STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY CONSUMERS** for Authority to Increase Its Rates for the Generation and Distribution of Electricity and for Other Relief.	MSPC No. U-21870

CUSTOMER A'S APPLICATION FOR LEAVE TO APPEAL RULING ON MOTION TO QUASH DISCOVERY REQUEST AND PROTECTIVE ORDER AND REQUEST FOR CONTINUATION OF INTERIM RELIEF

Customer A, a customer of Consumers Energy Co. ("Consumers"), seeks leave to appeal the January 22, 2026 decision by the Administrative Law Judge ("ALJ") on its Motion to Quash a Portion of a Discovery Request and Production to Prevent the Improper Disclosure of its Confidential Information (the "Motion"). Additionally, it seeks the continuation of interim relief during the pendency of any appeal of the Motion, specifically a requirement by FOIA-able entities to notify Customer A promptly upon any receipt of a FOIA request that would reach the contracts at issue in the Motion.

1. On September 18, 2025, Customer A sought limited, pseudonymic intervention for the purpose of filing the Motion. Its limited and pseudonymic intervention was granted on September 30, 2025.

2. The Motion challenged discovery served by the Attorney General on Consumers and Consumers' response, which included the production of certain contracts (the "Contracts") between Consumers and some of its customers, including Customer A. Although portions of the Contracts were redacted, Customer A maintains that the production of documents disclosed

contained protected information in violation of the Mich Admin Code R. 460.153 and associated tariff provisions.

3. At the hearing on the motion on September 30, 2025, the Administrative Law Judge ("ALJ"), receiving no objection, granted Customer A's request for interim relief during the Motion's pendency, notably ordering that any entity subject to the Freedom of Information Act ("FOIA") that received a FOIA request potentially encompassing the Contracts would promptly notify Customer A's attorney.

4. On January 22, 2026, the ALJ granted in part and denied in part the Motion, and that decision ordered the destruction of the Contracts within 10 days (the "Ruling").

5. As explained further in its accompanying brief, Customer A agrees with some portions of the Ruling, including that Mich Admin Code, R 460.153 limits what can be produced in discovery and that the production of the Contracts was not pursuant to a primary purpose. However, it believes other portions of the Ruling were in error, including, but not limited to: (i) the finding that the production of the Contracts was not a violation of Rule 460.153 and associated tariff provisions; (ii) finding that the Contracts did not contain protected information; and (iii) finding that the Contracts were appropriately designated a "public record" for any purpose.

6. Both the MPSC Staff and the Attorney General's office have filed motions to appeal the ALJ's decision, arguing in part that they cannot lawfully comply with the ALJ's order to destroy the Contracts because of their document retention duties under the Management and Budget Act. Additionally, Michigan's Office of Administrative Hearings and Rules ("MOAHR") has not provided any notice to Customer A's attorney that the Contracts in its possession have been destroyed.

7. Customer A is not a signatory to the Protective Order in this case issued on June 5, 2025, as its limited intervention is not for the purpose of opining on Consumers Energy proposed rate increase. Therefore, absent an order to give Customer A notice of any FOIA request that is received, no party would be required to inform Customer A of any such request and Customer A could be deprived of the opportunity to seek to prevent disclosure of its confidential information.

8. Consumers gave Customer A two minutes notice before producing the Contracts in this case, so even if Consumers would receive notice of a FOIA request, Customer A does not have confidence that Customer A would be provided sufficient notice to allow it to seek to prevent disclosure of its confidential information.

9. Mich Admin Code, R 792.10433(2)(a) permits rulings of an ALJ to be appealed to the Commission. Mich Admin Code, R 792.10433(2)(b) further authorizes interlocutory appeals where necessary to prevent substantial harm to the appellant or to the public interest.

10. Use of this procedure, as opposed to the procedure in which parties filing exceptions to the ALJ's decision, will better allow the Commission to consider the questions presented, as the various findings of the ALJ all impact other determinations and the potential for relief.

