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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:

On behalf of John Beam and Equitus Law Alliance, PLLC enclosed please find four copies of the Response to the intervenors Motions for Sanctions with supporting Affidavit. Let me know if you need any additional information.

Sincerely,

John Beam

Enclosure

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

IN RE: THE APPLICATION OF JACKSON SUSTAINABILITY COOPERATIVE FOR A DETERMINATION OF EXEMPTION UNDER T.C.A. § 65-4-101(6)(A)(v)	))))	**DOCKET NO. 21-00061**

RESPONSE BY JOHN BEAM AND EQUITUS LAW ALLIANCE, PLLC TO THE MOTIONS FOR SANCTIONS FILED BY THE TENNESSEE ELECTRIC COOPERATIVE ASSOCIATION AND BY JACKSON ENERGY AUTHORITY

COMES NOW, John Beam and Equitus Law Alliance, PLLC, non-parties, and responds to the Motion for Sanctions filed by Tennessee Electric Cooperative Association ("TECA") and filed by Jackson Energy Authority ("JEA"). John Beam and Equitus Law Alliance, PLLC adopt by reference all discovery objections, response to the TECA motion to compel (Doc. No. 2100061bt), response to the JEA motion to compel (Doc. No. 2100061bs) and the memorandum filed before the full Commission (Doc. No. 2100061cf).

TECA and JEA seek to impose personal financial sanctions on counsel for Jackson Sustainability Cooperative without any proof of wrongdoing by counsel. The record contains no evidence that counsel instructed the Petitioner or the solar developer not to produce documents that TECA subpoenaed from a non-party hired to construct the solar facility[1]. Since TECA's nonparty subpoena directly impacted trade secrets, counsel had a duty to communicate with the subpoenaed non-party to protect their mutual trade secrets. Attorney Shap Smith, counsel for

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[1] The contract with Northern Relaibility to construct the facility was produced in discovery. (JSC Confidential 50001 - 500033)

Northern Relaibility, negotiated a new protective order which assists in reducing the risk of trade secret piracy.

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. (Doc. No. 21000611) The Petition requests an order from the Commission that when energy from a proposed solar facility is available to share with qualifying members behind their existing municipal power meters, that sharing of solar energy through a non-profit cooperative is not a public utility and is exempt from Commission regulation because it is covered by an express statutory exemption found at T.C.A. § 65-4-101(6)(A)(v). (Doc. No. 21000611) The Petition asked for a ruling that its proposed future solar facility was not a facility that is "affected by and dedicated to public use." This issue was presented in the context of shared supplemental solar electric power provided behind the municipal meter. The premises of the Petition was based on an opinion of the Attorney General's Office as follows:

> The ultimate question is whether the utility conducts its business in a way that makes it a public concern. Put in a more concrete way, the question is whether the utility holds itself out (expressly or implicitly) as engaged in supplying its product or services to the public in general or to a limited portion of the public, as opposed to holding itself out as serving or **prepared to serve only particular individuals**.

2017 Tenn. AG, Opinion No. 17-25 (p. 8, 2100061j)(emphasis added)

On June 25, 2021, Tennessee Electric Cooperative Association ("TECA") filed an intervening petition asserting that the Petitioner's proposed activity of facilitating the sharing of solar energy behind the municipal electric meter was illegal under the Generation and Transmission Act. (Doc. 2160001f). On October 8, 2021, the Southern Alliance for Clean

Energy ("SACE") filed a statement in support of the Petition citing environmental benefits as well as providing an economic stimulus to the residents of Jackson, Tennessee. (Doc. No. 2160001ad)

On September 8, 2021, TECA submitted 39 written questions and requests for documents to Jackson Sustainability Cooperative. On September 22, 2021, Jackson Sustainability Cooperative responded to all 39 written interrogatories and requests for productions submitted by TECA. (Doc. 2160001aa) On January 5, 2022, Jackson Sustainability Cooperative supplemented its responses to all 39 interrogatories submitted by TECA. (Doc. 2160001ak) The objection for overly broad requests was explained in the response, stating that discovery needed to relate to the issue at hand, "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) For example, discovery related to the technical construction of a solar facility is not related to a Petition focused on how the select group of members will share the energy generated.

On February 11, 2022, TECA issued a second set of written questions bringing the total to 53. (Doc. 2160001ar) On March 10, 2022, Jackson Sustainability Cooperative responded to the second set of written interrogatories and requests for production of documents submitted by TECA. (Doc. 2160001au)

On February 11, 2022, TECA issued a subpoena to Northern Reliability. The contract with Northern Reliability, Inc. to construct a solar facility was previously filed with Petition and produced in discovery. (Contract, JSC Confidential 50001 - 500033) Concerned that TECA was attempting to mine solar trade secrets from Northern Reliability, John Beam emailed Greg Noble at Northern Reliability about the subpoena that was issued. (Aff. J. Beam, ¶ 9) Immediately, Mr.

Beam called Greg Noble and left a voice mail message asking Mr. Noble to have the company legal counsel call after the subpoena was served to discuss protecting trade secrets from potential piracy. (Id.) As instructed in the voice mail message, Mr. Noble did not respond to the email and did not return the phone call. Three or four days later, attorney Shap Smith, counsel for Northern Reliability, called Mr. Beam. (Id.) They discussed weaknesses in the existing protective order and revisions necessary to help protect the technical trade secrets of Northern Reliability from potential piracy of ideas and know how by the intervening parties. (Id.) On April 7, 2022, the protective order was amended without objection, and Northern Reliability fully responded to the subpoena.

On April 21, 2022, TECA sent a letter requesting an explanation as to why certain documents produced by Northern Reliability were not produced by Jackson Sustainability Cooperative. On April 29, 2022, Mr. Beam, on behalf of Jackson Sustainability Cooperative sent a letter explaining the specific documents listed. (Aff. J. Beam, ¶ 11, Ex. A, letter) On page 2 of the letter Mr. Beam clearly states that all documents in his possession were produced. The letter goes on to point out that many of the specific documents referenced were related to Lane College. (Id., at ¶ 12) Before the inception of Jackson Sustainability Cooperative, the solar developer had discussions with Lane College to use solar energy to power the security lights and street lights used on campus at night. (Id.) The Lane College proposal was abandoned. (Id.) Jackson Sustainability Cooperative was not part of the Lane College proposal.(Id.)

