

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA MICHIGAN POWER )  
COMPANY FOR APPROVAL OF THE )  
CONTRACT FOR ELECTRIC SERVICE WITH ) CAUSE NO.  
STEEL DYNAMICS, INC. )

**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 and exempt from public disclosure. In support of this motion, I&M represents the following:

1. I&M has filed a Verified Petition with the Commission for approval of the Contract for Electric Service between Steel Dynamics, Inc. (SDI) and I&M dated August 11<sup>th</sup>, 2020.

2. On August 14, 2020, I&M filed its case-in-chief in this Cause. Certain of I&M’s attachments contain information identified as confidential, proprietary, competitively sensitive, or trade secret information by I&M (the “Confidential Information”). A table identifying the specific information is attached as Exhibit A.

3. Redacted copies of the prefiled attachments identified in Exhibit A are included with I&M’s case-in-chief. As stated below, I&M will submit an unredacted version of the Confidential Information once a protective order is entered. 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. As explained in the attached Affidavit of Brent E. Auer, the Confidential Information consists of: (a) the Service Contract provisions that relate to pricing, interruptibility, and term, negotiated at arm's length between I&M and SDI; and (b) the fixed cost analysis. These documents have been identified as Attachments BEA-1 (Confidential), BEA-2 (Confidential) and BEA-5 (Confidential) to Mr. Auer's testimony.

5. As explained in Mr. Auer's Affidavit, such information is considered confidential, proprietary, competitively sensitive, and trade secret information because knowledge of these provisions would influence I&M's discussions with other existing and potential customers and thereby could have the effect of limiting future benefits to I&M, its other retail customers, and, potentially, the State. Such information would also provide an unfair advantage to potential energy resource competitors. With respect to the fixed cost analysis, public disclosure of this information could be used by competitors to gain insight into SDI's operations. Moreover, disclosure of the fixed cost analysis to any I&M customer (including SDI) or potential I&M customer could be used to establish a price ceiling or pricing methodology in future negotiations, thereby limiting the potential revenues and benefits that could accrue to I&M and its other retail customers. The Confidential Information, if disclosed or otherwise made publicly available, would allow competitors of I&M's customers to make strategic changes to their own business, marketing and negotiating plans, which would place I&M's customers at an unfair competitive and economic disadvantage.

6. As explained in the attached Affidavit of Jordan Breiner, General Manager – Flat Roll Group for SDI, the Confidential Information includes information that SDI considers confidential, proprietary, competitively sensitive, and trade secret. Because energy costs are a major component of the production cost of a steel maker, such as SDI, knowledge of pricing information and SDI's operational capabilities could benefit SDI's competitors, thereby affecting the competitiveness and profitability of SDI's Butler facility. Further, as explained by Mr. Breiner, public disclosure of the confidential terms and conditions of the Service Contract would reveal commercially sensitive information to SDI's competitors and cause irreparable harm to SDI.

7. As explained in the attached Affidavits, 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. I&M, American Electric Power Service Corporation (AEPSC), and SDI restrict the access of information to only those employees, officers and representatives of I&M, AEPSC and SDI who have a need to know about such information due to their job and management responsibilities. With respect to the fixed cost analysis, such information is kept confidential to I&M and AEPSC and is not provided to SDI. 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. 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. The Confidential Information, if disclosed, would have a substantially detrimental effect on I&M and its stakeholders. The Confidential Information therefore constitutes a trade secret under Indiana law and is entitled to protection from disclosure by the Commission.

8. The Confidential Information is similar to or the same as confidential, proprietary, competitively-sensitive and/or trade secret information previously found to be exempt from public disclosure by the Commission. For example, the Commission has found prior versions of the Service Contract and prior amendments to those agreements, along with the accompanying fixed cost analysis, to be exempt from public disclosure. *Re Indiana Michigan Power Co.*, Cause No. 45120, Docket Entry dated August 2, 2018 (prior SDI Service Contract, Fourth Amendment and fixed cost analysis exempt from public disclosure), affirmed by Order dated November 7, 2018; *Re Indiana Michigan Power Co.*, Cause No. 44975, Docket Entry dated August 31, 2017 (prior SDI Service Contract, Third Amendment and fixed cost analysis exempt from public disclosure), affirmed by Order dated January 10, 2018; *Re Indiana Michigan Power Co.*, Cause No. 44655, Docket Entry dated August 17, 2015 (prior SDI Service Contract, Second Amendment and fixed cost analysis exempt from public disclosure), affirmed by Order dated November 18, 2015; *Re Indiana Michigan Power Co.*, Cause No. 44530, Docket Entry dated October 14, 2014 (prior SDI Service Contract, First Amendment and fixed cost analysis exempt from public

