

Electronically Filed in TPUC Docket  
Room on October 2, 2023 at 3:23 p.m.

October 2, 2023, via email

Monica Smith-Ashford, Hearing Officer  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243

Re: Application of Jackson Sustainability Cooperative for a Determination of Exemption, Docket  
#21-00061

Dear Hearing Officer Smith-Ashford:

I must ask your indulgence for an extension of time to obtain independent counsel and file a brief in answer to the intervenors' filings on September 1, 2023 requesting that the PUC award their attorneys fees against me personally.

John Beam the attorney for the Jackson Sustainability Cooperative (JSC), requested more time in a letter to you on September 5, 2023. The latest order sets a date of October 2, today, to file reply briefs.

I only learned about the need for me to find independent counsel on September 25, a week ago, because John Beam was tied up in trials up to that point, and was not able to discuss this new motion with me until then. Since then, I have gotten references from John Beam and Steve Lefkovitz for attorneys who might be able to represent me without conflict, but have not succeeded in getting one to agree yet.

Therefore, I need at least a few weeks, I believe, to locate an unconflicted, qualified attorney to file a reply brief and represent me at the next hearing, presently scheduled for October 17, but which may also have to be postponed. It will take this new attorney some time to read the docket, get up to speed on the law and the case, and prepare this reply brief, much less prepare for the following hearing.

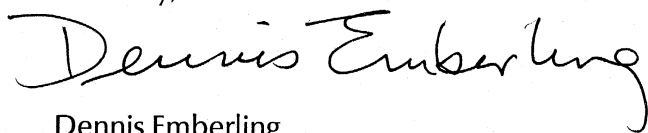
I am advised by John Beam and Steve Lefkovitz that they cannot help me in this matter, but that I need a different type of attorney who has no prior involvement with JSC's petition.

They also suggested I file an Affidavit with this letter of request to you, just to be sure to put certain facts into the record that may be important for the hearing. I am therefore attaching and filing that Affidavit.

Please treat this letter as a motion (I am not an attorney) to continue the deadline for the filing of reply briefs from October 2 to at least October 23, 2023, and the date of the hearing at least 3 weeks after that. I appreciate your consideration of my request.

Please also treat it as my going on record as personally opposing the intervenors' motions to award attorneys fees against me personally. I feel this is completely unwarranted by the true facts. I hope my affidavit attached, laying out the chronological facts of this case, supports my contention that I never withheld, much less destroyed, evidence to which the intervenors' were entitled. Therefore, I strongly object to their attempt to circumvent the bankruptcy of JSC and attempt to get their attorneys' fees from me personally instead.

Sincerely,



Dennis Emberling

5548 Trousdale Drive

Brentwood, TN 37027

(731) 240-5001

email: [de@comdevent.com](mailto:de@comdevent.com)

Enclosure: Affidavit of Dennis Emberling of October 2, 2023

**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 )**

**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. In March 2020, I was approached by residents of Jackson, Tennessee, to look into the possibility of providing some solar generation for the city. I was informed about East Jackson's poverty, dilapidated housing, and need for redevelopment, and that the residents approaching me thought bringing some solar to some industries in East Jackson would result in more jobs and more businesses locating to Jackson, bringing benefits to this needy community.
5. In inquiring into this possibility, I began by having discussions with Antonio Eugene Jones, who was in charge of renewable energy for Tennessee Valley Authority (TVA). We had many conversations. He encouraged me to apply for a program TVA had to pay for solar-generated electricity. There was no hint of any opposition from TVA to bringing solar to Jackson. Indeed, many of TVA's published documents and website articles declared they were strong supporters of such efforts.
6. Next, I made contact with John Nanney, Vice President of Development for Jackson Energy Authority (JEA), the Jackson retailer for TVA electricity in Jackson. I candidly discussed with him everything we were considering, and he was also encouraging. He put me in touch with other people at JEA, including Hameen Harris, chief electrical engineer. We discussed and agreed on ways of making sure any solar power we produced could not backfeed onto JEA's

distribution grid and cause any danger to linemen when the grid was down. Again, JEA was encouraging and made no mention of problems, legal or otherwise.

