

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA MICHIGAN )  
POWER COMPANY (I&M), AN INDIANA )  
CORPORATION, FOR APPROVAL OF A CLEAN )  
ENERGY PROJECT AND QUALIFIED )  
POLLUTION CONTROL PROPERTY AND FOR )  
ISSUANCE OF CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY FOR USE OF )  
CLEAN COAL TECHNOLOGY; FOR ONGOING )  
REVIEW; FOR APPROVAL OF ACCOUNTING )  
AND RATEMAKING, INCLUDING THE TIMELY )  
RECOVERY OF COSTS INCURRED DURING )  
CONSTRUCTION AND OPERATION OF SUCH )  
PROJECT THROUGH I&M'S CLEAN COAL )  
TECHNOLOGY RIDER; FOR APPROVAL OF )  
DEPRECIATION PROPOSAL FOR SUCH )  
PROJECT; AND FOR AUTHORITY TO DEFER )  
COSTS INCURRED DURING CONSTRUCTION )  
AND OPERATION, INCLUDING CARRYING )  
COSTS, DEPRECIATION, TAXES, OPERATION )  
AND MAINTENANCE AND ALLOCATED )  
COSTS, UNTIL SUCH COSTS ARE REFLECTED )  
IN THE CLEAN COAL TECHNOLOGY RIDER OR )  
OTHERWISE REFLECTED IN I&M'S BASIC )  
RATES AND CHARGES. )

CAUSE NO. 44871

**PETITIONER'S MOTION FOR PROTECTION AND NONDISCLOSURE OF  
CONFIDENTIAL AND PROPRIETARY INFORMATION**

Indiana Michigan Power Company (I&M), pursuant to 170 IAC 1-1.1-4, Ind. Code § 5-14-3, 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 filed by I&M containing information that is confidential, proprietary, competitively sensitive and trade secret. In support of this motion, I&M represents the following:

1. I&M has filed a Verified Petition with the Commission requesting approval for approval of a Clean Energy Project and Qualified Pollution Control Property and for issuance of a Certificate of Public Convenience and Necessity (CPCN) to install Selective Catalytic Reduction (SCR) technology to allow I&M to reduce emissions of nitrogen oxides (NO<sub>x</sub>) from Rockport Unit 2, an existing coal-fired steam electric generating unit (Rockport Unit 2 SCR Project).<sup>1</sup> I&M jointly leases Rockport Unit 2 with AEP Generating Company under the terms of the Rockport Lease Agreement (Rockport Lease).

2. Company witness Scott C. Weaver's direct testimony and accompanying Attachment SCW-3 contain confidential, proprietary, competitively sensitive and/or trade secret information. The confidential information which I&M requests be protected in this proceeding specifically includes major modeling input costs and operation parameters for unit disposition options for I&M generating facilities, as well as various assumptions associated with the Rockport Lease. Petitioner's Attachment SCW-3 also includes the fuel, and when applicable, consumables pricing assumptions for different elements that would provide suppliers and competitors an unfair competitive advantage (collectively the "Confidential Information"). A redacted version of Scott C. Weaver's direct testimony and a redacted version of Petitioner's Attachment SCW-3 are included with I&M's pre-filed case-in-chief. The Confidential Information may also be contained in I&M's supporting workpapers. As stated below, I&M will submit an unredacted version of the documents containing the Confidential Information once a protective order is entered.

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<sup>1</sup> I&M's Verified Petition and direct testimony and attachments were filed contemporaneous herewith.

3. The Confidential Information may also be discussed in the evidence, pleadings and other submissions to be made in this Cause. A Commission protective order will allow I&M to safely file the Confidential Information with the Commission.

