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March 1, 2023

Via Electronic Filing and U.S. Mail

Hon. Herbert H. Hilliard, Chairman
c/o Ectory Lawless, Docket Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
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Electronically Filed in TPUC Docket
Room on March 1, 2023 at 1:24 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 Hilliard:

On behalf of the Tennessee Electric Cooperative Association ("TECA"), please find enclosed four copies of TECA's Response to Petitioner's Request for the Notice Sent to the Office of the Attorney General, which Response was filed electronically on March 1, 2023.

Thank you for your attention in this matter. Should you have any questions concerning the enclosed, please do not hesitate to contact us.

Sincerely,



W. Brantley Phillips, Jr.
Chair – Litigation & Dispute Resolution

WBP:
Enclosures
cc: All counsel of record (via email)

35247504.1

**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)	

**RESPONSE TO PETITIONER’S REQUEST FOR
THE NOTICE SENT TO THE OFFICE OF THE ATTORNEY GENERAL**

Intervenor Tennessee Electric Cooperative Association (“TECA”) files this Response to Petitioner’s Request for the Notice Sent to the Office of the Attorney General, which Petitioner Jackson Sustainability Cooperative (“JSC”) filed on February 27, 2023 (“JSC’s Request”).

JSC’s Request relates to the Hearing Officer’s order on TECA’s Motion to Compel, which was granted in part and denied in part. The Hearing Officer’s order imposes sanctions on JSC for documented evidence of its blatant misconduct in discovery in this docket. JSC filed an interlocutory appeal of the Hearing Officer’s order with the Commission, and that order was unanimously affirmed by members of the Commission following oral argument at its meeting held on February 27, 2023.

According to JSC’s Request, “[t]he Commission is clearly relying on the validity of its rules and regulations adopting the Rules of Civil Procedure to impose sanctions....” JSC’s Request goes on to assert that JSC “has clearly challenged the validity of such a rule to the extent that it allows the Commission to directly impose sanctions against [JSC], rather than apply to a court for

an order of compliance.” JSC’s Request further asserts the Commission was obligated in some way under Commission Rule 1220-01-02-.10 to give notice to the Attorney General of JSC’s opposition to the Hearing Officer’s order on the Motion to Compel, and it implies the Commission has acted improperly if it has failed to give such notice under these circumstances.

While TECA will leave the resolution of JSC’s Request to the sound discretion of the Commission, TECA nonetheless feels compelled to submit this Response to note just how illegitimate JSC’s Request truly is. Simply stated, despite the claim it has “clearly challenged the validity” of a Commission rule (JSC’s Request fails to identify which rule it has “clearly challenged”), the truth is that JSC has done no such thing – something that is conclusively established by even a cursory review of JSC’s motion for interlocutory appeal filed on December 12, 2022. In that motion, JSC recounts the ways it believes the Hearing Officer’s order exceeded the Commission’s legal authority. But, the motion says nothing about the validity of the Commission’s statutes or rules. Nor does it make clear that JSC is calling the validity of any such statute or rule into question. The same is true for all of JSC’s briefing in support of its motion for interlocutory appeal. Needless to say, there is a world of difference in challenging the validity of a statute or rule and challenging the application of that same statute or rule. In this instance, it is clear JSC has only ever done the latter, and any claim otherwise should be rejected as nothing more than a disingenuous *post hoc* rationalization that does not give rise to any obligation under Commission Rule 1220-01-02-.10.

TECA submits that this conclusion would apply with equal force even if JSC intended to challenge the validity of a Commission statute or rule as a part of its interlocutory appeal but somehow failed to state that intention clearly in its papers. Consistent with the principles observed by Tennessee appellate courts, the Commission is “under no obligation to search for, or derive,

issues that are not specifically stated.” *Crews v. Cahhal*, 2005 WL 2860235 at *1 (Tenn. Ct. App. Nov. 1, 2005). The Commission may disregard as waived any argument that JSC has not clearly presented. *Id.*

For the foregoing reasons, TECA submits that JSC’s Request is lacking in factual basis or legal merit and, thus, is simply another attempt by JSC to re-write the history of this docket. JSC’s Request may, therefore, be disregarded by the Commission without further action.

DATED this 1st day of March, 2023.

Respectfully submitted,

/s/ W. Brantley Phillips, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of March, 2023, 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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