

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. 44705

APPROVED:

JAN 20 2016

ORDER OF THE COMMISSION

**Presiding Officers:**

**James F. Huston, Commissioner**

**Gregory R. Ellis, Administrative Law Judge**

On November 2, 2015, 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 2015 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 sworn affidavits, which included: the affidavit of Scott C. Weaver, Managing Director-Resource Planning and Operational Analysis of the American Electric Power Service Corporation and Robert W. Bradish, Vice President of Transmission Grid Development of the American Electric Power Service Corporation (collectively “Affidavits”). The Affidavits 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.

Based upon the Petition and the Affidavits filed herein, a review of the information filed as confidential, and the applicable law, the Commission now finds:

**1. Commission Jurisdiction.** Ind. Code § 8-1-8.5-3 requires a public utility to submit an IRP to the Commission. 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.** I&M is a wholly owned subsidiary of American Electric Power Company, Inc. (“AEP”) and is an operating subsidiary in the American Electric Power System (“AEP System”). Petitioner is a public electric generating utility, organized and existing

under the laws of the State of Indiana, with its principal offices at Indiana Michigan Power Center, Fort Wayne, Indiana. 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 458,000 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. Petitioner currently provides retail electric service to approximately 128,000 customers in Michigan. 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.** In its Petition, I&M 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 indicates that its IRP is an assessment of a variety of supply-side and demand-side resources that I&M may use to cost-effectively meet the electricity service needs of its customers. I&M indicates the IRP contains cost, price, and customer-specific data, and CEII, that it considers to be proprietary, confidential, 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. I&M has provided, under seal, to the Commission the non-redacted information that it considers confidential. The following items were submitted under seal: Exhibit B (Pages 1-522); Exhibit C (Pages 1-22); Exhibit H (Pages 1-38); Exhibit I (AEP East Transmission Map); and Exhibit J (Page 1). I&M's Petition indicates that it has taken reasonable steps to maintain the confidentiality of the Confidential Information contained in the IRP.

**A. The Affidavit of Scott C. Weaver.** Mr. Weaver's affidavit was submitted along with the Petition in support of certain information being determined to be confidential and exempt from disclosure. He explained I&M's IRP contains certain confidential, proprietary, and trade secret information, including cost, price, and customer-specific data and CEII. 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. Mr. Weaver identified certain sections of the IRP that I&M requests to be held confidential and exempt from public disclosure including the following exhibits:

**i. Exhibit B - Short-Term Large Industrial Energy Models and Input Data.** Mr. Weaver indicated that this information pertains to I&M's large industrial customers and includes load and customer names that should be protected from disclosure. He noted that due to the

relative sizes of load of I&M's largest customers the information cannot otherwise be secured by removing customer names from I&M's report. 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.

**ii. Exhibit C - Long-Term Industrial and Wholesale Forecast Model**

**Price Input Data.** Mr. Weaver indicated that disclosure of I&M's future pricing 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.

**iii. Exhibit I - Map of the AEP System, East Zone Transmission**

**System.** Mr. Weaver stated the American Electric Power Eastern Companies system map is part of the information submitted to the Federal Energy Regulatory Commission ("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.

**iv. Exhibit J - I&M Projected Fuel Costs (cents/MBtu).**

Mr. Weaver indicated that Exhibit J 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. These suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide resources.

**B. The Affidavit of Robert W. Bradish.**

Mr. Bradish's affidavit was submitted along with the Petition in support of certain information being determined to be confidential and exempt from disclosure. He stated that he is familiar with the content of AEP's FERC Form 715 and the need to protect certain CEII contained in FERC Form 715 from public disclosure. He indicated that I&M submitted FERC Form 715 as Exhibit H of its IRP. He explained that FERC Form 715 reports in their entirety are not publicly available in accordance with the FERC order issued on October 11, 2001 in Docket PL02-1-000 for national security reasons. The FERC Form 715 report contains specific engineering and design information about proposed and existing critical infrastructure that is deemed CEII. He cited 18 C.F.R. § 388.113(c), which defines CEII as information about proposed or existing infrastructure that relates details about the production, generation, transportation, transmission, or distribution of energy and could be useful to a person planning an attack on critical infrastructure. He further indicated that this information is provided confidential treatment by FERC and that I&M and AEP take steps to protect this information from public disclosure.

Mr. Bradish indicated that I&M submitted a redacted public version of AEP's 2015 FERC Form 715 as part of its IRP. He noted that certain information set forth in pages 1.1, 2.1 through 2.7, 5.3 through 5.13, as well as Part 6 in its entirety, of FERC Form 715 should be treated as CEII and

should be exempt from public disclosure 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.

**5. Discussion and Findings.** Ind. Code § 8-1-8.5-3 requires public utilities to submit an IRP to the Commission. 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). 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 1.1, 2.1 through 2.7, 5.3 through 5.13, as well as Part 6 in its entirety of its FERC Form 715 is CEII and has been provided confidential treatment by FERC. Therefore, the Commission finds those portions of Petitioner’s FERC Form 715 included in Exhibits H and I 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 2, 2015, the following portions of its IRP qualify as confidential trade secret information: (1) Exhibit B; Short-Term Large Industrial Energy Models and Input Data, (2) Exhibit C; Long-Term Industrial and Wholesale Forecast Model Price Input Data, and (3) Exhibit J; Projected Fuel Costs (cents/MBtu). 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, 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 I&M's 2015 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.

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

**APPROVED:**

JAN 20 2016

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

  
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Brenda Howe  
Secretary to the Commission