

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN)
INDIANA PUBLIC SERVICE COMPANY LLC)
FOR APPROVAL OF (1) A FUEL COST)
ADJUSTMENT TO BE APPLICABLE DURING)
THE BILLING CYCLES OF AUGUST,)
SEPTEMBER, AND OCTOBER 2024, PURSUANT)
TO IND. CODE § 8-1-2-42 AND CAUSE NOS.)
45159 AND 45772, AND (2) RATEMAKING) CAUSE NO. 38706 FAC 143
TREATMENT FOR THE COSTS INCURRED)
UNDER WHOLESALE PURCHASE AND SALE)
AGREEMENTS FOR WIND AND SOLAR)
ENERGY APPROVED IN CAUSE NOS. 43393,)
45194, 45195, 45310, 45462, 45524, 45541, AND)
45936, PURSUANT TO IND. CODE § 8-1-2-42(d).)

NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC'S MOTION FOR
PROTECTION AND NONDISCLOSURE OF
CONFIDENTIAL AND PROPRIETARY INFORMATION

Petitioner Northern Indiana Public Service Company LLC ("NIPSCO"), pursuant to 170 IAC 1-1.1-4, Ind. Code § 5-14-3-4 and Ind. Code § 8-1-2-29, respectfully requests that the Indiana Utility Regulatory Commission ("Commission") enter a Protective Order prohibiting dissemination outside of the Commission and adopting safeguards for the handling of certain documents to be submitted under seal to the Commission by NIPSCO that contain trade secrets and which NIPSCO deems confidential, proprietary, and competitively sensitive (the "Confidential Information"). In support of this motion, NIPSCO represents the following:

1. The Confidential Information includes (a) a compilation of several root cause analysis reports containing information about the dates of, causes of, and solutions for outages at certain of NIPSCO's generation facilities to be included in Confidential Attachment 4-B to the Verified Direct Testimony of David Saffran, and (b) pricing and commercial terms of one of NIPSCO's coal contracts to be included in Confidential Attachment 3-A to the Verified Direct Testimony of John A. Wagner. The Confidential Information may also be used as part of rebuttal testimony, at the Evidentiary Hearing, and/or discussed in the post-hearing pleadings to be made in this Cause. The Confidential Information contains trade secrets and is therefore confidential information within the meaning of Ind. Code § 5-14-3-4(a) and should be exempt from disclosure under Ind. Code § 8-1-2-29. A Commission protective order will allow NIPSCO to safely submit the Confidential Information to the Commission.

2. As affirmed by the Affidavit of David Saffran, attached hereto as Exhibit A, the Confidential Information should be treated confidentially because (1) the Confidential Information is not available or ascertainable by third parties through normal or proper means, (2) NIPSCO has taken reasonable steps to protect the Confidential Information, including sharing such information internally on a need to know basis and only providing the Confidential Information to external stakeholders who have executed protective agreements with NIPSCO, and (3) public disclosure of the Confidential Information would cause substantial detriment to NIPSCO and its customers. The

Confidential Information therefore constitutes a trade secret in accordance with Ind. Code § 5-14-3-4(a) and is entitled to protection from disclosure by the Commission.

3. Public disclosure of the root cause analysis reports would be harmful to NIPSCO as it would provide third parties with insight into NIPSCO's operations regarding maintenance and would reveal information about unit condition of many of NIPSCO's generation facilities. It would also reveal the timelines associated with generation outages and repairs and, in some instances, the vendors and contractors on whom NIPSCO relies to perform such repairs. Disclosure of this information would be to the detriment of NIPSCO and its customers.

4. As affirmed by the Affidavit of David Saffran, the root cause analysis reports disclose the following types of information, which NIPSCO protects from public disclosure: (1) the specific vendors it utilizes to perform certain repair and replacement work; and (2) the timeline associated with procurement of specific components and/or parts and details about NIPSCO's approach or operational solutions for completion of tasks necessary to restore a generation unit to full operation.¹ This kind of information meets the definition of "trade secret" because it is information that (a) derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its

¹ This is distinct from the general timeline of an outage, which NIPSCO does publicly disclose.

disclosure or use, and (b) NIPSCO has taken reasonable efforts under the circumstances to maintain its secrecy, including through use of non-disclosure agreements in prior FAC proceedings.