RELIEF REQUESTED

Based on the foregoing and as explained further in the attached brief, Customer A respectfully requests that:

A. The Commission order that Customer A receive advance notice of potential further disclosure of its confidential information, similar to notice that other parties are entitled to under

the terms of the June 5 Protective Order in this case, during the pendency of this appeal to protect its confidential information from being disclosed; and

B. The Commission grant this Application for Leave to Appeal and find that the Contracts contain protected material and were produced in contravention of Customer A's data privacy rights; and

C. The Commission grant any additional relief it deems appropriate.

Respectfully submitted,

Dated: February 5, 2026

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY CONSUMERS** for Authority to Increase Its Rates for the Generation and Distribution of Electricity and for Other Relief.	MSPC No. U-21870

BRIEF IN SUPPORT OF CUSTOMER A'S APPLICATION FOR LEAVE TO APPEAL RULING ON MOTION TO QUASH DISCOVERY REQUEST AND PROTECTIVE ORDER AND REQUEST FOR CONTINUATION OF INTERIM RELIEF

Customer A, an existing electric service customer of Consumers Energy Company ("Consumers"), entered into certain contracts with Consumers as a condition of being provided electrical service. Versions of those contracts (with some redactions) were produced in response to a discovery query in this case on the afternoon of September 16, 2025. Customer A did not receive sufficient notice to seek to prevent that production, which it believes violated its data privacy rights and places confidential trade secrets at severe risk of public disclosure. On September 18, 2025, Customer A moved to protect its confidential information by bringing a motion to quash the related discovery request and ensure the continued confidentiality of its protected information (the "Motion").

Customer A seeks immediate interim relief: An order by the Commission allowing Customer A to receive notice of potential further disclosure of its confidential information, similar to notice that other parties are entitled to under the terms of the June 5 Protective Order in this case, during the pendency of this appeal. Additionally, in considering the appeal of the decision on the Motion, Customer A also requests that the Commission issue an order finding Consumers production was in violation of Customer A's data privacy rights.

I. Jurisdiction and Standard for Interlocutory Appeal

Under Mich Admin Code, R 792.10433(2), interlocutory review is appropriate where:

(a) a decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding;

(b) a decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public at large; and

(c) a decision on the ruling before submission of the full case to the Commission for final decision is consistent with any other criteria the Commission may establish by order.

Interlocutory relief is warranted here because immediate Commission review is necessary to prevent substantial harm to Customer A and to preserve the effectiveness of appellate review. Absent Commission review, the Ruling will result in substantial and irreparable harm to Customer A's protected information by finding that it is not confidential and is a public record.

II. Procedural History

A. The Challenged Disclosure

Consumers notified Customer A on September 16, 2025 at 2:00 pm EDT that it intended to disclose Customer A contracts, with some redactions, under a protective order in an unnamed proceeding. Customer A later learned that a redacted version of those contracts were disclosed in response to discovery request 21870-AG-CE-0478(c) (AG question #159(c)) in this case on 2:02 pm EDT that day. That production, which had redactions that differed somewhat from the version that was provided to Customer A by Consumers, went to 15 individuals who are employees of the State of Michigan and thus subject to Michigan's Freedom of Information Act, MCL 15.231 et seq. (Act 442 of 1976) ("FOIA"), pursuant to a Protective Order entered on June 5, 2025 ("June 5 Order").

The June 5 Order provides that confidential information may be subject to disclosure in response to a FOIA request following notice to affected parties (which did not include Customer A, as it was not a party to the case) and that documents are to be retained in accordance with the State's records-retention schedules.

The portions of the discovery request that are the subject of this motion, 21870-AG-CE-0478(b) and (c) (AG question #159(b) and(c)), read as follows:

> "Refer to Figure 58 on page 139 of Ms. Hayward's direct testimony on HVD Strategic Customers capex. Please: []
>
> b. For each customer project, provide the type of business the customer is involved in, the business location, the contract status (whether signed or not), the phase the project is currently in (scoping, conceptual design, engineering design, construction, completed), the project cost by year from inception to completion with and without any CIAC, and what facilities will be installed.
>
> c. For each customer project, provide a copy of the signed contract and explain what provisions have been included in the contract for reimbursement of capital expenditures and O&M expenses incurred by the Company in case the customer abandons the project before completion of construction and also subsequent to start of operations but before the Company has recovered the full investment in the project."

Consumers' objected and specifically responded: "Consumers Energy Company objects to this discovery request because it requests information that is not relevant and that is personally identifiable Customer Account information that cannot be disclosed under Consumers Energy's Customer Data Privacy tariff." Consumers cited this objection for declining to provide "the type of business and business location" requested in part (b).

In response to part (c), Consumers provided confidential attachments 3a, 3b, 4, 5, 6, 7, 8, 9, and 10, which it described as "copies of the signed contracts" (the "Contracts") and went on to say the following: "It can be explained that the Company's contracts with customers depending on the type of contract have minimum billing requirements for certain energy usages and terms, and/or provisions for prorated payment of investments if the customer ceases operation prior to the end of the term of the contract. Additionally, the Company performs risk reviews on projects over $1M and may require additional security (e.g. a letter of credit or parental guaranty) as a result of the review." Although Consumers did not say so, it also presumably relied on the Customer Data Privacy Rule and associated tariff provisions in choosing to make redactions to the Contracts, as some of the redactions were of information requested by the Attorney General, including but not limited to the name and address of Customer A.

