperative. Membership is by invitation from Jackson Sustainability Cooperative. There is no such thing as "qualifying" for membership. Jackson Sustainability Cooperative's shared services are not offered to the general public or to any categories of users. No public or private entity can demand service from Jackson Sustainability Cooperative. The cooperative service is of no use to the public in general, but only to those few manufacturers that Jackson Sustainability Cooperative specifically invites to participate in sharing supplemental solar energy under the Bylaws and Full Member Agreement with Jackson Sustainability Cooperative.

Jackson Sustainability Cooperative represents its members when holding itself out as facilitating supplemental electricity to members who share the common objective of using energy from renewable sources. Jackson Sustainability Cooperative does not hold itself out to the public in general or any limited portion of the public in general. It represents a collaborative effort of neighboring commercial and industrial concerns with a strong desire to increase their use of energy from renewable sources. Its offers of membership are made directly to selected neighboring manufacturers. The general public has no interest in Jackson Sustainability Cooperative, since the public is not and cannot connect to the solar facility. Even if entities strongly prefer solar energy, there is no way of receiving supplemental energy from Jackson Sustainability Cooperative. Jackson Sustainability Cooperative can only facilitate a few of the requests for membership, and only from neighboring manufacturers who are approved.

The membership factors Jackson Sustainability Cooperative considers include, but are not limited to, the location, number of buildings, number of meters, site wiring, building wiring,

historical and projected electrical consumption profile, historical and projected peak electrical demand profile, maintenance and repair costs for machinery caused by voltage or frequency surges or dips, historical costs associated with power outages, shut down processes, sending workers home, lost productivity, and restart protocols, publically stated corporate goals for use of energy from renewable sources, and time lines for sustainability, reduction of emissions, and shifting to renewable energy, acceptance of mutually agreeable terms of full membership, credit worthiness, and a willingness to participate in and contribute to the charitable and public works of Jackson Sustainability Cooperative for the benefit of the Jackson community and the East Jackson development district. In addition, from the group of interested members, Jackson Sustainability Cooperative will invite only a small subgroup whose electrical profiles fit well together in terms of consumption and peak demand, so as to maximize the ability of the solar facility to serve the mutual benefit of members economically and to their satisfaction.

This restriction to a few members chosen by Jackson Sustainability Cooperative according to practical considerations demonstrates that Jackson Sustainability Cooperative is not in actual or potential competition with public utilities. Its sole service is to supplement the electricity provided by JEA to a few manufacturers. A competitor would be an alternative to JEA, not a supplement to it. When the grid fails and Jackson Sustainability Cooperative continues to provide power, it is not competing with JEA, it is helping JEA with its mission of providing energy to local employers.

Although it will reduce JEA's revenue in peak demand charges from those manufacturers, it will also reduce JEA's acquisition costs for that peak demand electricity from TVA. JEA's cost of assuring it meets peak demand is both in the form of payments to TVA for the capacity to deliver peak demand electricity and for the wear and tear on JEA's transmission system that peak demand imposes. The net result will likely be an increase in JEA's profit from those manufacturers. In addition, expansion of existing Jackson businesses and attraction of additional businesses to Jackson as a result of Jackson Sustainability Cooperative's contributions to Jackson will increase the number of customers of JEA and their increase total consumption, thereby increasing JEA's revenue and profits. There is no competitive loss or disadvantage to JEA from Jackson Sustainability Cooperative's collaborative efforts to provide supplemental services.

Q: Describe the process by which a Conditional Member becomes a Full Member of the Cooperative?

- A. Once Northern Reliability informs Jackson Sustainability Cooperative that sufficient electrical usage information from a sufficient number of Conditional Members has been received, Northern Reliability begins to analyze all relevant information submitted by all Conditional Members. Northern Reliability then selects a set of Conditional Members whose electrical usage patterns form a good fit for the capabilities of the solar facility. Jackson Sustainability Cooperative then offers these selected Conditional Members the opportunity to sign Full Member Agreements. If all sign, they become the only Full Members. If one or more do not sign, Northern Reliability selects replacements for them from the set of Conditional Members, and these newly selected Conditional Members are then offered Full Membership. Once a complete set of Full Members, according to Northern Reliability's analysis of the fit between

members' usage and the facility's production, is achieved, membership is complete.

Q: Mr. Emberling, you have described two member agreements, why are there two steps before an entity becomes a member eligible for supplemental renewable solar energy?

A. The process of choosing the set of members is a type of problem in mathematics called "optimizing a set of interdependent variables." It proceeds recursively. One must start with a trial set, analyze it, change it, re-analyze it, and continue until the set reaches optimum in value. Therefore, potential members must first be identified, then evaluated, then formed into a well-fitting, optimized set. This requires securing their electrical usage profiles and other relevant information before membership can be offered, because which candidates fit best together cannot be determined until after evaluation and recursive attempts at fitting. Only when the set is optimized can membership be offered and the second membership step completed.

Q: Who regulates the proposed Jackson Solar Facility?

A. Electric utilities that deliver all the requirements for retail electric service to consumers are, in most states, regulated by state, federal, and local agencies. These agencies primarily govern the prices utilities charge, the terms of their service to consumers, their budgets and their construction plans. Two broad, fundamental principles justify governmental oversight of these utilities. First, because a utility provides essential services for the well being of society, the public interest is best supported by having one large provider charged with meeting the overall demand of the community. Second, the theory is that this can be accomplished more cheaply through a monopoly given to a single provider rather than having a competition among smaller providers. Small providers cannot thrive under these conditions, so eventually all firms but one will exit the market or fail. The survivor is a natural monopoly.

Given these two conditions, economic regulation is explicit governmental intervention into a market. It is necessary to achieve public benefits that the market fails to achieve on its own. In recent years, we have seen telephone services, cable services, and other services give way to competitive pressure. In Tennessee, other than filing a financial report, a municipal electric energy acquisition utility is excluded from economic regulation by the Public Utility Commission. For example, Jackson Electric Authority is not required to submit its rates or its building projects to the Tennessee Public Utility Commission for approval. Local Commissioners regulate Jackson Electric Authority. The theory is that the public who benefits locally can elect Commissioners to direct the municipal service provider.

By contrast, Jackson Sustainability Cooperative provides supplemental electric energy for the mutual benefit of its members. Jackson Sustainability Cooperative does not replace the municipal provider. Jackson Sustainability Cooperative is not open to the public. However, it is locally owned and will ultimately be controlled by its members who are manufacturers who benefit from its supplemental solar energy. Much like the municipal provider and the consumer with its own equipment, in Tennessee the government does not regulate cooperative providers to its consumer-members. Cooperative providers are accountable to their members and must comply with the local electrical codes.

The proposed Jackson Solar Project is currently exempt from regulation under federal laws because it does not interconnect to the public utility grid.

Q: How will Jackson Sustainability Cooperative deliver supplemental energy without affecting the existing connection with JEA?

A: Smart electric meters will be installed at each member's facility. Energy from the Solar Facility will flow to these smart meters. The controller technology intelligently allocates power to and from the batteries and to members, taking all factors into account to optimize power delivery. Members will draw power seamlessly from both JEA and JSC's controller, but no power will ever be able to backflow onto JEA's grid. The controller is designed to deliver supplemental energy when demand is high and the energy is most needed. When a JEA or TVA grid outage occurs, members will draw all their electricity from the Solar Facility for short periods of time and/or for priority usage until grid power is restored.

Q: Has the Jackson Sustainability Cooperative solar energy facility received any national recognition?

A. The Jackson Solar Project received an award from the U. S. Department of Energy's National Community Solar Partnership for innovation and contribution to making solar available in areas of the country where it is presently uneconomical.

Q. How will Jackson Sustainability Cooperative finance the Jackson Solar Project?

A. Jackson Sustainability Cooperative will lease all equipment necessary for the production of solar energy for its members. The Lessor is Community Development Enterprises - Jackson I, who is the on site developer. Jackson Sustainability Cooperative has a purchase option. Therefore, if the members of Jackson Sustainability Cooperative can find more favorable finance terms, they can acquire the leased equipment.

Q. Who will maintain the operation of the solar facility for Jackson Sustainability Cooperative?

A. Maintenance of the facility will initially be handled by Northern Reliability, Inc.

Q. In summary, what steps has JSC accomplished to date?

Since beginning work on this project a year and a half ago, we have completed the following:

- Site research, survey, and acquisition
- Feasibility study
- Due diligence: environmental, regulatory, permitting, and utility
- Received all 6 environmental approvals needed
- Preliminary design of the facility
- Selecting equipment needed

- Selecting and contracting with companies to design, engineer, and construct the project
- Selecting local contractors for construction and electrical work, preferring local labor
- All civil engineering site work
- Approval of the site plan design by the Jackson Planning Commission
- Held neighborhood meetings to explain the project to people living nearby, receiving near-unanimous approval
- Arranging for insurance during and after construction
- Beginning funding negotiations with select tax-equity investment banks and investors

Once we are assured that we are in compliance with the law, we will be ready to complete our financing, obtain a building permit, and begin construction of the Jackson Solar Project.

I swear that the foregoing testimony is true and correct to the best of my knowledge.

Dennis Emberling
Dennis Emberling, President

Respectfully submitted this 21 day of September, 2021.

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Subscribed and sworn to me a Notary Public, in his capacity as President of JSC this
this 21 of September, 2021.

Ambra Barnes
Notary Public

Commission Expires: 3/23/2025

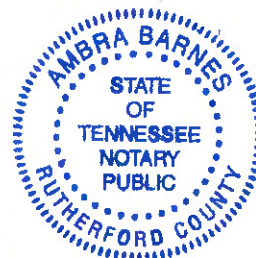


EXHIBIT 11
FILED UNDER SEAL

EXHIBIT 12
FILED UNDER SEAL

EXHIBIT 13

W. Brantley Phillips, Jr.
bphillips@bassberry.com
(615) 742-7723

October 4, 2021

VIA E-MAIL

John A. Beam, III
Equitus Law Alliance, PLLC
709 Taylor Street
P.O. Box 280240
Nashville, TN 37228

**Re: In re: Petition of Jackson Sustainability Cooperative to Determine if a
Certificate of Convenience and Necessity Is Needed, Docket No. 21-00061**

Dear John:

I am writing to follow up on the meet and confer conference call between the parties that took place on September 29, 2021, and to address numerous, fundamental deficiencies in Jackson Sustainability Cooperative's ("JSC") responses to Tennessee Electric Cooperative Association's ("TECA") Interrogatories and Requests for Production of Documents (the "Requests"). While JSC has provided TECA with written responses to TECA's Requests, as well as a limited number of documents—the vast majority of which are simply Bates-numbered versions of documents previously filed in this docket—JSC's responses and production are deficient in many respects that require correction.

I. General Instructions and Objections

Status of JSC's "Investigation." JSC's instructions state that JSC has not completed its "investigation into some of the issues raised" in the discovery requests. Further, JSC repeatedly states that it will supplement its production when or if additional documents are located. Given the very small volume of new documents produced by JSC, we are concerned that insufficient effort was made to comply with JSC's discovery obligations. We appreciate that JSC intends to comply with its obligation to supplement its discovery responses. But, we do not believe that this commitment absolves JSC of its responsibility to perform a thorough investigation and provide complete discovery responses in the first instance. Moreover, complete responses are needed to allow this docket to proceed in an orderly manner. Among other things, TECA and the other parties must receive complete responses well in advance of whatever date is set for the filing of their witnesses' written testimony.

Please advise us of when you expect the "investigation" to be substantially completed. If that will occur promptly, please produce all additional discovery responses and responsive

documents to TECA at least seven (7) days prior to the October 21, 2021 Status Conference with the Hearing Officer. If JSC needs additional time to complete its investigation, preparation of additional responses and document production, please let us know. As you are aware, TECA is glad to work with JSC on adjusting the procedural schedule to provide JSC the time it needs.

Assertions of Privileges. JSC objects to disclosing the identities of consulting experts and any work generated by consulting experts. Please state whether any information or documents have been withheld on the basis of this objection. Further, to the extent you additionally object on the grounds of “investigative privilege,” please explain your assertion of the “investigative privilege” and how it applies in this case.

Related Entities. JSC objects to producing information or documents available from “other entities not parties in this litigation.” Please explain whether information or documents available from (i) Community Development Enterprises - Jackson I (“CDE”) or (ii) any of CDE’s owners and principals, including but not limited to E A Solar, LLC, Hunt Solar, LLC, and SynEnergy, Inc., have been withheld based on this objection.

Breadth, Burden and Relevance. JSC generally objects to each and every Interrogatory and Request for Production as “overly broad, burdensome, and/or oppressive, or seeks information or documents neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.” Broad boilerplate objections of this type are highly disfavored. Indeed, they are impermissible in the federal courts, to which Tennessee looks to inform the interpretation and application of its own procedural rules. Regardless, based on the information JSC has filed and produced, it appears there are only a small number of persons involved with JSC. Considering that, please explain why it is unduly burdensome to search for and produce all documents responsive to TECA’s Requests.

We also note that JSC’s production does not include any of the types of documents that are commonly produced in litigation, including emails, letters, spreadsheets, notes, and other electronic and paper documents. Please explain what search was performed for responsive documents, which persons’ electronic and paper files were searched, and what categories of documents were not searched (*e.g.*, emails, letters, computer folders, *etc.*), and why a search for responsive documents would be burdensome.

JSC also makes a general objection relating to discovery requests seeking “All” or “Each and Every,” asserting that “such an inquiry, in essence, is a request for evidence, and not discoverable information.” This makes no sense and is not a proper objection. Please explain how this objection was applied when compiling the discovery responses.

Identities of Knowledgeable Persons. JSC states it is “contacting those persons who have knowledge of the location and/or existence of information that may be responsive.” Please disclose any persons being contacted who are not identified in the responses. The fact that JSC is still contacting persons knowledgeable of responsive information demonstrates that JSC has not yet fully complied with its discovery obligations. All information responsive to TECA’s current Requests should be produced.

Documents Created for JSC by Other Parties. JSC objects to each and every request to the extent it requires JSC to “produce documents created for it by other parties in that such an Interrogatory or Request for Production is vague, ambiguous, and overly broad.” Please explain how such a request is vague and ambiguous and disclose whether any responsive information or documents have been withheld based on this objection. TECA believes that this objection has no merit and all documents responsive to its Requests must be produced.

