

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SOUTHERN INDIANA GAS  
AND ELECTRIC COMPANY D/B/A  
CENTERPOINT ENERGY INDIANA SOUTH  
("CEI SOUTH") FOR APPROVAL OF A  
CHANGE IN ITS FUEL COST  
ADJUSTMENT FOR ELECTRIC SERVICE  
IN ACCORDANCE WITH THE ORDER OF  
THE COMMISSION IN CAUSE NO. 37712  
EFFECTIVE JUNE 18, 1986 AND SENATE  
BILL NO. 529 EFFECTIVE APRIL 11, 1979

CAUSE NO. 38708 FAC 138

MOTION FOR PROTECTION OF  
CONFIDENTIAL AND PROPRIETARY INFORMATION

Petitioner, Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South, ("CEI South") requests under 170 IAC 1-1.1-4 that the Indiana Utility Regulatory Commission ("Commission") enter a Docket Entry making a preliminary determination, and at the conclusion of this Cause enter a Final Order, finding that certain information is confidential and restricted from public access under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3 and adopting safeguards for the handling of certain documents that CEI South intends to file in this Cause or produce in discovery. In support of this motion, CEI South has attached the affidavit of Wayne D. Games and states the following:

1. Mr. Games' testimony contains certain information ("Confidential Information"), which includes competitively sensitive trade secrets and protected critical infrastructure information. The Confidential Information may also be used as part of rebuttal testimony, in formal and informal discovery, at the evidentiary hearing, or in post-hearing pleadings in this Cause.
2. Whether confidential information is a trade secret is determined by the Uniform Trade Secrets Act, Ind. Code ch. 24-2-3. The phrase *trade secret* means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives actual

or potential, 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; and (2) is the subject of reasonable efforts under the circumstances to maintain its secrecy. Ind. Code § 24-2-3-2. Records containing trade secrets are excepted from the public disclosure requirements of Ind. Code § 5-14-3-3 and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. Ind. Code § 5-14-3-4(a)(4).

3. As discussed in Mr. Games's affidavit, the Confidential Information derives independent economic value from not being generally known to or being readily ascertainable by proper means by other people who can obtain economic value from its disclosure or use. The Confidential Information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Confidential Information relates to pricing for CEI South's coal contracts, the annual and quarterly optionality with some coal supply contracts, tonnage figures calculated using such optionality, and other terms of the coal supply contracts included in CEI South's coal supply plan. The Confidential Information also contains details related to costs, responsibilities, and volumes associated with CEI South's coal storage agreements. Knowledge of the Confidential Information would provide CEI South's fuel suppliers with an unfair advantage in future competitive situations, which could result in CEI South negotiating less favorable terms than would otherwise be possible to the detriment of CEI South and its customers. For example, knowledge by other suppliers of the optionality provisions, other terms, and supplier bid prices would establish a price floor in future negotiations, thereby limiting the potential terms and benefits that could accrue to ratepayers, shareholders, and CEI South. This information constitutes a trade secret under Ind. Code ch. 24-2-3 that is exempt from public disclosure pursuant to Ind. Code § 5-14-3-4(a).

4. CEI South requests that the Commission make a preliminary determination of confidentiality based upon this motion and permit CEI South to submit a single copy of the Confidential Information to the presiding Administrative Law Judge, designating the contents to be confidential and proprietary materials pursuant to the preliminary order of confidentiality.
5. Upon a preliminary determination that the Confidential Information is confidential, CEI South proposes that the Commission adopt procedures such as the following to assure the Confidential Information will be protected from public disclosure or access, which CEI South 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 designated employees of the Commission and its Staff for the purposes of their examination and analysis in this proceeding.
  - b. That the Confidential Information will be specifically filed with, secured by and under the control of a person who will ensure its confidentiality.
  - c. That the Commission Staff members receiving access to the Confidential Information be obligated to secure and maintain exclusive control thereof; to refrain from directly or indirectly allowing public disclosure of the Confidential Information; to refrain from the copying or reproducing of the Confidential Information; and to refrain from disclosing the Confidential Information in any documents, materials or reports prepared by the Commission Staff.

