

STATE OF INDIANA

BEFORE THE INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE SUBMISSION OF AN)
INTEGRATED RESOURCE PLAN BY)
INDIANAPOLIS POWER & LIGHT COMPANY) CAUSE NO. 44873
AND REQUEST FOR COMMISSION)
DETERMINATION THAT DESIGNATED)
CONFIDENTIAL INFORMATION BE EXEMPT)
FROM DISCLOSURE)

PETITION

Indianapolis Power & Light Company (“IPL”), pursuant to 170 IAC 1-1.1-4, Ind. Code ch. 5-14-3, and Ind. Code § 8-1-2-29, respectfully petitions the Indiana Utility Regulatory Commission (“Commission”) to find that certain information contained in IPL’s biennial Integrated Resource Plan (“IRP”) submitted on November 1, 2016, is confidential, proprietary, competitively sensitive, and/or trade secret, and therefore exempt from disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. In support of this petition, IPL represents the following:

1. Petitioner’s Corporate Status. IPL is an Indiana corporation organized and existing under the laws of the State of Indiana, with its principal office at One Monument Circle, Indianapolis, Indiana. It is an Indiana public utility as defined in Ind. Code § 8-1-2-1(a), furnishing electric services to the public, and is subject to regulation by the Commission under the laws of the State of Indiana.

2. IPL owns, operates, manages and controls electric generating, transmission and distribution plant, property and equipment and related facilities, which are used and useful for the convenience of the public in the production, transmission, delivery and furnishing of such utility service.

3. Petitioner's Service Territory. IPL renders retail electric utility service to approximately 480,000 retail customers located principally in and near the City of Indianapolis, Indiana, and in portions of the following Indiana counties: Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Owen, Putnam and Shelby Counties.

4. Petitioner's "Public Utility" Status. As a "public utility" within the meaning of that term as defined in Ind. Code § 8-1-2-1, IPL is subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana.

5. IRP. The IRP submitted by IPL is an assessment of a variety of supply- and demand-side resources to cost-effectively meet the electricity service needs of IPL's customers. IPL is submitting a redacted version of its 2016 IRP concurrently with this Petition. IPL proposes to submit to the Commission under seal an unredacted copy of the 2016 IRP upon the Commission making a preliminary determination that they are confidential and not subject to public disclosure and access.

6. Governing Statutes. The statutes and regulations IPL considers applicable to this petition include: 170 IAC 4-7 and 1-1.1-4, and Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-13.

7. Confidential Information. IPL considers some of the information required by the Commission's IRP Rules to be proprietary, confidential, competitively-sensitive and trade secrets as that term is used in Ind. Code ch. 5-14-3 (the "Confidential Information"). The redacted version of IPL's 2016 IRP does not include the Confidential Information. The affidavit of Joan Soller, Director of Resource Planning, attached hereto as Exhibit A, describes the information for which IPL requests confidential treatment and the reasons therefore.

8. IPL has taken steps to limit access to the proprietary and confidential information contained in the IRP to those employees who need to know the information. The IPL files containing the proprietary and confidential information are maintained separately from their general records and access to those files is restricted.

9. The Confidential Information is similar to confidential, proprietary, competitively-sensitive and/or trade secret information previously found to be exempt from public disclosure by the Commission. *See, e.g., Duke Energy Indiana, Inc.*, Cause No. 44698 (IURC 2/24/2016) (economic forecasts, cost estimates, spreadsheet programs, performance data, capital and operating costs contained in integrated resource plan exempt from public disclosure), *Re Indianapolis Power & Light Company*, Cause No. 44540 (IURC 7/29/2015) (forecasts of gas, coal, capacity, power prices and spreads and coal generation value, CO₂ price forecasts from third-party vendor exempt from public disclosure); *Re Indianapolis Power & Light Company*, Cause No. 44339 (IURC 5/14/2014) (CPCN modeling assumptions, engineering, procurement and construction and capital cost estimates, contingency factors, Monte Carlo risk analysis and simulation inputs and outputs, price spread information and capacity and power forecast information exempt from public disclosure); *Re Indianapolis Power & Light Company*, Cause No. 44242 (IURC 8/14/2013) (cost estimates, forecasted capital expenditures, carbon price assumptions, price spread information and capacity and power forecast information exempt from public disclosure); *Re Duke Energy Indiana, Inc.*, Cause No. 44217 (IURC 12/11/2012) (IRP modeling inputs, inputs and outputs to screening model, environmental compliance equipment and reagent testing data and internal capital and O&M estimates preliminary exempt from public disclosure); *Re Northern Indiana Public Service Company*, Cause No. 44012 (IURC 9/5/2012)

(confidential commodity price forecasts obtained from third parties exempt from public disclosure).

