

In The Matter Of:
U-21870

Hearing
September 30, 2025



**SYNERGY
LITIGATION
SERVICES**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
)
 OF CONSUMERS ENERGY COMPANY FOR)
)
 AUTHORITY TO INCREASE ITS RATES) NO. U-21870
)
 FOR THE GENERATION AND)
)
 DISTRIBUTION OF ELECTRICITY AND)
)
 FOR OTHER RELIEF.

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HEARING

Proceedings held via Microsoft Teams in the
 Above-entitled matter before John Thoits,
 Administrative Law Judge with MOAHR, for the
 Michigan Public Service Commission, Lansing, Michigan, on
 September 10, 2025, at 1:31 p.m.

APPEARANCES:

For Consumers Energy Company:

BRET A. TOTORAITIS, ESQ.

GARY A. GENSCH, JR., ESQ.

Consumers Energy Company

One Energy Plaza

Jackson, Michigan 49201

APPEARANCES CONTINUED

1 For Michigan Public Service Commission Staff:

2 DANIEL E. SONNEVELDT, ESQ.

3 AMIT B. SINGH, ESQ.

4 MICHAEL J. ORRIS, ESQ.

5 NICHOLAS Q. TAYLOR, ESQ.

6 ALENA M. CLARK, ESQ.

7 Assistant Attorney Generals

8 7109 west Saginaw Highway

9 Floor 3

10 Lansing, Michigan 48917

11

12 For Attorney General Dana Nessel

13 CELESTE R. GILL, ESQ.

14 LUCAS WOLLENZIEN, ESQ

15 525 West Ottawa Street, Floor 6

16 Lansing, Michigan 48933

17

18 For Citizen Utility Board of Michigan

19 HOLLY L. HILLYER, ESQ.

20 Troposphere Legal

21 420 East Front Street

22 Traverse City, Michigan 49686

23

24 APPEARANCES CONTINUED

25 For Union of Concerned Scientists and Vote Solar

1 KATIE DUCKWORTH, ESQ
2 1007 Lake Drive SE
3 Grand Rapids, Michigan 49506
4
5 For Hemlock Semiconductor and Solar Technology

6 JENNIFER UTTER HESTON, ESQ.
7 Fraser Treilcock Davis & Dunlap, PC
8 124 West Allegan Street, Suite 1000
9 Lansing, Michigan 48933

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11 For Customer A

12 VALERIE BRADER, ESQ.

13 SUSIE MAHONEY, ESQ.

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22 Reported by: Nicole Droske, CER 16192

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1 VIA TEAMS, VIDEOCONFERENCE, TUESDAY, SEPTEMBER 30, 2025,

2 AT 1:31 PM

3 JUDGE THOITS: We are on the record in case
4 U-21870 titled In the Matter of the Application of
5 Consumers Energy Company for Authority to Increase Its
6 Rates for the Generation and Distribution of Electricity
7 and for Other Relief.

8 My name is John Thoits. I'm the presiding officer
9 for this matter. This is the date and time for a hearing
10 on, on two items. First is a pseudonymic Customer A's
11 Petition for Late Intervention for the Limited Purpose of
12 Protecting Confidential Information From Disclosure. And
13 it's also the Hearing for the Motion by Customer A to
14 Quash a Portion of a Discovery Request and Production to
15 Prevent the Improper Disclosure of Its Confidential
16 Information.

17 This hearing is being held by video and audio
18 conference call. Can we have appearances, please, first,
19 on behalf of Consumers.

20 MR. TOTORAITIS: Yes, Your Honor. Bret
21 Totoraitis on behalf of Consumers Energy Company. And I
22 have Gary Gensch on standby in case I have some technical
23 issues due to my location.

24 JUDGE THOITS: All right. Thank you. Do we
25 have an appearance on behalf of staff?

1 MR. SONNEVELDT: Yes, Your Honor. Daniel
2 Sonneveldt appearing on behalf of Staff. And I also have
3 with me, Nicholas Taylor, Alena Clark, Mike Orris, and
4 Amit Singh.

5 JUDGE THOITS: All right. Thank you. I -- do
6 we have an appearance on behalf of the Michigan Attorney
7 General?

8 MS. GILL: Yes. Your Honor, Celeste Gill on
9 behalf of Attorney General Dana Nessel. Also with me,
10 Lucas Wollenzien.

11 JUDGE THOITS: Thank you. Do we have an
12 appearance on behalf of Customer A?

13 MS. BRADER: Yes, Your Honor. Valerie Brader
14 on behalf of Customer A. I also note that Susie Mahoney
15 of our firm is proper audio through a phone number ending
16 in 90. She is also here today, but we'll not be speaking
17 on behalf of Customer A.

18 JUDGE THOITS: All right. Thank you. Do we
19 have any other appearances? I see, Ms. Heston.

20 MS. HESTON: Good afternoon, Your Honor.
21 Jennifer Heston of the Potomac Law Group appearing on
22 behalf of Solar Technology, LLC and Hemlock Semiconductor
23 Operations, LLC.

24 JUDGE THOITS: All right. Thank you. Do we
25 have any other appearances?

1 (Cross talk)

2 MS. DUCKWORTH: Thank you. Good afternoon,
3 Your Honor. This is Katie Duckworth appearing on behalf
4 of The Ecology Center, Environmental Law and Policy
5 Center, Union of Concern Scientists, and Vote Solar.
6 Collectively, the Clean Energy Organization. Thank you.

7 JUDGE THOITS: Thank you. All right. And I
8 thought there was someone else who was trying to mention
9 an appearance.

10 MS. HILLYER: Thank you. This is Holly Hillier
11 appearing on behalf of the Michigan Environmental
12 Counsel, Natural Resources Defense Counsel, Citizens
13 Utility Board of Michigan, and Sierra Club.

14 JUDGE THOITS: All right. Thank you. Any
15 other appearances? All right. I'm going to try to take
16 this one at a time.

17 Starting with the Petition for Late Intervention.
18 I note that the attorney -- no, excuse me, Staff filed
19 its Response to the Petition and the Motion to Quash.
20 But while the company, Consumers, and the Attorney
21 General filed a response to the motion, I do not believe,
22 and please correct me if I'm wrong, that the -- their
23 filing included or a separate filing addressed the
24 Petition to Intervene. Is that correct?

25 MR. TOTORAITS: That's your -- correct.

1 That's correct for Consumers Energy, Your Honor. We, we
2 are not opposing the limited intervention that Customer A
3 filed.

4 JUDGE THOITS:: All right. Thank you. I think
5 you have a -- oh, I'm sorry. Go ahead.

6 MS. GILL: And that's also correct for the
7 Attorney General.

8 JUDGE THOITS: All right. Anyone else who's
9 appeared -- any other party who's appeared through
10 counsel who have filed a response to the petition that I
11 have not seen? All right. Is there anyone other than
12 Staff who wishes to offer a position with respect to the
13 petition for intervention?

14 All right. Well, that's easy. So far, I have read
15 the Petition. I -- I have read Staff's Response. Miss
16 Brader, if you wish to offer comments in support of your
17 petition, please proceed.

18 MS. BRADER: Thank you, Your Honor. Customer A
19 would just note that if there were a mechanism in which
20 it could provide an affidavit of the type described or
21 verify a complaint without creating a significant risk
22 that its identity would then be a matter of public record
23 via a FOIA request. It would be quite -- I would have no
24 objection to doing so. Unfortunately, most of the
25 ability to keep things confidential, but file that type

1 of thing come from cases before the judicial branch,
2 which is, of course, exempt from FOIA and thus is able to
3 provide litigants, we believe, an increased level of
4 privacy.

