

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS)
 POWER & LIGHT COMPANY D/B/A AES)
 INDIANA PURSUANT TO IND. CODE § 8-1-)
 2.5-5 FOR PARTIAL COMMISSION)
 DECLINATION UNDER IND. CODE)
 CHAPTER 8-1-8.5 TO ISSUE A)
 CERTIFICATE OF PUBLIC CONVENIENCE) CAUSE NO. _____
 AND NECESSITY OR OTHERWISE)
 APPROVE A SOLAR GENERATION)
 PROJECT OF APPROXIMATELY 375 KW_{ac})
 (384 KW_{dc}) AND ALTERNATIVE REQUEST)
 FOR APPROVAL OF SAID SOLAR PROJECT)
 AS CLEAN ENERGY PROJECT)

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

Petitioner, Indianapolis Power & Light Company, d/b/a AES Indiana ("AES Indiana," "IPL," or "Company"), 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 filed its petition initiating this docket together with its prefiled case-in-chief and supporting workpapers on May 31, 2022.

2. As further identified below, the testimony, attachments, and workpapers of AES Indiana witnesses C. Scott Perry and Robert A. Pflum contain certain information identified as confidential, proprietary, competitively sensitive and/or trade secret by AES Indiana (the

“Confidential Information”). The Confidential Information may also be discussed in the evidence, pleadings, workpapers and other submissions to be made in this Cause.

3. A table identifying the specific Confidential Information is attached as Exhibit A. The confidential, proprietary, competitively sensitive and trade secret nature of the Confidential Information is explained in the affidavit of C. Scott Perry attached hereto as Exhibit B. AES Indiana requests the Confidential Information to be exempted from public disclosure.

4. To the extent practicable, public redacted versions of the identified documents have been prefiled with the Commission. A Commission protective order will allow AES Indiana to safely file the Confidential Information with the Commission.

5. As further described in the list below and in the attached affidavit, the Confidential Information includes the anticipated value of the investment tax credit, detailed cost information and other competitively sensitive commercial pricing, terms and conditions, including contracts and proposals from suppliers and contractors involved with this Project.

- a. AES Indiana witness Perry’s testimony (Q/A 21) includes the anticipated dollar value of the investment tax credits (“ITC”) for the proposed Harding Street Station Solar Array.
- b. AES Indiana witness Pflum’s testimony includes the 5B Supply Agreement between AES Indiana and 5B AUSTRALIA PTY LIMITED (AES Indiana Attachment RAP-1(C) (Confidential)). The 5B Supply Agreement describes the quantity, pricing, and characteristics of the Maverick™ arrays AES Indiana will

purchase and sets forth the terms and conditions between AES Indiana and 5B for the purchase and shipping of the 5B Maverick™ arrays.

- c. AES Indiana witness Pflum's testimony also includes the costs and associated contracts supporting the best estimate of the cost of the proposed Harding Street Station Solar Array Project. This Confidential Information is set forth in Table 2 of Mr. Pflum's direct testimony (Q/A 16) and is also provided in AES Indiana Confidential Workpapers RAP-2 through RAP-7, which contain the following:
 - a. estimated cost of materials and installation (RAP-2) (Skanska USA, Inc. ("Skanska") proposal);
 - b. estimated cost of engineering and inverter procurement (i.e., engineering services, site survey and documentation, and inverter procurement) (RAP-3) (PCI, a Salas O'Brien Company);
 - c. estimated cost of other materials, i.e., procuring and placing gravel in and around the proposed Project site (RAP-4) (Skanska proposal);
 - d. estimated costs of deployment (RAP-5) (Directional Services, Inc. proposal);
 - e. estimated interconnection costs (RAP-6) (engineering estimate); and
 - f. estimated environmental assessment cost (RAP-7) (GAI Consultants, Inc. proposal);

6. 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.

7. The Confidential Information consists of competitively-sensitive and detailed cost information and associated proposals and contracts that are based on the assumption that such information would be maintained as confidential. The disclosure of the Confidential Information would adversely impact AES Indiana because it would permit competitors and potential bidders to better determine how to price their services and products. Disclosure of the detailed cost estimates would negatively affect the negotiation or competitive bidding process by allowing potential suppliers or vendors to know what AES Indiana's expectations are with respect to such items. Thus, suppliers or vendors would have the advantage of knowing how to price their bids or negotiate to provide construction, procurement, and other services in order to maximize their prices to the disadvantage of AES Indiana and its customers. The cost estimate information contained in the Confidential Information could also be used by contractors and suppliers to establish artificial minimum prices for the cost to complete the various projects. The anticipated dollar value of the ITC identified in AES Indiana witness C. Scott Perry's direct testimony (Q/A 21) is based on a subset of costs included in the total best estimate of the Project cost. This ITC value is confidential because revealing it publicly would allow third parties to back into or estimate components of the Project cost estimate which remain subject to negotiation for this Project or are the types of cost that are subject to negotiation on other projects.