10. Furthermore, courts interpreting Indiana's trade secret statute have consistently applied the statutory definition of trade secret to the type of information IPL seeks to protect. *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). In *Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 414-415 (S.D. Ind. 2001), the court recognized that a protectable trade secret includes any information or compilation which is used in one's 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 Commission has previously recognized that trade secrets must be protected when competitors can use the trade secret information to win an advantage in competitive bidding. *Re Investigation into the Propriety of Declining to Exercise Its Jurisdiction*, Cause No. 38561 (IURC 1/18/1989). Therefore, IPL's request is consistent with Commission precedent, otherwise complies with Indiana law and should be granted.

11. IPL is providing the Office of the Utility Consumer Counselor ("OUCC") with a non-redacted copy of IPL's IRP pursuant to the Standard Form Nondisclosure Agreement between IPL and the OUCC.

12. IPL requests that the Commission protect the confidential and proprietary information from disclosure and limit access to those Commission employees with a need to review the confidential and proprietary information. Further, IPL requests that the Commission not disclose the information to persons outside the Commission unless the person has entered into an appropriate protective agreement with IPL.

13. Attorneys for Petitioner. The names and addresses of IPL's duly authorized representatives, to whom all correspondence and communications concerning this petition should be sent, are as follows:

Teresa Morton Nyhart (Atty. No. 14044-49)
Jeffrey M. Peabody (Atty. No. 28000-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Peabody Phone: (317) 231-6465
Fax: (317) 231-7433
Nyhart Email: tnyhart@btlaw.com
Peabody Email: jpeabody@btlaw.com

WHEREFORE, IPL respectfully requests that the Commission find, after due notice and an opportunity to be heard is provided to interested parties, that the confidential and proprietary information contained in the non-redacted copy of IPL's 2016 IRP is confidential, proprietary, competitively sensitive, and/or trade secret, and therefore exempt from disclosure pursuant to Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3, and for all other appropriate relief.

Respectfully submitted,



Teresa Morton Nyhart (Atty. No. 14044-49)
Jeffrey M. Peabody (Atty. No. 28000-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Peabody Phone: (317) 231-6465
Fax: (317) 231-7433
Nyhart Email: tnyhart@btlaw.com
Peabody Email: jpeabody@btlaw.com

Attorneys for Indianapolis Power & Light Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two (2) copies of the foregoing Petition have been served this 1st day of November, 2016, by hand delivery upon the Office of Utility Consumer Counselor, PNC Center, Suite 1500 S., 115 W. Washington Street, Suite 1500 South, Indianapolis, Indiana 46204.



Jeffrey M. Peabody

Exhibit A

AFFIDAVIT OF JOAN M. SOLLER

Joan M. Soller, being first duly sworn upon her oath says:

1. I am the Director of Resource Planning of Indianapolis Power & Light Company (“IPL”), and at all times relevant to this matter, have had responsibilities for the development of the 2016 Integrated Resource Plan (“IRP”) submitted by IPL on November 1, 2016, pursuant to the rules and regulations of the Indiana Utility Regulatory Commission (“Commission”). I am familiar with the content of IPL’s IRP and the need to protect certain confidential and proprietary information contained in IPL’s IRP from disclosure. I acknowledge that I am of the requisite age and capacity to testify to the matters stated and that I make this affidavit based upon direct personal knowledge.

2. I have personal knowledge of the confidential, proprietary, competitively-sensitive and trade secret nature of the Confidential Information addressed herein and in the accompanying Motion through direct contact with this information and through my investigation with other IPL employees who work directly with the Confidential Information. I have personal knowledge of efforts taken by IPL to maintain the secrecy of the Confidential Information through direct contact with these efforts and through my investigation of these efforts with other employees who work directly with these procedures.

**Description of the Confidential Information for
Which Protection is Sought**

3. IPL is requesting that certain information contained in IPL’s IRP be exempted from public disclosure as confidential, proprietary, competitively-sensitive and trade secret information (the “Confidential Information”). More specifically, the Confidential Information which is the subject of this affidavit includes the following:

- (i) Confidential Attachment 2.2 (ABB Modeling Summary – Confidential Version),
- (ii) Confidential Attachment 4.4 (EIA End Use Data),
- (iii) Confidential Attachment 4.8 (Energy–Forecast Drivers),
- (iv) Confidential Attachment 5.1 (Supply Side Resource Option Cost Chart),
- (v) Confidential Attachment 5.2 (Modeling Parameters – Generic CHP, May 20 2016),
- (vi) Confidential Attachment 5.3 (AES Proprietary Battery Cost Information),
- (vii) Confidential Attachment 5.9 (Loadmap DSM Measure Detail),
- (viii) Confidential Attachment 5.10 (Avoided Cost Calculation),
- (ix) Confidential Attachment 7.1 (Confidential Figures in Section 7), and
- (x) Confidential Attachment 8.3 (ABB Results).

