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May 20, 2022

**VIA ELECTRONIC FILING AND VIA U.S. MAIL**

Chairman Kenneth C. Hill  
Attn: Ectory Lawless, Esq.  
Docket & Records Manager  
Tennessee Public Utility Commission  
Andrew Jackson State Office Building  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243-0001

Electronically Filed in TPUC Docket  
Room on May 20, 2022 at 3:51 p.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 Ms. Lawless,

On behalf of Jackson Energy Authority (“JEA”), please accept for filing the following:

1. Motion to Compel; and
2. Memorandum of Law in Support of Jackson Energy Authority’s Motion to Compel.

We will also submit the Motion and Memorandum by hard copy. Thank you for your assistance and if further information is needed, please let us know.

Sincerely,

Larry L. Cash

LLC/dac

Enclosures

cc: All Counsel of Record

21160686v1  
15509-0006

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ATLANTA  
CHARLOTTE  
CHATTANOOGA  
NASHVILLE

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

<b>IN RE:</b>	)	
	)	
<b>PETITION OF JACKSON</b>	)	
<b>SUSTAINABILITY COOPERATIVE</b>	)	
<b>FOR DETERMINATION OF</b>	)	Docket No. 21-00061
<b>EXEMPTION OR, ALTERNATIVELY,</b>	)	
<b>CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY.</b>	)	

**MOTION TO COMPEL**

Comes Jackson Energy Authority (“JEA”), pursuant to Tennessee Rule of Civil Procedure 37.01 and T.P.U.C. Rule 1220-01-02-.11, and files this Motion to Compel, asking that the Petitioner Jackson Sustainability Cooperative (“JSC”) be compelled to comply with discovery obligations and produce all documents responsive to JEA’s First and Second Discovery Requests. A Memorandum of Law in support of this Motion is attached.

Respectfully submitted,

**MILLER & MARTIN PLLC**

By:  \_\_\_\_\_

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*Attorneys for: Jackson Energy Authority*

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2022, a copy of the foregoing document was served on the following persons via email, hand delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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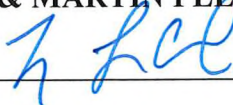
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A handwritten signature in blue ink, appearing to read "H LCC", is written over a horizontal line.

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

<b>IN RE:</b>	)	
	)	
<b>PETITION OF JACKSON</b>	)	
<b>SUSTAINABILITY COOPERATIVE</b>	)	
<b>FOR DETERMINATION OF</b>	)	Docket No. 21-00061
<b>EXEMPTION OR, ALTERNATIVELY,</b>	)	
<b>CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY.</b>	)	

**MEMORANDUM OF LAW IN SUPPORT OF JACKSON ENERGY AUTHORITY'S  
MOTION TO COMPEL**

Jackson Energy Authority ("JEA") files herewith its Motion to Compel and Memorandum in Support of the Motion, asking that the Petitioner, Jackson Sustainability Cooperative ("JSC") be compelled to comply with its discovery obligations and produce all documents responsive to JEA's First Set of Discovery Requests dated September 8, 2021 and JEA's Second Set of Discovery Requests dated February 11, 2022. JEA is concerned that, in light of plethora of documents recently produced by Northern Reliability, JSC has either failed to conduct a diligent search for records or has destroyed documents which were responsive to the JEA requests.

**I. JEA DISCOVERY REQUESTS**

On September 8, 2021, JEA served on JSC its First Discovery Requests. On September 22, 2021, JSC served Responses to the JEA discovery requests. With its September 22, 2021 Response, JSC also filed direct testimony, Part II by Dennis Emberling. Upon reading the JSC responses, JEA and its counsels believed the Responses were deficient. On September 29, 2021 counsels for JEA and counsel for JSC had a lengthy telephone conversation to review what JEA believed were deficiencies in the JSC Responses. On October 4, 2021, JEA counsel sent JSC counsel a letter, summarizing the issues discussed in the September 29, 2021 call. On October

26, 2021, JSC provided its Supplement Responses. On November 5, 2022, JEA counsel again sent JSC counsel a letter identifying additional Responses which were deficient. On or about January 5, 2022 JSC again updated its Responses.

Subsequently, on February 11, 2022, JEA submitted its Second Discovery Requests to JSC. JSC responded on March 10, 2022 and, following the pattern in response to JEA's First Discovery Requests, JEA noted that the discovery responses were deficient. By letter dated April 22, 2022, counsel for JEA wrote JSC counsel advising of what JEA believed were deficient Responses. Subsequently, on April 29, 2022, JSC filed its Supplemental Responses.

## **II. ARGUMENT**

What we now know, based on the Northern Reliability production, is that Dennis Emberling, the Principal of JSC, sent or received more than 170 emails between December 2020 and March 2022. When the scope and volume of those emails is compared to the minimal number of emails produced by JSC, one must wonder how, or why, this discrepancy occurred. Whatever the reason, it is clear that JSC has not produced a large number of documents which are responsive to the JEA discovery requests. The Memorandum of Law filed by TECA clearly connects the dots with respect to documents not produced, and perhaps destroyed, by JSC. Those discovery failures apply to discovery sent by JEA as well. JEA joins in the TECA request and asks that the relief sought by TECA, that is:

1. JSC 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 JEA's discovery requests.
2. To the extent JSC maintains its assertion that documents have been deleted or otherwise discarded, JSC should be compelled to answer the following three interrogatories:
  - 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 JEA's reasonable attorney's fees and expenses associated with 1) this motion to compel, and 2) JEA's expenses in having expend additional time, money and effort to continually seek Supplemental Responses to its Discovery Requests.

Respectfully submitted,

**MILLER & MARTIN PLLC**

By: 

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