5 We would also note that the rules do not require
6 either an affidavit or a verified pleading in the Rules
7 for Intervention. And under Michigan Administrative Rule
8 792.104051, "unless otherwise provided, a pleading need
9 not be verified or accompanied by an affidavit."

10 Finally, {redacted} would note that the pleading was
11 signed by an attorney and that attorneys have duties
12 under the law that go beyond those of a simply not
13 committing perjury.

14 We are required to undertake certain investigations
15 prior to signing a pleading. I do appreciate that Staff
16 noted that it's request for this. Additional
17 verification was not due to a concern that counsel had
18 failed to comply with these ethical obligations, but I do
19 represent today that I did meet my ethical requirements
20 and the filing of this petition and believe all of the
21 allegations in it to be factual. Thank you.

22 JUDGE THOITS: Thank you. Mr. Sonneveldt, as I
23 read through Staff's response, and I just want you to
24 confirm that I read this correctly or I'm understanding
25 it correctly, that Staff does not oppose late

1 intervention for a limited purpose. However, Staff has
2 expressed concerns regarding both the use of an anonymous
3 status or anonymous name as well as lack of supporting
4 information in support of the petition. Is that correct?

5 MR. SONNEVELDT: Yes, Your Honor. I think
6 that's correct. I just simply -- I kind of rephrase it
7 and say, Staff has some concerns with respect to
8 proceeding under a pseudonymic identifier absent some
9 additional procedural assurances. I think I'd phrase it
10 that way.

11 JUDGE THOITS: Okay. All right. Anything else
12 you wish to add in addition to what is in Staff's
13 response?

14 MR. SONNEVELDT: No. I -- I think that covers
15 it, and I won't take up more time just simply restating
16 what's in our filing.

17 JUDGE THOITS: All right. And I appreciate
18 that. Thank you. All right. I will issue a ruling on
19 both the, the Petition and the Motion, but I will state
20 right now that I'm granting the Petition for Late
21 Intervention, noting that there isn't real opposition to
22 it, and even Staff doesn't oppose it regarding Staff's
23 concerns. I don't think in my personal experience, I've
24 seen numerous contested Petitions for Intervention, which
25 petitions are not accompanied by any kind of verified

1 statement. And as Counsel mentioned, the Michigan Court
2 Rules, specifically MCR 1.109(E)(5) includes the, the
3 reference that counsel made to pleadings having factual
4 support.

5 And as far as proceeding, anonymously, Staff, I
6 believe, identified the correct case. Godwin is setting
7 forth the standard. But the standards kind of -- kind of
8 an open ended balancing test. And I just think that
9 allowing Customer A to proceed as Customer A is
10 inappropriate, the appropriate approach with respect to
11 this very specific and very limited intervention.

12 So with that we can move to the motion to cash.
13 Miss Brader, I will offer you and any, all other Counsel
14 an opportunity to say whatever you like in support and,
15 or in reply to someone else. But I have read through it,
16 and I just want to ask you some questions as I will ask
17 other -- some questions. And, and these questions are --
18 of mine are directed primarily to clarify some of the
19 facts here.

20 So it's my understanding that Customer A that is
21 challenging and seeking to cash discovery requests that
22 are identified in the various -- in -- excuse me, in the
23 motion as well as the parties' responses. I'm just going
24 to shorten them to Subparts B and C. B, as I understand
25 it, requested some information, C, requested copies of

1 contracts.

2 And I also understand that the discovery response
3 was made -- the information was provided by Consumers in
4 response to the discovery request, and the various
5 contracts were indeed produced in response. So if we
6 could just start off, Miss Brader, it's my understanding
7 from reading the customers as well -- excuse me,
8 Consumers as well as the Attorney General's responses.
9 They, they both included the specific response in
10 question with the exception of Attachment 2 to Subpart B.
11 At least I did not see that attached to my copy.

12 But anyway, my question to you is just focusing on
13 Subpart B. Are there -- I -- is there information
14 included, included in the response to Subpart B,
15 including the attachment to the Subpart B, which I
16 understand to be public. Is there information in that
17 response that the Customer A -- finds struggling and
18 wishes to have that request and the responses quash?

19 MS. BRADER: So Your Honor, Customer A did not
20 receive the full production because it is not a party in
21 this case. So even items of the discovery that were
22 public it has received only portions from Consumers
23 Energy at its request. So I -- I will say that the --
24 what we did see of the request, we are only objecting to
25 those items, which at that time, Consumers Energy also

1 objected to, notably, the customers identity and business
2 type and business premises being disclosed.

3 So those would be the -- in that case, we are not
4 seeking a clawback of materials that were produced to our
5 knowledge. But also, I cannot say that I have seen the
6 full response. And therefore, to the extent that
7 anything more would be included, that would include the
8 business type, the business premises, or other in, you
9 know, customer identification. In that case, Customer A,
10 would object.

11 JUDGE THOITS: So, so I understand from your
12 statement just now that you have not seen the entirety of
13 Consumers discovery response with respect to Subpart B.
14 Is that correct?

15 MS. BRADER: I am saying that I -- I don't
16 believe I've seen that attachment. If I am in error,
17 then I apologize. But I do not recall seeing that
18 attachment that you referenced. However, again, as long
19 as it doesn't contain the information that I detailed,
20 and I expect it is not given that Consumers objected to
21 the same items that were some of the subject of the
22 motion, I -- I have no reason to believe that we object
23 to the information that was provided.

24 JUDGE THOITS: All right. Ms. Brader, you have
25 received and reviewed, have you not, the, the Company's

1 Response to the Motion to Quash?

2 MS. BRADER: I have.

3 JUDGE THOITS: Okay. On page 3 of the -- of
4 Consumers response, they make reference there to this
5 Attachment 2 and they indicate in general terms what is
6 included in that Attachment 2. So I would ask you, if
7 you haven't already, to take a look at that and see if
8 there's anything in that sentence, anything described by
9 Consumers that you believe Customer A -- would find
10 problematic.

11 MS. BRADER: So it is difficult for me to
12 address that definitively because one of the things that
13 is described as a project description, I -- I don't know
14 what that project description entails and whether it
15 would identify a business premises, et cetera. I would
16 assume not, but the description alone does not allow me
17 to definitively answer that question.

18 JUDGE THOITS: All right. And with respect to
19 the project description, is indeed the identifying
20 information with respect to the specific premises, is
21 that the extent of Customer A's concern?

22 MS. BRADER: If, in addition, it contained
23 information that would allow Customer A's identity to be
24 determined without extraordinary effort then -- and, and
25 contained information that includes our billing data, et

1 cetera, then in that case, yes, we would.

2 JUDGE THOITS: All right. Mr. Totoraitis, any
3 objection to you or someone on your team providing Ms.
4 Brader with Attachment 2 -- with respect to your response
5 to Subpart B? Mr. Totoraitis, I -- I cannot hear you,
6 sir.

7 MR. TOTORAITIS: (Inaudible response)

8 JUDGE THOITS: I'm, I'm sorry, not very well.

9 MR. TOTORAITIS: Microphone options here. Can
10 you hear me any better?

11 JUDGE THOITS: At the very end of that
12 statement, yes. All right.

13 MR. TOTORAITIS: I'm, I'm just going to try to
14 speak directly into the microphone.

15 JUDGE THOITS: I -- I can hear you now.

16 MR. TOTORAITIS: Okay. Yes, we can provide
17 that to Ms. Brader, and I can speak a little bit to the
18 nature of the project description in that attachment now,
19 if it would be helpful.

