

December 29, 2025

Ms. Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Hwy., 3<sup>rd</sup> Floor  
Lansing, MI 48917

**RE: MPSC Case No. U-21859 – In the Matter of the Application of Consumers Energy Company for Ex Parte Approval of Certain Amendments to Rate GPD.**

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find **Consumers Energy Company's Answer to the Attorney General's Petition for Rehearing**. This is a paperless filing and is therefore being filed only in PDF. Also included is a Proof of Service showing service upon the parties.

Sincerely,

Anne M. Uitvlugt  
Phone: 517-788-2112  
Email: [anne.uitvlugt@cmsenergy.com](mailto:anne.uitvlugt@cmsenergy.com)

cc: Parties Per Attachment 1 to the Proof of Service

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. )  
\_\_\_\_\_ )

Case No. U-21859

**CONSUMERS ENERGY COMPANY’S ANSWER**  
**TO THE ATTORNEY GENERAL’S PETITION FOR REHEARING**

Pursuant to Rule 437 of the Michigan Administrative Hearing System’s Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or the “Commission”), Mich Admin Code R 792.10437, Consumers Energy Company (“Consumers Energy” or the “Company”) files this Answer to the Attorney General’s Petition for Rehearing (“Petition”) of the Commission’s November 6, 2025 Order (“November 6 Order”) in this proceeding.

The Attorney General continues her crusade against business investment in Michigan by using the rehearing process to reargue issues she has already presented in this proceeding. After considering those and other issues presented by numerous parties, the Commission issued the November 6 Order which established reasonable customer protections associated with Consumers Energy’s service to new large load electric customers. The Commission should again reject the Attorney General’s misguided attempt to create unreasonable and out-of-market obstacles designed to discourage large load customers from locating and investing in Michigan.

## **I. STANDARD FOR REHEARING**

The Commission's standards for rehearing petitions are well known and have been consistently applied for many years. MPSC Rule 437(1) states the standards for petitioning for rehearing:

A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. [Mich Admin Code, R 792.10437(1).]

The Commission has provided the following guidance for its consideration of petitions for rehearing:

Rule 403<sup>[1]</sup> provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing. [MPSC Case No. U-16045, April 26, 2011 Order, page 4.]

As discussed in more detail below, the Attorney General's Petition fails to meet the above standard for rehearing because it fails to establish any errors, newly discovered evidence, or unintended consequences that will occur as a result of the November 6 Order. Instead, the Attorney General merely reargues issues that have already been considered by the Commission. Accordingly, the Commission should deny the Petition for Rehearing.

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<sup>1</sup> MPSC Rule 403 has been replaced by Rule 437 of the Michigan Administrative Hearing System's Administrative Hearing Rules. The language of the rule is unchanged.

## II. ARGUMENT

The Attorney General's Petition for Rehearing reargues several issues, presenting no new evidence or unintended consequences, only her position that the Commission should make it more difficult and onerous for new large load customers to locate in Michigan. See Petition, pages 1-3. The Attorney General's petition fails to recognize the purpose of this proceeding.

Consumers Energy, like other utilities throughout the country, is experiencing a significant increase in requests for service from new large load customers considering locating and investing in Michigan. In order to position itself to appropriately serve this new load and protect its existing customers, the Company voluntarily filed its application in this case to propose modifications to Rate GPD to put certain customer protections in place. In fact, Consumers Energy's stated purpose of its tariff modifications was to help mitigate risks associated with serving new large customer loads and protect other customers from potentially stranded assets and increased costs should the load not materialize after resources are committed to serve them or the load is not in place for as long as expected. Ultimately, Consumers Energy is proposing to serve large load growth in a manner that justly and reasonably balances the interests of new large load with other customers. The unintended consequences alleged by the Attorney General ignores simply expresses disagreement with the outcome. The Commission should again reject the Attorney General's arguments.