B. The Motion to Quash

On September 18, 2025, Customer A filed a Motion to Quash a Portion of a Discovery Request and Production to Prevent the Improper Disclosure of its Confidential Information ("Motion"). Customer A sought to quash the same portions of part (b) that Consumers objected to, for many of the same reasons: (i) relevancy; (ii) violations of the Customer Data Privacy Rule and associated tariff provisions; and (iii) that the harm to customers from the disclosure far outweighs any benefit to disclosure of that information. It further sought to quash production of confidential attachments 3a, 3b, 4, 5, 6, 7, 8, 9, and 10, for the same three reasons. Although portions of the Contracts were redacted, Customer A maintains unredacted portions contain competitively sensitive and confidential commercial information in contravention of Consumers' obligations under the Customer Data Privacy Rule, Mich Admin Code, R 460.153, and the associated tariff provisions.

The Attorney General, MPSC Staff and Consumers opposed Customer A's Motion, and a hearing was held on September 30, 2025.

C. The Ruling on the Motion to Quash

On January 22, 2026, the presiding Administrative Law Judge issued a ruling granting the Motion to Quash Discovery Request and Protective Order in part and denying it in part ("Ruling"). Customer A believes that the Ruling erred in two key ways. The Ruling concluded that the unredacted portions of Customer A's contract did not contain confidential or proprietary information, and the Ruling also found that the Customer Data Privacy Rule was not violated by the production. Due to these errors, the Ruling inadequately protects its commercial interests and customer data privacy rights.

This appeal concerns whether the production of the Contracts improperly disclosed Customer A's confidential and competitively sensitive commercial information and whether the Administrative Law Judge was incorrect in concluding otherwise. Customer A respectfully requests that the Commission grant leave to appeal the Ruling and find that the Contracts contain confidential information and were produced in violation of the Customer Data Privacy Rule.

III. Contracts Contained Protected Information Under the Customer Data Privacy Rule and Associated Tariff Provisions.

The Administrative Law Judge incorrectly found that "[i]n response to Customer A's assertion that its data privacy rights were violated by Consumers' Responses because the Contracts contain 'unredacted, customer specific information,' Consumers counters that, having redacted all Protected Customer Information within the ambit of Consumers' Customer Data Privacy tariff and having marked the redacted versions as 'confidential' and subject to the Protective Order, Consumers asserts that it complied with the Customer Data Privacy tariff and

the Commission's Practice Rules. This Ruling agrees." (U21870 January 22, 2026, Opinion at pg 14-15). In fact, Consumers' disclosure violated the Customer Data Privacy Rule and the Data Privacy Tariff, which mandates the protection of individual customer data from unauthorized disclosure.

The Commission's Customer Data Privacy Rule is set forth at Mich Admin Code, R 460.153, with relevant definitions in Mich Admin Code, R 460.102 and 102a. The Customer Data Privacy Rule requires utilities to establish policies that protect customer information from disclosure with only limited exceptions.

Specifically, the Customer Data Privacy Rule requires each electric utility to file for Commission approval of a "customer data privacy tariff that contains a customer data privacy policy." This policy must, among other things, "protect all customer information or data collected for the utility from unauthorized [] disclosure." Mich Admin Code, R 460.153(2)(b). Unaggregated customer information may be disclosed without consent only "in response to a warrant or court order, as required for collection activities, or as necessary for primary purposes." Rule 460.153(2)(e).

Primary purpose is defined in Mich Admin Code, R 460.102a(t) as follows:

> (t) "Primary purpose" means the collection, use, or disclosure of information that a utility collects or a customer supplies when an authorized business need exists or as an emergency response requires in order to do any of the following:
> (i) Provide, bill, or collect for regulated electric or natural gas service.
> (ii) Provide for system, grid, or operational needs.
> (iii) Provide services as state or federal law requires or as the utility's approved tariff specifically authorizes.

> (iv) Plan, implement, or evaluate programs, products, or services related to energy assistance, demand response, energy management, or energy efficiency.

