

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF WABASH VALLEY POWER)
ASSOCIATION, INC. FOR A DETERMINATION)
THAT CERTAIN INFORMATION CONTAINED)
IN THE 2013 WABASH VALLEY POWER)
ASSOCIATION, INC. INTEGRATED RESOURCE)
PLAN IS CONFIDENTIAL PURSUANT TO IND.)
CODE 8-1-2-29, IND. CODE 5-14-3, AND 170 IAC)
4-7-3(f))

CAUSE NO. 44415

APPROVED:

JAN 29 2014

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Gregory R. Ellis, Administrative Law Judge

On November 1, 2013, Wabash Valley Power Association, Inc. (“Petitioner” or “Wabash Valley”), 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 and a nonredacted version under seal. 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, Wabash Valley submitted the affidavits of Jeff A. Conrad, Chief Financial Officer of Wabash Valley, and Jeffrey L. Walker, Senior Vice President and Chief Risk Officer of Alliance for Cooperative Energy Services Power Marketing LLC (“ACES”).

Based upon the Petition and 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 public utility as defined by Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1. 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. Petitioner is a public utility incorporated and existing under the Indiana Non-Profit Corporations Act providing wholesale power and transmission service to its member systems. Its principal place of business is located at 722 N.

High School Road, Indianapolis, Indiana 46224. Wabash Valley serves as a power supplier to electric cooperative members, and owns and operates generation, transmission and related facilities. All of Wabash Valley's Indiana members have withdrawn from Commission jurisdiction pursuant to Ind. Code § 8-1-13-18.5.

3. **Relief Requested.** Petitioner filed the Petition initiating this Cause on or about 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.** Wabash Valley's Petition indicated that its IRP contains information that it considers proprietary, competitively-sensitive, or otherwise confidential. Wabash Valley has provided, under seal, to the Commission the non-redacted information that it considers confidential.

Mr. Conrad indicated in his affidavit that Wabash Valley used certain confidential and proprietary information and data in developing its IRP. He stated this confidential information constitutes trade secrets of Wabash Valley that has actual and potential independent economic value to Wabash Valley and some of this data is also the confidential information of a third party. He explained Petitioner has maintained the confidentiality of the information for which it now seeks protection from public disclosure. He further explained 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 Wabash Valley at a competitive and economic disadvantage.

Mr. Walker indicated in his affidavit that ACES provided certain information to Wabash Valley pursuant to an agreement whereby Wabash Valley and its subsidiaries would keep such information confidential. He stated that such data has not been filed, produced, published or otherwise furnished to third parties without appropriate confidentiality agreements, protective orders, or other appropriate means to protect that confidentiality of such information. He concluded that ACES derives actual economic value from the sale and protection of such information.

The affidavits of Mr. Conrad and Mr. Walker described the portions of the IRP that Wabash Valley requests to be held confidential and exempt from public disclosure consists of the two (2) following appendices:

(a) Appendix E – Wabash Valley Unit Power Costs, Power Production Statistics. Mr. Conrad indicated the information in Appendix E possesses independent economic value for Wabash Valley and its members. He stated public release of this information would greatly hinder Wabash Valley's ability to successfully negotiate long-term power supply agreements with potential suppliers. The material in Appendix E would give potential suppliers detailed information on Wabash Valley's long-range price expectations. He further indicated that

competitors of Wabash Valley would have an economic advantage in competing against Wabash Valley in the energy market if they knew of the forecasts contained in Appendix E.

(b) Appendix G - Market Price Assumptions. Mr. Conrad's affidavit indicated the forecast and wholesale power market prices shown in Appendix G were provided by ACES, which considers the information confidential and proprietary trade secrets. He noted Wabash Valley agreed to keep the information confidential. The affidavit of Mr. Walker explained ACES treats the forecasts and wholesale market prices contained in Appendix G as confidential and takes steps to maintain the confidentiality of such information.

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: Appendix E 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 Wabash Valley Power Association, Inc.'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