

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of
CONSUMERS ENERGY COMPANY for
authority to increase its rates for the
generation and distribution of
electricity and for other relief.

Case No. **U-21870**
(e-file paperless)

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**MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S RESPONSE TO
THE PSEUDONYMIC CUSTOMER A'S PETITION FOR LATE
INTERVENTION FOR THE LIMITED PURPOSE OF PROTECTING
CONFIDENTIAL INFORMATION FROM DISCLOSURE AND THE MOTION
BY CUSTOMER A TO QUASH A PORTION OF
A DISCOVERY REQUEST AND PRODUCTION TO PREVENT THE
IMPROPER DISCLOSURE OF ITS CONFIDENTIAL INFORMATION**

The Michigan Public Service Commission Staff (Staff), pursuant to Michigan Administrative Code Rules 792.10115 and 792.10432, state as following in response to the Customer A Motion to Quash:

I. Introduction

Customer A has made two filings in this matter. The first is a petition for late intervention for a limited purpose to purportedly limit disclosure of its customer data (Petition). The second is a Motion to Quash (Motion) that can be summarized as seeking to quash the portions of discovery question 21870-AG-CE-0478(b) and (c) (AG question #159(b) and(c)), and require the deletion and destruction of any copies of the confidential response to 21870-AG-CE-0478(c) (AG question #159(c)). (Motion, p 2.) In short, the numbering refers to discovery responses that Consumers Energy (Company) served on the parties in response to discovery requests made by the Attorney General.

The original discovery request, served by the Attorney General on September 2, 2025, reads, in part:

159. Refer to Figure 58 on page 139 of Ms. Hayward's direct testimony on HVD Strategic Customers capex. Please:

...

b. For each customer project, provide the type of business the customer is involved in, the business location, the contract status (whether signed or not), the phase the project is currently in (scoping, conceptual design, engineering design, construction, completed), the project cost by year from inception to completion with and without any CIAC, and what facilities will be installed.

c. For each customer project, provide a copy of the signed contract and explain what provisions have been included in the contract for reimbursement of capital expenditures and O&M expenses incurred by the Company in case the customer abandons the project before completion of construction and also subsequent to start of operations but before the Company has recovered the full investment in the project.

The Company served its response as a confidential discovery response on September 17, 2025. The response included 9 heavily redacted PDF attachments served via email and through the Company's OneDrive. The redactions scrubbed items like Customer Name, Service Location Name, Service Location, Billing Address, Service Address City/Township/County, Maximum Demand, and other customer identifying information. The limited intervention and Motion were filed on September 18, 2025.

II. Discussion

A. Response to Petition for Late Intervention for a Limited Purpose

To begin, Staff does not oppose Customer A's late intervention for a limited purpose. However, despite its lack of opposition, Staff must express a concern with

the Petition. Staff's concerns center primarily around practical implications of determining whether intervention is appropriate given the use of an anonymous status for an intervening party, and lack of information provided therein. Though Staff has no reason to doubt any of the allegations in the Petition, unlike other pleadings where the two-prong intervention test can be readily applied, the allegations of harm to an anonymous party make this analysis far more problematic. With the limited information provided, Staff cannot take a position on whether intervention is appropriate and would encourage the production of further information if deemed appropriate by the ALJ.

As correctly articulated in Petition, intervention is a two-part test. (Petition, p 3.) "This test requires the prospective intervenor to show: (1) that it will suffer an injury in fact, and (2) that the interests allegedly endangered are within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." MPSC Case No. U-20359, 9/26/2019 Order, p 10, (citing *Assoc of Data Processing Service Orgs Inc v Camp*, 297 US 150 (1970); *Drake v Detroit Edison*, 453 F Supp 1123, 1129 (WD Mich 1978).) Thus, the first prong relates to identifying an injury in fact. In this instance, without knowing who the party is, or any additional information offered by way of affidavit or offer of proof, even if only available for *in camera review*, this prong does not appear to be able to be satisfied. It is not surprising therefore, that there are not anonymous parties intervening in MPSC cases routinely, and there is a lack of clear procedure for one to do so.