The Customer Data Privacy Rule does not protect "aggregate data, containing general characteristics of a customer group, which is used for analysis, reporting, or program design purposes." Mich Admin Code R 460.153(2)(h). Aggregate data is defined by Rule 460.102(b) as "any customer account information from which all identifying information has been removed ***so that the individual data or information of a customer cannot be associated with that customer without extraordinary effort***" (emphasis added).

Consumers' tariff book Section C, Part V, C17 contains the required privacy policy that incorporates these same terms and restrictions. Like the Customer Data Privacy Rule, the tariff protects the disclosure of customer-specific account information and consumption data, including usage data such as amounts billed, information related to customer participation in utility programs like demand-side management and load management, and any information regarding a customer's usage profile, including kW, kWh, voltage, var, power factor, or other information that is collected by the electric meter by the Company and stored in its systems. First Revised Data Sheets C-70.00-C.73.00 at C17.1.D and E. Consumers Energy, Rate Book for Electric Service, (Dec. 13, 2019), p 132, also available at https://www.consumersenergy.com/-/media/CE/Documents/rates/electric-rate-book.pdf (accessed September 18, 2025).

Customer A's produced contracts contain unredacted, customer specific information protected by the Commission's Customer Data Privacy Rule and Consumers' corresponding tariff terms. As explained below, there is no exception to the data privacy rules that permits the production of these Contracts in response to this discovery request, even if the name and location of the customer and the customer's substation is redacted.

D. Confidential Customer Information Was Unredacted, Violating Customer A's Right to Data Privacy Under the Rule and Tariff

Customer A had the right to protection of its unaggregated data from disclosure in this proceeding. That right was violated when Consumers provided its information to, among others, FOIA-able entities.

Unredacted information in the Contracts is normally kept confidential precisely because it can be readily used to glean competitive advantages. For instance, Contracts were included for projects under Rate LED, which is restricted to new builds or expanded facilities that demand large amounts of electricity. Customers of all types make decisions based on what facilities might be able to offer services at the right time for a particular price, and the Contracts provided unredacted information on all three of those commercially sensitive terms. For instance, the unredacted portions of the Contracts expressly provides: (i) a maximum amount of power; (ii) the date on which that power was expected to be available; (iii) the percentage of that power that was expected to be used during on-peak hours; (iv) and letter of credit installment amounts to be provided by year. This information is highly commercially valuable and often protected from public disclosure. Having a competitor know the precise date on which a single expanded facility is planning to take power of a known maximum amount is vital competitive information. A competitor could gain commercially-valuable insight regarding what timing would need to be included in its terms to lure away a customer, or whether a particular customer is likely to have the new facility as an option for service given their electrical demand and timing. Similarly, knowing the precise amount of the letter of credit required in each year is business sensitive information that relates directly to the price the facility must charge to recover its costs – a rival facility could gain a strong signal as to what price it could quote and still hope to win the

business that might otherwise go to a new facility if it knew that key input and could compare it to their own financing requirements.

The Customer Data Privacy Rule balances the need for information in rate setting and other arenas with the need for anonymity for customer protection by allowing aggregations of data to be disclosed even while it protects customer-specific information. Aggregations, compared to individual contracts, make it far harder for competitors to trace back information to a particular facility, at least absent "extraordinary effort." Mich Admin R. 460.153(2)(h).

Notably, Customer A does not have access to the production and Consumers has declined to answer how many contracts for customers of each class were provided in the set. If, for instance, only two or three contracts for customers in a specific rate class were provided, it is easy to imagine a scenario in which it does not take extraordinary effort to discern a particular customer's identity.

For example, imagine a customer knows one or two of its own contracts were included in the production. When it views the Contracts, it realizes there is only one other contract in its own rate class. It knows another nearby business – perhaps a competitor – is undergoing an expansion that likely requires an energy upgrade. The customer has an additional hint as to the length of the other customer's name by the size of the redaction. That customer now has discerned, without extraordinary effort, exactly the amount of money its competitor is required to put up in a letter of credit by year, the equipment its competitor is required to purchase by a specific date, the amount of energy that is expected to be used by its competitor at specific times of day, and the exact date on which its competitor is expected to come online. This is clearly the kind of sensitive customer information that can pose significant competitive harm when disclosed, and the kind of information the customer data privacy tariff was intended to protect.

Further, the terms of the protective order provide only a false sense of security for data produced by Consumers. This unaggregated data was produced to entities subject to Michigan's Freedom of Information Act ("FOIA"). As explained in Customer A's Motion, and as found in the Ruling, the protective order would likely be ineffective at preventing a disclosure via a FOIA request. Significantly, no party opposing the Motion has offered a legal theory under which the documents would be protected from disclosure under FOIA.

