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January 6, 2026

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-21568

Dear Ms. Felice:

Attached for electronic filing in the above-captioned matter, please find a Request for Declaratory Ruling.

Thank you for your assistance in this matter.

Sincerely yours,

VARNUM



Timothy J. Lundgren

TJL/plf
Attachment(s)

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission’s own motion,)
to implement the provisions of Sections 22)
through 49 and related definitions of Public Act)
235 of 2023.)
_____)

Case No. U-21568

REQUEST FOR DECLARATORY RULING

Pursuant to Section 63 of the Michigan Administrative Procedures Act, 1969 PA 306, MCL 24.263, and Michigan Public Service Commission (the "Commission") Rule 448 (R 792.10448), Energy Michigan¹ respectfully requests a declaratory ruling and order interpreting that all renewable energy dockets, such as Case No. U-21568, have a risk of disclosure of confidential and/or commercially sensitive information to the public, thus finding submissions of renewable energy plans by electric providers, as well as all submissions in renewable energy dockets and rate cases generally, are entitled to protections for confidential, commercially sensitive information they may contain.

I. INTRODUCTION

At this time, the Commission has not yet explicitly ruled on protections for confidential or commercially sensitive information submitted in renewable energy plan dockets, such as filings of updated renewable energy plans (“REPs”) to meet recent changes made to Michigan’s renewable portfolio standards (“RPS”). Electric providers thus run the risk of revealing information that may place them at a competitive disadvantage, as the submissions for such renewable energy dockets

¹ The Comments expressed in this filing represent the position of Energy Michigan as an organization but may not represent the views of any individual member of the organization.

may be made public and available for public comment. In addition, absent the Commission's taking specific action to ensure that a specific exemption to the Michigan Freedom of Information Act ("FOIA") applies, such as the exemption provided under MCL 15.243(1)(f), which requires that the "information [be] submitted upon a promise of confidentiality by the public body," submissions provided to the Commission ostensibly under seal can potentially be exposed to requests under FOIA.

The concern over protection of commercially sensitive information can be easily addressed, protecting electric providers' sensitive information by adopting the approach taken by the Commission in other similar instances, most notably for capacity demonstrations under Section 6w of Public Act 3 of 1939. See September 15, 2017 Order in Case No. U-18197, at 45 ("All electric providers will be treated identically with respect to confidentiality. Thus, electric providers may request assistance from the Executive Secretary in making confidential filings of commercially sensitive information in the docket"). There, the Commission explicitly permitted the protection of information marked as confidential and commercially sensitive and contained within electric providers' filings from public disclosure: "Confidential filings may be viewed by the Staff, but may not be viewed by other electric providers." *Id.* The Commission permitted disclosures in rare and unusual circumstances, subject to legal process: "If a show cause is commenced, any party may seek intervention in that matter, and questions regarding discovery will be handled in the first instance by the Administrative Law Judge." The Commission can easily extend these commonsense safeguards to the renewable energy context, where similar concerns regarding disclosure are present.

Therefore, on behalf of its members who file Renewable Energy Plans under Public Act 235 of 2023 as amended ("Act 235"), Energy Michigan respectfully requests that the Commission

issue a declaratory ruling and order that applies the same protections for confidential and commercially sensitive information in renewable energy cases as are available in capacity demonstration cases.

II. STATEMENT OF FACTS

1. On November 28, 2023, Governor Gretchen Whitmer signed into law Act 235, which amended Sections 22 through 49 of Public Act 342 of 2016, to increase the RPS for electric providers from 15% through 2029 to 50% in 2030 through 2034 and 60% in 2035, and thereafter.

2. Act 235 took effect on February 27, 2024.

3. Section 22(3) of Act 235 requires electric providers to amend their renewable energy plans to demonstrate compliance with the updated RPS standards and to file with the Commission their amended REPs within one year of the effective date of Act 235.

4. On February 8, 2024, the Commission issued an Order setting a staggered schedule for the amended REP filings and requesting public comment on several topics in relation to the docket and its submissions. February 8, 2024 Order in Case No. U-21568.

5. The Commission thus opened the REPs to public comment, placing any commercially sensitive and/or confidential information within them at risk of disclosure.

6. In other dockets, the Commission has offered protections for confidential and/or commercially sensitive information, whether in the form of specific confidentiality assurances or in the form of protective orders.

7. In its initial docket implementing Section 6w of Act 3 of 1939, which requires capacity demonstration submissions by electric providers, the Commission explicitly authorized use of confidential protections for the purpose of safeguarding confidential and/or commercially sensitive information: “If information is commercially sensitive or critical energy infrastructure

information (CEII), it may be submitted to the Commission in confidence.” January 12, 2017 Order in Case No. U-18197 (January 12, 2017 Order”), p. 4; see also September 15, 2017 Order in Case No. U-18197, at 45.

8. The Commission suggests that the ability for providers to confidentially report is tied to its “need for complete, accurate, and detailed reporting by LSEs.” January 12, 2017 Order at 5.

9. The Commission specifically commits to treat confidential submissions as “being voluntarily provided to the Commission under MCL 15.243(1)(f),” an exemption under FOIA, and directs submitters to use its model protective order to file confidential information. See January 12, 2017 Order at 6–7; see also *id.* at 4 n. 5.

10. In its January 12, 2017 Order, the Commission references another instance of using protective orders to protect confidential information, specifically in the 2016 capacity assessment docket. See January 12, 2017 Order at 4–5; see also December 22, 2015 Order in Case No. U-17992.