Further, while the Petition notes that pseudonymous status is granted in Michigan, it should be noted that there are fairly limited instances where that has

occurred, none of which are present here. *Doe v Bodwin*, 119 Mich App 264, 278 (1982). In Michigan, through *Bodwin* and its progeny, the standard by which pseudonymous status should be analyzed was created. *Id.* at 266–68. In *Bodwin*, the Michigan Court of Appeals noted that the right to proceed anonymously is derived from a right to privacy, but this right is not absolute. *Id.* at 267. The *Bodwin* Court noted, “[T]he decision whether to permit fictitious names is subject to a decision by the judge as to the need for the cloak of anonymity’, and ‘requires a balancing of considerations calling for maintenance of a party's privacy against the customary and constitutionally-embedded presumption of openness in judicial proceedings.’” *Id.* (internal citations removed).

All parties, the ALJ, and potentially the Commission are being asked to take counsel’s word that Customer A is an affected party without proof, only allegations. It seems only reasonable that this may have been avoided by a verified (sworn) filing, potentially even by counsel, or even an affidavit. In the event those are not feasible, an alternative option could even include a separate review by the ALJ via an *in camera* review.

Without some procedural assurances, it is difficult to see how the ALJ and Commission can adequately evaluate a request to intervene under the two-prong standard for intervention, much less balance the privacy concerns versus the need to have transparent judicial hearings in order to justify the use of anonymous status by any intervening party.

In conclusion, Staff does not object to the granting of the Petition but asks the ALJ to either take steps to confirm the allegations of Customer A or provide guidance with how the allegations of a pseudonymic customer should be confirmed.

B. Response to Motion to Quash

Michigan Admin Code Rule 792.10423 establishes that:

Discovery shall, as far as practicable, be conducted in the same manner as in the circuit courts of this state pursuant to the Michigan court rules or as otherwise provided by law. When appropriate, the presiding officer shall set time limitations for the conduct of discovery. ***Every party shall respond promptly and fully to requests for discovery.*** The parties shall not use discovery to harass or cause needless delay. [emphasis added.]

The Michigan Court Rules further define the general scope of discovery:

Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable. [MCR 2.302(B)(1).]

When considering the breadth of possible discovery, it is often helpful to consider the narrower definition of relevant evidence found in the Michigan Rules of Evidence at Rule 401, which reads in relevant portion:

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence. [MRE 401(a).]

While the question of whether the discovery responses are relevant is not before the ALJ, Staff does have a position regarding the analysis that has been presented in the Motion.

At its core, Staff asserts that the data privacy rules are not so limiting that they shield information that could otherwise be properly obtained from discovery if the material is relevant, regardless of whether it is confidential or not. In fact, based on the language of Admin Code R 792.10423, a party responding to discovery must ***respond promptly and fully***. If the argument of Customer A is accepted, there is concern that the data privacy rules could be used to improperly limit the Michigan Public Service Commission's (Commission) auditing power under MCL 460.55 and MCL 460.56, on top of creating an end around on the Commission's rules, and the Michigan Court Rules that govern discovery.

Finally, Staff notes that Customer A states that "there is no exception to the data privacy rules that permits the production of these individual customer contracts in response to this discovery request, even if the name and location of the customer and the customer's substation is redacted." Staff believes this point is misguided. A review of the Customer Data Privacy tariff as represented by Customer A in its motion, appears to govern disclosure of certain specific types of information or specific data. It does not appear to prevent the release of separate contextual data or information that may be used by a third party to essentially triangulate the identity of Customer A.

In conclusion, it is Staff's position that the data privacy language doesn't shield from discovery material that is relevant to an ongoing proceeding even if that data is confidential. Protective orders and non-disclosure agreements provide the appropriate framework for disclosing such material in discovery.

PRAYER FOR RELIEF

Wherefore, Staff respectfully requests the rule on Customer A's motion in a manner consistent with Staff's argument.

Respectfully submitted,

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Subscribed and sworn to before me
this 25th day of **September, 2025**.

De Ann M. Payne, Notary Public
State of Michigan, County of Eaton
Acting in the County of Eaton
My Commission Expires: 11-29-31