

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Athens Utilities Board;)	Docket Nos. EL21-40-000
)	TX21-1-000
Gibson Electric Membership Corporation;)	
and)	
)	
Volunteer Energy Cooperative Petitioners,)	
)	
v.)	
)	
Tennessee Valley Authority Respondent.)	
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)	
)	

**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD
AND SUPPLEMENT OF PETITIONERS**

Pursuant to Rule 212 of Federal Energy Regulatory Commission’s (FERC or Commission) Rules of Practice and Procedure,¹ Athens Utilities Board (AUB), Gibson Electric Membership Corporation (Gibson EMC), and Volunteer Energy Cooperative (Volunteer) (together, Petitioners) respectfully request leave to supplement the record in the above-captioned proceedings to apprise the Commission of events that have occurred in the intervening months since the Petitioners filed the January 11, 2021 Complaint and Petition for Order under Federal Power Act Sections 210 and 211A Against Tennessee Valley Authority (Petition).² Specifically, Petitioners seek to submit (1) a supplemental affidavit of Volunteer President/Chief Executive

¹ 18 C.F.R. § 385.212.

² Petitioners January 11, 2021 Complaint and Petition for Order under Federal Power Act Sections 210 and 211A Against Tennessee Valley Authority (Petition).

Officer (CEO) Roderick Blevins; (2) a supplemental affidavit of Gibson EMC President/CEO Daniel Rodamaker; (3) a supplemental affidavit of AUB General Manager Eric T. Newberry, Jr.; (4) an affidavit of Petitioners' consultant Michael Whiteside; and (5) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Because the discriminatory nature of this conduct (1) supports the Petition's contention that TVA does not provide comparable or nondiscriminatory transmission service and (2) represents a troubling response to Petitioners' lawful exercise of their rights under the Federal Power Act (FPA), Petitioners respectfully request leave to supplement the record with the attached supplements.

I. MOTION FOR LEAVE TO SUPPLEMENT THE RECORD

Petitioners respectfully request that the Commission grant them leave to supplement the record in the above-captioned proceedings. The Commission has permitted supplements to the record when good cause exists and doing so will assist the Commission in its decision-making process.⁴ The supplemental materials Petitioners attach to this motion demonstrate TVA's retaliatory reaction to the Petitioners' exercise of their rights under section 211A of the FPA,⁵

³ [REDACTED]

⁴ See, e.g., *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,160, at P 52 (2018) (granting motion to supplement the record in complaint proceeding); *Central Maine Power Co.*, 129 FERC ¶ 61,153, at P 14 (2009) (granting motion to lodge where the parties "demonstrated good cause" and "have presented the Commission with information about a material change in the facts that the Commission relied on in reaching its decision."); *SFPP, L.P.*, 102 FERC ¶ 61,073, at P 5 (2003) (accepting motion to supplement where supplement "add[ed] useful information on points before the Commission").

⁵ 16 U.S.C. § 824j-1.

which has only exacerbated the difference between the terms and conditions on which TVA provides transmission service to itself and other customers who have not challenged TVA at FERC, as compared to Petitioners. Because this difference and TVA's discriminatory practices bear directly on a disputed matter in these proceedings, the supplementary materials will ensure a more accurate and complete record and provide useful and relevant information that will assist the Commission in its deliberative process. Further, TVA's conduct in explicit response to Petitioners seeking relief from the Commission sets a dangerous precedent that the Commission should condemn in no uncertain terms. Accordingly, there is good cause to accept these supplements to the record.

II. SUPPLEMENT

The Petitioners filed the Petition on January 11, 2021, which demonstrated that TVA does not offer transmission service at terms and conditions that are comparable to those it offers itself and that are not unduly discriminatory or preferential.⁶ The Petition requested that the Commission issue an order under FPA section 211A compelling TVA to provide unbundled transmission service to Petitioners on comparable and nondiscriminatory rates, terms, and conditions so that Petitioners could serve notice of termination on their bundled full-requirements Power Contracts with TVA and seek alternative suppliers.

