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June 1, 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, Floor
Nashville, TN 37243-0001

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

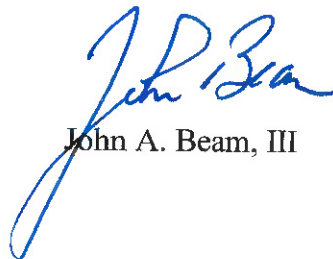
Dear Chairman Hill:

Enclosed please find for filing the following documents:

1. Response to Motion to Compel filed by JEA; and
2. Response to Motion to Compel filed by TECA.

The originals are coming to you in the mail. Please let me know if you have any questions or need additional information.

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)	

**RESPONSE BY JACKSON SUSTAINABILITY COOPERATIVE TO THE MOTION
TO COMPEL FILED BY JACKSON ENERGY AUTHORITY**

COMES NOW, Jackson Sustainability Cooperative ("Jackson Sustainability Cooperative" or "Applicant"), and responds to the Motion to Compel filed by Jackson Energy Authority ("JEA"). JEA is seeking unidentified materials which, because they are not identified are not necessary or relevant to a full consideration of the Petition filed by Jackson Sustainability Cooperative. The Tennessee Utility Commission (the "Commission") agreed to hear the Petition of Jackson Sustainability Cooperative requesting that the Commission declare its legal rights to operate a solar facility with battery-energy storage and shared interconnection so that its members can acquire clean, renewable, stable, supplemental electricity.

JEA has not produced the slightest evidence for its claims that Petitioner is withholding documents. JEA made no effort to connect the relevance of its requests to the unending list of information it demands. JEA has not identified specific documents the Commission might need to understand the operation of the Cooperative or the design and construction of the Solar Facility.

The Petitioner, with the assistance of its solar developer, Community Development Enterprises - Jackson I, has spent nearly nine months cooperating fully with the Commission's

desire to resolve discovery informally. The Petitioner and its vendor have responded honestly and fully to each and every request made by JEA, despite many burdensome and duplicative questions, requests for material more conveniently obtainable from JEA itself, or the unreasonable burden and expense they place on Petitioner - a local nonprofit organization.

PROCEDURAL BACKGROUND

On July 21, 2021, the Tennessee Public Utility Commission gave notice pursuant to T.C.A. § 4-5-224 that it would hear the Petition filed by Jackson Sustainability Cooperative. The Petition requests an order from the Commission that it is not a public utility and exempt from Commission regulation because it is a non-profit electric cooperative which is covered by an express exemption under T.C.A. § 65-4-101(6)(A)(v). (Doc. No. 2100061l) This notice was in response to the May 24, 2021 petition filed by Jackson Sustainability Cooperative seeking a declaratory ruling that it is a nonprofit cooperative entity subject to the Rural Electric and Community Services Cooperative Act found in title 65, chapter 25. (Petition, p. 1)

On June 25, 2021, Jackson Energy Authority (“JEA”) filed an intervening petition. (Doc. No. 2100061e) Without citing any legal authority, JEA declared that Jackson Sustainability Cooperative “seeks to establish a competitive electric utility in Jackson.” (Id., p.2) It further concludes that Jackson Sustainability Cooperative proposes to provide retail services a G&T cooperative is prohibited from providing. (Id., p. 4, citing T.C.A. § 48-69-118) Next, the intervening petition stated that the named board of directors are ineligible to serve. (Id., citing T.C.A. § 48-69-108(b)) Jackson Sustainability Cooperative filed a response to these conclusory allegations stating that it is not a “public utility” because it is a non-profit cooperative under state law. (citing T.C.A. §65-25-123)(Cooperatives ... shall be deemed to be not-for-profit

cooperatives and nonutilities, ... exempt in all respects from the jurisdiction and control of the Tennessee Public Utility Commission.”) On October 8, 2021, the Southern Alliance for Clean Energy (“SACE”) filed a statement in support of the Petition. (Doc. No. 2160001ad) SACE emphasized that in addition to clean energy and environmental benefits, the solar facility proposed by Jackson Sustainability Cooperative will provide a much needed economic stimulus to the residents of Jackson, Tennessee. (Id.)

