

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE SUBMISSION BY)
HOOSIER ENERGY RURAL ELECTRIC)
COOPERATIVE, INC. OF ITS 2014)
INTEGRATED RESOURCE PLAN AND)
REQUEST FOR A COMMISSION)
DETERMINATION THAT DESIGNATED)
INFORMATION BE EXEMPT FROM PUBLIC)
DISCLOSURE)**

CAUSE NO. 44559

APPROVED: MAR 25 2015



ORDER OF THE COMMISSION

**Presiding Officers:
James F. Huston, Commissioner
Gregory R. Ellis, Administrative Law Judge**

On November 5, 2014, Hoosier Energy Rural Electric Cooperative, Inc. (“Petitioner” or “Hoosier Energy”), 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 2014 Integrated Resource Plan (“IRP”), including Critical Energy Infrastructure Information (“CEII”), is confidential 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, a redacted public version of Volume I of its IRP and a copy of Volume II of its IRP with the Commission on November 5, 2014. Pursuant to 170 IAC 4-7-3(f), Hoosier Energy also filed those parts of Volume I of its IRP for which it seeks confidential treatment. Also accompanying Hoosier Energy’s Petition was the affidavit of Michael Mooney, Manager of Corporate Planning for Hoosier Energy Rural Electric Cooperative, Inc., which discussed the nature of the Confidential Information.

The Commission issued a Docket Entry on January 15, 2015, which indicated Hoosier Energy filed an unredacted Volume I of its IRP on white paper and marked “Confidential” on the cover page only. The Commission directed Hoosier Energy to submit the Confidential Information on light green paper under seal and clearly marked as confidential with the Cause Number noted thereon and also retrieve the unredacted copies that were filed on white paper. On January 22, 2015, Hoosier Energy filed amendments to its Petition. Hoosier Energy also filed on January 22, 2015, a revised unredacted version of Volume I of its IRP and a second affidavit of Michael Mooney which discussed the nature of the Confidential Information. 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.

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. 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.** 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 local district corporation members in Indiana and one electric cooperative member in Illinois.

3. **Relief Requested.** On November 5, 2014, Hoosier Energy filed the Petition initiating this Cause. Pursuant to 170 IAC 4-7, Hoosier Energy also submitted its IRP to the Commission on November 5, 2014 with designated portions redacted therefrom. Hoosier Energy also provided, under seal, to the Commission a non-redacted copy of its 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 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.** Hoosier Energy's Petition states that certain information filed in this Cause contains detailed engineering and resource optimization analyses of the environmental regulations on existing resources and future generation alternatives. This information also includes details about Hoosier Energy's costs and resources for potential wholesale transactions with other utilities, as well as dispositions of resources and projections of commodity prices. The confidential and/or trade secret information for which protection is sought is predominately the same, but updated, information that the Commission has found to be exempt from public disclosure in prior Commission orders. If this information were generally available to the public, Hoosier Energy would be placed at a considerable competitive disadvantage. The knowledge of Hoosier Energy's costs and pricing provides a competitor with a material advantage in formulating a competitive bid and such information is not available or ascertainable by competitors through normal or proper means.

In support of its Petition, Hoosier Energy offered the affidavit of Michael Mooney. Mr. Mooney indicated the IRP submitted by Hoosier Energy 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 noted that Hoosier Energy's Federal Energy

Regulatory Commission (“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.

In addition to FERC Form 715, Mr. Mooney’s affidavit identifies the Confidential Information to include: (1) Volume I, Section 6.2-Hoosier Energy’s Existing Supply-Side Resources (pages 80-83); (2) Volume I, Section 6, Table 23 - Forecasted Fuel Prices (page 88); (3) Volume I, Section 6, Table 24 - Forecasted Emissions Costs; (page 90); and (4) Volume I, Section 6, Table 25 - Forecasted Market Power Prices (page 92). Mr. Mooney states that the information contained in these specified portions of the IRP would be of economic value to suppliers and competitors and is not ascertainable through normal or proper means. Disclosure of the information would unfairly allow suppliers and competitors to analyze Hoosier Energy’s operations, make pricing decisions, and determine market entry. In addition, Hoosier Energy has spent considerable time and money in developing its assumptions contained in the Confidential Information and believes this information should be kept confidential. Mr. Mooney further states that Hoosier Energy takes all reasonable steps to protect the Confidential Information from public disclosure and does not release such information outside of Hoosier Energy without appropriate confidentiality protection.

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.

Hoosier Energy's Petition and evidence indicates that its entire FERC Form 715 contains CEII and therefore is provided confidential treatment. 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 Hoosier Energy's IRP, with the exception of Parts 1, 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, Hoosier Energy shall file an updated redacted version of its IRP containing basic information and generic criteria contained in Parts 1, 4, and 5 of its FERC Form 715.

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 and/or containing trade secret information: (1) Parts 2, 3, 6 of FERC Form 715; (2) Volume I, Section 6.2-Hoosier Energy's Existing Supply-Side Resources (pages 80-83); (3) Volume I, Section 6, Table 23 - Forecasted Fuel Prices (page 88); (4) Volume I, Section 6, Table 24 - Forecasted Emissions Costs; (page 90); and (5) Volume I, Section 6, Table 25 - Forecasted Market Power Prices (page 92). 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. Hoosier Energy shall file an updated redacted version of its IRP containing the basic information and generic criteria contained in Parts 1, 4, and 5 of its FERC Form 715, as described in Finding Paragraph 5.

2. Those portions of Hoosier Energy's 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.

3. 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.

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

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

APPROVED: MAR 25 2015

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



Brenda Howe
Secretary to the Commission