E. No Exception to the Customer Data Privacy Rule Applied to the Contracts, So This Production of Customer A's Data Was Not Permissible.

None of the exceptions that would permit disclosure of Customer A's unaggregated, highly sensitive data were applicable in this proceeding. As the Ruling properly found, Consumers was not operating in response to either a warrant or a court order, nor was it undertaking collection activities. Ruling at 11. Nor, as the Ruling correctly found, does its disclosure otherwise fall under the exception of 460.153(2)(e), because the disclosure was not "necessary for primary purposes." *Id.*

The scope of the "primary purposes" exception to the Customer Data Privacy Rule has four categories as set forth in Section C17 of Consumers' tariff book:

> "Primary Purpose" means the collection, use, or disclosure of information collected by the Company or supplied by the Customer in order to:
> (1) provide, bill, or collect for, regulated electric service;
> (2) provide for system, grid, or operational needs;
> (3) provide services as required by state or federal law or as specifically authorized by an order of the Commission;
> (4) plan, implement, or evaluate programs, products or services related to energy assistance, demand response, energy management, energy efficiency, or renewable energy by the

> Company or under contract with the Company, under contract with the Commission, or as part of a Commission-authorized program conducted by an entity under the supervision of the Commission, or pursuant to state or federal statutes governing energy assistance.

First Revised Sheet No. C-70.00.

The disclosure of the Contracts to the parties in this case was obviously not necessary for provision of the services to Customer A, billing of the services to Customer A, or collection of the monies for the services from Customer A, so category (1) would not apply to the production of the Contracts. It was not necessary or even in furtherance of better operation of the grid or the electrical system, so category (2) would likewise not apply to the production of the Contracts. The disclosure was not required by state or federal law or specifically authorized by the utility's tariff, so category (3) would also not apply to the production of the Contracts. Finally, the purpose of the disclosure was not to evaluate any program, product or service related to energy assistance, demand response, energy management or energy efficiency – it was explicitly to aid the Attorney General in assessing whether Consumers would be able to recover funds unrelated to any of the listed product types. Therefore, the production of the Contracts does not fall under this exception, and thus the Customer Data Privacy Rule does not extend to allow the disclosure of these Contracts.

Similarly, the production does not fall under the exception for aggregate data, because individual contracts are manifestly not "aggregate data." Contracts do not contain "general characteristics of a customer group" – such documents contain only data specific to a single customer. Indeed, contract information that was provided includes the time of day that a specific quantity of energy is expected to be used by a specific customer now and in the future. Nor does sending multiple individual contracts at one time result in that data being "aggregated" – it is

only collected. When only a few customer contracts are provided based on specific characteristics, individual data or information of a customer could be associated with that customer without extraordinary effort. This is precisely the type of sensitive commercial information both Michigan law and the tariff explicitly protect. The disclosure of Customer A's information violated its right to privacy.

IV. IMPACT OF RULING

Although not strictly necessary to allow the Commission to decide this motion, Customer A believes it would be helpful to understand potential implications of its decision regarding the application of the Customer Data Privacy Rule in its decision on this Motion. First, a decision regarding the application of the Data Privacy Rule also implicates Customer A's rights and potential remedies under the Uniform Trade Secret Act, MCL 445.1901 et seq. (Act 448 of 1998). Second, customer privacy concerns deserve greater weight and protection than those of utilities. Finally, there are several mechanisms that would allow public entities to review contracts, or receive key, commercially sensitive information involving customers, *without* violating the Customer Data Privacy Rule.

A. Michigan Uniform Trade Secrets Act Provides a Potential Remedy for Customer A If the Production Violated the Customer Data Privacy Rule

Customer A has the right under the Michigan Uniform Trade Secrets Act to seek equitable relief where its trade secrets have been misappropriated.

Michigan law protects trade secrets from misappropriation. MCL 445.1908. Trade secrets include information that derives independent economic value from not being generally known to other persons who can obtain economic value from disclosure or use, provided there are reasonable efforts made to maintain its secrecy. MCL 445.1902(d). One way

misappropriation occurs is when a trade secret is disclosed "without express or implied consent" from the owner of that secret by a person who has acquired that trade secret under circumstances creating a duty to maintain its secrecy. MCL 445.1902 (b)(ii)(B). A court of competent jurisdiction has the power to compel "affirmative acts to protect a trade secret" from "actual or threatened" misappropriation. MCL 445.1903.

