

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**APPLICATION OF INDIANAPOLIS)
POWER & LIGHT COMPANY D/B/A AES)
INDIANA FOR APPROVAL OF A FUEL)
COST FACTOR FOR ELECTRIC)
SERVICE DURING THE BILLING)
MONTHS OF JUNE THROUGH AUGUST) CAUSE NO. 38703 FAC 131
2021, IN ACCORDANCE WITH THE)
PROVISIONS OF I.C. 8-1-2-42, AND)
CONTINUED USE OF RATEMAKING)
TREATMENT FOR COSTS OF WIND)
POWER PURCHASES PURSUANT TO)
CAUSE NOS. 43485 AND 43740.)**

**APPLICANT’S MOTION FOR PROTECTION AND NONDISCLOSURE OF
CONFIDENTIAL AND PROPRIETARY INFORMATION**

Indianapolis Power & Light Company d/b/a AES Indiana (“AES Indiana”, “Applicant”, “Company”, or “IPL”), 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 AES Indiana containing information that is confidential, proprietary, competitively sensitive and trade secret. In support of this motion, AES Indiana represents the following:

1. AES Indiana has filed a Verified Application with the Commission requesting approval of a fuel cost factor for electric service during the months of June through August 2021 and continued use of ratemaking treatment for costs of wind power purchases.
2. On March 16, 2021, AES Indiana prefiled its case-in-chief in this Cause. The prefiled attachments and workpapers of AES Indiana witness David Jackson contain certain

information identified as confidential by AES Indiana (the “Confidential Information”). AES Indiana requests the Confidential Information to be exempted from public disclosure.

1. A list of the Confidential Information is attached hereto as Exhibit A. As explained in the affidavit of David Jackson, attached hereto as Exhibit B, the Confidential Information includes: (a) weekly model runs used in Petersburg commitment decisions in November 2020 through January 2021, included in Confidential Attachment DJ-3 to Mr. Jackson’s testimony; (b) Petersburg look back analysis, contained in Confidential Workpaper DJ-1, which includes generating unit cost information, daily margin calculations, and projected coal and natural gas price information; and (c) projected coal burn and inventory by source for 2020 through 2021, included in Confidential Attachment DJ-4 to Mr. Jackson’s testimony. The Confidential Information is also contained in the electronic spreadsheet versions of these confidential attachments.

2. As stated below, AES Indiana plans to submit unredacted versions of the documents that include the Confidential Information once a protective order is entered. The Confidential Information may also be discussed in the evidence, pleadings, workpapers and other submissions to be made in this Cause. A Commission protective order will allow AES Indiana to safely file the Confidential Information with the Commission.

3. As explained in Mr. Jackson’s affidavit, 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.

4. The Confidential Information identifies the actual and projected costs for various coal inventory options, including supplier negotiations, increased on-site coal storage capacity, temporary interim storage, and contract buyout. The Confidential Information is competitively sensitive and a trade secret because coal suppliers and other vendors could use such information to better determine whether and how to negotiate with AES Indiana and would allow them to better determine how to price their services and products. Specifically, if coal suppliers were aware of AES Indiana's coal levels and AES Indiana's coal contract prices, it would hinder AES Indiana's ability to negotiate for economical coal supplies. Further, such information may be used to determine AES Indiana's current and projected resource costs, information about the operation of AES Indiana's facilities and the price at which AES Indiana has secured coal for its plant. The Confidential Information therefore has considerable independent economic value by reason of the fact that it is not publicly available. Accordingly, there would be a substantially detrimental effect on AES Indiana, its customers and its stakeholders if the Confidential Information were disclosed to AES Indiana's suppliers, vendors, or competitors or otherwise made publicly available.

5. 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).

6. The Confidential Information is an updated version of information previously found to be confidential and exempt from public disclosure by the Commission. *See, e.g., Re Indianapolis Power & Light Co.*, Cause No. 38703 FAC 130, Docket Entry dated January 25, 2021, affirmed by Order dated February 24, 2021; *Re Indianapolis Power & Light Co.*, Cause No. 38703 FAC 129, Docket Entry dated November 4, 2020, affirmed by Order dated November 25, 2020. Moreover, the Commission has previously exempted AES Indiana's forward-looking coal inventory information and information related to coal inventory management options, as well as decrement pricing calculations, from public disclosure. *Re Indianapolis Power & Light Co.*, Cause No. 38703 FAC 112, Docket Entry dated July 6, 2016 (information related to coal contracts, coal storage and inventory management options, generator offers and projected market energy prices, wholesale margins and capacity, and decrement pricing calculations exempt from public disclosure), affirmed by Order dated August 24, 2016. The Commission has also previously protected generating unit financial and operating characteristics, generator offers and other related information from public disclosure. *See, e.g., Re Indianapolis Power & Light Co.*, Cause No. 38703 FAC 127, Docket Entry dated April 30, 2020 (detailed historical and projected generating unit information, including dispatch information, weekly unit dispatch assessment spreadsheets, MISO offer details, fixed and variable costs of production, net generation, market revenues, heat rates and other unit operating characteristics, and coal contract information exempt from public disclosure), affirmed by Order dated June 3, 2020; *Re Duke Energy Indiana, LLC*, Cause No. 38707 FAC 123, Docket Entry dated March 10, 2020 (generation variable cost data, Day-Ahead Awards, dispatch information, and pricing and commercial terms of coal contracts exempt from public disclosure), affirmed by Order dated March 31, 2020; *Re Duke Energy Indiana, LLC*, Cause No. 43114 IGCC-17, Docket