7. Then I contacted people knowledgeable about regulatory approval and was told to call the Public Utilities Commission (PUC) and request exemption from their oversight, due to the nature of the project. I did so, talked to several people on several occasions, and was told there should be no problem in receiving this exemption. I was advised to send the PUC a letter requesting it. I did not do so at the time. Later, our attorney advised against approaching the PUC in this way, but to file a formal petition instead.
8. I had discussions in 2020 with companies to work with me on developing such a project. We went through several possible partners until we settled in 2020 on Northern Reliability (NRI) as the best for our microgrid efforts in Jackson and other locations around the world. We concluded a provisional agreement with Northern Reliability that omitted many specifics, just to have some evidence that we were working together in various ways.
9. From March of 2020 on, we were focused on working with a single off-taker for solar electricity we would produce. That was Lane College in Jackson. They continued to encourage us to help them reduce their energy expenses, including powering their street lights, by building a solar generating facility on or near their campus in Jackson. Gradually, Lane ran into difficulties with the project, eventually telling us they chose not to proceed.
10. After learning of Lane's decision, we began to explore other possible off-takers of the electricity we would generate, along with the many location, development, funding, environmental, regulatory, and other issues that would go into such a project.
11. Community Development Enterprises (CDE) was formed on September 21, 2020 as a Tennessee joint-venture partnership among the companies of the Jackson residents who prompted this venture. It's purpose was to develop solar generation facilities anywhere in the United States, including this first project in Jackson. Several partners in CDE owned parcels in Jackson that we thought might be suitable for solar.
12. In September, CDE engaged L. I. Smith Co., civil engineers, to do preliminary civil engineering investigations of this Roosevelt Ave. parcel. Working with them, we discussed the project with Jackson's Planning Department and other relevant departments to learn what would be required to get permission to build. They produced a site plan in collaboration with the Planning Department, to be submitted for approval.
13. This led to a formal application submitted to the Planning Department in October 2020 for one of several possible designs we might adopt for the project, whether for Lane College or another off-taker.
14. In February, 2021, we approached JEA again to offer to share our thinking with them. We held a zoom meeting with their staff, including Monte Cooper, at which we discussed possible

projects, whether at Roosevelt or another location, with various possible off-takers. As before, JEA raised no objections at this meeting, thanked us for the information, and said they'd get back to us. They never did.

15. In May, 2021, our attorney recommended that we file a formal petition with the PUC requesting exemption from their oversight. The purpose was to be able to demonstrate to potential investors that there would be no objection from the PUC. To give this the strongest backing under an explicit Tennessee law authorizing such exemption, he recommended that we form a nonprofit cooperative that would eventually consist of the off-takers of the electricity. Since we did not have off-takers yet in hand, we enlisted some prominent Jackson citizens and myself as a temporary board of directors for what became Jackson Sustainability Cooperative (JSC) on May 12, 2021.
16. On May 14, 2021, Jackson Sustainability Cooperative filed a petition to the PUC requesting a letter of exemption under the Tennessee law that clearly and explicitly forbade the PUC from having any authority whatsoever over electric cooperatives in Tennessee.
17. Our application for site approval was considered at 4 separate hearings of the Madison County Planning Commission, and formally approved with conditions at its June 2, 2021 meeting. Monte Cooper attended representing JEA and objected to our application. The commission disagreed, approving it nearly unanimously, with one abstention.
18. To our great surprise, given their previous discussions with us, JEA and others filed petitions to intervene in the matter of our petition to the PUC. I did not believe they had any interest or any right to intervene in what was a simple request for the PUC to acknowledge the validity of a Tennessee statute. We did, however, allow them to intervene without objection.
19. The 4 intervenors were granted permission to intervene, given our lack of objections, on August 20, 2021.
20. On September 8, 2021, the intervenors began to demand documents from JSC. These demands were mostly vague, overly broad, intrusive, and irrelevant to our petition.
21. As temporary president of JSC, I carefully read each discovery demand letter from each of the intervenors and located all paper and electronic documents that seemed to be responsive to the demands. Our attorney filed objections to most of the demands as illegally vague, overly broad, intrusive, and irrelevant. However, instead of forcing the intervenors to file a motion to compel us to produce documents, we cooperated with them by providing thousands of pages of everything relevant to their demands.
22. However, it was never enough. No matter how much we turned over to the intervenors, they always stretched out the response times to the limit the PUC allowed, causing delays that lasted over 9 months until May of 202. Again and again, they complained that what we

