

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

EDF Industrial Power Services (IL), LLC)
)
Petition for Relief to Protect a Portion of)
Petitioner's 2013 Kilowatt-Hour Report)
From Disclosure For Not Less Than Two)
Years To Protect Highly Confidential and)
Proprietary Information)
)

Docket No. 14- 0263

PETITION FOR RELIEF TO PROTECT CONFIDENTIAL AND PROPRIETARY
INFORMATION OF EDF INDUSTRIAL POWER SERVICES (IL), LLC

Pursuant to Ill. Adm. Code tit. 83, §§ 200.430, 451.60, EDF Industrial Power Services (IL), LLC ("Petitioner" or "EIPS") hereby petitions the Illinois Commerce Commission ("ICC" or "Commission") for relief to protect Petitioner's Report of Continuing Compliance which includes Petitioner's 2013 Kilowatt-Hour Report ("2013 KWh Report") from disclosure for not less than two years to protect highly confidential and proprietary information included therein. In support of this Petition, EIPS states as follows:

(1) EIPS is certified by the Commission as an alternative retail electric supplier ("ARES") in the State of Illinois. The Commission granted EIPS a certificate of service authority as an ARES on December 2, 2009, in Docket No. 09-0467.

(2) Petitioner is required, pursuant to Ill. Adm. Code tit. 83, § 451.770, to submit to the Commission each year a report for the preceding calendar year stating the total annual kilowatt-hours delivered and sold by Petitioner to retail customers within each utility service territory.

(3) On March 13, 2014, Petitioner submitted its Report of Continuing Compliance to the Chief Clerk of the Commission via overnight delivery with copies for the Manager of the Consumer Services Division, the Energy Division, and the Financial Analysis Division. Petitioner's 2013 KWh Report, included as Attachment B, contains confidential and proprietary information and was designated as such when submitted to the Commission. The proprietary information was submitted to the Commission under seal, marked "CONFIDENTIAL & PROPRIETARY." A public, redacted version of the 2013 KWh Report was provided to the Commission concurrently.

(4) The specific information for which EIPS seeks proprietary treatment is the total kilowatt-hour sales in the service areas for which EIPS is eligible to provide service, the nature and number of customers for whom it currently provides service, and the strategic market and type of customers that EIPS seeks to serve in the future. This proprietary information is highly

CHIEF CLERK'S OFFICE
2014 MAR 28 P 11:03
ILLINOIS COMMERCE
COMMISSION

sensitive material that EIPS has designated as proprietary and confidential, and it should be protected from public disclosure for not less than two (2) years pursuant to Section 4-404 of the Public Utilities Act (“PUA”), 220 Ill. Comp. Stat. 5/4-404, and Section 7(g) of the Illinois Freedom of Information Act (“FOIA”), 5 Ill. Comp. Stat. 140/7.

(5) Section 4-404 of PUA provides that the “Commission *shall* provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity ...” (emphasis added). An ARES who believes that any of the information to be submitted to the Commission by the ARES is privileged or confidential, is instructed by the Commission’s rules to “request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of [the information].” Ill. Admin. Code tit. 83, § 451.60. Similarly, Section 7(g) of the FOIA exempts from public disclosure “trade secrets and commercial or financial information ... where the trade secrets or information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm.” 5 Ill. Comp. Stat. 140/7(1)(g).

(6) The proprietary information falls within the FOIA 7(g) exemption and should be afforded confidential treatment pursuant to both PUA and the Illinois FOIA. More particularly, the proprietary information includes market-sensitive material that is company specific, and information of highly commercially sensitive nature involving company business operations or financial information. The specific information for which EIPS seeks proprietary treatment is the total kilowatt-hour sales in the service areas for which EIPS is eligible to provide service. EIPS’ competitors can directly use such information to determine EIPS’ market share in Illinois’ competitive retail electricity industry and to determine EIPS’ proprietary business model and strategies.

(7) The information contained in the 2013 KWh Report is highly confidential and proprietary and should be afforded protection from public disclosure for two years. The Illinois retail electric service industry is highly competitive. The Office of Retail Market Development’s 2013 Annual Report indicates that there are 87 ARES certified to serve Illinois customers.¹ This is in addition to public utilities that may serve customers competitively outside of their service territory(ies) without certification. As one of the 87 certificated ARES, EIPS faces significant competition for its position in the market. The release of the highly confidential and proprietary information contained in the 2013 KWh Report would likely result in substantial competitive harm to EIPS by providing an unfair competitive advantage to EIPS’ competitors. Disclosure of such commercial and strategic information would be harmful to EIPS because it would give EIPS’ competitors insight into information about EIPS’ relative position in the marketplace.

(8) The Commission has consistently held that market share data is confidential, and the Commission previously has afforded proprietary and confidential treatment to the type of information for which EIPS seeks protection. *See, e.g., EDF Industrial Power Services (IL), LLC*, Docket No. 13-0178 (Feb. 20, 2014); *Constellation NewEnergy, Inc.*, Docket No. 09-0126

¹ Office of Retail Market Development, Illinois Commerce Commission, 2013 Annual Report Submitted Pursuant to Section 20-110 of the Public Utilities Act (June 30, 2013), p. 3.

(Aug. 19, 2009).

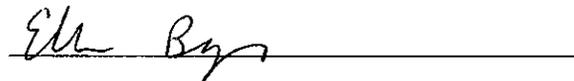
(9) Accordingly, EIPS seeks an Order from this Commission, without hearing, protecting from disclosure, for a period of not less than two years from the date of the Order, the proprietary information designated in Petitioner's 2013 KWh Report.

(10) EIPS agrees to accept service by electronic means as provided for in 83 Ill. Adm. Code 200.1050.

WHEREFORE, PREMISES CONSIDERED, EIPS respectfully requests that the Commission enter an Order, without hearing, protecting from disclosure the proprietary information submitted to the Commission for a period of not less than two years.

Respectfully submitted,

EDF INDUSTRIAL POWER SERVICES (IL), LLC



Ellenna Berger (IL 6302813)
Jones Day
77 West Wacker
Chicago, Illinois 60601-1692
(312) 269-1573 (voice)
(312) 782-8585 (fax)
evberger@jonesday.com

Attorney for EDF Industrial Power Services (IL), LLC

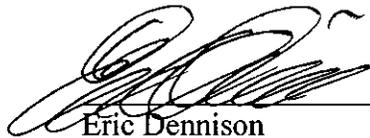
Dated: March 13, 2014

HUI-166423v2

STATE OF TEXAS)
)
COUNTY OF HARRIS)

Verification

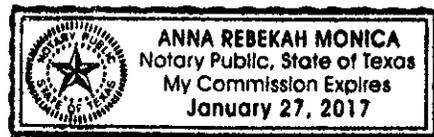
I, Eric Dennison, being first duly sworn upon my oath, depose and state that I am Senior Vice President, General Counsel and Secretary for EDF Industrial Power Services (IL), LLC; that I have read the above and foregoing Report of Continuing Compliance and all the attachments accompanying and referred to within the Report; and that said contents are true, correct and complete to the best of my knowledge, information and belief.


Eric Dennison

Senior Vice President General Counsel and Secretary

Subscribed and sworn to before me this 13th day of March, 2014.


Notary Public



My Commission expires: 01/27/2014