STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY COMPANY** for *Ex Parte* Approval of Certain Amendments to Rate GPD.	U-21859 ALJ Katherine Talbot

RESPONSE BY SWITCH, LTD.
TO MOTION BY THE ATTORNEY GENERAL
TO COMPEL DISCOVERY RESPONSES FROM CONSUMERS ENERGY COMPANY AND FOR ENTRY OF A PROTECTIVE ORDER

As explained below, Switch Ltd. ("Switch") opposes the Attorney General's motion to the extent it seeks to compel the production of unaggregated customer data in discovery. This unaggregated customer data has the potential to post significant commercial risk to Switch if made public and is normally protected from disclosure under Michigan law. Any production as requested by the Attorney General would not be protected from disclosure under FOIA and therefore would *de facto* result in a violation of Switch's rights. Specifically, forced disclosure of unaggregated customer information could mean the commercially valuable energy data of a single customer becomes generally accessible to the public, including economic competitors, despite the protections in rule and tariff designed to prevent such a result.

The Michigan Public Service Commission ("MPSC"), the Attorney General, and the Administrative Law Judge are unquestionably subject to FOIA. As set forth below, there is no statute, either state or federal, providing a likely basis to exempt Switch's customer information proposed to be produced in this proceeding from public disclosure in response to a FOIA. Production of Switch's data in this case would make the MPSC's own privacy rules illusory.

Switch is an industry leader on issues of sustainability, and its energy usage profile gives it a significant competitive advantage in a hyper competitive market. Its proprietary designs reduce energy consumption, have a net positive water impact, and overall reduce costs to clients. Switch, *Sustainability: Sustainable by Design*, available at https://www.switch.com/sustainability/ (accessed May 27, 2025). Switch also has a longstanding commitment to ensuring renewable energy production equaling 100% of its electric usage and operates back-up generation on site to be able to self-generate at times of grid strain or outage and to provide electrical redundancy. These are among the many reasons customers choose Switch over its competitors in the market. Switch's Pyramid campus near Grand Rapids, a well-established Consumers Energy customer taking service under Rate LED, is also in the process of expanding its data center ecosystem. Switch's unique offerings and guarantees render its load information especially commercially sensitive.[1] In light of the forgoing, the Attorney General's attempt to compel such information from Consumers should be denied.

I. Granting the motion to disclose private customer data could make Switch's valuable confidential information public.

This motion to compel should be denied because Switch even if a protective order is adopted in this case, such an order will not provide protection against public disclosure of an individual customer's information if a Freedom of Information Act ("FOIA") request is made to the Attorney General, the MPSC, or the Michigan Office of Administrative Hearings and Rules ("MOAHR"). In the absence of such protection from disclosure under FOIA, there is nothing to

[1] Other than the ongoing Pyramid expansion, Switch does not have plans to expand further in Consumers Energy territory and did not make any queries to Consumers Energy for new load that would be served under rate GPD.

protect against Switch's data from becoming a public record in the event an order requires either production of individually identifiable information in discovery or an *in camera* review of such material.

A. The Attorney General, the Michigan Public Service Commission and the Administrative Law Judge are all subject to FOIA.

The Office of the Attorney General and the MPSC are public bodies subject to FOIA. E.g. *Detroit Free Press, Inc v Dept of Atty Gen*, 271 Mich App 418; 722 NW2d 277 (2006) (Attorney General's office); *Residential Ratepayer Consortium v Pub Serv Comm'n*, 168 Mich App 476, 478; 425 NW2d 98 (1987) (MPSC). Additionally, the entity housing administrative law judges ("ALJs"), the Michigan Office of Administrative Hearings ("MOAHR"), is a division of the Department of Licensing and Regulatory Affairs, which is also is subject to FOIA. E.g. *Forner v Dept of Licensing & Regulatory Affairs*, unpublished opinion of the Court of Appeals, issued July 18, 2017 (Docket No. 336742), 2017 WL 3044106. Information produced in discovery in this proceeding is therefore subject to public disclosure under FOIA unless there is an applicable statutory exemption to FOIA, regardless of the existence of a protective order.