20 JUDGE THOITS: I appreciate that. I -- I don't
21 know how -- that, that Ms. Brader would be able to feel
22 comfortable -- I don't mean to speak for her, but that
23 she would feel comfortable offering a position with
24 respect to a description of, of what attachment a might
25 provide in that regard as opposed to being able to read

1 it. But, so, so why don't we just -- appreciate the
2 offer, but why don't we just move on from that? And, and
3 if we could have that attachment to be provided to her,
4 it need not be done right now, and it need not be done so
5 quickly that I'm going to ask her to read through it
6 while we're on the record here. But I do want her to
7 have that and have an opportunity to, to look at that.

8 MS. BRADER: Thank you, Your Honor. I -- I
9 would need to also confer with my client prior to being
10 able to respond to that, but I do appreciate that
11 ability, the time to review it.

12 JUDGE THOITS: Let's see. Miss Brader, you
13 make reference to -- in the -- the company's response
14 also makes reference to the -- to Consumers having
15 objected to offering an objection with respect to its
16 response to Part B. I take it then from your prior
17 answers that you do not know and maybe asking Mr.
18 Totoraitis when it's his turn to, to answer this, that
19 you do not know whether with respect to the materials to
20 which Consumers objection applied, whether or not they
21 either did not provide the objective to information or it
22 was redacted or as a lot of parties -- in my experience
23 do, parties often, the attorneys often offer objections
24 but nonetheless answer the interrogatory or provide the
25 documents requested subject to the objection.

1 And my question to you is, do you know whether or
2 not Consumers provided information to which it's
3 objection applied?

4 MS. BRADER: I do not know. I will say that
5 the -- what we received was consistent with a redaction
6 of location information. And so presumably, that would
7 have been carried through throughout the response. But
8 again, without having seen it, I can't confirm or
9 otherwise speculate.

10 JUDGE THOITS: All right. Thank you. And as I
11 say, we'll, we'll ask Mr. Totoraitis some -- maybe he or
12 part of his group can enlighten us on that. Now, with
13 respect to Subpart C of the discovery request, which is
14 the contracts that were indeed produced, as I understand
15 it, I believe from my reading of the various responses,
16 that some or all of those contracts had portions that
17 were redacted. So Miss Brader, my question to you is,
18 have you seen the contracts that were produced in
19 response to this Discovery Request C?

20 MS. BRADER: Yes, Your Honor. And thank you
21 for the opportunity to make a clarification. The
22 materials that Customer A received at two o'clock on the
23 16th had areas marked for redaction. Upon reading the
24 responses, I made further inquiries and have now been
25 provided the con -- two contracts that were redacted and

1 did have additional information redacted from those
2 received by Customer A on the 16th.

3 Customer A has been able to verify that even the
4 versions that were provided do contain information that
5 we believe to be confidential and thus still have the
6 same concerns in our pleadings. But notably, it is
7 apparent that the data of usage by year and by time of
8 day was redacted in what was served even though it was
9 not marked for redaction in what was provided to Customer
10 A at 2 p.m. on the 16th. So thank you for the
11 opportunity to make that clarification.

12 I do believe I have now -- I have in my possession
13 the contracts of Customer A that were, in fact, provided
14 with the redactions provided.

15 JUDGE THOITS: Okay. And, and just so I'm
16 clear and you anticipated my next question, but so it
17 sounds like you received contracts that would -- were
18 indicating where redactions would be made. And then you
19 subsequently received copies of the redacted contracts,
20 which actually had more redactions than the first batch
21 you reviewed. But nonetheless, even with the materials
22 redacted, Customer A still has issues with respect to
23 some non redacted materials within the contracts,
24 correct?

25 MS. BRADER: That is correct, Your Honor.

1 JUDGE THOITS: All right. Thank you, Miss
2 Brader. Those are my questions. If you wish to offer
3 anything else now or, and, or after we hear from the
4 others, please do so.

5 MS. BRADER: Your Honor, in the interest of
6 efficiency, I'm happy to wait until we've heard from the
7 others, so I can give full responses. But if you believe
8 it would be helpful if I went first, I'm certainly
9 prepared to do so.

10 JUDGE THOITS: Oh, it, it, it, it does not
11 matter to me. So why don't we -- since it sounds like
12 your initial thought was to, wait, why don't we go that
13 way. And Mr. Totoraitis, I will ask you the question
14 that I asked Ms. Brader. And that is with respect to
15 Subpart B, to which I understand Consumers offered some
16 objections, but that some material was provided or some
17 information or answers with -- provided with respect to
18 Subpart B.

19 My question to you is, was there -- was the material
20 that Consumers objected to withheld and, or redacted from
21 the materials that were provided, including attachments
22 to the Subpart B, or might Consumers have offered an
23 objection but nonetheless produced all the information
24 that it believed to be responsive to Discovery Request B?

25 Mr. Totoraitis, I see you're talking, but I can't

1 hear you.

2 MR. TOTORAITIS: (Inaudible response)

3 JUDGE THOITS: Very slightly. I doubt the
4 court reporter can.

5 MR. TOTORAITIS: Given the technical
6 difficulties, I think I'm going to have Mr. Gensch take
7 over.

8 JUDGE THOITS: Well, well, I -- I can hear you
9 now. I don't know if that's a function of you leaning
10 in, but I -- I heard your last statement loud and clear.

11 MR. TOTORAITIS: Okay? All right. Well,
12 before I have Mr. Gensch take this over, then -- well, I
13 can -- I can confirm that the Attachment 2, to Part B of
14 the Discovery Response did not contain the objectionable
15 material that we identified in our objection to the
16 narrative portion of the answer. So that material was
17 not provided at all to the parties, not even redacted.

18 JUDGE THOITS: All right. Thank you. Another
19 question for you, Mr. Totoraitis or Mr. Gensch. There's
20 reference in Consumers' Response to the Motion to Quash,
21 that the Commission previously has indicated that it --
22 with respect to approving proposed expenditures, it wants
23 to have projects identified and indicating that there's a
24 signed contract, which makes perfect sense.

25 But my question to you is, as I thought I saw a

1 reference in your response to this effect, but you tell
2 me if I'm wrong or I misunderstood it, that, that
3 Consumers can -- I think the terminology you used in the
4 response was validate the identification of a project and
5 whether the project involves or includes a signed
6 contract. That Consumers can do that without producing
7 the underlying signed contract itself. Is that correct?

8 MR. TOTORAITIS: I don't think that's what I
9 meant to suggest, Your Honor. I -- I believe that I --
10 I'm not sure that any party receiving discovery response
11 from Consumers Energy that's trying to confirm the
12 existence of a contract is going to be satisfied with
13 something other than a copy of the contract. I think I
14 was speaking more to -- when I talk about validating the,
15 the identity of a project, I'm speaking more to the, the
16 project descriptions that Ms. Brader was referencing in
17 respect to that Attachment 2 -- that she was unfamiliar
18 with, with what those project descriptions say.

19 I -- I can tell you that the project descriptions
20 that were included in Attachment 2, responses to Subpart
21 B of the discovery requests were not any more descriptive
22 than project descriptions that exist in the company's
23 exhibits -- public exhibits in this case.

24 JUDGE THOITS: All right. Thank you for that
25 clarification. I' obviously misunderstood. Appreciate

1 it. So I'm correct that, that Consumers, as part of
2 their support for their requested expenditures tied to
3 these particular investments, want to and anticipate
4 relying on the actual contracts themselves in support of
5 your position, correct?

6 MR. TOTORAITIS: Your Honor, I -- I don't know
7 what use the other parties will make of the contracts
8 that we submitted to them in discovery. From Consumers
9 Energy's perspective, we have a witness under oath that
10 will -- that has and will testify that, that we do have
11 such contracts. I -- I don't know that the company is
12 going to make any motion to admit them as exhibits. I
13 don't think we were.