### A. Minimum Contract Term and Minimum Billing Demand

The Attorney General's Petition alleges that the Commission mischaracterized its position and instead applied "arbitrary reasoning" when issuing its Order. Petition, pages 5-6. The Attorney General incorrectly argues the Order as a whole is flawed. This is incorrect and not a proper basis for rehearing.

The record reflects that Attorney General witness Michael W. Deupree testified which supported a 15-year initial contract term. 5 TR 982, 1012. Despite that evidentiary position, the Attorney General modified her position in briefing, presenting “three alternative recommendations to the Commission.” See Attorney General’s Initial Brief, pages 5, 19-27. The Commission provided a summary of these alternatives in its Order. See November 6 Order, pages 70-71. Notably, in her briefing, the Attorney General did not cite the record (including her own witness’s testimony) when presenting support for these alternative recommendations. Nor did the Attorney General explain the shift away from its own witness’s testimony.

The Order provided a thorough summary of the different recommendations made by all the parties to the proceeding, summarizing the direct testimony through the briefing. See November 6 Order, pages 11 through 101. The Order reflects the range of parties’ recommendations on the various topics. Positions on the issue of contract term ranged from 10 years (Data Center Coalition (“DCC”)) to 20 years (Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan (collectively “MNSC”)). Additionally, positions on the minimum billing demand ranged from 70% (DCC) to 90% (MNSC). The November 6 Order’s discussed all of these positions.

A final order of the Commission must be authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney General v Pub Serv Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987). Expert opinion testimony is considered “substantial” if offered by a qualified expert who has a rational basis for his or her views, whether or not other experts disagree. “To hold otherwise would thus neutralize all expert testimony in cases of conflict and the party with the burden of proof would automatically lose. Const 1963, art 6, § 28, intends no such absurd result.” *Great Lakes Steel Div of Nat’l Steel Corp*

*v Pub Serv Comm*; 130 Mich App 470, 481; 344 NW2d 321 (1983). The MPSC can properly rely on the testimony of a qualified expert and that testimony constitutes competent evidence. *Attorney General v Pub Serv Comm*, 174 Mich App 161, 170; 435 NW2d 752 (1988). The Commission may weigh conflicting expert testimony of qualified experts to determine which evidence meets the preponderance of the evidence. *Aquilina v General Motors Corp*, 403 Mich 206, 211-212; 267 NW2d 923 (1978); *Great Lakes Steel Div of Nat'l Steel Corp v Pub Serv Comm*, 130 Mich App 470, 481; 344 NW2d 321 (1983).

The Commission in its Order also described the legal standard governing the Commission's authority to modify a utility's tariff provisions. The Commission indicated that

The ratemaking process requires the Commission to balance investor and customer interests. *Ass'n of Businesses Advocating Tariff Equity v Pub Serv Comm*, 208 Mich App 248, 267; 527 NW2d 533 (1994). In ratemaking, the Commission "may, in the exercise of its discretion, determine what factors are relevant in a particular case." *In re Consumers Energy Co*, 278 Mich App 547, 563; 753 NW2d 287 (2008) (citing *Attorney General v Pub Serv Comm*, 231 Mich App 76, 79; 585 NW2d 310 (1998), and *Attorney General v Pub Serv Comm*, 133 Mich App 719, 725-726; 349 NW2d 539 (1984)). Further, the Commission is "not bound by any particular ratemaking method and can make pragmatic adjustments in order to respond to particular circumstances of any given case." *Consumers*, 278 Mich App at 563. The Commission has found that:

a rate proposal can be lawful and non-discriminatory even though it creates a rate class for which only some customers qualify and even though there are differences in rates among customers within the rate class. Rational differences in classifications and rates can be nondiscriminatory, provided appropriate standards are used to differentiate customers. The resulting issues are largely factual.

May 9, 1995 order in Case No. U-10787, pp. 19-20. [November 6 Order, pages 101-102.]