Public records subject to FOIA include any "writing [] used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." MCL 15.232(i). FOIA "presumes records are discloseable." *Intl Union, United Plant Guard Workers of Am (UPGWA) v Dept of State Police*, 422 Mich 432, 441; 373 NW2d 713 (1985). "[O]nce a request under the FOIA has been made, a public body has a duty to provide access to the records sought or to release copies of those records unless the records are exempted from disclosure." *Pennington v Washtenaw Co Sheriff*, 125 Mich App 556, 564; 336 NW2d 828 (1983), citing MCL 15.233(2).

B. The Attorney General has not identified any statutory exemptions that would protect Switch's confidential data from disclosure under FOIA.

Switch's data, if produced pursuant to discovery in this matter, is subject to disclosure under FOIA – again, even if a protective order is imposed – unless there is an applicable statutory exemption. These exemptions include those discussed *infra*. In *American Civil Liberties Union of Mich v. Calhoun Co Sheriff's Off*, 509 Mich 1; 983 NW2d 300 (2022), the Michigan Supreme Court overruled prior FOIA precedent to find that a regulation of any kind cannot be the basis for exempting public records from disclosure under MCL 15.243(1), because FOIA's reference to exemptions is to *statutory* exemptions. The Attorney General's motion does not cite any statutory exception that could be relied upon to protect individually identifiable customer data from public release.

Switch would welcome authority from the Attorney General regarding the availability and applicability of a FOIA exemption for the requested information here. Switch notes it has reviewed a number of common exceptions that are unlikely to apply, as detailed below.

1. Judicial exception to FOIA

FOIA obligations are not applied to the judiciary or their court clerks. MCL 15.232(h)(iv). The Administrative Law Judge in this matter, however, is not a member of the judicial branch of government. Instead, she is an employee working under MOAHR, an agency within the executive branch. See, e.g., MCL 445.2021 (executive reorganization order 2005-1 creating office of administrative hearings). The MOAHR website indicates queries regarding the process for making FOIA requests are frequently received and references a form to fill out to make such requests, in compliance with FOIA, demonstrating that it is an entity subject to FOIA. https://www.michigan.gov/lara/bureau-list/moahr ("Administrative Hearings Frequently Asked

Questions" include "How do I submit a FOIA request?") (accessed May 26, 2025). Thus, the FOIA exemption for the judiciary is inapplicable in this docket.

In litigation before the judicial branch, granting of a discovery motion does not necessarily result in making individual customer information that is commercially sensitive a public record. If the Attorney General seeks to rely on case law regarding discovery in proceedings of the judicial branch of government, it must provide authority that the same protections are available in the current executive branch proceeding.

The Attorney General's motion does not address this issue or cite any authority that gives the ALJ the power to exempt the information from FOIA, and Switch has not located any statute that would do so. When relying on case law or other statements regarding discovery in judicial proceedings to argue for similar treatment in this docket, the Attorney General fails to grapple with the implications of importing procedures involving confidential materials from a judicial proceeding into an executive branch's proceeding. Unless Michigan's executive branch has the same powers as the judiciary to protect confidential information from disclosure upon a FOIA request, such precedents are inapposite in this executive branch proceeding.

2. FOIA exception for trade secrets

Unlike the federal FOIA Act, Michigan's FOIA exception that directly references "trade secrets or commercial or financial information", MCL 15.243(f), only excepts such information in very limited circumstances that do not apply here. Moreover, the nature of the Attorney General's motion makes it even less likely this exception would apply to the materials being sought if the motion was granted. For the exception to apply, the protected disclosures must be voluntary – instead the Attorney General seeks the material to be produced in response to a motion to compel. MCL 15.243(f). Any disclosure under this exception must also be subject to a

promise of confidentiality "authorized by the chief administrative officer of the public body… at the time the promise is made." MCL 15.243(f)(ii). Here, the Attorney General has made no such promise of confidentiality in advance of the desired disclosure, nor has the Chair of the Public Service Commission, nor has the Executive Director of MOAHR. Thus, none of the public bodies proposed to have access to personally-identifiable customer information if the motion was granted could rely on the trade secret exception to FOIA.