On May 20, 2022, TECA and JEA filed their first (and only) motions to compel discovery because the subpoena issued to Northern Reliability, a third party contractor to the solar developer, produced email communications with the solar developer not produced in discovery by

Jackson Sustainability Cooperative. (Doc. No. 2100061bp; 2100061bq) Even through JEA did not issues subpoenas, it filed a companion motion to compel. Mr. Beam was never asked to respond to any specific email. (Aff. J. Beam, ¶ 11) The first motion to compel also requested sanctions.

On June 2, 2022, Jackson Sustainability Cooperative filed a response to the motion to compel. On June 8, 2022 argument on the motion was heard. On November 14, 2022, an order was issued granting in part the motion to compel and the motion for sanctions. (Doc. No. 2100061bz) As a basis for sanctions, order stated "[t]he emails may contain vital information that goes to the heart of the fact determination to be made regarding JSC's status as a not-for-profit electric cooperative exempt from Commission regulation." (Id. at 12) Mr. Beam was never asked to respond to any specific email produced by Northern Reliability.

The order awarding sanctions was appealed to the full Commission. (Doc. No. 2160001ct) The full Commission affirmed the motion to compel and award of sanctions. (Doc. No. 2160001cv)

STATEMENT OF LAW

A. Motion for Order Compelling Discovery of Electronically Stored Information.

If a deponent ... fails to answer an interrogatory submitted under Rule 33, ... the discovering party may move for an order compelling an answer.... (Tenn. R. Civ. P. 37.01(2)) If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent 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(4))

Emails and other electronically stored information have a special rule. With respect to electronically stored information subject to a motion to compel, the judge must first determine whether the material sought is subject to production, and if subject to production, the judge is required to weigh the benefits to the requesting party against the burden and expense of the discovery for the responding party. (Tenn. R. Civ. P. 37.06(1)) When weighing these burdens the judge considers the ease of accessing the requested information, the total cost of production compared to the amount in controversy, the materiality of the information to the requesting party, the availability of the information from other sources, the complexity of the case and the importance of the issues addressed, and the need to protect privilege, proprietary, or confidential information and trade secrets. (Id.) A judge may also consider whether the responding party has deleted, discarded or erased electronic information **after litigation was commenced** or after the responding party was aware that litigation was probable. (Id., emphasis added) More importantly, except in exceptional circumstances, the judge **may not impose sanctions under these rules** on a party for failing to provide electronically stored information lost as a result of the routine, good faith, operation of an electronic information system. Tenn. R. Civ. P. 37.06(2) Moreover, the usual sanction for failure to supplement or amend discovery responses under Rule 37.03(1) will be exclusion of evidence at trial. (Advisory Commission Comment to Rule 37.06)

In Tatham v. Bridgestone Americas Holding, 473 S.W.3d 734 (Tenn. 2015), the Tennessee Supreme Court held that "the analysis for the possible imposition of any sanction for the spoliation of evidence should be based upon a consideration of the totality of the circumstances." (Id. at 746) The Court identified four relevant, non-exclusive factors to consider

prior to the award of sanctions, as follows:

(1) the culpability of the spoliating party in causing the destruction of the evidence, including evidence of intentional misconduct or fraudulent intent;

(2) the degree of prejudice suffered by the non-spoliating party as a result of the absence of the evidence;

(3) whether, at the time the evidence was destroyed, the spoliating party knew or should have known that the evidence was relevant to pending or reasonably foreseeable litigation; and

(4) the least severe sanction available to remedy any prejudice caused to the non-spoliating party.

(Id. at 746)

The first and third Tatham factors pertain to the spoliating party's intent and knowledge. The second and fourth factors focus on the non-spoliating party's injury. When showing prejudice to the non-spoliating party, the court may establish a presumption that intentionally spoliated material would have been unfavorable to the cause of the spoliator, a presumption that stands in for evidence of prejudice and shifts the burden of proof. (Tatham, 473 S.W.3d at 741, citing Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995)) The burden of proof shifts to the proponent of the evidence to prove that the other side was not prejudiced by the alteration or destruction of the evidence. (Id., citing Nationwide Mut. Fire Ins. Co. v. Ford Motor Co., 174 F.3d 801, 804 (6th Cir. 1999)

The Tennessee Supreme Court made it clear that contentions theorized by attorneys who surmise that the requested items are related, is not evidence because "argument of counsel is not evidence." Tatham at 741, citing Martin v. Norfolk S. Ry. Co., 271 S.W.3d 76, 86 fn. 3 (Tenn. 2008); see also Groves v. Ernst-W. Corp., No. M2017-01779-COA-R3-CV, 2018 WL 3600015, at *6 (Tenn. Ct. App. July 26,2018) (holding that statements made by counsel during the course

of a hearing, trial, or argument are not evidence.)

B. Document Retention Policies.

In a patent infringement case, the court established an evidentiary adverse inference against plaintiff and defendant where Samsung continued its 14 day email auto delete policy and Apple failed to issue a litigation hold on emails after litigation was reasonably foreseeable. Apple Inc. v. Samsung Electronics Co., Ltd., 888 F. Supp.2d 976 (ND Calif. 2012) In stating the legal standard the court noted:

> `Document retention policies,' which are created in part to keep certain information from getting into the hands of others, ... are common in business," and are lawful "under ordinary circumstances." Arthur Andersen LLP v. United States, 544 U.S. 696, 704, 125 S.Ct. 2129, 161 L.Ed.2d 1008 (2005); see Micron Tech., Inc. v. Rambus Inc., 645 F.3d 1311, 1322 (Fed.Cir.2011) (recognizing that "most document retention policies are adopted with benign business purposes, reflecting the fact that `litigation is an ever-present possibility in American life'") (quoting Nat'l Union Fire Ins. v. Murray Sheet Metal Co., 967 F.2d 980, 984 (4th Cir.1992)). Spoliation, however, "refers to the destruction or material alteration of evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir.2001) (citing West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999)). Evidence of spoliation may be grounds for sanctions, which may include an adverse inference instruction.