8. The Confidential Information falls within the purview of the Indiana Uniform Trade Secret Act. Ind. Code § 24-2-3-2 *et seq.* The Confidential Information is not publicly available and (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.

9. 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). 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.

10. The Confidential Information is similar to confidential, proprietary, competitively-sensitive, and/or trade secret information previously found to be exempt from public disclosure by the Commission. *Indianapolis Power & Light Company d/b/a AES Indiana*, Cause No. 45584, Docket Entry dated November 19, 2021 (competitively-sensitive pricing including pricing information used to develop the *AES Indiana Plus* Subscription Program Fee exempt from public disclosure) affirmed by Final Order April 6, 2022; *Duke Energy Ind., Inc.*, Cause No. 45395, Docket Entry dated July 7, 2020 (costs, pricing-related and other competitive provisions of service negotiated between utility and customer exempt from public disclosure), affirmed by Final Order December 29, 2020; *Indianapolis Power & Light Co.*, Cause No. 45264, Docket Entry August 7, 2019 (detailed project cost estimates exempt from public disclosure), affirmed by Final Order March 4, 2020; *Joint Petition of Indiana Gas Co., Inc. and Southern Indiana Gas Elec. Co.*, Cause No. 45129 Docket Entry dated August 6, 2018 (services, labor, equipment, and materials pricing information in master services agreement exempt from public disclosure) affirmed by Final Order September 12, 2018; and *Indiana-American Water*

Company, Inc., Cause No. 42351 DSIC-11 Docket Entry February 23, 2018 (contractor bid information exempt from public disclosure) affirmed by Final Order March 14, 2018.

11. AES Indiana has taken steps to limit access to the Confidential Information to those employees who need to know the information. AES Indiana's files, including electronic files, containing the Confidential Information are maintained separately from their general records and access to those files is electronically restricted.

12. Therefore, AES Indiana's request is consistent with Commission precedent, otherwise complies with Indiana law and should be granted.

13. Based upon the above description of material for which AES Indiana seeks protection and the attached affidavits, 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.

14. 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.

15. 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.

16. AES Indiana will provide 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. AES Indiana is willing to consider providing the Confidential Information to intervening parties 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.

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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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 31st day of May, 2022, by email transmission to:

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Attorneys for AES Indiana

List of Confidential Information

	Document Reference	Description of Information	Basis for Protection
1.	AES Indiana Witness Perry Direct Testimony Q/A 21	Anticipated dollar value of investment tax credit	Disclosure would reveal competitively sensitive cost and pricing information.
2	AES Indiana Witness Mr. Pflum Direct Testimony (Q/A 16 (Table 2))	Breakdown of Harding Street Station Solar Array Best Estimate of Costs	Competitively sensitive cost and pricing information.
2.	AES Indiana Attachment RAP-1(C)	5B Supply Agreement between AES Indiana and 5B AUSTRALIA PTY LIMITED	Competitively sensitive cost and pricing information and commercial terms and conditions.
3.	AES Indiana Confidential Workpapers RAP-2 through RAP-7	Detailed costs and associated contracts or proposals supporting the best estimate of the cost of the proposed Harding Street Station Solar Array	Competitively sensitive cost and pricing information and commercial terms and conditions.



Perry Affidavit - Case in Chief22728188.1.docx

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E-Signature Summary

E-Signature 1: C. Scott Perry (CSP)

May 31, 2022 06:51:57 -8:00 [220B8F593333] [165.225.61.63]
 scott.perry@aes.com (Principal) (Personally Known)

E-Signature Notary: Shanna Bowman (SB)

May 31, 2022 06:51:57 -8:00 [917FCF72CA2F] [12.13.246.69]
 shanna.bowman@aes.com
 I, Shanna Bowman, did witness the participants named above electronically sign this document.



AFFIDAVIT OF C. SCOTT PERRY

C. Scott Perry, upon his oath, deposes and states:

1. I am employed by AES Indiana as Manager, Regulatory Affairs. In this capacity, I lead a team responsible for various regulatory projects and filings.