3. Federal Critical Energy Infrastructure Information ("CEII") exception

The Federal Power Act, 16 USC § 824o-1, has special provisions preventing disclosure of "critical energy infrastructure information" ("CEII"). Critical energy infrastructure is defined as "a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters." 16 USC § 824o-1(a)(2). In order for information to be protected from disclosure as CEII, the statute provides that information must be "designated as critical electric infrastructure information" by the Federal Energy Regulatory Commission (including by falling under its promulgated regulations) or the Secretary of Energy. 16 USC § 824o-1(a)(3).

The regulation defines CEII as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; [and] (ii) Could be useful to a person in planning an attack on critical infrastructure." 18 CFR § 388.113(2).

While Switch considers its business to be mission critical to a variety of governmental and nongovernmental customers (as indicated by its 100% uptime guarantee to the same), its

energy usage information has not been formally designated by the federal government as CEII. So, this statute is also unlikely to serve as a basis for a FOIA exemption.

C. The Administrative Procedures Act's statutory provisions do not generally shield discovery in a contested case from disclosure.

Crucially, the Administrative Procedures Act ("APA"), which provides the statutory authority for the hearings held by this Commission, is devoid of a statutory provision allowing the ALJ or other agencies to exempt material from FOIA. The APA requires all agencies to promulgate rules describing "the methods by which the public may obtain information and submit requests" as well as "prescribing procedures for contested cases." MCL 24.233(2) and (3) The procedures for contested cases "must be consistent with [] applicable statutes." Indeed, the APA's language discussing public access to information for hearings held under its auspices suggests an intent for such proceedings to be subject to public disclosure.

As discussed below, there are statutory provisions that explicitly authorize the MPSC to authorize protective orders to shield specific materials from FOIA. Unfortunately, none of those provisions are found in the section of the law authorizing the Commission to set electric rates.

D. PA 3 of 1939 has no FOIA exception for proceedings under MCL 460.6a.

This matter concerns the setting of electric rates. The primary act governing nearly all proceedings before the MPSC, PA 3 of 1939 (the "PSC Act"), contains least four references to FOIA – three of them creating an exception to FOIA for certain proceedings. None of these references are found in MCL 460.6a, the section governing the setting of electric rates.

MCL 460.6l discusses FOIA in the context of the Utility Consumer Protection Board, clarifying that its materials are subject to FOIA. The PSC Act section regarding the acquisition, control, or merger of a jurisdictionally regulated utility creates a clear FOIA exception for non-

public materials designated confidential by the utility and authorizes the adoption of a protective order to that effect. MCL 460.6q(10). Nearly identical exception language is found in MCL 460.10d(7) and (8), regarding records in support of requests for recovery of certain enhanced security costs.

Finally, the section of the PSC Act governing the retail open access queue for customers creates an exception to FOIA to prevent public disclosure of individual customer information (emphasis added):

> The filing must include the estimated amount of electricity used by each customer awaiting retail open access service under subdivision (g). All customer-specific information contained in the filing under this subdivision is exempt from release under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and the commission shall treat that information as confidential information. The commission may release aggregated information as part of its annual report **as long as individual customer information or data are not released.**

MCL 460.10a(h). Thus, while there is a demonstrable statutory interest in shielding individual customer information and data from public release in the PSC Act, there is no exception to FOIA in the statutory section that is central to the MPSC's regulation of electric rates. This failure to reference a FOIA exception in part of the statute seems to indicate the legislature did not intend to protect confidential information from FOIA in electric rate cases such as the instant matter absent any federal statutory exemptions that might apply.