disclosure), affirmed by Order dated December 30, 2014. *See also Re S. Ind. Gas and Elec. Co.*, Cause No. 45286, Docket Entry dated September 23, 2019 (special contract and detailed operational data related to large industrial customer exempt from public disclosure on preliminary basis), affirmed by Order dated November 27, 2019; *Re Indianapolis Power & Light Co.*, Cause No. 45211, Docket Entry dated March 25, 2019 (customer contract provisions related to term length, demand, pricing, interruptibility and other negotiated terms and conditions, as well as fixed and increment cost analysis containing customer-specific revenue and billing and other cost information exempt from public disclosure), affirmed by Order dated June 5, 2019; *Re Duke Energy Indiana, LLC*, Cause No. 44932 REP 1, Docket Entry dated February 20, 2018 (load and price information concerning Commission-approved special contract exempt from public disclosure), affirmed by Order dated June 27, 2018; *Re Indianapolis Power & Light Co.*, Cause Nos. 44576/44602, Docket Entry dated July 15, 2015 (granting motion to protect customer-specific revenue and sales volume information), affirmed by Order dated March 16, 2016; *Re Duke Energy Indiana, Inc.*, Cause No. 44662, Docket Entry dated September 8, 2015 (pricing and negotiated terms contained in contract between Duke and SDI exempt from public disclosure), affirmed by Order dated January 13, 2016.

9. Courts in Indiana look to the Indiana Uniform Trade Secret Act, I.C. § 24-2-3-2, for guidance as to whether information is trade secret or proprietary business interest entitled to protection from disclosure. *Northern Electric Co. v. Torma*, 819 N.E.2d 417, 425 (Ind. Ct. App. 2004); *Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 414 (S.D. Ind. 2001). The Confidential Information falls within the purview of the Indiana Uniform Trade Secret Act. The Confidential Information is not publicly available and (i) 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 (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. In *Star Scientific*, 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 that do not have the information. *Star Scientific, Inc. v. Carter*, 204 F.R.D. at 414-415; *accord Northern Electric Co.*, 819 N.E.2d 417 at 425-426 (finding compilation of data to be protectable trade secret).

10. Based upon the above description of material for which I&M seeks protection and the attached Affidavits, 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. I&M's request is consistent with Indiana law, otherwise complies with Commission precedent and should be granted.

11. 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 Online Services Portal. This submission will be made 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.

12. I&M requests that the Commission protect the Confidential Information from disclosure and limit access to those Commission employees with a need to review the confidential and proprietary information.

13. I&M will provide the Office of the Utility Consumer Counselor (OUCC) with a copy of the Confidential Information pursuant to the Standard Form Nondisclosure Agreement between I&M and the OUCC dated July 6, 2006. If necessary, I&M will request that the Commission enter a protective order safeguarding the dissemination of the Confidential Information.

14. 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) Adopting the procedures set forth herein to insure that the Confidential Information is appropriately secured and made available only to the appropriate Commission members and employees 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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Jeffrey M. Peabody (Atty. No. 28000-53)  
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Indianapolis, Indiana 46204  
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Email: [jpeabody@btlaw.com](mailto:jpeabody@btlaw.com)

Attorney for Indiana Michigan Power Company

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion for Protection and Nondisclosure of Confidential and Proprietary Information has been served this 14th day of August, 2020, by hand delivery, electronic transmission or U.S. Mail, first class postage prepaid upon:

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



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Jeffrey M. Peabody

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**List of Information Marked Confidential by I&M**

	<b>Testimony/Attachment Reference</b>	<b>Description of Information</b>	<b>Basis for Protection</b>
1.	Attachment BEA-1 (Confidential)	Service Contract provisions related to pricing, interruptibility, and other terms and conditions negotiated at arm's length.	Confidential, proprietary, competitively sensitive, and trade secret commercial terms and conditions – see Auer and Breiner Affidavits
2.	Attachment BEA-2 (Confidential)	Fixed Cost Analysis containing customer-specific revenue and billing information.	Confidential, proprietary, competitively sensitive, and trade secret, customer-specific information – see Auer and Breiner Affidavits
3.	Attachment BEA-5 (Confidential)	Redline Service Contract provisions related to pricing, interruptibility, and other terms and conditions negotiated at arm's length.	Confidential, proprietary, competitively sensitive, and trade secret commercial terms and conditions – see Auer and Breiner Affidavits

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF ALLEN        )

AFFIDAVIT

Brent E. Auer, being first duly sworn upon his oath says:

1. I am a Regulatory Analysis & Case Manager for Indiana Michigan Power Company (I&M). In that capacity, I am familiar with the nature of information in the possession of I&M that relates to the Service Contract for Electric Service Between Steel Dynamics, Inc. (SDI) and I&M. I have personal knowledge of the confidential, proprietary, competitively sensitive, and trade secret nature of such information through my familiarity with such information, my communication with SDI, my communication with other I&M and American Electric Power Service Corporation (AEPSC) employees who work with such information, and my job responsibilities. I acknowledge that I am of requisite age and capacity to testify to the matters stated and that I make this affidavit based on personal knowledge of efforts taken by I&M to maintain the secrecy of confidential information.

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

2. I&M is requesting that certain information (the “Confidential Information”) to be filed in this proceeding be treated as confidential, proprietary, competitively sensitive and trade secret and therefore exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The Confidential Information consists of the Service Contract provisions that relate to pricing, interruptibility, and term, negotiated at arm’s length between I&M and SDI, and the related fixed cost analysis.