It is within this framework that the Commission adopted the Minimum Contract Term and Minimum Billing Demand. The Commission adopted the position of the MPSC Staff ("Staff")

and the Company (and the Attorney General's witness) when finding that "while not a perfect match, 15 years approximates the life of the investments that will need to be made in the form of PPAs and self-built generation. In this case, as in so many proceedings, the Commission is called upon to balance competing risks—the significant risk of stranded costs versus the risk of disincentivizing economic development of the kind represented by data centers and other large load customers. The Commission finds that the longer proposed contract term of 20 years is longer than needed to provide the revenue certainty required and the shorter term of 10 years presents too much risk for the creation of stranded assets." November 6 Order, pages 107-108. Similarly, after evaluating the position of the parties, the Commission determined that "the 80% MBD reasonably balances Consumers' and ratepayers' interests in ensuring sufficient financial support for the necessary investments and large load customers' interests in flexibility and a fair assessment of the risk." November 6 Order, page 109.

The Attorney General's Petition reargues her briefing position. This is not a proper basis for rehearing. The Commission considered the varying opinions of the parties and rendered an opinion based on expert testimony. Moreover, the Attorney General's claim of newly discovered evidence (Petition, page 9) rings hollow as the new evidence cited was to the Company's Construction in Aid of Construction tariff. Not only has this information been available all along but it was cited by the Attorney General's witness and incorporated into her Initial Brief. Similarly, the "uncontested cost analysis" presented by the Attorney General in her Initial Brief, and reiterated in her Petition at page 6, was disputed by Staff and the DCC (See Staff's Reply Brief, pages 6-8; DCC's Reply Brief, pages 11-12) and these arguments were acknowledged by the Commission. November 6 Order, pages 69-70, 86, 99-100. Altogether, these arguments fail to meet the standard for rehearing, and the Attorney General is merely attempting to take "another

opportunity . . . to argue a position or to express disagreement with the Commission’s decision. . . .” See MPSC Case No. U-16045, April 26, 2011 Order, page 4. The Commission should deny the Attorney General’s Petition.

**B. Ex Parte Rate Contract Review Process**

Despite approving a new Rate GPD large load tariff provision, the Commission also ordered the Company to make an ex parte filing “prior to each large load customer taking service under this tariff,” which “clearly demonstrates compliance with the tariff requirements and that costs caused by the interconnecting large load customer to be served under this tariff are not being paid for by other customers.” November 6 Order, page 117. The directive is unprecedented in that, for the first time the Company is aware of, it requires an ex parte proceeding *before* a customer can begin to take service under a Commission-approved tariff rate under which the customer is eligible to take service. The Attorney General expands on this new requirement contending that the MPSC Order was in error for not requiring large load customer contracts to undergo a contested case proceeding in order to approve their contract for service. Petition, page 11.

The Attorney General simply reiterates her briefing in support of her rehearing request (See Petition, page 11), and she also disregards the fact that the Order approved serving large load customers on the Company’s existing Rate GPD with provisions added to protect other customers. Rate GPD is based on Commission-approved cost allocation principles which require that electric rates are based on the cost of providing service to each customer class. See MCL 460.11. This statutory mandate ensures that rates are designed to recover the actual cost to serve customers, which eliminates cross subsidization. The Commission-approved cost of service study allocates costs based on objective methodologies which are then reviewed and approved through the process of contested general rate cases.

Importantly, adding a new customer to the Company's service never changes the rates charged to other customers absent a rate case. So, no other customer will be paying for any of the costs associated with serving a new large load customer at the time the Company is required to file the ex parte filing required by the November 6 Order nor within the 90 days from filing until the Commission's decision on the ex parte application. To the extent that Consumers Energy must acquire any new resources to serve a large load customer, the costs of the new resources will not impact any customers until they are incorporated into a **future** rate case. When those costs finally appear in a subsequent rate case, the Commission performs its ratemaking duties and determines whether the costs are assigned exclusively to the new large load customer or shared by other customers within the customer class. Thus, there are no rate implications that would make a contested case proceeding necessary for approval of these customers' contracts.