II. Authorization for the MPSC to protect trade secrets via a protective order is found in rule, not statute.

While the MPSC has adopted rules protecting trade secrets disclosed in commission proceedings (R 792.11105), its rule predated, and is likely rendered void, by the Michigan Supreme Court's decision in *ACLU of Mich*, 509 Mich 1. In that decision, the Michigan Supreme

Court found that a sheriff could not rely on an explicit disclosure exemption in federal *regulation* to prevent disclosure of a detainee's name in response to a Michigan FOIA request, even if the federal regulation exempting such disclosures had the force of law. The court reasoned that since Michigan's FOIA exception references statutes but not regulations, any exception to FOIA must rely on a statutory (not regulatory) exemption. *Id.* It is unlikely the courts would find the MPSC's rules, which are not a statute, provide protection against disclosure in the face of a Michigan FOIA request if federal regulations did not. The fact that (as discussed above) other portions of the PSC Act provide explicit authorization for FOIA exceptions would likely be considered in determining whether there is any power to exempt materials from FOIA disclosure in this proceeding.

III. Making Switch's data available to third parties would violate the Commission's duly-adopted rules.

Switch is entitled to data privacy under the Commission's recently own adopted rules, which must be incorporated into utility tariffs. Those rules were adopted specifically to address concerns regarding customer data privacy. *In the Matter, on the Commission's Own Motion, to Process Data Privacy Tariffs Filed in Compliance with Mich Admin Code*, *R 460.153 for Approval*, Case No. U-18485 (Order, December 20, 2017); Mich Admin Code, R 460.101 *et seq*. These rules generally mirror the statutory concern regarding the disclosure of individual customer usage information found in the provisions regarding the electric customer choice queue. MCL 460.10a(h). Utilities are required to adopt a privacy policy that "encompass[es] all customer information or data collected or maintained by the utility" and "protect[s] all customer information or data collected for the utility from unauthorized use or disclosure." Rule

460.153(2). Similarly, the rules permit disclosure of "aggregate data" under certain circumstances, but such data is defined as "any customer account information from which all identifying information has been removed **so that the individual data or information of a customer cannot be associated with that customer without extraordinary effort**." Rule 460.153(2)(h); R 460.102(b) (emphasis added).

The protections provided by these rules indicate a clear intent to ensure data privacy for utility customers in general.[2] Although the rules permit disclosure of customer information "without consent in response to a warrant or court order," (Rule 460.153(e)), materials produced in response to warrants and court orders fall under explicit exceptions in FOIA in nearly every case, allowing compliance in these circumstances while still shielding the information from public view. Specifically, FOIA contains an exemption for "investigating records compiled for law enforcement purposes," so material seized pursuant to a warrant is highly unlikely to immediately be made accessible to economic competitors. MCL 15.243(b). Second, regarding court orders, as discussed above, the judiciary and court clerks are not subject to FOIA, meaning that information produced in litigation before the judicial branch has significantly greater protection from public disclosure than information produced in this executive branch proceeding.

[2] The Attorney General has highlighted the importance of customer privacy, including advocating for laws that "provide[] a person with the ability to have a greater say in what information of theirs is findable online and the ability to edit and delete that data." Exhibit 1, Diane Smoyer and Hubert Zanczak, *Michigan Attorney General Nessel on strengthening consumer protections, right to privacy,* IAPP, available at https://iapp.org/news/a/michigan-attorney-general-nessel-on-strengthening-consumer-protections-right-to-privacy, August 23, 2022 (Accessed May 28, 2025).

IV. Making Switch's data available to third parties violates the tariff's terms of service.

Nothing in the Attorney General's motion seeking to compel disclosure of such information cites a single authority that would prevent disclosure of Switch's data in violation of the tariff's terms of service. In fact, to compel disclosure here would make the Commission's own duly promulgated privacy rules, and Consumers tariff provisions adopted pursuant to that rule, meaningless.