14 JUDGE THOITS: Sure. I -- I understand and
15 appreciate that. On the other hand, if, if a party who
16 opposes or challenges or questions some of Consumers
17 proposed expenditures, and if that challenge involves a
18 question about whether or not there are signed contracts,
19 I presume Consumers would like to be in a position to, to
20 say, well, yeah, actually, we do have signed contracts,
21 and here they are.

22 MR. TOTORAITIS: That is certainly correct.

23 JUDGE THOITS: Yeah. Okay. All right. Thank
24 you. That's, that's all I have for, for you, Mr.
25 Totoraitis, on a factual question and approach. Again,

1 feel free or Mr. Gensch can offer comments now or later
2 in support of your response.

3 MR. TOTORAITIS: I would rely, for the most
4 part, Your Honor, just on the written response that the
5 company offered. I think -- I will briefly say that I do
6 not think it is a realistic reading of any of the
7 relevant rules or laws or tariffs to assume that the
8 commission ever intended to so limit access to
9 information that the parties in MPSC regulatory
10 proceedings would be unable to see relevant material.

11 And, and the, the commission itself, of course,
12 relies on this adverse process to be able to see and
13 contemplate and consider that material. I do -- I just
14 do not believe that it is reasonable to assume that the
15 Commission meant to deprive itself of access to this type
16 of information.

17 JUDGE THOITS: Well, but Mr. Totoraitis, on
18 that point, though, don't both the Michigan Court Rules,
19 which I believe the Commission's Administrative Rules
20 incorporate specifically, as well as one of the multiple
21 sets of rules the Commission has specifically makes
22 reference to privacy responsibilities and limit,
23 limiting, limiting information with respect to that. Do
24 they not?

25 MR. TOTORAITIS: They do, Your Honor. And

1 that's why we have procedures in cases where there's the
2 potential to discuss some private information like the
3 ability to seek a protective order and to hold all of the
4 parties to the case who received confidential information
5 to a confidentiality obligation by having them file and
6 sign nondisclosure agreements. This -- Consumers Energy
7 is a heavily regulated public utility company, and the
8 law gives the Commission tremendous scope of access to
9 the company's books, records, accounts, papers, what have
10 you. And the commission will obviously expect parties to
11 observe procedures to the extent possible to protect that
12 private customer information.

13 And they've got a specific date, a privacy tariff
14 in Consumers Energy's electric rate book that spells out
15 in detail what information is protected and the manner in
16 which that information can and cannot be disclosed, can
17 and cannot be used. But the steps that Consumers Energy
18 took in this particular case, and I would I assert in all
19 cases to protect that information were the appropriate
20 steps that balance that interest in protecting private
21 customer information while still providing the Commission
22 with all of the relevant information it needs in order to
23 evaluate contested issues in rate cases.

24 JUDGE THOITS: Now, I -- thank you. And I
25 understand -- and, and I know there's been a -- an

1 assertion, and I believe in Customer A's Motion to Quash
2 an assertion to the effect that Consumers in their
3 response -- in their discovery response may have violated
4 some rules, and I understand that Consumers disagrees
5 with that. And, and I'll say that I have not seen
6 anything to suggest that Consumers has done so.

7 But I'm -- as you could probably gather from my
8 questions, I'm trying to explore whether or not there's a
9 way to, to split the baby, if you will, for lack of a
10 better term, to, to offer some protections for a Customer
11 A while not inhibiting Consumers nor the Attorney General
12 nor any other party from, from being able to access and
13 use all appropriate information with respect to the
14 matters at issue.

15 Mr. Totoraitis, just one final question for you. I
16 don't believe I saw that in your response. And if
17 Consumers doesn't want to address it, that's just fine.
18 It does not -- won't be meaningful to me one way or the
19 other. But Customer A, in their motion indicates one of
20 their concerns, maybe even fairly characterized as a
21 primary concern is, is the discovery -- well, I shouldn't
22 use that term -- is the -- having information be made
23 available pursuant to a FOIA request.

24 My question to you, Mr. Totoraitis, is it the
25 Company's position that the protective order in this case

1 or any subsequent protective order would preclude the
2 dissemination of information requested pursuant to a FOIA
3 request?

4 MR. TOTORAITIS: Your Honor, you correctly
5 noted Consumers Energy did not take a position on that
6 particular issue, and I don't have a position on that
7 issue today.

8 JUDGE THOITS: All right. I appreciate it.
9 Thank you. All right. Why don't we move to the Attorney
10 General who also filed her response. Ms. Gill, maybe you
11 could offer some comments regarding some of the questions
12 I asked of the prior witnesses in addition to what other,
13 other comments you wish to make. Miss Gill, you're
14 muted.

15 MS. GILL: I guess my initial reaction is that,
16 you know, we did submit a Discovery Request seeking
17 information regarding the kind of -- I guess you call
18 them large strategic customer contracts, which were --
19 calls for those were included in part in the rate case.
20 So we were inquiring about costs incurred in the rate
21 case and also our concerns regarding potential for
22 stranded costs. These are specialized unique facilities,
23 whether those costs would be borne by the rate payors.

24 What we were provided were redacted contracts that
25 on their face, I could not tell you who or what was

1 involved in those contracts. Both name, location
2 information and other information was redacted. So what
3 we have -- and as far as FOIA is concerned, if there were
4 ever a FOIA requested -- and I'll speak to the idea that
5 whether or not the protective order necessarily would
6 apply to FOIA.

7 The protective order, by its own terms, indicate
8 that if we receive a FOIA request that we have to
9 provide, and it also applies to Staff, that we would
10 notify the company. So I think by its terms, it does not
11 necessarily guarantee protection from FOIA. And if that
12 -- you know, but again, anytime we get a FOIA request,
13 there's an analysis of whether we have stuff --
14 information that is -- or documents because it's really
15 based on documents. We have documents that were, are
16 responsive.

17 So I can't say at this point in time whether a FOIA
18 year request would ever come across that we would feel we
19 would need to respond to because it would depend on the
20 request and what they're asking for and our analysis at
21 that time. But just, you know, from the Attorney
22 General's position, the, the protective order in this --
23 in and of itself does not, you know, prohibit a response
24 to FOIA, but it does provide notice to whoever provided
25 the documents and that they can then, you know, take

1 whatever action the -- necessary to address the FOIA
2 request.

3 I -- I mean, you went through a lot of things. I
4 don't know if it -- anything in particular you want me to
5 weigh in on.

6 JUDGE THOITS: Well, I'm -- I appreciate that,
7 Ms. Gill. And I was jumping all over and probably not
8 very articulate in my questions, but, well, one question
9 for you. Given the response that the Attorney General
10 got to Discovery Requests Subpart B and C, was that
11 response from the perspective of the Attorney General
12 adequate, or is the Attorney General anticipating follow
13 up Discovery Request and, or a Motion to Compel or
14 anything like that?

15 MS. GILL: No, we're not thinking about a
16 Motion to Compel. We're not considering a Motion to
17 Compel. I will let you know for the record, we don't
18 intend to, at least at this point now, you never know
19 what happens during the course of the case. But at this
20 point, we're not intending to present the contracts as
21 exhibits, although we are intending to present the public
22 responses AGCE 0478 through AGCE 0 -- I think it's 47 or
23 048. I'm sorry.