More significantly, the Attorney General's Petition ignores the fact that the Company has a duty to serve its customers – including large load customers. A public utility “is bound from the very nature of its business to furnish such public service in such quantities as the public may require . . . .” *City of Saginaw v Consumers' Power Co*, 213 Mich 460, 481; 182 NW 146 (1921).

The Michigan Supreme Court held that:

[i]n granting the use of the streets for public utility purposes, the Legislature recognized the public purpose to be subserved through such use. The Legislature tendered the use of the streets for public utility purposes to such individuals and corporations as would provide the public with a necessary utility service, knowing that the creation of such a utility and its service would entail the expenditure of large sums of money and benefit the public by providing a common service of the utility, knowing also that as soon as it should be installed in the public streets it would become affected with a public interest, and that its owner would have to surrender the right to serve whom and where it willed, or to charge as it willed, and that it would become subject to the laws regulating public service corporations. [*City of Lansing v Michigan Power Co*, 183 Mich 400, 410; 150 NW 250 (1914) (emphasis added)].

This principle is echoed in the Commission's own Consumer Standards and Billing Practices for Electric and Natural Gas Service. See Mich Admin Code R 460.106. Conducting a contested case proceeding to approve a large customer contract would disrupt the ordinary process of allowing Consumers Energy, consistent with its duty as a public utility to serve, to work with a prospective customer to commence service expeditiously under the terms of tariffs that are approved by the Commission. Instead, it would replace that longstanding duty with an intervening litigated proceeding in which it would remain uncertain whether the prospective customer could receive service at all. And while the Attorney General points to DTE Electric's application for approval of a large load contract as evidence of the unnecessary litigation and delay that could occur if these contract approvals are filed on an ex parte basis (Petition, pages 11-12), this argument ignores the fact that Consumers Energy and DTE Electric undertook different paths in their approaches to large load customers. Unlike DTE Electric, the Company undertook a proceeding, which was fully litigated, to establish certain customer protection terms and incorporated these provisions in its tariffs.

The Attorney General further disputed the Commission's determination at pages 110-111 of the November 6 Order to not require contested case proceeding for requests related to exit fee mitigation and certain customer capacity reductions. See Petition, pages 12-13. These assertions as supported by direct quotes from the Attorney General and MNSC's Initial Briefs. The Commission reviewed the arguments of the parties (November 6 Order, pages 60-74) and exercised its reasonable discretion when making its determination to review these changes through an ex parte proceeding. As the Commission has considered and rejected the Attorney General's argument, rehearing should not be granted.

**C. Act 235 Compliance**

When addressing arguments regarding Act 235 compliance, the Commission stated that:

....[it] agrees with Consumers and the Staff that issues related to renewable and clean energy standards should be addressed in the proceedings that are already structured to address these issues, including REP, CEP, IRP, and VGP program cases, as well as rate cases. As the Staff notes, capacity demonstration cases and EWR cases will be involved as well. The Commission recognizes that MCL 460.1051 and MCL 460.1028 require a ramping-up of clean and renewable energy supplies and they are volumetrically-based. These are requirements that will be addressed in the proceedings where such requirements are reviewed under the statutorily authorized process. As the Staff correctly noted, the existing separate proceedings authorized by statute have a wider scope and allow for better consideration of alternatives. Thus, the Commission declines the suggestion to include mandated renewable and clean energy requirements in the large load provisions of Rate GPD. This does not foreclose the possibility of changes to the tariff at a later date based on the results of future CEP, REP, IRP, VGP, and rate cases, nor does it ignore that many of these issues are likely to be included in the required filings detailed above that show the generation and other resources required to serve these new large load customers and how the costs associated with these resources will be recovered from the large load customers in order to avoid cost shifting. But it means that the Commission is not persuaded to include such requirements based on the record in the instant case. Recognizing that this is likely to happen in any case, the Commission directs Consumers to discuss VGP options with prospective large load customers during contract negotiations. [November 6 Order, pages 118-119.]