Consumers Energy's tariff, attached as Exhibit H to the Attorney General's motion, contains protections for individual customer data pursuant to MPSC rules. Like the rules, the tariff protects the disclosure of customer-specific account information and consumption data, including usage data including but not limited to amounts billed, information related to customer participation in utility programs including demand-side management and load management, and any information regarding a customer's usage profile, including kW, kWh, voltage, var, power factor, or other information that is collected by the electric meter by the Company and stored in its systems. Exhibit H of the Attorney General's Motion to Compel, First Revised Data Sheets C-70.00-C.73.00 at C17.1.D and E. Consumers Energy, *Rate Book for Electric* Service, (Dec. 13, 2019), p 132, also available at https://www.consumersenergy.com/-/media/CE/Documents/rates/electric-rate-book.pdf (accessed May 27, 2025).

No party is alleging this docket was intended to revise the terms of service for Switch's Pyramid campus. Yet ordering that individually identifiable information must be disclosed in discovery would do exactly that. If Switch's individually identifiable information is disclosed to public bodies, which are then obligated to produce it to any member of the public making a request pursuant to FOIA, that result would directly contravene the data-protection tariff provisions incorporated into rate LED.

V. Switch proposed language additions to the draft protective order to allow disclosure of some information while protecting customer privacy.

Switch sought in good faith to negotiate an appropriate protective order that balances the protection of its data privacy with the interests of the other parties in this docket. Prior to the circulation of a draft protective order by the Consumers Energy, Switch's counsel received a call from counsel for Consumers Energy asking if Switch would consent to its identifiable customer data being disclosed as part of a discovery response. Switch did not and does not consent to such disclosure because this information is critically sensitive to its operations and protected by the MPSC's own rules. Soon after that call, Consumers objected to discovery requests at issue in this motion – one regarding cost-of-service data and cost allocation, and a separate request regarding load shape for data center customers – on the basis that such responses could contain unaggregated customer data, a disclosure that would violate this Commission's rules. Exhibit C to the Attorney General's motion, response to question 4 on p. 1 and question 17c on p. 4.

When the draft protective order was circulated, Switch sought and received helpful clarifications from the Company regarding its intent to continue to protect Switch's data, and from the Data Center Coalition regarding its handling of confidential information given the nature of its membership. Switch also researched the potential application of FOIA to any responses that might be made under the protective order. It then proposed three insertions in the draft protective order to protect its commercially sensitive, individually identifiable information from becoming a matter of public record, specifically:

- At the end of paragraph II.F, adding the following sentence: "Nothing in this paragraph shall be read to prevent any Party from offering evidence or argument that material produced in discovery was disclosed in contravention of a law,

regulation, or rule pertaining to customer data privacy and seeking an order requiring such material to be returned or destroyed by all Receiving Parties."

- Adding to paragraph IV.A the language in italics and underlined: If the presiding hearing officer revokes a document's protected status *or orders material to be disclosed over an objection that such disclosure violates a law, regulation or rule pertaining to customer data privacy*, then the document loses its protected status after 14 days unless a Party files an application for leave to appeal the ruling and a request for a stay to the Commission pursuant to R 792.10433.
- At the end of paragraph IV.B, adding the following sentences: "Nothing in this paragraph shall be read to prevent any Party from offering evidence or argument that a document should continue to be protected from disclosure or should be returned or destroyed by all Receiving Parties due to a law, regulation, or rule pertaining to customer data privacy. Any Party may appeal a ruling requiring disclosure even if the Disclosing Party does not join in such an appeal."

On Monday May 19, at 1:22 pm, an Assistant Attorney General in this matter sent a message to Switch's counsel responding to Switch's proposed language to address its privacy concerns. Exhibit 2 (e-mail correspondence of May 19, 2025). That e-mail read in part:

> By my reading, you're proposing that any application for appeal filed concerning the data privacy tariff would stop all disclosure of that material/information between parties (i.e. nothing goes out, even if labeled confidential) pending Commission review, even when the other protections of the PO are in effect. Let me know if you think this is an incorrect reading of your language.
>
> Further, are you saying your client will not agree to entry of the model PO without the language proposed below included?