The Apple, Inc. Court approved the use of the Second Circuit's three-part test, which provides that a party seeking an adverse inference instruction based on an email auto delete policy (or other destruction of evidence) must establish that:

> (1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the records were destroyed `with a culpable state of mind'; and (3) that the evidence was `relevant' to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense." Residential Funding Corp. v. DeGeorge Fin. Corp., 306 F.3d 99, 107 (2d Cir.2002) (quoting Byrnie v. Town of Cromwell, 243 F.3d 93, 107-12 (2d Cir.2001)); see, e.g., Io Group, 2011 WL 4974337, at *8; Vieste, LLC v. Hill Redwood Dev., 2011 WL 2198257, at *2 (N.D.Cal. June 6, 2011); Cyntegra, Inc. v. Idexx Labs., Inc., No. CV 06-4170 PSG, 2007 WL 5193736, at *2 (C.D.Cal. Sept. 21, 2007); World Courier v. Barone, No. C 06-3072 TEH,

2007 WL 1119196, at *1 (N.D.Cal. Apr. 16, 2007); UMG Recordings, Inc. v. Hummer Winblad Venture Partners (In re Napster, Inc. Copyright Litig.), 462 F.Supp.2d 1060, 1078 (N.D.Cal.2006); AmeriPride Servs., Inc. v. Valley Indus. Serv., Inc., No. CIV S-00-113, 2006 WL 2308442, at *5 n. 6 (E.D.Cal. Aug. 9, 2006); Hamilton v. Signature Flight Support Corp., No. C 05-0490 CW(MEJ), 2005 WL 3481423, at *3 (N.D.Cal. Dec. 20, 2005); Housing Rights Ctr. v. Sterling, No. CV 03-859 DSF, 2005 WL 3320739, at *7 (C.D.Cal. Mar. 2, 2005).

Apple, Inc. at 989, 990

In determining whether litigation is reasonably foreseeable, though not dispositive, the parties' preexisting business relationship is one factor among the totality of circumstances. (Id. at 991, citing Micron Tech., 645 F.3d at 1325)

C. Due Process Limitations on Sanctions.

The U.S. Supreme Court, in Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178 (2017), set limits on a judge's inherent authority to award sanctions in discovery disputes. The Court held that when imposing sanctions, a judge must determine which fees and costs would not have been borne "but for" the misconduct and can assess only "the fees the innocent party incurred solely because" of that misconduct. (Id. at 1182) The policy behind the rule is to put a check on lawyers who seek to unfairly game the sanction system. In Goodyear, the plaintiff wanted to recover all their fees after the alleged discovery violation in which Goodyear failed to turn over a responsive document. The trial judge did not draw any causal connection between the failure to produce this document and fees incurred. In a unanimous 8-0 decision, the Supreme Court vacated the sanction. The Supreme Court explained that fee-shifting sanctions are constitutionally limited to reimbursing the aggrieved parties for costs they would not have incurred "but for" the alleged malfeasance. They are solely compensatory sanctions. If an award extends beyond the costs and fees caused by the alleged malfeasance, it crosses the boundary and

becomes a punitive sanction. If the court seeks to impose punitive sanctions, the defendant is owed heightened due process protections such as those afforded in criminal proceedings, including a higher standard of proof.

ARGUMENT

I. MR. BEAM FULLY COOPERATED IN THE DISCOVERY PROCESS.

With Mr. Beam's assistance, Jackson Sustainability Cooperative made prompt responses to TECA and JEA requests for information. Specifically, on September 8, 2021, TECA served discovery requests that included 39 questions. (2100061x) On September 22, 2021, Jackson Sustainability Cooperative provided responses to all 39 questions. (2100061aa) On October 26, 2021, Jackson Sustainability Cooperative provided supplemental responses to TECA which were filed with the Commission on January 5, 2022. (2100061ak) 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 responses. (2100061ak)

On February 11, 2022, TEAC and JEA issued a second set of questions related to Part II of Mr. Emberling's direct testimony. (2100061ar; 2100061as)) On March 10, 2022, Jackson Sustainability Cooperative filed responses.(2100061av; 2100061au)

Jackson Sustainability Cooperative provided timely responses to the requests. More importantly, over 1100 pages of documents were produced by Jackson Sustainability Cooperative in its responses, including a site plan approved by the Jackson Planning Commission, signed agreements with the essential vendors required to build and operate the proposed solar facility, and signed agreements with members.

On February 11, 2022, TECA issued a subpoena to Northern Reliability. The contract with Northern Reliability, Inc. to construct a solar facility was previously produced in discovery. (Contract, JSC Confidential 50001 - 500033) Concerned that TECA was attempting to mine solar trade secrets from Northern Reliability, John Beam emailed Greg Noble at Northern Reliability about the subpoena that was issued. (Aff. J. Beam, ¶ 9) Immediately, Mr. Beam called Greg Noble and left a voice mail message asking Mr. Noble to have legal counsel call after the subpoena was served to discuss protecting trade secrets from potential piracy. (Id.) As instructed in the voice mail message, Mr. Noble did not respond to the email and did not return the phone call. Three or four days later, attorney Shap Smith, counsel for Northern Reliability, called Mr. Beam. They discussed weaknesses in the protective order, and revisions necessary to help protect the technical trade secrets of Northern Reliability from potential piracy of ideas. (Id.) On April 7, 2022, the protective order was amended without objection, and Northern Reliability fully responded to the subpoena.

On April 21, 2022, TECA set a letter requesting an explanation as to why certain documents produced by Northern Reliability were not produced by Jackson Sustainability Cooperative. On April 29, 2022, Mr. Beam, on behalf of Jackson Sustainability Cooperative sent a letter explaining the specific documents listed. (Aff. J. Beam, ¶ 11, Ex. A, letter) On page 2 of the letter Mr. Beam clearly states that all documents in his possession were produced. The letter goes on to point out that many of the specific documents referenced were related to Lane College. Before the inception of Jackson Sustainability Cooperative, the solar developer, Community Development Enterprises - I, had discussions with Lane College to use solar energy to power the security lights and street lights used on campus at night. (Aff. J. Beam, ¶ 12)

Jackson Sustainability Cooperative was not part of the Lane College proposal. (Id.)

Under Rule 37.01, when a motion to compel is granted the party whose conduct caused the motion may be held responsible for attorney fees. (Tenn. R. Civ. P. 37.01(2) The attorney has liability if he or she is advising the client not to produce documents. (Id.) There is no evidence that Mr. Beam advised Jackson Sustainability Cooperative not to produce documents that were not privileged. There is no evidence that Mr. Beam advised the solar developer, Community Development Enterprises Jackson - I, not to produce documents. Proper objections were made to the written discovery. There have been no rulings on these objections.

