

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the application of)
CONSUMERS ENERGY COMPANY)
for a Financing Order Approving the)
Securitization of Qualified Costs)
_____)

Case No. U-17473

PROTECTIVE ORDER

This Protective Order governs the use and disposition of Protected Material disclosed by Consumers Energy Company to the Attorney General's discovery questions 1 and 2 contained in this First Discovery Request to Consumers Energy Company. The intent of this Protective Order is to protect these answers that Consumers asserts contain non-public confidential information. Consumers Energy Company asserts that these answers contain non-public confidential information because the materials include proprietary Strategist computer models of Ventyx, Inc., a vendor to Consumers Energy Company. Consumers Energy Company is contractually obligated to preserve the confidentiality of these materials. This Protective Order describes the manner in which this Protected Material is to be treated, and governs its ultimate disposition. Accordingly, IT IS HEREBY ORDERED:

1. This Protective Order shall govern the use of this Protected Material, so identified and marked as required by Paragraph 11, made available for review, or produced, by or on behalf of Consumers Energy Company to any Party or Reviewing Representative. This Protected Material shall be used and disclosed by the recipient thereof solely in accordance with the terms and conditions of this Protective Order.

2. This Protective Order protects: (1) the Protected Material; (2) any copy or reproduction of the Protected Material made by any person; and (3) any memorandum,

handwritten notes, or any other form of information that copies, contains or discloses Protected Material.

3. The information subject to this Protective Order does not include:
 - a. Information lawfully known by the Party or Reviewing Representative at the time of disclosure; and
 - b. Information that is or becomes available to the general public through no fault of a Party or Reviewing Representative.

4. “Party” shall mean any party to this proceeding who requests or receives access to the Protected Material, subject to the requirement that each Reviewing Representative must sign a Nondisclosure Certificate.

5. “Reviewing Representative” shall mean a person who has signed a Nondisclosure Certificate and who is:

- a. an attorney who has entered an appearance in this proceeding for a Party;
- b. an attorney, paralegal, or other employee associated for purposes of this case with an attorney described in 5a;
- c. an expert or employee of an expert retained by a Party for purposes of advising, preparing for, or testifying in this proceeding;
- d. an employee or other representative of a Party, or its Affiliate with significant responsibility for this docket.

A Reviewing Representative is responsible for assuring that persons under his supervision and control comply with this Protective Order.

6. “Nondisclosure Certificate” shall mean a certificate substantially in the form of the certificate attached to this Protective Order by which a Reviewing Representative who has

been granted access to the Protected Material certifies his or her understanding that such access is provided pursuant to the terms of this Protective Order and that he or she agrees to be bound by it.

7. A Party may authorize access to and use of the Protected Material by a Reviewing Representative identified by the Party as being necessary in order to analyze the Protected Material, including consultants employed by the Party, but only for the purposes of analyzing the issues, presenting evidence, and preparing testimony, cross-examination, argument, pleadings, briefs, exceptions or other motions or filings in Michigan Public Service Commission (“MPSC” or the “Commission”) Case No. U-17473. Such persons may not release or disclose the content of Protected Material to any other person or use such information for any other purpose.

8. All persons authorized to review Protected Material, including copies or reproductions, and copies of notes of the Protected Material, must, before reviewing any Protected Material, sign a copy of the Nondisclosure Certificate, which evidences an agreement by such person to be bound by the terms of this Protective Order. A copy of the executed Nondisclosure Certificate shall be provided to Consumers Energy Company.

9. The Protected Material shall remain the property of Consumers Energy Company and shall only remain available to the Party until no later than the conclusion of any appeal of any final order issued by the MPSC in this Case No. U-17473 proceeding. An attorney for a party in Case No. U-17473 who has signed a Nondisclosure Certificate and who is representing such party in an appeal from an MPSC final order in this Case No. U-17473 may retain copies of the Protected Material until the date the final order in this Case No. U-17473 is no longer subject to judicial review. On or before the date specified by the preceding sentences, the Party shall return to Consumers Energy Company all Protected Material in its possession or in the

possession of its Reviewing Representatives, including all copies thereof and notes of the Protected Material, or certify in writing that the Protected Material has been destroyed. The Party shall submit to the Providing Entity written certification stating that all Protected Material and all copies thereof and all notes of Protected Material in its possession, care, custody or control have been returned or destroyed.