II. Deficient Responses to TECA’s Requests for Production

Request No. 1

Please explain how a request for documents upon which JSC intends to rely is overly broad, burdensome, and not likely to produce relevant information. By definition, these are documents of which JSC is aware and considers relevant to the Petition and Response. Please produce all responsive documents.

Request No. 2

Please explain how a request for documents on which JSC relied in answering TECA’s interrogatories is overly broad, burdensome, and not likely to produce relevant information. By definition, these are documents of which JSC is aware and actually relied on when responding to the Requests. Further, explain why any documents JSC referenced or relied on when responding to TECA’s interrogatories could not be located. Please produce all responsive documents.

Request No. 4

Request No. 4 seeks documents in JSC’s custody and control that support its position that JSC is not a public utility. Please explain how documentation supporting a position taken by JSC is overly broad, burdensome, or not likely to produce relevant information. Moreover, a request for *documents* supporting a position taken by JSC does not call for a legal conclusion. Please produce all responsive documents.

Request No. 5

Although we disagree that the wording in this request is argumentative, we understand the response to say that JSC will have only members and potential members—not customers—and it is JSC’s position that it will not be in competition with any entity. Please confirm that our interpretation of JSC’s response is correct.

We further disagree that the request “necessitates the preparation of a compilation” and do not understand the basis for this contention. Please explain why JSC would be required to prepare compilations to respond to this Request.

JSC states that it has offered for review “certain documents related to the projected future operation of the solar facility.” To the extent they exist, JSC needs to produce all documents—not simply “certain documents”—responsive to Request No. 5 or confirm that no other documents

exist. With respect to JSC's assertion that "more documents may be responsive" as the status of the final design nears completion, please state when such documents will be available.

Request No. 6

Please confirm that Exhibit 13 to the Petition is the *only* responsive document or produce all responsive documents, including the documents used to create Exhibit 13. Further, please disclose whether documents concerning Exhibit 13 have not been produced because they are in the custody or control of SynEnergy or CDE, rather than JSC.

Request No. 7

Please disclose if any documents have been withheld based on JSC's general objections. Additionally, please confirm that the "Direct Testimony of Dennis Emberling Part II" is the *only* document responsive to this Request or produce all such documents.

Request No. 8

JSC produced no communications responsive to this Request, instead producing an 18-page, non-final lease "substantially in the form of the document at Bate Stamped JSC CONFIDENTIAL 500034 to JSC CONFIDENTIAL 500052." Please state whether any documents have been withheld based on JSC's general objections. Otherwise, please confirm it is JSC's position that *no other responsive documents exist* or produce all responsive documents.

Request No. 9

In response to this request, JSC simply points TECA to the Petition, JSC's Bylaws, and JSC's response to Request No. 8. Please state whether any documents have been withheld based on JSC's general objections. Otherwise, please confirm it is JSC's position that *no other responsive documents exist* or produce all responsive documents.

Request No. 10

JSC objects on the grounds that this Request requires assumptions and possible inferences, yet does not explain what assumptions and inferences are allegedly being made by this Request. Please explain what assumptions and inferences about the role of CDE are required. Further, please explain why the iSun contract was not produced and why no request(s) for proposal related to the project, and responses thereto, were produced. And, please confirm that no documents responsive to this Request are being withheld based on JSC's general or specific objections. If responsive documents have been withheld, please produce them.

Request No. 11

JSC's document production contains absolutely no emails, letters, memoranda, voicemail, or other written or electronic communications to potential funders who have purportedly made commitments to JSC. Further, no notes or internal documents analyzing financing or potential funders were produced. By JSC's own response, JSC "sent a nondisclosure agreement to several

prospective funders” and “[o]nce signed, the parties exchange information, including the project description found in the confidential feasibility study.” Yet neither the signed non-disclosure agreements nor any other information exchanged (other than a feasibility study) were produced. Given that JSC admits responsive documents exist, please explain why such documents were withheld and/or produce all documents responsive to this Request.

III. Deficient Responses to TECA’s Interrogatories

Request No. 13

This Request seeks the identity of individual persons, but JSC objects to this Request as seeking information protected by the attorney-client privilege. Please state whether any information was withheld based on this objection. And, please provide JSC’s response as to the other documents submitted by JSC in this Docket, including but not limited to, Exhibit 13 to the Petition, “Economic Impact of the Jackson Solar Facility” (JSC000372-374), “How the Co-Op Works,” (JSC000415), and “Aims of the Co-Op” (JSC000416).

Request No. 15

This Request seeks identification of *facts* supporting JSC’s position that it is not a "public utility" as defined by T.C.A. § 65-4-101 *et seq.* A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC’s general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC’s position. If any facts were withheld, please provide all facts responsive to this Request.

Request No. 16

This Request seeks identification of *facts* supporting JSC’s position that the proposed solar facility is not “affected by and dedicated to the public use,” as stated on page 17 of the Petition and page 8 of JSC’s Response. A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC’s general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC’s position. If any facts were withheld, please provide all facts responsive to this Request.

Request No. 17

This Request seeks identification of *facts* supporting JSC’s position that it “‘does not hold itself out to the general public,’ as stated on page 10 of JSC’s Response.” A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC’s general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC’s position. If any facts were withheld, please provide all facts responsive to this Request.

Request No. 18

This Request seeks identification of *facts* supporting JSC's position proposed solar facility project does not violate the Geographic Territories of Electric Utility Systems act, as codified at T.C.A. § 65-34-101 *et seq.* (the "GTL"). A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC's position. If any facts were withheld, please provide all facts responsive to this Request.

Request No. 19

This Request asks JSC to identify the language in the GTL that supports JSC's statement that "the legislature did not intend to prevent this kind of Solar Facility project," which appears on page 12 of JSC's Response. The Request calls for JSC to identify language in the GTL that JSC believes supports a statement it made in filings to the TPUC and does not call for a legal opinion. If any information was withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the information supporting JSC's position. If any information was withheld, please provide all information responsive to this Request.

Request No. 22

We disagree that this request is argumentative and makes a false inference. Nevertheless, we appreciate your response. Please confirm that the response is complete and that no information has been withheld based on the general or specific objections. If any information was withheld, please provide all information responsive to this Request.

Request No. 24

We disagree that this Request call for a legal conclusion. If any information was withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the information supporting JSC's position. If any information was withheld, please provide all information responsive to this Request.

Request No. 27

JSC's response to this Request is only partially responsive in that it addresses federal tax credits, but it fails to address how JSC members will benefit from the "accelerated depreciation benefits" referenced on page 14 of the Petition. Please correct this deficiency.

Request No. 28

We disagree that this Request is argumentative. Regardless, we understand JSC's response to indicate that it takes the position that it will not be in competition with JEA or any local power company. Please confirm that this statement is correct.

Request No. 29

JSC's response to this Request is only partially responsive in that it addresses whether and how TVA is a "competing enterprise that distributes electric energy" under Section 5.3.2. of the Bylaws of Jackson Sustainability Cooperative, attached as Exhibit 2 to the Petition. But, the answer fails to address JEA. Please correct this deficiency.

Request No. 32

Request No. 32 seeks the "peak demand profile" for each member or prospective member. JSC's response only provides general information about peak demand. It provides no information about the peak demand profiles of JSC's members or prospective members. Please provide a complete response to this request or confirm that JSC has ***no information*** about the peak demand profile of its members or prospective members.

Request No. 35

Request No. 35 asks JSC to identify all facts that support the purported benefits of JSC's proposed solar facility. The response only references the Supplemental Testimony of Dennis Emberling.¹ Please confirm that there are no other facts that support the purported benefits of JSC's proposed solar facility or provide a complete response.

Request No. 37

JSC's answer to this Request is incomplete. Please state whether each of E A Solar, LLC, Hunt Solar, LLC, and SynEnergy, Inc. is a non-profit entity.

Request No. 39

We disagree with JSC's objection that this Request is argumentative. Moreover, JSC has provided a mostly non-responsive answer that only addresses the final representation that "[t]his is a 17 MW solar facility." This Request asks for facts that support each of the public statements made by CDE, which are quoted in the Request. Please provide a full and complete response to this Request. If any facts were withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all

¹ As you are now aware, it is highly unusual for a party to submit additional pre-filed direct testimony in contested cases before the TPUC. Mr. Emberling's supplemental direct testimony raises new matters, including matters concerning the purported benefits of JSC's proposed solar facility, that will require additional discovery. TECA reserves its right to propound such additional discovery.

John A. Beam, III
October 4, 2021
Page 8

the facts supporting JSC's position. If any facts were withheld, please provide all facts responsive to this Request.

Please produce all supplemental responses and all responsive documents at least seven (7) days prior to the October 21, 2021 Status Conference to allow the parties time to resolve as many of these issues as possible prior to submitting any remaining disputes to the Hearing Officer. We look forward to your response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "W. Brantley Phillips, Jr.", is positioned above the printed name.

W. Brantley Phillips, Jr.

cc: Larry Cash
Mark Smith
Henry Walker
(all via email)

EXHIBIT 14

W. Brantley Phillips, Jr.
bphillips@bassberry.com
(615) 742-7723

November 2, 2021

VIA E-MAIL

John A. Beam, III
Equitus Law Alliance, PLLC
709 Taylor Street
P.O. Box 280240
Nashville, TN 37228

**Re: In re: Petition of Jackson Sustainability Cooperative to Determine if a
Certificate of Convenience and Necessity Is Needed, Docket No. 21-00061**

Dear John:

I am writing to follow up on the meet and confer conference call between the parties that took place on September 29, 2021; the status conferences held by the Hearing Officer on September 30, 2021 and October 21, 2021; my letter to you dated October 4, 2021 (“First Deficiency Letter”) detailing the deficiencies in Jackson Sustainability Cooperative’s (“JSC”) responses (“First Response”) to Tennessee Electric Cooperative Association’s (“TECA”) Interrogatories and Requests for Production of Documents (the “Requests”); and Petitioner’s Supplemental Responses to Tennessee Electric Cooperative Association’s Discovery Requests (“Supplemental Response”), which I received via email on October 26, 2021.

JSC’s Supplemental Response wholly fails to address the fundamental deficiencies identified in the First Deficiency Letter. In its First Response, JSC asserted numerous broad, unsupported objections, provided incomplete interrogatory answers and made a paltry document production. The First Deficiency Letter asked a number of straightforward questions about JSC’s discovery efforts. These questions were designed to clarify JSC’s responses and objections in order to allow the parties to resolve their disputes or, at least, identify those disputes where informal resolution is not possible. With few exceptions, the Supplemental Response provides *no* answers to these questions and does not even explain why JSC refused to provide answers. Instead, the Supplemental Response *repeatedly invokes “all prior objections and limitations,”* leaving TECA in the dark about the bases for these objections and what information and documents are being withheld.

Further, the Supplemental Response and accompanying document production (“Supplemental Production”) fail to cure JSC’s deficient document production. In its Requests, TECA made comprehensive requests for documents concerning JSC, its affiliates and its proposed solar project. In its First Response, JSC produced only a handful of documents—totaling 100

pages—that had not been filed previously with the Tennessee Public Utility Commission (“Commission”). The First Deficiency Letter identified numerous shortcomings in the production, including the complete absence of emails, letters, memoranda, voicemail, or other written or electronic communications, as well as the kinds of spreadsheets and other electronic files that are produced in virtually every case involving business entities. In the Supplemental Production, JSC only produced some 588 pages of additional documents, and most of these—some 421 pages—are publicly available third-party documents, like IRS publications and industry white papers. And, the Supplemental Production includes just *three* emails.

Stated simply, JSC’s discovery efforts to date fall *far* short of satisfying its obligations. JSC has repeatedly expressed its desire for this Docket to move forward to a final hearing as expeditiously as possible. TECA shares that objective. But, that cannot be achieved if JSC continues to engage in what appears to be discovery gamesmanship designed to prevent TECA, the other parties and the Commission from obtaining a full view of JSC and the planned solar project. Fulsome discovery is needed before this case can move forward.

The remainder of this letter identifies defects in JSC’s Supplemental Production and other shortcomings in the Supplemental Response.

A. Incomplete, Missing, and Improperly Redacted Documents in JSC’s Supplemental Production.

JSC’s Supplemental Production includes numerous documents that have been redacted, and no explanation has been given in support of the redactions. As you know, a protective order has been entered in this Docket, so there is no basis for concealing the types of business information JSC has redacted.¹ And, from our review of the documents, it does not appear that any valid privilege would justify the redactions. Accordingly, please produce unredacted copies of the documents in the following Bates range: 500110-500167.

In addition, pages 2 and 3 are missing from each of the conditional member agreements at Bates 500162-500167. Please produce complete copies of all conditional member agreements.

Also, no documents were produced at Bates 500138-500140, and no explanation was given for this gap. Please produce these documents or explain why there is a gap in the numbering.

B. Defects in JSC’s Response to the First Deficiency Letter.

Because the Supplemental Response largely fails to address the questions and issues raised in the First Deficiency Letter, excerpts of that letter are repeated below, along with a summary of JSC’s response or lack thereof.

¹ It also appears that JSC is improperly designating documents as “Confidential.” There can be no basis for applying this designation to, for example, [REDACTED] (500135) or [REDACTED] (50053-50056). Given the need to address higher priority issues, TECA will reserve discussion of JSC’s designation practices for a later date.

I. General Instructions and Objections.

First Deficiency Letter: Status of JSC's "Investigation."

JSC's instructions state that JSC has not completed its "investigation into some of the issues raised" in the discovery requests. Further, JSC repeatedly states that it will supplement its production when or if additional documents are located. Given the very small volume of new documents produced by JSC, we are concerned that insufficient effort was made to comply with JSC's discovery obligations. We appreciate that JSC intends to comply with its obligation to supplement its discovery responses. But, we do not believe that this commitment absolves JSC of its responsibility to perform a thorough investigation and provide complete discovery responses in the first instance. Moreover, complete responses are needed to allow this docket to proceed in an orderly manner. Among other things, TECA and the other parties must receive complete responses well in advance of whatever date is set for the filing of their witnesses' written testimony.

Advise us of when you expect the "investigation" to be substantially completed. If that will occur promptly, please produce all additional discovery responses and responsive documents to TECA at least seven (7) days prior to the October 21, 2021 Status Conference with the Hearing Officer. If JSC needs additional time to complete its investigation, preparation of additional responses and document production, please let us know. As you are aware, TECA is glad to work with JSC on adjusting the procedural schedule to provide JSC the time it needs.

Summary of Inadequate Supplemental Response.