24 So we aren't intending to present those responses as
25 exhibit and with regard to our discussion of the issues.

1 You know, I -- I don't want to get too far into the -- at
2 this -- right at this moment, we're finalizing testimony.
3 But we're not going to delve deeply into what the
4 contracts may or may not have said, other to just
5 observed -- make some observations with regards to our
6 concerns, but nothing that would be identifying of the
7 party, the customers or whoever the Company has entered
8 into the contracts with clearly because we, we don't have
9 that information.

10 JUDGE THOITS: Sure. And thank you. And, and
11 please know, my question was just kind of a background
12 question. I am not looking to -- and indeed, I don't be
13 wholly improper for me to do so. I'm not trying to pin
14 down the Attorney General on what their positions may or
15 may not be or what they might assert in any brief. I
16 recognize even if a decision has been made on a certain
17 issue with respect to a position that, that often and can
18 change throughout the course of hearings and briefing and
19 all that good stuff. And, and I'm not looking to -- not
20 looking to tie anyone's hands in any way, shape, or form.

21 All right. Ms. Gill, do you have anything else at
22 this point? As I say, I -- I have read through your
23 response, The Attorney General's response. Do you have
24 anything else you wish to offer at this time before I go
25 back to Ms. Brader?

1 MS. GILL: No.

2 JUDGE THOITS: All right. Thank you, Miss
3 Brader.

4 MS. BRADER: Your Honor. I'm happy to have it
5 come back to me, but I don't know if Staff wanted to
6 weigh in before I did that.

7 JUDGE THOITS: A good point. That's me again,
8 missing Mr. Sonneveldt. I apologize. Please proceed.

9 MR. SONNEVELDT: No apology necessary. Thank
10 you. I'm going to keep it very brief. I'll just rely on
11 what we included in our response. But I just want to tie
12 the two last ideas that we put on paper on page 6. And
13 that is just to reiterate, it Staff's position, we don't
14 think the data privacy language should be used to shield
15 from discovery material that is relevant to that kind of
16 ongoing proceeding that we have here, particularly if
17 it's un redacted contextual data and other information
18 like that. I know, Bret, heavily kind of gave that kind
19 of answer, but I just wanted to stress it here. Other
20 than that, I'm happy to just rely on the brief now.

21 JUDGE THOITS: All right. Thank you. Ms.
22 Brader.

23 MS. BRADER: Thank you. You know, as I see it,
24 there are some key questions to decide here. The first
25 being, do the Data Privacy Rules in tariff protect

1 against disclosure of the customer's identity, business
2 type, and premises? Do the Data Privacy Rules in tariff
3 protect against the disclosure of individual customer
4 contracts? And even if the Data Privacy Rules and tariff
5 would permit those disclosures, is it appropriate to
6 quash discovery because the balancing of the potential
7 harms exceeds the value of it being provided in this form
8 given the lack of any true confidentiality protections
9 for Customer A and the amount of irrelevant information
10 that is contained in the contract?

11 So I will just begin by noting that it does sound
12 like, in general, people agree that it is appropriate to
13 redact the customer premises. And that is consistent
14 with the Public Service Commission decisions regarding
15 whether addresses are protected by the Data Privacy
16 Rules. And they ruled even earlier this year that it
17 absolutely was so in request to waive the rules in
18 certain contexts. So I'll discuss that further.

19 But I do note, that Consumers both says that the
20 data privacy tariff does not restrict what can be
21 produced in discovery and cited it, apparently, without
22 the need for a Motion to Quash as the basis for not
23 producing certain information. And we believe the
24 Consumer's position on September 16 was correct. And the
25 Data Privacy Rules do restrict what can be produced in

1 discovery because discovery is not noted among the many
2 exceptions to the Data Privacy Rule.

3 And the exceptions allowing aggregated data and
4 other items should be sufficient to address the demands
5 of both the data privacy tariff and the need by
6 intervenors to have the information necessary to take
7 their positions. And we believe that it can be done so
8 in this case. So to, to sort of say more along those
9 lines, I would note that on the April 24, 2025, Order by
10 the Commission and Docket Number You 21916, page 2
11 regarding the application Data Privacy Rules, clearly and
12 explicitly identifies customer addresses as among the
13 data that cannot be revealed without customer's consent.

14 Now, that Order was also making an exception as the
15 Data Privacy Rules allow the Commission to do. And we do
16 believe that the information in particularly, Request B
17 would be the ability for any party with very little
18 effort to identify who Customer A is. Now, I note that
19 parties have discussed, and I think Staff discussed their
20 concern about auditing, that the Data Privacy Rules
21 weren't really intended for that. And again, I note that
22 under Michigan Admin Code, so Rule 46101(a)(3), "upon
23 written request of a person, utility, or on its own
24 motion, the Commission may temporarily waive any
25 requirements of these rules when it determines the waiver

1 will further the effective and efficient administration
2 of these rules and is in the public interest."

3 So the Commission, I believe, has, in fact, put
4 limitations, but has also created a number of exceptions
5 to allow things to move forward properly while still
6 protecting customer information. Also, I will note that
7 FOIA itself has a provision where entities may
8 voluntarily provide trade secret information and, and
9 have it remain private if there is an agreement in
10 advance to do so. So there -- even if we find as
11 Customer A believes it's appropriate, that the Data
12 Privacy Rules do provide a restriction on what can be
13 provided should that restriction prove unable to allow
14 the Commission to do its work. There are a number of
15 ways that, that the productions could still be permitted,
16 weighing the privacy and public interest amounts there.
17 We also note that nobody has stated how many customer
18 contracts of each class were produced.

19 Customer A has been informed that there were a
20 number of customers -- nine of them or nine contracts --
21 not nine customers, but nine contracts provided across
22 two rate classes. We don't know how many of those
23 contracts were in each rate class. That really does
24 create the possibility that they're -- if there's a
25 particularly limited rate class and only a few customers

1 who are in that rate class doing an expansion, that one
2 customer could pretty easily determine if provided the
3 contract. Well, that one's not mine. So I know who it
4 probably is. And so we would just note that is of
5 concern to us.

6 However, if the grouping is large enough that isn't
7 possible, we would have less concern there. But we do
8 know that nobody argued that our example was not
9 possible. So while Ms. Gill might not be able to
10 determine not having the information of any one customer,
11 it is quite possible another customer, perhaps a
12 competitor, could do so. So the Data Privacy Rules are
13 fundamentally about that issue of triangulation. I know
14 Staff did not feel that, but the rule itself says "that
15 the aggregated data exception is provided so that the
16 individual data or information of a customer cannot be
17 associated with that customer without extraordinary
18 effort."

19 And I think we can all agree that making a FOIA
20 request does not require extraordinary effort. And we
21 believe the Commission Staff and the Commission have
22 provided instructions to utilities regarding the number
23 of customers that must be included in any particular
24 compilation to ensure that exception is adhered to
25 precisely to prevent triangulation.

1 JUDGE THOITS: Miss Brader, is, is that -- is
2 your last statement -- is that in a rule somewhere?

3 MS. BRADER: Yes. I'm sorry. That is the
4 aggregated data exception to the Data Privacy Rules that
5 recite in the brief. I'm sorry. Let -- I can find you
6 the precise citation right now from my brief, but it is
7 the definition of the aggregated data that is in those
8 privacy us -- I apologize. I don't have it right in
9 front of me.

10 JUDGE THOITS: No. I did see a reference to
11 aggregated data. I was talking about -- I thought I
12 understood your statement to mention that the intent or
13 one of the intents behind that rule was to preserve
14 privacy or words to that effect. Is that right?

15 MS. BRADER: Yes. It's in Rule 460.1532(h)
16 refers aggregated data. That definition is found in
17 460.102(b). And that definition has that -- has
18 instructed "that any customer or count information from
19 which all identifying information has been removed so
20 that the individual data or information of the customer
21 cannot be associated with that customer without
22 extraordinary effort." That is, in fact, in the
23 Administrative Rules is the definition of aggregated
24 data. It gives the reason for aggregation.