Entry dated August 6, 2018 (generating unit dispatch data, including generator offers exempt from public disclosure), affirmed by Order dated June 5, 2019; *Re Indiana Michigan Power Co.*, Cause No. 43992 ECCR-6, Docket Entry Dated February 10, 2017 (projected unit generation protected from public disclosure), affirmed by Order dated April 26, 2017; *Re Indianapolis Power & Light Co.*, Cause No. 38703 FAC 113, Docket Entry dated September 23, 2016 (information related to generator offers and projected market energy prices, wholesale margins and capacity exempt from public disclosure), affirmed by Order dated November 22, 2016. Therefore, AES Indiana's request is consistent with Commission precedent, otherwise complies with Indiana law and should be granted.

7. As explained in Mr. Jackson's affidavit, AES Indiana has taken steps to limit access to the Confidential Information to those employees who need to know the information. The AES Indiana files containing the 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 AES Indiana seeks protection and the attached verified statement, AES Indiana 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 AES Indiana 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 AES Indiana's request for protection. Subject to paragraph 10 below, once a preliminary determination is made that the Confidential Information is exempt from public disclosure, AES Indiana will submit the

Confidential Information to the Presiding Administrative Law Judge using the Commission's Online Services Portal.

9. AES Indiana 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, AES Indiana requests that the Commission not disclose the information to persons outside the Commission unless the person has entered into an appropriate protective agreement with AES Indiana.

10. Upon a preliminary determination that the Confidential Information is confidential and/or trade secret, AES Indiana proposes that the Commission adopt procedures to assure the protection of the Confidential Information provided by AES Indiana.

11. AES Indiana has provided the Confidential Information to the Indiana Office of Utility Consumer Counselor ("OUCC") pursuant to the Standard Form Nondisclosure Agreement between AES Indiana and the OUCC. While no other party has intervened as of the date of this Motion, should a subsequently filed petition to intervene be granted AES Indiana is willing to consider providing the Confidential Information to an intervenor pursuant to an appropriate protective agreement that is acceptable to AES Indiana. If necessary, AES Indiana 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, AES Indiana will provide the Confidential Information subject to and contingent upon AES Indiana's 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, AES Indiana 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 AES Indiana 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 ensure 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 AES Indiana such other relief as may be appropriate.

Respectfully submitted,



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Indianapolis Power & Light Company
d/b/a AES Indiana

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a copy of the foregoing was served this 16th day of March, 2021, by email transmission to:

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Attorneys for Petitioner
INDIANAPOLIS POWER & LIGHT COMPANY
D/B/A AES INDIANA

List of Confidential Information

	Document Reference	Description of Information	Basis for Protection
1.	Confidential Attachment DJ-3, including spreadsheet version provided in Excel format	Weekly model runs used in Petersburg commitment decisions, containing daily generating unit information, including start up costs, consumable and total variable O&M, coal costs, projected market power prices, projected natural gas prices.	Confidential, proprietary, competitively sensitive and trade secret generating unit information and pricing information – See Exhibit B (Jackson Affidavit).
2.	Confidential Attachment DJ-4, including spreadsheet version provided in Excel format	Projected coal burn and coal inventory by source for 2020 through 2021.	Confidential, proprietary, competitively sensitive and trade secret information regarding commercial terms, coal inventory levels, and projected coal consumption – See Exhibit B (Jackson Affidavit).
3.	Confidential Workpaper DJ-1, provided in Excel format	Petersburg Margin Look Back Analysis containing daily generating unit information, including start up costs, consumable and total variable O&M, coal costs, projected market power prices, and projected natural gas prices.	Confidential, proprietary, competitively sensitive and trade secret generating unit information and pricing information – See Exhibit B (Jackson Affidavit).