Customer A never consented to the production of the Contracts and has made reasonable efforts to maintain the secrecy of the information contained within. The Contracts include trade secrets of Customer A, which Consumers had a duty not to disclose under the Customer Data Privacy Rule and associated tariff provisions. The improper disclosure constitutes misappropriation under the Michigan Uniform Trade Secrets Act.

Here, the harm is not speculative. Disclosure of information to government entities, especially if it renders that information disclosable to the public, is often a dispositive factor in determining whether that information is entitled to protection as a trade secret. E.g. *Rockwell Med, Inc v Yocum*, 76 F Supp 3d 636, 648 (ED Mich, 2014), aff'd 630 Fed Appx 499 (CA 6, 2015) (disclosure to FDA, which would share with doctors and patients, meant information was not a trade secret); *Lomasney v Old Nat'l Bank*, No. 1:24-CV-359, 2024 WL 2945671, at *2 (WD Mich, April 10, 2024), report and recommendation adopted No. 1:24-CV-359, 2024 WL 2938841 (WD Mich, June 11, 2024), app dis No. 24-1538, 2024 WL 5256377 (6th Cir, Oct 24, 2024) (information that is "recorded in the public records for all to see" is found to "antithesis" of a trade secret). Where information was made a public record without the consent of the trade secret's owner, and only due to the violation of a duty to keep that secret by the discloser, then under the Michigan Uniform Trade Secrets Act, Customer A would be entitled to seek equitable relief from a court of competent jurisdiction to preserve the confidentiality of its secret. A court

order mandating the destruction as an equitable remedy for misappropriation of the trade secret could allow the destruction of the Contracts by public entities otherwise required to retain those records.

B. Highly Sensitive Customer Data Does, Like the Data at Issue Here, Deserve Higher Protection Than the Utility's Own Confidential Information.

Customer A demonstrated in its Motion that the data produced by Consumers in this proceeding was demonstrably sensitive commercial information protected under Michigan law.

Yet, staff alleges that Customer A's confidential information should receive no more protection than Consumers' own confidential information. (MPSC Staff Br in Support of Its Application for Leave to Appeal, p. 9, n 6.) This is a breathtaking statement. As the very existence of the *Customer* Data Privacy Rule shows, customer information *should* receive greater protection than Consumers' own confidential information does.

Consumers chose to file a request to raise its rates. It chose to produce its own confidential information in support of that request, knowing that failure to do so may result in Consumers receiving less money than it would get if it disclosed additional information in support of that request. Conversely, Customer A's information was produced by its utility, without Customer A's consent, without any meaningful notice, and without any foreseeable benefit from that disclosure to Customer A.

Absent the proper application of the Customer Data Privacy Rule, a non-intervening customer, as a non-party to the case and having no rights under the June 5 Protective Order, receives no meaningful notice its utility's decision to disclose its trade secret. It thus has no opportunity to seek protections preventing disclosure before it is in the hands of governmental employees who are subject to FOIA and document retention laws. Once disclosed, the customer

is told that that document containing its trade secrets is now a matter of public record and will remain so for 10 years. Thus, absent appropriate application of the Customer Data Privacy Rule, the customer must choose to either forgo electric service, or accept that at any time the utility, in an effort to secure greater revenues for itself, may unilaterally and without notice disclose information in a way that may destroy the customer's trade secrets and cause it serious competitive harm. This is not the current state of the law in Michigan: Customer A is entitled to retain the privacy of its trade secrets, and prevent against experiencing an unfair competitive disadvantage if that privacy is lost. The Customer Data Privacy Rule was intended in part to ensure this protection was not lost simply because an entity takes utility service.

C. Public Entities Have Multiple Mechanisms to Obtain Sufficient Information Without Violating the Customer Data Privacy Rule.

The Customer Data Privacy Rule allows the Commission to waive the rules in advance if needed for particular purposes, including an audit. Mich Admin Code, R 460.101a(3). Rule 1a(3) states that "[u]pon written request of a person, utility, or on its own motion, the commission may temporarily waive any requirements of these rules when it determines the waiver will further the effective and efficient administration of these rules and is in the public interest." The Commission has already demonstrated the ability and willingness to issue waivers, for instance to assist with accurate census counts in the City of Detroit Docket No. U-21215 (Order of Feb 23, 2003.

