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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA)
PUBLIC SERVICE COMPANY FOR)
DETERMINATION THAT CERTAIN)
INFORMATION CONTAINED IN ITS)
INTEGRATED RESOURCE PLAN IS)
CONFIDENTIAL AND EXEMPT FROM)
DISCLOSURE PURSUANT TO 170 IAC 4-7-)
3(f), 170 IAC 1-1.1-4, IND. CODE 8-1-2-29)
AND IND. DOCE 5-14-3-4)

CAUSE NO. 44554

APPROVED:

JAN 21 2015

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Commissioner

Gregory R. Ellis, Administrative Law Judge

On October 31, 2014, Northern Indiana Public Service Company (“Petitioner” or “NIPSCO”), pursuant to 170 IAC 1-1.1-4 and 170 IAC 4-7-3(f), filed its Verified Petition (“Petition”) seeking a determination by the Indiana Utility Regulatory Commission (“Commission”) that certain information (the “Confidential Information”) contained in its biennial 2014 Integrated Resource Plan (“IRP”), including Critical Energy Infrastructure Information (“CEII”), submitted on or about October 31, 2014 is confidential, proprietary, competitively sensitive and/or trade secret and therefore exempt from public disclosure under Ind. Code § 5-14-3-4. The Petition was verified by Frank A. Shambo, Vice President of Regulatory and Legislative Affairs of NIPSCO. Pursuant to 170 IAC 4-7-3(f), Petitioner filed along with its Petition those parts of its IRP for which it seeks confidential treatment. Also accompanying NIPSCO’s Petition was the affidavit of Daniel L. Douglas, Executive Director of Strategic Planning for NIPSCO, which discussed the confidential nature of the Confidential Information.

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 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 4-7-3(f), the Commission has jurisdiction to determine confidentiality of information to be submitted by Petitioner. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner’s Characteristics. NIPSCO is a public utility corporation organized and existing under the laws of the State of Indiana and having its principal office at

801 East 86th Avenue, Merrillville, Indiana. NIPSCO renders electric and gas public utility service 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 generation, transmission, distribution and furnishing of such service to the public in all of part of Benton, Carroll, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, Saint Joseph, Starke, Steuben, Warren and White Counties in northern Indiana. NIPSCO provides electric utility service to more than 468,000 residential, commercial, industrial, wholesale and other customers.

3. Relief Requested. On October 31, 2014, NIPSCO filed its Petition initiating this Cause and pursuant to 170 IAC 4-7, concurrently submitted its IRP to the Commission with designated portions redacted therefrom. NIPSCO also provided, under seal, to the Commission a non-redacted copy of its IRP. NIPSCO 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. NIPSCO's Petition indicates the Confidential Information includes portions of Appendices H, I, J, and K.

4. Petitioner's Evidence. NIPSCO's Petition states that certain information filed in this Cause includes information previously found by the Federal Energy Regulatory Commission ("FERC") to be CEII and that the Commission has recognized as being eligible for exemption from public disclosure pursuant to Ind. Code § 5-14-3-4. Mr. Douglas states in his affidavit that NIPSCO's FERC Form 715: Annual Transmission Planning and Evaluation Report information, included in NIPSCO's IRP as Appendix H, is considered by FERC to be CEII following the events of September 11, 2001, and that NIPSCO takes all reasonable steps to protect the information in FERC Form 715 from public disclosure. Petitioner asserts that the Commission should afford NIPSCO's FERC Form 715 the same confidential treatment as that provided by FERC.

NIPSCO's Petition also states that certain other information filed in this Cause contains confidential, proprietary, competitively sensitive and/or trade secret information. Mr. Douglas states in his affidavit that the specific information entitled to protection includes (1) Appendix I: confidential pricing and other information which NIPSCO received from third parties and NIPSCO is required to maintain this information as confidential information; (2) Appendix J: Strategist® modeling input and output of the foregoing, disclosure of which would have the effect of disclosing the forecast, study and operational information, and NIPSCO's confidential assessment and analysis of this information submitted with NIPSCO's 2014 IRP on CD; and (3) Appendix K: the Sargent & Lundy - IRP Engineering Study Technical Assessment Report, which includes various generation technologies, and assesses transmission, infrastructure, fuel and supply procurement, environmental, labor, and other sensitive issues.

The Petition indicates and Mr. Douglas states that the Confidential Information is not available or ascertainable by third parties through normal or proper means. NIPSCO has maintained the confidentiality of the Confidential Information by taking all reasonable steps

in order to protect the Confidential Information. Further, the Confidential Information derives value from being neither generally known to nor readily ascertainable by persons who could obtain economic value from its disclosure or use. Public disclosure of the Confidential Information would cause substantial harm to NIPSCO and others, including the entities from whom NIPSCO purchased the information pursuant to an obligation to maintain the information as confidential and proprietary. Public disclosure of these forecasts and associated analysis could be harmful to NIPSCO as it would provide third parties with insight into NIPSCO's operational needs, strategic plans and expectations. This information would be of economic value to independent power producers and other parties with whom NIPSCO may be negotiating. Further, the disclosure of NIPSCO's resource costs would disincite the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what NIPSCO's expectations are with respect to its resource and other costs. Finally, Mr. Douglas states that disclosure of such forecasts and other cost information would adversely affect NIPSCO because it would permit such third parties to better determine how to price their services and products.

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).

NIPSCO's Petition and evidence indicates that Appendix H, FERC Form 715, of its IRP contains CEII. The redacted version of NIPSCO's IRP has Part 3, Part 4 and 5, and Part 6 of FERC Form 715 marked as confidential. We note FERC has determined that the portions of Form 715 containing CEII should have limited public availability. See 18 C.F.R. § 141.300 (2003) 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. This generic information does not qualify as CEII and should be filed publicly. See 18 C.F.R. § 388.112 (2012). 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. Based upon the evidence submitted in this Cause, the Commission finds that portions of Petitioner's FERC Form 715 included in Appendix H of NIPSCO's IRP, with the exception of Part 4 and 5, 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. Accordingly, NIPSCO shall file an updated redacted version of its IRP containing the generic criteria contained in Part 4 and 5 of FERC Form 715 in Appendix H.

We further note that 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) Revised Appendix I: confidential pricing and other information which NIPSCO received from third parties and NIPSCO is required to maintain as confidential information; (2) Appendix J: the Strategist® modeling input and output of the foregoing submitted with NIPSCO's 2014 IRP on Compact Disc, disclosure of the data would have the effect of disclosing the forecast and bid information and NIPSCO's confidential assessment and analysis of the information; and (3) Revised Appendix K: the Sargent & Lundy - IRP Engineering Study Technical Assessment Report, which includes generation technologies, assesses transmission, infrastructure, fuel, supply procurement, environmental, and other sensitive data. 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 NIPSCO'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. NIPSCO shall file an updated redacted version of its IRP containing the information in Part 4 and 5 of FERC Form 715 in Appendix H as described in Finding Paragraph 5.

2. Those portions of NIPSCO'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.

3. 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. 2.

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

STEPHAN, MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED:

JAN 21 2015

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



Brenda A. Howe

Secretary to the Commission