FAC 131 - Jackson Affidavit.docx

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E-Signature Summary

E-Signature 1: David Jackson (DJ)

March 15, 2021 15:19:53 -5:00 [8C02D3CAFC41] [64.210.39.254]
 david.g.jackson@aes.com (Principal) (Personally Known)

E-Signature Notary: Karla J. Ives (KJI)

March 15, 2021 15:19:53 -5:00 [007CB2574AA4] [64.210.39.254]
 karla.ives@aes.com

I, Karla J. Ives, did witness the participants named above electronically sign this document.



AFFIDAVIT OF DAVID JACKSON

David Jackson, upon his oath, deposes and states:

1. I am employed by AES US Services, LLC (“the Service Company”), as Director, Commercial Operations. In this capacity, I am responsible for managing Indianapolis Power & Light Company d/b/a AES Indiana’s (“AES Indiana”, “IPL”, or the “Company”) participation in the Midcontinent Independent System Operator, Inc. (“MISO”) energy market and oversight of AES Indiana’s strategy and execution for demand bids and generation offers. I am also responsible for the management of AES Indiana’s wind power purchase agreements and procurement of natural gas and coal.

2. I acknowledge that I am of requisite age and capacity to testify to the matters stated herein. 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 direct contact with this information and through my investigation with other AES Indiana employees who work directly with the Confidential Information. I have personal knowledge of efforts taken by AES Indiana 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. AES Indiana is requesting that certain confidential information to be included as attachments in this proceeding be exempted from public disclosure as confidential, proprietary, competitively sensitive and trade secret information (the “Confidential Information”).

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4. More specifically, the Confidential Information includes: (a) weekly model runs used in Petersburg commitment decisions in November 2020 through January 2021, included in Confidential Attachment DJ-3 to my testimony, which contain generating unit cost information, daily margin calculations, coal and natural gas prices, and other market price information; (b) Petersburg look back analysis, contained in Confidential Workpaper DJ-1, which includes generating unit cost information, daily margin calculations, and projected coal and natural gas price information; and (c) projected coal burn and inventory by source for 2020 through 2021, included in Confidential Attachment DJ-4 to my testimony. The Confidential Information is also contained in the electronic spreadsheet versions of these confidential attachments. As stated below, AES Indiana will submit unredacted versions of the attachments and workpapers that include the Confidential Information once a protective order is entered.

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

5. The Confidential Information is not readily available in the public domain and AES Indiana takes steps to protect this information from public disclosure. Such information is competitively sensitive and a trade secret because competitors may use such data to gain a competitive advantage over AES Indiana. For example, the weekly model runs and look back analysis included in Confidential Attachment DJ-3 and Confidential Workpaper DJ-1 contain confidential information by day and by unit, including start up costs, consumable and total variable O&M costs, coal costs, projected market prices, and natural gas prices. Public disclosure of such competitively sensitive information would provide considerable economic value to competitors, who could use information to gain insight into AES Indiana's generator offers, bidding strategy, and expectations with respect to inputs into the commitment decision analysis. With respect to the information contained in Confidential Attachment DJ-4, coal suppliers and



other vendors could use such information to better determine whether and how to negotiate with AES Indiana and would allow them to better determine how to price their services and products. Specifically, if coal suppliers were aware of AES Indiana's coal levels and AES Indiana's coal contract prices it would hinder AES Indiana's abilities to negotiate for economical coal supplies. Further, such information may be used to determine AES Indiana's current and projected resource costs, information about the operation of AES Indiana's facilities and the price at which AES Indiana has secured coal for its plants. In addition, the disclosure of the Company's commercial terms and conditions, contract prices, and alternative options would negatively affect the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what the Company's expectations are with respect to such products in the future. Thus, these suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide similar services in order to maximize their prices to the disadvantage of AES Indiana and its customers. The Confidential Information, if disclosed to coal suppliers, competitors of AES Indiana, or otherwise made publicly available, would have a substantially detrimental effect on AES Indiana and its stakeholders. Public disclosure of AES Indiana's estimated coal burns, weighted average avoided costs and projected market energy prices would also impact AES Indiana's ability to manage its coal inventory, to the detriment of AES Indiana and its customers.

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

6. 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**

7. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. AES Indiana restricts the access of information to only those employees, officers and representatives of AES Indiana who have a need to know about such information due to their job and management responsibilities. AES Indiana's files containing the Confidential Information are maintained separately from AES Indiana's general records and access to those files is restricted. Within AES Indiana, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of AES Indiana who have a need to know about such information due to their job and management responsibilities. Outside AES Indiana, 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: March¹⁵, ---

David Jackson

Signed on 2021/03/15 15:19:53 -5:00

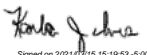

David Jackson



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

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

Karla J. Ives
Printed

Si  
Signed on 2021/03/15 15:19:53 -5:00

My Commission Expires:

March 23, 2024

My County of Residence:

Marion