STATEMENT OF FACTS

Jackson Sustainability Cooperative seeks authority to supply supplemental solar energy to a small group of members in East Jackson, in an area where clean solar energy is presently uneconomical. (Testimony D. Emberling, JSC - 0003760) The nonprofit Board of Directors consists of mostly local citizens who desire to see clean solar energy in their community. (JSC 000024) The Board of Directors will transition over to a board elected by the members once the solar facility is operational. (JSC 000039)

After the Petition was filed, on October 26, 2021, Jackson Sustainability Cooperative entered into a lease agreement with a purchase option with Community Development Enterprises - Jackson I for its solar facility. (JSC Confidential 500143) Community Development Enterprises - Jackson I is a joint venture which includes several local citizens. (JSC Confidential 500088) A minority of the Board, Mr. Emberling and Mr. Shimon, are the only persons who serve on the Board of Directors for Jackson Sustainability Cooperative and who are officers of the managing entity (E A Solar, LLC) for the lessor of the equipment.

Northern Reliability, Inc. entered into a signed contract with Community Development Enterprises - Jackson I to design and build the controller hardware and software, install the

system, and oversee, test, and commission the connections to the members of Jackson Sustainability Cooperative. (Testimony D. Emberling, JSC - 000377; Contract, JSC Confidential 50001 - 500033) The solar facility will be installed on 34.2 acres of land in Jackson, Tennessee. (Testimony D. Emberling, JSC - 000376) In summarizing this design, the solar facility consists of solar panels mounted on fixed mounts (no movable trackers), inverters, batteries, system controller, and all associated electric equipment. (Id.) Underground wiring will connect the solar facility to a small number of commercial users desiring supplemental solar energy. (Id.) Approximately 33,347 SunPower A-450-COM solar panels rated for approximately 16 MW of power will supply approximately 25 GWh/yr. of supplemental electricity through SMA Highpower string inverters, with Kore Power lithium battery storage of approximately 46 Mwh. (Id.)

Jackson Sustainability Cooperative is not-for-profit Tennessee membership organization that is organized and operates as a cooperative. (Charter, JSC 000023; Bylaws, JSC 000028) There are currently three conditional members. (JSC Confidential 500162) Once the facility nears operations, conditional members with the required energy profile will participate in sharing energy through the cooperative by becoming full members. (JSC 000063) Each member-user will have a "smart electric meter." (Testimony D. Emberling, JSC - 000376) Supplemental energy will flow from the Solar Facility to these smart meters leading to the electrical circuits of the member-users. (Id.) The controller technology intelligently allocates supplemental power to and from the batteries and to members to optimize the delivery of supplemental electric energy. (Id.) The controller systems allow members to consume supplemental solar energy at the very time their demand for energy requires it. (Testimony of D. Emberling, JSC - 000377)

The smart meters will be isolated from the existing Jackson Electric Authority (“JEA”) meters. (Testimony of D. Emberling, JSC - 000377) JEA will remain as the primary source of electrical energy. (Id.) No electrical power will backflow onto the JEA/TVA grid. (Id.) When a JEA/TVA grid outage occurs, the solar supplemental energy will become the primary source of electricity for short periods of time. (Id.)

The Solar Facility is exempt from federal regulation because it does not connect to the public utility grid. (Id.) Though some states have statutes that regulate submetering behind the municipal provider’s meter, Tennessee has no restrictions on submetering.

Community Development Enterprises - Jackson I will lease the Solar Facility equipment to Jackson Sustainability Cooperative. After completing a feasibility study (JSC Confidential 500057), Community Development Enterprises - Jackson I has already accomplished or initiated many tasks to establish a Solar Facility. Mr. Emberling testified to signing a ground lease for the facility, obtaining preliminary approval for the site plan from Jackson Planning Commission (JSC 000355), signed a contract with Northern Reliability to design, engineer, and construct the project (JSC Confidential 500001), signed an agreement for electrical design (JSC Confidential 500180), held neighborhood meetings to explain the project, and began discussions with possible tax-equity investors. (Testimony D. Emberling Part II, JSC - 000435-436)

On June 25, 2021, Jackson Energy Authority filed an intervening petition which also contends that the Petitioner is not authorized to provide its proposed services under the Generation and Transmission Act. (Doc. 2100061e, p.4)(officially known as “Electric G&T Cooperative Act”) In its motion to compel, JEA does no more than “assume” that discovery responses were not complete. JEA fails to connect any request for information to its disputed

theory that the proposed facility violates the territorial restrictions provided to municipalities under the Generation and Transmission Act. Instead, JEA criticizes the lack of emails produced in discovery under a subpoena issued by another party to Northern Reliability. (JEA Mot. Compel, p. 2) JEA did not subpoena any documents.

