

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE SUBMISSION OF) AN INTEGRATED RESOURCE PLAN BY) INDIANA MICHIGAN POWER 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. 44413 APPROVED: JAN 29 2014
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ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Gregory R. Ellis, Administrative Law Judge

On November 1, 2013, Indiana Michigan Power Company (“Petitioner” or “I&M”) pursuant to 170 IAC 4-7-3(f), filed its Verified Petition (“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 contemporaneously with its Petition, including Critical Energy Infrastructure Information (“CEII”), 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. Petitioner filed along with its Petition a redacted public version of its IRP and nonredacted parts of its IRP for which it seeks confidential treatment. Also accompanying I&M’s Petition were the affidavits of Scott C. Weaver and Robert W. Bradish which discussed the nature of the Confidential Information. The claimed confidential documents, in accordance with 170 IAC 4-7-3(f), have been treated by the Commission as confidential pending the 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 affidavits filed herein, and the applicable 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. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner’s Characteristics. Petitioner is a wholly owned subsidiary of American Electric Power Company, Inc. (“AEP”). Petitioner is a corporation organized and existing under the laws of the State of Indiana, with its principal offices at One Summit Square, Fort Wayne, Indiana. Petitioner is a member of the East Zone of the AEP System. Petitioner is engaged in rendering electric service and owns, operates, manages and controls plant and equipment within the States of Indiana and Michigan that are in service and used and useful in the generation, transmission, distribution and furnishing of such service to the public. I&M provides retail electric service to

approximately 456,000 customers in the following Indiana counties: Adams, Allen, Blackford, DeKalb, Delaware, Elkhart, Grant, Hamilton, Henry, Howard, Huntington, Jay, LaPorte, Madison, Marshall, Miami, Noble, Randolph, St Joseph, Steuben, Tipton, Wabash, Wells and Whitley. In addition, Petitioner provides wholesale electric service to other electric utilities, municipalities, electric cooperatives, and non-utility entities engaged in the wholesale power market.

3. **Relief Requested.** On November 1, 2013, I&M 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. 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 § 8-1-2-29 and Ind. Code ch. 5-14-3.

4. **Petitioner's Evidence.** I&M's Petition indicated the IRP is an assessment of a variety of demand-side and supply-side resources that I&M may use to cost-effectively meet the electricity service needs of its customers. I&M indicated the IRP contains cost, price, and customer-specific data, and CEII, that I&M considers to be confidential, proprietary, competitively sensitive, and/or trade secret. In accordance with 170 IAC 4-7-3(f), I&M filed under seal nonredacted parts of its IRP for which it seeks confidential treatment along with a public version of its IRP.

In support of its claim for confidential treatment of certain portions of the IRP, I&M filed the sworn affidavits of Robert W. Bradish, Vice President of Transmission Grid Development of the American Electric Power Service Corporation and of Scott C. Weaver, Managing Director-Resource Planning and Operational Analysis of the American Electric Power Service Corporation. The affidavits discussed the confidential nature of the Confidential Information.

Mr. Weaver stated that the Confidential Information derives actual and potential independent economic value from being neither generally known to nor readily ascertainable by, persons who could obtain economic value from its disclosure or use. He also indicated that the Confidential Information contained in I&M's IRP, if publicly disclosed, would be useful to suppliers and competitors of I&M and disclosure of the Confidential Information would cause substantial detriment to I&M.

Mr. Weaver further indicated that the Confidential Information is not available or ascertainable by such entities through normal or proper means. I&M has taken steps to limit access to the Confidential Information to those employees who need to know the information. He also stated that the files containing proprietary and confidential information are maintained separately from the general files, and access to those files is restricted.

The affidavits of Mr. Weaver and Mr. Bradish indicated the portions of the IRP that I&M requests to be held confidential and exempt from public disclosure consists of the following six (6) exhibits:

(a) Exhibit 1 – I&M Projected Fuel Costs, cents/MBtu (for Existing Generating Plants), 2014-2033. Mr. Weaver indicated that Exhibit 1 of the IRP sets forth projected resource cost information. He stated disclosure of such cost information would adversely impact I&M because it would permit competitors to better determine how to price their services and products. He also

stated that disclosure would undermine the negotiation or competitive bidding process by allowing potential suppliers or vendors to know I&M's expectations with respect to its resource costs.

(b) Exhibit 2 - AEP System-East Zone, New Generation Technologies. Mr. Weaver's affidavit stated Exhibit 2 of its IRP is not readily available in the public domain and I&M takes steps to protect this information from public disclosure. He states this compilation of data is competitively sensitive and a trade secret because competitors may derive economic value by using this projected resource cost and emissions information. The disclosure of the projected resource cost and emissions forecasts would also be of economic value to third parties and adversely impact I&M because it would permit competitors to better determine how to price their services and products and provide suppliers with insight regarding the pricing of products and services to meet I&M's expectations.