25 JUDGE THOITS: All right. Thank you.

1 MS. BRADER: So moving away from the question
2 of whether the Data Privacy Rules require this, we think,
3 again, you have to, in any discovery question, balance
4 the need of the parties with the harms that could be
5 realized by individuals, especially if that harm would
6 come from the revelation of information that is not
7 relevant to the issue at hand. And we would argue in
8 this case, there are alternatives that exist that could
9 have allowed Consumers to demonstrate that the contracts
10 existed without actually providing much of the
11 information that -- and in this form, in particular, that
12 Customer A is concerned, would allow folks to determine
13 whose contract that is. So I did just want to make --

14 JUDGE THOITS: Miss Brader, if I could just
15 interrupt just for clarification, just so I'm clear, it's
16 Customer A's position that your last point that relates
17 to the contracts that were produced under Subpart C and
18 does not pertain to the information provided in response
19 to Subpart B. Is that correct?

20 MS. BRADER: Well, Your Honor, since I have not
21 yet had a chance to review the entirety of the
22 information provided in -- understand I can't make a
23 definitive statement, but I can say that we believe that
24 the failure to provide the customer premises and this
25 type of business and the information that Consumers

1 objected to stating that the Data Privacy Rules did not
2 allow it to provide it, that is correct. And the
3 redactions of that information would be appropriate.

4 JUDGE THOITS: All right. Thank you. Sorry to
5 interrupt.

6 MS. BRADER: No. Thank -- I'm happy to have
7 you interrupt any time. So then looking at the contracts
8 themselves and, and thinking about the balancing of the
9 harms, there were a few statements that were in the
10 responses that I -- I wish to highlight and, and give a
11 response to.

12 First, the attorney general's office notes that
13 Customer A is doing business with a utility regulated by
14 the state of Michigan, and as such, no should have known
15 it was bearing the risk of its contracts being produced.
16 And that statement does not grapple with the question of
17 whether Customer A could legally do business with any
18 other entity as a supplier of electricity. And so the
19 decision to do business with Consumers should not
20 reasonably be characterized as an assumption of risk that
21 its trade secrets would become a public record.

22 We -- a Customer A also notes that center is a
23 statutory exception protecting disclosure for customers
24 that are permitted to buy their electricity from other
25 parties just to relay -- just to get rid of any question

1 on that score, Customer A represents today it is a full
2 service customer of Consumers and thus would not have
3 access to any additional privacy protections that
4 customers of alternative electric suppliers may
5 (indiscernible). Also, I would say that no party has
6 disputed that there is a risk that the material produced
7 in discovery becomes a public record by virtue of having
8 been provided to employees of the state.

9 The only party to directly address the FOIA concerns
10 is the AG. And the AG does not dispute that there is a
11 potential risk. The AG simply says that it is not
12 certain that someone would bring a FOIA response. And
13 then if there were a FOIA response, they would tell
14 Consumers. Well, Customer A is not Consumers. And the
15 AG already said that they don't know Customer A's
16 identity and, and does not believe that they could
17 determine who Customer A is. Customer A has no rights
18 under the protective order.

19 And therefore, if there were to be a FOIA request
20 received for its contract, we are not aware of any other
21 party to this case saying Customer A has any right to be
22 notified. And based on the fact that its contracts were
23 produced according to the Proof of Service two minutes
24 after it was notified, they might be because Customer A
25 has significant concerns that were a FOIA request to be

1 received, it would not receive notice in time to attempt
2 to protect that information, and that Consumers Energy
3 would have far lower interest in attempting to defend
4 those FOIA -- those information as trade secrets, et
5 cetera. And the risk is, is high.

6 Under the Michigan Uniform Trade Secrets Act. One
7 of the ways you tell if something is a trade secret or
8 not is to see if it's a matter of public record. So this
9 is tremendously potentially damaging to the customer.
10 And thus there is a significant likelihood of harm.
11 Customer A should not have to demonstrate that a FOIA
12 request will be received in order for the great risk that
13 its information would become a public record to be
14 weighed in the balancing of harm.

15 And finally, again, alternatives exist, to use your
16 phrase, Judge. We think there are some ways to split the
17 bate here if only the first page of the contract that
18 shows a redacted signature and redacted other information
19 had been provided to show there was a signed contract and
20 then a sample contract to put in with, like, all the
21 boilerplate and stuff had been supplied and they would
22 say that we -- we say, we have these contracts. And then
23 perhaps a table of information, you know, say without
24 then which, you know, person or which other configuration
25 et cetera was implied, giving the maximum total amount of

1 money outlaid, the percent of that was covered with some
2 kind of collateral, whether the contract is in default or
3 currently not. And if it is in default, any recovery of
4 dollars.

5 That sort of table could -- coupled with a redacted
6 first page of the contract could allow verification that
7 a signed contract exists without revealing any of that
8 information that would then be irrelevant, like what the
9 customer has to have on their side in the meter, what the
10 feed looks like, the exact timing of various requirements
11 that come into effect, the information that Customer A
12 believes is associated with its trade secrets could be
13 protected while allowing the Attorney General, the Staff,
14 and others to protect all customers, including Customer
15 A, in the setting of rates. So we don't --

16 JUDGE THOITS: So, so I mean, Miss Brader, so I
17 have not seen these contracts you apparently have seen,
18 albeit redacted. So the signature block is on page 1?

19 MS. BRADER: It is. And it was redacted in
20 what was provided. And it was indicated that it would be
21 redacted in the initial that we got.

22 JUDGE THOITS: All right. Thank you. I just
23 not familiar with too many commercial contracts that have
24 a signature on the first page.

25 MS. BRADER: I think it is often used when most

1 of the rest of the contract is standard forms of
2 conditions with some things filled in, that the main
3 signature page --

4 JUDGE THOITS: Sure.

5 MS. BRADER: -- would be on the front --

6 JUDGE THOITS: Okay.

7 MS. BRADER: But it, it is a back on the first
8 page.

9 JUDGE THOITS: All right. Thank you.

10 MS. BRADER: And other than that, Your Honor.
11 I'm just looking to see my notes. We would simply like
12 to thank those who are not intending to present the
13 contracts as exhibits, including, you know, in any sort
14 of files, simply because of our concern that it would
15 then be Google-able in addition to, you know, having to
16 do it for a -- so we would note that any action that's
17 taken that would put those into the record would be of
18 additional concern to Customer A -- because of the
19 additional ease in obtaining that information. Thank
20 you.

21 JUDGE THOITS: Thank you. Mr. Gensch.

22 MR. GENSCHE: Thank you, Your Honor. Really,
23 not much more to add here. I'm just kind of restate that
24 Consumers Energy proceeded in a way that it, that it --
25 what's appropriately a balancing this protecting

1 customers' private information with the requirement to
2 respond promptly and fully to discovery. We provided the
3 contracts redacted and under the protective order. And
4 we, we took out a lot of the what -- we did take out the
5 customer count information, the consumption data, and
6 personal data under the data privacy tariff. That was
7 redacted from even the versions we provided as
8 confidential. And so just kind of to reiterate what,
9 what Mr. Totoraitis said, we believe that was consistent
10 with the data privacy tariff requirements.

11 JUDGE THOITS: All right. Thank you. Mr.
12 Sonneveldt, do you have anything further?

13 MR. SONNEVELDT: No, Your Honor.

14 JUDGE THOITS: All right. Ms. Gill.

15 MS. GILL: Thank you, Your Honor. Given the
16 (indiscernible) of information that is available in rate
17 cases, the Attorney General often seeks what we would
18 call the best evidence of, you know, what terms are
19 involved in contracts, what terms are involved in other
20 types of agreement. And the best evidence is obviously,
21 the agreement.

