

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE SUBMISSION OF AN)
INTEGRATED RESOURCE PLAN BY THE)
INDIANA MUNICIPAL POWER AGENCY,)
PURSUANT TO 170 IAC 4-7 AND REQUEST)
UNDER 170 IAC 4-7-3(f) FOR A COMMISSION)
DETERMINATION THAT DESIGNATED)
CONFIDENTIAL INFORMATION BE EXEMPT)
FROM PUBLIC DISCLOSURE.)

CAUSE NO. 44111

APPROVED: AUG 29 2012

ORDER OF THE COMMISSION

Presiding Officers:

Kari A.E. Bennett, Commissioner

Gregory R. Ellis, Administrative Law Judge

On November 1, 2011, the Indiana Municipal Power Agency (“Petitioner” or “IMPA”), pursuant to 170 IAC 1-1.1-4 and 170 IAC 4-7-3(f), filed its Petition in this Cause seeking a determination by the Indiana Utility Regulatory Commission (“Commission”) that certain information (the “Confidential Information”) contained in its biennial 2011 Integrated Resource Plan (“IRP”) submitted on or about November 1, 2011 is confidential, proprietary, competitively sensitive and/or trade secret and therefore exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. Pursuant to 170 IAC 4-7-3(f), Petitioner filed a redacted public version of its IRP along with a public version of its IRP on CD-ROM and a nonredacted version on CD-ROM under seal. The claimed confidential information, in accordance with 170 IAC 4-7-3(f), has been treated by the Commission as confidential pending a determination as to whether the information is entitled to confidential treatment in accordance with Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. In support of its Petition, IMPA submitted the affidavit of Doug Buresh, Senior Vice President, Planning and Operations of IMPA.

The Commission issued a Docket Entry on April 23, 2012 requesting that IMPA file a copy of its Federal Energy Regulatory Commission (“FERC”) Form 715 and instructing Petitioner to submit either revisions to the redacted public version of its IRP or additional testimony demonstrating why certain data was entitled to confidential treatment. On May 25, 2012, Petitioner filed a response to the Commission’s Docket Entry along with the supplemental affidavit of Mr. Buresh.

Based upon the Petition and affidavit filed herein, a review of the information filed as confidential, and application of relevant law, the Commission now finds:

1. **Commission Jurisdiction.** Petitioner is a joint agency within the meaning of Ind. Code § 8-1-2.2-2(e) and is a body corporate and politic and a political subdivision of the State of Indiana. IMPA is subject to the jurisdiction of the Commission in the manner and to the extent provided for in Ind. Code ch. 8-1-2.2. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Pursuant to the terms and conditions of Power Sales Contracts, IMPA provides all the electric power and energy requirements of its 53 municipal members in Indiana and one Ohio village. IMPA's office is located at 11610 North College Avenue, Carmel, Indiana 46032. As provided in Ind. Code § 8-1-2.2-19, IMPA is not a "public utility" as defined in Ind. Code ch. 8-1-2, with respect to proceedings initiated by a joint agency under this section, but the Commission is given jurisdiction to proceed in the same manner and with like power as is provided by Ind. Code ch. 8-1-2 in the case of public utilities. Ind. Code § 8-1-8.5-1(a)(2) also defines IMPA as a "public utility" for purposes of the Utility Powerplant Construction Act.

3. **Relief Requested.** Petitioner filed the Petition initiating this Cause on or about November 1, 2011 and pursuant to 170 IAC 4-7 submitted its IRP to the Commission with designated portions redacted therefrom. Petitioner requests a determination by the Commission, pursuant to 170 IAC 1-1.1-4 and 170 IAC 4-7-3(f), that designated portions of the IRP filed in this Cause contain confidential, proprietary and/or trade secret information and, therefore, are exempt from public disclosure under Ind. Code ch. 5-14-3.

4. **Petitioner's Evidence.** IMPA's Petition indicated that its IRP contains information that it considers proprietary or otherwise confidential. Petitioner's response to the Commission's Docket Entry questions indicated that IMPA does not prepare, assist in preparing, or otherwise have its own FERC Form 715 and IMPA did not intend to provide a FERC Form 715 or seek confidential treatment for a FERC Form 715. The response also indicated the FERC Form 715 prepared and submitted by Duke Energy Indiana includes information for transmission assets owned by IMPA as part of the Joint Transmission System.

IMPA has provided, under seal, to the Commission a CD-ROM containing the non-redacted information that it considers confidential. Doug Buresh stated in his affidavit that IMPA has maintained the confidentiality of the Confidential Information by taking all reasonable steps in order to protect the Confidential Information. He further stated that the Confidential Information derives independent economic value from being neither generally known to nor readily ascertainable by persons who could obtain economic value from its disclosure or use and public disclosure of the Confidential Information would place IMPA at a competitive and economic disadvantage.