Jackson Sustainability Cooperative has produced responsive documents or discusses why documents are not available.

STATEMENT OF LAW

A. Discovery of relevant facts.

Tennessee's discovery rules reflect a broad policy favoring discovery of all **relevant**, non-privileged information. (Lee Medical, Inc. v. Beecher, 312 SW 3d 515, 525 (Tenn. 2010), citing Harrison v. Greeneville Ready-Mix, Inc., 220 Tenn. 293, 302, 417 S.W.2d 48, 52 (Tenn. 1967); Wright v. United Servs. Auto. Ass'n, 789 S.W.2d 911, 915 (Tenn. App.1990)) This policy encourages deciding disputes on facts rather than by legal maneuvering. (Id., citing White v. Vanderbilt Univ., 21 S.W.3d at 223) This policy embodies the general concept found in Tenn. R. Evid. 501 on making evidence available to the trier of fact to facilitate the ascertainment of the truth. (Id., citing Neil P. Cohen et al., Tennessee Law of Evidence § 5.01[2], at 5-12 (5th ed. 2005))

When compelling drafts of a signed contract and communications concerning a signed contract, the party seeking the drafts of the contracts and negotiation correspondence fails to show they are relevant to the subject matter where the signed final agreement is available. Boyd v. Comdata Network, Inc., 88 S.W. 3d 203, 224 (Tenn. App. 2002) Trial courts should deny

motions to compel the discovery of documents leading to a signed contract when the moving party fails to demonstrate that the requested documents satisfy Tenn. R. Civ. P. 26.02(1)'s standards for relevancy to the issues. Boyd v. Comdata Network, Inc., 88 SW 3d 203, 224 (Tenn. App. 2002), citing American Tel. & Tel. Co. v. Cardwell, 798 S.W.2d 761, 762 (Tenn.1990) (reversing an order compelling the discovery of irrelevant documents); Price v. Mercury Supply Co., 682 S.W.2d 924, 936 (Tenn. App.1984) (affirming an order denying a motion to compel discovery of irrelevant documents). In Boyd, the documents were irrelevant because the rights and obligations of the parties to a written contract are governed by the terms of the contract. Id. at 223, citing Hillsboro Plaza Enters. v. Moon, 860 S.W.2d 45, 47 (Tenn. App.1993) The rights and obligations of the parties do not include the parties' statements during their negotiations or drafts of the final contract. Id., citing Faithful v. Gardner, 799 S.W.2d 232, 235 (Tenn.Ct.App.1990) (holding that the existence of a written contract gives rise to the presumption that the parties have reduced their prior agreements to writing); GRW Enters., Inc. v. Davis, 797 S.W.2d 606, 610 n. 2 (Tenn.Ct.App.1990) (stating that negotiations and agreements are deemed to be integrated into a written contract when the parties intend the contract to be a complete expression of their agreement)

B. Authority to Limit Discovery.

The trial court may limit discovery sought in a particular case if the court determines, that "the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive," or that "the discovery is unduly burdensome or expensive, 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 SW 3d 788, 792-793 (Tenn. App. 1999)

C. Burden of Proof in Compelling Discovery.

The Intervening Party has the burden of proof. Specifically, the party compelling discovery under Tenn. R. Civ. P. 37.01 has the burden of establishing that it is entitled to discover the documents or other materials withheld by its adversary. (Lee Medical, Inc. v. Beecher, 312 SW 3d 515, 525 (Tenn. 2010) To carry its burden, the party seeking discovery must establish (1) that the material being sought is relevant to the subject matter involved in the pending action, (2) that the material being sought is not otherwise privileged, and (3) that the material being sought consists of documents or other tangible things. Id. (internal cites omitted) Obviously, the above criteria are only applied to documents that still exist.

ARGUMENT

I. JEA FAILED TO CARRY ITS BURDEN OF PROOF TO SHOW THE EMAILS SOUGHT IN DISCOVERY ARE RELEVANT TO THE SUBJECT MATTER OF THE PETITION OR ITS OWN INTERVENTION.