5. As affirmed by the Affidavit of David Saffran, disclosure of the vendors NIPSCO utilizes to perform specific tasks could allow suppliers and competitors an unfair opportunity to analyze NIPSCO's operations and make pricing decisions. The root cause analysis reports also include information about NIPSCO's dispute resolution process and negotiations for contracted maintenance issues. This information would also be valuable to third parties with whom NIPSCO currently works or may work in the future for such work. With respect to the specific techniques or approaches NIPSCO uses to perform certain maintenance and repair tasks, it would similarly be valuable to third parties with whom NIPSCO does business (or may in the future).

6. As affirmed by the Affidavit of David Saffran, disclosure of the timeline for part or component procurement could provide independent power producers and other generation-owning utilities in the broader market with insight into when, how long, and under what circumstances NIPSCO generating units may not be available due to an outage. In some instances, the root cause analysis reports also indicate the timeframe for future generation outages during which additional repairs will be performed. This could be utilized by others to make decisions about whether to bid their own generation and

the price at which to bid that generation if and when NIPSCO experiences similar outages in the future. This would be to the detriment of NIPSCO's customers and the wholesale energy market more generally. NIPSCO's operational strategy when its units are in outage could also be derived from the information contained in the root cause analysis reports.

7. The Confidential Information includes pricing and other proprietary and competitively sensitive information relating to NIPSCO's coal contracts. As affirmed by the Affidavit of John Wagner, attached hereto as Exhibit B, the Confidential Information relating to NIPSCO's coal contracts should be treated confidentially because (1) the Confidential Information is not available or ascertainable by third parties through normal or proper means; (2) NIPSCO has taken reasonable steps to protect the Confidential Information, including sharing such information internally on a need to know basis and only providing the Confidential Information to external stakeholders who have executed protective agreements with NIPSCO; (3) 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; and (4) public disclosure of the Confidential Information would cause substantial detriment to NIPSCO and its customers. Specifically, the Confidential Information would be of economic value to counterparties with whom NIPSCO may be negotiating currently or in the future. Knowledge of the proprietary and competitively sensitive information

would provide counterparties with an unfair advantage in their negotiations with NIPSCO to the detriment of NIPSCO and its customers.

8. The Confidential Information is the same confidential trade secret information previously found to be exempt from public disclosure by the Commission. See, e.g., *Northern Indiana Public Service Company*, Cause No. 38706 FAC 124 (IURC 10/29/2019), p. 19, and most subsequent FAC proceedings; and *Re Duke Energy Indiana, Inc.*, Cause No. 38707-FAC 92 (IURC 6/27/2012) (coal contract pricing exempt from public disclosure); *Northern Indiana Public Service Company*, Cause No. 43969 (IURC 12/21/2011) (coal contracts exempt from public disclosure).

9. In addition, NIPSCO's request is consistent with Indiana cases in which courts have interpreted Indiana's trade secret statutes. *In Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 414-415 (S.D. Ind. 2001), the court held that a protectable trade secret includes any information or compilation which is used in a business and which gives the business an opportunity to obtain an advantage over competitors who do not have the information. The Indiana Supreme Court has also held that although a trade secret may include elements that are readily ascertainable in the public domain, the unique compilation of the information may afford a competitive advantage and constitute a protectable trade secret. *Amoco Production Co. v. Laird*, 622 N.E.2d 912, 919 (Ind. 1993). The Confidential Information discussed herein meets the statutory definition of trade

secret as that term has been interpreted in Indiana. *See Hydraulic Exchange and Repair, Inc. v. KM Specialty Pumps, Inc.*, 690 N.E.2d 782, 785-86 (Ind. Ct. App. 1998); *Bridgestone/Firestone, Inc. v. Lockhart*, 5 F. Supp. 2d. 667, 681 (S.D. Ind. 1997).