provided was insufficient, even though they never mentioned specific documents they sought nor explained why they needed more.

23. Before this discovery period began, I had a common (often default) setting on my email client that automatically deleted email from the host server that was over 30 days old. However much the intervenors have made of this setting, it has nothing to do with preserving evidence. I always moved important emails into separate email folders on my hard drive. The only ones that went into my trash folder were ones that I thought not worth keeping. After our filing to the PUC, I was even more cautious about moving anything to trash that might be important for the PUC case. I never put any emails in trash that I believed relevant to our petition.
24. Throughout the endless discovery process, I searched diligently through electronic and paper records and provided anything our attorney and I thought responsive to the intervenors' discovery demands. However, since their demands were so vague, it was not always clear what they were after. They never gave any specifics, such as "your earliest ideas about a site layout." They made their demands so broad that they went far beyond the boundaries of anything relevant to JSC or its petition. I had no obligation to turn over items to them that had no relevance to the petition.
25. JSC itself sent and received very few emails. All were turned over to the intervenors.
26. CDE sent and received many emails, most of which were not about JSC, its petition, or its plans. Some were about CDE's other projects. Some about representing manufacturers to sell their equipment. Some were general technical inquiries. Not much was about the JSC application stalled in the Planning Commission or the petition stalled at the PUC. Whatever there was that was responsive to the intervenors' demands, as best could be deciphered from their vague descriptions of what they wanted, was turned over. Nothing germane was deleted or destroyed.
27. The intervenors went on to get subpoenas from related parties, such as Northern Reliability (NRI). They used these documents to claim that they were proof that I had withheld information from them that they should have received. I assert this is false.
28. I have carefully reviewed the NRI response filed at the PUC on April 18, 2022. I am attaching my Analysis of each of the 630 Bates-numbered documents provided by NRI filed April 28, 2022 with the PUC. It shows the original date, description, and status of each of the documents in the filing. The intervenors complained that it contained 200 to 400 emails which hadn't been turned over to them. In fact, it contains only two emails. It is the contents of a file NRI set up for CDE when we first made contact with them, and contains all the documents they thought were relevant to our business relationship. Many of them were technical datasheet I never received. Others were documents, like the JSC bylaws, all filed with the PUC or turned over to the intervenors. There was not a single document out of the