Switch's counsel response, which was sent at 5:16 pm that day, read:

> Your reading of the proposed language is correct re how it would work. If you have a counterproposal on language I'm happy to take it to my client.

As this exchange shows, Switch was attempting to resolve its concerns cooperatively and was open to discussing alternative language with the Attorney General. It had not formally objected to the protective order. It did not receive a response from the Attorney General. The next communication Switch received on this matter from the Attorney General was when this motion was served upon counsel after 4 pm on the Friday before Memorial Day weekend, with an additional e-mail following after 11 pm that Friday indicating the Attorney General had conferred with the Company and ALJ and the motion was likely to be heard on the following Friday morning at 10:00 a.m.

This proceeding is held under the auspices of the executive branch, and therefore subject to FOIA – a statutory mandate for public disclosure that cannot be contravened by a protective order in this case. The Attorney General has not cited, nor can Switch locate, an applicable statutory exemption to FOIA that would protect its highly sensitive commercial information from public disclosure once produced in this proceeding, even if only produced for *in camera* review. Such a result is neither compelled by nor permitted by the governing law for this proceeding. Switch therefore urges denial of the portions of the Attorney General's motion that request production in discovery of any unaggregated customer data.

Dated: May 29, 2025

RIVENOAK LAW GROUP P.C.

By: 

_____

Valerie J.M. Brader
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Switch, Ltd.
Exhibit List
Case No. U-21859

Exhibit	Title
1	Diane Smoyer and Hubert Zanczak, *Michigan Attorney General Nessel on strengthening consumer protections, right to privacy*, IAPP, Aug. 23, 2022 (excerpt)
2	E-mail correspondence of May 19, 2025

23 Aug. 2022

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North America Enforcement

Michigan Attorney General Nessel on strengthening consumer protections, right to privacy

Diane Smoyer
Contributor
CIPP/US

Hubert Zanczak
Contributor
CIPP/US

9 Minute Read

In January 2019, Dana Nessel was sworn in as Michigan's 54th attorney general. Since then, Attorney General Nessel has leveraged her experience in fighting for civil rights and has been an outspoken advocate for consumer protection, including the right to privacy.

Nessel began her legal career as a prosecutor and later started her own criminal defense and civil rights practice. She represented plaintiffs in civil rights actions and became involved in litigating LGBTQ rights issues in Michigan. Her efforts in this area contributed greatly to the expansion of LGBTQ rights, including the fundamental right to relationship and marriage privacy. She represented same-sex couples in an action that was later consolidated with Obergefell v. Hodges, in

that track menstruation and ovulation to gather and sell personal health data to entities that may use it for purposes not obvious to the user. While it is unclear how the data could be used in states where abortion is not legal, it is imperative that consumers be made aware of potential risks. In Michigan, our Consumer Protection Act is restricted by two state supreme court rulings that exempt any industry that is otherwise generally regulated from enforcement under the act. Those rulings greatly limit the ability of my department to pursue bad actors operating in those regulated industries.

I believe it is imperative that state legislatures act to ensure the privacy of consumers and evaluate existing consumer protection laws for adequate protections and enforcement. Otherwise, many residents may find themselves in a vulnerable position with little to no protections.

The Privacy Advisor: Five states have passed comprehensive privacy legislation in the last few years. Michigan House Bill No. 5989, which would create the Michigan Consumer Privacy Act, is currently pending in the House. The bill mirrors similar laws in Colorado, Connecticut, Utah and Virginia, and gives the attorney general exclusive enforcement powers. Does your office have interest in this legislation or other similar efforts and do you expect Michigan to join the growing number of states with a consumer privacy act?

Nessel: I welcome additional statutory tools to help protect Michigan consumers. Consumer protection is one of the primary functions of my department and one of my top priorities as attorney general. I will continue to lobby in support of legislation that extends additional protections to consumers, and I would hope Michigan legislators recognize the value of such legislation for their constituents.

The Privacy Advisor: Are there any changes you would like to see in the Michigan Consumer Privacy bill?