The Supplemental Response fails to explain when JSC's "investigation into some of the issues" is expected to be substantially completed or whether this investigation is now complete. We understand that new information and documents will be created during the pendency of this Docket, but we remain concerned that JSC has not completed its "investigation" and provided all information and documents in existence as of the present date. Please explain what investigation is still incomplete and, again, please advise us of when you expect the investigation to be substantially completed.

First Deficiency Letter: Assertions of Privileges.

JSC objects to disclosing the identities of consulting experts and any work generated by consulting experts. Please state whether any information or documents have been withheld on the basis of this objection. Further, to the extent you additionally object on the grounds of "investigative privilege," please explain your assertion of the "investigative privilege" and how it applies in this case.

Summary of Inadequate Supplemental Response.

The Supplemental Response fails to state whether any information or documents have been withheld based on these objections and fails to explain JSC's assertion of the "investigative privilege" and how it applies in this case. Again, please provide this information.

First Deficiency Letter: Related Entities.

JSC objects to producing information or documents available from "other entities not parties in this litigation." Please explain whether information or documents available from (i) Community Development Enterprises - Jackson I ("CDE") or (ii) any of CDE's owners and principals, including but not limited to E A Solar, LLC, Hunt Solar, LLC, and SynEnergy, Inc., have been withheld based on this objection.

Summary of Inadequate Supplemental Response.

The Supplemental Response fails to state whether any information or documents have been withheld based on this objection. Please answer this question so that TECA may consider whether additional discovery to these entities is necessary. We note that JSC has already produced CDE documents, including the CDE joint venture agreement and amendment thereto (50088-500109), a CDE-Northern Reliability, Inc. contract (50001-50033), and the CDE Feasibility Study (50057-50087). Accordingly, we do not believe there is any basis to withhold other CDE documents on the basis of this objection.

First Deficiency Letter: Breadth, Burden and Relevance.

JSC generally objects to each and every Interrogatory and Request for Production as "overly broad, burdensome, and/or oppressive, or seeks information or documents neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence." Broad boilerplate objections of this type are highly disfavored. Indeed, they are impermissible in the federal courts, to which Tennessee looks to inform the interpretation and application of its own procedural rules. Regardless, based on the information JSC has filed and produced, it appears there are only a small number of persons involved with JSC. Considering that, please explain why it is unduly burdensome to search for and produce all documents responsive to TECA's Requests.

We also note that JSC's production does not include any of the types of documents that are commonly produced in litigation, including emails, letters, spreadsheets, notes, and other electronic and paper documents. Please explain what search was performed for responsive documents, which persons' electronic and paper files were searched, and what categories of documents were not searched (e.g., emails, letters, computer folders, *etc.*), and why a search for responsive documents would be burdensome.

JSC also makes a general objection relating to discovery requests seeking “All” or “Each and Every,” asserting that “such an inquiry, in essence, is a request for evidence, and not discoverable information.” This makes no sense and is not a proper objection. Please explain how this objection was applied when compiling the discovery responses.

Summary of Inadequate Supplemental Response.

The Supplemental Response fails to provide any explanation of or basis for JSC’s objection that TECA’s discovery requests are “overly broad, burdensome, and/or oppressive, or seek[] information or documents neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.” Instead, the Supplemental Response cites to a few Tennessee authorities that stand for the uncontroversial proposition that an objection based on overbreadth and burden can be appropriate. But, these same authorities demonstrate that JSC’s objections are improper. The Advisory Commission comment quoted by JSC states that “[a] responding party may object to a Rule 34 request as overly broad on the grounds that the time period covered is too long, or that the breadth of sources from which documents are sought is unduly burdensome, ***providing the specific bases therefore, and further making clear whether the objection is being made in whole or in part.***” (Supplemental Response at 1 (quoting In re Amendments to the Tenn. Rules of Civil Procedure, 2019 Tenn. LEXIS 3, *11-12) (emphasis added).)

Neither JSC’s First Response nor the Supplemental Response provides the specific bases for these objections. In fact, the questions asked by TECA were intended to elicit some explanation for the bases of these objections, but JSC gave none. Likewise, JSC has not explained how TECA’s discovery requests are irrelevant to JSC’s Petition. (See Supplemental Response at 2 (citing *Johnson v. Nissan N. Am., Inc.*, 146 S.W.3d 600, 605 (Tenn. Ct. App. 2004).) Nor can it: TECA’s requests are directly focused on the claims and statements made by JSC in its filings. Accordingly, JSC’s objections based on overbreadth, burden, and irrelevance are improper and should be withdrawn.

Moreover, the Supplemental Response does not explain what search was performed for responsive documents, which persons’ electronic and paper files were searched, and what categories of documents were not searched (*e.g.*, emails, letters, computer folders, *etc.*), and why a search for responsive documents would be burdensome. Again, please provide this information.

Finally, the Supplemental Response does not provide any defense of JSC’s objection that discovery requests seeking “All” or “Each and Every,” are “in essence, ... a request for evidence, and not discoverable information.” Nor does it explain how this objection was applied when compiling the discovery responses. Please provide this information.

First Deficiency Letter: Identities of Knowledgeable Persons.

JSC states it is “contacting those persons who have knowledge of the location and/or existence of information that may be responsive.” Please disclose any persons being contacted who are not identified in the responses. The fact that

JSC is still contacting persons knowledgeable of responsive information demonstrates that JSC has not yet fully complied with its discovery obligations. All information responsive to TECA's current Requests should be produced.

Summary of Inadequate Supplemental Response.

The Supplemental Response does not disclose any such persons and does not state whether all such persons have been identified. Please confirm that there are or were no additional persons being contacted who are not identified in JSC's responses.

First Deficiency Letter: Documents Created for JSC by Other Parties.

JSC objects to each and every request to the extent it requires JSC to "produce documents created for it by other parties in that such an Interrogatory or Request for Production is vague, ambiguous, and overly broad." Please explain how such a request is vague and ambiguous and disclose whether any responsive information or documents have been withheld based on this objection. TECA believes that this objection has no merit and all documents responsive to its Requests must be produced.

Summary of Inadequate Supplemental Response.

The Supplemental Response does not explain how a request that requires JSC to "produce documents created for it by other parties" is vague, ambiguous, and overly broad and does not explain whether any responsive information or documents were withheld based on this objection. As underscored by JSC's silence, this objection is meritless and should be withdrawn. Please produce all documents and provide all information that has been withheld based on this objection.

II. Deficient Responses to TECA's Requests for Production

First Deficiency Letter: Request No. 1

Please explain how a request for documents upon which JSC intends to rely is overly broad, burdensome, and not likely to produce relevant information. By definition, these are documents of which JSC is aware and considers relevant to the Petition and Response. Please produce all responsive documents.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanation. As discussed above, JSC's objections are unsupported and improper. Please produce all responsive documents or *confirm that there are no other responsive documents*.

First Deficiency Letter: Request No. 2

Please explain how a request for documents on which JSC relied in answering TECA's interrogatories is overly broad, burdensome, and not likely to produce relevant information. By definition, these are documents of which JSC is aware and actually relied on when responding to the Requests. Further, explain why any documents JSC referenced or relied on when responding to TECA's interrogatories could not be located. Please produce all responsive documents.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. As discussed above, JSC's objections are unsupported and improper. Again, please provide the explanations requested above and produce all responsive documents or ***confirm that there are no other responsive documents.***

First Deficiency Letter: Request No. 4

Request No. 4 seeks documents in JSC's custody and control that support its position that JSC is not a public utility. Please explain how documentation supporting a position taken by JSC is overly broad, burdensome, or not likely to produce relevant information. Moreover, a request for ***documents*** supporting a position taken by JSC does not call for a legal conclusion. Please produce all responsive documents.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. As discussed above, JSC's objections are unsupported and improper. Moreover, we disagree with your new contention that Request No. 4 requires the preparation or the making of a compilation of documents or that this objection provides a proper basis to withhold responsive documents. Again, please provide the explanations requested above and produce all responsive documents or ***confirm that there are no other responsive documents.***

First Deficiency Letter: Request No. 5

Although we disagree that the wording in this request is argumentative, we understand the response to say that JSC will have only members and potential members—not customers—and it is JSC's position that it will not be in competition with any entity. Please confirm that our interpretation of JSC's response is correct.

We further disagree that the request "necessitates the preparation of a compilation" and do not understand the basis for this contention. Please explain why JSC would be required to prepare compilations to respond to this Request.

JSC states that it has offered for review "certain documents related to the projected future operation of the solar facility." To the extent they exist, JSC needs

to produce all documents—not simply “certain documents”—responsive to Request No. 5 or confirm that no other documents exist. With respect to JSC’s assertion that “more documents may be responsive” as the status of the final design nears completion, please state when such documents will be available.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. Please answer the questions asked in the First Deficiency Letter and provide all responsive documents. It is not credible that there are no other “documents, including studies, analysis, policies, and plans, concerning JSC’s operations; market; competition; competitors; potential and current members, patrons, or other customers; and projected customer demand.” But, if that is JSC’s position, ***please state that there are no other responsive documents.***

First Deficiency Letter: Request No. 6

Please confirm that Exhibit 13 to the Petition is the ***only*** responsive document or produce all responsive documents, including the documents used to create Exhibit 13. Further, please disclose whether documents concerning Exhibit 13 have not been produced because they are in the custody or control of SynEnergy or CDE, rather than JSC.

Summary of Inadequate Supplemental Response.

We appreciate the update in the Supplemental Response and the production of a small number of additional documents responsive to Request No. 6. But, the Supplemental Response invokes all prior objections and limitations while failing to provide the requested explanations. Please ***confirm that there are no other responsive documents.***

Further, based on our review of the documents produced to date, it does not appear that documents concerning Exhibit 13, such as workpapers or any supporting documentation, have been produced. Please produce such documents and any other documents responsive to Request No. 6. And, if documents concerning Exhibit 13 have been withheld for any reason, including that they are in the custody or control of SynEnergy or CDE, rather than JSC, please so state and explain why such documents have been withheld.

First Deficiency Letter: Request No. 7

Please disclose if any documents have been withheld based on JSC’s general objections. Additionally, please confirm that the “Direct Testimony of Dennis Emberling Part II” is the ***only*** document responsive to this Request or produce all such documents.

Summary of Inadequate Supplemental Response.

We appreciate the narrative provided in the Supplemental Response and the citations to previously produced documents. But, the Supplemental Response invokes all prior objections and

limitations while failing to provide the requested explanations. Please provide the explanations requested in the First Deficiency Letter and produce all responsive documents or ***confirm that there are no other responsive documents.***

First Deficiency Letter: Request No. 8

JSC produced no communications responsive to this Request, instead producing an 18-page, non-final lease “substantially in the form of the document at Bate Stamped JSC CONFIDENTIAL 500034 to JSC CONFIDENTIAL 500052.” Please state whether any documents have been withheld based on JSC’s general objections. Otherwise, please confirm it is JSC’s position that ***no other responsive documents exist*** or produce all responsive documents.

Summary of Inadequate Supplemental Response.

We appreciate that the Supplemental Response regarding Request No. 8 does not invoke prior objections and limitations, and we appreciate your production of the confidential equipment lease and three conditional member agreements. But, no communications have been produced other than a single PowerPoint presentation (500123-500132) and a two-page “invitation to join the co-op” (500133-500134). It is implausible that there are no other communications or other documents responsive to Request No. 8. And, the Supplemental Response fails to provide the requested explanations. Again, please confirm it is JSC’s position that ***no other responsive documents exist*** or produce all responsive documents. Finally, as noted above, there is no proper basis for redacting these documents or providing incomplete copies of the conditional member agreements.

First Deficiency Letter: Request No. 9

In response to this request, JSC simply points TECA to the Petition, JSC’s Bylaws, and JSC’s response to Request No. 8. Please state whether any documents have been withheld based on JSC’s general objections. Otherwise, please confirm it is JSC’s position that ***no other responsive documents exist*** or produce all responsive documents.

Summary of Inadequate Supplemental Response.

We appreciate that the Supplemental Response regarding Request No. 9 does not invoke prior objections and limitations, and we appreciate your citation to additional previously produced documents, as well as the executed lease agreement. Again, please state whether any documents have been withheld based on JSC’s general objections. TECA does not believe it is credible that there are no other documents concerning the relationship between JSC and CDE. But, if that is JSC’s position, ***please state that there are no other responsive documents.*** If there are other responsive documents, please produce them.

First Deficiency Letter: Request No. 10

JSC objects on the grounds that this Request requires assumptions and possible inferences, yet does not explain what assumptions and inferences are allegedly being made by this Request. Please explain what assumptions and inferences about the role of CDE are required. Further, please explain why the iSun contract was not produced and why no request(s) for proposal related to the project, and responses thereto, were produced. And, please confirm that no documents responsive to this Request are being withheld based on JSC's general or specific objections. If responsive documents have been withheld, please produce them.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. Again, please answer the questions asked in the First Deficiency Letter and provide all responsive documents.

Further, it is difficult to reconcile JSC's statement that "there is no contract with iSun" with a press release quoting Dennis Emberling as saying "'We evaluated multiple proposals for our Jackson solar microgrid from qualified EPCs and it was clear to us that the iSun proposal stood out as superior. CDE has selected iSun'" That same press release, which CDE's website links to, states "iSun's estimated contract value is approximately \$25 million with installations beginning in late-summer 2021." The press release is available at:

<https://www.businesswire.com/news/home/20210322005182/en/iSun-Selected-by-Northern-Reliability-a%20nd-Community-Development-Enterprises-for-PV-Installation-of-one-of-America%E2%80%99s-Largest-Solar-Plus-Storage-Microgrid-Projects>

Mr. Emberling's statement also references "multiple proposals," but no proposals, requests for proposals, or communications regarding these topics have been produced. Thus, it is not credible that there are no other documents responsive to Request No. 10. Please produce all responsive documents.

First Deficiency Letter: Request No. 11

JSC's document production contains absolutely no emails, letters, memoranda, voicemail, or other written or electronic communications to potential funders who have purportedly made commitments to JSC. Further, no notes or internal documents analyzing financing or potential funders were produced. By JSC's own response, JSC "sent a nondisclosure agreement to several prospective funders" and "[o]nce signed, the parties exchange information, including the project description found in the confidential feasibility study." Yet neither the signed non-disclosure agreements nor any other information exchanged (other than a feasibility study) were produced. Given that JSC admits responsive documents exist, please explain why such documents were withheld and/or produce all documents responsive to this Request.

