

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
BLOOMINGTON, INDIANA, FOR APPROVAL )  
OF A NEW SCHEDULE OF RATES AND )  
CHARGES FOR WATER UTILITY SERVICE ) CAUSE NO. 45533  
AND FOR AUTHORITY TO ISSUE AND )  
APPROVAL OF BONDS, NOTES, OR OTHER )  
OBLIGATIONS )

**PETITIONER’S MOTION FOR PROTECTION AND NONDISCLOSURE  
OF CONFIDENTIAL INFORMATION**

The Petitioner, the City of Bloomington, Indiana (“Bloomington” or “Petitioner”) pursuant to 170 IAC 1-1.1-4, Ind. Code § 5-14-3-1, *et seq.*, and Ind. Code § 8-1-2-29, respectfully requests that the Indiana Regulatory Commission (“Commission”) enter a Protective Order prohibiting dissemination outside of the Commission and adopting safeguards for the handling of certain workpapers to be filed by Petitioner containing information that is confidential, proprietary, competitively sensitive and trade secret information (“Confidential Information”). In support of this Motion, Petitioner represents the following:

1. On April 16, 2021, Petitioner filed a Petition and its case-in-chief with the Commission for authority to modify its rates and charges for water utility service and other related relief as reflected in the caption.

2. On April 20, 2021, Petitioner filed its Submission of Direct Workpapers (the “Workpapers”) of which the Workpapers of Mark C. Beauchamp contain information deemed Confidential Information. Mr. Beauchamp is the owner and President of Utility Financial Solutions, LLC. As explained in the Affidavit of Mark C. Beauchamp, attached as Attachment A (“Affidavit”), the Confidential Information includes formulas used in

completion of the cost of service study (“COSS”) that are embedded in the Excel COSS model.

3. Because the formulas are embedded in the Excel COSS model, a redacted copy of Mr. Beauchamp’s Workpapers was not included with Petitioner’s Submission of Direct Workpapers filed on April 20, 2021. Petitioner will submit an unredacted version of the Workpapers 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 Petitioner to safely file the Confidential Information with the Commission.

4. As explained in the Affidavit, the Confidential Information includes an electronic copy, including all formulas, of the COSS model prepared by Mr. Beauchamp for purposes of this proceeding. The Confidential Information is not available from any other source. As further explained in the Affidavit, Utility Financial Solutions, LLC, has taken reasonable precautions to protect against the public disclosure of the Confidential Information. Utility Financial Solutions, LLC, does not publicly provide, file or otherwise disclose the Confidential Information except with appropriate confidentiality protections in place to maintain its secrecy, and competitors do not have unrestricted access to the Confidential Information. Accordingly, the Confidential Information has been the subject of reasonable efforts to maintain its secrecy as required by Ind. Code § 24-2-3-2.

5. Based upon the above description of material for which Petitioner seeks protection and the attached Affidavit, Petitioner requests the Commission enter a preliminary determination that the Confidential Information appears to be confidential and protected from disclosure to the public under 170 IAC 1-1.1-4, Ind. Code § 5-14-3-4 and

Ind. Code § 8-1-2-29, for the limited purpose of allowing Petitioner 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 Petitioner's request for protection. Petitioner's request is consistent with Indiana law and should be granted.

6. Once a preliminary determination is made that the Confidential Information is exempt from public disclosure, Petitioner 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.

7. Petitioner 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.

8. Petitioner entered into a settlement in Cause No. 44855 with the Office of Utility Consumer Counselor and Washington Township Water Authority (the "Settlement") that expressly contemplated that the COSS would be confidential. The Settlement specifically recognized in Section 3.D. that the COSS would be provided subject to a "reasonable nondisclosure agreement." *In the Matter of the Petition of Bloomington*, 2017 Ind. PUC Lexis 80 at \*27 (2017 WL 1208969 (Ind U.R.C. March 29, 2017) (note the Westlaw version does not include the settlement attachment referenced in the Order, which is why the Lexis cite is the primary cite)).

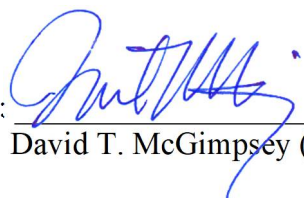
9. Petitioner will provide the Confidential Information to the parties who have been granted intervenor status in this Cause pursuant to an appropriate protective agreement that is acceptable to Petitioner. To date, Petitioner has entered into confidentiality agreements with the Office of Utility Consumer Counselor and with Washington Township Water Authority.