10. Based upon the above description of material for which NIPSCO seeks protection and the attached affidavit, NIPSCO requests the Commission enter a preliminary determination that the Confidential Information appears to be confidential and trade secret within the meaning of Ind. Code § 5-14-3-4(a) as defined by Ind. Code § 24-2-3-2, for the limited purpose of allowing NIPSCO to safely submit or otherwise make available the Confidential Information under seal for an *in camera* inspection by the presiding Administrative Law Judge and Commission for a final determination of the appropriateness of NIPSCO's request for protection. Subject to Paragraph 12 below, once a preliminary determination is made that the Confidential Information is exempt from public disclosure, NIPSCO will make available or submit a single copy of the material for which protection is sought to the Commission either via the Electronic Filing Database or in hard copy on light green paper and in a sealed envelope, designating that the contents are confidential and proprietary material submitted by NIPSCO, under a preliminary order of confidentiality, and which is marked to the attention of the presiding Administrative Law Judge. NIPSCO will notify the Commission when, and if, the information is no longer confidential.

11. Upon a preliminary determination that the Confidential Information is confidential and/or trade secret, NIPSCO proposes that the Commission issue a Docket Entry adopting the following procedures to assure the protection of the information provided by NIPSCO which NIPSCO believes to be consistent with procedures followed by the Commission in similar situations:

a. That the Confidential Information will be made available solely for inspection by certain designated employees of the Commission and its Staff for the purposes of their analysis.

b. That the Confidential Information will be specifically filed, secured, and under the control of a responsible person.

c. That any Commission employee or Staff member receiving access to such Confidential Information be under an obligation to secure and maintain exclusive control of documents, to refrain from directly or indirectly allowing public disclosure of such Confidential Information and to refrain and prohibit the copying and reproduction of the Confidential Information.

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

e. That no Commission employee or Staff member should have access to the Confidential Information without first acknowledging in writing prior to access, the existence of an order providing for confidential treatment, the need to treat the Confidential Information in accordance with the provisions thereof, and the sanctions which may be imposed for unauthorized disclosure of such Confidential Information.

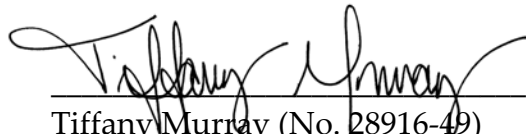
12. NIPSCO will provide the Confidential Information to the Office of Utility Consumer Counselor ("OUCC") pursuant to a standard non-disclosure agreement between NIPSCO and the OUCC. Should a subsequently filed petition to intervene be granted, NIPSCO will provide the Confidential Information to any intervenor pursuant to an appropriate confidentiality agreement that is acceptable to NIPSCO. If necessary, NIPSCO will request that the Commission enter a protective order safeguarding the dissemination of the Confidential Information.

13. Once a preliminary determination of confidentiality has been made, NIPSCO will provide the Confidential Information subject to and contingent upon the right to retrieve the Confidential Information before it can be disclosed to any members of the public should the Commission upon a final determination find that the material submitted under seal should not be protected.

WHEREFORE, NIPSCO respectfully request that the Commission make and enter appropriate orders in this Cause:

- (i) Finding the Confidential Information to be preliminarily confidential for the limited purpose of allowing NIPSCO to safely file the Confidential Information with the Commission under seal;
- (ii) Thereafter make a final determination that the Confidential Information is exempt from public disclosure under Ind. Code § 8-1-2-29 and § 5-14-3-4;
- (iii) Adopting the procedures set forth herein to ensure that the Confidential Information is appropriately secured and made available only to the appropriate Commission employees of the Commission's Staff on a need-to-know basis, and who are under an obligation not to disclose such confidential information to any third party; and
- (iv) Granting to NIPSCO such other relief as may be appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tiffany Murray", is written over a horizontal line.

Tiffany Murray (No. 28916-49)
NiSource Corporate Services - Legal
150 West Market Street, Suite 600
Indianapolis, Indiana 46204
Phone: (317) 649-6424
Fax: (317) 684-4918
Email: tiffanymurray@nisource.com

Attorney for Petitioner
Northern Indiana Public Service Company LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by email transmission upon the following:

Lorraine Hitz
Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
lhitz@oucc.in.gov
infomgt@oucc.in.gov

A courtesy copy has also been provided by email transmission upon the following:

Gregory T. Guerrettaz
Financial Solutions Group, Inc.
2680 East main Street, Suite 223
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fsg@fsgcorp.com
kristen@fsgcorp.com

Tabitha L. Balzer
Aaron A. Schmoll
Lewis & Kappes, P.C.
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tbalzer@lewis-kappes.com
aschmoll@lewis-kappes.com

Dated this 17th day of May, 2024.