Summary of Inadequate Supplemental Response.

We appreciate that the Supplemental Response regarding Request No. 11 does not invoke prior objections and limitations, and we appreciate that you have now produced redacted copies of non-disclosure agreements with prospective funders. But, JSC still has not produced emails, letters, memoranda, voicemail, or other written or electronic communications to potential funders. And, it appears that JSC has produced just five pages of internal analysis responsive to this request, which includes a simple list of publications that investors like to read (000446-000449; 000857). It is not credible that there are no other responsive documents. Again, please produce all responsive documents or explain why such documents were withheld. If it is JSC's position that there are no other responsive documents, *please state that there are no other responsive documents*.

III. Deficient Responses to TECA's Interrogatories

First Deficiency Letter: Request No. 13

This Request seeks the identity of individual persons, but JSC objects to this Request as seeking information protected by the attorney-client privilege. Please state whether any information was withheld based on this objection. And, please provide JSC's response as to the other documents submitted by JSC in this Docket, including but not limited to, Exhibit 13 to the Petition, "Economic Impact of the Jackson Solar Facility" (JSC000372-374), "How the Co-Op Works," (JSC000415), and "Aims of the Co-Op" (JSC000416).

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanation as to whether information has been withheld. Moreover, despite the fact that, in the First Response, JSC committed to "further assist in identifying persons who contributed to specific documents identified by TECA," the Supplemental Response does not identify the persons who provided information or otherwise participated in creating Exhibit 13 to the Petition, "Economic Impact of the Jackson Solar Facility" (JSC000372-374), "How the Co-Op Works," (JSC000415), and "Aims of the Co-Op" (JSC000416). Please provide this information.

First Deficiency Letter: Request No. 15

This Request seeks identification of *facts* supporting JSC's position that it is not a "public utility" as defined by T.C.A. § 65-4-101 *et seq.* A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC's position. If any facts were withheld, please provide all facts responsive to this Request.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. In particular, the Supplemental Response does not state whether any facts were withheld or whether JSC's First Response and Supplemental Response include all the facts supporting JSC's position. Again, if any facts have been withheld, please provide them. If your answer is complete as to information that exists as of the present date, please state that the response to this Request includes all the facts supporting JSC's position.

First Deficiency Letter: Request No. 16

This Request seeks identification of *facts* supporting JSC's position that the proposed solar facility is not "affected by and dedicated to the public use," as stated on page 17 of the Petition and page 8 of JSC's Response. A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC's position. If any facts were withheld, please provide all facts responsive to this Request.

Summary of Inadequate Supplemental Response.

By its reference to the Supplemental Response to Request No. 15, the Supplemental Response invokes all prior objections and limitations, but it fails to provide the requested explanations. In particular, the Supplemental Response does not state whether any facts were withheld or whether JSC's First Response and Supplemental Response include all the facts supporting JSC's position. Again, if any facts have been withheld, please provide them. If your answer is complete as to information that exists as of the present date, please state that the response to this Request includes all the facts supporting JSC's position.

First Deficiency Letter: Request No. 17

This Request seeks identification of *facts* supporting JSC's position that it "does not hold itself out to the general public," as stated on page 10 of JSC's Response." A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC's position. If any facts were withheld, please provide all facts responsive to this Request.

Summary of Inadequate Supplemental Response.

By its reference to the Supplemental Response to Request No. 15, the Supplemental Response invokes all prior objections and limitations, but it fails to provide the requested explanations. In particular, the Supplemental Response does not state whether any facts were withheld or whether JSC's First Response and Supplemental Response include all the facts

supporting JSC's position. Again, if any facts have been withheld, please provide them. If your answer is complete as to information that exists as of the present date, please state that the response to this Request includes all the facts supporting JSC's position.

First Deficiency Letter: Request No. 18

This Request seeks identification of *facts* supporting JSC's position proposed solar facility project does not violate the Geographic Territories of Electric Utility Systems act, as codified at T.C.A. § 65-34-101 *et seq.* (the "GTL"). A request for the identification of *facts* does not call for a legal conclusion. If any facts were withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC's position. If any facts were withheld, please provide all facts responsive to this Request.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. In particular, the Supplemental Response does not state whether any facts were withheld or whether JSC's First Response and Supplemental Response include all the facts supporting JSC's position. Again, if any facts have been withheld, please provide them. If your answer is complete as to information that exists as of the present date, please state that the response to this Request includes all the facts supporting JSC's position.

First Deficiency Letter: Request No. 19

This Request asks JSC to identify the language in the GTL that supports JSC's statement that "the legislature did not intend to prevent this kind of Solar Facility project," which appears on page 12 of JSC's Response. The Request calls for JSC to identify language in the GTL that JSC believes supports a statement it made in filings to the TPUC and does not call for a legal opinion. If any information was withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the information supporting JSC's position. If any information was withheld, please provide all information responsive to this Request.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. In particular, the Supplemental Response does not state whether any facts were withheld or whether JSC's First Response and Supplemental Response include all the facts supporting JSC's position. Again, if any facts have been withheld, please provide them. If your answer is complete as to information that exists as of the present date, please state that the response to this Request includes all the facts supporting JSC's position.

First Deficiency Letter: Request No. 22

We disagree that this request is argumentative and makes a false inference. Nevertheless, we appreciate your response. Please confirm that the response is complete and that no information has been withheld based on the general or specific objections. If any information was withheld, please provide all information responsive to this Request.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. In particular, the Supplemental Response does not state whether any information was withheld or whether JSC's First Response and Supplemental Response provide a complete answer. Again, if any facts have been withheld, please provide them. If your answer is complete as to information that exists as of the present date, please state that the response to this Request includes all the facts supporting JSC's position.

First Deficiency Letter: Request No. 24

We disagree that this Request call for a legal conclusion. If any information was withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the information supporting JSC's position. If any information was withheld, please provide all information responsive to this Request.

Summary of Inadequate Supplemental Response.

Although the Supplemental Response invokes all prior objections and limitations, it fails to provide the requested explanations. In particular, the Supplemental Response does not state whether any information was withheld or whether JSC's First Response and Supplemental Response provide a complete answer. Again, if any facts have been withheld, please provide them. If your answer is complete as to information that exists as of the present date, please state that the response to this Request includes all the facts supporting JSC's position.

First Deficiency Letter: Request No. 27

JSC's response to this Request is only partially responsive in that it addresses federal tax credits, but it fails to address how JSC members will benefit from the "accelerated depreciation benefits" referenced on page 14 of the Petition. Please correct this deficiency.

Summary of Supplemental Response.

The Supplemental Response is acceptable.

First Deficiency Letter: Request No. 28

We disagree that this Request is argumentative. Regardless, we understand JSC's response to indicate that it takes the position that it will not be in competition with JEA or any local power company. Please confirm that this statement is correct.

Summary of Inadequate Supplemental Response.

The Supplemental Response is acceptable.

First Deficiency Letter: Request No. 29

JSC's response to this Request is only partially responsive in that it addresses whether and how TVA is a "competing enterprise that distributes electric energy" under Section 5.3.2. of the Bylaws of Jackson Sustainability Cooperative, attached as Exhibit 2 to the Petition. But, the answer fails to address JEA. Please correct this deficiency.

Summary of Inadequate Supplemental Response.

We appreciate that the Supplemental Response regarding Request No. 29 does not invoke prior objections and limitations, but it fails to provide the requested explanation. In particular, the Supplemental Response continues to fail to address JEA. Again, please correct this deficiency.

First Deficiency Letter: Request No. 32

Request No. 32 seeks the "peak demand profile" for each member or prospective member. JSC's response only provides general information about peak demand. It provides no information about the peak demand profiles of JSC's members or prospective members. Please provide a complete response to this request or confirm that JSC has ***no information*** about the peak demand profile of its members or prospective members.

Summary of Inadequate Supplemental Response.

We appreciate that the Supplemental Response regarding Request No. 32 does not invoke prior objections and limitations, but it fails to provide the requested information. Please confirm that the First Response and Supplemental Response include all of the requested information known to JSC.

First Deficiency Letter: Request No. 35

Request No. 35 asks JSC to identify all facts that support the purported benefits of JSC's proposed solar facility. The response only references the Supplemental Testimony of Dennis Emberling. Please confirm that there are no other facts that support the purported benefits of JSC's proposed solar facility or provide a complete response.

Summary of Inadequate Supplemental Response.

We appreciate that the Supplemental Response regarding Request No. 35 does not invoke prior objections and limitations, and we appreciate the additional citations to documents previously filed by JSC. Please confirm that the First Response and Supplemental Response include all of the requested information known to JSC.²

First Deficiency Letter: Request No. 37

JSC's answer to this Request is incomplete. Please state whether each of E A Solar, LLC, Hunt Solar, LLC, and SynEnergy, Inc. is a non-profit entity.

Summary of Inadequate Supplemental Response.

The Supplemental Response is acceptable.

First Deficiency Letter: Request No. 39

We disagree with JSC's objection that this Request is argumentative. Moreover, JSC has provided a mostly non-responsive answer that only addresses the final representation that "[t]his is a 17 MW solar facility." This Request asks for facts that support each of the public statements made by CDE, which are quoted in the Request. Please provide a full and complete response to this Request. If any facts were withheld based on JSC's general or specific objections, please disclose that JSC withheld such information or state that the response to this Request includes all the facts supporting JSC's position. If any facts were withheld, please provide all facts responsive to this Request.

Summary of Inadequate Supplemental Response.

We appreciate that the Supplemental Response regarding Request No. 39 does not invoke prior objections and limitations, and we appreciate the additional information provided by JSC. Please confirm that the First Response and Supplemental Response include all of the requested facts known to JSC.

While JSC's failure to meaningfully respond to the First Deficiency Letter makes me less optimistic that the parties can resolve this discovery dispute on their own, TECA intends to fully comply with the Hearing Officer's directive that we continue efforts to do so. Accordingly, I ask that you or someone in your office contact me as soon as possible to discuss and attempt to resolve these matters or, at least, to provide some explanation of the positions JSC has taken to limit its responses. Where this letter asks JSC to produce documents or information, please provide the documents or information within five (5) business days to allow the parties time to resolve as many of these issues as possible prior to submitting any remaining disputes to the Hearing Officer.

² TECA continues to reserve its right to propound additional discovery necessitated by JSC's filing of Dennis Emberling's supplemental direct testimony.

John A. Beam, III
November 2, 2021
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We look forward to your response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "W. Brantley Phillips, Jr.", with a stylized, cursive script.

W. Brantley Phillips, Jr.

cc: Larry Cash
Mark Smith
Henry Walker
Jeremy Elrod
(all via email)

EXHIBIT 15

November 11, 2021

W. Brantley Phillips, Jr.
Bass Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201

Re: Application of Jackson Sustainability Cooperative for a Declaratory Determination of
Exemption
Docket No. 21-00061

Dear Mr. Phillips:

Thank you for your letter dated November 2, 2021 on behalf of Tennessee Electric Cooperative Association ("TECA") that arrived in the mail on November 9, 2021. TECA is focused more on the objections made by Jackson Sustainability Cooperative to TECA's discovery request, than to the substance of the material provided. Though I have given careful consideration to TECA's commentary on the objections submitted on behalf of Jackson Sustainability Cooperative, no documents or responses were held back based on these objections. Under the rules, objections to questions in interrogatories can be raised, and a party need not answer until a court determines their validity. Rather than wait on a determination of validity, thoughtful and complete responses were made to each questions.

In many respects, the original questions tendered by TECA were outside of the scope of the Petition and the testimony of Mr. Emberling. In spite of TECA's wider scope, Jackson Sustainability Cooperative seeks to work with TECA to produce those facts and documents that are material to the nature of the Petition, a request for declaratory ruling on a project that is currently in development. TECA appears to want this project to be constructed and fully operational with active members. The project has a solar developer who has obtained an approved site plan, a contract to design and build the solar facility with a very prestigious company (Northern Reliability), three members, and a community based board of directors that transitions over to a member lead board once the solar facility is constructed, tested, and begins operations. This is not a shovel ready project. There are currently no operations. TECA speculates that there are responsive emails, letters, memos, and other written communications that are produced in other litigation. This is not other litigation. This is a declaratory action on a proposed solar facility that will connect with its member-users behind the JEA meter. TECA is a

group of local power authorities who understand that they do not regulate the customer behind the meter. This entire project is about delivering supplemental solar energy behind the meter to those persons who hold the use of clean energy as a corporate goal. I trust that TECA members share these goals for using energy from renewable sources, even though their TVA contracts limit their ability to act on these clean energy goals.

An informal inquiry could resolve many of the issues raised in your recent letter. For example, TECA correctly points out that pages 2 and 3 are missing from the signed conditional member agreements. (Bates JSC CONFIDENTIAL 500162-500167) I will gladly send the complete executed member agreement to you. Similarly, there are no documents produced at Bates JSC CONFIDENTIAL 500138-500140 because I had duplicated a document and removed the second copy from the sequential numbering. On pages 5 and 6 of the recent letter, TECA seeks a firm response that it has all persons with knowledge. As a project under development, the number of persons with knowledge of the proposed solar facility is and will be increasing. The increase will be significant after Jackson Sustainability Cooperative accomplishes regulatory approval of its project as requested in its Petition. Once all regulatory approvals are accomplished, the final technical documents will be completed, the financing completed, and the project constructed.

The TECA letter does not cite any case law, Rule of Civil Procedure, or administrative rule that requires a Petitioner to confirm to an opposing party the it has produced all documents. Regardless of this short coming, Jackson Sustainability Cooperative has made good faith inquiries and produced its documents and the documents of others in its possession that are responsive to the questions propounded by TECA. At this time there are no other documents. However, Jackson Sustainability Cooperative understands that its inquiry is ongoing and that as the project moves progressively toward a shovel ready project more documents may become available and will be provided in discovery. This statement responds to TECA's concerns expressed in Requests 1, 2, 4, 5, 6, 7, 9, and 11.

In a similar vein, TECA cites no authority requiring an opposing party to confirm that all of its world of stated facts include the entire universe of all facts. Jackson Sustainability Cooperative has made good faith responses to the questions propounded by TECA. Many of the questions come from factors under the Geographic Territories of Electric Utility Systems Act, as codified at T.C.A. § 65-34-101 et seq. Jackson Sustainability Cooperative contends this Act does not apply to providing supplemental solar energy to its members behind the municipal meter. At this time there are no other responsive facts. Jackson Sustainability Cooperative has an obligation to continue its inquiry. Moreover, as the project moves progressively toward a shovel ready project more facts may become available and will be provided in discovery. This statement responds to TECA's concerns expressed in Requests 15, 16, 17, 18, 19, 22, 25, and 35.