Nessel: I believe this legislation would go a long way in providing Michiganders with privacy protections in relation to the data that they have online. As noted, we have seen similar legislation enacted in other states, and this model — which mimics the Virginia legislation — provides a person with the ability to have a greater say in what information of theirs is findable online and the ability to edit and delete that data.

The Privacy Advisor: You recently testified in support of Michigan House Bills 4798 and 4974, which address safety concerns arising last year when the Michigan Court of Appeals ruled in People of the State of Michigan v. Ricky Dale Jack that a prosecutor must provide a defendant with victim and witness information, including their addresses and telephone numbers. In this age where information is so easily spread online, why is it important to ensure privacy for victims and how do you balance this right to privacy with the defendant's right to access information to prepare for trial?

Nessel: It takes great strength and courage for victims to face their abusers or assailants. Those who do so are among the most vulnerable individuals in our judicial system — and they deserve and need encouragement and protection.

Providing witnesses' and victims' addresses during a criminal trial will deter victims from

RIVENOAK LAW GROUP PC

Valerie Brader <valerie@rivenoaklaw.com>

Re: Case No. U-21859 Protective Order

1 message

Valerie Brader <valerie@rivenoaklaw.com> Mon, May 19, 2025 at 5:16 PM
To: "Wollenzien, Lucas (AG)" <WollenzienL@michigan.gov>
Cc: Chris Bzdok <chris@tropospherelegal.com>, "Anne M. Uitvlugt" <anne.uitvlugt@cmsenergy.com>, Nikhil Vijaykar <nvijaykar@keyesfox.com>, Lucas Fykes <lucas@datacentercoalition.org>

Hi Luc --

Your reading of the proposed language is correct re how it would work. If you have a counterproposal on language I'm happy to take it to my client.

--Valerie

On Mon, May 19, 2025 at 1:22 PM Wollenzien, Lucas (AG) <WollenzienL@michigan.gov> wrote:

> Hi Valerie,
>
> By my understanding, concerns about the data privacy tariff have been expressed as a discrete issue from the protections under the model PO. Relatedly, one point where your proposed language is somewhat confusing is whether you intend the term "protected status" to have different meanings in the context of the other protections of the PO versus when it's referring to your added data privacy language.
>
> By my reading, you're proposing that any application for appeal filed concerning the data privacy tariff would stop all disclosure of that material/information between parties (i.e. nothing goes out, even if labeled confidential) pending Commission review, even when the other protections of the PO are in effect. Let me know if you think this is an incorrect reading of your language.
>
> Further, are you saying your client will not agree to entry of the model PO without the language proposed below included?
>
> Thanks,
> Luc
>
> ---
>
> **From:** Valerie Brader <valerie@rivenoaklaw.com>
> **Sent:** Sunday, May 18, 2025 7:09 PM
> **To:** Chris Bzdok <chris@tropospherelegal.com>
> **Cc:** Anne M. Uitvlugt <anne.uitvlugt@cmsenergy.com>; Nikhil Vijaykar <nvijaykar@keyesfox.com>; Lucas Fykes <lucas@datacentercoalition.org>; Wollenzien, Lucas (AG) <WollenzienL@michigan.gov>; Rachel Kent <rkent@switch.com>
> **Subject:** Re: Case No. U-21859 Protective Order
>
> **CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov**
>
> Dear all,
>
> If the below changes are included, Switch would have no objection to the entry of the proposed protective order.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of **CONSUMERS ENERGY COMPANY** for *Ex Parte* Approval of Certain Amendments to Rate GPD.	U-21859

PROOF OF SERVICE

On the date below, an electronic copy of the **Response by Switch, Ltd. to Motion by the Attorney General to Compel Discovery Responses from Consumers Energy Company and for Entry of a Protective Order** was served on the following:

Name/Party	E-mail Address
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The statements above are true to the best of my knowledge, information and belief.

Dated: March 29, 2025

RIVENOAK LAW GROUP P.C.

By: Valerie J.M. Brader

_____

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