In its Petition at pages 13 through 15, the Attorney General claims that the MPSC's Order is vague on the topic of PA 235 compliance costs and repeats her briefing position calling for the Order to explicitly require that "new large customers cover their added cost of compliance for meeting the resource portfolio standards of PA 235, and enter into contracts with the Company for procurement of at least 60 percent of incremental energy requirements to be supplied by renewable resources (as she recommended in briefing)." Petition, page 15. However, the Order language

was not vague as suggested by the Attorney General. Instead, the Commission simply did not agree with the Attorney General's request, agreeing with the Company and Staff, and clearly found that issues related to Act 235 compliance will be addressed in the relevant proceeding (such as the Renewable Energy Plan or Voluntary Green Pricing proceedings) as these separate proceedings are designed to consider those issues, have a wider scope, and allow for better consideration of alternatives under the statutorily authorized processes. Moreover, the Order contemplates that there could be issues in these other proceedings that would require an examination of costs. The Attorney General's disagreement with this finding is not a basis for rehearing to be granted.

**D. Eligibility Requirements**

In support of its Rehearing Petition, the Attorney General "reiterates her recommendation from briefing for a 50 MW single-site eligibility threshold, combined with a [North American Industry Classification System] NAICS code 518210 customer-class definition." Petition, page 15. The Attorney General offers no support for the Commission to grant rehearing and fails to establish any errors, newly discovered evidence, or unintended consequences that will occur as a result of the November 6 Order.

A review of the MPSC's Order shows that the Commission considered the evidence when reaching its decisions. To that point, the Commission summarized the arguments of the parties indicating:

On the issue of whether the tariff under review should be applied solely to data centers, the Attorney General offers that:

a solution to the parties' concerns about singling out data center customers can be seen in recent legislation ("HB 3546") enacted in Oregon, referred to as the POWER Act, which directs minimization of cost-shifting in tariff provisions concerning eligible customers. The POWER Act uses the North American Industry Classification System codes (NAICS codes) to describe the industries at issue.

The statute specifically references NAICS code 518210, which refers to “Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services.” This category does not single-out data centers, and includes both large data center operations and similar large non-data center computing operations.

*Id.*, p. 31 (citing 5 Tr 1012-1013). The Attorney General supports the 100 MW threshold for aggregate customer operations at multiple sites and 50 MW for any single site. The Attorney General notes that Ohio adopted a threshold of 25 MW, and agrees with MNSC that a threshold lower than 100 MW would capture a broader range of operations and limit additional risk. Attorney General’s initial brief, p. 32. [November 6 Order, page 72.]

Staff asserts that it is:

the size of the load that makes these large load customers unique and thus a provision that is intended to ensure that the tariff applies only to data centers should be rejected. *Id.*, p. 2. Likewise, the Staff argues that NAICS Code 518210 is just another definition of data centers and recommends that the Attorney General’s proposal be rejected because, again, it is the size of the load that makes these customers unique. [November 6 Order, page 86.]

Based on the arguments made, the Commission held that:

The Commission also finds that eligibility should be end-use neutral, rather than applied only to data center customers. The Commission agrees with the Staff that the end-use at issue here does not involve a unique type of service such as that required for metal melting or electric vehicle charging, but that the size itself is the unique feature that must be addressed. 4 Tr 308-309. While ABATE is correct that MCL 460.557 does not preclude the creation of rates with different terms and conditions for one group of customers versus another, the Commission agrees with the Staff that, in this case, it is the size of the customer that results in the need for additional tariff-based protections. The Commission sees no reason to limit those protections to a particular end-use, despite the relative certainty that data centers are the only potential customers that are likely to be assigned to the large load provisions of Rate GPD in the near future. [November 6 Order, pages 106-107.]