4. The affidavit of Scott C. Weaver, attached hereto as Exhibit A, supports the confidential, proprietary, competitively sensitive and/or trade secret nature of the Confidential Information identified above. The Confidential Information: (i) is such that it may derive 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. Such Confidential Information is competitively sensitive and a trade secret because it would permit competitors and suppliers to better determine how to price their services and products. With respect to the various assumptions associated with the Rockport Lease, such information could be used to adversely impact future negotiations regarding the Rockport Lease. Furthermore, if the Confidential Information were publicly known it could adversely affect I&M and American Electric Power Service Corporation's (AEPSC) ability to secure the resources needed for the Rockport Project in a timely and economic manner. The public disclosure of such information could also adversely affect the suppliers who provide these types of information to I&M and AEPSC. Further, the disclosure of the Confidential Information would negatively affect the negotiation or competitive bidding process by allowing suppliers or vendors to know what the Company's expectations are with respect to its resource needs and costs. Thus, these suppliers or vendors would have the advantage of knowing how to price their bids or

negotiate to provide resources in order to maximize their prices to the disadvantage of I&M and its customers. The Confidential Information therefore constitutes a trade secret under Indiana law and is entitled to protection from disclosure by the Commission.

5. The Confidential Information in this proceeding 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., Re Indianapolis Power & Light Company*, Cause No. 44576/44602 (IURC 3/16/2016) (limestone and coal combustion product price information, capacity and energy price forecasts, projected generator characteristics and market prices exempt from public disclosure); *Re Indiana Michigan Power Company*, Cause No. 44523 (IURC 5/13/2015) (major modeling input costs and operation parameters for unit disposition options, including fuel and consumables pricing, exempt from public disclosure); *Re Indiana Michigan Power Company*, Cause No. 43992-ECCR 3 (IURC 2/21/2014) (projected monthly unit generation, monthly unit emissions and monthly emission allowance consumption information treated as confidential); *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, CO<sub>2</sub> price forecasts, pricing information and cost estimates for environmental compliance project exempt from public disclosure); *Re Duke Energy Indiana, Inc.*, Cause No. 44217 (IURC 12/11/12) (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 9/5/12) (confidential commodity price forecasts obtained from third parties exempt from public disclosure); *Re Duke Energy Indiana, Inc.*, Cause No. 42061 ECR 15 (IURC 8/18/10) (detailed cost estimates for environmental compliance plan exempt from public disclosure).

6. Furthermore, courts interpreting Indiana's trade secret statute have consistently applied the statutory definition of trade secret to the type of information I&M's seeks to protect. In *Hydraulic Exchange and Repair, Inc. v. KM Specialty Pumps, Inc.*, 690 N.E.2d 782, 785-86 (Ind. Ct. App. 1998), the Court of Appeals determined that certain "customer pricing" information was trade secret. Similarly, a federal district court interpreting Indiana's statute has held that financial and cost information can be protected as trade secrets. *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, 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 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). The Commission has found that public disclosure of pricing terms and cost analysis regarding wholesale power purchase and other contracts and integrated resource planning, could be detrimental to the owners of the confidential information and result in potentially higher costs to customers. *Indiana Michigan Power Company*, Cause No. 42534 (IURC 3/16/2005), p. 10; *PSI Energy, Inc.*,

Cause No. 41448-S1 (IURC 5/16/2001), p. 14; *Northern Indiana Public Service Co.*, Cause No. 41711 (IURC 8/16/2000), p. 5; *Southern Indiana Gas and Electric Company*, Cause No. 40684 (IURC 2/5/1997), p. 4. Therefore, I&M's request is consistent with Commission precedent, otherwise complies with Indiana law and should be granted.

7. I&M and AEPSC have taken steps to limit access to the proprietary and confidential information to those employees who need to know the information. The I&M and AEPSC files containing the proprietary and confidential information are maintained separately from their general records and access to those files is restricted.

8. Based upon the above description of material for which I&M seeks protection and the attached affidavit, I&M 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 I&M 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 I&M's request for protection. Subject to paragraph 12 below, once a preliminary determination is made that the Confidential Information is exempt from public disclosure, I&M will submit the Confidential Information to the Presiding Administrative Law Judge using the Commission's Electronic Filing System.

9. I&M 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, I&M requests that

the Commission not disclose the information to persons outside the Commission unless the person has entered into an appropriate protective agreement with I&M.

10. Upon a preliminary determination that the Confidential Information is confidential and/or trade secret, I&M proposes that the Commission utilize procedures to assure the protection of the Confidential Information provided by I&M.

11. I&M will provide the Confidential Information to the OUCC pursuant to the Standard Form Nondisclosure Agreement between I&M and the OUCC dated July 6, 2006. I&M is willing to consider providing the Confidential Information to intervening parties pursuant to an appropriate protective agreement that is acceptable to I&M. If necessary, I&M will request that the Commission enter a protective order safeguarding the dissemination of the Confidential Information.

