

BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF LNG INDY, LLC FOR A FINDING)
THAT CERTAIN INFORMATION IN ITS ANNUAL)
REPORT CONSTITUTES CONFIDENTIAL,)
PROPRIETARY, COMPETITIVELY SENSITIVE)
AND/OR TRADE SECRET INFORMATION AND) CAUSE NO. 44935
SHOULD BE PROTECTED FROM PUBLIC)
DISCLOSURE PURSUANT TO 170 IAC 1-1.1-4, IND.)
CODE § 8-1-2-29 AND IND. CODE § 5-14-3-4)

PETITION FOR FINDING OF CONFIDENTIALITY

LNG Indy LLC d/b/a Kinetrex Energy (“Petitioner” or “Kinetrex”), pursuant to 170 IAC 1-1.1-4, respectfully petitions the Indiana Utility Regulatory Commission (“Commission”) for an Order determining that certain designated confidential information contained in its Annual Report for the year ended December 31, 2016 (“Annual Report”) is exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code § 5-14-3. In support thereof, Kinetrex states as follows:

1. Kinetrex is a limited liability company organized and existing under the laws of the State of Indiana with its principal office at 129 East Market Street, Suite 100, Indianapolis, Indiana 46204. Kinetrex is engaged in the manufacturing and selling of liquefied natural gas, and also is engaged in the natural gas marketing and trading business.

2. The statutes and regulations Kinetrex considers applicable to this matter include Ind. Code §§ 8-1-2-29 and 5-14-3-4 and 170 IAC 1-1.1-4.

3. The names and addresses of Kinetrex’s attorneys in this matter, who are duly authorized to accept service of papers on behalf of Petitioner, are:

Steven W. Krohne
Mark R. Alson
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282-0200
Krohne Telephone: (317) 236-2294
Krohne Facsimile: (317) 592-4212
Alson Telephone: (317) 236-2263
Alson Facsimile: (317) 592-4698
Email: Steven.Krohne@icemiller.com
Email: Mark.Alson@icemiller.com

4. Pursuant to the Commission's Order in Cause No. 44277 (the "Order"), Kinetrex was determined to be a "public utility" within the meaning of Ind. Code § 8-1-2-1 with respect to its sales of liquefied natural gas, as well as an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2. Also, in the Order, the Commission declined to exercise its full jurisdiction over Kinetrex pursuant to Ind. Code § 8-1-2.5-5. The Commission found that "the evidence reflects that competitive forces make full Commission regulation of [Kinetrex], including the requirements of Ind. Code § 8-1-2-87.5, unnecessary." The Commission, however, found Kinetrex "shall file an Annual Report under Ind. Code § 8-1-2-49, and shall pay the utility fee under Ind. Code ch. 8-1-6."

5. The Commission recognized in the Order that Kinetrex "intends to compete in a highly competitive market." As such, the Commission found that "knowledge of [Kinetrex's] cost of goods sold and operating model could be used by competitors to undercut [Kinetrex's] pricing and by customers in negotiating contracts with [Kinetrex]." Accordingly, the Commission held that information that might disclose Kinetrex's cost of goods sold and operating model to be exempt from the public access requirements of Indiana Code §§ 5-14-3-4 and 8-1-2-29.

6. Kinetrex's 2016 Annual Report contains information of the type the Commission found confidential in the Order. The Annual Report discloses the cost of natural gas and other materials purchased by Kinetrex to produce LNG for resale to customers, as well as its operating costs associated with producing LNG. Competitors of Kinetrex could use this information to determine Kinetrex's cost of goods sold in order to undercut Kinetrex's pricing or to understand Kinetrex's operating model in order to make competitive decisions to the detriment of Kinetrex. The information also could be used by Kinetrex's customers to negotiate contracts with Kinetrex to its competitive detriment. In addition, certain information discloses sensitive information regarding the finances and investments of Kinetrex's parent company that it considers to be confidential, as well as information about Kinetrex's key employees.

7. Accordingly, Kinetrex seeks a Commission finding that such information contained in the Annual Report (the "Confidential Information"), is confidential, proprietary, competitively sensitive, and/or trade secret, and therefore exempt from disclosure under Ind. Code § 8-1-2-29 and Ind. Code § 5-14-3.