(c) Exhibit 3 – FERC Form 715. Mr. Bradish indicated the FERC Form 715 report contains specific engineering and design information about proposed and existing critical infrastructure that is deemed CEII. This information is provided confidential treatment by the FERC and I&M takes steps to protect this information from public disclosure. Mr. Bradish specifically stated FERC Form 715 Pages 5.3 through 5.13 of Part 5, as well as Part 6 in its entirety, is CEII as these pages contain detailed operating procedures for specific transmission facilities that can be implemented to reduce facility loadings, maintain stability margins, maintain reliability without exceeding equipment capabilities, ensure adequate voltage levels, and an evaluation of transmission system performance as it relates to the load flow, voltage, and stability requirements. This information is critical to the safe and reliable operation of the transmission system. This infrastructure information depicts the configuration of critical electrical systems and its disclosure would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack.

(d) Exhibit 4 - Short-Term Large Industrial Energy Models and Input Data.¹ Mr. Weaver indicated this information pertains to I&M's large industrial customers and includes load and customer names that should be protected from disclosure. He stated disclosure of the information would be of economic value to third parties and would adversely affect I&M as well as the individual customers because such information would provide useful information regarding the operational needs of the individual customers and I&M.

(e) Exhibit 5 - Long-Term Industrial and Wholesale Forecast Model Price Input Data. Mr. Weaver's affidavit indicated that disclosure of this information can be competitively harmful to I&M's industrial customers, as it would allow third parties to determine the future costs of competitive products and provide insights regarding the operational needs of I&M's customers. He also indicated the information details I&M's expectations regarding growth and future price changes and that if such information became generally known to other parties with whom I&M is negotiating, or to independent power producers with whom I&M is to compete, this knowledge would be of considerable economic value to such parties and cause economic harm to I&M.

(f) Exhibit 6 - Map of the AEP System, East Zone Transmission System. Mr. Weaver stated the American Electric Power Eastern Companies system map and is part of the information

¹ I&M's IRP section Short-Term Large Industrial Energy Models and Input Data is marked as Exhibit 5, while Mr. Weaver's Affidavit refers to it as Exhibit 4. The IRP section Long-Term Industrial and Wholesale Forecast Model Price Input Data is also marked as Exhibit 5 and Mr. Weaver refers to it as Exhibit 5.

submitted to FERC as part of Form 715 and is considered CEII and is exempt from public disclosure as it is information about existing infrastructure that relates to the production, generation, transportation, and transmission of energy that could be useful to a person planning an attack on critical infrastructure.

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).

FERC has determined that the portions of its Form 715 containing CEII should have limited public availability. *See* 18 C.F.R. § 141.300 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. *See* 18 C.F.R. § 388.112 (2010). 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. I&M has submitted sufficient evidence in this Cause that Pages 5.3 through 5.12 of Part 5 of its FERC Form 715 is CEII and has been provided confidential treatment by FERC. Therefore, based upon the evidence submitted in this Cause, the Commission finds that portions of Petitioner’s FERC Form 715, included in Exhibits 3 and 6 of I&M’s 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.

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, to the extent the Confidential Information is consistent with I&M’s redacted public version of its IRP filed on November 1, 2013, the following portions of its IRP qualify as confidential trade secret information: (1) Exhibit 1; Projected Fuel Costs (cents/MBtu), (2) Exhibit 2; AEP System-East Zone, New Generation Technologies, (3) Exhibit 3; FERC Form 715 Pages 5.3 through 5.13 of Part 5, as well as Part 6 in its entirety, (4) Exhibit 4 containing Short-Term Large Industrial Energy Models and Input Data, (5) Exhibit 5; Long-Term Industrial and Wholesale Forecast Model Price Input Data, and (6) Exhibit 6; Map of the AEP System, East Zone Transmission System. 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 harm to Petitioner.

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. The findings above necessitate that the Commission adopt safeguards to insure the protection of the documents we have determined to constitute confidential information. We find that the following procedures would be adequate to protect Petitioner’s information submitted under seal:

- a. That the information will be made available solely for the inspection by certain designated employees of the Commission and its Staff for purposes of their examination as needed to 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. That any Commission employee or Staff member who receives access to the information be under an obligation to secure and maintain exclusive control of the information, to refrain from directly or indirectly allowing public disclosure of such information and to refrain from and prohibit the copying and reproduction of the information; and

d. That any documents, materials or reports prepared by Commission employees or Staff members not have the effect of disclosing the information.

We find that these procedures are reasonably necessary and consistent with past Commission practice and should be implemented with respect to the Confidential Information.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:

1. Those portions of I&M's 2013 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**