12. Once a preliminary determination of confidentiality has been made, I&M 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, I&M respectfully requests 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 I&M 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) Implementing procedures to insure 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 I&M such other relief as may be appropriate.

Respectfully submitted,



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Teresa Morton Nyhart (14044-49)  
Jeffrey M. Peabody (28000-53)  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535  
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 Petitioner  
INDIANA MICHIGAN POWER COMPANY

## **AFFIDAVIT OF SCOTT C. WEAVER**

Scott C. Weaver, being first duly sworn upon his oath says:

1. I am employed by American Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of American Electric Power Company, Inc. (AEP). AEP is the parent company of Indiana Michigan Power Company (I&M). I am employed as a Managing Director-Resource Planning and Operational Analysis of the AEPSC, and, at all times relevant to this matter, have been involved in drafting and coordinating the preparation of this filing by Indiana Michigan Power Company (I&M or Company). I am familiar with the content of I&M's filing and the need to protect certain confidential and proprietary information contained in I&M's filing 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 through direct contact with this information and through my investigation with other AEPSC, AEP and I&M employees who work directly with the Confidential Information. I have personal knowledge of efforts taken by AEPSC, AEP and I&M 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. I&M is requesting that certain confidential information included in my prefiled direct testimony and accompanying Attachment SCW-3 be exempt from public disclosure as confidential, proprietary, competitively sensitive and trade secret information (the "Confidential Information"). The Confidential Information may also be contained in I&M's supporting workpapers.

4. More specifically, the Confidential Information includes the major modeling input costs and operating parameters for unit disposition options as well as various assumptions associated with the Rockport Lease. This information includes the input assumptions that would provide competitors and suppliers an unfair advantage in understanding the elements of operation for I&M units including the prices assumed for consumable. Petitioner's Attachment SCW-3 also includes the fuel and, when applicable, consumables pricing assumptions for different elements that would provide suppliers and competitors an unfair competitive advantage.

5. A redacted version of my direct testimony and a redacted version of Petitioner's Attachment SCW-3 are included with I&M's pre-filed case-in-chief.

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

6. I&M analysis and assumptions in the Confidential Information can be used by suppliers and competitors to negotiate directly against I&M and increase costs or to negotiate in the market with suppliers that disadvantage I&M and its customers by exposing the I&M assumed need and price. Knowledge of the provisions by potential

power supply competitors could enable them to gain an unfair advantage in future competitive situations. For example, the disclosure of the Confidential Information would negatively affect the negotiation or competitive bidding process by allowing suppliers or vendors to know what the Company's expectations are with respect to its resource needs and costs. Suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide resources in order to maximize their prices to the disadvantage of I&M and its customers. With respect to the various assumptions associated with the Rockport Lease, such information could be used to adversely impact future negotiations regarding the Rockport Lease.

**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. Access to the information is restricted to only those employees, officers and representatives of I&M and AEPSC who have a need to know about such information due to their job and management responsibilities. I&M and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by I&M and AEPSC who are allowed past security guards at buildings where Confidential

Information is kept are not permitted to walk within such buildings without an escort. I&M's and AEPSC's files containing the Confidential Information are maintained separately from I&M's and AEPSC's general records and access to those files is restricted. Within I&M and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of I&M and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside I&M and AEPSC, this information is only provided 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 nothing more.

Dated: 10/19/16



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Scott C. Weaver



Princess M. Brown  
Notary Public, State of Ohio  
My Commission Expires 04-19-2020

STATE OF OHIO            )  
  ) SS:  
COUNTY OF FRANKLIN    )

Scott C. Weaver appeared before me, a Notary Public in and for this County and State, and swore that the foregoing statements are true.

Princess Brown  
Printed

*Princess Brown*  
Signature

My Commission Expires:  
4/19/2020

My County of Residence:  
Franklin

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Petitioner's Motion for Protection and Nondisclosure of Confidential and Proprietary Information was served via hand delivery or email transmission upon the Office of Utility Consumer Counselor, PNC Center, 115 W. Washington Street, Suite 1500 South, Indianapolis, Indiana 46204, [infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov), this 21st day of October, 2016.



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Jeffrey M. Peabody