Tiffany Murray

STATE OF INDIANA)
)
COUNTY OF PORTER)

AFFIDAVIT OF DAVID SAFFRAN

Affiant, upon being first duly sworn, subject to the penalties for perjury, states that:

1. He is the Generation Business Systems Administrator in the Operations Management Reporting division of Northern Indiana Public Service Company LLC ("NIPSCO").
2. He is responsible for managing NIPSCO's various business systems and programs, recording data concerning Generation's operational and maintenance performance, and analyzing the results to identify adverse trends and recommend corrective actions to improve performance. In addition, he is responsible for submitting various NIPSCO Generation reports and filings to local, state, and federal agencies such as the Indiana Utility Regulatory Commission ("Commission"), Midcontinent Independent System Operator, Inc., North American Electric Reliability Council, Federal Energy Regulatory Commission ("FERC"), and Indiana Department of Natural Resources ("DNR").
3. He is supplying this Affidavit to support Petitioner's Motion for Protection and Nondisclosure of Confidential and Proprietary Information for determination that

certain information that contains trade secrets is confidential and exempt from public disclosure, pursuant to 170 IAC 1-1.1-4 and Ind. Code § 5-14-3 ("Confidential Information").

4. The Confidential Information specifically includes a compilation of several root cause analysis reports, which contain information about the dates of, causes of, and solutions for outages at certain of NIPSCO's generation facilities. The Confidential Information contains trade secrets and is therefore confidential within the meaning of Ind. Code § 5-14-3-4(a) and should be exempt from disclosure under Ind. Code § 8-1-2-29.

5. The Confidential Information is not available or ascertainable by third parties through normal or proper means. NIPSCO has taken reasonable steps to protect the Confidential Information, including sharing such information internally on a need to know basis and only providing the Confidential Information to external stakeholders who have executed protective agreements with NIPSCO.

6. The Confidential Information provides details of NIPSCO's operations regarding maintenance and would reveal information about unit condition of many of NIPSCO's generation facilities. It would also reveal the timelines associated with generation outages and repairs and, in some instances, the vendors and contractors on whom NIPSCO relies to perform such repairs. Further, public disclosure of the

Confidential Information would cause substantial detriment to NIPSCO and its customers.

7. The root cause analysis reports disclose the following types of information, which NIPSCO protects from public disclosure: (1) the specific vendors it utilizes to perform certain repair and replacement work; and (2) the timeline associated with procurement of specific components and/or parts and details about NIPSCO's approach or operational solutions for completion of tasks necessary to restore a generation unit to full operation.¹ This kind of information meets the definition of "trade secret" because it is information that (a) derives independent economic value 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 (b) NIPSCO has taken reasonable efforts under the circumstances to maintain its secrecy, including through use of non-disclosure agreements in prior FAC proceedings.

8. Disclosure of the vendors NIPSCO utilizes to perform specific tasks could allow suppliers and competitors an unfair opportunity to analyze NIPSCO's operations and make pricing decisions. The root cause analysis reports also include information about NIPSCO's dispute resolution process and negotiations for contracted maintenance issues. This information would also be valuable to third parties with whom NIPSCO

¹ This is distinct from the general timeline of an outage, which NIPSCO does publicly disclose.

currently works or may work in the future for such work. With respect to the specific techniques or approaches NIPSCO uses to perform certain maintenance and repair tasks, it would similarly be valuable to third parties with whom NIPSCO does business (or may in the future).

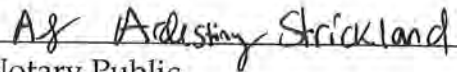
9. Disclosure of the timeline for part or component procurement could provide independent power producers and other generation-owning utilities in the broader market with insight into when, how long, and under what circumstances NIPSCO generating units may not be available due to an outage. In some instances, the root cause analysis reports also indicate the timeframe for future generation outages during which additional repairs will be performed. This could be utilized by others to make decisions about whether to bid their own generation and the price at which to bid that generation if and when NIPSCO experiences similar outages in the future. This would be to the detriment of NIPSCO's customers and the wholesale energy market more generally. NIPSCO's operational strategy when its units are in outage could also be derived from the information contained in the root cause analysis reports.

