

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE)
SUBMISSION HOOSIER ENERGY) CAUSE NO. 44148
RURAL ELECTRIC COOPERATIVE,)
INC. OF ITS 2011 INTEGRATED) APPROVED: SEP 05 2012
RESOURCE PLAN.)

ORDER OF THE COMMISSION

Presiding Officers:
Kari A.E. Bennett, Commissioner
Gregory R. Ellis, Administrative Law Judge

Hoosier Energy Rural Electric Cooperative, Inc. ("Petitioner" or "Hoosier Energy") filed a copy of Volume I of its biennial 2011 Integrated Resource Plan ("IRP") and a redacted public version of Volume II of its IRP with the Indiana Utility Regulatory Commission ("Commission") on December 30, 2011. On January 17, 2012, Hoosier Energy, pursuant to 170 IAC 4-7-3(f), filed its Petition ("Petition") in this Cause seeking a determination by the Commission that certain information (the "Confidential Information") contained in its IRP, including Critical Energy Infrastructure Information ("CEII"), 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. Hoosier Energy filed along with its Petition, nonredacted parts of Volume II of its IRP for which it seeks confidential treatment and the affidavit of Michael Mooney, Manager of Corporate Planning for Hoosier Energy Rural Electric Cooperative, Inc., which discussed the nature of the Confidential Information. Hoosier Energy filed amendments to its Petition on May 2, 2012, seeking a determination by the Commission that certain nonredacted parts of Volume III of its IRP, which was submitted contemporaneously with its amendments to the Petition, are proprietary, confidential, constitute trade secrets and should be exempt from public disclosure. Hoosier Energy also filed on May 2, 2012, a redacted public version of Volume III of its IRP and a second affidavit of Michael Mooney which discussed the nature of the Confidential Information.

The Commission issued a Docket Entry on June 27, 2012, 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 July 6, 2012, Petitioner filed its response and the third affidavit of Michael Mooney which discussed the Confidential Information. No revisions to either version of Hoosier Energy's IRP were submitted to the Commission.

Based upon the Petition and the affidavits 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 rural electric membership corporation within the meaning of the Rural Electric Membership Corporation Act as amended, Ind. Code

ch. 8-1-13 and as such, is subject to the jurisdiction of the Commission, in the manner and to the extent provided by law. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner's Characteristics. Hoosier Energy is a generation and transmission cooperative organized under the Indiana Rural Electric Membership Corporation Act. Hoosier Energy's principal place of business is located at 7398 North State Road 37, Bloomington, Indiana. Hoosier Energy is engaged in the generation and transmission of electricity in the State of Indiana, and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the production and transmission of electric utility service for its member local district corporations and to certain public utilities at wholesale. Hoosier Energy's members include seventeen (17) Rural Electric Membership Corporations ("REMCs") and one (1) Illinois Cooperative.

3. Relief Requested. Hoosier Energy 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. 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.

4. Petitioner's Evidence. Hoosier Energy submitted Volume I of its IRP on December 30, 2011 for which it is not seeking confidential treatment. On January 18, 2012, Hoosier Energy submitted both a redacted public version of Volume II of its IRP and a nonredacted version of Volume II, parts of which contain information that Hoosier Energy is seeking confidential treatment. On May 2, 2012, Hoosier Energy submitted a redacted public version of Volume III of its IRP along with a nonredacted version of Volume III containing information that Hoosier Energy asks be found confidential. Hoosier Energy filed eleven (11) exhibits under seal with the following designations: Volume II, Appendix J – Federal Energy Regulatory Commission ("FERC") Form 715; Volume III, Section 6, Table 1-Hoosier Energy Existing Owned Resources-Cost and Performance Data (page 12); Volume III, Section 6, Table 2-Hoosier Energy Existing Owned Resources Emission Rates (page 13); Volume III, Section 6, Table 3-Hoosier Energy Power Purchase Contracts Contract Data (page 14); Volume III, Section 6, Table 4-Coal and Natural Gas Price Projections (Nominal \$/MMBtu) (page 16); Volume III, Section 6, Table 5-Emission Price Projections (Nominal \$/Ton); (page 17); Volume III, Section 6, Table 6-Annual Market Energy Prices (Nominal \$/MWh) (page 18); Volume III, Section 6, Table 7-Renewal Resource Parameters (\$/MWh) (page 19); Volume III, Section 7 including all tables within that Section (pages 21-31); Appendix K-Potential Resource Alternatives-Cost and Performance Data (pages 1-3); and Appendix L-Ratts Strategy Study Methodology and Approach (27 pages consisting of 54 PowerPoint slides). The claimed confidential documents, in accordance with 170 IAC 4-7-3(f), have been treated by the Commission as confidential pending a final 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, Hoosier Energy offered the affidavit of Michael Mooney. Mr. Mooney indicated that Hoosier Energy's FERC Form 715 is considered to be CEII following the

