

may petition the Commission to change its assigned service area to include an annexed area beyond its assigned service area by filing its petition not later than 60 days after the annexation becomes effective. The Verified Petition states that the Ordinance became effective on February 26, 2015. The Verified Petition in this Cause was filed not later than 60 days after the annexation became effective, and therefore, the Commission has jurisdiction over the subject matter of this Cause.

2. Summary of the Arguments related to Duke Energy Indiana's Verified Motion.

On January 22, 2015, Duke Energy Indiana filed its Verified Motion and stated that dismissal is appropriate in this Cause because 1) Petitioner is not ready or able to serve Duke Energy Indiana's customers and also seeks to force Duke Energy Indiana to consent to continue serving these customers for an indefinite period of time; and 2) Petitioner has not complied with Ind. Code § 8-1-2.3-6(1)(B) by paying Duke Energy Indiana its statutorily required reproduction cost new less depreciation ("RCNLD") value of its electric assets within the annexation area within 30 days of Petitioner filing its Amended Petition. Petitioner argues that the Verified Motion should be denied because the plain language of Ind. Code § 8-1-2.3-6 only requires the Commission to promptly issue an order changing Petitioner's assigned service area boundary upon the submission of a timely filed Petition. Further, Petitioner asserts that Ind. Code § 8-1-2.3-6(1)(C) provides the sole remedy to Duke Energy Indiana for Petitioner's alleged failure to make the required RCNLD payments under Ind. Code § 8-1-2.3-6(1)(B). Specifically, Petitioner asserts that Ind. Code § 8-1-2.3-6(1)(C) allows Duke Energy Indiana to file a petition with the Commission stating that Petitioner has not made the required RCNLD payments not later than 60 days after the payment was due, and after Duke Energy Indiana has given the Petitioner notice of its failure to pay and the opportunity to make the payments. Ind. Code § 8-1-2.3-6(1)(C). Therefore, Petitioner asserts that Duke Energy Indiana's argument is without merit and the Commission must deny the Verified Motion and order the change in service area as requested by Petitioner.

3. Background. The process by which an annexation ordinance becomes effective is established by Ind. Code § 36-4-3-7. Subsection (a) of that statute provides:

After an ordinance is adopted . . . it must be published in the manner prescribed by IC 5-3-1. Except as provided in subsection (b), (c), or (f), in the absence of remonstrance and appeal . . ., the ordinance takes effect at least ninety (90) days after its publication and upon the filing required by section 22(a) of this chapter.

Ind. Code § 36-4-3-22(a)(1) requires the clerk of the municipality to file an annexation ordinance with each of the following governmental offices:

- (A) The county auditor of each county in which the annexed territory is located.
- (B) The circuit court clerk of each county in which the annexed territory is located.
- (C) If a board of registration exists, the registration board of each county in which the annexed territory is located.
- (D) The office of the secretary of state.
- (E) The office of census data established by IC 2-5-1.1-12.2.

If there is a remonstrance and a judgment is entered by a court in favor of the proposed annexation, the annexation ordinance does not become effective until the filings required by Ind. Code § 36-4-3-22(a), set forth above, are completed. Ind. Code § 36-4-3-15(f).

The Town Council of the Town of Pendleton, Indiana adopted the Annexation Ordinance on August 26, 2014. The Annexation Ordinance was published on November 9, 2014. No remonstrance ensued. Subsequently the Annexation Ordinance was filed as required by Ind. Code § 36-4-3-22(a) and the Ordinance was effective on February 26, 2015, when it was recorded by the Madison County Recorder.

In order to change its service area boundaries to include an annexed area, Ind. Code § 8-1-2.3-6(1)(A) states that a municipally owned electric utility shall file its petition with the Commission not later than 60 days after the annexation becomes effective. Ind. Code § 8-1-2.3-6(1)(A) further provides that the petition must include a certified copy of the annexation ordinance which serves as conclusive evidence that the area has been lawfully annexed and is a part of the municipality. Thereafter, the statute provides that the Commission shall promptly enter an order changing the assigned service area facet maps of the municipally owned electric utility and giving the right to serve and immediate possession to the municipally owned electric utility. Additionally, within 30 days of filing the petition for change of the service area boundary the municipally owned electric company is required to determine and pay to each incumbent electricity supplier the RCNLD value of electric assets within the Annexation Area as required by Ind. Code § 8-1-2.3-6(1)(B), along with severance damages if applicable.

