

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,)	CAUSE NO. 44412
PURSUANT TO 170 IAC 4-7 AND REQUEST)	
UNDER 170 IAC 4-7-3(f) FOR A COMMISSION)	
DETERMINATION THAT DESIGNATED)	APPROVED:
CONFIDENTIAL INFORMATION BE EXEMPT)	JAN 29 2014
FROM PUBLIC DISCLOSURE.)	

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Gregory R. Ellis, Administrative Law Judge

On November 1, 2013, 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 2013 Integrated Resource Plan (“IRP”) submitted on November 1, 2013 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 version of its IRP along with a public version of its IRP on CD-ROM and a nonredacted version under seal on CD-ROM. 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 support of its Petition, IMPA submitted the affidavit of Doug Buresh, Senior Vice President, Planning and Operations of IMPA.

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. 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 Ind. Code § 8-1-2.2-19, 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. Under Ind. Code § 8-1-2-29 and 170 IAC 4-7, the Commission has jurisdiction to determine confidentiality of information to be submitted by Petitioner. 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 59 municipal members in Indiana and one Ohio village. IMPA's office is located at 11610 North College Avenue, Carmel, Indiana 46032.

3. **Relief Requested.** Petitioner filed the Petition initiating this Cause on November 1, 2013 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 the utility considers proprietary, competitively-sensitive, or otherwise confidential. IMPA has provided, under seal, to the Commission a CD-ROM containing the non-redacted information that it considers confidential.

Mr. 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. He stated that portions of the Confidential Information are subject to confidentiality agreements and/or licensing arrangements that IMPA has executed with third-party suppliers of the information and disclosure of this information could adversely affect IMPA's competitive position in the utility industry and ongoing negotiations with suppliers and equipment vendors.

In his affidavit, Mr. Buresh identified the items and provided a reason for which confidential treatment is being sought:

a. Table 13 Average Delivered Natural Gas Price (\$/MMBtu) is a table that sets forth IMPA's forecast of delivered natural gas prices for the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

b. Figure 31 MISO - Indiana and PJM-AEP 5x16 Market Prices. This figure, along with textual references to projected growth rates, illustrates IMPA's forecast of on-peak (5x16) energy market prices at the Midcontinent Independent System Operator, Inc. ("MISO")-Indiana and PJM Interconnection LLC ("PJM")-American Electric Power ("AEP") hubs for the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

c. Figure 32 MISO-Indiana and PJM-AEP Wrap Market Prices. This figure, along with textual references to projected growth rates, illustrates IMPA's forecast of wrap (off-peak) energy market prices at the MISO-Indiana and PJM-AEP hubs for the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

d. Figure 33 Natural Gas Marginal Fuel Percentage illustrates IMPA's forecast of the percentage of time during which the marginal unit at the MISO-Indiana and PJM-AEP hubs will be a natural gas unit during the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

e. Figure 34 MISO-IN (LRZ6), PJM-RTO, MISO-IL (LRZ4) Capacity Prices illustrates IMPA's forecast of capacity prices for the specified MISO and PJM zones for the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

f. Figure 58 MISO-Indiana Annual 7x24 Market Prices. This figure, along with a textual reference to the projected escalation rate, illustrates the range and average of IMPA's stochastic futures forecasts and the deterministic price forecast of 7x24 annual energy market prices at the MISO-Indiana hub for the 2014 to 2033 time period using external data and internal IMPA data and assumptions, and stochastic draws based thereon.

g. Figure 59 MISO-Indiana Annual 7x24 Tornado Chart (2014-2033) illustrates the relative impact of various factors on IMPA's forecast of 7x24 annual energy market prices at the MISO - Indiana hub for the 2014 to 2033 time period using external data and internal IMPA data and assumptions, and stochastic draws based thereon.

h. Figure 60 PJM-AEP Annual 7x24 Market Prices. This figure, along with a textual reference to the projected escalation rate, illustrates the range and average of IMPA's stochastic futures forecasts and the deterministic price forecast of 7x24 annual energy market prices at the PJM - AEP hub for the 2014 to 2033 time period using external data and internal IMPA data, and assumptions and stochastic draws based thereon.