events of September 11, 2001 and is provided confidential treatment by FERC. He also indicated that Hoosier Energy takes all reasonable steps to protect this information from public disclosure.

Mr. Mooney stated in his affidavit submitted with Hoosier Energy's amendments to the Petition that the IRP is an assessment of a variety of demand-side and supply-side resources that Hoosier Energy may use to cost-effectively meet the electricity service needs of its members. He identified the information for which confidential treatment is sought in Volume III of Hoosier Energy's IRP and noted the proprietary and confidential information contained in the IRP would be of economic value to suppliers and competitors and is not available or ascertainable by competitors through normal or proper means. He also indicated disclosure of the information would put Hoosier Energy at a competitive disadvantage and cause economic harm. He further indicated that Hoosier Energy works diligently to protect the confidentiality of such information.

In response to the Commission's Docket Entry of June 27, 2012, Hoosier Energy filed a response and supporting affidavit of Mr. Mooney. Mr. Mooney's affidavit stated that certain portions of Hoosier Energy's IRP for which confidential treatment was originally sought do not require protection. He identified certain other portions for which confidential treatment is sought and provided information as to why the information should be provided confidential treatment:

a. Volume II, Appendix J: Hoosier Energy's FERC Form 715 - Petitioner requested the Commission exempt the following from public disclosure:

1. FERC Form 715, Part III - Transmitting Utility Map and Diagrams. Mr. Mooney stated that the map and diagram are internally generated documents that are labeled and contain information which is not available or ascertainable by competitors through normal or proper means. In addition, the map and diagram were prepared by, and are labeled as the property of, Hoosier Energy and they cannot be used without the prior written consent of Hoosier Energy.

2. FERC Form 715, Part IV - Transmission Planning Criteria. Mr. Mooney indicated the twelve (12) page section of Part IV of Hoosier Energy's FERC Form 715 which is titled "Electric Transmission System and Generation Facility Rating Methodology" contains CEII and therefore should be exempt from public disclosure.

b. Volume III, Section 6, Table 1, page 12. Mr. Mooney indicated that the Hoosier Energy Existing Owned Resources Cost and Performance Data table contains individual and unique operating characteristics of Hoosier Energy's generating facilities, which are not available or ascertainable by competitors through normal or proper means.

c. Volume III, Section 6, Table 2, page 13. Mr. Mooney's affidavit stated the Hoosier Energy Existing Owned Resources Emission Rates table contains individual and unique operating characteristics of Hoosier Energy's generating facilities, which are not available or ascertainable by competitors through normal or proper means.

d. Volume III, Section 6, Table 3, page 14. Mr. Mooney indicated that the Hoosier Energy Power Purchase Contracts Contract Data table contains pricing and operational details of

Hoosier Energy's bilateral power purchase contracts with individual counterparties. This information is not available or ascertainable by competitors through normal or proper means.

e. Volume III, Section 6, Table 4, page 16. The affidavit of Mr. Mooney indicated the information contained within the Coal and Natural Gas Price Projections table was generated by Hoosier Energy's consultant, PA Consulting, through its own proprietary models and obtained by Hoosier Energy under the terms of a non-disclosure agreement and the information is not publicly available or ascertainable through normal or proper means.

f. Volume III, Section 6, Table 5, page 17. Mr. Mooney identified the Emission Price Projections table and noted the information contained within this table was generated by Hoosier Energy's consultant, PA Consulting, through its own proprietary models and obtained by Hoosier Energy under the terms of a non-disclosure agreement.

g. Volume III, Section 6, Table 6, page 18. Mr. Mooney indicated the Annual Energy Market Prices table contains information generated by Hoosier Energy's consultant, PA Consulting, through its own proprietary models and obtained by Hoosier Energy under the terms of a non-disclosure agreement.