10. The Parties to Case No. U-17473 retain the right to seek further restrictions on the dissemination of Protected Material to persons who have or may subsequently seek to intervene in this MPSC proceeding.

11. Protected Material made available by Consumers Energy Company shall be clearly marked by the Company as Protected Material subject to this Protective Order, including by labeling such items as “Confidential.” Any copies of Protected Material shall be physically designated as Protected Material by the Party or the person authorized by the Party to make the copy. Notes of Protected Material shall be physically marked as Protected Material by the person making the notes. All Protected Material in the possession of the Party shall be maintained in a secure place. Access to Protected Material shall be limited to persons authorized to have such access subject to the provisions of this Protective Order.

12. Even if no longer engaged in this proceeding, every person who has signed a Nondisclosure Certificate shall continue to be bound by the provisions of this Protective Order. The obligations under this Protective Order shall not be extinguished or nullified by entry of a final order in this case and shall be enforceable before the MPSC or in a court of competent jurisdiction. To the extent the Protected Material is not returned to Consumers Energy Company, it shall remain subject to this Protective Order.

13. If a Party with access to Protected Material desires to incorporate, utilize, refer to, or otherwise use Protected Material in pre-filed testimony, pleadings, direct or cross-examination, briefs, oral argument, comments or in some other form in this proceeding, such Party shall only do so pursuant to procedures that will maintain the confidentiality of the Protected Material. For purposes of this Order, the following procedures are established:

- a. Written submissions using the Protected Material shall be filed in a sealed record, to be maintained by the Docket Section of the MPSC in envelopes clearly marked on the outside, "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER ISSUED IN CASE NO. U-17473." Simultaneously, identical documents and materials, but with the Protected Material redacted, shall be filed, offered, introduced, or otherwise disclosed in the usual manner for the submission of evidence or briefs.
- b. Furthermore, with regard to proceedings before the MPSC or presiding officers designated by it, oral testimony, examination of witnesses, or argument on the Protected Material shall be conducted on a separate record to be maintained by the Docket Section of the MPSC. These separate record proceedings shall be closed to all persons except those furnishing the Protected Material and parties otherwise subject to this Protective Order. The Party presenting the information during the course of the proceeding shall advise the presiding officer receiving testimony of the terms of this Protective Order on sufficient notice to allow the presiding officer an opportunity to take measures within the presiding officer's control to protect the confidentiality of

the Protected Material, and suggest that a separate, protected record be made of all testimony concerning the protected information.

- c. Copies of the documents filed with the MPSC that contain the Protected Material, including the portions of the exhibits, transcripts, and briefs that refer to the Protected Material, must be sealed and maintained in the MPSC's files with a copy of the Protective Order attached.

14. It is intended that the Protected Material subject to this Protective Order should be shielded from disclosure by the Party only to the extent permitted by law. If any person files a Freedom of Information Act Request with the MPSC or Michigan Attorney General seeking access to documents subject to this Protective Order, the MPSC's Executive Secretary or the Attorney General shall immediately notify Consumers Energy Company, and the Company may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. In light of Section 5 of the Freedom of Information Act, MLC 15.235, the notice must be given at least five (5) business days before the MPSC, its Staff, and/or Attorney General grant the request in full or in part.

15. The provisions of this Protective Order shall not apply to a particular document or portion of a document described in Paragraph 2 if a Party can demonstrate that it has been previously disclosed by the Providing Entity on a non-confidential basis or meets the criteria set forth in Paragraph 3a or 3b. Before disclosing a particular document or portion of a document described in Paragraph 2, however, the Party must first provide reasonable notice to Consumers Energy Company of its conclusion that the document or portion of a document is not subject to this Protective Order because of prior disclosure. The provisions of this Protective Order shall terminate as to the Protected Material described in Paragraph 2 to the extent that the content of

such Protected Material are filed with a state, provincial or federal agency and are not subject to protection from public disclosure, or are otherwise lawfully disclosed.