On page 8 TECA requests confirmation that Exhibit 13 ("Economic Impact of the Jackson Solar Facility") is the only responsive document to Request 6 concerning benefit of the facility. However, several documents were disclosed as part of the response to Request 6. More

importantly, there may be many more benefits to the citizens of Jackson than envisioned in the current Economic Impact of the Jackson Solar Facility. At this time, these are all the documents for which Jackson Sustainability Cooperative is aware.

On page 9 at Request 8 TECA questions why there are not more communications. Since the list of potential members is small, Jackson Sustainability Cooperative prefers to network and obtain personal introductions to discuss the merits of using clean energy. The PowerPoint presentation is used to explain the solar project and its benefits. The sample introductory letter was written to explain the project. Jackson Sustainability Cooperative has no record of actually using this sample introductory letter because its contacts are personal.

Page 10 of the TECA letter presents a good example of the continued progress of the project. Mr. Emberling had discussions with iSun with a very favorable initial impression. iSun put an estimated value on these discussions. There is no signed contract with iSun. The feasibility study was shared with a few firms engaged in engineering, procurement, and construction of solar facilities. Community Development Enterprises concluded that it did not require a single expert for these three tasks. Northern Reliability, Inc. will work in conjunction with a local contractor to secure vendors once the regulatory approvals are complete and designs are finalized.

In Request 13 on page 11 of the TECA letter, John C. Meyer Jr. is a principal in the firm that prepared the study entitled Economic Impact of the Jackson Solar Facility.

On page 13 of the TECA letter, TECA in Request No. 32 seeks the "peak demand profile" for each prospective member. Jackson Energy Authority has this information. Jackson Energy Authority, as an intervenor in this action, should share this information with you so long as the privacy and confidentiality of the customer is protected.

Please call so that we can discuss any further concerns. Jackson Sustainability Cooperative would like to see TECA open its membership up to entities that are not solely municipal power authorities under long term contracts with TVA as their sole supplier of energy. Jackson Sustainability Cooperative would welcome the opportunity to become a member of TECA and work together cooperatively on this project.

Sincerely,



John A. Beam, III

Enclosure
cc: Dennis Emberling

EXHIBIT 16

W. Brantley Phillips, Jr.
bphillips@bassberry.com
(615) 742-7723

December 15, 2021

VIA E-MAIL

John A. Beam, III
Equitus Law Alliance, PLLC
709 Taylor Street
P.O. Box 280240
Nashville, TN 37228

**Re: In re: Petition of Jackson Sustainability Cooperative to Determine if a
Certificate of Convenience and Necessity Is Needed, Docket No. 21-00061**

Dear John:

I write on behalf of Tennessee Electric Cooperative Association (“TECA”) in the above-referenced matter to memorialize our discussion during our November 23, 2021, meet-and-confer call regarding TECA’s Interrogatories and Requests for Production of Documents (“Requests”), Jackson Sustainability Cooperative’s (“JSC”) September 22, 2021 and October 26, 2021, objections and responses thereto (“Responses”), and issues raised in the Parties’ correspondence.

At the outset of the call, I noted that some of TECA’s concerns overlap with matters you had recently discussed with counsel for Jackson Energy Authority (“JEA”) and on which you would be engaging in further discussion with your client. I endeavored not to rehash those discussions, and you agreed to share with TECA the additional information you provide to JEA.

I. Documents that Are Redacted, Missing Pages, or Being Produced to Jackson Energy Authority.

I asked for unredacted copies of Confidential Exhibits 11 and 12 to the Petition, which you provided shortly after our call. Thank you for promptly sending those documents.

I also requested unredacted copies of all redacted documents in the Bates range 500110-500167. You agreed to promptly produce these unredacted documents. You also agreed to produce to TECA all documents that will be produced to JEA. You indicated that you wished to avoid piecemeal productions, but that you anticipated producing documents early in the week of November 29, 2021. As of the date of this letter, I have not received the unredacted copies we requested or any other documents, except as noted above. I look forward to receiving these materials.

You also agreed, going forward, that I would receive unredacted copies of confidential documents in JSC's supplemental productions pursuant to the Amended Protective Order.

II. Scope of TECA Discovery Requests, JSC's General Objections, and Scope of JSC's Document Search.

JSC's Responses asserted general and request-specific objections related to the scope of TECA's Requests, and, in its November 11, 2021 letter, JSC maintained that "[i]n many respects, the original questions tendered by TECA were outside of the scope of the Petition and the testimony of Mr. Emberling." On our call, I asked you to provide an explanation of this objection and to state whether it applies to a specific group or type of request since, in my view, TECA's requests directly related to matters raised in the Petition and Mr. Emberling's testimony. You indicated that you could not provide specific details and that you were trying to preserve objections for the hearing. You agreed to provide an update if you identify any specific areas where TECA's Requests are, in your view, out of scope of the Petition and Mr. Emberling's testimony. We agreed that unless notified by you, TECA can proceed on the assumption that this objection is not applicable to JSC's Responses and no documents or information have been or will be withheld on this basis.

Additionally, JSC objected to TECA's Requests as overly broad and unduly burdensome, and JSC's October 26 supplemental production cited caselaw that such an objection can be supported based on irrelevance, time periods that are too long, and sources that are too broad. Although JSC's November 11 letter states that "no documents or responses were held back based on these objections," I asked for clarification in light of the fact that this objection had not been withdrawn and the specific bases for the objection had not been described. You confirmed that no documents or information were being withheld on the basis of this objection and stated that it was simply your intention to preserve JSC's objections for the hearing.

I also asked you to explain how JSC limited the scope of its search for responsive documents and whether this search included both physical and electronic documents. You stated that you believe you have provided TECA with all responsive electronic and physical documents in the possession of each of JSC and Community Development Enterprises ("CDE"). You noted that Northern Reliability has the contract to construct the solar facility, but you do not know what documents, communications and information Northern Reliability has in its files. You also noted that John Meyer put together the economic impact study that was attached as Exhibit 13 to the Petition and may possess responsive documents and information. I advised that third-party discovery may be necessary because significant documents and information are only in the possession of third parties.

III. General Absence of Documentation and Status of JSC's Investigation.

Your November 11, 2021 letter, stated that, "[a]t this time, there are no other documents" and "[t]his statement responds to TECA's concerns expressed in Requests 1, 2, 4, 5, 6, 7, 9, and 11." On the call, I expressed concern that even for a project at an early stage of development, the absence of emails, internal analyses, notes, projected financials, spreadsheets and other documents seems extraordinary, particularly given that the Petition and Mr. Emberling's testimony make

many specific statements about the project, the status of the project, communications with potential funders, the projected operations of JSC and CDE and the benefits the project will create in Jackson. You assured me that no documents are being withheld on the basis of any of JSC's objections. And, going forward, you agreed to tell me if any responsive documents or information identified or created after the date of our call are being withheld on the basis of any objection and to explain why any such documents or information are being withheld.

During our call, we further asked you to explain the status of JSC's investigation and whether it is now complete. You indicated that your reference to further investigation related to the fact that the project is in development and, accordingly, new documents that did not exist at the time of the Petition will be created as the project continues forward. As an example, you stated that an agreement for electrical drawings had been reached recently, but a scope of work had not yet been finalized. You stated that once the scope of work had been finalized, the document would be produced.

I appreciate your clarification regarding JSC's investigation, and I appreciate your acknowledgement that you have the burden to make supplemental responses and productions as new documents and information become available. As discussed, TECA believes there is some logic to exploring a protocol governing the timing of these supplemental productions, and we will endeavor to confer with counsel for the other intervening parties on their views.

IV. Specific Document Requests.

Request Nos. 5, 8, and 9

We discussed Request Nos. 5, 8, and 9 as a group, and I expressed my concern that very few documents were produced in response to these requests. You again assured us that JSC has produced all responsive documents and information and that no documents and information are being withheld. You explained that most of the communications responsive to these requests were conducted orally, so there are few written communications and emails. You again agreed that supplemental productions would be made if and when responsive documents come into existence.

Request No. 6

I identified Exhibit 13 to the Petition as an example of a document that includes specific and detailed statements about the benefits of the solar facility, but for which no supporting documentation was produced. You again stated that all documents in the possession, custody, or control of each of JSC and CDE had been produced. You identified John Meyer as a person having knowledge of this document.

Request No. 10

You stated that TECA has received everything currently in each of JSC's and CDE's possession and that you will supplement JSC's production with additional documents as they are created.

Request No. 11

I noted that JSC's supplemental production included only a few pages of internal analysis and sought an explanation for how a complex project had so few pages of internal documentation. You again confirmed that that TECA has received everything currently in each of JSC's and CDE's possession. You explained that JSC has put the pursuit of financing into a holding pattern and is currently not pushing forward with potential funders due to potential changes to solar incentives in pending legislation. You further explained that if Congress passes the pending legislation, the tax credits for solar projects would change, which may significantly change how the project is financed and may necessitate restructuring by JSC and CDE. I appreciate that explanation.

We also inquired about unredacted copies of NDAs with potential funders and what information has been exchanged to this point. You agreed to send the unredacted copies of the NDAs and indicated that the feasibility study is the only document that has been shared with potential funders.

V. Interrogatories

Your letter of November 11 stated that "[a]t this time there are no other responsive facts" in response to "TECA's concerns expressed in Requests 15, 16, 17, 18, 19, 22, 25, and 35." On the call, you confirmed that JSC is not withholding any responsive facts.

Request No. 13

I asked who authored "How the Co-Op works" (JSC000415) and "Aims of the Co-op" (JSC000416). You stated that you are reasonably certain that Mr. Emberling authored these documents and agreed to tell me if that understanding is incorrect.

Request No. 24

I asked you to state whether all facts responsive to Request No. 24—which asks JSC to explain whether and how it will operate the solar facility on an area coverage basis—had been provided. You stated that this Request is akin to knocking a square peg in a round hole because JSC will not be operating the proposed solar facility on an area coverage basis. You affirmed that all responsive information had been given in JSC's Responses.

Request No. 32

I asked you to confirm that JSC does not have peak demand profiles for members and prospective members. You confirmed that JSC does not have any specific data responsive to this request, and the only profile breakdown of which you are aware is JEA's annual report of top 10 customers. You explained that Mr. Emberling is knowledgeable about the kinds of demand profiles that can benefit from the proposed solar facility, but you reiterated that JSC does not currently have specific data responsive to this request.

Request No. 39

On the call, I asked you to confirm that there are no other facts responsive to this request, which sought facts supporting certain statements made by CDE on its website. You were unsure who made the statements but described them as things your client generally believes to be true. Regarding the statement that “around half of Members’ power will come from renewables,” you stated that this figure may be incorrect because all members have not yet been selected and many factors will go into how much power will come from renewables. You also explained that SunPower solar panels will be used in the project, and an independent lab gives the SunPower panels an outstanding rating. As a result of this laboratory testing, it is Mr. Emberling’s belief these panels are the most productive solar panels on the market.

Please let us know if you believe that the foregoing does not accurately document the parties’ discussions or wish to discuss any of these items further. We look forward to receiving unredacted documents soon, as well as any supplemental productions and updated information that results from your follow-up discussions with your client.

Very truly yours,



W. Brantley Phillips, Jr.

cc: Larry Cash
Mark Smith
Henry Walker
Jeremy Elrod
(all via email)

EXHIBIT 17

W. Brantley Phillips, Jr.
bphillips@bassberry.com
(615) 742-7723

April 12, 2022

VIA E-MAIL

John A. Beam, III
Equitus Law Alliance, PLLC
709 Taylor Street
P.O. Box 280240
Nashville, TN 37228

**Re: In re: Petition of Jackson Sustainability Cooperative to Determine if a
Certificate of Convenience and Necessity Is Needed, Docket No. 21-00061**

Dear John:

I write on behalf of Tennessee Electric Cooperative Association (“TECA”) in the above-referenced matter regarding TECA’s Second Set of Discovery Requests to Jackson Sustainability Cooperative (“Second Requests”), and Jackson Sustainability Cooperative’s (“JSC”) March 10, 2022 objections and responses thereto (“Second Responses”).

I. General Objections

The Second Responses “adopt[]by reference the Instructions and General Objections raised in [JSC’s] initial response to first set written discovery from [TECA]. In answering this second set of interrogatories and request for production of documents, [JSC] is not waiving any prior objection provided in response to the first set of interrogatories and request for production of documents.”

In its September 22, 2021 response to TECA’s first set of discovery requests (the “Initial Response”), JSC asserted numerous broad, unsupported objections, provided incomplete interrogatory answers and made a small document production. The parties had to go through multiple rounds of correspondence and telephone calls regarding the impropriety of these general objections and whether and how JSC applied them. Eventually, you stated that JSC had not withheld any information or documents based on its general objections.

Now, JSC has incorporated its faulty general objections into its Second Responses with no mention of the grounds for these objections and no explanation of what information or documents, if any, have been withheld based on these objections. Accordingly, please confirm that no documents or information were withheld based on the general objections on the basis of anything other than attorney-client privilege. This request relates to each of the numbered requests in the

Second Requests. If any documents or information were withheld, please state that and provide the specific bases for the relevant objections.

II. Specific Document Requests

Second Request No. 43

For resellers other than Memphis Light, Gas and Water, please confirm that JSC has no information or documents in its possession, custody, or control as to the particular reasons that Tennessee Valley Authority's resellers, including Jackson Energy Authority, have refused to sign TVA's long-term contracts.

Second Request No. 45

JSC's response to Second Request No. 45 is unclear. JSC's response states "[r]eflecting his collegial style, Mr. Emberling spoke with *numerous persons* about various sections of the Feasibility Study," yet names only *two* persons. (emphasis added). Please either supplement JSC's response to include the names of individuals to whom Mr. Emberling spoke or confirm that JSC cannot provide the identity of these persons.

Request No. 53

JSC produced an email relating to the National Community Solar Partnership ("NCSP"), Bates stamped JSC-000871, which states in part "[w]e are pleased to let you know that we would like to offer your organization [and your team] free technical assistance based on your application." Any information submitted to or exchanged with NCSP or the Lawrence Berkeley National Laboratory ("LBL") is not privileged. Please produce the application referenced in JSC-000871, as well as any other documents or communications with NCSP or LBL.