8. As shown by the affidavit of Aaron D. Johnson, attached hereto as Exhibit "A," the Confidential Information: (i) derives actual and potential independent economic value from being neither generally known to, nor readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

9. The Confidential Information, if disclosed to Kinetrex's competitors and prospective customers or otherwise made publicly available, would have a substantial detrimental effect on Kinetrex. Kinetrex has taken steps to limit access to the Confidential Information to those employees who need to know the information.

10. Mr. Johnson's Affidavit further describes the nature of the Confidential Information, the reasons why the information should be treated as confidential, and the efforts Kinetrex has made to maintain the confidentiality of the Confidential Information.

11. The Commission found Kinetrex's operating cost information to be trade secret and exempt from public disclosure in connection with Kinetrex's filing of its Annual Report for the year ended December 31, 2015. Specifically, on April 29, 2016, Kinetrex filed a *Motion for Protective Order with Respect to Certain Information Contained in LNG Indy, LLC's Annual Report for the year ended December 31, 2015*. The motion requested that the same financial information for which protection is sought herein be treated as confidential and exempt from public disclosure. By Docket Entry dated May 24, 2016, the Commission granted the foregoing motion for protection.

12. The Commission also found the operating cost information to be trade secret and exempt from public disclosure in connection with Kinetrex's filing of its Annual Report for the years ended December 31, 2013 and December 31, 2014. Specifically, by Docket Entry dated May 12, 2014, the Commission granted Kinetrex's April 30, 2014 motion for protection of the same financial information in Kinetrex's 2013 Annual Report. On April 20, 2015, Kinetrex filed a motion for protection for the same information in its 2014 Annual Report. The Commission granted that motion for protection by Docket Entry dated May 20, 2015.¹

13. Certain additional information contained in Kinetrex's Annual Report is confidential by virtue of its new ownership structure. For instance, the Annual Report discloses the investment of Kinetrex's parent company, which it considers to be proprietary and

¹ The Commission granted the motions for protections described in ¶¶ 11 and 12 in Cause No. 44277, which was a proceeding jointly filed by Kinetrex and the Board of Directors for Utilities of the City of Indianapolis, as Trustee of a Public Charitable Trust d/b/a Citizens Gas. Kinetrex is no longer an affiliate of Citizens Gas and therefore, has filed this request for protection of the same information as a separate proceeding.

confidential. The Annual Report also discloses the full salaries of certain key personnel, which could be used by competitors to attempt to attract talent away from Kinetrex.

14. Kinetrex has taken care to redact from its Annual Report only the type of information that the Commission previously held confidential, as well as that described above, which is confidential due to the new ownership structure.

15. Based upon the foregoing, Kinetrex requests the Commission determine that the Confidential Information is confidential and trade secret within the meaning of Ind. Code § 5-14-3-4(a) as defined by Ind. Code § 24-2-3-2. Once such a determination is made, Kinetrex will submit to the Commission a single copy of the Annual Report containing the Confidential Information in accordance with the rules prescribed by the Commission for the filing of confidential materials.

16. In the interim, Kinetrex has submitted to the Commission a redacted version of the Annual Report.

17. Kinetrex will provide an unredacted version of the Annual Report, which includes the Confidential Information, to the Indiana Office of Utility Consumer Counselor pursuant to a Non-Disclosure Agreement.

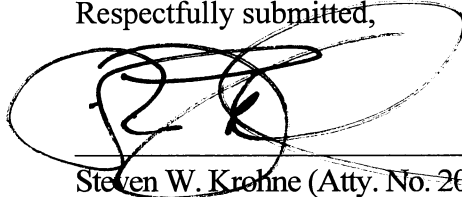
18. Kinetrex requests that the Commission protect the Confidential Information from disclosure and limit access to those Commission employees with a need to review the Confidential Information. Further, Kinetrex requests that the Commission not disclose the Confidential Information to persons outside the Commission unless that person has entered into an appropriate protective agreement with Kinetrex.

WHEREFORE, Kinetrex respectfully moves the Commission for a Protective Order:

- (i) Finding the unredacted Annual Report, confidential, proprietary, competitively sensitive, and/or trade secret, and therefore exempt from disclosure pursuant to IC § 8-1-2-29 and § 5-14-3-4; and
- (ii) Granting such other and further relief as the Commission may deem necessary and appropriate in the premises.

[signature page follows]

Respectfully submitted,

A handwritten signature in black ink, appearing to be "SK", enclosed within a large, loopy oval shape.