All email and other electronically stored information requires the judge to determine whether they are subject to production.(Tenn. R. Civ. P. 37.06(1) If subject to production, the judge balances the benefits to the requesting party against the burden and expense of the discovery for the responding party. (Id.) When weighing these burdens the judge considers the ease of accessing the requested information, the total cost of production compared to the amount in controversy, the materiality of the information to the requesting party, **the availability of the information from other sources**, the complexity of the case and the importance of the issues addressed, and the need to protect privilege, proprietary, or confidential information and trade secrets. (Id., emphasis added) In this case, the documents in the hands of Northern Reliability were mostly technical issues on the construction of a solar facility, and not material to the issue in the Petition filed by Jackson Sustainability Cooperative. In fact, TECA and JEA now have all the subpoaened technical data behind the contract that was filed with the Petition and the design and pricing communications. Therefore, they have no damages. More importantly, except in exceptional circumstances, the judge **may not impose sanctions under Rule 37** on a party for

failing to provide electronically stored information lost as a result of the routine, good faith, operation of an electronic information system. Tenn. R. Civ. P. 37.06(2)

In this case, Community Development Enterprises Jackson - I is not a party. The managing member, EA Solar, LLC, had a 30 day auto delete systems set up on Microsoft Outlook. This 30 days auto delete protocol was abandoned when litigation became apparent. Regardless of when the auto delete policy was suspended, there is no evidence which indicaes that Mr. Beam has any culpability in causing the destruction of emails through a non-parties auto delete policy. See Tatham v. Bridgestone Americas Holding, 473 S.W.3d 734, 746 (Tenn. 2015) There is also no evidence that emails were subject to the auto delete policy after Jackson Sustainability Cooperative filed its Petition with the Commission.

Contentions theorized by attorneys as to why emails and documents with Northern Reliability, the party charged to construct the solar facility, are not evidence. The Tennessee Supreme Court made it clear that contentions theorized by attorneys who surmise that the requested items are related, is not evidence becauseTatham at 741 ("argument of counsel is not evidence"), citing Groves v. Ernst-W. Corp., No. M2017-01779-COA-R3-CV, 2018 WL 3600015, at *6 (Tenn. Ct. App. July 26,2018) (holding that statements made by counsel during the course of a hearing or argument are not evidence)

II. MR. BEAM DID NOT INTERFERE WITH THE SUBPOENA ISSUED TO NORTHERN RELIABILITY BY ASSISTING IN STRENGTHENING THE PROTECTIVE ORDER TO DISCOURAGE THE USE OF DISCOVERY TO OBTAIN TECHNICAL TRADE SECRETS.

On February 11, 2022, TECA issued a subpoena to Northern Reliability. The contract with Northern Reliability, Inc. to construct a solar facility was previously produced in discovery. (Contract, JSC Confidential 50001 - 500033) Concerned that TECA was attempting to mine solar trade secrets from Northern Reliability, John Beam emailed Greg Noble at Northern Reliability about the subpoena. (Aff. J. Beam, ¶ 9) Immediately, Mr. Beam called Greg Noble and left a voice mail message asking Mr. Noble to have legal counsel call after the subpoena was served to discuss protecting trade secrets from potential piracy. (Id.) As instructed, Mr. Noble did not respond to the email or return the phone call. Three or four days later, attorney Shap Smith called Mr. Beam. Attorneys discussed weaknesses in the protective order that were necessary to address to protect the trade secrets of Northern Reliability. (Id.) On April 7, 2022, the protective order was amended without objection.(Id. at ¶10) Protecting these trade secrets prevented the use of discovery to interfere with the contract for the construction of the solar facility in Jackson, Tennessee.

When weighing the burden of production against the need for the information under the electronically stored information section of Rule 37, the judge considers the need to protect privilege, proprietary, or confidential information and trade secrets. (Tenn. R. Civ. P. 37.06(1)) After emailing and leaving a voice message for Mr. Noble, Mr. Beam's only interaction with Northern Reliability was through attorney Shap Smith. (Aff. J. Beam, ¶¶ 9, 11) This interaction resulted in an improved protective order that helps prevent the government intervenors from pirating technical information and data from an industry leader in solar systems controls.

Mr. Beam did not and does not object to the use of relevant emails and other documents obtained from Northern Reliability. In this case, there were likely dozens of email and documents

related to a proposed project between Community Development Enterprises Jackson - I and Lane College to light the college at night. None of these items have any bearing on whether the delivery of solar energy to industrial members behind their meter makes Jackson Sustainability Cooperative a public utility subject to regulation by the Commission.

III. THERE WAS NO EVIDENCE OF PREJUDICE TO THE INTERVENING PARTIES TO SUPPORT A PUNITIVE MONETARY SANCTION.

The construction of the proposed solar facility is not the purpose of the Petition. The purpose of the Petition is to determine whether Jackson Sustainability Cooperative is or is not a public utility by allowing a few select members to share solar energy behind their existing municipal meter. In is Petition Jackson Sustainability Cooperative contends that it is a nonprofit cooperative engaged in this proposed activity is exempt from Commission regulation under T.C.A. § 65-4-101(6)(A)(v). (Tenn. AG, Opinion No. 17-25 (p. 8, 2100061j))

TECA and JEA filed intervening petitions based on the Generation and Transmission Act[2]. In the hearing on its motion to compel there was no testimony or other admissible evidence presented to show any prejudice to TECA or JEA based on the documents produced by Northern Reliability.

