

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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APW

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

CAUSE NO. 44557

APPROVED: JAN 28 2015

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Commissioner

Gregory R. Ellis, Administrative Law Judge

On October 31, 2014, Indianapolis Power & Light Company (“Petitioner” or “IPL”), pursuant to 170 IAC 1-1.1-4 and 170 IAC 4-7-3(f), filed its 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 and/or trade secret and therefore exempt from public disclosure under Ind. Code § 5-14-3-4. Pursuant to 170 IAC 4-7-3(f), IPL filed along with its Petition those parts of its 2014 IRP for which it seeks confidential treatment. Also accompanying IPL’s Petition were the affidavits of Michael Holtsclaw, IPL’s Director of Engineering and Richard Benedict, IPL’s Director of Project Development. These affidavits were filed in support of Petitioner’s request for confidential treatment of certain parts of its IRP.

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 4-7-3(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. IPL is a public utility corporation organized and existing under the laws of the State of Indiana and having its principal office at One Monument Circle, Indianapolis, Indiana. IPL renders electric 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 Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Owen, Putnam, and Shelby Counties in Indiana. IPL provides electric utility service to more than 470,000 residential, commercial, industrial, wholesale and other customers.

3. Relief Requested. On or about October 31, 2014, IPL filed the Petition initiating this Cause. Pursuant to 170 IAC 4-7, IPL also submitted its 2014 IRP to the Commission on October 31, 2014 with designated portions redacted therefrom. IPL also provided, under seal, to the Commission a non-redacted copy of its 2014 IRP. 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 its 2014 IRP contain confidential and/or trade secret information and, therefore, are exempt from public disclosure under Ind. Code ch. 5-14-3.

4. Petitioner's Evidence. IPL's Petition states that certain information filed in this Cause includes information already reported to the Federal Energy Regulatory Commission ("FERC") by submitting FERC Form 715. FERC has previously found that Form 715 contains CEII. Mr. Holtsclaw indicates in his affidavit that the Confidential Information contained in IPL's 2014 IRP includes parts of FERC Form 715 which contains CEII. He also explains the Confidential Information includes Parts 2, 3, and 6 of IPL's FERC Form 715: Annual Transmission Planning and Evaluation information, included in IPL's 2014 IRP as Attachment 1.1, and is considered by FERC to be CEII following the events of September 11, 2001. He notes that IPL takes all reasonable steps to protect the information in FERC Form 715 from public disclosure. Petitioner asserts that the Commission should afford IPL's FERC Form 715 the same confidential treatment as that provided by FERC.

Mr. Holtsclaw also indicates in his affidavit that the Confidential Information contained in IPL's 2014 IRP includes the Short Term Action Plan Transmission Expansion Projects included in IPL's 2014 IRP as Attachment 1.3. Mr. Holtsclaw states that Attachment 1.3 identifies specific short term transmission expansion projects, anticipated construction periods, and estimated costs. Disclosure of this information would negatively affect the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what IPL's expectations are with respect to such items.

Mr. Holtsclaw states that IPL's Confidential Information is not available or ascertainable by other parties through normal or proper means. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

IPL's Petition also states that certain information filed in this Cause contains trade secret information as that term is used in Ind. Code ch. 5-14-3. Mr. Benedict's affidavit identifies the Confidential Information to include: (1) Section 4B: Avoided Costs (page 110); (2) Confidential Figure 4.9: Supply Resource Options (2013\$) (page 55); (3) Confidential Figure 4A.7: IRP Supply Side Resource Options (page 95); (4) Confidential Figure 4D.9: IPL Average Annual Fuel Forecast per Generating Unit (page 153); (5) Confidential Attachment 4.3: DSM Future Avoided Costs; (6) Confidential Attachment 5.1: Ventyx IPL-IRP 2014 Report; (7) Confidential Attachment 6.3: End Use Modeling Technique; (8) Confidential Attachment 6.4: EIA End Use Data; (9) Confidential Attachment 6.5: Energy - Forecast Drivers; and (10) Confidential Attachment 6.10: Model Performance - Statistical Measures. Mr. Benedict states that the information contained in these specified portions of its 2014 IRP constitutes trade secret information because it includes IPL's assumptions as to the costs of building new generation. Mr. Benedict further states that this information pertaining to the cost of building new generation would be of benefit to potential bidders and that bids would be less competitive if IPL disclosed its assumptions about the cost of the new-build option. The Confidential Information also includes confidential, proprietary,

competitively-sensitive and trade secret information obtained by IPL pursuant to subscriptions and agreements with Ventyx and Itron. Finally, Mr. Benedict states that the Confidential Information is not readily available in the public domain and IPL takes all reasonable steps to protect this information from public disclosure.

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 that “[l]iberal 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. 170 IAC 4-7-3(f) authorizes a utility to request confidential treatment of certain information submitted as part of the IRP process if the utility considers information in the IRP to be proprietary or otherwise confidential. If the Commission determines that the information is proprietary or confidential, it will treat the information as confidential in accordance with Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

IPL’s Petition and evidence indicates that Attachment 1.1, FERC Form 715, of its 2014 IRP contains CEII. The redacted version of IPL’s IRP has Part 2, Part 3, and Part 6 of FERC Form 715 identified 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 Attachment 1.1 of its 2014 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.

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 containing trade secret information: (1) Section 4B: Avoided Costs found on page 110 of IPL’s 2014 IRP; (2) Section 4, Confidential Figure 4.9: Supply Resource Options (2013\$) found on page 55 of IPL’s 2014 IRP; (3) Section 4A, Confidential Figure 4A.7: IRP Supply Side Resource Options found on page 95 of IPL’s 2014 IRP; (4) Section 4D, Confidential Figure 4D.9: IPL Average Annual Fuel Forecast per Generating Unit found on page 153 of IPL’s 2014 IRP; (5) Confidential Attachment 4.3 of IPL’s 2014 IRP: DSM Future Avoided Costs; (6) Confidential Attachment 5.1 of IPL’s 2014 IRP: Ventyx IPL-IRP 2014 Report; (7) Confidential Attachment 6.3 of IPL’s 2014 IRP: End Use Modeling Technique; (8) Confidential Attachment 6.4 of IPL’s 2014 IRP: EIA End Use Data; (9) Confidential Attachment 6.5 of IPL’s 2014 IRP: Energy - Forecast Drivers; and (10) Confidential Attachment 6.10 of IPL’s 2014 IRP: Model Performance - Statistical Measures. This information has 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.

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 IPL's 2014 IRP 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 specifically described in Finding Paragraph No. 4 and found to be entitled to confidential treatment in Finding Paragraph No. 5 of this Order.
3. This Order shall be effective on and after the date of its approval.

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

APPROVED: JAN 28 2015

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



Brenda Howe
Secretary to the Commission