10. For all the foregoing reasons, the Confidential Information should be protected from public disclosure.

11. Further, Affiant sayeth not.

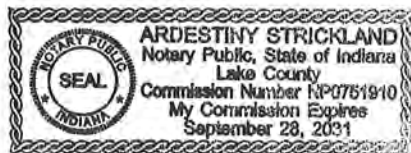

David Saffran

The preceding Affidavit of David Saffran was subscribed and sworn before me
this 15th day of May, 2024.


Notary Public

My Commission Expires: 09-28-2031

My County of Residence: Lake



STATE OF INDIANA)
)
COUNTY OF LAKE)

AFFIDAVIT OF JOHN WAGNER

Affiant, upon being first duly sworn, subject to the penalties for perjury, states that:

1. He is the Manager of Fuel Supply of Northern Indiana Public Service Company LLC (“NIPSCO”).

2. He is responsible for supervising the purchase and transport of coal to be used for generating electric energy, including negotiation and administration of the fuel, fuel transportation contract, railcar leases, and railcar maintenance service agreements.

3. He is supplying this Affidavit to support Petitioner’s Motion for Protection and Nondisclosure of Confidential and Proprietary Information for determination that certain information that contains trade secrets is confidential and exempt from public disclosure, pursuant to 170 IAC 1-1.1-4 and Ind. Code § 5-14-3 (“Confidential Information”).

4. The Confidential Information specifically includes Confidential Attachment 3-A attached to the Verified Direct Testimony of John Wagner (Petitioner’s Exhibit No. 3). As discussed below and detailed in Petitioner’s Motion for Protection and Nondisclosure of Confidential and Proprietary Information, the Confidential Information

consists of pricing and other proprietary and competitively sensitive information relating to NIPSCO's coal supply arrangements. The Confidential Information contains trade secrets and is therefore confidential within the meaning of Ind. Code § 5-14-3-4(a) and should be exempt from disclosure under Ind. Code § 8-1-2-29.

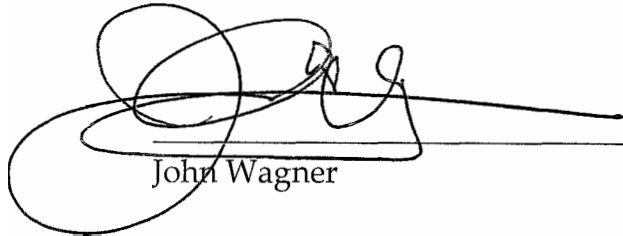
5. The Confidential Information is not available or ascertainable by third parties through normal or proper means. NIPSCO has taken reasonable steps to protect the Confidential Information, including sharing such information internally on a need to know basis and only providing the Confidential Information to external stakeholders who have executed protective agreements with NIPSCO.

6. 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. Further, public disclosure of the Confidential Information would cause substantial detriment to NIPSCO and its customers. Specifically, the Confidential Information would be of economic value to counterparties with whom NIPSCO may be negotiating currently or in the future, as well as MISO market participants generally. Knowledge of the competitively sensitive information would provide counterparties and market participants with an unfair advantage in their negotiations with NIPSCO to the detriment of NIPSCO and its customers.

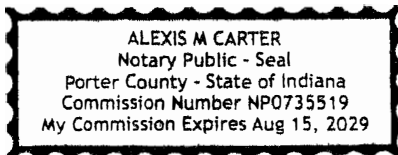
Exhibit B

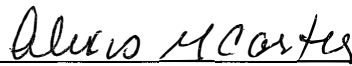
7. For all the foregoing reasons, the Confidential Information should be protected from public disclosure.

8. Further, Affiant sayeth not.


John Wagner

The preceding Affidavit of John Wagner was subscribed and sworn before me
this 15 day of May, 2024.




Notary Public

My Commission Expires: August 15, 2029

My County of Residence: PORTER