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 information to be included in the Company's prefiled case-in-chief testimony and attachments and in the Company's workpapers be exempted from public disclosure as confidential, proprietary, competitively-sensitive, and trade secret information (the "Confidential Information").

4. The Confidential Information that is the subject of my affidavit and the Company's Motion includes the anticipated value of the investment tax credit, detailed cost information and other competitively sensitive commercial pricing, terms, and conditions, including contracts and proposals from suppliers and contractors involved with this Project. The specific information is identified in the Motion, paragraph 5, and in the table attached to the Motion as Exhibit A.

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5. More specifically, the Confidential Information includes the 5B Supply Agreement which describes the quantity, pricing, and characteristics of the Maverick™ arrays AES Indiana will purchase and sets forth the terms and conditions between AES Indiana and 5B for the purchase and shipping of the 5B Maverick™ arrays. The Confidential Information also includes proposals for work with other suppliers for engineering, materials, installation, deployment and environment assessment work on the Project as well as the estimated cost of interconnection prepared by AES Indiana. The Confidential Information also includes the value of investment tax credit (“ITC”), discussed in my direct testimony. The ITC value is based on a subset of the Project costs and revealing it would allow third parties to back into or estimate components of the Project cost estimate which remain subject to negotiation for this Project or are the types of cost that are subject to negotiation on other projects.

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

6. The Confidential Information is not readily available in the public domain and AES Indiana and its suppliers take steps to protect this information from public disclosure. The competitively sensitive pricing and commercial terms were received from and negotiated with the Company’s suppliers based on understanding that the bids and associated agreements are held as confidential. Such information is competitively sensitive and a trade secret because third parties may use such data to gain a competitive advantage over AES Indiana or its suppliers.

7. The Confidential Information includes competitively sensitive and trade secret information provided by and negotiated with AES Indiana’s vendors, including 5B. Such information is competitively sensitive and a trade secret because suppliers may use such data to gain a competitive advantage over AES Indiana in the implementation of this Project. AES



Indiana may negotiate for these services or similar services for other projects in the future. Knowledge of the pricing and negotiated terms and conditions would be of economic value to and provide counterparties with an unfair advantage. For example, suppliers would have the advantage of knowing how to price their bids or negotiate terms and conditions in order to maximize their prices, to the disadvantage of AES Indiana and its customers. The cost estimate information contained in the Confidential Information could also be used by suppliers to establish artificial minimum prices for their goods and services. This is also why the value of the ITC is included as Confidential Information. The ITC value is based on a subset of the costs included in the confidential best estimate, if it were publicly disclosed it would allow third parties to back into or estimate components of the Project cost estimate which remain subject to negotiation for this Project or are the types of cost that are subject to negotiation on other projects.

8. The public disclosure of the Confidential Information may also harm AES Indiana's third-party suppliers. AES Indiana is not the supplier's only customer. 5B and other suppliers negotiate with other customers and their competitors also negotiate with other customers. AES Indiana also negotiates and enters into contracts with other suppliers and vendors. AES Indiana's suppliers would be harmed if competitively sensitive information were publicly disclosed because it would give competitors or customers an advantage in competitive negotiations. Further, if suppliers were aware that confidential information regarding their pricing and other negotiated terms were not kept confidential, such suppliers may be less likely to deal with AES Indiana in the future.

9. Thus, the Confidential Information identified above and in the Motion and Exhibit A derives 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.

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

10. 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**

11. 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: May 31, 2022

C. Scott Perry
Signed on 2022/05/31 06:51:57 -8:00

C. Scott Perry



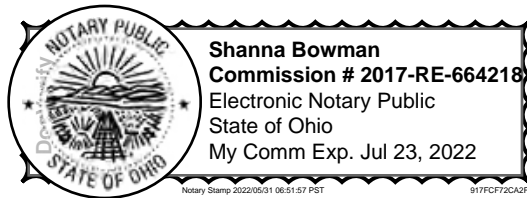
STATE OF OHIO

COUNTY OF MONTGOMERY

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SS:

Sworn to before me and subscribed in my presence via online notarization pursuant to Ohio Revised Code 147.60 et seq. this 05/31/2022. This certificate pertains to an electronic notarial act performed with the principal appearing online using audio-video communication. This is a jurat certificate; an oath was administered to the signer.



Shanna Bowman
Signed on 2022/05/31 06:51:57 -8:00

Shanna Bowman
Ohio Online Notary Public
Dayton, Ohio

DMS 22728188