The Petitioners remain bundled power and transmission service customers of TVA under the Power Contracts. None of them has submitted the required five-year notice to terminate service because they do not know what ultimate action the Commission may take with regard to the Petition. [REDACTED]

⁶ See Petition at 27-39.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁷ See Exhibit No. LPC-0019, Supplemental Affidavit of Roderick Blevins (Blevins Aff.); Exhibit No. LPC-0020, Supplemental Affidavit of Daniel Rodamaker (Rodamaker Aff.); Exhibit No. LPC-0021, Supplemental Affidavit of Eric T. Newberry, Jr. (Newberry Aff.); Exhibit No. LPC-0022, Affidavit of Michael Whiteside (Whiteside Aff.); Exhibit No. LPC-0023, Transcript of Blevins/Lyash Exchange (Transcript).

⁸ Blevins Aff. at P 5; Rodamaker Aff. at P 5; Whiteside Aff. at P 5.

⁹ Blevins Aff. at P 6; Rodamaker Aff. at P 6; Whiteside Aff. at P 6; Transcript at 1.

¹⁰ Blevins Aff. at P 7; Rodamaker Aff. at P 6; Whiteside Aff. at P 6; Transcript at 1.

¹¹ Blevins Aff. at P 8; Rodamaker Aff. at P 7; Whiteside Aff. at P 7; Transcript at 2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And, as recounted in the Supplemental Affidavit of Eric T. Newberry, Jr., Mr. Lyash has made this claim in other settings as well.¹⁴

Although Petitioners initiated this proceeding to facilitate the termination of their Power Contracts, TVA remains bound by those contracts to meet Petitioners' supply needs and conduct necessary system upgrades.¹⁵ As noted above, neither Volunteer nor the other Petitioners have submitted a notice of termination, which must be filed five years prior to such termination. Thus, even if the Petition is successful, they must still give TVA five years' notice before terminating their Power Contracts. Petitioners have not yet done so because they must continue to serve their members' needs, and thus Petitioners remain full-requirements, wholesale customers of TVA. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹² Blevins Aff. at P 9; Rodamaker Aff. at P 7; Whiteside Aff. at P 7; Transcript at 2.

¹³ Blevins Aff. at P 9; Rodamaker Aff. at P 7; Whiteside Aff. at P 7; Transcript at 2.

¹⁴ Newberry Aff. at P 6.

¹⁵ *See generally* Exhibit No. LPC-0010, Power Contract of Athens Utilities Board; Exhibit No. LPC-0011, Power Contract of Gibson EMC; Exhibit No. LPC-0013, Power Contract of Volunteer Energy Cooperative.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Commission

should not stand for this brazen disrespect of the Commission’s procedures and Petitioners’ rights under the FPA. TVA’s actions must be condemned in order to avoid setting the dangerous precedent that such retaliation is acceptable, or else wronged entities will refrain from exercising their rights before this Commission for fear of similar treatment.

Petitioners provide these materials for the Commission’s consideration to aid in its assessment of the Petition. As shown in the attached materials, TVA’s actions provide additional support for the Petition’s requested relief, which would allow Petitioners to escape dependence on TVA by requiring TVA to provide unbundled transmission service to Petitioners. Petitioners therefore reiterate their request that the Commission issue an order directing TVA to (1) provide unbundled transmission service to Petitioners and/or outside power suppliers seeking to serve Petitioners’ load at rates and on terms and conditions comparable to those TVA offers itself, and

(2) formalize interconnection arrangements and provide interconnection service to Petitioners when Petitioners terminate their existing full-requirements Power Contracts with TVA.

III. REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to 18 C.F.R. § 388.112, Petitioners request confidential treatment of portions of this Motion and the supplements attached hereto, as they recount statements made at a TVPPA event that was not open to the general public. Accordingly, out of an abundance of caution, Petitioners have marked the Motion and exhibits with the following header: “**CUI//PRIV; CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE**” and redacted the privileged material in the public versions, pursuant to the applicable requirements for confidential materials. In accordance with 18 C.F.R. § 388.112(b)(2)(i), participants that have executed a Non-Disclosure Certificate in the form attached to Petitioners’ March 16, 2021 Motion for Leave to Answer and Answer, as corrected on March 22, 2021, pursuant to the proposed Protective Order attached to the same, will receive the unredacted versions.

IV. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Commission grant the Petitioners leave to supplement the record and consider the supplemental materials contained herein.

Respectfully submitted,

/s/ William DeGrandis

William D. DeGrandis

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Attorneys for Petitioners

October 15, 2021

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rule of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 15th day of October 2021.