Steven W. Krohne (Atty. No. 20969-49)

Mark R. Alson (Atty. No. 27724-64)

ICE MILLER LLP

One American Square, Suite 2900

Indianapolis, Indiana 46282-0200

Telephone: (317) 236-2100

Facsimile: (317) 236-2219

Email: Steven.Krohne@icemiller.com

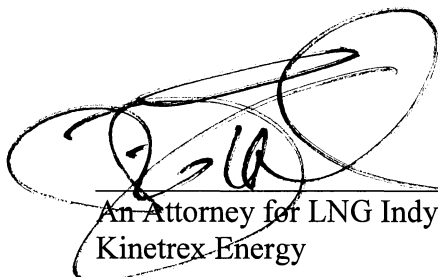
Email: Mark.Alosn@icemiller.com

An Attorney for LNG Indy LLC d/b/a Kinetrex
Energy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 28⁷th day of April, 201⁷ by personal delivery or electronic mail on the following:

Randall C. Helmen
Indiana Office of Utility Consumer Counselor
PNC Center
115 W. Washington St., Suite 1500 South
Indianapolis, Indiana 46204
rhelmen@oucc.in.gov
infomgt@oucc.in.gov



An Attorney for LNG Indy LLC d/b/a
Kinetrex Energy

Steven W. Krohne (Atty. No. 20969-49)
Mark R. Alson (Atty. No. 27724-64)
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282-0200
Telephone: (317) 236-2100
Facsimile: (317) 236-2219
Email: Steven.Krohne@icemiller.com
Email: Mark.Alson@icemiller.com

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THAT CERTAIN INFORMATION IN ITS ANNUAL)
REPORT CONSTITUTES CONFIDENTIAL,)
PROPRIETARY, COMPETITIVELY SENSITIVE)
AND/OR TRADE SECRET INFORMATION AND) CAUSE NO.
SHOULD BE PROTECTED FROM PUBLIC)
DISCLOSURE PURSUANT TO 170 IAC 1-1.1-4, IND.)
CODE § 8-1-2-29 AND IND. CODE § 5-14-3-4)**

**AFFIDAVIT
of
AARON D. JOHNSON**

I, Aaron D. Johnson, state as follows:

1. I am employed by LNG Indy LLC d/b/a Kinetrex Energy (“Kinetrex”). I serve as President and Chief Executive Officer of Kinetrex. As such, I have personal knowledge of the matters set forth herein. Specifically, I have reviewed the financial information contained in Kinetrex’s Annual Report for the year ended December 31, 2016 (the “Annual Report”). I also have personal knowledge of the efforts Kinetrex has taken to maintain the secrecy of information that would reveal Kinetrex’s cost structure and operating model to customers and competitors. I am authorized to make this Affidavit on behalf of Kinetrex.

2. Kinetrex sells liquefied natural gas (“LNG”) primarily to purchasers that use the LNG in Indiana and throughout the United States, as a replacement to diesel fuel and propane. Kinetrex’s primary customers include trucking fleets and high horsepower operations that use large amounts of diesel fuel, such as drilling and mining operations. Kinetrex’s customers are sophisticated companies seeking to negotiate the lowest cost fuel for their purposes within a competitive market with multiple available fuel options.

3. As the Commission recognized in its June 26, 2013 Order in Cause No. 44277, Kinetrex competes “in a highly competitive market.” Kinetrex has multiple competitors throughout the country that offer a variety of fuel options. Kinetrex’s main competitors are retailers of diesel fuel, propane and certain unregulated merchant natural gas plants. Accordingly, the Commission found in its June 26, 2013 Order in Cause No. 44277 that information disclosing Kinetrex’s cost structure and operating model could be used by competitors to undercut Kinetrex’s pricing and by customers in negotiating contracts with Kinetrex and therefore, such information is trade secret and exempt from public access.

4. Kinetrex’s customers and competitors continue to have an incentive and the technical savvy to use any information they can obtain regarding Kinetrex’s costs and business model to obtain a competitive advantage over Kinetrex in negotiations or to further other purposes in the highly competitive fuel market. In fact, since beginning operations in 2013, Kinetrex has become aware of several competitors that have sought to obtain information regarding its pricing structure.

5. Certain information contained in the Annual Report discloses the cost of natural gas and other materials purchased by Kinetrex to produce LNG for resale to customers, as well as its operating costs associated with producing LNG. Other portions of the Annual Report disclose sensitive information regarding the finances and investment of Kinetrex’s parent company that it considers to be confidential, as well as information about Kinetrex’s key employees.