Additionally, the Commission thoroughly discussed its reasoning for adopting its eligibility requirements. The Commission found that:

Turning to eligibility, the Commission finds that the new large load tariff provisions should apply to loads of 100 MW or greater. Additionally, these provisions should apply to customers with an aggregate load of 100 MW or more when those customers share a common owner and individually have a load of 20 MW or more. Consumers has discretion in determining when common ownership is present. The positions on this eligibility issue ranged from 25 MW (MEIU) to 300 MW (ABATE). MEIU's 25 MW proposal was centered on the concept of providing customers with greater input into how they are served and did not constitute a recommendation on eligibility for the additional ratepayer protections that are the focus of this effort. In the context of this record, ABATE's 300 MW proposal appears to be an outlier and would eliminate too many very large customers (19 out of 67, for example, in the instant case) from the tariff requirements that address the risk of stranded costs. Exhibits AG- 1.1, AG-1.2. Arguments for a lower threshold based on the size of Rate GPD's current customer base do not seem relevant, as the loads that are contemplated in the instant proceeding are on a different scale from the current customer base (Rate GPD's largest current customer has a load of 28 MW). The 100 MW threshold would capture at least 61 of the 67 inquiries that Consumers has received and possibly more if aggregation is involved (which cannot be known at this point). Exhibits AG-1.1, AG-1.2. The Commission further finds that a single owner with multiple sites of at least 20 MW per site should be subject to the large load provisions of Rate GPD if all sites together total 100 MW or more. Thus, the Commission agrees with Consumers, the Staff, and DCC that 100 MW (with a 20 MW aggregation provision) is the appropriate eligibility threshold. [November 6 Order, pages 105-106.]

Not only did the Commission explain the reasoning behind its finding, but the Attorney General's alleged unintended consequences have no merit. Regardless of the eligibility level set, there is always a possibility that a customer would narrowly miss the requirements. This would be true if the eligibility requirement was set at 20 MW, 50 MW, 100 MW, or 500 MW. As the Court has recognized, ratemaking is inherently imprecise. *Youmans v. Charter Township of Bloomfield*, 336 Mich App 161 (2021). Further, the Commission is "not bound by any particular ratemaking method and can make pragmatic adjustments in order to respond to particular circumstances of any given case." *In re Consumers Energy Co*, 278 Mich App 547, 563; 753

NW2d 287 (2008). The Commission reviewed the arguments of the parties and exercised its reasonable discretion when making its determination. As the Commission has addressed and rejected the Attorney General's argument, rehearing should not be granted.

**III. CONCLUSION**

The Commission should deny the Attorney General's Petition because the Attorney General has not shown that the November 6 Order was incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision. Instead, the Attorney General's Petition merely repeats arguments that the Commission has already heard and decided without offering new evidence or demonstrating error. Accordingly, Consumers Energy requests that the MPSC deny the Petition.

Respectfully submitted,

CONSUMERS ENERGY COMPANY



Dated: December 29, 2025

By:

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Jackson, Michigan 49201  
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of )  
**CONSUMERS ENERGY COMPANY** )  
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Case No. U-21859

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF JACKSON )

Melissa K. Harris, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on December 29, 2025, she served an electronic copy of the **Consumers Energy Company's Answer to the Attorney General's Petition for Rehearing** upon the persons listed in Attachment 1 to this Proof of Service.



\_\_\_\_\_  
Melissa K. Harris

Subscribed and sworn to before me this 29<sup>th</sup> day of December, 2025.



\_\_\_\_\_  
Crystal L. Chacon, Notary Public  
State of Michigan, County of Eaton  
My Commission Expires: 05/25/30  
Acting in the County of Jackson

**ATTACHMENT 1 TO CASE NO. U-21859**

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\* Receives Confidential Materials

**ATTACHMENT 1 TO CASE NO. U-21859**

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