/s/ Nicholas J. Guidi
Nicholas J Guidi

Exhibit No. LPC-0019

Supplemental Affidavit of Roderick Blevins

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Tennessee Valley Authority Respondent.)	
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**Supplemental Affidavit of Roderick Blevins
October 15, 2021**

BACKGROUND

1. My name is Roderick Blevins. I serve as President & Chief Executive Officer (CEO) of Volunteer Energy Cooperative (Volunteer).
2. Volunteer is a not-for-profit electric cooperative based in Decatur, Tennessee. We serve 92,559 members with electric service throughout parts of East and Middle Tennessee with a total peak load of 726 MW. As a not-for-profit electric cooperative, our management team is required to ensure that we provide the most reliable power to our members at the lowest cost.
3. As the President & CEO, I am responsible for all aspects of power supply for Volunteer, including ensuring that our current contract for power and delivery services (Power Contract) with the Tennessee Valley Authority (TVA) is implemented properly. I am also responsible for the financial and operational direction of the Cooperative.
4. I submitted an affidavit on January 11, 2021 in support of the Complaint and Petition for Order under Federal Power Act Sections 210 and 211A Against Tennessee Valley Authority

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(Petition), filed by Volunteer, Athens Utility Board, and Gibson Electric Membership Corporation (Petitioners)¹ in the above-captioned dockets.

SUPPLEMENTAL AFFIDAVIT

5. I attended the Tennessee Valley Public Power Association, Inc.'s (TVPPA) Annual Conference on August 30, 2021 through September 1, 2021, as Volunteer is a TVPPA member.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Joe Wheeler Electric Membership Corporation also joined in the Petition but has since withdrawn its participation from this proceeding.

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[REDACTED]

10. TVA and Mr. Lyash may be disappointed that Volunteer has sought relief from FERC, but we still have members that we must serve pursuant to our existing Power Contract with TVA, which is still in effect.

[REDACTED]

[REDACTED]

Volunteer urges the Commission to grant the relief requested in the Petition.

This concludes my Affidavit.

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AFFIDAVIT

STATE OF TENNESSEE)	
)	ss:
COUNTY OF MEIGS)	

I, **Roderick Blevins**, being duly sworn, certify that the attached testimony in this docket was prepared by me or under my supervision and that the answers contained in such testimony are true and correct to the best of my knowledge, information and belief.



Roderick Blevins
Roderick Blevins
President and CEO
Volunteer Energy Cooperative

Exhibit No. LPC-0020

Supplemental Affidavit of Daniel Rodamaker

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**Supplemental Affidavit of Daniel Rodamaker
October 15, 2021**

BACKGROUND

1. My name is Daniel Rodamaker. I serve as the President and CEO of Gibson Electric Membership Corporation (Gibson EMC) and Gibson Connect, LLC.
2. Gibson EMC is a not-for-profit electric cooperative based in Trenton, Tennessee. We serve approximately 39,000 members with electric service and broadband throughout eight west Tennessee counties (Crockett, Dyer, Gibson, Haywood, Lake, Lauderdale, Obion and Madison) and four west Kentucky counties (Carlisle, Fulton, Graves and Hickman) with a total load of approximately 200 MW. As a not-for-profit electric cooperative, our management team is required to ensure that we provide the most reliable power to our members at the lowest possible cost.
3. As the President and CEO, I am responsible for all aspects of power supply for Gibson EMC, including ensuring that our current contract for power and delivery services with the Tennessee Valley Authority (TVA) is implemented properly. I am responsible for the daily operations and report directly to the Board of Trustees.

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4. I submitted an affidavit on January 11, 2021, in support of the Complaint and Petition for Order under Federal Power Act Sections 210 and 211A Against Tennessee Valley Authority (Petition), filed by Volunteer Energy Cooperative (Volunteer), Athens Utility Board, and Gibson EMC (Petitioners)¹ in the above-captioned dockets.

SUPPLEMENTAL AFFIDAVIT

5. I attended the Tennessee Valley Public Power Association, Inc.'s (TVPPA) Annual Conference on August 30, 2021, through September 1, 2021, as Gibson EMC is a TVPPA member. [REDACTED]

[REDACTED]

[REDACTED]

8. As a fellow Petitioner and also as a fellow cooperative President/CEO, I was shocked by this response. Volunteer, like Gibson EMC, remains party to a full-requirements power supply contract with TVA, and even if the Petitioners prevail in this proceeding, they could not terminate their contracts with TVA for five years. None of the Petitioners has provided the five-year notice of termination, as we are all waiting to see if FERC grants our pending request for transmission access. [REDACTED]

[REDACTED]

¹ Joe Wheeler Electric Membership Corporation also joined in the Petition but has since withdrawn its participation from this proceeding.