Jackson Sustainability Cooperative made prompt and proper responses to JEA's requests for information. Specifically, on September 8, 2021, JEA served discovery requests. (2100061w) On September 22, 2021, Jackson Sustainability Cooperative provided responses to all questions. (2100061z) On January 5, 2022, Jackson Sustainability Cooperative provided supplemental response. (2100061ak)

On February 11, 2022, JEA issued a second set of questions. (2100061as) On March 10, 2022, Jackson Sustainability Cooperative filed timely responses.(2100061au) More importantly, over 1,100 pages of documents were produced by Jackson Sustainability Cooperative in its

responses, including preliminary approval of a site plan by the Jackson Planning Commission, and signed agreements with the essential vendors required to build and operate the proposed solar facility.

There were few questions that related to JEA's intervening petition. There were few questions related to how this nonprofit cooperative shares supplemental energy among a few members behind the JEA meter and off the JEA/TVA grid. JEA has not named any specific subject matter over which it seeks additional information to effectively respond to the Petition. JEA provided a list of items that were not related to the contract with Northern Reliability or the documents subpoenaed by TECA. JEA has not contested the validity of any document already produced. Instead, JEA filed a motion to compel alleging generally that there were more emails than those produced by Jackson Sustainability Cooperative by its solar equipment lessor in a subpoena issued by TECA, another intervening party.

JEA has the burden of proof as the party compelling discovery. To carry its burden of proof to compel documents, JEA must establish that the material being sought consists of documents and that the material being sought is relevant to the subject matter as stated in the Petition or in the intervening petition it filed. (see Lee Medical, Inc. v. Beecher, 312 SW 3d 515, 525 (Tenn. 2010))

Jackson Sustainability Cooperative entered into a signed lease agreement for its solar facility, with an option to purchase, from Community Development Enterprises - Jackson I. (Lease, JSC Confidential 500143) Though not a party to these proceedings, Community Development Enterprises - Jackson I as lessor produced its signed joint venture agreement. (JV Agmt., JSC Confidential 500088) The joint venture agreement reads as a business plan for the

development of a solar facility in Jackson, Tennessee, moving from ground lease to completed solar facility. (JSC Confidential 5000057)

E A Solar, LLC is the manager of Community Development Enterprises - Jackson I. (JV Agmt., JSC Confidential 5000088; Aff. D. Emberling, ¶ 3, attached) Mr. Emberling is the CEO of E A Solar, LLC. (Id.) E A Solar, LLC has a document retention policy . The document retention policy provides in part that the e-mail software is configured so that all e-mails are “permanently deleted after 30 days so that e-mail accounts are not overpopulated with unusable communications.” (Aff. D. Emberling, ¶ 4, attached) The document retention policy excludes signed documents from the monthly review of all text/formatted files. (Id.)

Without identifying any specific interrogatory or specific request for production of documents, JEA simply demands more on the legal structure of Jackson Sustainability Cooperative. (JEA Memo., p.3) However, JEA has already received the signed Charter (JSC 000023), the signed Bylaws (JSC 000028), and signed Joint Venture Agreement for Community Development Enterprises - Jackson I (JSC Confidential 500088), and First Amendment (JSC Confidential 500104). JEA demands more on the membership requirements. However, JEA already has the signed Bylaws (JSC 000028), and signed Member Agreements (JSC Confidential 500162).

Interestingly, JEA demand to know “JSC status as a public utility.” (JEA Memo, p. 2) Jackson Sustainability Cooperative is a “nonutility” by statute. JEA already knows about the statutory exception in the definition Section of Title 65, which reads as follows:

Cooperatives ... transacting business in this state pursuant to this chapter **shall be deemed to be not-for-profit cooperatives and nonutilities**, 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; see more detailed explanation, Doc. 2100061j)

There are no current operations. This is a pre-construction development project with preliminary approved of its site plan. Before spending the money to build the solar facility, Jackson Sustainability Cooperative wants to make sure that providing supplemental clean energy to its small group of members behind their meter box with JEA and off the grid does not draw them into the regulatory authority of the Commission.

