

**ORIGINAL**

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**VERIFIED PETITION OF SOUTHERN INDIANA )  
 GAS AND ELECTRIC COMPANY D/B/A )  
 CENTERPOINT ENERGY INDIANA SOUTH UNDER ) CAUSE NO. 45897  
 170 IAC 4-7-2.1 AND 1-1.1-4 FOR DETERMINATIONS )  
 THAT CERTAIN INFORMATION CONTAINED IN ) APPROVED: AUG 30 2023  
 AND RELATED TO ITS 2023 INTEGRATED )  
 RESOURCE PLAN IS CONFIDENTIAL AND )  
 EXEMPT FROM PUBLIC DISCLOSURE )**

**ORDER OF THE COMMISSION**

**Presiding Officers:  
 Sarah E. Freeman, Commissioner  
 Kristin E. Kresge, Administrative Law Judge**

On May 26, 2023, Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (“CEI South” or “Petitioner”) filed its Verified Petition (“Petition”) in this Cause. Included in its Petition is a request that certain information (“Confidential Information”) contained in CEI South’s 2023 Integrated Resource Plan (“IRP”) be exempt from disclosure because the information contains trade secrets as that term is defined under Ind. Code § 24-2-3-2 and/or contains critical energy infrastructure information (“CEII”) which is protected from disclosure under federal law. Information containing trade secrets and CEII is excepted from public disclosure under Ind. Code § 5-14-3-4. In support of its request, CEI South includes the Affidavit of Matthew A. Rice (“Affidavit”). The Affidavit has been placed in the Commission’s official file in this matter and is incorporated by reference.

On June 15, 2023, the Presiding Officers issued a Docket Entry, which found that the Petition and accompanying Affidavit provided sufficient basis for a determination that the Confidential Information should be held as confidential by the Commission on a preliminary basis. In the Docket Entry, the Presiding Officers directed CEI South to file the Confidential Information with the Commission in accordance with General Administrative Order 2016-2.

On June 26, 2023, CEI South submitted to the Commission under seal those parts of the IRP for which it sought confidential treatment. The Commission, pending a final determination as to whether the information is entitled to confidential treatment, has treated the claimed Confidential Information as confidential in accordance with Ind. Code §§ 8-1-2-29 and 5-14-3-4.

On August 7, 2023, the Presiding Officers issued a Docket Entry, requesting CEI South respond as to whether its 2022-2023 CNP IRP Final Non-Technical Summary and Appendix D – Proposal Data were public documents or contained confidential information that should be redacted from Petitioner’s IRP.

On August 10, 2023, CEI South responded to the Docket Entry and stated that its 2022-2023 CNP IRP Final Non-Technical Summary and Appendix D – Proposed Data were public documents.

Based upon the Petition, the affidavit, a review of the information filed under seal, and 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. CEI South is a public utility as defined by Ind. Code §§ 8-1-2-1 and 8-1-8.5-1. Under Ind. Code § 8-1-2-29 and 170 IAC 4-7-2.1, the Commission has jurisdiction to determine the confidentiality of information to be submitted by CEI South with its IRP. Therefore, the Commission has jurisdiction over CEI South and the subject matter of this Cause.

2. **Petitioner's Characteristics.** CEI South is a corporation organized and existing under the laws of the State of Indiana, with its principal offices at 211 NW Riverside Drive, Evansville, Indiana. CEI South is engaged in rendering electric service in Indiana and owns and operates plant, equipment, and related facilities in Indiana that are in service and used and useful in generation, transmission, distribution and furnishing of such service to the public.

3. **Relief Requested.** In its Petition, CEI South requests that the Commission determine that designated portions of its IRP 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.** CEI South asserts that certain information in its IRP is unavailable or not ascertainable through normal or proper means and if made available, CEI South's suppliers and competitors may use such information to gain a competitive advantage over CEI South and its customers. Further, CEI South indicates that it takes reasonable efforts to maintain the secrecy of the Confidential Information, providing access only to those employees, officers, and AES Indiana representatives who need to know about the information.

CEI South also states that the Confidential Information is similar to what the Commission has previously found to be confidential and exempt from public disclosure in several prior Causes. The information CEI South seeks to protect is described in detail in the Petition and includes the following:

- Proprietary carbon dioxide price forecasts purchased under license;
- Customer-specific load information;
- Capital and operation and maintenance expense estimates included in various studies and models performed by 1898 & Co.; and
- Protected critical energy infrastructure information.

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") in 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. Ind. Code § 5-14-3-1 explains APRA's underlying principles:

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 the 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 is to provide the information.

While APRA provides mandatory and discretionary exemptions from public disclosure for certain categories of information, *see* Ind. Code § 5-14-3-4, the Court of Appeals has stated that “[I]b liberal construction of [APRA] requires narrow construction of its exceptions.” *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995). Consequently, we must balance the purpose of APRA against the protections provided to confidential information.

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. Thus, under Indiana law, a 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 & Repair, Inc. v. KM Specialty Pumps, Inc.*, 690 N.E.2d 782, 785-86 (Ind. Ct. App. 1998).

After initial review of the documents, CEI South’s 2022-2023 CNP IRP Final Non-Technical Summary and Appendix D – Proposal data were filed as public documents and also included in the submission of Confidential Information. Petitioner has clarified that these documents do not contain confidential information. For this reason, CEI South’s 2022-2023 CNP IRP Final Non-Technical Summary and Appendix D – Proposal are public documents and will not be treated as confidential.

The rules pertaining to IRP filing requirements authorize a utility to request confidential treatment of certain information submitted as part of the IRP process. 170 IAC 4-7-2.1. A review of the documents withheld or redacted by CEI South and then submitted under seal (the information identified in the Petition) shows that those documents, except for the 2022-2023 CNP IRP Final Non-Technical Summary and Appendix D – Proposal Data, contain confidential trade secret information. The evidence shows the information has independent economic value from not being generally known or readily ascertainable by proper means, and CEI South takes reasonable steps to maintain the secrecy of the information. Disclosure of the trade secret information could harm CEI South, its customers, or its third-party sources. Therefore, the Commission finds that this information is entitled to confidential treatment, qualifies for an exemption from public disclosure under 170 IAC 4-7-2.1

and Ind. Code § 5-14-3-4, and is exempt from the public access requirements of Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

**6. Method of Protection.** 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, therefore, shall be implemented consistent with Ind. Code ch. 5-14-3:

a. The Confidential Information shall 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. The information that is submitted to the Commission shall be specifically secured and under the control of a responsible person;

c. Any Commission member or employee who receives access to the Confidential Information shall 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; and

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

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

1. Those portions of CEI South's Integrated Resource Plan submitted under seal, which are described in Finding Paragraph No. 4 of this Order and found to be entitled to confidential treatment in Finding Paragraph No. 5, 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 Confidential Information.

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

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: AUG 30 2023**

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

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**Dana Kosco  
Secretary of the Commission**