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[REDACTED]

[REDACTED]

This concludes my Affidavit.

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v.)	
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Tennessee Valley Authority Respondent.)	
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AFFIDAVIT

STATE OF TENNESSEE)	
)	ss:
COUNTY OF GIBSON)	

I, **Daniel Rodamaker**, being duly sworn, certify that the attached testimony in this docket was prepared by me or under my supervision and that the answers contained in such testimony are true and correct to the best of my knowledge, information and belief.



Daniel Rodamaker
President and CEO
Gibson Electric Membership Corporation

Exhibit No. LPC-0021

Supplemental Affidavit of Eric T. Newberry, Jr.

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**Supplemental Affidavit of Eric T. Newberry Jr.
October 15, 2021**


BACKGROUND

1. My name is Eric T. Newberry Jr. I serve as the General Manager of Athens Utilities Board (AUB).
2. AUB is a not-for-profit municipal utility in Athens, Tennessee. We serve 13,490 customer accounts with electricity throughout our service territory in Southeastern Tennessee. As a not-for-profit municipal utility, our management team is required to ensure that we provide the most reliable power to our members at the lowest cost.
3. As the General Manager, I am responsible for all aspects of power supply for AUB, including ensuring that our current contract for power and delivery services (Power Contract) with the Tennessee Valley Authority (TVA) is implemented properly. I am responsible for the daily operations of all four divisions of AUB and report directly to the Board of Directors.

PUBLIC VERSION
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4. I submitted an affidavit on January 11, 2021, in support of the Complaint and Petition for Order under Federal Power Act Sections 210 and 211A Against Tennessee Valley Authority (Petition), filed by Volunteer Energy Cooperative (Volunteer), AUB, and Gibson EMC (Petitioners)¹ in the above-captioned dockets.

SUPPLEMENTAL AFFIDAVIT

5. 
6. Mr. Lyash has made similar statements elsewhere. I recently spoke to McMinn County Mayor John Gentry and Athens City Mayor Bo Perkinson, both of whom recently met with Mr. Lyash and TVA Board Chairman Bill Kilbride. Mr. Kilbride had called Mayor Perkinson to attend a meeting with officials to discuss the programs and benefits of TVA to local governments in the TVA service territory. Mr. Perkinson had invited Mr. Gentry to the meeting as a fellow local official impacted by TVA programs. Both mayors relayed to me the substance of the meeting and statements made by Mr. Lyash, which involved a discussion of TVA's benefits to the community and the overall reliability of its system. Mr. Lyash noted that Volunteer's system was one of the few problem areas in which TVA had significant reliability issues. Mr. Lyash acknowledged that it was a real issue and that he would "like" to invest millions in needed transmission infrastructure and equipment to remedy the situation, but that TVA is reluctant to invest in that area because of the Petition proceeding and the possibility that Volunteer might give notice on its Power Contract as a result. It was also very disappointing that they excluded me, the General Manager of the city's utility, from the meeting.
7. As a fellow Petitioner and also as a fellow LPC General Manager, I was taken aback by this statement. Volunteer, like AUB, remains party to a full-requirements power supply contract with TVA, and pays millions of dollars each month in wholesale power charges to TVA. Further, even if the Petitioners prevail in this proceeding, they could not terminate their contracts with TVA for five years. None of the Petitioners has provided the five-year notice of termination, as we are all waiting to see if FERC grants our pending request for transmission access. Nevertheless, Mr. Lyash has now consistently stated that TVA has deferred planned upgrades that are necessary to provide reliable service to Volunteer solely due to the Petition that we filed at FERC. This conduct is discriminatory, punitive, and needlessly retaliatory as a direct result of Volunteer asserting its rights under federal law. Given the setting and the attendees at the meeting (Mayor Perkinson is also an AUB Board member), I suspect Mr. Lyash was trying to influence the mayor to pressure AUB to withdraw from the Petition. In my opinion, it was very similar to the strategy taken with Joe Wheeler EMC's board members that resulted in their withdrawal from the Petition.

¹ Joe Wheeler Electric Membership Corporation (Joe Wheeler EMC) also joined in the Petition but has since withdrawn its participation from this proceeding.