i. Figure 61 PJM-AEP Annual 7x24 Tornado Chart (2014-2033) illustrates the relative impact of various factors on IMPA's forecast of 7x24 annual energy market prices at the PJM-AEP hub for the 2014 to 2033 time period using external data and internal IMPA data and assumptions, and stochastic draws based thereon.

j. Figure 62 MISO-IL (LRZ4) Capacity Market illustrates the range and average of IMPA's stochastic futures forecasts and the deterministic price forecast of MISO-Illinois (LRZ4) capacity market prices for the 2014 to 2033 time period using external data and internal IMPA data and assumptions, and stochastic draws based thereon.

k. Figure 63 MISO-IN (LRZ6) Capacity Market illustrates the range and average of IMPA's stochastic futures forecasts and the deterministic price forecast of MISO-Indiana (LRZ6) capacity market prices for the 2014 to 2033 time period using external data and internal IMPA data and assumptions, and stochastic draws based thereon.

l. Figure 64 PJM-RTO Capacity Market illustrates the range and average of IMPA's stochastic futures forecasts and the deterministic price forecast of PJM-RTO capacity market prices for the 2014 to 2033 time period using external data and internal IMPA data and assumptions, and stochastic draws based thereon.

m. Figure 70 Scenario Natural Gas Prices illustrates IMPA's forecast of natural gas prices under the described scenarios for the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

n. Figure 75 Scenario 7x24 Annual Market Prices illustrates IMPA's forecast of 7x24 annual energy market prices under the described scenarios for the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

o. Figure 76 Scenario Capacity Prices illustrates IMPA's forecast of capacity market prices for the MISO-Indiana (LRZ6) and PJM-RTO under the described scenarios for the 2014 to 2033 time period using external data and internal IMPA data and assumptions.

p. Figure 77 Retirement Screening Curve illustrates screening curves developed by IMPA to forecast existing resource retirements at various capacity factors. The curves were developed using confidential data and assumptions contained in other parts of the IRP and appendices.

q. Figure 78 Thermal Screening Curve illustrates screening curves developed by IMPA to compare thermal generation resource expansion alternatives at various capacity factors. The curves were developed using confidential data and assumptions contained in other parts of the IRP and appendices.

r. Figure 79 Renewable Screening Curve illustrates screening curves developed by IMPA to compare renewable generation resource expansion alternatives at various capacity factors. The curves were developed using confidential data and assumptions contained in other parts of the IRP and appendices.

s. Figure 86 IMPA Natural Gas Price - 50 Stochastic Futures illustrates the range and average of IMPA's stochastic futures forecasts of natural gas market prices for the 2014 to 2033 time period using external data and internal IMPA data and assumptions, and stochastic draws based thereon.

t. Existing Resource Data Sets. Appendix E-2 sets forth either the operating characteristics of IMPA's existing generation resources or IMPA's projections for the performance and costs of its existing generation units for the 2014 to 2033 time period based on internal IMPA data and assumptions, including forecasts of fixed and variable operating and maintenance costs, fuel costs, emissions and allowances.

u. Expansion Resource Data Sets. Appendix F sets forth IMPA's projections and assumptions for potential future generation resources for the 2014 to 2033 time period based on external data and internal IMPA data and assumptions, including projections of capacity planning factors, construction costs, construction time, heat rates, outage rates, fixed and variable operating and maintenance costs and emissions.

v. Avoided Costs Data. Appendix G sets forth IMPA's projected avoided costs of capacity, energy and transmission rates for the 2014 to 2033 time period based on external data and internal IMPA data and assumptions.

Mr. Buresh testified that the documents described above are comprised of information that is confidential, proprietary, competitively sensitive, and trade secret information. He stated that IMPA takes all reasonable steps in order to protect the Confidential Information from disclosure, including, but not limited to, sharing such Confidential Information with employees only on a need-to-know basis and storing it in limited access sections of IMPA's file system.

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, 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: Table 13, Figures 31-34, Figures 58-64, Figure 70, Figures 75-79, Figure 86, Appendix E-2, Appendix F, and Appendix G. 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, MAYS, AND ZIEGNER CONCUR:

APPROVED: JAN 29 2014

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



Brenda Howe
Secretary to the Commission