

**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  
UNDER T.C.A. § 65-4-101(6)(A)(v) )**

---

**DIRECT TESTIMONY OF JOHN BEAM AND EQUITUS LAW ALLIANCE, PLLC**

---

COMES NOW, John Beam, a non-party, with personal knowledge of the proceedings in this case.

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER.

A. John A. Beam, III  
709 Taylor Street  
Nashville, TN 37208  
Phone: (615) 251-3131  
Email: beam@equituslaw.com

Q. WHAT WERE YOUR RESPONSIBILITIES FOR THE PETITIONER, JACKSON SUSTAINABILITY COOPERATIVE (“JSC”)?

After considering several possible ways to organize a solar facility where energy is shared, the nonprofit cooperative model was selected because of the express statutory exemption from regulation. David Hunt and John C. Meyer Jr. helped recruit as Board members local Jackson citizens seeking to improve their community through bringing solar energy to Jackson, including Dr. Ann Keyl, Robert Starr, and Jeff Frieling. Board members Dennis Emberling and David Shimon do not reside in Jackson, Tennessee. On or about May 16, 2021, I filed the

documents to incorporate the Petitioner.

Eight days later, 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 its proposed future sharing of 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 all future petitioners and how to construct solar facilities.

The Petition with its many exhibits tells the Commission what Jackson Sustainability Cooperative plans to do in the future.

The Petitioner sought a ruling that its proposed operation in sharing supplemental 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. Rather than build first, the Petitioner sought the guidance of the Commission in applying a legislative exemption from government regulation. The request was made prior to moving the project from development and design to construction and operation. The Order setting the contested case hearing was limited to the legislative exemption request, a legal question. In short, the issue is whether the Tennessee Public Utility Commission has jurisdiction over a nonprofit cooperative where members share supplemental clean, solar energy behind the meter box from which they receive municipal electricity.

In the Petition I sought to include every detail made known to me or that was planned about the proposed operation of the future solar facility where energy is shared through a nonprofit cooperative.

I expected the Commission to issue discovery to the Petitioner to explore the jurisdictional question before the Commission. There were several government intervenors who are in business to provide municipal electrical energy. They obviously do not want citizens to form groups to share solar energy, even though each citizen can produce its own supplemental solar energy. These governmental intervenors propounded written discovery. The government intervenors delved into how Jackson Sustainability Cooperative got to its Petition, including the technical aspects of building a solar facility. I made numerous objections to these questions that were not focused on the statutory exemption request. I delivered to the governmental intervenors all non-privileged documents in my possession. The written discovery made only a limited inquiry into where Jackson Sustainability Cooperative was going with its proposed project.

In addition to a voluminous response to discovery from the Petitioner, the government intervenors issued six subpoenas. One subpoena was issued to Northern Reliability, Inc.. Northern Reliability has expertise in the design, construction, and operation of solar facilities. I reviewed the contract with Northern Reliability for the construction of the proposed facility before it was signed. The signed contract was attached to the Petition. The construction of the solar facility was not relevant to the legal issue before the Commission. Who builds the solar facility, the equipment they select, and the technology to share energy are not relevant to the legal question before the Commission.

When the government intervenors issued a subpoena to Northern Reliability, it appeared

to me that TVA, TECA, and JEA were likely seeking confidential, trade secret technical knowledge from Northern Reliability for their own use. As it turns out, they used this information that was not relevant to the Petition to weaponize the discovery process. By using their status as government, the intervenors succeeded in blocking a local solar project in an economically challenged community where jobs and investment are needed. With this aggressive action, no lenders have an interest in this project.

Q. WHAT WERE YOUR RESPONSIBILITIES FOR THE SOLAR DEVELOPER, COMMUNITY DEVELOPMENT ENTERPRISES - JACKSON I ("CDE")?

On June 2, 2021, I attended the fourth and final meeting of the Madison County Planning Commission to approve the site for a solar facility. The purpose of the meeting was to vote on and approve the site plan for the construction of a solar facility in Jackson, Tennessee. I was an observer. David Hunt made an oral presentation in support of the site plan. To my surprise, Monte Cooper, Vice President of Jackson Energy Authority, made 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. Prior to this fourth meeting, I believed the Petition would result in 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 for the proposed solar facility, and one commissioner abstained.

After June 2, 2021 all the members of Community Development Enterprises - Jackson - I, the solar developer, were requested to retain all email communications and other documents related to work in Jackson, Tennessee. Other than privileged communications, all of the

communications of the third party solar developer related to the operation of a nonprofit cooperative and development of the solar facility that were given to me were produced to TECA and JEA in discovery.

Q. WHAT WERE NORTHERN RELIABILITY, INC.'S RESPONSIBILITIES IN THE DEVELOPMENT OF A SOLAR FARM WHERE MEMBERS SHARE CLEAN SOLAR ENERGY?

Northern Reliability, Inc. signed a contract to construct the proposed solar facility. (Doc. No. 2100061, Petition, Confidential Ex. 10) 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. Moreover, TECA does not operate its facilities in Jackson, Tennessee.

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. 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 of 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. Mr. Smith's concerns were heightened because the technical construction details were not relevant to the issue of exemption before the Tennessee Public Utility Commission.

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 and encouraged voluntarily accepting service of process.

Q: WHAT WAS YOUR ROLE IN THE DISCOVERY PROCESS INITIATED BY THE COMMISSION?