TECA reserves all rights and remedies available with respect to the deficiencies in JSC's objections and responses to TECA's discovery requests. If you would like to discuss, please let us know. We look forward to your prompt response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "W. Brantley Phillips, Jr.", is written over a faint, circular blue ink stamp.

W. Brantley Phillips, Jr.

cc: Larry Cash
Mark Smith
Henry Walker
Jeremy Elrod
(all via email)

EXHIBIT 18

Sinback, Matthew

From: John Beam <beam@equituslaw.com>
Sent: Wednesday, February 9, 2022 11:48 AM
To: Phillips, Brant; Henry M. Walker (hwalker@bradley.com); Larry Cash
Cc: Sinback, Matthew; Hogan, Caleb
Subject: Re: Subpoenas

Brant,

I believe I can arrange for Northern Reliability and Synenergy to accept service of process.

Best regards,
John
615.251.3131

From: Phillips, Brant <BPhillips@bassberry.com>
Sent: Wednesday, February 9, 2022 11:40 AM
To: John Beam <beam@equituslaw.com>; Henry M. Walker (hwalker@bradley.com) <HWALKER@bradley.com>; Larry Cash <Larry.Cash@millermartin.com>
Cc: Sinback, Matthew <msinback@bassberry.com>; Hogan, Caleb <caleb.hogan@bassberry.com>
Subject: RE: Subpoenas

Thanks, John.

Greatly appreciate you reaching out on this. Mindful of your concern about delay, we had planned to ask you to reach out to the out-of-state 3d-parties to see if they would be willing to accept service of the subpoenas without requiring us to domesticate them. WE are prepared to go through the domestication process, which is not burdensome, if needed, but it obviously would save time if the out-of-staters simply agreed to accept service. If you are willing to make that inquiry, we would appreciate it. Just let us know.

Many thanks.

Brant Phillips

615-742-7723 phone • 615-268-8049 cell
bphillips@bassberry.com

From: John Beam <beam@equituslaw.com>
Sent: Wednesday, February 9, 2022 11:35 AM
To: Henry M. Walker (hwalker@bradley.com) <HWALKER@bradley.com>; Phillips, Brant <BPhillips@bassberry.com>; Larry Cash <Larry.Cash@millermartin.com>
Subject: Subpoenas

Guys,

Good to speak with you today (look forward to when we work in person again). When you issue discovery on Northern Reliability and Synenergy, I will make sure that Greg Noble and John Meyer have a copy that day.

Best regards,
John Beam
615.251.3131

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

EXHIBIT 19

Sinback, Matthew

From: John Beam <beam@equituslaw.com>
Sent: Wednesday, February 16, 2022 3:55 PM
To: Sinback, Matthew
Cc: Phillips, Brant; Hogan, Caleb
Subject: Re: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

Matt,

I have spoken with the venture members of Community Development Enterprises. They will all agree to accept service of process on the subpoenas. This includes E A Solar, LLC, Hunt Solar, LLC, and Synenergy, Inc.

Northern Reliability and I have traded calls and missed each other. I will try to let you know whether they will accept service by agreement tomorrow or Friday.

Best regards,
John
615.251.3131

From: Sinback, Matthew <msinback@bassberry.com>
Sent: Friday, February 11, 2022 1:09 PM
To: John Beam <beam@equituslaw.com>
Cc: Phillips, Brant <BPhillips@bassberry.com>; Hogan, Caleb <caleb.hogan@bassberry.com>
Subject: FW: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

John, A word version of the second set of discovery requests is attached.

Best regards,
Matt

Matthew Sinback

From: Sinback, Matthew
Sent: Friday, February 11, 2022 1:06 PM
To: 'tpuc.docketroom@tn.gov' <tpuc.docketroom@tn.gov>; 'Ectory.R.Lawless@tn.gov' <Ectory.R.Lawless@tn.gov>
Cc: 'jelrod@tmepa.org' <jelrod@tmepa.org>; 'John Beam' <beam@equituslaw.com>; 'hwalker@bradley.com' <hwalker@bradley.com>; 'dcallis@tnelectric.org' <dcallis@tnelectric.org>; Phillips, Brant <BPhillips@bassberry.com>; 'Bolton, Kimberly Anita' <kabolton@tva.gov>; 'tcobb@jaxenergy.com' <tcobb@jaxenergy.com>; 'Mark Smith' <Mark.Smith@millermartin.com>; 'Larry Cash' <Larry.Cash@millermartin.com>; Hogan, Caleb <caleb.hogan@bassberry.com>
Subject: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

Ms. Lawless,

Attached for filing is Tennessee Electric Cooperative Association's Second Set of Discovery Requests to Jackson Sustainability Cooperative. A hard copy will be sent by U.S. Mail.

Best regards,
Matt

BASS BERRY  SIMS

Matt Sinback

Senior Litigation Attorney

Bass, Berry & Sims PLC

150 Third Avenue South, Suite 2800 • Nashville, TN 37201
(615)-742-7910 phone • 615-742-6293 fax • 615-495-2921 cell
msinback@bassberry.com • www.bassberry.com

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

EXHIBIT 20

Sinback, Matthew

From: John Beam <beam@equituslaw.com>
Sent: Monday, February 28, 2022 12:47 PM
To: Sinback, Matthew
Cc: Phillips, Brant; Hogan, Caleb
Subject: Re: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

Matt,

I sent an email, but have received no reply. I will call them today or tomorrow and report back.

Best regards,
John
615.251.3131

From: Sinback, Matthew <msinback@bassberry.com>
Sent: Monday, February 28, 2022 12:40 PM
To: John Beam <beam@equituslaw.com>
Cc: Phillips, Brant <BPhillips@bassberry.com>; Hogan, Caleb <caleb.hogan@bassberry.com>
Subject: RE: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

John,

Have you heard anything from Northern Reliability?

Many thanks,
Matt

Matthew Sinback

From: John Beam <beam@equituslaw.com>
Sent: Wednesday, February 16, 2022 3:55 PM
To: Sinback, Matthew <msinback@bassberry.com>
Cc: Phillips, Brant <BPhillips@bassberry.com>; Hogan, Caleb <caleb.hogan@bassberry.com>
Subject: Re: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

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I have spoken with the venture members of Community Development Enterprises. They will all agree to accept service of process on the subpoenas. This includes E A Solar, LLC, Hunt Solar, LLC, and Synenergy, Inc.

Northern Reliability and I have traded calls and missed each other. I will try to let you know whether they will accept service by agreement tomorrow or Friday.

Best regards,
John
615.251.3131

From: Sinback, Matthew <msinback@bassberry.com>
Sent: Friday, February 11, 2022 1:09 PM
To: John Beam <beam@equituslaw.com>
Cc: Phillips, Brant <BPhillips@bassberry.com>; Hogan, Caleb <caleb.hogan@bassberry.com>
Subject: FW: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

John, A word version of the second set of discovery requests is attached.

Best regards,
Matt

Matthew Sinback

From: Sinback, Matthew
Sent: Friday, February 11, 2022 1:06 PM
To: 'tpuc.docketroom@tn.gov' <tpuc.docketroom@tn.gov>; 'Ectory.R.Lawless@tn.gov' <Ectory.R.Lawless@tn.gov>
Cc: 'jelrod@tmepa.org' <jelrod@tmepa.org>; 'John Beam' <beam@equituslaw.com>; 'hwalker@bradley.com' <hwalker@bradley.com>; 'dcallis@tnelectric.org' <dcallis@tnelectric.org>; Phillips, Brant <BPhillips@bassberry.com>; 'Bolton, Kimberly Anita' <kabolton@tva.gov>; 'tcobb@jaxenergy.com' <tcobb@jaxenergy.com>; 'Mark Smith' <Mark.Smith@millermartin.com>; 'Larry Cash' <Larry.Cash@millermartin.com>; Hogan, Caleb <caleb.hogan@bassberry.com>
Subject: TPUC Docket 21-00061 - TECA's Second Discovery Requests to Jackson Sustainability Cooperative

Ms. Lawless,

Attached for filing is Tennessee Electric Cooperative Association's Second Set of Discovery Requests to Jackson Sustainability Cooperative. A hard copy will be sent by U.S. Mail.

Best regards,
Matt

BASS BERRY + SIMS

Matt Sinback
Senior Litigation Attorney

Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800 • Nashville, TN 37201
(615)-742-7910 phone • 615-742-6293 fax • 615-495-2921 cell
msinback@bassberry.com • www.bassberry.com

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

EXHIBIT 21
FILED UNDER SEAL

EXHIBIT 22

W. Brantley Phillips, Jr.
bphillips@bassberry.com
(615) 742-7723

April 21, 2022

REFERENCES CONFIDENTIAL DOCUMENTS

VIA E-MAIL

John A. Beam, III
Equitus Law Alliance, PLLC
709 Taylor Street
P.O. Box 280240
Nashville, TN 37228

**Re: In re: Petition of Jackson Sustainability Cooperative to Determine if a
Certificate of Convenience and Necessity Is Needed, Docket No. 21-00061**

Dear John:

On behalf of Tennessee Electric Cooperative Association (“TECA”), we are writing in regard to Jackson Sustainability Cooperative’s (“JSC”) responses to TECA’s discovery requests. As you are aware, TECA has engaged in extensive efforts to notify you of deficiencies in JSC’s discovery responses, to understand how JSC applied its general objections and request-specific objections, and to understand the nature and extent of JSC’s search for responsive documents.

In our October 4, 2021 letter (“First Letter”), we explained, among other things, that JSC’s production does not include any of the types of documents that are commonly produced in litigation, including emails, letters, spreadsheets, notes, and other electronic and paper documents. We asked you to explain what search was performed for responsive documents, which persons’ electronic and paper files were searched, and what categories of documents were not searched.

In our November 2, 2021 letter (“Second Letter”), we explained, among other things, that JSC’s October 26, 2021 supplemental response and supplemental document production failed to address the issues raised in the First Letter. We specifically stated that “[t]he First Deficiency Letter identified numerous shortcomings in the production, including the complete absence of emails, letters, memoranda, voicemail, or other written or electronic communications, as well as the kinds of spreadsheets and other electronic files that are produced in virtually every case involving business entities” and that “[i]n the Supplemental Production, JSC only produced some 588 pages of additional documents, and most of these—some 421 pages—are publicly available third-party documents, like IRS publications and industry white papers. And, the Supplemental Production includes just *three* emails.” Moreover, the Second Letter asked you to clarify whether any information or documents available from Community Development Enterprises - Jackson I (“CDE”) had been withheld. And, throughout that letter, we asked you to confirm that all documents responsive to TECA’s requests had been produced.

On November 23, 2021, we had a lengthy meet-and-confer call to discuss TECA's discovery requests, JSC's responses and objections, and issues raised in our correspondence. We summarized our discussion in a letter to you dated December 15, 2021 ("Third Letter"). During the call, you confirmed that no documents or information had been withheld based on JSC's general objections regarding relevance, breadth, or burden. You also stated that you believed TECA had been given all responsive electronic and physical documents in the possession of each of JSC and CDE. On the call, we expressed concern that even for a project at an early stage of development, the absence of emails, internal analyses, notes, projected financials, spreadsheets and other documents seemed extraordinary, particularly given that the Petition and Mr. Emberling's testimony make many specific statements about the project, the status of the project, communications with potential funders, the projected operations of JSC and CDE and the benefits the project will create in Jackson. You assured us that no documents were being withheld on the basis of any of JSC's objections. And, you repeatedly assured us that TECA had received all responsive documents in the possession, custody, or control of each of JSC and CDE.

Indeed, TECA formally advised the Hearing Officer of your assurances. In the Update on Status of Discovery Issues by Jackson Energy Authority, Tennessee Electric Cooperative Association and Tennessee Municipal Electric Power Association, filed on January 28, 2022, TECA explained: "Although JSC has produced a limited volume of discovery, JEA and TECA take JSC at its word that it has produced all responsive documents and information in the possession, custody and control of JSC and the project developer, [CDE], and has not withheld any non-privileged documents or information based on JSC's general and specific objections. Based on JSC's representations, JEA and TECA do not contemplate filing motions to compel at this time."

Accordingly, TECA's letter dated April 12, 2022 ("Fourth Letter") focused only upon issues regarding JSC's responses to TECA's Second Discovery Requests, which pertained to the Direct Testimony of Dennis Emberling, Part II.

As you know, TECA served a subpoena on Northern Reliability, Inc. in March 2022. Northern Reliability produced an initial batch of documents to TECA on April 14, 2022 ("Initial Northern Reliability Production"), and those documents were electronically filed with the TPUC and made available to you to download on April 18, 2022. As we explained to the Hearing Officer during the Status Conference held on April 18, 2022, a number of documents included in the Initial Northern Reliability Production appear to be documents that were generated by or should be in the possession, custody, or control of JSC or CDE but that were not produced by JSC. Specifically, the following documents appear to be ones that should have been produced by JSC:

- NRI000138-168, [REDACTED] (CONFIDENTIAL) – [REDACTED]
[REDACTED]
- NRI000169, "Handout - New Roosevelt Parkway Solar Microgrid" – JSC did not produce a copy of this document.

REFERENCES
CONFIDENTIAL DOCUMENTS

- NRI000170-184, [REDACTED] (CONFIDENTIAL) [REDACTED]
[REDACTED]
[REDACTED]
- NRI000185-196, [REDACTED] (CONFIDENTIAL) [REDACTED]
[REDACTED]
[REDACTED]
- NRI000197-198, “Request for a Proposal” – JSC did not produce a copy of this RFP for potential customers.
- NRI000199-208, “RFP for Funding v14” – JSC did not produce a copy of this RFP for potential funders, which is dated February 15, 2021, or any prior versions.
- NRI000209-212, [REDACTED] (CONFIDENTIAL) [REDACTED]
[REDACTED]
- NRI000213-221 [REDACTED] (CONFIDENTIAL) [REDACTED]
[REDACTED]
- NRI000267, “iSUN Solar Glare statement for planning committee” – JSC did not produce a copy of this document.
- NRI000280-282, [REDACTED]
(CONFIDENTIAL) [REDACTED]
- NRI000283 [REDACTED]
(CONFIDENTIAL) – JSC did not produce a copy of this document.
- NRI000290-298, “JEA Requirements Discussion” – This document is an email string between Dennis Emberling and certain employees of Jackson Energy Authority (“JEA”) that appears to have been forwarded to a person named Gregg at Northern Reliability. JSC did not produce this email string.
- NRI000424-463, [REDACTED] (CONFIDENTIAL)
[REDACTED]
- NRI000469, “InstantOn Tennessee 20MW-46MWh Award Letter” – JSC did not produce a copy of the email between Dennis Emberling and a representative of Instant On.