11. The Commission then reiterated its support for its procedure to protect confidential and commercially sensitive information in its July 26, 2023 Order in Case No. U-21225, stating: “[T]he Commission finds that the current allowance for confidential filings and protective orders approved for the capacity demonstration process are sufficient to protect the commercially sensitive information contained in such filings.” July 26, 2023 Order in Case Nos. U-21225, U-21099 & U-21393 at 20.

12. The Commission even comments on its history of using protective orders as the default procedure to protect confidential and/or commercially sensitive information in its

“Capacity Demonstration Process and Requirements” guidance, most recently modified and re-adopted in Case No. U-21775:

Other types of documentation submitted as part of a capacity demonstration will be evaluated on a case-by-case basis. Because some of the documentation that is required to be filed in these proceedings is commercially sensitive, competitive information, it shall continue to be treated in a confidential manner, as has been done in the past.

August 21, 2025 Order in Case Nos. U-21775 & U-21907, Exhibit A, p. 5.

13. The Commission thus has an established procedure to use protective orders to shield confidential and/or commercially sensitive information submitted by electric providers that may be subject to public comment and disclosure under FOIA.

14. However, the Commission to date has not explicitly extended similar protections to renewable energy dockets such as the submissions of updated REPs, despite similar risks of disclosure of commercially sensitive and/or confidential business information to the public via public comment procedures.

III. LEGAL STANDARD

Section 63 of the Michigan Administrative Procedure Act, 1969 PA 306, MCL 24.263 and Rule 448 of the Commission’s rules of practice and procedure, Mich Admin R 792.10448, authorize a person to request and the Commission to issue a declaratory ruling “as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency.” Section 13 of the FOIA authorizes “a public body” to “exempt from disclosure as a public record . . . any of the following,” including “trade secrets or financial information voluntarily provided to an agency for use in developing governmental policy if all of the following apply:

- (i) the information is submitted upon a promise of confidentiality by the public body.

- (ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
- (iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request.

MCL 15.243(1)(f).

Applying its authority under FOIA, the Commission has previously protected commercially sensitive material submitted by electric providers from disclosure, including in the context of capacity demonstrations under Section 6w. See, *e.g.*, December 22, 2015 Order in Case No. U-17992; January 12, 2017 Order in Case No. U-18197; July 26, 2023 Order in Case Nos. U-21225, U-21099 & U-21393; and August 21, 2025 Order in Case No. U-21775 & U-21907.

The Commission has the same authority here.

IV. REQUEST AND DISCUSSION

Energy Michigan, on behalf of its members who are required to file REPs, requests that the Commission apply the same process for submitting confidential and/or commercially sensitive information to REP filings, such as those required per the Order in Case No. U-21568, as it applies for capacity demonstrations per the January 12, 2017 Order in Case No. U-18197. The Commission has made confidential, commercially sensitive protections for submissions available in analogous cases, such as capacity demonstrations, so that providers can share commercially sensitive business plans and contracts with the Commission and its Staff, and the same logic applies to renewable energy cases and the REPs required by the Order in Case No. U-21568. In all such cases, these protections of confidential information allow for more fulsome, yet protected, responses from the providers, which benefits the Commission as it implements the statutory requirements.

As evidenced by the December 22, 2015 Order in Case No. U-17992, the Commission has used protective orders to safeguard confidential and commercially sensitive information for almost

a decade at least. However, the Commission has so far not extended such protections to filings made in renewable energy cases generally. There is no logical reason not to provide such protections for the confidential and commercially sensitive information contained in submissions to renewable energy dockets that will be opened to public comment.

The Commission has taken a clear stance on confidential and commercially sensitive information in its series of cases regarding capacity demonstrations. The Commission has acknowledged that public filings that contain “commercially sensitive, competitive information” should “continue to be treated in a confidential manner, as has been done in the past.” August 21, 2025 Order in Case Nos. U-21775 & U-21907, Exhibit A, pp. 5. The Commission’s solution to protecting commercially sensitive and/or confidential information has been the protective order. *See, e.g.* December 22, 2015 Order in Case No. U-17992; January 12, 2017 Order in Case No. U-18197.

Filings by providers in the renewable energy plan dockets deserve the same kinds of protection for commercially sensitive and confidential information as the Commission has extended for capacity filings. In the case of the REPs, changes in the laws for RPS have required new submissions to the Commission that electric providers fear will reveal confidential and/or commercially sensitive information regarding their competitive strategies for meeting such requirements. The Commission could address this concern, as it has done in the capacity demonstration context, by issuing an order that shields “[t]rade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy” pursuant to MCL 15.243(1)(f).

To date, the Commission has not issued such an order, nor addressed how such confidential and commercially sensitive information may be protected in renewable energy dockets like U-

21568. It would be unjust and unreasonable not to extend similar protections to providers' submissions in renewable energy dockets as the Commission provides for capacity demonstration filings.

The Commission has stressed its need for “complete, accurate, and detailed reporting by LSEs.” January 12, 2017 Order in Case No. U-18197, p. 5. Extending protections for confidential and/or commercially sensitive information to renewable energy plans will enable and encourage electric providers to include all pertinent information in their submissions, as it removes the fear of disclosure of trade secrets or similar confidential and commercially sensitive information to the public. Taking this step will serve the Commission’s goal of complete, accurate, and detailed responses.

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V. CONCLUSION

For the foregoing reasons, Energy Michigan requests that the Commission issue a declaratory ruling and order providing that confidential filings made in all renewable energy dockets, such as Case No. U-21568, shall be awarded the same protections for confidential and commercially sensitive information as are applied to other submissions to Commission dockets that are open to public comment and review.

Respectfully submitted,

Dated: January 6, 2026

VARNUM LLP

Timothy J.

By: **Lundgren**

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