The trial court must review the totality of the circumstances when considering possible

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[2] The legislative purpose of the Electric G&T Cooperative Act is "for electric utility systems engaged in the distribution of electric power and energy in this state and adjoining states to have additional sources of electrical energy through traditional sources of generation and through renewable, clean and passive sources of electrical energy, as well as through other sources known and those sources yet to be known and discovered." T.C.A. §48-69-102(a)

sanctions. Tatham v. Bridgestone Americas Holding, 473 S.W.3d 734, 746 (Tenn. 2015) Our Tennessee Supreme Court identified four relevant factors to consider. Focused on the injury to the non-spoilating party, the trial court must examine the degree of prejudice suffered by the non-spoliating party as a result of the absence of the evidence, and determine the least severe sanction available to remedy any prejudice caused to the non-spoliating party. (Id. at 746) There was no testimony provided during the motion to compel to explain why the technical details obtained from Northern Reliability prejudiced TECA in showing why the proposed operation of Jackson Sustainability Cooperative in having a few select members violated the Generation and Transmission Act. That Act is the stated basis of the intervention by the government. The Tennessee Supreme Court clearly stated that "argument of counsel is not evidence." Tatham at 741 (internal cites ommitted)

Not only has TECA failed to show prejudice based on the documents produced by Northern Reliability, TECA has not named any class of documents or specific subject matter connected to the Petition which will allow it to more effectively respond to the Petition. TECA and JEA have not contested the validity of any document already produced. Instead, TECA and JEA filed a motion to compel alleging generally, without supporting testimony or other evidence, that there were additional documents to be produced other than those produced by Jackson Sustainability Cooperative. The allegation was based on alleged emails recovered from Northern Reliability. The sanction must fail under Rule 37 where there is no evidence showing prejudice to the government intervenors.

IV. THERE IS NO EVIDENCE THAT MR. EMBERLING'S AUTO DELETE

POLICY RESULTED IN THE SPOILATION OF RELEVANT EVIDENCE.

All emails of Jackson Sustainability Cooperative in Mr. Beam's possession were produced in discovery. (Aff. J. Beam, ¶ 17) Northern Reliability produced documents related to Community Development Enterprises - Jackson I. Many of these documents were related to an early proposed project that was abandoned long before discovery was answered. The abandoned project was to provide solar powered night lighting for Lane College. (Aff. J. Beam, ¶ 12) Most of the documents were technical details for construction of a solar facility. (Id., ¶¶ 13, 15, and 16)

TECA argues that if there are earlier emails between Northern Reliability and Mr. Emberling produced by Northern Reliability, Mr. Emberling must not have provided all emails on behalf of Community Development Enterprises - Jackson I related to Northern Reliability. This speculative argument is not evidence and is false. E A Solar, LLC (not other members of Community Development Enterprises - Jackson I) had an auto delete function that applied only to its email trash bin. All relevant, non-privileged emails in Mr. Beam's possession that came from E A Solar, LLC, manager of the solar developer, were produced in discovery. (Aff. J. Beam, ¶ 4)

In a motion to compel emails and other electronically stored information, the judge first has to determine these items are material to the issues at hand. After this initial determination, the judge is then required to perform a balancing analysis between the benefits to the requesting party against the burden and expense of the discovery for the responding party. (Tenn. R. Civ. P. 37.06(1)) When weighing these burdens the judge has to consider the ease of accessing the requested information, the materiality of the information to the requesting party, the availability of the information from other sources, the importance of the issues addressed, and the need to

protect proprietary information and trade secrets. (Id.) The judge also has to consider whether the responding party has deleted, discarded or erased electronic information **after litigation was commenced or after the responding party was aware that litigation was probable**. (Id., emphasis added)

Mr. Beam did not create the document retention policy used by E A Solar, LLC. The document retention policy was in use long before Mr. Beam was hired to form the cooperative and prepare and file a Petition with the Commission. The first day Mr. Beam reasonably understood there may be opposition to the Petition filed a few days earlier for Jackson Sustainability Cooperative was June 2, 2021. On June 2, 2021, Mr. Beam was in attendance as an observer at the fourth and final meeting of the Planning Commission. (Aff. J. Beam, ¶ 3) The purpose of the fourth meeting was to vote to approve or reject the site plan for the construction of a solar facility in Jackson, Tennessee. (Id.) After Mr. Hunt spoke in favor of the solar facility, Monte Cooper, Vice President of Jackson Energy Authority, made a public statement that the proposed solar facility was illegal. Mr. Cooper provided no support for his contention.(Id.) After Mr. Cooper's statements about the solar facility, the site plan came to a vote and was overwhelmingly approved. However, after June 2, 2021 E A Solar, LLC, the manager of Community Development Enterprises - Jackson I, retained all electronic documents, including email communications. The email communications from the solar developer were produced to TECA and JEA in discovery.

More importantly, except in exceptional circumstances, the judge **may not impose sanctions under Rule 37** on a party for failing to provide electronically stored information lost as a result of the routine, good faith, operation of an electronic information system. Tenn. R. Civ.

P. 37.06(2) Moreover, the usual sanction for failure to supplement or amend discovery responses under Rule 37.03(1) will be exclusion of evidence at trial. (Advisory Commission Comment to Rule 37.06)

In this case the Petition was filed on May 24, 2021. At the time of filing, practically everything known about the proposed solar facility and the intent of Jackson Sustainability Cooperative to share solar energy with select members was in the Petition or attached as an exhibit.

TECA and JEA are seeking to impose personal liability on John Beam for emails that were deleted under a document retention policy put in place by E A Solar, LLC prior to the filing of the Petition or when Mr. Beam perceived there may be conflict with JEA. June 2, 2021 was the earliest date Mr. Beam perceived there may be conflict with JEA[3].

Similar arguments to those made by TECA and JEA were made in a well known patent infringement case, Apple Inc. v. Samsung Electronics Co., Ltd., 888 F. Supp.2d 976 (ND Calif. 2012). In that case, Apple argued that Samsung's 14 day email auto delete policy must have caused spoilation of evidence when it was not abandoned at the point in time Samsung was confronted by Apple for violating its patents. At that time Apple argued that Samsung should reasonably believe patent litigation with Apple was likely. On the other hand, Samsung statistically showed the number of emails between Apple's key employees prior to the litigation declined so significantly at the start of litigation that Apple must be withholding or destroying email documents.

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[3] The series of emails with John Nanny, Vice President of Jackson Energy Authority, produced by Northern Reliability indicate the helpful and courteous attitude in answering questions for preparation of the site plan. (Doc. No. 2160001bj, NRI000290 to 297)

With respect to auto delete policies and possible spoilation of email information, the Apple court held that a party seeking a sanction under federal Rule 37 (such as the adverse inference instruction), based on the destruction of evidence must establish the following:

(1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed;

(2) that the records were destroyed "with a culpable state of mind;"

(3) that the evidence was `relevant' to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense."

