

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 29, 2023

IN RE:

**PETITION OF JACKSON SUSTAINABILITY
COOPERATIVE TO DETERMINE IF A CERTIFICATE
OF CONVENIENCE AND NECESSITY IS NEEDED**

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**DOCKET NO.
21-00061**

PRE-HEARING ORDER

This matter came before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) during a Pre-hearing Conference held on November 21, 2023. In accordance with Tenn. Code Ann. § 4-5-306 and Commission Rule 1220-1-2-.12, the Pre-Hearing Conference was held to resolve certain matters including any outstanding procedural matters or pending motions, and to establish the orderly conduct of the hearing to establish the amount of reasonable attorneys’ fees to be awarded to Tennessee Electric Cooperative Association (“TECA”) and Jackson Energy Authority (“JEA”). The hearing is scheduled to be held at 10:30 a.m. CST on November 30, 2023. During the Pre-hearing Conference, the procedure was also established for the for the oral arguments on the *Motion to Dismiss Pursuant to TRCP 12.02(1)(2)(4)(5) and 1220-01-02-.03(2)(a)(b)(c)(d)* (“*Emberling Motion to Dismiss*”) filed on behalf of Dennis Emberling that will precede the hearing.

I. PRELIMINARY ISSUES

The Hearing Officer took Official Notice of the Final Bankruptcy Order of Jackson Sustainability Cooperative (“JSC”). The Hearing Officer also reiterated that the *Applicant’s Motion*

to Dismiss with Prejudice filed by JSC on August 14, 2023, will be considered after the proceedings establishing the amount of the attorney's fees have concluded.¹

On November 17, 2023, TECA filed *Tennessee Electric Cooperative Association's Motion for Leave to File Reply to Responses by Jackson Sustainability Cooperative and Its Former Counsel Regarding Award of Reasonable Attorneys' Fees* ("TECA's Motion for Reply") and its Reply seeking to file responses to *Applicant's Response Argument to Motion to Assess Fees and Expenses in This Case* filed on September 29, 2023; the *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* filed on October 2, 2023 ("Beam's Response"); and the *Affidavit of Dennis Emberling* filed on October 2, 2023 ("Emberling's October Affidavit"). According to TECA, a brief reply will help the Hearing Officer's consideration of the issues, and *Beam's Response* goes beyond simply responding to *TECA's Memorandum Supporting Award of Reasonable Attorneys' Fees*, and *Emberling's October Affidavit* "contains incomplete and misleading characterizations of the record in this docket."² The Hearing Officer finds that *TECA's Motion for Reply* was timely and no objections were filed or raised during the Status Conference. Further, the Commission and Hearing Officer often grant motions to reply to a response because it is beneficial to have as much information as possible when considering complex issues. Therefore, the Hearing Officer grants *TECA's Motion for Reply*. During the Status Conference, JEA and Emberling made verbal motions to file Replies to the Responses as well. The Hearing Officer granted those Motions and required that all Replies be filed by **November 28, 2023, at 12:00 p.m. (CST)**.

¹ The Hearing Officer initially advised the parties of this during the September 8, 2023, Status Conference.

² *TECA's Motion for Reply*, pp. 1-2 (November 17, 2023).

II. PROCEDURE FOR ORAL ARGUMENT ON *EMBERLING MOTION TO DISMISS*

A. Emberling will present oral arguments on the *Emberling Motion to Dismiss* first.

Emberling will have a total of **thirty (30) minutes** to argue and may reserve a portion of that time for rebuttal.

- Emberling will have **twenty (20) minutes** for the initial argument and **ten (10) minutes** reserved for rebuttal.

B. The Intervenors will present their oral arguments next and will have a combined total of **thirty (30) minutes** to argue.

- TECA will argue first and will have **twenty (20) minutes**, followed by JEA, who will have **ten (10) minutes**.

C. Ruling on *Emberling Motion to Dismiss*

III. PROCEDURE FOR HEARING ON THE AMOUNT OF REASONABLE ATTORNEYS' FEES

During the Pre-Hearing Conference, the length and timing of the order of proof for the hearing was discussed. The following order of the hearing was then established and agreed upon:

A. NOTICE OF HEARING & PUBLIC COMMENT

On November 17, 2023, a *Notice of Oral Arguments and Hearing* was issued notifying the public that a hearing will be held at **10:30 a.m. (CST)** on **Thursday, November 30, 2023**. Members of the public are encouraged to participate by filing written comments in the docket file and/or presenting verbal comments during the hearing.

B. OPENING STATEMENTS

The parties will give opening statements in the following order and with the time limits designated below:

1. **Intervenors** (combined total of 30 minutes):

a. **TECA**- 20 minutes

- b. **JEA**-10 minutes
2. **Beam**-30 minutes
3. **Emberling**-15 minutes
4. **JSC** – 15 minutes; JSC will state its position on the record.

C. EXHIBITS & DOCUMENTS

The parties should exchange any demonstrative exhibits related to a witness's pre-filed testimony by **Tuesday, November 28, 2023 (CST)**. Each party should have its own copy of all exhibits, including those appended to pre-filed testimony, available for reference during the hearing and is responsible for supplying a sufficient number of copies of any exhibits that it intends to reference or discuss with a witness. A party should use its discretion in determining the total number of copies to have on hand, but at a minimum, six (6) copies of an exhibit should be provided for the court reporter, the Hearing Officer, and Legal Staff. Additional copies will need to be provided to the other parties.

D. WITNESS SUMMARY AND CROSS-EXAMINATION

During direct examination, the witness, Mr. Beam, will be permitted **ten (10) minutes** to summarize his pre-filed testimony. After Mr. Beam's summary, he will be subject to cross-examination by the other parties in the following order: Intervenors, then Emberling.

E. QUESTIONS BY THE COMMISSION

The Hearing Officer and the Commission's Advisory Staff have the opportunity to ask questions following cross-examination and additional questions may be asked of the other parties after closing arguments.

F. CLOSING ARGUMENTS

The parties will give closing arguments in the following order and with the time limits designated below:

1. **Beam**- 15 minutes

2. **Emberling**-10 minutes
3. **Intervenors** (combined total of 30 minutes):
 - a. **TECA**- 20 minutes
 - b. **JEA**-10 minutes

IT IS THEREFORE ORDERED THAT:

1. Jackson Energy Authority or Emberling must file any Reply to the Responses by November 28, 2023, at 12:00 p.m.
2. Parties should provide exhibit lists by November 28, 2023.
3. The hearing scheduled for **10:30 a.m. CST on November 30, 2023**, shall be conducted in accordance with this Pre-Hearing Order unless amended or otherwise ordered by the Hearing Officer.


Monica Smith-Ashford, Hearing Officer