16. If a Party violates this Order by an improper disclosure or use of Protected Material, then that Party shall take all necessary steps to remedy the improper disclosure or use. This includes immediately notifying the MPSC, the presiding officer, and Consumers Energy Company, in writing, of the identity of the person known or reasonably suspected to have obtained the Protected Material. Parties that violate this Protective Order remain subject to this paragraph regardless of whether the Providing Entity could have discovered the violation earlier than it was discovered. This paragraph of this Protective Order applies to both inadvertent and intentional violations. Nothing in this Protective Order limits Consumers Energy Company's rights and remedies, at law or in equity, against Parties or persons using Protected Material in a manner not authorized by this Protective Order, including the right to obtain injunctive relief to prevent violations of this Protective Order.

17. The MPSC or any presiding officer designated by it may subsequently declare that the protected status of Protected Material should not be continued and immediately communicate that declaration to the Providing Entity. Thereafter, this Protective Order shall cease to apply to such Protected Material unless, within fourteen (14) days, the Providing Entity files a pleading asserting that the information should continue to be protected and setting forth the basis for that assertion. Consumers Energy Company shall bear the burden of proving that the asserted Protected Material is entitled to continuing protection from disclosure. If the MPSC or presiding officer finds that the asserted Protected Material no longer qualifies for treatment as Protected Material, it shall remain subject to the protection afforded by this Order for fourteen (14) days following the issuance of the MPSC's order or the presiding officer's ruling.

18. The obligations of this Protective Order shall not apply if the Protected Material is approved for release by written authorization of Consumers Energy Company, but only to the extent of such authorization.

Sharon L. Feldman
Administrative Law Judge

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the application of)
CONSUMERS ENERGY COMPANY)
for a Financing Order Approving the)
Securitization of Qualified Costs)
_____)

Case No. U-17473

NONDISCLOSURE CERTIFICATE

#

I hereby certify my understanding that access to Protected Material is provided to me pursuant to the terms and restrictions of the Protective Order issued in Case No. U-17473, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of the Protective Order. I am aware that the Providing Entity asserts that Protected Material, as defined in the Protective Order, includes information that is confidential, proprietary, and commercially sensitive. I understand that the substance of the Protected Material, any notes or other memoranda, or any other form of information that copies or discloses Protected Material, shall be maintained as confidential, shall not be disclosed to anyone other than in accordance with that Protective Order, and shall not be used for any purpose other than in connection with Michigan Public Service Commission Case No. U-17473.

Reviewing Representative

Date: _____

Title:

Representing:

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: _____

By: _____

One Energy Plaza
Jackson, Michigan 49201
Attorney for Consumers Energy Company
(517) 788-

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN)		
)	SS.	Case No. U-17473
County of Ingham)		
_____)		

P R O O F O F S E R V I C E

Danielle R. Rogers being duly sworn, deposes and says that on October 21, 2013, she served a copy of the attached Protective Order via E-Mail, to the persons as shown on the attached service list.

Danielle R. Rogers

Subscribed and sworn to before me
this 21st day of October 2013.

Gloria Pearl Jones
Notary Public, Ingham County, MI
My commission expires June 5, 2016
Acting in Eaton County

ATTACHMENT A

Consumers Energy

Jon R. Robinson
jon.robinson@cmsenergy.com

Bret A. Totoraitis
bret.totoraitis@cmsenergy.com

Kelly M. Hall
kelly.hall@cmsenergy.com

mpscfilings@cmsenergy.com

MPSC Staff

Patricia S. Barone
baronep@michigan.gov

Attorney General Bill Schuette

Donald E. Erickson, Assistant Attorney General
ericksond@michigan.gov

John A. Janiszewski
janiszewskij2@michigan.gov

ABATE

Robert A.W. Strong
rstrong@clarkhill.com

Leland R. Rosier
lrosier@clarkhill.com

MEC/NRDC

Emerson Hilton
emerson@envlaw.com

Ruth Ann Liebzeit
Ruthann@envlaw.com

Kimberly Flynn
Kimberly@envlaw.com

Energy Michigan

Eric J. Schneidewind
ejschneidewind@varnumlaw.com

Laura A. Chappelle
lachappelle@varnumlaw.com

Timothy J. Lundgren
tjlundgren@varnumlaw.com