In this case, the date the obligation to preserve emails arose was on June 2, 2021, when Monte Cooper, Vice President of Jackson Energy Authority, publically stated that the construction of a solar facility was illegal. Prior to this date, when the "trash" bin in a Microsoft Outlook email system deleted "trash" emails after 30 days, there was no obligation to preserve this electronic information. Second, there is no testimony or other admissible evidence in the record showing that Mr. Emberling had an intent to harm TECA or JEA by maintaining an auto delete policy over emails in his email "trash" bin. Last, there is no finding that the alleged emails recovered by TECA are relevant to a claim or defense in this case, especially where the signed contract to construct the facility was produced in discovery. The signed contract has a merger clause making email negotiations and design choices merge into the final signed document.

Samsung relied on expert statistical testimony to conclude Apple had not produced all of its emails. In this case, TECA offered no evidence. TECA's position solely consists of argument of counsel that documents were not produced. Even after TECA asked whether there were iSUN documents, Mr. Beam requested that E A Solar, LLC search its computers to see if it had documents from iSUN, a prospective subcontract not selected by Northern Reliability. (Aff. J.

Beam, ¶ 13)

Mr. Beam was only provided with a few emails from Northern Reliability's production of documents. There are not any technical emails with Northern Reliability which show that these electronic communications are relevant to the request in the Petition seeking a determination of exemption from regulation based on a select group of members sharing clean solar energy through a non-profit cooperative. More significantly, Tenn. R. Civ. P. 37.06(2) clearly states that the trial judge may not impose sanctions under Rule 37 on a party for failing to provide electronically stored information lost as a result of the routine, good faith, operation of an electronic information system, unless the circumstances are exceptional.

At the motion to compel hearing, there was no testimony or other evidence presented to support a conclusion that the electronic information was not handled in accordance with company policy. There also was no evidence that demonstrated exceptional circumstances. The typical sanction for failures to supplement electronic information lost as a result of routine operation of an electronic information system, such as Microsoft Outlook, is the exclusion of evidence at the final hearing. (Advisory Commission Comment to Rule 37.06) The typical sanction is not personal liability of counsel.

E A Solar, LLC is the manager of Community Development Enterprises - Jackson I. (JV Agmt., JSC Confidential 5000088) Mr. Emberling is the CEO of E A Solar, LLC. (Id.) Mr. Emberling acted in his capacity as an officer of E A Solar, LLC, and not his individual capacity. Mr. Beam produced all the documents and emails in his possession. (Aff. J. Beam, ¶ 17) There is no evidence or testimony that Mr. Beam instructed any person to destroy documents. Mr. Beam had no control over the email retention policies of E A Solar, LLC. However, after June 2, 2021

when Monte Cooper made a public statement challenging the solar facility, Mr. Beam made sure all documents, including electronically stored documents were retained by the solar developer.

VI. MR. BEAM AND EQUITUS LAW ALLIANCE, PLLC ARE NOT THE CAUSE IN FACT OF JACKSON SUSTAINABILITY COOPERATIVE'S FAILURE TO PRODUCE DOCUMENT (IF ANY).

The U.S. Supreme Court, in Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178 (2017)[4], set limits on a judge's inherent authority to award sanctions in discovery disputes. The Court held that when imposing sanctions, a judge must determine which fees and costs would not have been borne "but for" the misconduct of the accused. (Id. at 1182) The judge can assess only "the fees the innocent party incurred solely because" of the misconduct of the accused.

In the record before the Commission, there exists no evidence or testimony in the record that supports a finding that "but for" the conduct of Mr. Beam, documents would not have been destroyed. The fees TECA and JEA incurred were in preparation of their motions to compel and in seeking discovery through subpoenas. Mr. Beam was not the "but for" cause of TECA and JEA filing a motion to compel.

The United States Supreme Court explained in Goodyear that policy behind requiring direct causation is to put a check on lawyers who seek to unfairly game the sanction system. In Goodyear, the plaintiff wanted to recover all their fees after the alleged discovery violation in which Goodyear failed to turn over a specific responsive document. The trial judge did not draw any causal connection between the failure to produce this document and the fees incurred by the innocent party. In a unanimous 8-0 decision, the Supreme Court vacated the sanctions that

[4] Note that TECA cites cases prior to the Goodyear decision in 2017.

awarded attorney fees. The Supreme Court explained that fee-shifting sanctions are constitutionally limited to reimbursing the aggrieved parties for costs they would not have incurred "but for" the alleged malfeasance. Sanctions must be solely compensatory, not punitive. Mr. Beam is not the "but for" reason TECA filed a motion to compel after Northern Reliability produced documents. TECA filed its motion to compel on its belief that there were more documents. There is no evidence that Mr. Beam instructed anyone in withholding or destroying any document, much less documents relevant to the issues in the Petition.

The Supreme Court in Goodyear held that when an award of sanctions extends beyond the costs and fees caused by the alleged malfeasance, it crosses the boundary and becomes a punitive sanction. If a court seeks to impose punitive sanctions, the accused is owed heightened due process protection such as those afforded in criminal proceedings, including proof beyond a reasonable doubt.

In this case the costs and fees requested clearly exceed the amount caused by any alleged malfeasance. TECA and JEA seek to punish Mr. Beam personally. Mr. Beam respectfully requests an order denying TECA and JEA motions for sanctions against him. Mr. Beam is not the "but for" cause of any spoilation of documents. The amounts requested are punitive. Due process of law requires TECA and JEA to produce evidence beyond a reasonable doubt. A standard they have not met.

Conclusion

TECA and JEA are asking the Commission to sanction John Beam and Equitus Law Alliance, PLLC for not producing documents. There is no evidence or testimony that proves the

existence of documents allegedly not produced in discovery. The materials sought are based on the production of Northern Reliability. TECA and JEA already have the documents from Northern Reliability. The are largely technical documents or documents related to matters that were abandoned before Petition and the Petitioner were considered. These technical construction documents are not relevant to a full consideration of the Petition filed by Jackson Sustainability Cooperative. Jackson Sustainability Cooperative filed a Petition with the Tennessee Utility Commission requesting that the Commission declare the legal rights of Jackson Sustainability Cooperative to operate a solar facility with battery-energy storage and shared interconnection so that a small group of local manufacturing and commercial users, its members, can acquire clean, renewable, stable, supplemental electricity.