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8. AUB provides this information for the Commission to take into account in deciding whether to grant the Petition. None of the Petitioners should be punished for exercising our rights under the Federal Power Act to seek transmission access from TVA. And TVA should not be able to use our attempt to assert those rights against us as a basis to put off upgrades needed to ensure reliable service to us and, by extension, our members, especially while we still have a contract in place under which TVA is required to provide reliable service and to address problems that undermine reliability. AUB urges the Commission to grant the relief requested in the Petition.

This concludes my Affidavit.

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AFFIDAVIT

STATE OF TENNESSEE)	
)	ss:
COUNTY OF MCMINN)	

I, **Eric T. Newberry Jr.**, being duly sworn, certify that the attached testimony in this docket was prepared by me or under my supervision and that the answers contained in such testimony are true and correct to the best of my knowledge, information and belief.



Eric T. Newberry Jr.
General Manager
Athens Utilities Board

Exhibit No. LPC-0022

Affidavit of Michael Whiteside

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Respondent.)	
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**Affidavit of Michael Whiteside
October 15, 2021**

BACKGROUND

1. My name is Michael Whiteside. I serve as Vice President of Business Development at EnerVision Inc. (EnerVision).
2. EnerVision is an independent management and technical consulting firm, offering the electric utility industry a full range of business-related services. We work with utilities of all sizes, in all markets to add value, solve technical and business-related problems as well as partner with our clients to successfully address current and emerging industry issues. Our service lines include Power Supply Services, Emerging Energy Solutions, and Management Consulting Services.
3. Prior to joining EnerVision, I spent 35 years at Coweta-Fayette EMC (Coweta-Fayette), a Georgia electric cooperative, rising to the position of President and Chief Executive Officer (CEO) of the cooperative. Coweta-Fayette is a distribution

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cooperative providing retail electric power service to its retail member consumers and is a member of Oglethorpe Power Corporation. In addition to my leadership role at Coweta-Fayette, I have also served as President/CEO of Relyco Resources, Inc., a commercial/residential security subsidiary; President/CEO of Coweta-Fayette EMC Natural Gas, Inc.; and President of Green Power EMC, an organization of 38 participating Georgia cooperatives that offer renewable energy from Georgia resources.

4. EnerVision is supporting Athens Utilities Board, Gibson Electric Membership Corporation, and Volunteer Electric Cooperative (Volunteer) (collectively, Petitioners) in their efforts to seek alternative power supply in the event they elect to terminate their current power supply arrangements with the Tennessee Valley Authority (TVA). In furtherance of this effort, the Petitioners submitted a Complaint and Petition for Order under Federal Power Act Sections 210 and 211A against Tennessee Valley Authority (Petition) on January 11, 2021 in the above-captioned dockets, asking the Federal Energy Regulatory Commission (FERC or the Commission) to issue an order compelling TVA to provide unbundled transmission service at comparable and nondiscriminatory rates, terms, and conditions under section 211A of the Federal Power Act.

AFFIDAVIT

5. In my capacity as consultant to the Petitioners, I attended the Tennessee Valley Public Power Association, Inc.'s Annual Conference on August 30, 2021, through September 1, 2021.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

8. In my over 35 years in the electric cooperative industry, I have never seen such openly discriminatory and unprofessional conduct, especially in response to a customer seeking relief from a regulator.

[REDACTED]

[REDACTED] Volunteer, like all of the Petitioners, remains party to a full-requirements power supply contract with TVA (Power Contract), and even if they prevail in this proceeding, they could not terminate their contracts with TVA for five years. None of the Petitioners has provided the five-year notice of termination, as they are waiting to see if FERC grants the pending request for transmission access under section 211A of the Federal Power Act.

[REDACTED]

[REDACTED]

[REDACTED] TVA's actions only further support the Petitioners' request for relief in the Petition and show that TVA does not provide comparable or non-discriminatory transmission service.

This concludes my Affidavit.

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AFFIDAVIT

STATE OF GEORGIA)	
)	ss:
COUNTY OF DEKALB)	

I, **Michael Whiteside**, being duly sworn, certify that the attached testimony in this docket was prepared by me or under my supervision and that the answers contained in such testimony are true and correct to the best of my knowledge, information and belief.

Michael Whiteside

 Michael Whiteside
 Vice President, Business Development
 EnerVision, Inc.