REQUEST UNDER WISCONSIN OPEN RECORDS LAW

October 15, 2020

Mr. Paul J. Ferguson
Office of Open Government
Department of Justice
P.O. Box 7857
Madison, WI 53707

Via Electronic Mail: heinam@doj.state.wi.us

Re: Certain Correspondence

Dear Mr. Ferguson:

On behalf of the public policy group Energy Policy Advocates (EPA), recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) the Internal Revenue Code, and pursuant to the Wisconsin Open Records Law, § 19.31 *et seq.*, please provide copies of the following records: all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or which copies (whether as cc: or bcc:) Bradley Motl and/or Sarah Gears that, b) includes, *anywhere*, whether in an email address, in the sent, to, from, cc, bcc fields, or the subject fields or body of an email or email "thread", including also in any attachments, i) **Eisenhof,** *in any usage* (this includes, therefore, not only **Eisenhof** but also e.g., **Eisenhoff**, **Eisenhoffer**, and **Eisenhofer**), ii) **Bench Walk** (or "**Benchwalk**"), and/or iii) **@gelaw.com**, and c) is dated from April 1, 2020 through the date you process this request, inclusive.

We request entire "threads" of which any responsive electronic correspondence is a part, regardless whether any portion falls outside of the above time parameter.

Please consider as non-responsive electronic correspondence that merely receives or forwards newsletters or press summaries or 'clippings', such as news services or stories or opinion pieces, if that correspondence has no comment or no substantive comment added by a party other than the original sender in the thread (an electronic mail message that includes any expression of opinion or viewpoint would be considered as including substantive comment; examples of non-responsive emails would be those forwarding a news report or opinion piece with no comment or only "fyi", or "interesting").

Additionally, please consider all published or docketed materials, including pleadings, regulatory comments, ECF notices, news articles, and/or newsletters, as non-responsive, unless forwarded to or from the named persons with substantive commentary added by the sender.

We understand that in some instances a public body may charge a fee for the cost of the search, examination, review, copying, separation of confidential from nonconfidential information, and mailing costs. If your Office expects to seek a charge associated with the searching, copying or production of these records, please provide an estimate of anticipated costs.

As noted earlier in this request, EPA is a non-profit public policy organization dedicated to informing the public of developments in the area of energy and environmental issues and relationships between governmental and non-governmental entities as they relate to those issues. EPA's ability to obtain fee waivers is essential to this work. EPA intends to use any responsive information to continue its work highlighting the nexus between interested non-governmental entities and government agency decision-making. The public is both interested in and entitled to know how regulatory, policy and enforcement decisions are reached. EPA ensures the public is

made aware of its work and findings via its partnership with the non-profit public interest law firm Government Accountability & Oversight, P.C., and the ClimateLitigationWatch.org project dedicated to broadly disseminating energy and environmental policy news and developments. The public information obtained by EPA and published on ClimateLitigationWatch.org have been relied upon by established media outlets, including the Washington Times and Wall Street Journal editorial page.[1]

Energy Policy Advocates requests records on your system, e.g., its backend logs, and does not seek only those records which survive on an employee's own machine or account. We do not demand your office produce requested information in any particular form, instead **we request records in their native form**, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards.[2] The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, "Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather

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[1] See, e.g., The Editorial Board, "State AGs' Climate Cover-Up" Wall Street Journal, June 7, 2019, https://www.wsj.com/articles/state-ags-climate-cover-up-11559945410. Valerie Richardson, "Motivated or manipulated? Rise of youth climate activism fuels alarms over exploitation" Washington Times, March 15, 2019, https://www.washingtontimes.com/news/2019/mar/13/youth-climate-strike-sparks-debate-use-students-pr/, see also "Climate Strike Sparks Debate on Use of Students as Props", https://www.realclearpolicy.com/2019/03/15/climate_strike_sparks_debate_on_use_of_students_as_props_41180.html. Valerie Richardson, "Democratic AGs team up with George Soros-funded group on anti-Trump lawsuit" Washington Times, August 1, 2019, https://www.washingtontimes.com/news/2019/aug/1/george-soros-funded-group-democratic-ags-partner-a/. Anthony Watts, "Emails reveals how children become pawns of climate alarmism", Watts Up With That (two-time Science Website of the Year), March 13, 2019, https://wattsupwiththat.com/2019/03/13/emails-reveal-how-children-become-pawns-of-climate-alarmism/.

[2] https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf.

than an image of a spreadsheet. ***(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)***" (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

We look forward to your response. If you have any questions, do not hesitate to contact me by email at ncornettlaw@gmail.com.

Sincerely,

Neal Cornett
Attorney at Law