In Lee Medical, Inc. v. Beecher, 312 SW 3d 515 (Tenn. 2010) HCA owned hospitals outsourced certain vascular services to Lee Medical. While HCA considered internally providing these vascular services, Lee Medical submitted a revised contract and new proposal. A third party evaluated the services performed by Lee Medical which led to HCA deciding to terminate its contracts with Lee Medical. Lee Medical filed suit and commenced an aggressive discovery campaign, including issuing subpoenas duces tecum, lengthy interrogatories, and multiple depositions from parties and non-parties. Lee Medical believed that the decision to stop outsourcing vascular services was the result of defamatory remarks about the quality of its services. Under the pretext of learning the basis for the corporate decision, Lee Medical went after the third party evaluation. The defendants and their parties provided complete copies of records, redacted copies of confidential records, and identified certain “peer review” privileged documents. After viewing documents in chambers, the trial court ruled that except for three documents, the privileged items were not subject to production. The Tennessee Supreme Court noted that even though Lee Medical asserted that the third party evaluator acted with malice, the decision to stop outsourcing was an HCA decision not the decision of a third party. (Id. at 38)

In this case, Jackson Sustainability Cooperative has produced available documents. It has made objections to the production of several documents to challenge admissibility at a future hearing, but has not withheld documents. There are no disputed documents for the Hearing Officer to review in chambers. JEA argues that because Northern Reliability possessed emails, that Jackson Sustainability Cooperative should have produced more emails.

Jackson Sustainability Cooperative has delivered signed agreements for most of the key components in its proposed solar facility for the delivery of clean solar energy to a few members behind the meters of members without contacting or connecting to the JEA/TEA grid. Its equipment lessor has a reasonable document retention policy. More emails are not available. The next argument shows why they are not relevant where there are signed contracts in place.

II. AFTER TECA SUBPOENAED BUSINESS DOCUMENTS FROM NORTHERN RELIABILITY, JEA FAILS TO IDENTIFY ANY DOCUMENT THAT IS RELEVANT WHERE THE PETITIONER HAS PRODUCED THE SIGNED CONTRACT WITH NORTHERN RELIABILITY.

Jackson Sustainability Cooperative produced in discovery the signed contract for the design and construction of the solar facility with Northern Reliability. (JSC Confidential 50001 - 500033) The 33 page signed contract details the numerous responsibilities of Northern Reliability, Inc. in the design and construction of the solar facility. Page 4 of the contract provides:

NRIs responsibility within the project shall be that of the **technical lead and prime contractor** including the solar array, the electrical storage component, the microgrid controller and subservient customer microgrid panels, and the medium voltage distribution network.

(JSC Confidential 50004)(emphasis added)

The scope of work is comprehensive. Northern Reliability has committed in writing to perform all technical aspects in the design and installation of the equipment that Jackson Sustainability Cooperative will lease under a signed lease agreement with Community Development Enterprises - Jackson I. (Lease, JSC Confidential 500143)

In responding to the TECA subpoena, Northern Reliability had hundreds of documents that it used to cost and enter into a contract for \$22,359,188.00, including emails used in negotiating and fulfilling the contract. (Contract, JSC Confidential 500031) The numerous documents produced evidence Northern Reliability taking its role as “technical lead and prime contractor” very seriously. The controlling document is the signed contract. All other documents are irrelevant in these proceedings because the 33 page contract details the responsibilities of the parties in completing the solar facility. Completing the solar facility is not the purpose underlying the Petition before the Commission. The purpose of the Petition is focused on the activity of sharing supplemental solar energy through a nonprofit cooperative. Relevance must be tied to the purpose of the Petition or to the purpose of the intervening petition.

In its argument, JEA fails to identify any vague or ambiguous section in the contract in which other documents or email negotiations would clarify. JEA simply filed this motion to compel on the heels of TECA, choosing to weaponize the very excellent due diligence of Northern Reliability as a pretext for making false allegations that Jackson Sustainability Cooperative is not requiring the lessor of its future solar equipment, Community Development Enterprises - Jackson I, to produce its emails. As a general rule, Community Development Enterprises - Jackson I does not save emails for longer than 30 days. There are no emails to produce. JEA has read the emails subpoenaed from Northern Reliability and provides no specific request for information based on

the content of specific emails. Even if Jackson Sustainability Cooperative produced the identical documents as received from Northern Reliability, the duplication does not benefit any party.

Other courts have addressed this type of discovery abuse and denied the motion to compel. Specifically, when compelling drafts of a signed contract and communications leading up to a signed contract, the party seeking the drafts of the contracts and negotiation correspondence failed to show they are relevant to the subject matter where the signed final agreement is available.