TECA and JEA successfully used the discovery process to delay these proceedings until the proposed project failed. The Patron members of Jackson Sustainability Cooperative have lost all their investment.(Bylaws, Section 9.2) Now, TECA and JEA seek to place punitive sanctions on Mr. Beam and Equitus Law Alliance, PLLC. They seek these sanctions without evidence that Mr. Beam is the "but for" cause of the withholding of any document, or the destruction of any document. They cannot even establish on the record that the sought documents exist.

While warning that argument of counsel is never evidence, the Tennessee Supreme Court identified four factors to consider prior to the award of sanctions under Rule 37, as follows:

(1) the culpability of the spoliating party in causing the destruction of the evidence, including evidence of intentional misconduct or fraudulent intent;

(2) the degree of prejudice suffered by the non-spoliating party as a result of the absence of the evidence;

(3) whether, at the time the evidence was destroyed, the spoliating party knew or

should have known that the evidence was relevant to pending or reasonably foreseeable litigation; and

(4) the least severe sanction available to remedy any prejudice caused to the non-spoliating party.

(Tatham v. Bridgestone Americas Holding, 473 S.W.3d 734, 746 (Tenn. 2015)

There is no testimony that supports intentional misconduct. There is no evidence that allegedly withheld emails with persons in charge of the technical construction of the solar facility causes any prejudice to TECA. There is no evidence that relevant documents were withheld. Even if there was an auto delete policy of emails in the trash bin of E A Solar, LLC, E A Solar, LLC could not have reasonably foreseen a contested case hearing from TECA or JEA until June 2, 2021. On June 2, 2021, Monte Cooper, Vice President of JEA stated publically at a Jackson planning commission meeting that building a solar facility was illegal. The least severe sanction to remedy the prejudice caused, is no sanction where Mr. Beam has cooperated fully and timely delivered responses to all discovery requests. There is no basis to sanction John Beam or Equitus Law Alliance, PLLC personally.

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 2ND day of October, 2023.

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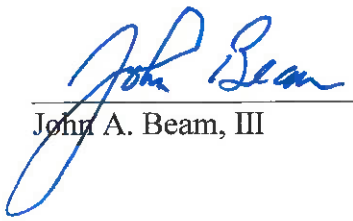

John A. Beam, III

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

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**

DECLARATION OF JOHN BEAM

I, John Beam, a non-party and former counsel to the Petitioner Jackson Sustainability Cooperative, hereby declare: I am over 18 years of age, a member of Equitus Law Alliance, PLLC, and a member of the bar of the state of Tennessee. I have personal knowledge of the facts (except where otherwise stated) stated below and with the proceedings in this case.

1. On or about May 16, 2021, I filed the documents to incorporate the Petitioner. At the time of incorporation, the Board of Directors was comprised mostly of people from Jackson, Tennessee seeking to improve their community.

2. On or about May 24, 2021, on behalf of Petitioner Jackson Sustainability Cooperative, I filed a petition with the Tennessee Public Utility Commission seeking a declaratory ruling on the application of Tennessee statutes to it proposed future of sharing solar energy among select industrial members in Jackson, Tennessee. The scope of the declaratory ruling requesting exemption is binding only between the Petitioner and the Commission. There was no request to decide differences between the interveners as government representatives and the Petitioner. The requested declaratory ruling was jurisdictional in nature, a question of law, and not binding on any of the governmental interveners. The declaratory ruling was

further limited to the particular facts and future proposed events stated in the Petition, and did not apply to solar installations for future petitioners.

3. On June 2, 2021, I attended the fourth and final meeting of the Planning Commission Meeting to vote on and approve the site plan for the construction of a solar facility in Jackson, Tennessee. I was an observer. David Hunt make an oral presentation in support of the site plan. To my surprise, Monte Cooper, Vice President of Jackson Energy Authority, make a statement that the proposed solar facility was illegal. Mr. Cooper provided no support for his contention. This was the first time I was aware of any potential opposition to the Petition requesting what I believed would be a letter from the Public Utility Commission stating that Jackson Sustainability Cooperative was exempt from regulation by statute. After Mr. Cooper spoke, approval of the site plan came to a vote. Seven commissioners voted in support of the site plan and one abstained.

4. After June 2, 2021 all the members of Community Development Enterprises - Jackson - I were requested to retain all email communications. Other than privileged communications, all of the communications of the third party solar developer were produced to TECA and JEA in discovery.

5. The Petition with its many exhibits tells the Commission what Jackson Sustainability Cooperative plans to do in the future. In the Petition and in the discovery process I sought to include every detail I knew or that was planned about the proposed operation of the future solar facility.

6. The Petitioner sought a ruling that its proposed operation in sharing energy

among a small group of select industrial members was not running a public utility in accordance with an Attorney General Opinion on the subject. Petitioner has never built a shared solar facility before, and sought the guidance of the Commission in applying a legislative exemption from government regulation prior to moving the project from development and design to construction and operation. The contested case hearing set by the Commission was limited to the legislative exemption request.

7. The written discovery propounded by the government intervenors delved into how Jackson Sustainability Cooperative got to its Petition, including the technical aspects of building a solar facility. The written discovery made only a limited inquiry into where Jackson Sustainability Cooperative was going with its proposed project. The only thing the government intervenors found with six subpoenas is technical information from Northern Reliability about the construction of solar fields. It appeared to me that TVA, TECA, and JEA were likely seeking technical knowledge from a private firm, Northern Reliabiliy, for their own use.

8. Northern Reliability, Inc. signed a contract to construct the proposed solar facility. (Doc. No. 2100061, Petition, Confidential Ex. 10) Northern Reliability is a leader in the hardware and software used to share electrical energy. When the subpoena issued to Northern Reliability, Inc., I was concerned that TECA was attempting to mine solar trade secrets from Northern Reliability. My concern was heightened because the technical construction of the facility has no relevance to the subject matter of the Petition in determining whether there is an express exemption under the statute between the Petitioner

and the Commission.