# Analysis of Northern Reliability Production April 14, 2022

List of Documents NRI filed April 28, 2022 at TN PUC

Analyzed by Dennis Emberling

Beginning Bates	Ending Bates	Date	Description	Status
NRI 000 016	NRI 000 016	9/30/20	container sketch	never received by CDE
NRI 000 025	NRI 000 025		old assessor's map of site	E A Solar EAS000001
NRI 000 026	NRI 000 078	10/1/20-4/15/21	site plan	Petition Exhibit 9
NRI 000 079	NRI 000 079	2020	assessor's parcel data	old, not kept
NRI 000 080	NRI 000 080	6/8/20	East Jackson map	Petition Exhibit 3
NRI 000 081	NRI 000 081	6/8/20	East Jackson map	superceded, not kept
NRI 000 082	NRI 000 084	6/10/20	Soil map	incorporated in site plan
NRI 000 085	NRI 000 085	6/10/20	Site topo map	superceded by site plan
NRI 000 086	NRI 000 086	6/10/20	contact info for Civil Engineer	did not have
NRI 000 089	NRI 000 113	2/1/21	JSC Bylaws	Petition Exhibit 2
NRI 000 114	NRI 000 137	2/1/21	JSC Bylaws	Petition Exhibit 1
NRI 000 169	NRI 000 169	1/10/21	Handout about future development	superceded, not kept
NRI 000 197	NRI 000 198	1/29/21	Draft of funding RFP	superceded, not kept
NRI 000 199	NRI 000 208	1/29/21	Draft of funding RFP	superceded, not kept
NRI 000 222	NRI 000 222	?	module rendering	never received by CDE
NRI 000 258	NRI 000 258	2020	Google Earth - Lane College	project abandoned, not kept
NRI 000 259	NRI 000 259	2020	Lane College diagram	project abandoned, not kept
NRI 000 265	NRI 000 266	2020	SunPower datasheet	not used, not kept
NRI 000 267	NRI 000 267	3/22/21	Letter from iSun filed with Planning application	not found
NRI 000 269	NRI 000 269	11/20	Sketch of possible layout of panels	superceded, not kept
NRI 000 284	NRI 000 285	2020	SunPower datasheet	not used, not kept
NRI 000 289	NRI 000 289	6/11/20	JEA utility lines	not found
NRI 000 290	NRI 000 298	6/11/20	JEA email	not found
NRI 000 299	NRI 000 299	6/11/20	duplicate of NRI 000 289	
NRI 000 300	NRI 000 333	8/12/77	JEA-TVA contract	Petition Exhibit 5
NRI 000 334	NRI 000 350	2020	Snips from area maps	all part of maps provided; not kept
NRI 000 359	NRI 000 362		EcoPower Quote	never had
NRI 000 363	NRI 000 404		Bard datasheets	never had
NRI 000 409	NRI 000 412	12/1/20	Documents between NRI and Instant On	never had
NRI 000 413	NRI 000 413	6/4/21	Rough estimate at timeline	superceded, discarded
NRI 000 414	NRI 000 417	10/8/21	SACE Amicus Brief	filed with PUC
NRI 000 464	NRI 000 468		EcoPower datasheets	never had
NRI 000 469	NRI 000 469	9/14/20	Instant On Announcement	we dropped Instant On. Not kept.
NRI 000 470	NRI 000 471		KorePower datasheets	superceded, not kept
NRI 000 566	NRI 000 566	12/4/20	Krebs & Lansing invoice to NRI	never had
NRI 000 567	NRI 000 585		Bard datasheets	never had
NRI 000 586	NRI 000 586	10/27/20	Webb Co. invoice to NRI	never had
NRI 000 587	NRI 000 600	10/26/20	Bard quote to NRI	never had
NRI 000 601	NRI 000 630	10/21/20	NRI internal drawings	never had

entire file that I ever had that was not turned over to the intervenors and PUC, except for 3 documents I could not find (noted in the Analysis).

29. The intervenors represented this filing of NRI as if it were NRI's record of exchanges with CDE. It was nothing of the kind. It was their own, internal file for their relationship with CDE, and, as such, was completely different from the files CDE had. Many of the documents in this collection were superceded, ignored, irrelevant to CDE or its projects. They are just NRI's internal file into which its staff dumped anything and everything they thought might have some relevance for their business dealings with CDE.
30. It is false for the intervenors to misrepresent this data dump as evidence of materials they requested from JSC in discovery that were withheld. There is not a single such document in the dump, and the intervenors have not identified a single such document.
31. I made my best efforts to comply with discovery demands, even though they were overly burdensome and difficult even to understand. I turned over everything I could find relevant to them.
32. Under no circumstances did our auto-delete selection in our email program delete anything relevant to this case. Nor was anything withheld, despite our objections to their discovery requests.

FURTHER AFFINED SAITH NOT.

Dennis Emberling  
Dennis Emberling

STATE OF TENNESSEE     )  
COUNTY OF Davidson     )

Sworn to and subscribed before me this 2<sup>nd</sup> day of October, 2023.

Pamela J. Garber  
Notary Public

My commission expires: 7/1/2027