22 Now, Miss -- Customer A's Counsel indicates, well,
23 there were other ways you -- this information could have
24 been provided. It could've been provided is aggregated
25 data, which, you know, seems to me to apply to things

1 like usage and that type of thing. What we were looking
2 for was particular -- particular protections that I'm not
3 sure it's easy to aggregate. I know in Customer A's
4 motion, they provide an example where you could provide,
5 like, the total amount of a particular financial method.
6 Well, when you're looking at individual contracts, that
7 does not necessarily apply across all contracts. And so
8 I think in the argument that we could aggregate, you
9 could also distort data or distort information that's not
10 easily aggregated.

11 As far as the Motion of Quash. And, you know,
12 Customer A's Counsel laid out what she viewed as the
13 issue, but here's what the Attorney General views as the
14 issue. We provided, you know, under the rules of --
15 Court Rules of -- and, and, and the Rules of the
16 Commission, we sought discovery of what we view as
17 relevant information for our concerns. We are -- and
18 discovery is the mechanism by which a party can develop
19 its case. And so we're working on developing our case.

20 We submitted the discovery response. We received a
21 reply to the discovery response. Now, the Customer A
22 seeking a Motion to Quash. And part of her remedy is
23 basically to say, well, although you've received
24 information, you must now destroy or delete information.
25 And that's a huge concern for the Attorney General.

1 It's a huge concern because under date of retention
2 that all of the state of Michigan government has, there
3 are -- there are rules about when you can destroy
4 information. Myself, as an Assistant Attorney General,
5 cannot determine on my own when to destroy information.
6 It is set in schedules. And so right now we have a
7 situation where we were provided the data, a discovery
8 response, we believe, a legitimate discovery request as
9 far as the extent to which there was personal or
10 identifiable information that was redacted.

11 But now we're in a position where, okay, what do we
12 do? Now, we have this information? And the request of
13 Customer A is, well, although you had received the
14 information, you know, they're asking you to decide
15 whether to ask us to then destroy information. And so,
16 you know, I won't get into whether I think what we
17 submitted was relevant because I think our response
18 addresses that issue. But what I do say is a really
19 important issue, and it's going forward, is, what do we
20 do with the information that we received it and whether
21 the, you know, data retention schedules that the state of
22 Michigan has established allows us to just destroy
23 information.

24 I think that's, you know, again, I think that's a
25 critical point we need to be thinking about right now is

1 going forward, what do we do? We have the information,
2 and it's there. The extent that something is FOIA-able,
3 that is true of every case the state of Michigan is
4 involved in, the potential for FOIA, any project the
5 state of Michigan is involved in, it's the potential for
6 FOIA. If that becomes the guiding principle, that
7 because you are subject to FOIA, then, you know, you're
8 somehow restricted from getting information that is
9 needed for you to carry out whatever your role is. And
10 in this case, we are litigants in a rate case. Then
11 effectively, you will prevent the state of Michigan from
12 doing its job.

13 I -- you know, as I indicated to Customer A's
14 Counsel, you know, here, yes, it's a possibility the FOIA
15 could happen. And at that point, a decision would have
16 to be made. But, you know, this is a slippery slope. It
17 -- we're saying, well, you may get a FOIA request in the
18 future, and therefore, you can't discover things now. I
19 think then, you know, you've tied our hands on how we
20 could perform in these cases. That's all I have to say.

21 JUDGE THOITS: All right. Thank you. Miss
22 Brader. Do you have anything further?

23 MS. BRADER: I do. I would just simply note
24 that in most cases that the Attorney General would
25 pursue, there are FOIA exceptions that the legislature

1 has seen fit to put in. So for instance, in the merger
2 statutes regarding utilities, there is a FOIA exception
3 there. In tax cases, there are FOIA exceptions. And of
4 course, the judiciary is not subject to FOIA. So all
5 cases that the Attorney General pursues in the courts of
6 Michigan or of The United States would not be subject to
7 the same concern. So it is not -- I think the scope of
8 the concern there is much more limited than she raises.

9 Additionally, I will note that the Michigan Uniform
10 Trade Secrets Act "prohibits entities including the
11 government from an improper disclosure of a trade
12 secret." And improper is defined "to include breach of a
13 duty to maintain secrecy." So to the extent information
14 is provided that breaches the terms and conditions of
15 service by a customer, like Customer A, if that
16 information has been provided in breach, then Customer A
17 would have the opportunity to seek a court order or
18 injunction that would allow that destruction.

19 And I believe that the state laws of Michigan do
20 permit such destruction in accordance with a court order.
21 So even if you as ALJ feel, you do not have the power to
22 order the requested remedy regarding the destruction, we
23 would still have -- think that there is value in
24 determining whether the production did violate the rules.
25 And if it did not, but the balance of harm says "it

1 should not have been produced", that is extremely
2 important to future contractual obligations. Even if the
3 harm done to Consumer -- a Customer A -- is unremediable
4 as the Attorney General suggests.

5 Because under that provision, "should a utility
6 violate the Customer Service Rule, Privacy Rules, and
7 offer data to the Commission, which is then produced in a
8 toy request, even if it is later found that production
9 was illegal." The Attorney General's position is that
10 it's too bad it has entered the public record. It cannot
11 be clawed back. We do believe there are provisions under
12 Michigan law that a customer could proceed under to claw
13 that back. And also in the future, think it would be
14 very important to have guidance as to what the balancing
15 would be in any discovery for a rate case.

16 Again, Customer A appreciates that folks need to be
17 able to test the con -- the case that is put forward and
18 appreciates the efforts of all those who advocate on
19 behalf of rate payers, including Customer A. However,
20 customer does believe that the interests here could have
21 been served without the information that was provided.
22 And is also very pleased that no one seems to believe
23 that the customer premises were required to be disclosed
24 due to an inapplicability of the {redacted} plus the need
25 -- the fact that it was requested by the AG.

1 We think that was the right decision. We think it
2 should be affirmed through a granting of our motion
3 regarding the sustaining of that objection to Request B.
4 and we believe that the co -- the finding that the
5 contracts were produced in, in -- against both the terms
6 of the tariff and the Data Privacy Rules is appropriate.
7 And even if it is not appropriate, that a balancing of
8 harms that says this should not have happened in the
9 future and that Customer A should get some notice and an
10 opportunity to object prior to things entering the public
11 domain would all be quite appropriate. And so we thank
12 you for hearing our request.

13 JUDGE THOITS: All right. Thank you. Ms.
14 Gill, one final question for you. I'm looking at the
15 Attorney General's response. The page numbers are not --
16 or the pages are not numbered, but it's the last
17 paragraph before the relief requested toward the very
18 end. And there's a footnote there, Footnote 31, that
19 makes reference to "state document retention requirements
20 and other statutes." Are those the -- all the citations
21 to the various record retention requirements that you
22 were alluding to in your comments?

23 MS. GILL: Yes.

24 JUDGE THOITS: All right. Thank you. Mr.
25 Gensch. I believe you or Mr. Totoraitis or someone from

1 your team is going to get to Miss Brader Attachment 2, I
2 think it is, for your Discovery Response B, correct?

3 MR. TOTORAITIS: Correct? We will do that.

4 JUDGE THOITS: All right. And then Miss
5 Brader, once you receive that, I will give you an
6 opportunity to file something very briefly regarding
7 whether or not there is material contained within that
8 attachment to that Customer A, asserts should be, should
9 be cause -- should be redacted, if you will, from the
10 record for the reasons set forth in the motion. And I
11 would ask you to attach that attachment to your written
12 response.

