

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ELISSA M. ROBERTS, Individually and on)) Case Number: 4:19-cv-02935-HSG) STIPULATED ORDER RE: DISCOVERY) OF ELECTRONICALLY STORED) INFORMATION
Behalf of All Others Similarly Situated,)	
Plaintiff,)	
v.)	
BLOOM ENERGY CORPORATION, et al.,)	
Defendants.)	

IT IS HEREBY STIPULATED AND AGREED by and between parties hereto, through their undersigned counsel, and subject to this Court’s approval:

1. PURPOSE

This Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules. The purpose of this Order is to streamline production to promote efficient electronic discovery in this action. The Parties agree to alert all other Parties concerning any technical problems associated with complying with this Protocol. To the extent a Party reasonably believes that compliance with this Protocol imposes an undue burden with respect to any protocol, source, or search term listed herein, it shall notify the other Parties, and the Parties shall promptly confer in an effort to resolve the issue

2. DEFINITIONS

2.1. “Document” or “Documents” means any writing however recorded, including handwriting, typewriting, printing, photographing, photocopying, transmitting by electronic mail

1 or facsimile and every other means of recording upon any tangible thing, any form of
2 communication or representation, including letters, words, pictures, sounds or symbols or
3 combinations thereof, and any record created thereby, regardless of the manner in which the
4 record has been stored, and also specifically includes Electronically Stored Information and Hard-
5 Copy Documents.

6 2.2. “Electronically stored information” or “ESI” means any Document or Documents
7 stored or transmitted in electronic form.

8 2.3. “Hard-Copy Document” means any Document existing in paper form at the time
9 of collection.

10 2.4. “Hash Value” is a unique alphanumeric identifier that can be assigned to a file,
11 a group of files or a portion of a file, based on a standard mathematical algorithm applied to the
12 characteristics of the text contained within the file or files.

13 2.5. “Metadata” means data created as a function of the application software used to
14 create the document or file. To the extent they are available and able to be captured at the time of
15 collection, the metadata values that are to be extracted and produced in the metadata load files
16 (.DAT file using concordance standard delimiters) are listed in “Addendum A” attached hereto.

17 2.6. “Native Format” means and refers to the format of ESI in which it was generated
18 and/or as used by the Producing Party in the usual course of its business and in its regularly
19 conducted activities. For example, the Native Format of an Excel workbook is a .xls or .xlsx file.

20 2.7. “Load Files” means electronic files provided with a production set of Documents
21 and images used to load that production set into a Requesting Party’s Document review platform.

22 2.8. “Optical Character Recognition” or “OCR” means the process of recognizing, and
23 creating a file containing, visible text within an image.

24 2.9. “Searchable Text” means the text extracted or generated using OCR from any
25 Document that allows the Document to be electronically searched.

26 **3. COOPERATION**

27 The parties are aware of the importance the Court places on cooperation and commit to
28 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the

1 Discovery of ESI.

2 **4. LIAISON**

3 The parties have identified liaisons to each other who are and will be knowledgeable
4 about and responsible for discussing their respective ESI, as follows:

5 For Plaintiff: Adam M. Apton, Esq., Levi & Korsinsky, LLP

6 For Defendants: Matthew J. Dolan, Esq., Sidley Austin LLP and Robert H. O’Leary,
7 Esq., Morgan, Lewis & Bockius LLP

8 Each e-discovery liaison will be, or have access to those who are, knowledgeable about
9 the technical aspects of e-discovery, including the location, nature, accessibility, format,
10 collection, search methodologies, and production of ESI in this matter. The parties will rely on
11 the liaisons, as needed, to confer about ESI and to help resolve disputes without court
12 intervention.

13 **5. PRESERVATION**

14 The parties have discussed their preservation obligations and needs and agree that
15 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs
16 and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

17 a) Only ESI created or received between March 30, 2017, and December 31,
18 2020 needs to be preserved, unless otherwise agreed in the ordinary course of discovery;

19 b) The parties will meet and confer on the types of ESI they believe should
20 be preserved and the custodians, or general job titles or descriptions of custodians, for
21 whom they believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing
22 manager.” The parties shall add or remove custodians as reasonably necessary. If the
23 Parties fail to reach agreement, any Party may, but is not required to, bring the dispute to
24 the Court for resolution;

25 c) The parties will meet and confer on the number of custodians per party
26 for whom ESI will be preserved. If the Parties fail to reach agreement, any Party may,
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1 but is not required to, bring the dispute to the Court for resolution; and

2 d) Defendants believe that the circumstances of this case do not warrant the
3 preservation, collection, review, or production of ESI that is not reasonably accessible
4 because they anticipate that enough relevant information can be yielded from reasonably
5 accessible sources and, as necessary and appropriate, supplemented with deposition
6 discovery.