WHEREFORE, Petitioner 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 Petitioner 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 § 5-14-3-4, Ind. Code § 8-1-2-29, and 170 IAC 1-1.1-4;
- (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 such other relief as may be appropriate.

Dated this 20<sup>th</sup> day of April, 2021

Respectfully submitted,

By:   
David T. McGimpsey (21015-49)

DENTONS BINGHAM GREENEBAUM LLP  
212 W. 6<sup>th</sup> Street  
Jasper, Indiana 47546  
Office: 812.482.5500  
Facsimile: 812.482.2017  
Email: [david.mcgimpsey@dentons.com](mailto:david.mcgimpsey@dentons.com)

Michael T. Griffiths (26384-49)  
Hannah G. Bennett (35991-49)  
DENTONS BINGHAM GREENEBAUM LLP  
2700 Market Tower  
10 West Market Street  
Indianapolis, Indiana 46204  
Office: 317.635.8900  
Facsimile: 317.236.9907  
[hannah.bennett@dentons.com](mailto:hannah.bennett@dentons.com)

Attorneys for the Petitioner, the City of  
Bloomington, Indiana

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing has been served by electronic service on the following this 20<sup>th</sup> day of April, 2021:

**Oucc**  
Tiffany Murray, Esq.  
[timurray@oucc.in.gov](mailto:timurray@oucc.in.gov)  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov)

**Washington Township Water Authority**  
Mark Cooper, Esq.  
[attymcooper@indy.rr.com](mailto:attymcooper@indy.rr.com)



---

An attorney for Petitioner,  
The City of Bloomington, Indiana

Courtesy copy provided to:

Keith Thompson  
Indiana University  
AVP-Facility Operations  
[Thompkei@iu.edu](mailto:Thompkei@iu.edu)

**ATTACHMENT A**

**AFFIDAVIT OF MARK C. BEAUCHAMP**

Mark C. Beauchamp, upon his oath, deposes and states:

1. I am the owner and President of Utility Financial Solutions, LLC, a consulting firm that provides electric, water, wastewater, gas, and refuse cost of service studies primarily for municipal and cooperative utilities in over 40 states, Canada, Barbados, Bermuda, Cayman Islands, and Guam. I have been engaged by the City of Bloomington (“Petitioner” or “Bloomington”) to prepare a cost of service study (“COSS”) using proprietary formulas developed by Utility Financial Solutions, LLC (the “Confidential Information”). The Confidential Information was not submitted with the workpapers included in the Submission of Direct Workpapers filed by Petitioner on April 20, 2021 (the “Workpapers”) pending a ruling on Petitioner’s Motion for Protection of Confidential Information (“Motion”) filed concurrently with the Workpapers, which this Affidavit supports.

2. I have personal knowledge of the confidential, proprietary, competitively sensitive and trade secret nature of the Confidential Information addressed herein and in the accompanying Motion through my own compilation and calculation of the information, and I have knowledge of the steps taken to prevent public disclosure of the Confidential Information.

3. The Confidential Information is not available in the public domain, and Utility Financial Solutions, LLC, takes steps to protect this information from public disclosure. The formulas making up the COSS have been developed by Utility Financial

Solutions, LLC, and their disclosure would cause economic harm to Utility Financial Solutions, LLC. The formulas making up the COSS derive independent economic value, actual and potential, from the information 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. Disclosure of the Confidential Information would have a substantial detrimental effect on Utility Financial Solutions, LLC because its competitors would gain insights into how Utility Financial Solutions, LLC, conducts its cost of service studies and gain insight into the assumptions and rationale used by Utility Financial Solutions, LLC, when performing a COSS. Utility Financial Solutions, LLC, does not disclose its COSS formulas except under appropriate confidentiality protections, such as the execution of an appropriate confidentiality agreement. If the formulas would become publicly available, the significant time and effort spent developing the formulas would be lost. Accordingly, the Confidential Information is not readily available in the public domain, and Utility Financial Solutions, LLC, has taken steps to protect this information from public disclosure.


4. I am supporting the request of the Petitioner for protection of Confidential Information contained in my Workpapers, which includes the formulas used in the COSS.

5. Petitioner will submit an unredacted version of the Workpapers including the Confidential Information once a protective order is entered.

Dated: 4/20/2021 Mark C. Beauchamp  
Mark C. Beauchamp

STATE OF MICHIGAN )  
 ) SS:  
COUNTY OF Ottawa )

Andrew Zoerman  
Printed

  
Signature

7/28/2027

Ottawa

3