The fact that these documents were not produced by JSC, or were produced in an incomplete form, raises significant concern about the quality of JSC’s efforts to gather and produce responsive documents. It also belies JSC’s assurances that it produced all responsive documents in the possession, custody, or control of each of JSC and CDE.

We must, therefore, ask for an explanation as to why these documents were not produced by JSC in response to the discovery requests of TECA and/or JEA. We also renew our request for clarification on what search was performed for responsive documents, which persons' electronic and paper files were searched, and what categories of documents, if any, were not searched (*e.g.*, emails, letters, computer folders, etc.). Barring a compelling explanation, it is apparent that substantial additional efforts need to be made by JSC to gather responsive documents. We request that JSC do so, and we request that you advise us of the time that will be needed for this effort to be completed.

As a final matter, we want to make clear that the sincerity of the statements you made to us during the conversations and correspondence discussed herein is not in doubt. We understand that you, like all lawyers, must depend on the quality of the information you are given by your client. Further examination of that information is plainly necessary, however. We look forward to your response, which we would appreciate having by not later than April 29. Please let us know if that timetable is unworkable for any reason.

Regards,



W. Brantley Phillips, Jr.

cc: Larry Cash
Mark Smith
Henry Walker
Jeremy Elrod
(*all via email*)

EXHIBIT 23

April 29, 2022

W. Brantley Phillips, Jr.
Bass Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201

Re: Application of Jackson Sustainability Cooperative for a Declaratory Determination of
Exemption
Docket No. 21-00061

Dear Mr. Phillips:

Thank you for your letter dated April 22, 2022 on behalf of Tennessee Electric Cooperative Association (“TECA”) that was focused on documents obtained in the subpoena of Northern Reliability, Inc. For clarification, Jackson Sustainability Cooperative will lease its Solar Facility from the solar developer, Community Development Enterprises Jackson I. (Petition, p. 5, ¶3, 23, 31) Community Development Enterprises Jackson I was formed to investigate the feasibility of developing a Solar Facility in the Jackson, Tennessee community. (Petition, p. 11, ¶24) Community Development Enterprises Jackson I sought out Northern Reliability, Inc, as a possible microgrid and battery-storage contractor for designing and constructing part of the Solar Facility. (Petition, p. 12, ¶24, 27) Others were considered but not selected. After construction, Northern Reliability, Inc. would commission and test the microgrid and storage parts of the Solar Facility to ensure safe operation. (Petition, p. 14, ¶29) Though it is very likely Community Development Enterprises Jackson I discussed aspects of the project beyond design, construction, and commissioning the project, Northern Reliability, Inc. is under contract to construct the Solar Facility for Community Development Enterprises Jackson I. (Petition, Conf. Ex. 10) TECA correctly identified that Jackson Sustainability Cooperative [REDACTED] Confidential Exhibit 10. Jackson Sustainability Cooperative [REDACTED] [REDACTED] (attached JSC CONFIDENTIAL 500212 -218); also see NRI000424-463)

Many of the documents for which you requested explanation were draft investigation or development working documents that were never used as part of the process leading to leasing of the Solar Facility to Jackson Sustainability Cooperative. Many of these temporary documents

were discarded as they were superseded by later documents. All documents in possession of Jackson Sustainability Cooperative and Community Development Enterprises Jackson I have been produced. Community Development Enterprises Jackson I did not retain prior versions such as those that were discussed with Northern Reliability, Inc. The documents presented in your letter of April 22, 2022 are discussed below. Naturally, you are invited to call me to discuss any document in more detail.

1. NRI000138-168, [REDACTED] (CONFIDENTIAL). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
2. NRI000169, “Handout - New Roosevelt Parkway Solar Microgrid.” The Handout produced as NRI000169 was not produced for or used by Jackson Sustainability Cooperative. After Lane College withdrew its interest in solar, the “Handout” produced as NRIU00169 was never used and abandoned. Subsequently, Jackson Sustainability Cooperative was formed and filed its Petition with the Public Utility Commission.
3. NRI000170-184, [REDACTED] (CONFIDENTIAL) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
4. NRI000185-196, [REDACTED] (CONFIDENTIAL). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

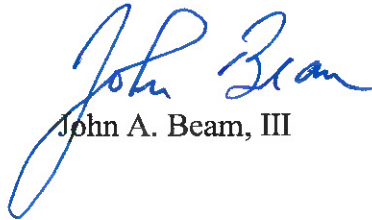
5. NRI000197-198, "Request for a Proposal" This request is an interim draft list of information that was never used and abandoned. Some of the items made their way into other documents that were produced. Community Development Enterprises Jackson I sought Northern Reliability, Inc.'s input on items needed for their portion of the project, including screening potential members.
6. NRI000199-208, "RFP for Funding v14" Community Development Enterprises Jackson I drafted various versions of this document, until it was advised that this was the wrong kind of document to use in approaching prospective lenders. Therefore, it was abandoned and not used.
7. NRI000209-212, [REDACTED] (CONFIDENTIAL) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
8. NRI000213-221, [REDACTED] (CONFIDENTIAL) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
9. NRI000267, "iSUN Solar Glare statement for planning committee." Just as Community Development Enterprises Jackson I interviewed candidates to handle the microgrid and storage portions of the project, over time it interviewed several candidate solar EPC companies to handle the solar portion of the project. iSUN was the last of these candidates considered. It was to be a subcontractor to Northern Reliability, so no legal arrangements were considered or signed between iSUN and Community Development Enterprises Jackson I. One of the documents iSUN provided was this Solar Glare statement. It was never used and not kept. iSUN was rejected as a subcontractor.
10. NRI000280-282, [REDACTED] (CONFIDENTIAL)
[REDACTED]
[REDACTED]
11. NRI000283, [REDACTED]
(CONFIDENTIAL) [REDACTED]

- [REDACTED]
12. NRI000290-298, "JEA Requirements Discussion" This email string between Dennis Emberling and John Nanney and Hameen Harris resulted in several phone conversations and at least one meeting in Jackson with Jackson Energy Authority in which Northern Reliability attended and answered questions. Jackson Sustainability Cooperative will supplement its discovery responses with this email string. (See attached JSC 000872-880)
13. NRI000469, "InstantOn Tennessee 20MW-46MWh Award Letter" After this email was sent, InstantOn sent a draft contract that was unacceptable. InstantOn was dropped as a prospective vendor.

Jackson Sustainability Cooperative understands that its inquiry into document is ongoing and that as the project progresses more documents may become available and will be provided in discovery.

Please call so that we can discuss any further concerns.

Sincerely,



John A. Beam, III

Enclosure
cc: Dennis Emberling

EXHIBIT 24
FILED UNDER SEAL

EXHIBIT 25
FILED UNDER SEAL

EXHIBIT 26
FILED UNDER SEAL

EXHIBIT 27
FILED UNDER SEAL

EXHIBIT 28
FILED UNDER SEAL

EXHIBIT 29
FILED UNDER SEAL

EXHIBIT 30
FILED UNDER SEAL

EXHIBIT 31
FILED UNDER SEAL

EXHIBIT 32
FILED UNDER SEAL

EXHIBIT 33
FILED UNDER SEAL

EXHIBIT 34
FILED UNDER SEAL

EXHIBIT 35

JEA Requirements – Discussion between Denny Emberling and John Nanney JEA

Dear Gregg,

Here's the main email from John Nanney at JEA about their requirements.

Best,

Denny

----- Forwarded Message -----

Subject:RE: FW: information about applying to construct a solar facility

Date:Thu, 11 Jun 2020 15:44:11 +0000

From:John Nanney <jnanney@jaxenergy.com>

To:Dennis Emberling <DE@MTRandC.com>

CC:Joey Coley <JCOLEY@jaxenergy.com>

Denny

Any inquiry about a large commercial project is brought to the attention of my work group. Since it also included "solar" it was specifically brought to my attention.

I can go ahead and answer those questions.

1. With exception of any utility lines located at the street where you may have frontage, we do not have any utility lines on that site with exception of possibly near the eastern boundary. We have a sewer line that follows the ditch east of your site (see attached) but, based on our drawings, it appears it does not run on your property (just depends on where your property line

is in relation to that ditch). Our database does not accurately reflect property lines so that would be confirmed when you have a survey of the property performed.

2. For large commercial developments, during the plan review process we may request a utility easement be included around the perimeter of the site (typically 20-25 feet). That request is based on what is submitted to the Planning Department and their review of the potential development of adjoining properties. Based on the availability of utilities for adjoining undeveloped areas, I do not anticipate we will request that for this site. If we did, the utility easement would fall within any setbacks required by zoning so it would not impact your development of the site.

John Nanney

Vice President, Economic and Industrial Development

Jackson Energy Authority

250 N. Highland

Jackson, TN 38301

(731) 422-7325

(731) 616-0157 (cell)

jnanney@jaxenergy.com

From: Dennis Emberling <DE@MTRandC.com>

Sent: Wednesday, June 10, 2020 5:27 PM

To: John Nanney <jnanney@jaxenergy.com>

Subject: Re: FW: information about applying to construct a solar facility

*** This is an EXTERNAL email . Please exercise caution. DO NOT open attachments, click links from unknown senders or unexpected email, or respond to requests for information from unknown senders. ***

Dear John,

I didn't intend to bother you with this routine inquiry. I just wanted to know whether JEA has any pipelines or anything under the ground on our 28.54 acre parcel just north of the row of houses along Roosevelt Parkway about 1/4 mile west of Dr. F. E. Wright Drive. Also whether JEA has any utility easements to or across the property. I just asked Customer Service, and they said they'd have the appropriate person contact me. It has nothing to do with available electric service.

Could you please ask the appropriate person to call me?

Thanks,

Denny

On 6/10/2020 3:46 PM, John Nanney wrote:

Denny

I was contacted by one of our Customer Service Reps this morning regarding an inquiry you made concerning available electric service on Roosevelt Parkway. JEA has 12.47 kV 3-phase overhead service in that area. If you have any other questions regarding available electric service, you should direct those to Hameen Harris but, as he has previously noted, for a solar system the size you have been discussing, a system impact study will need to be done to provide much more technical information on our part.

John Nanney

Vice President, Economic and Industrial Development

Jackson Energy Authority

250 N. Highland

Jackson, TN 38301

(731) 422-7325

(731) 616-0157 (cell)

jnanney@jaxenergy.com

From: Dennis Emberling <DE@MTRandC.com>

Sent: Thursday, June 4, 2020 5:04 PM

To: Hameen Harris <hharris@jaxenergy.com>

Subject: Re: information about applying to construct a solar facility

*** This is an EXTERNAL email . Please exercise caution. DO NOT open attachments, click links from unknown senders or unexpected email, or respond to requests for information from unknown senders. ***

Dear Hameen,

Thanks very much for all this information. Very helpful.

I'm not clear who the word "customer" (I put it in red) in item 2) below refers to: we, as the owners/operators of the solar facility, or the end user getting electricity both from us and from JEA? The customer is the end user.

And what if we do not interconnect to JEA/TVA at all, but neither do we supply 100% of end-users' power. We just connect to them behind their meters and supply some of their power. In this case, do we still need an interconnection agreement with JEA, system impact study, etc.? Yes, there will still need to be an interconnection agreement because of the possibility of supplying power back onto JEA's grid. If your solar is connected behind the meter, and JEA is connected in front of the meter, we are interconnected. Typically the owner/operator and customer are the same, so we may have to investigate what is the best way the agreement should be written if you connect to the customer side of the meter.

A system impact study of some proportion will still be needed regardless of size because of the possibility of supplying power to the grid, regardless if it is at multiple nodes or just one. Once the scope of the project is finalized, and a single line diagram can be produced, the magnitude of the system impact study can be determined. When you have theoretical numbers like 22MW, that leads JEA to believe an SIS is required.

In 1.b. below, I highlighted in red your phrase about federal mandates. According to FERC, NERC, and SERC, there are no such mandates. Especially if we are not interconnected to the JEA/TVA grid. What mandates are you thinking of? I interpreted your question that you wanted to sell electricity directly to the customer based on kwh and not go through JEA or TVA. I assumed that what rate structure and how that is metered would come under some federal regulation, I could be wrong. JEA has to have our rates approved by TVA, and TVA keep a close eye on our finances to make sure we are not overcharging customers.

But if FERC, NERC, and SERC have confirmed there are no policies to generate, transport, and sell power then I'd say that you have disproved my theory.

In 1.e. below, you refer to TVA's requirements for community solar, but TVA tells me they have no such requirements. And if we are not connected to the JEA/TVA grid, but are solely behind the meter, TVA says they have no requirements for us of any kind. Are they misinforming us? How can we make sure? I look at community solar as a solar farm that feeds directly into JEA's system, and an end use customer is able to purchase power based on the solar farms output, regardless if they are receiving power directly from the solar farm. Using JEA lines and infrastructure to transport solar

production to the end use customer would need to be part of a TVA project.

If you can refer me to any documents that would address these issues, that would be most helpful. If not, could you refer me to anyone or any department at TVA for definitive answers? I have been talking with Antonio Jones there, but have no documentation except their contract for their DPP program, which would be irrelevant if we don't interconnect to their grid.

Many thanks again,

Denny Emberling

On 5/28/2020 6:29 AM, Hameen Harris wrote:

Dennis,

My apologies, I just remembered I did not attach the interconnection agreements. See attached.

Hameen

From: Hameen Harris

Sent: Wednesday, May 27, 2020 9:44 AM

To: 'Dennis Emberling' <DE@MTRandC.com>

Subject: RE: information about applying to construct a solar facility

Dennis,

You can find JEA's answers to your questions below in the body of your previous email. I also wanted to clarify some things that may have not been covered in your questions or my answers below.

1. If your company wants to island a customer, where you will provide 100% of the customers power with no system ties or backup power from JEA. There are no regulations against that.

2. If your company provides behind the meter solar with JEA power as backup, there are no regulations against that. The customer will have to sign a JEA interconnection agreement and the end use customer would be subject to a rate for redundant power. That rate is currently under development.
3. A system impact study is a study that uses existing load data and JEA infrastructure to determine the impact generation such as solar will have on JEA's system. It also determines what upgrades if any are required and provides a cost estimate for such upgrades.
4. Any project that ties directly into a substation must be part of a TVA program.
5. JEA can only respond to JEA requirements for generation projects. TVA, FERC, and the City of Jackson Building Department would have to give you their requirements.