WHEREFORE, CEI South respectfully moves that the Commission make and enter appropriate docket entries and orders in the Cause:

- a. Finding the Confidential Information to be preliminarily confidential for the limited purpose of allowing CEI South to safely submit the Confidential Information to the

Commission under seal or provide reasonable access to the Confidential Information as described above;

- b. Thereafter make a final determination that the Confidential Information is exempt from public disclosure under Ind. Code ch. 5-14-3, Ind. Code § 8-1-2-29, and 170 IAC 1-1.1-4; and
- c. Adopting the procedures set forth herein to ensure that the Confidential Information is appropriately protected from public disclosure and access.

Dated this 15<sup>th</sup> day of February 2023.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Heather A. Watts", is centered within a light gray rectangular box.

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Attorneys for Southern Indiana Gas and Electric Company  
d/b/a CenterPoint Energy Indiana South

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served this 15<sup>th</sup> day of February 2023, by electronic transmission to the following:

**Indiana Office of Utility Consumer Counselor**

Lorraine Hitz

Michael Eckert

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A handwritten signature in black ink, appearing to read "Steven W. Krohne", is written over a light gray rectangular background.

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

### **AFFIDAVIT OF WAYNE D. GAMES**

The undersigned affiant, Wayne D. Games, being duly sworn upon his oath, deposes and states:

1. I am over the age of 18 years, suffer from no disability which would render my testimony incompetent, and have personal knowledge of all matters contained in this Affidavit.

2. I am the Vice President of Power Generation Operations for CEI South, and I have personal knowledge of the confidential, proprietary, and competitively sensitive nature of certain information in my direct testimony submitted in this proceeding.

3. My direct testimony contains annual and quarterly optionality and pricing for optionality and other confidential terms that were negotiated between CEI South and potential coal suppliers. It also includes details related to costs, responsibilities, and volumes associated with its coal storage agreements. I have personal knowledge of the efforts taken to maintain the secrecy of the Confidential Information. Access to this information is limited to individuals with a need to know it and is maintained in CEI South's password protected computer system. Hard copies are maintained in CEI South buildings that are accessible only with approved badges.

4. Disclosure of the Confidential Information could cause economic harm to CEI South and its customers. Knowledge of the optionality provisions, details related to CEI South's costs, responsibilities and volumes associated with its coal storage agreements, and other terms by potential coal suppliers could enable them to gain unfair advantage in future competitive situations and could result in CEI South negotiating less favorable terms than would otherwise be possible. The less favorable terms would diminish the flexibility available to CEI South's operations to the disadvantage of CEI South and its customers. Further, disclosure of the coal suppliers' optionality

provisions would be of significant value to the coal suppliers' competitors, which could prove harmful to the suppliers.

5. CEI South's request for confidentiality relates only to those contractual terms and other information that have not been previously disclosed.

6. The Confidential Information is not available to competitors of CEI South or competitors of its suppliers through normal or proper means. Every effort has been made to keep the Confidential Information out of the public domain. CEI South has taken all reasonable steps to protect the Confidential Information, including, but not limited to, only sharing such information internally on a need to know basis and not releasing such information externally without appropriate protections.

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

8. This concludes my affidavit.



## VERIFICATION

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

By: Wayne D. Games  
Wayne D. Games

STATE OF INDIANA                                 )  
                                                                )      SS:  
COUNTY OF VANDERBURGH                     )

Subscribed and sworn to before me, a Notary Public in and for said State and County, this 15<sup>th</sup> day of February 2023

BY: Mary L. Jernigan  
Mary L. Jernigan

My Commission Expires:

July 1, 2023

My County of Residence:

Vanderburgh