Had such a motion been filed in this matter prior to the production of the Contracts, presumably Customer A would have had notice and the opportunity to be heard prior to the production of its protected information. Customer A might have been willing to voluntarily produce the information if the Commission and the Attorney General agreed to protect that

information from FOIA, a process that is clearly provided for under Michigan law. MCL 15.243(f). Thus, finding that the data privacy rule prevented *this* disclosure is not equivalent to barring future disclosures; it is instead a key finding to remedy harm done to Customer A by the decision of the AG to seek protected information without following the legal processes by which it could have received the information without violation of the law and causing competitive harms.

The Attorney General regularly recognizes the importance of customer privacy. The AG has advocated for legislation that would give customers "the ability to have a greater say in what information of theirs is findable online and the ability to edit and delete that data." IAPP "Michigan Attorney General Nessel on strengthening consumer protections, right to privacy."<https://iapp.org/news/a/michigan-attorney-general-nessel-on-strengthening-consumer-protections-right-to-privacy> (accessed February 4, 2026). The Attorney General has also fought to prevent disclosure of personal data of SNAP beneficiaries, arguing that doing otherwise would "force families into choosing between" protecting their information "that may be shared for any purpose" and eating. Michigan Department of Attorney General, "Attorney General Nessel Wins Court Order Protecting SNAP Benefits for Thousands of Michigan Families," <https://www.michigan.gov/ag/news/press-releases/2025/09/19/attorney-general-nessel-wins-court-order-protecting-snap> (accessed February 5, 2026).

Michigan law provides *multiple* pathways to allow public entities to have access to information in rate cases without forcing Customer A – or any customer – to choose between protecting their confidential information and receiving utility electrical service. The public entity can seek data aggregations instead of individual customer information. The public entity can ask the customer to voluntarily provide that information and promise to protect it against

disclosure under FOIA. The public entity can ask the Commission to waive the Customer Data Privacy Rule to obtain such information lawfully, giving customers notice and an opportunity to be heard prior to production of their protected information. Here, where *none* of these paths were pursued and Customer A was denied any opportunity to protect its data prior to production, the Customer Data Privacy rule applies, and the Commission should find the production contravened that protection.

V. CONCLUSION AND RELIEF REQUESTED

During the pendency of this appeal, Customer A should be afforded the same notice and an opportunity to protect its data prior to disclosure as entities that are signatories to the Protective Order, and the Commission should immediately issue such an order.

The Ruling below, which correctly found that the Customer Data Privacy Rule applies to limit discovery, erred when it found production of the Contracts did not reveal confidential information of Customer A or violate the Customer Data Privacy Rule. Failure to make that finding would make those Contracts, and the commercially sensitive and trade secret information they contain, broadly available, to the immediate harm of customers who were given no chance to prevent such disclosures. Therefore, it is appropriate to apply laws regarding the need to balance privacy interests and discovery needs and find that the Contracts were produced in contravention of the data privacy rules. It is also appropriate to ensure that in the future, customers receive enough advance notice to allow them a chance to protect their information from disclosure, especially when their protected data is being provided to parties that may be required to disclose it to the public. Such protections and notice guard against, among other things, the unfair competition that would otherwise result.

Accordingly, Customer A respectfully requests that the Commission grant this Application for Leave to Appeal and reverse the January 22, 2026 Ruling to the extent it finds that information disclosed in Customer A's contract is not confidential and that Customer A's data-privacy rights were not violated by production of the Contracts.

Dated: February 5, 2026

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Exhibit 1

Lomasney v Old Nat'l Bank, No. 1:24-CV-359, 2024 WL 2945671, at *2 (WD Mich, April 10, 2024)

2024 WL 2945671
Only the Westlaw citation is currently available.
United States District Court, W.D.
Michigan, Southern Division.

Mark Daniel LOMASNEY, Plaintiff,

v.

OLD NATIONAL BANK, Defendant.

Case No. 1:24-cv-359
|
Signed April 10, 2024

Attorneys and Law Firms

Mark Daniel Lomasney, Grand Rapids, MI, ProSe.

REPORT AND RECOMMENDATION

SALLY J. BERENS, United States Magistrate Judge

***1** Plaintiff Mark Lomasney paid the filing fee and filed his complaint in this action on April 8, 2024, against Defendant Old National Bank. Having reviewed Plaintiff's complaint, I recommend that the Court dismiss this action for lack of jurisdiction.

The complaint's only factual allegation, is as follows:

> Old National Bank did knowingly so took advantage of trade secrets. They participated in double entry booking of my loan. And profited again by converting my mortgage into MBS, then securitizatied [sic] it into a hedgefund and selling it globally.

