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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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. 44102

APPROVED: JAN 18 2012

ORDER OF THE COMMISSION

Presiding Officers:

Kari A.E. Bennett, Commissioner
Gregory R. Ellis, Administrative Law Judge

On October 28, 2011, Indianapolis Power & Light Company (“Petitioner” or “IPL”), pursuant to 170 IAC 4-7-3(f), filed its Petition in this Cause seeking a determination by the Indiana Utility Regulatory Commission (“Commission”) that certain information contained in its biennial 2011 Integrated Resource Plan (“IRP”), including Critical Energy Infrastructure Information (“CEII”), submitted on or about October 28, 2011, is confidential, proprietary and/or trade secret, and therefore exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. 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 Petitioner’s Petition were the affidavits of Michael Holtsclaw, IPL’s Director of Power Delivery Operations and Herman Schkabla, IPL’s Director of Markets & Risk. These affidavits were filed in support of Petitioner’s request for confidential treatment of certain parts of its IRP. Petitioner publicly filed its IRP with redactions of the information for which it seeks confidential treatment on October 31, 2011. The Commission issued a Docket Entry on December 9, 2011, instructing Petitioner to submit either a revised IRP with redactions or additional testimony demonstrating why certain data was entitled to confidential treatment. On December 27, 2011, Petitioner filed a revised version of its IRP with redactions. The claimed confidential documents, in accordance with 170 IAC 4-7-3(f), have been treated by the Commission as confidential pending the determination on the issue of confidentiality made in this Order.

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 within the meaning of the Public Service Commission Act as amended, Ind. Code ch. 8-1-2 and as such, is subject to the jurisdiction of the Commission, in the manner and to the extent provided by law. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** IPL is an electric generating utility and is a corporation organized and existing under the laws of the State of Indiana, having its principal office at One Monument Circle, Indianapolis, Indiana. IPL is engaged in rendering electric public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plants and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of such service to the public.

3. **Relief Requested.** On or about October 28, 2011, and pursuant to 170 IAC 4-7, Petitioner submitted its IRP to the Commission with designated portions redacted therefrom. On October 28, 2011, Petitioner filed the Petition initiating this Cause. Petitioner requests a determination by the Commission, pursuant to 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.** IPL's Petition states that certain information filed in this Cause includes information previously found by the Federal Energy Regulatory Commission ("FERC") to be CEII. Mr. Holtsclaw states in his affidavit that IPL's FERC Form 715: Annual Transmission Planning and Evaluation information, included in IPL's IRP as Attachment I, is considered by FERC to be CEII following the events of September 11, 2001, and 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.

IPL's Petition also states that certain information filed in this Cause contains trade secret information. Mr. Schkabla states in his affidavit that the specific information entitled to trade secret protection includes (1) Figure 4.3: Resources for Capacity Expansion Modeling (2010\$) found on page 42 of IPL's 2011 IRP; (2) Figure 4D.5: Natural Gas Price Forecast (Constant 2011\$/MMBtu) found on page 129 of IPL 2011 IRP; (3) Figure 4D.6: Natural Gas Forecast (Constant 2011\$/MMBtu) found on page 129 of IPL 2011 IRP; (4) Figure 4D.7: U.S. Basin FOB Mine Price Forecast (2011\$) found on page 132 of IPL 2011 IRP; (5) Figure 4D.8: IPL Average Annual Fuel Forecast Per Generating Unit found on page 133 of IPL 2011 IRP; (6) Figure 4D.9: Nuclear Fuel Cost found on page 134 of IPL 2011 IRP; (7) the Capital Costs found on pages 72, 75, 76, 77, 78, and 79 of IPL 2011 IRP; and (8) the document titled "Ventyx's - Indianapolis Power & Light Integrated Resource Plan Modeling Summary," dated August 31, 2011 which is included in Section 7 of the 2011 IRP as Attachment VII. Mr. Schkabla states that the information contained in these specified portions of its 2011 IRP constitutes trade secret information because it includes IPL's assumptions as to the costs of building new generation. Mr. Schkabla 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. Finally, Mr. Schkabla states that 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 “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. Therefore, based upon the evidence submitted in this Cause, the Commission finds that portions of Petitioner’s FERC Form 715, included in IPL’s IRP as Attachment I that are consistent with the revised version of the IRP filed on December 27, 2011, qualifies for exemption from public disclosure pursuant to 170 IAC 4-7-3(f) and Ind. Code § 5-14-3-4(a)(3), and is therefore exempt from the public access requirements of Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

Documents containing trade secrets 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) Figure 4.3: Resources for Capacity Expansion Modeling (2010\$) found on page 42 of IPL's 2011 IRP; (2) Figure 4D.5: Natural Gas Price Forecast (Constant 2011\$/MMBtu) found on page 129 of IPL 2011 IRP; (3) Figure 4D.6: Natural Gas Forecast (Constant 2011\$/MMBtu) found on page 129 of IPL 2011 IRP; (4) Figure 4D.7: U.S. Basin FOB Mine Price Forecast (2011\$) found on page 132 of IPL 2011 IRP; (5) Figure 4D.8: IPL Average Annual Fuel Forecast Per Generating Unit found on page 133 of IPL 2011 IRP; (6) Figure 4D.9: Nuclear Fuel Cost found on page 134 of IPL 2011 IRP; (7) the Capital Costs found on pages 72, 75, 76, 77, 78, and 79 of IPL 2011 IRP; and (8) the document titled "Ventyx's - Indianapolis Power & Light Integrated Resource Plan Modeling Summary," dated August 31, 2011 which is included in Section 7 of the 2011 IRP as Attachment VII. 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.

Therefore, based upon the evidence submitted in this Cause, the Commission finds that this information 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. 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.

c. 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 revised Integrated Resource Plan which are specifically described in Finding Paragraph No. 4 of this Order are entitled to confidential treatment and 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 of this Order.

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: JAN 18 2012

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



**Brenda Howe,
Secretary to the Commission**