h. Volume III, Section 6, Table 7, page 19. Mr. Mooney identified the Renewable Resource Parameters table as containing individual and unique operating characteristics of Hoosier Energy's current and proposed renewable generating facilities, which are not available or ascertainable by competitors through normal or proper means.

i. Volume III, Section 7: Screening Results. Mr. Mooney indicated in his affidavit that pages 24, 25, 26, 27 and 29 of Section 7 of Volume III of Hoosier Energy's IRP contain information related to Hoosier Energy's intermediate and long-term strategy for existing and potential new resources. Disclosure of this information contained on these pages would cause substantial detriment to Hoosier Energy. He also noted the remainder of Volume III, Section 7 should not be exempted from public disclosure.

j. Volume III, Appendix K: Potential Resource Alternatives-Cost and Performance Data. Mr. Mooney stated the information contained within Appendix K was obtained from Hoosier Energy's consultant, Burns & McDonnell, under the terms of a non-disclosure agreement. He noted the information was prepared, in part, in anticipation of litigation and is labeled as "Attorney Work Product - Privileged and Confidential". He further noted the information is integral to Hoosier Energy's near and intermediate-term strategic plan and disclosure of this information would cause substantial detriment to Hoosier Energy.

k. Volume III, Appendix L: Ratts Strategy Study Methodology and Approach. Mr. Mooney indicated the information contained within Appendix L was obtained from Hoosier Energy's consultant, Burns & McDonnell, under the terms of a non-disclosure agreement and the information was prepared, in part, in anticipation of litigation and is labeled as "Attorney Work Product - Privileged and Confidential". He also indicated the information is integral to Hoosier Energy's near and intermediate-term strategic plan and disclosure of this information would cause substantial detriment to Hoosier Energy.

5. **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).

FERC has determined that the portions of its Form 715 containing CEII should have limited public availability. *See* 18 C.F.R. § 141.300 and FERC Order No. 630, Final Rule on Critical Energy Infrastructure Information, 102 FERC ¶ 61, 190 (2003). FERC Form 715, Part 1 (Identification and Certification) contains basic contact information which should be filed publicly. Similarly, Parts 4 and 5 contain generic criteria used in evaluating and testing petitioner’s system and as such is not generally CEII and therefore is subject to public disclosure. *See* 18 C.F.R. § 388.112 (2010). The remaining portions of FERC Form 715 contain CEII and are not subject to public disclosure. Ind. Code § 5-14-3-4(a)(3) requires the Commission to keep confidential those public records which are required to be kept confidential under federal law. Hoosier Energy has submitted sufficient evidence in this Cause that the section of Part 4 of Hoosier Energy’s FERC Form 715 which is titled “Electric Transmission System and Generation Facility Rating Methodology” contains CEII and therefore should be exempt from public disclosure. Therefore, based upon the evidence submitted in this Cause, the Commission finds that portions of Petitioner’s FERC Form 715, included in Appendix J of Volume II of Hoosier Energy’s IRP, qualify for exemption from public disclosure pursuant to 170 IAC 4-7-3(f) and Ind. Code § 5-14-3-4(a)(3), and are therefore exempt from the public access requirements of Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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, from 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 trade secret information: (1) portions of Appendix J of Volume II containing Parts 2, 3, 6 and portions of 4 of FERC Form 715, (2) Volume III, Section 6, Table 1, page 12, (3) Volume III, Section 6, Table 2, page 13, (4) Volume III, Section 6, Table 3, page 14, (5) Volume III, Section 6, Table 4, page 16, (6) Volume III, Section 6, Table 5, page 17, (7) Volume III, Section 6, Table 6, page 18, (8) Volume III, Section 6, Table 7, page 19, (9) Volume III, Section 7: Screening Results, (10) Volume III, Appendix K: Potential Resource Alternatives-Cost and Performance Data and (11) Volume III, Appendix L: Ratts Strategy Study Methodology and Approach. 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 harm to Petitioner.

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 Hoosier Energy’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 Hoosier Energy's 2011 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. Hoosier Energy is hereby directed to submit a revised redacted version of its 2011 IRP to the Commission containing only public information, consistent with Finding Paragraph 5, within twenty (20) days of this Order.

4. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: SEP 05 2012

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



Brenda Howe
Secretary to the Commission