7 e) The Parties agree to meet and confer regarding any disagreements. If the
8 Parties fail to reach agreement, any Party may, but is not required to, bring the dispute to
9 the Court for resolution.

10 **6. SEARCH**

11 6.1 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or
12 earlier if appropriate, they will meet and confer about methods to search ESI in order to identify
13 ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

14 6.2 The Producing Party may apply electronic searches in order to identify potentially
15 responsive ESI. The Parties agree to meet and confer on a search protocol for such searches,
16 comprising of (a) the custodians and/or sources of ESI to be searched; (b) the search terms to be
17 applied against those custodians and/or sources; (c) the date range to be applied against those
18 custodians and/or sources; and (d) any other search criteria or methods to be used to identify
19 potentially responsive ESI (the "Search Protocol"). If the Parties fail to reach agreement as to
20 the Search Protocol, either Party may, but is not required to, bring the dispute to the Court for
21 resolution. In the absence of an agreement or court order regarding a Search Protocol, the
22 Producing Party may apply a Search Protocol of its choosing, without prejudice to the
23 Requesting Party's ability to seek later relief from the Court regarding the adequacy of the Search
24 Protocol.

25 6.3 The fact that the Parties agree to a Search Protocol shall not preclude a Producing
26 Party from reviewing potentially responsive ESI that is returned by the Search Protocol in order
27 to make final determinations as to the responsiveness of the ESI and the privilege and other
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1 protections applicable to the ESI.

2 6.4 Where reasonable, including but not limited to if specific sources of potential ESI
3 cannot be searched using the Search Protocol due to technical limitations, a Producing Party may
4 employ means other than the Search Protocol in order to identify responsive Documents or ESI.
5 The Parties agree to meet and confer regarding any disagreements. If the Parties fail to reach
6 agreement, any Party may, but is not required to, bring the dispute to the Court for resolution.

7 **7. PRODUCTION FORMATS**

8 7.1 ESI is to be produced in 300 DPI Group IV Grayscale Tagged Image File Format
9 (.TIFF or .TIF) files. TIFF files shall be produced in single-page format along with image load
10 files (.OPT file and .LFP file). If TIFF files are unavailable or unable to be produced, documents
11 may be produced in a similar graphic file format (*e.g.*, .JPG). All documents are to be provided
12 with per document searchable text (.TXT) files, and such text files shall contain the full text
13 extraction. In the event a document is redacted or scanned into TIFF format, the text file should
14 contain that document's OCR text. These text files and image load files should indicate page
15 breaks, to the extent possible. If particular documents warrant a different format, the parties will
16 cooperate to arrange for the mutually acceptable production of such documents. The parties agree
17 not to degrade the searchability of documents as part of the document production process.

18 7.2 During the process of converting ESI from the electronic format of the application
19 in which the ESI is normally created, viewed and/or modified to TIFF, metadata values should be
20 extracted and produced in a load file.

21 7.3 Unless otherwise stated herein, documents in families shall be produced and
22 Bates-stamped in sequence with the Absolute Parent first in sequence, followed by any and all
23 attachments. Absolute Parent shall be defined as the document that is the source for all other
24 documents in a document family, regardless of whether attachments to the Absolute Parent are
25 also parent documents with attachments. When producing responsive attachments, the parent
26 email will be produced, regardless of responsiveness unless otherwise protected from disclosure.

27 7.4 The parties may deduplicate document families found to be MD5 Hash duplicates
28 across or within custodians. If deduplication is done across custodians, then that party shall

1 include all custodians of a record (including custodians of deduplicated records) in the Custodian
2 field delimited by semicolons. Moreover, (a) de-duplication shall be performed only at the
3 document family level so that attachments are not de-duplicated against identical stand-alone
4 versions of such documents and vice versa, although each family member shall be hashed
5 separately for purposes of populating the MD5 Hash field; (b) attachments to emails, instant
6 messages, or other documents shall not be disassociated from the parent email, instant Messages,
7 or document even if they are exact duplicates of another Document in the production, except that
8 non-substantive embedded objects such as email footers, logos, etc. need not be produced. A party
9 electing to deduplicate exact duplicates across custodians shall take reasonable steps to ensure
10 that at least one copy of a responsive exact duplicate that is located in the files of one or more
11 custodians agreed to by the parties (or ordered by the Court) is produced.