**The Information Contained in the Confidential Information
Derives Independent Economic Value By
Reason of the Fact that it is Not Publicly Available**

4. IPL’s IRP is an assessment of a variety of supply- and demand-side resources to cost-effectively meet the electricity needs of IPL’s customers. IPL has historically met its reserve-margin capacity needs through a combination of Power Purchase Agreements (“PPAs”) from the power market and through the acquisition of generating assets. In making the decision to “buy or build,” IPL evaluates the likely life-cycle costs of both options. One of the most significant assumptions that IPL must make in its buy-or-build analysis is the cost to build new generating capacity. Information on the cost of building new capacity is difficult to acquire and the information must be evaluated in light of site-specific conditions such as the availability of fuel transportation, difficulty of securing permits, etc. There is no readily available and transparent market for this information.

IPL has spent considerable time and money in developing its assumptions for the cost of building new generation, and believes that this information should be kept proprietary and confidential. In addition, general trends and pricing information has been secured by IPL under Requests for Proposals and other solicitations where there are non-disclosure provisions in place.

IPL is particularly concerned that revealing the Confidential Information would be of benefit to potential bidders and that those bids would be less competitive if IPL disclosed its assumptions about the cost of the new-build option. By making public its assumptions on new-build costs, IPL would reveal to suppliers one of the most important aspects of pricing. A potential supplier who had a lower-cost to build asset (or an existing lower-cost asset already in place), would have every incentive to value such an asset in the quote at the higher IPL assumption rather than at the lower, competitive number. Thus IPL and its customers would be deprived of the lower-cost alternative.

5. The Confidential Information also includes confidential, proprietary, competitively-sensitive and trade secret information obtained by IPL pursuant to subscriptions and agreements with third parties, including ABB, Moody's Analytics and Itron. The Confidential Information is not readily available in the public domain and IPL takes steps to protect this information from public disclosure. Such information is subject to agreements between IPL and these third parties that prohibit IPL from copying, publishing or reproducing the information or using the information in reports without their consent. IPL has obtained consent to use some of this confidential third-party information in IPL's filing in this case and to provide such information to other parties subject to the protection of the information from public disclosure. The Confidential Information contains and constitutes the proprietary and trade secret work product of these third parties, and is not made publicly available.

6. With respect to the cost information contained in Confidential Attachment 5.3, this data reflects confidential, proprietary and competitively-sensitive construction cost information developed by AES. These internal estimates and data provide actual or potential independent economic value for IPL and its customers and should be treated as confidential. For example, such information may be used to determine IPL's current and projected resource costs and information about the operation of IPL's facilities. The disclosure of this information would undermine the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what the Company's expectations are with respect to its resource needs and costs. Thus, the suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide resources to maximize their prices to the disadvantage of IPL and its customers. The Confidential Information, if disclosed to vendors, suppliers, competitors of IPL, or otherwise made publicly available, would have a substantially detrimental effect on IPL and its stakeholders.

**The Information is Not Generally Known, Readily Ascertainable
by Proper Means by Other Persons Who Can
Obtain Economic Value from its Disclosure or Use**

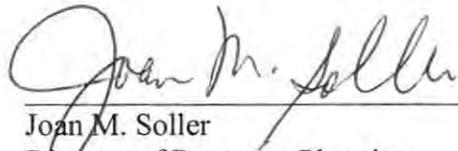
7. The Confidential Information is not available or ascertainable by other parties through normal or proper means. No reasonable amount of independent research could yield this information to other parties.

**The Information is the Subject of Efforts Reasonable
Under the Circumstances to Maintain Its Secrecy**

8. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. IPL restricts the access of information to only those employees, officers and representatives of IPL who have a need to know about such information due to their job and management responsibilities. IPL limits public access to

buildings housing the Confidential Information by use of security guards. IPL's files containing the Confidential Information are maintained separately from IPL's general records and access to those files is restricted. Within IPL, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of IPL who have a need to know about such information due to their job and management responsibilities. Outside IPL, this information is only provided in accordance with the subscription agreements to certain persons who have a legitimate need to review the information to participate in this Cause and who sign a confidentiality agreement.

Further the Affiant sayeth not.

A handwritten signature in cursive script, reading "Joan M. Soller", written in black ink. The signature is positioned above a horizontal line.

Joan M. Soller
Director of Resource Planning
Indianapolis Power & Light Company

STATE OF INDIANA)
)
COUNTY OF MARION)

SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Joan M. Soller, and she being first duly sworn by me upon her oath, says that the facts alleged in the foregoing Affidavit are true to the best of her information and belief.

Subscribed and sworn to before me this 1st day of November, 2016.



Karla J. Ives
Karla J. Ives
Notary Public State of Indiana

Marion County

My Commission Exp. March 23, 2024