9. Based on my concern that the Northern Reliability, Inc. subpoena was being used improperly to search for trade secrets, I emailed Greg Noble at Northern Reliability about the subpoena that was issued. Immediately after hitting send on the email, I called Greg Noble and left a voice mail message. My voice mail message asked Mr. Noble to have the company legal counsel call me after the subpoena was served to discuss protecting Northern Reliability trade secrets from potential piracy. As instructed in the voice mail message, Mr. Noble did not respond to the email and did not return the phone call. I have not spoken with any employee or Northern Reliability about discovery. Several days later, attorney Shap Smith called. He is counsel for Northern Reliability. We discussed weaknesses in the existing protective order. We discussed revisions necessary to protect the technical trade secrets of Northern Reliability from potential piracy of ideas by the intervening parties. Concerns were heightened the technical construction details were not relevant to the issues before the Tennessee Public Utility Commission.

10. On April 7, 2022, the protective order was amended without objection, and Northern Reliability fully responded to the subpoena. When speaking with attorney Shap Smith I encouraged full compliance with the subpoena.

11. On April 21, 2022, TECA set a letter to the Petitioner requesting an explanation as to why certain documents produced by Northern Reliability were not produced by Jackson Sustainability Cooperative. On April 29, 2022, on behalf of Jackson Sustainability Cooperative, I sent a letter explaining the specific documents listed in the April

21, 2022 letter. (Ex. A, letter) On page 2 of the letter I emphasized that all non-priviledged documents in my possession were produced in discovery in this matter. TECA never provided to Jackson Sustainability Cooperative any specific email between Greg Noble of Northern Reliability and Mr. Emberling as the manager for E A Solar, LLC, the manager of the solar developer.

12. The letter I sent to TECA on April 29 2022 also points out that many of the specific documents referenced in the Northern Reliability production were related to Lane College (Ex. A). The index to the production supplied by Northern Reliability, Inc. shows 127 documents. (Doc. 2160001bj) For example, NRI000259 is a layout of the buildings on Lane College. Prior to any thought of forming Jackson Sustainability Cooperative, Lane College was interested in using solar energy from battery storage to light its buildings, parking lots, and streets at night for security. The proposed Lane College project was abandoned by the solar developer before Jackson Sustainability Cooperative was established and the Petition seeking statutory exemption was filed. Lane College was never a member, prospective member, or patron supporting Jackson Sustainability Cooperative. The same solar developer, Community Development Enterprises Jackson - I and Northern Reliability reviewed the facilities at Lane College and the battery needs for night security lighting. Jackson Sustainability Cooperative was not part of the Lane College proposal.

13. The April 29, 2022 letter explains that iSUN was a prospective engineering subcontractor to Northern Reliability. On information and belief, iSUN was rejected by Northern Reliability in favor of using local Jackson, Tennessee contractors. Even though any

negotiations between iSUN and Northern Relaibility are not relevant to the issues presented in the Petition, I requested E A Solar, LLC to search its computers for any communications with iSUN. There were no additional documents found. If found, they could not be relevant to the Petition.

14. The production supplied by Northern Reliability, Inc. to TECA includes a series of emails with John Nanny, Vice President of Jackson Energy Authority (NRI000290 to 297). Mr. Nanny was helpful in answering questions for preparation of the site plan that is an exhibit to the Petition. On behalf of Jackson Energy Authority, Mr. Nanny did not suggest any objection or illegality in building a solar facility. These are the only emails produced by Northern Reliaibility and delivered by TECA to Jackson Sustainability Cooperative that are available in the public record at Doc. No. 2160001bj.

15. Northern Reliability, Inc. also filed confidential documents. The confidential documents TECA produced for Jackson Sustainability Cooperative to view were parts of pages Bate Stamped NRI 000001to NRI 000621. The documents include a feasibility study which lists potential local college user Lane College. (CONFIDENTIAL NRI 000156) Lane College's electric bills are also provided. (CONFIDENTIAL NRI 000229) A substantially similar feasibility study was produced in discovery which excludes Lane College. (JSC Confidential 5000057)

16. The confidential documents produced by Northern Reliability, Inc. and delivered to Jackson Sustainability Cooperative by TECA did not include any email communications between E A Solar, LLC, manager of the solar developer, and Greg Noble

for Northern Reliability.

17. All emails of Jackson Sustainability Cooperative in my possession were produced in discovery. All emails of the solar developer, Community Development Enterprises Jackson - I that were delivered to me were produced in discovery. From these third parties I requested emails from all joint venture members who participated with the solar developer that related to sharing clean solar energy among industrial users and the proposed solar facility, including its manager E A Solar, LLC.

18. Presumably, because the issues in the Petition that were for contested case hearing involved primarily legal questions, the Commission choose not to issue any discovery requests to Jackson Sustainability Cooperative.

19. The attorney fees requested by TECA and JEA represent the attorney fees incurred to file one motion to compel more information. Since Jackson Sustainability Cooperative was formed close in time to the filing of the Petition, there were not many emails from Jackson Sustainability Cooperative. On information and belief, at this point, TECA and JEA have in their possession technical emails from Northern Reliability in which they gather information on materials and costs to construct a solar facility. TECA has in its possession far more information than I have from the Petitioner and the solar developer. I have not withheld any emails or other information from TECA, even items for which proper objections were made and never ruled on.

20. My understanding from the award of sanctions is that the entire basis for the sanctions was a perceived "deficiency" related to E A Solar, LLC, the managing member of

Community Development Entrprises Jackson - I. My efforts as attorney was not the cause of this perceived deficiency, a deficiency that is not supported by witness testimony or other evidence other than the argument of counsel for the government intervenors who have successfully preserved their grip on the supply of electrical energy to Tennesseans in Jackson, Tennessee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 2nd day of October, 2023.

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Sworn to and subscribed before me, this 2nd day of October, 2023.

Notary Public

My Commission Expires: 1/4/2027

SUSAN F. CLYNES
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2023, I electronically filed a true and correct copy of the foregoing with the Tennessee Public Utility Commission which will

automatically send email notification of such filing to the following intervening parties, and I emailed and sent by U.S. mail copies to the following parties:

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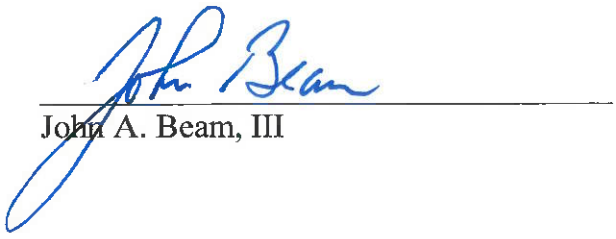

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