12 7.5 Any Party may request the production of ESI in native format where the
13 production in native format is reasonably necessary to the ESI's comprehension or use. For ESI
14 produced in native format, a Bates-stamped placeholder TIFF bearing the legend "This Document
15 has been produced in Native Format" shall also be produced in the same manner as other TIFFs.

16 7.6 Documents shall be exchanged on DVD-ROMs, CD-ROMs, USB drives, portable
17 hard drives or through secure file transfer protocols (*e.g.*, FTP) or similar secure electronic
18 transmission. A production by secure file transfer shall be considered complete when made
19 available to the Receiving Party.

20 7.7 To maximize the security of information in transit, any media on which
21 documents are produced shall be encrypted by the Producing Party. In such cases, the
22 Producing Party shall transmit the encryption key or password to the Requesting Party, under
23 separate cover, contemporaneously with the encrypted media.

24 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

25 Communications involving trial counsel that post-date May 28, 2019, the date of the filing
26 of the original complaint in this matter, are presumed privileged and need not be logged in any
27 privilege log.

1 **9. MODIFICATION**

2 This Stipulated Order may be modified by a Stipulated Order of the parties or by the
3 Court for good cause shown.

4 **IT IS SO STIPULATED**, through Counsel of Record.

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6 DATED: June 27, 2022

LEVI & KORSINSKY, LLP

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1 DATED: June 27, 2022

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Pursuant to Civil Local Rule No. 5-1(h)(3), all signatories concur in filing this Stipulated Order re: Discovery of Electronically Stored Information.

DATED: June 27, 2022 By: /s/ Adam M. Apton
Adam M Apton (SBN 316506)

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 6/28/2022 
Hon. Haywood S. Gilliam, Jr.
United States District Court Judge

ADDENDUM A

Field	Definition	Doc Type
CUSTODIAN	Name of person from where Documents/files were collected or, in the case of non-human sources, a short description of that source (<i>e.g.</i> , “Shared Drive”).	All
ALLCUSTODIANS	The Custodian value of the Document as well as the Custodian value for all copies of the Document that were removed as a result of de-duplication.	All
BEGBATES	Beginning Bates Number (production number)	All
ENDBATES	Ending Bates Number (production number)	All
BEGATTACH	First Bates number of family range (<i>i.e.</i> , Bates number of the first page of the parent Document)	All
ENDATTACH	Last Bates number of family range (<i>i.e.</i> , Bates number of the last page of the last attachment or, if no attachments, the Document itself)	All
PAGE COUNT	Number of pages in the Document	All
APPLICATION	Commonly associated application for the specified file type.	All
NATIVE FILE LINK	The file path for Documents provided in Native Format	All
TEXTPATH	File path for OCR or Extracted Text files	All

1	FOLDER	Folder location of the e-mail within the	E-mail
2		PST/OST	
3	FROM	Sender	E-mail
4	TO	Recipient	E-mail
5	CC	Additional Recipients	E-mail
6	BCC	Blind Additional Recipients	E-mail
7	SUBJECT	Subject line of e-mail	E-mail
8	DATESENT	Date Sent (mm/dd/yyyy hh:mm:ss AM)	E-mail
9	DATERCVD	Date Received (mm/dd/yyyy hh:mm:ss AM)	E-mail
10	HASHVALUE	Hash value (e.g., MD5 or SHA-1)	All
11	FILENAME	Original file name at the point of collection	E-Document
12	TITLE	Internal Document property	E-Document
13	AUTHOR	Creator of a Document	E-Document
14	DATE CREATED	Creation Date (mm/dd/yyyy hh:mm:ss AM)	E-Document
15	DOCUMENT TYPE	Descriptor for the type of Document	All
16	PRODVOL	Name of media that data was produced on.	All
17	CONFIDENTIALITY	Confidentiality level if assigned pursuant to any applicable Protective Order or stipulation.	All
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21	TIMEZONE	Time zone of data used during processing of data.	All
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