(ECF No. 1 at PageID.2.) For relief, Plaintiff seeks "the full value and closure of the account (4000398661) ... [,] reimbursement of the double entry bookings in the amount of [$]13,714.74[ ] ... [, and] court costs and lawyer fees of [$]5,000[ ]." (*Id.*) Plaintiff purports to invoke this Court's federal question jurisdiction, citing 12 U.S.C. § 1831n(2); the Defend Trade Secrets Act (DTSA), S. 1890, codified as 18 U.S.C. § 1831 *et seq.*; and SEC article 8. (*Id.*)

As courts of limited jurisdiction, "federal court[s] must proceed with caution in deciding that [they have] subject matter jurisdiction." *Musson Theatrical, Inc. v. Fed. Express Corp.*, 89 F.3d 1244, 1252 (6th Cir. 1996). "It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). It is firmly established that a court may dismiss an action *sua sponte* "for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple v. Glenn*, 183 F.3d 477, 479–80 (6th Cir. 1999); *see also Wagenknecht v. United States*, 533 F.3d 412, 417 (6th Cir. 2008).

First, although the Sixth Circuit has not addressed the issue, other courts have consistently held that 12 U.S.C. § 1831n(2), which requires that banking institutions adhere to Generally Accepted Accounting Principles (GAAP) in certain filings with federal agencies, does not create a private right of action. *See Anthony v. Cattle Nat'l Bank & Trust Co.*, 684 F.3d 738, 739–40 (8th Cir. 2012) (per curiam) ("[H]aving reviewed the language and structure of section 1831n, this court determines that section 1831n does not create a private right of action"); *Guardia v. CitiMortgage*, No. 2:21-cv-553, 2021 WL 3811028, at *2 (C.D. Cal. May 24, 2021) ("[T]o the extent Plaintiff is relying on the requirement of complying with GAAP in 12 U.S.C. § 1831n, Plaintiff's GAAP-based causes of action fail because 12 U.S.C. § 1831n(2)(A) does not provide for a private right of action."); *Stoute v. Navient*, No. 19-11362, 2019 WL 12493604, at *1 (D. Mass. Sept. 19, 2019) (holding that the plaintiff could not proceed under 12 U.S.C. § 1831n(2)(A) because it does not create a private right of action); *Chavez v. HSBC Bank, NA*, No. 11-03292, 2011 WL 13220484, at *3 (C.D. Cal. July 13, 2011) (noting that "the text, context, and history of section 1831n(2)(A) fail to indicate an intention to create a private right of action, but rather suggest a framework for federal administrative oversight over the banking industry"); *Mathews v. Washington Mut. Bank, FA*, No. 05-100, 2006 WL 2380460, at *4 n.6 (E.D. Pa. Aug. 14, 2006) ("We find no indication in the text, context, or history of § 1831 that it was intended to create a private right of action.").

***2** Second, SEC (Securities and Exchange Commission) article 8, 17 C.F.R. Part 210, pertains to financial statements of so-called smaller reporting companies as defined in 17 C.F.R. § 229.10(f)(1). Nothing in this regulation indicates that it creates a private right of action. Instead, it merely regulates the preparation and content of smaller reporting company financial statements.

Finally, while the DTSA does create a private right of action in favor of "[a]n owner of a trade secret that is misappropriated ... if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce," 18 U.S.C. § 1836(b)(1), Plaintiff does not allege that Old National Bank misappropriated any trade secret that he owned. To the extent that Plaintiff asserts his mortgage constituted a trade secret, such a claim is implausible, unsubstantial, and devoid of merit under *Apple, supra*, because Plaintiff did not own the mortgage and, more importantly, and because a mortgage—which is recorded in the public records for all to see—is the antithesis of a trade secret.

Thus, this entire action is subject to dismissal. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998) (dismissal for lack of subject-matter jurisdiction is appropriate when a complaint is so "completely devoid of merit as not to involve a federal controversy"). Accordingly, I recommend that the Court **dismiss** this action for lack of subject matter jurisdiction. *Apple*, 183 F.3dd at 479.

NOTICE

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

All Citations

Not Reported in Fed. Supp., 2024 WL 2945671

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY CONSUMERS** for Authority to Increase Its Rates for the Generation and Distribution of Electricity and for Other Relief.	MSPC No. U-21870

PROOF OF SERVICE - U-21870

The undersigned certifies that a copy of the ***Customer A's Application for Leave to Appeal Ruling on Motion to Quash Discovery Request and Protective Order and Request for Continuation of Interim Relief and Brief in Support*** was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 5th day of February 2026.

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Dated: February 5, 2026

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