Mr. Buresh described in his affidavit three items of confidential information that Petitioner claims is entitled to confidential treatment. The items include: (1) detailed information on IMPA's financial results and information regarding its existing and proposed power supply resources; (2) forecasts of wholesale power market prices, IMPA revenue requirements and fuel costs; and (3) estimated costs for new generation resources and avoided costs. In his supplemental affidavit, he specifically identified the items and provided a reason for which confidential treatment is being sought:

a. Avoided Cap Cost-2011 IRP.pdf is a table that reflects IMPA's projection of its avoided capacity costs for the period 2012-2031 using IMPA internal data and assumptions.

b. Avoided Energy Cost-2011 IRP.pdf is a table that reflects IMPA's projection of regional transmission organizations, MISO and PJM, locational marginal pricing for the period 2012-2031 using IMPA internal data and assumptions and the Horizon Interactive market model.

c. Avoided Xmit Cost-2011 IRP.pdf is a table that reflects IMPA's projection of network integration transmission service costs for the period 2012-2031 using IMPA internal data and assumptions.

d. Plan Matrix.pdf summarizes six plans utilized by IMPA to form the IRP. The matrix shows the plan assumptions, expansion summaries, capacity added, NPV revenue requirement, and levelized rate per MWh for each of plan.

e. New Unit Costs.pdf is a table that summarizes the basic economic and operational assumptions for the new resources used in the capacity expansion module.

f. PLAN00.pdf contains summaries of the plans and various projections under the plans in the plan matrix.

g. PLAN01.pdf contains information for Plan 1 corresponding to the description above for PLAN00.pdf.

h. PLAN02.pdf contains information for Plan 2 corresponding to the description above for PLAN00.pdf.

i. PLAN03.pdf contains information for Plan 3 corresponding to the description above for PLAN00.pdf.

j. PLAN11.pdf contains information for Plan 11 corresponding to the description above for PLAN00.pdf.

The Commission notes that Mr. Buresh did not provide additional supporting testimony specific to why Plan 12.pdf should be determined to be confidential. However, it was submitted under seal and contains information for Plan 12 corresponding to the description above for PLAN00.pdf for which additional testimony was submitted. Mr. Buresh testified that the documents described above are comprised of information that is confidential, proprietary, competitively sensitive, and or trade secret information. He further indicated that disclosure of this information could adversely affect IMPA's competitive position in the utility industry as well as negotiations with suppliers and equipment vendors.

5. Commission Discussion and Findings. Under Ind. Code § 8-1-2-29, all information submitted to the Commission is open to the public, subject to the provisions of the Indiana Access to Public Records Act ("APRA") found at Ind. Code ch. 5-14-3. The APRA sets out a broad policy in favor of disclosure of information and generally mandates that government agencies make public records available for inspection and copying. The purpose behind Indiana's APRA is codified at Ind. Code § 5-14-3-1, which states, in part, as follows:

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part

of the routine duties of public officials and employees, whose duty it is to provide the information.

The APRA also provides mandatory and discretionary exemptions from public disclosure for certain categories of information. See Ind. Code § 5-14-3-4. The Indiana Court of Appeals, in interpreting this statute, stated “liberal construction of the statute requires narrow construction of its exceptions.” *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995).

We, therefore, must balance the purpose of the APRA against the protections provided to confidential information. Our analysis begins with the rules pertaining to IRP filing requirements, which authorize a utility to request confidential treatment of certain information submitted as part of the IRP process. See 170 IAC 4-7-3(f).

Documents containing trade secret information are exempt from public disclosure under Ind. Code § 5-14-3-4(a)(4). Whether confidential information is a “trade secret” under Indiana law is determined by the Uniform Trade Secrets Act, which defines trade secret as follows:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that (1) derives independent economic value, actual or potential, form not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ind. Code § 24-2-3-2. Indiana courts have interpreted this definition to mean that:

[A] protectable trade secret has four characteristics: (1) information, (2) which derives independent economic value, (3) is not generally known, or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (4) the subject of efforts reasonable under the circumstances to maintain its secrecy.

Hydraulic Exchange and Repair, Inc. v. KM Specialty Pumps, Inc., 690 N.E.2d 782, 785-786 (Ind. Ct. App. 1998).

Petitioner’s evidence demonstrates that the following portions of its IRP qualify as confidential, proprietary, competitively sensitive and/or containing trade secret information: Avoided Cap Cost, Avoided Energy Cost, Avoided Transmission Cost, New Unit Cost, Plan Matrix, Plan 00, Plan 01, Plan 02, Plan 03, Plan 11 and Plan 12. This information has independent economic value from not being generally known or readily ascertainable by proper means and the Petitioner takes reasonable steps to maintain the secrecy of the information. Disclosure of such information would cause Petitioner harm.

Therefore, based upon the evidence submitted in this Cause, the Commission finds that this information is entitled to confidential treatment and qualifies for an exemption from public disclosure pursuant to 170 IAC 4-7-3(f) and Ind. Code § 5-14-3-4(a)(4), and is therefore exempt from the public access requirements of Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

6. **Method of Protection.** In order to protect the confidentiality of the documents designated as confidential by this Order, we find that the following procedures are reasonably necessary and consistent with past Commission practice, and should be implemented consistent with Ind. Code ch. 5-14-3:

- a. The confidential information should be made available solely for inspection by members or employees of the Commission as necessary to review and decide the issues presented by Petitioner's IRP.
- b. That the information which is submitted to the Commission be specifically secured and under the control of a responsible person.
- c. Any Commission member or employee who receives access to the confidential information should be under an obligation to secure and maintain exclusive control of the information, and should refrain from and prohibit any direct or indirect public disclosure of the information in any form.
- d. Any documents, materials or reports prepared by Commission members or employees should not have the effect of disclosing the confidential information.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:

1. Those portions of the Indiana Municipal Power Agency's Integrated Resource Plan submitted under seal which are described in Finding Paragraph No. 4 and found to be entitled to confidential treatment in Finding Paragraph No. 5 of this Order shall be exempt from disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.
2. The Commission and its employees shall follow the procedures set forth in Finding Paragraph No. 6 of this Order when handling the materials described in Ordering Paragraph No. 1.
3. This order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: **AUG 29 2012**

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Brenda Howe
Secretary to the Commission