On September 8, 2021, the government intervenors, Tennessee Electric Cooperative Association ("TECA") and Jackson Energy Authority ("JEA") submitted written questions and requests for documents to Jackson Sustainability Cooperative. I directed all questions to Jackson Sustainability Cooperative, and directed certain questions to the solar developer, Community Development Enterprises - Jackson I, for input. I assembled and assisted in the responses. On September 22, 2021, Jackson Sustainability Cooperative responded to all written interrogatories and requests for production submitted. (Doc. 2160001aa) After receiving allegations of deficiency in December, 2021, on January 5, 2022, Jackson Sustainability Cooperative supplemented its responses to interrogatories and requests for production. (Doc. 2160001ak)

On February 11, 2022, a second set of written questions was issued by the government intervenors limited to the supplemental direct testimony filed by Mr. Emberling as the initial president of Jackson Sustainability Cooperative. On March 10, 2022, Jackson Sustainability Cooperative responded to the second set of written interrogatories and requests for production of documents. (Doc. 2160001au)

There were no delays in responses. There was no refusal to produce documents. The objections to documents and information I made were never ruled on because there was no opportunity to attempt to introduce documents as evidence. All nonprivileged documents in my possession were turned over to the government intervenors. Specifically, no emails given to me by Jackson Sustainability Cooperative or Community Development Enterprises that were requested by the government intervenors were intentionally held back or deleted by me.

Q. WHY DO YOU BELIEVE DOCUMENTS PRODUCED BY NORTHERN RELIABILITY, INC. WERE NOT PRODUCED BY JACKSON SUSTAINABILITY COOPERATIVE OR COMMUNITY DEVELOPMENT ENTERPRISES?

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) On April 21, 2022, TECA set a letter to the Petitioner requesting an explanation as to why certain documents produced by Northern Reliability related to Community Development Enterprises were not produced by Jackson Sustainability Cooperative. There were no communications or documents between Northern Reliability and the Petitioner, Jackson Sustainability Cooperative questioned by the government

intervenors.

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. On page 2 of the letter I emphasized that all non-privileged documents in my possession were produced in discovery in this matter. TECA never provided to Jackson Sustainability Cooperative or questioned any specific email requiring explanation between Greg Noble of Northern Reliability and Mr. Emberling as one of the managers for E A Solar, LLC, the manager of the solar developer. It is my understanding that Mr. Noble and Mr. Emberling are friends who have collaborated on many issues and project proposals. Northern Reliability properly produced all communications with Mr. Emberling without regard to relevancy or subject matter. These documents have not been moved into evidence, so there is no determination on whether they are relevant to the Petition filed by Jackson Sustainability Cooperative.

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 located at 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.

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. David Hunt owns a local construction business which concentrates on hotels. Mr. Hunt was a logical contractor for the site work. Even though any negotiations between iSUN and Northern Reliability 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.

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 Reliability and delivered by TECA to me on behalf of Jackson Sustainability Cooperative that are available in the public record at Doc. No. 2160001bj.

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 000001 to 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 for Jackson Sustainability Cooperative was produced in discovery which excludes Lane College. (JSC Confidential 5000057)

The confidential documents produced by Northern Reliability, Inc. and delivered to me for 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. In the motion to compel, TECA and JEA provided no witnesses and put no facts into evidence under oath.

Q. DID YOU PRODUCE ALL NON-PRIVILEGED DOCUMENTS IN YOUR POSSESSION?

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 and documents 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. David Hunt, John Meyer, David Shimon, and Dennis Emberling had standing ZOOM meetings to discuss bringing solar to Jackson, Tennessee. On a few occasions, I attended the ZOOM meeting held by Community Development Enterprises. I confirmed that no additional documents were available.

Q. ARE THE REQUESTED ATTORNEY FEES OF TECA AND JEA REASONABLE FOR THE SERVICES PROVIDED?

TECA chose not to put its invoices into evidence to support a request for attorney fees. (Aff. B. Phillips, p. 3, 2100061de) Without putting invoices into evidence, it is not possible for TECA to carry its burden of proof to show the reasonableness of its charges. The attorney fees requested by TECA represent the attorney fees incurred to file one motion to compel more information. JEA simply joined in this motion. The time spent issuing six subpoenas is not time that was expended in writing a motion to compel. Without invoices in the record, the requested fee cannot be supported for the Commission or cross examined.

On information and belief, at this point, the government intervenors have in their possession the 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.

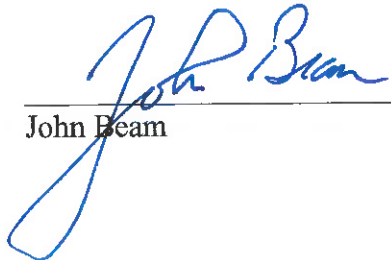
My understanding from the award of sanctions is that the entire basis for the sanctions was a perceived "deficiency" related to E A Solar, LLC, the managing member of Community Development Enterprises Jackson - I. My efforts as attorney was not the cause of this perceived deficiency, a deficiency that 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.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

I swear that the foregoing testimony is true and correct to the best of my knowledge.

Respectfully submitted this 20th day of November, 2023.

  
\_\_\_\_\_  
John Beam

STATE OF TENNESSEE   )  
                                  )  
COUNTY OF DAVIDSON   )

Subscribed and sworn to me a Notary Public, in his capacity as former counsel of JSC  
this 20<sup>th</sup> day of November, 2023.

  
\_\_\_\_\_  
Notary Public

Commission Expires: 1/4/2027