6. The above-described information is confidential, proprietary, competitively sensitive, and/or trade secret (the “Confidential Information”), and therefore exempt from

disclosure under Ind. Code § 8-1-2-29 and Ind. Code § 5-14-3. Disclosure of the Confidential Information would cause substantial detriment to LNG Indy.

7. If disclosed to Kinetrex's customers and competitors, the Confidential Information could be used by competitors and customers to determine Kinetrex's cost of goods sold. This information could be used by competitors to effectively "undercut" Kinetrex's prices or otherwise gain a competitive advantage in negotiations with prospective purchasers. The Confidential Information, if disclosed or otherwise made publicly available, also would allow Kinetrex's competitors to make strategic changes to their own business, marketing and negotiating plans, which would place Kinetrex at an unfair competitive and economic disadvantage. Conversely, Kinetrex's customers could use the Confidential Information to determine Kinetrex's potential profit margin in any given transaction and accordingly use the information to Kinetrex's detriment in negotiations by effectively establishing a price "ceiling."

8. Kinetrex does not have access to similar information belonging to its competitors. Therefore, public disclosure of Kinetrex's Confidential Information would place Kinetrex at a distinct competitive disadvantage with its competitors nationwide.

9. In addition, some information contained in Kinetrex's Annual Report is confidential by virtue of the company's new ownership structure. For instance, the Annual Report discloses the investment of Kinetrex's parent company in the business, which it considers to be proprietary and confidential. The Annual Report also discloses the full salaries of certain key personnel, which could be used by competitors to attempt to attract talent away from Kinetrex. Previously, the Annual Report only revealed an allocated portion of the salaries of those individuals – not their full salaries.

10. The Confidential Information should be protected from disclosure under Indiana law. The nature of the Confidential Information is such that it 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. The Confidential Information is not readily ascertainable or known by the competitors or customers of Kinetrex.

11. The Confidential Information is the same type of information that the Commission held confidential in the June 26, 2013 Order in Cause No. 44277.

12. The Confidential Information revealing information about Kinetrex's operating costs is the same information the Commission has found exempt from public disclosure in Kinetrex's last three Annual Reports. By Docket Entry dated May 12, 2014, the Commission granted Kinetrex's April 30, 2014 motion for protection of the same financial information for which protection is sought herein with respect to Kinetrex's 2013 Annual Report. Similarly, by Docket Entry dated May 20, 2015, the Commission granted Kinetrex's April 20, 2015 motion for protection of the same financial information in its 2014 annual report. Most recently, the Commission granted on May 24, 2016 a motion for protection of the same information in Kinetrex's 2015 annual report. The Commission's granting such protection has been important to Kinetrex in that it ensures Kinetrex can provide the Commission with information about its operations, while ensuring that competitors and customers are not able to use the information to Kinetrex's competitive detriment.

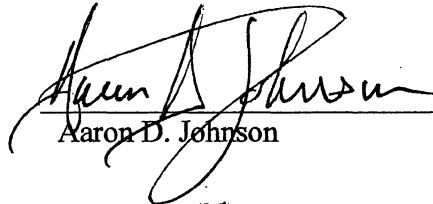
13. The Confidential Information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Specifically, Kinetrex has designated documents

containing the Confidential Information as trade secret or proprietary and limited disclosure to a select group of employees, consultants and counsel on a need to know basis.

14. No amount of independent research could reveal the Confidential Information to Kinetrex's potential competitors or customers.

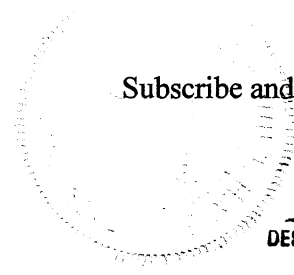
15. For the reasons set forth herein, the Confidential Information should be excepted from public disclosure.

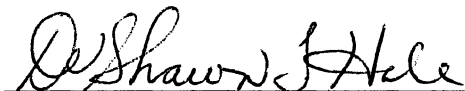
I affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge, information and belief.



Aaron D. Johnson

Subscribe and sworn to before me, a Notary Public, this 28 day of April, 2017.


DESHAWN T. HALE
Seal
Notary Public - State of Indiana
Marion County
Commission Expires Nov 19, 2023



Signature
DeShawn T. Hale

Printed Name

My Commission Expires: 11/19/2023

My County of Residence: Marion