Let me know if you have any further questions.

Thanks,

Hameen Harris

From: Dennis Emberling <DE@MTRandC.com>
Sent: Friday, May 15, 2020 2:57 PM
To: Hameen Harris <hharris@jaxenergy.com>
Subject: information about applying to construct a solar facility

*** This is an EXTERNAL email . Please exercise caution. DO NOT open attachments, click links from unknown senders or unexpected email, or respond to requests for information from unknown senders. ***

Dear Hameen,

I've been talking with John Nanney several times about our new plans to construct a community micro-grid solar facility in East Jackson, and he referred me to you for more information.

The project may be as large as 22 MW of ground-mounted solar panels on our 28.54 acre parcel on Roosevelt Parkway, about 500 feet west of Dr. F. E. Wright Drive.

We intend to supply behind-the-meter electricity to Lane College and a few heavy electricity users near the site, by wiring them directly from the solar facility. They will sublease a portion of the solar facility at a fixed monthly rate and receive a share of its energy production.

In addition, we intend to execute a Power Purchase Agreement with TVA to sell some of the energy

produced back to TVA via its Disbursed Power Program at its avoided cost rates. I have discussed this with Antonio Eugene Jones a number of times. We intend to apply for and be accepted as a Qualified Small Power Production Facility under FERC/PURPA.

John tells me JEA has two substations within a mile or 1.5 miles of our site, and that at least one of them probably has sufficient capacity to accommodate the input from our solar facility, which should be a fraction (a small one, we hope) of its total production.

I don't know whether the above is sufficient information to enable you to answer the questions below, but I'd be happy to provide more and/or discuss the project with you on the phone, if you'd call me at the number below.

Our starting questions are these:

1. Requirements from JEA, TVA, FERC, Jackson Building & Codes Dept., and whomever else will be involved:

a. I have been told that so long as we wire up users behind their meters directly, they can purchase electricity from us without violating any contracts or regulations. Right? There are some large commercial and industrial customers that have contracts with JEA for a minimal monthly demand that could result in penalties if they choose to offset their power bill. Once you have JEA customers that are interested in your program, and they give consent, we can investigate what penalties, if any, would occur based on the amount of solar generation they will have.

b. I have sometimes been told that they cannot pay directly for the electricity, say by the kWh, but must instead sublease a portion of our solar equipment. Right? JEA is regulated by TVA for the sale of electricity. Whether or not this is done by kWh sales or sublease would follow whatever federal mandates that are associated with power distribution and sales.

c. I have less often been told that they probably can't pay a rate per kWh, but must pay a flat fee, say monthly, for their sublease. Right? Unfortunately, I am unaware of who regulates the payment structure for this type project.

d. Do you happen to know (nobody has, so far) whether they must be hard-wired to certain solar panels and receive the energy from those panels alone, or whether they can be hard-wired to the whole solar facility and receive a share of its production according to their sublease agreements? I am unaware of how sublease agreements for solar power are to be installed.

e. Must our purchasers be within 1 mile of the solar facility, lest they not be considered part of that single facility? If you are connecting to a customer behind their meter, you would have to construct electric lines to their facility. For a community solar arrangement, JEA can only use TVA power to distribute on JEA power lines across the system. This project would have to be in partnership with TVA and follow whatever requirements they have for community solar.

2. Process, applications, permits, documents required: what do we need to send to whom and by when? How long do the various steps take to be finalized? I have attached copies of JEA's interconnection agreement, they would need to be filled out along with a single line diagram of the proposed site. All of the electrical designs would need to be stamped and approved by a Professional Engineer in the State of Tennessee. Permitting would be done through the City of Jackson for building and electrical permits. Any work done on City Right of Way would also require the proper permits required by the City of Jackson. The application can be sent to my attention.

30 days for JEA to review plans

90 days for a System impact Study

30 days for JEA to review System Impact Study

180 days (estimate) for TVA System Impact Study (if required)

1. What is the cost to apply for interconnection? The system impact study would be paid by the developer and they are around \$30k. The developer would also be responsible for all construction cost at the point of interconnection

2. Can you give any estimate for the cost to interconnect to whichever of your two nearby substations will be better, again taking capacity into account for our maximum 22 MW? Your single line diagram and the system impact study will dictate the cost to interconnect.

3. If most of that is being used by our nearby commercial users and only say 5 MW ever goes back to the grid, does that change which substation and the costs to interconnect? Once again, the system impact study will confirm the size and location. But typically the size of the interconnect is proportionate to the cost.

EXHIBIT 36

November 9, 2021

Larry Cash, Esq.
Miller & Martin PLLC
832 Georgia Avenue, Suite 1200
Chattanooga, TN 37402

Re: Application of Jackson Sustainability Cooperative for a Declaratory Determination of
Exemption
Docket No. 21-00061

Dear Larry:

Jackson Energy Authority appears to not understand that the application submitted by Jackson Sustainability Cooperative is for a declaratory ruling from the Commission that its proposed solar facility is not subject to regulation under T.C.A. 65-4-101(6)(A)(v) because it is a non-profit cooperative that is, therefore, deemed not a public utility subject to regulation under the statutory exception found in T.C.A. §65-25-123. The November 5, 2021 raises many speculative questions that appear to envision a project that is not consistent with the project disclosed in the Petition. For example, the November 5th letter sent on behalf of JEA states that “it is surprising that a project of the size ... [of the solar facility]... does not include more documents evidencing that the project has been fully vetted and evaluated for the purposes it seeks to accomplish.” In reality, there is a signed design-build contract in place with Northern Reliability, an experienced vendor, to build the modest project outlined in the Application for the purposes it seeks to accomplish. Northern Reliability has constructed many similar solar facilities in the United States. It has the technical ability to allow members to accept supplemental energy behind the JEA meter. It is disingenuous to say the project is “lacking in documentation” when one of the premier design build solar firms is fully engaged under a signed contract. Moreover, in construction projects accomplishing the regulatory approvals prior to the final engineering in the normal order of business. Many of JEA’s questions ask for technical documents as if the project is shovel ready. Jackson Sustainability Cooperative has accomplished some key regulatory issues in other areas, but it is a gross misrepresentation to act as if this project is fully ready to build with fully formed project plans. For safety and clarity, Jackson Sustainability Cooperative seeks clearance from regulatory oversight from the Commission before engaging final engineering and final equipment financing. Equally

important, upcoming legislation makes tax equity financing more attractive.

The Supplemental Responses are accurate and complete in all material respects. They clearly show the scope of the project under the cooperative business structure. A structure which the Petition contends that is exempt from regulation. In addition to the structure of the organization, the members will connect with the supplemental power behind their meters where JEA has no interest in regulating.

Jackson Sustainability Cooperative previously provided counsel with unredacted confidential documents. Though my client is concerned that you may have misplaced its previously provided unredacted confidential documents, I will send another copy of the unredacted documents to you. This is a good example of where a simple phone call requesting unredacted confidential documents under the protective order would be the proper solution under the rules. Please protect these documents to the fullest extent provided under the current Confidentiality Order which restricts the use to counsel.

This balance of this letter will address the JEA allegations.

In Request 1 you were provided with three emails to board members. The board is small. Board members speak by phone or in person on an informal basis. There will be more documents available each time the Board of Directors meet.

Request 3 asks for current members of JSC and Request 5 asks for potential members. There are currently three members. Their names are fully disclosed. Because the list of potential members is small, Jackson Sustainability Cooperative prefers to network and obtain personal introductions to discuss the project. The PowerPoint is used to explain the solar project and its benefits. The sample introductory letter was written to explain the project. The Applicant has no record of actually using this sample introductory letter to send to any prospect.

Jackson Sustainability Cooperative will gladly send you all pages of the signed Conditional Member Agreements. Once again, a simple phone call could have resolved this issue.

Request 6 isolates "4 to 8 suitable, heavy users of electricity" from the larger list of 38 prospects. Request 6 asks for documents related to these users. There are no documents related to these users. Request 6 also provide copies of all communications with these 4 to 8 suitable users. Because Jackson Sustainability Cooperative networks to obtain a personal introduction, there are no written communications with these suitable manufacturers. These names were disclosed as confidential. Please counsel your client with a warning not to contact these users with disparaging comments on the legality of Jackson Sustainability Cooperative. JEA has no business trying to regulate what these potential members do behind their meters, especially where there is no back flow onto the public grid owned by JEA.

In Request 7 there are no other or additional documents evidencing the strong support that came from the two, well attended, public meetings, and the in person private meetings with the named local leaders. The unused press release shows Mr. John Dodd with David Hunt in a photograph during a private meeting.

Request 8 seeks documents “relating to the formation, capitalization, and/or operation” of Jackson Sustainability Cooperative. There are currently no operations. Therefore, there are no documents related to operations. All formation documents were provided. The solar facility is capitalized through an equipment lease. The signed lease was provided to JEA.

Unredacted Non-Disclosure Agreements are provided to counsel for JEA. Your letter of November 5, 2021 incorrectly states that JEA is entitled to these names. Counsel’s disclosure of these names to JEA will be a violation of the protective order that is in place in this matter. The Non-Disclosure Agreements produced were signed prior to delivery of the feasibility study that was provided to JEA in discovery.

Request 9 asks for engineering and technical information on the “design, location, construction or configuration of the solar facility or the interconnection of the solar facility” with the facilities of JEA. The members of Jackson Sustainability Cooperative will obtain supplemental solar electricity behind the JEA meter. There is no “interconnection” with the JEA grid. The member will connect with Jackson Sustainability Cooperative ahead of its breaker box or after its breaker box, depending on it uses of supplemental solar energy.

Similar to Request 9, Request 10 asks the same questions about “the interconnection of the storage facility with the facilities of JEA.” There is no distinction made between energy from the solar facility and energy from the storage facility. Both are connected behind the JEA meter.

Request 11 asks for engineering on the “underground distribution system.” Distribution system is perhaps not the best descriptive word because some members will have a direct connection to the solar facility. The contract with Northern Reliability references “trenching of wire of a nominal 1.25 miles.” The contract with Northern Reliability provides that this trenching of wire will be set out in a separate addendum after the parties know the initial scope of work. The addendum will be available at a future date after the construction of the solar facility begins.

In Request 15, JEA asks for information on its own power outages. JEA admits outages in the two news broadcasts produced in discovery. JEA has access to records on outages and the length of outages. Jackson Sustainability Cooperative does not have access to the detail on outages that is in the possession of JEA. The November 5, 2021 letter fails to note the quality and stability of service issues experienced in Jackson. Hopefully, JEA is taking steps to provide better quality electric to its manufacturers who run expensive equipment which has a shorter life when run with voltage variances and other quality issues. JEA has access to its customers and can obtain this information on the quality of the electric energy it provides directly from its

customers.

Request 16 and Request 17 seeks identification of sites that do not currently exist. Jackson Sustainability Cooperative has an approved site plan in Jackson. It is currently not considering other sites. Because of numerous opportunities outside of Tennessee, Mr. Emberling individually has not had time to evaluate additional sites in Tennessee.

Requests 18 and 19 ask about payment for supplemental electric energy. The solar facility and the storage portion of the facility are not distinguished. The Full Member Agreement which was attached as Exhibit 4 to the Petition (Bates Nos. 000632-00085) provides all the payment terms and conditions for the members. Your November 5, 2021 letter correctly observes that the payment structure for supplemental energy used behind the JEA meter is not based on a rate schedule. Your November 5, 2021 makes assumptions that Jackson Sustainability Cooperative charges based on a rate schedule. That assumption is false. JEA has a rate schedule for consumption, but it also charges for providing capacity. The payment in the Full Member Agreement encompasses consumption and capacity as well as other factors to determine price.

There are no other documents responsive to Request 20 other than the fully executed joint venture agreement that forms the solar developer. Likewise, Request 21 seeks studies and plans related to “formation, capitalization, and/or operation” of Community Development Enterprises - Jackson I. The joint venture agreement is the document that responds to this request. Community Development Enterprises will lease equipment as is sole operation. The signed lease was provided. Community Development Enterprises is currently seeking tax equity funders for the purchase and construction of the equipment forming the facility. The November 5, 2021 letter assumes that additional documents are required for this project. Once an acceptable tax equity funder commits to the project, this request will be supplemented. Current proposed legislation makes waiting until the new legislation passes the best choice for tax equity funders.

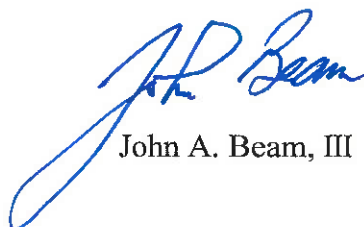
In Request 22 JEA seeks contracts and other understandings that are between three parties: CDE and JSC and/or one or more directors, officers, employees, agents, representatives or contractors of JSC. Neither Jackson Sustainability Cooperative nor its solar developer, Community Development Enterprises, has an employment agreement or contractor agreement with individuals. At this time there are no other documents responsive to this request in addition to the documents produced.

In Request 23 JEA seeks contracts and other understandings that are between three parties: CDE and JSC and/or one or more directors, officers, employees, agents, representatives or contractors of CDE. Neither Jackson Sustainability Cooperative nor its solar developer, Community Development Enterprises, has an employment agreement or contractor agreement with individuals. At this time there are no other documents responsive to this request in addition to the documents produced.

With respect to Request 24, JEA in its October 4, 2021 letter asked specifically about Mr. Emberling and Mr. Shimon. David Shimon operates Solarimon, Inc. His business is a supplier of solar products. Solarimon, Inc. does not participate in the development or construction of solar projects.

Jackson Sustainability Cooperative is willing to work with JEA to know all evidence before the hearing. A simple phone call would have resolved many of the concerns in JEA's November 5th letter. However, it is becoming increasingly apparent that JEA is more interested in transforming the fact gathering tool of discovery into a tactical weapon where discovery is used as a device to cause delay and increase costs. I left a voice mail for you yesterday. Hopefully, we can work together so that you realize that you have all material facts about the declaratory request made by Jackson Sustainability Cooperative.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Beam, III". The signature is stylized with a large, sweeping initial "J" and "A".

John A. Beam, III

Enclosure
cc: Dennis Emberling

EXHIBIT 37
FILED UNDER SEAL