3. The un-redacted Service Contract will be offered as Attachment BEA-1 (CONFIDENTIAL) to I&M’s prepared testimony prefiled with the Commission. Further, the un-redacted redline version of the Service Contract will be offered as Attachment BEA-5 (CONFIDENTIAL) to I&M’s prepared testimony prefiled with the Commission. The unredacted fixed cost analysis demonstrates that the revenues the Company will receive under the Service Contract will continue to cover the full variable cost of serving the SDI load, plus provide a contribution to the recovery of I&M’s fixed costs. The fixed cost analysis will be offered as Attachment BEA-2 (CONFIDENTIAL) to I&M’s prepared testimony prefiled with the Commission. Redacted (PUBLIC) versions of these documents are included as Attachments BEA-3, BEA-4 and BEA-6 in Petitioner’s prepared case-in-chief filed contemporaneous herewith.

4. The protection of the Confidential Information from public disclosure is consistent with past Commission findings with respect to the SDI Service Contract and fixed cost analysis, and a preliminary finding in the instant Cause would allow I&M to file the unredacted documents for review by the Commission.

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

5. The nature of this Confidential Information is such that it derives actual and potential independent economic value from being neither generally known to, nor readily ascertainable by, persons who could obtain economic value from its disclosure or use. Public disclosure of the Confidential Information would be useful to current and potential competitors of both I&M and SDI and, if this Confidential Information would fall into the possession of current or prospective competitors of I&M or SDI, such disclosure would have a substantial and detrimental effect on I&M and SDI.

6. Knowledge of the Confidential Information would influence I&M's discussions with other existing and potential customers and thereby could have the effect of limiting future benefits to I&M, its other retail customers, and, potentially, the State. Such information would also provide an unfair advantage to potential energy resource competitors.

7. SDI sells its products in a competitive steel market. It is I&M's understanding that because energy costs are a major component of a steel maker's production costs, knowledge of pricing information and SDI's operational capabilities would benefit SDI's competitors, thereby potentially affecting the competitiveness and profitability of SDI's Butler facility.

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

8. 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**

9. The unredacted Service Contract, redline Service Contract and fixed cost analysis are the subject of efforts by I&M and AEPSC to maintain their secrecy and are not available or ascertainable by competitors through normal or proper means. I&M's and AEPSC's files containing the proprietary and confidential information are maintained separately from general records and access to those files is restricted. Access to the

confidential information is restricted to 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 the Company, 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 Affiant sayeth not.

Dated: August 13, 2020

By:   
Brent E. Auer  
Regulatory Analysis & Case Manager  
Indiana Michigan Power Company

STATE OF INDIANA       )  
                                      ) ss:  
COUNTY OF ALLEN       )

Subscribed and sworn to before me, a Notary Public, in and for said County and State this 13 day of August 2020.

  
Regina M. Sistevaris

My Commission Expires: January 7, 2023  
My County of Residence: Allen County, Indiana

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF DEKALB        )

AFFIDAVIT

Jordan Breiner, being first duly sworn upon his oath says:

1. I acknowledge that I am of requisite age and capacity to testify to the matters stated and that I make this affidavit based on personal knowledge of efforts taken by Steel Dynamics, Inc. (SDI) to maintain the secrecy of confidential information.

2. I am General Manager of SDI's Flat Roll Division located at 4500 County Road 59, Butler, Indiana 46721.

3. The Contract for Electric Service between SDI and Indiana Michigan Power Company under consideration by the Indiana Utility Regulatory Commission in this Cause contains information that SDI considers confidential, proprietary, and competitively sensitive, and trade secret.

4. SDI sells steel products in extremely competitive regional, national and global markets. Public disclosure of the information for which protection is requested could harm SDI by informing its competitors of specifics of SDI's power supply arrangement.

5. Because energy costs are a major component of the production cost of a steel maker, such as SDI, knowledge of pricing information and SDI's operational capabilities could benefit SDI's competitors, thereby affecting the competitiveness and profitability of SDI's Butler facility.


6. The Contract for Electric Service for which SDI seeks protection includes pricing, interruptibility provisions, and the contract term. This confidential, proprietary, competitively sensitive, and trade secret information, if disclosed, would reveal commercially sensitive information to SDI's competitors and cause irreparable harm to SDI.

7. The Contract for Electric Service is treated as a confidential document within the SDI organization with access limited to management and employees who need to know the information. This confidential information is not available or ascertainable by competitors through normal or proper means.

8. For the reasons set forth herein, the Contract for Electric Service should be exempt from public disclosure.

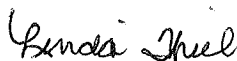
Further Affiant sayeth not.

Dated: 8-4-20

By:   
Jordan Breiner  
General Manager – Flat Roll Division  
Steel Dynamics, Inc.

STATE OF INDIANA       )  
                                      ) ss:  
COUNTY OF DEKALB    )

Subscribed and sworn to before me, a Notary Public, in and for said County and State this 4<sup>th</sup> day of August 2020.

  
Notary Public

My Commission Expires: 8/26/2027

My County of Residence: DeKalb County, Indiana