Boyd v. Comdata Network, Inc., 88 S.W. 3d 203, 224 (Tenn. App. 2002) In Boyd, Mr. Dudley Boyd owned a business that financed trucking companies. He used a line of credit from a company that specialized in transportation. Unable to repay, Mr. Boyd and the lender entered into three written agreements to restructure the business, to market services, and a note and debt reduction agreement with personal guaranty. The lender entered into an agreement to sell its assets to Comdata. Even though there was a payment default, Mr. Boyd filed suit to rescind his personal guaranty based on changed conditions. In discovery Mr. Boyd asked for **all documents and communications** regarding the three agreements. Comdata objected to producing drafts of the signed agreements. The court of appeals held that trial courts should deny motions to compel the discovery of documents leading to a signed contract when the moving party fails to demonstrate that the requested documents satisfy Tenn. R. Civ. P. 26.02(1)'s standards for relevancy to the issues. Boyd v. Comdata Network, Inc., 88 SW 3d 203, 224 (Tenn. App. 2002), citing American Tel. & Tel. Co. v. Cardwell, 798 S.W.2d 761, 762 (Tenn.1990) (reversing an order compelling the discovery of irrelevant documents); Price v. Mercury Supply Co., 682 S.W.2d 924, 936 (Tenn. App.1984) (affirming an order denying a motion to compel discovery of irrelevant documents). In Boyd, the documents were irrelevant because the rights and obligations

of the parties to a written contract are governed by the terms of the contract. Id. at 223, citing Hillsboro Plaza Enters. v. Moon, 860 S.W.2d 45, 47 (Tenn. App.1993) The rights and obligations of the parties do not include the parties' statements during their negotiations or drafts of the final contract. Id., citing Faithful v. Gardner, 799 S.W.2d 232, 235 (Tenn.Ct.App.1990) (holding that the existence of a written contract gives rise to the presumption that the parties have reduced their prior agreements to writing); GRW Enters., Inc. v. Davis, 797 S.W.2d 606, 610 n. 2 (Tenn.Ct.App.1990) (stating that negotiations and agreements are deemed to be integrated into a written contract when the parties intend the contract to be a complete expression of their agreement)

In this case, the negotiations and agreements between the lessor of equipment, Community Development Enterprises - Jackson I and the technical contractor, Northern Reliability, are deemed to be integrated into the final written contracts. The final written contract is the complete expression of their agreement. JEA fails to identify vague or ambiguous language in the contract to construct with Northern Reliability that might arguably require extrinsic evidence of negotiations. JEA fails to identify vague or ambiguous language in the lease agreement with Jackson Sustainability Cooperative that might arguably require extrinsic evidence of negotiations. JEA asks for a list of documents without reference which interrogatory or request for production they seek to supplement. Northern Reliability is the technical lead contractor. Rather than requesting documents to explain the technical features of the equipment, JEA asks for "membership requirements," "financing of the solar facility," and communications with iSUN. (JEA Memo., p. 3)

The Hearing Officer should deny the motion to compel. Just as in the Boyd case, the

requesting party failed to connect specific areas of the signed written contracts necessary to satisfy Tenn. R. Civ. P. 26.02(1)'s standards for relevancy to connect its request for emails that are not in the possession of Jackson Sustainability Cooperative.

The subpoenaed documents demonstrate that Northern Reliability exercised due diligence in selecting its subcontractors and in pricing the solar facility before entering into a binding signed contract with Community Development Enterprises - Jackson I to design and build the controller hardware and software, install the system, and oversee, test, and commission the connections to the members of Jackson Sustainability Cooperative. (Testimony D. Emberling, JSC - 000377; Contract, JSC Confidential 50001 - 500033) Mr. Emberling sought out and identified Northern Reliability, Inc. as the most experienced developer of controller hardware and software in the nation. (Id.) JEA asks no questions about this extensive experience coming to Jackson, Tennessee.

JEA asks for communications iSUN, a one man California engineering, procurement and construction business who contracts out all of his services. (JEA Memo. P. 3) Counsel for Jackson Sustainability Cooperative responded about iSUN in his letter to TECA of April 29, 2022 as follows:

iSUN was the last of these [Engineering, Procurement and Construction] 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 [NRI000267]. It was never used and not kept. iSUN was rejected as a subcontractor.