13 And then I will give the other parties ten days to
14 respond to whatever you submit if they wish to. And if
15 they don't wish to respond, that's just fine. But if
16 they could file a, a letter like they sometimes do with
17 respect to briefing and that kind of thing, just
18 indicating that they will not be filing response. Is
19 that acceptable?

20 MS. BRADER: That is, Your Honor. I would also
21 request, since we're going to have some additional time
22 before decision issues, that should any state agency
23 receive a FOIA request that may breach the contracts,
24 that they agree to give Customer A the same notice that
25 they're required to give Consumers Energy under the

1 protective order.

2 JUDGE THOITS: So that would be Staff and the
3 Attorney General, right?

4 MS. BRADER: And more, the Office for the ALJ
5 as well, Your Honor.

6 JUDGE THOITS: Oh, all right. All right. Any
7 objection to that from Staff or the Attorney General?

8 MR. SONNEVELDT: The notice would go to Val,
9 right?

10 MS. BRADER: Yes, that's my request.

11 JUDGE THOITS: The Staff had -- have any issue
12 or objection to that request?

13 MR. SONNEVELDT: No, Your Honor, was just
14 making sure I understood the request.

15 JUDGE THOITS: All right. Thank you. Ms.
16 Gill.

17 MS. GILL: No, the Attorney General doesn't
18 have an objection to that request. I do have an --
19 another issue because as you, you know, today, is that in
20 -- testimony as an exhibit. And one of our exhibits, as
21 I indicated before, it would include the public responses
22 that we received to our discovery request. Since there
23 seems to be further responses and briefings, perhaps on
24 this issue, I'm a little bit of a quandary as to is there
25 a concern with me providing that discovery response as an

1 exhibit?

2 MS. BRADER: Your Honor, may I request a
3 clarification?

4 JUDGE THOITS: Sure.

5 MS. BRADER: Or is it the -- is it on Exhibit 2
6 or simply what was provided in the response to the public
7 version that would be included?

8 MS. GILL: It would be -- it would include
9 Attachment 2 -- or Attachment 1. I'm sorry, because
10 there's -- so it would be the response to -- as I
11 indicated before, there were three questions. In
12 particular, there was an Attachment 1 that went with that
13 document. And I'm trying to see what we have Attachment
14 2. I don't see Attachment 2.

15 MS. BRADER: I mean, again, I don't -- if that
16 can be shared, I think we could very quickly say whether
17 we would have an objection. But, but, you know, again,
18 the public version of the Response to B with the
19 exception that we have not seen Attachment 2. But if
20 that's not even included, Customer A has no objection to
21 the public response to Question B being included. And
22 it's also its understanding that the contracts that it
23 objects to receive were not part of a public response but
24 a confidential response.

25 JUDGE THOITS: So Ms. Gill, does that answer

1 your question or not?

2 MS. GILL: Let's see. I think so. Let me ask
3 the -- for the Company whether or not Attachment 1 is
4 essentially the same thing that was in -- as exhibit, I
5 think, 109, A 109?

6 MR. TOTORAITIS: Hold on a moment. I'll try to
7 answer that.

8 MR. SONNEVELDT: Your Honor, while. Mr.
9 Totoraitis is looking at this, I'd like to make a request
10 that once we're off the record. Could I have a minute to
11 speak to Miss Brader and the other parties while we're
12 all on.

13 JUDGE THOITS: Yeah. That's fine with me.

14 MR. SONNEVELDT: Okay. I just wanted to throw
15 that out there in case someone was intending to like,
16 jump off quick when this finally closes.

17 JUDGE THOITS: No, I appreciate that. Thank
18 you.

19 MS. BRADER: Judge, I would just like to say I
20 do have another meeting that I was asked to be at the
21 start at 3:00. I have informed them I will be late for
22 the hearing, but I -- after that, am available all day.

23 MR. SONNEVELDT: I think you might want to let
24 me have 30 seconds of your time.

25 MS. BRADER: I hear you, and I will do so.

1 MR. SONNEVELDT: All right.

2 MR. TOTORAITIS: In response to miss gills
3 question. Maybe I heard the question incorrectly. I --
4 I thought she asked me if attachment one to the discovery
5 response was the same as Exhibit A 109 in the case.

6 MS. GILL: (Indiscernible)

7 MR. TOTORAITIS: And the, the answer to that,
8 as far as I can tell, is no. Attachment 1 is forecasted
9 capital costs for the projects collectively. So that
10 does not include any confidential information, private
11 information, or otherwise that would be of concern to any
12 party. I don't think it -- it's aggregate data.

13 I'm, I'm wondering if you meant Attachment 2?
14 Because attachment to is similar to -- contains some of
15 the same information that can be found in Exhibit A 109,
16 including those project descriptions that we talked about
17 very early in this hearing.

18 MS. GILL: For some reason, this Attachment 1
19 on this page but yes, it would be that same information.
20 So it would be basically the Attachment 2 information
21 that she needs to review.

22 MR. TOTORAITIS: I can tell you that the
23 project descriptions in Attachment 2 are identical to the
24 project descriptions in Exhibit A 109, page 11 of 13.

25 JUDGE THOITS: Miss Brader, are those project

1 descriptions problematic to Customer A?

2 MS. BRADER: Your Honor. Having been in this
3 case for a limited purpose for only a little while, I am
4 frantically trying to pull those up right now.

5 JUDGE THOITS: All right. Well, we've gone on
6 a long time. Let's not do that right now. Ms. Gill, how
7 about this? How about -- how about you hold off on, on
8 referencing Attachment 2 subject to the understanding
9 that depending on the ruling on this, you can
10 subsequently offer Attachment 2 as part of your case
11 without any adverse aspect being attributed to the fact
12 that it -- that filing was late. Does that work?

13 MS. GILL: Sure?

14 JUDGE THOITS: All right. And you won't have
15 anything else, Mr. Totoraitis? I don't know if you
16 heard, but I'm giving Ms. Brader an opportunity so -- to
17 submit something in writing if she wishes to once she
18 receives Attachment 2, and giving all parties an
19 opportunity to respond to that again if they wish to.

20 MR. TOTORAITIS: I have nothing further to add
21 on that basis, Your Honor.

22 JUDGE THOITS: All right. Thank you. Anyone
23 have anything else? All right. Thank you all. Thank
24 you, Nicole. We are off the record.

25 (At 3:05 p.m., proceeding concluded)

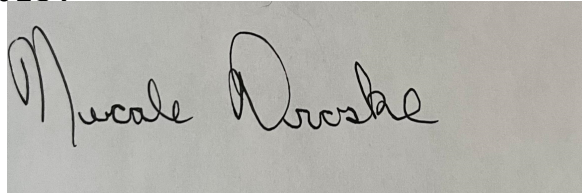
CERTIFICATION

I, Nicole Droske, a Certified Electronic Recorder and Notary Public within and for the State of Michigan, do hereby certify:

That this transcript, consisting of 54 pages, is a complete, true, and correct record of the proceedings hand in the within-entitled matter, that being Case No. U-21870, before John Thoits, Administrative Law Judge with MOAHR, for the Michigan Public Service Commission, Lansing, Michigan on Tuesday, September 30, 2025.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am not interested in the outcome of this matter, financially or otherwise.

IN WITNESS THEREOF, I have hereunto set my hand this 3rd day of October, 2025.



Nicole Droske, CER 16192

Notary Public, State of Michigan

County of Genesee

My commission expires: 03/15/2030