Rather than accept this clear informal explanation of iSUN, JEA wants emails with a rejected vendor. Discussions with iSUN were short lived.

The last part of the technical requirements to complement Northern Reliability was met on

November 19, 2021, when the lessor of the equipment entered into a signed contract with PV Complete for the electrical layout design of the solar array. (JSC Confidential 500180 to 500185) This completes the technical needs for the design of the solar facility. Together, PV Complete and Northern Reliability meet all technical design needs for the project. Once the Commission makes a declaratory ruling, the lessor will hire a local contractor and electricians to build the facility. The equipment will be leased to Jackson Sustainability Cooperative who will share clean supplemental solar energy among its members. The documents subpoenaed from Northern Reliability concern the design and construction of the facility, not how Jackson Sustainability Cooperative acts as a nonprofit for sharing supplemental clean energy behind the JEA meter. Jackson Sustainability Cooperative respectfully requests an order denying the motion to compel.

Conclusion

E A Solar, LLC has a document retention policy. (Aff. D. Emberling, attached) It does not collect emails unless they are critical to a project. After over 1100 pages of documents were produced, JEA insists there are missing emails because Northern Reliability had emails that were not produced. However, where executed contracts establish the responsibilities of the parties, JEA must connect its request for documents to specific sections in the written agreements where there is a possible need to understand the construction of an ambiguous or vague paragraph or section. JEA simply makes accusations that it does not have all emails, when in reality it has the executed signed agreements detailing what is expected of the parties in the design and construction of the facility. Without connecting its requests to specific concerns in the written agreements, JEA fails to carry its burden of proof that documents exist, and that they are needed to clarify the responsibilities of parties to a written agreement. More importantly, JEA failed to

connect the documents its cites from Northern Reliability to the specific purposes of the Petition.

Jackson Sustainability Cooperative respectfully requests an order denying JEA's motion to compel.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, and by email to the following this 1st day of June, 2022.

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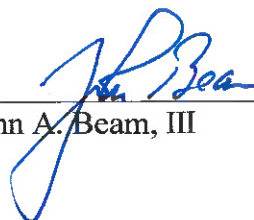
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John A. Beam, III

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AFFIDAVIT OF DENNIS EMBERLING

I, the undersigned, being duly sworn, do hereby state to the best of my knowledge and belief as follows:

1. I am over eighteen (18) years of age and competent to testify and I have personal knowledge of the facts set forth herein.
2. I am a resident of Davidson County, Tennessee.
3. I am the CEO of E A Solar, LLC, the manager of Community Development Enterprises - Jackson I. Neither E A Solar, LLC nor Community Development Enterprises - Jackson I are a party in this action seeking declaratory relief.
4. E A Solar, LLC has a document retention policy. Excerpts from that policy are as follows:

ELECTRONIC DOCUMENTS

Electronic Mail: Not all email needs to be retained.

- All e-mail—from internal or external sources—is to be permanently deleted after 30 days so that e-mail accounts are not overpopulated with unusable communications. Our e-mail client software is configured to do this automatically.

- Staff will strive to keep only that e-mail found in an e-mail account that is essential to business issues.
- Staff will not store or transfer business e-mail to non-work-related computers except as necessary or appropriate for business purposes.
- Staff will take care not to send confidential/proprietary E A Solar information to outside sources.
- Any e-mail staff deems vital to the performance of their job should be copied to the staff member's hard drive.

Electronic Documents: Retention also depends on the subject matter.

- PDF documents – The length of time that a PDF file should be retained should be based upon the content of the file and the category under the various sections of this policy. The maximum period that a PDF file evidencing a signed document should be retained is 6 years unless the project is not complete.
 - Text/formatted files - Staff will conduct monthly reviews of all text/formatted files (e.g., WordPerfect, Microsoft Word documents) and will delete all those they consider unnecessary or outdated, excluding signed documents.
5. The Intervening Parties are seeking many items that do not exist at this stage in the development of the solar facility.
 6. Requesting more documents without naming a specific document or category appears to me targeted to delay the solar facility and to harass.

FURTHER AFFIANT SAITH NOT.

Dennis Emberling
Dennis Emberling

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

Sworn to and subscribed before me this 1 day of ^{June}~~May~~, 2022.

Tiffany Young
Notary Public

My Commission Expires: 1/29/2023