4. Undisputed Material Facts. Based on the pleadings and the evidentiary materials submitted by the parties, the following facts are undisputed and material to the issues presented by Duke Energy Indiana's Verified Motion.

- (a) On August 26, 2014, Town Council of the Town of Pendleton, Indiana duly adopted and approved the Annexation Ordinance annexing 4.93 acres on the east side of the Town's then-existing corporate boundaries, all of which is located within the assigned service area of Duke Energy Indiana.
- (b) The Annexation Ordinance was published on November 9, 2014.
- (c) No remonstrance was filed challenging this annexation.
- (d) On February 26, 2015, the Annexation Ordinance was recorded with the Madison County Recorder.
- (e) Ordering Paragraph 6 of the Annexation Ordinance states that the annexation shall be in full force and effect from and after the date of its adoption and signing by the Council President and such publication and recordation as is required by law.
- (f) The annexation was effective on February 26, 2015.

5. Verified Motion.

A. Standard of Review. While summary judgment is not commonly employed before the Commission, it may be guided generally by the relevant provisions of the Indiana Rules of Trial Procedure, to the extent those rules are consistent with the Commission's Rules of Practice and Procedure. 170 IAC 1-1.1-26(a). Trial Rule 56 governs summary judgment, and provides in relevant part that "[t]he judgment sought shall be rendered forthwith if the designated evidentiary matter shows

that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”

Summary judgment is a procedure for applying the law to the facts when no factual controversy exists. *Lee v. Weston*, 402 N.E.2d 23, 24 (Ind. App. 1980). The Commission must accept the facts as provided by the parties’ proffered evidentiary materials. The Commission’s task is to determine which facts that arise from the evidentiary materials are both undisputed and material. Facts that arise by inference may be considered only when the inference from which they arise is either (i) the only reasonable inference, or (ii) an inference in favor of the non-moving party. *Id.* If the application of the law to the material facts requires judgment for either the moving party or any other party on the issues raised in the motion for summary judgment, the Commission must enter that judgment. Otherwise, the Commission must deny the motion for summary judgment. *Id.*

B. Modification of Assigned Service Area. The issue before the Commission is whether a certified copy of the annexation ordinance is all that is required to prove to the Commission that an area has been “lawfully annexed,” and whether the Commission must then issue an Order approving the requested change in Petitioner’s assigned service area if the municipality files its petition not later than 60 days after the annexation became effective pursuant to Ind. Code § 8-1-2.3-6(1)(A). Pursuant to Ind. Code § 8-1-2.3-6(1)(A), a municipally owned utility shall file its petition with the Commission not later than 60 days after the annexation becomes effective as evidenced by the certified copy of the Annexation Ordinance attached to the Verified Petition. Therefore, if the annexation at issue in this Cause was effective on February 26, 2015, as Petitioner alleges, and Petitioner’s Verified Petition properly attached a certified copy of the Annexation Ordinance and was filed not later than 60 days after the annexation’s effective date, the Commission must modify Petitioner’s assigned service area.

Duke Energy Indiana argues that Petitioner’s Verified Petition does not meet the statutory requirements of Ind. Code § 8-1-2.3-6(1)(A) because more is required. Duke Energy Indiana argues that Petitioner is unprepared to acquire, pay for, and properly operate Duke Energy Indiana’s utility assets within the Annexation Area, and therefore the Commission cannot promptly issue an order giving immediate possession to Petitioner. Duke Energy Indiana also asserts that Petitioner would require Duke Energy Indiana to consent to continue to serve the current and new customers in the Annexation Area, but the service area assignment law does not provide for Duke Energy Indiana’s forced consent. Therefore, Duke Energy Indiana asserts that the Verified Petition should be dismissed or denied.

Petitioner argues that Duke Energy Indiana ignores the plain language of the statute regarding the effective date of the annexation, and asks the Commission to provide relief that is not allowed. Petitioner alleges that to change service area boundaries pursuant to Ind. Code § 8-1-2.3-6(1)(A), a certified copy of the annexation ordinance is all that is required to prove to the Commission that the area has been “lawfully annexed.” Ind. Code § 8-1-2.3-6(1)(A). Petitioner further asserts that the effective date of the annexation establishes the only other requirement for annexation, and that the municipality must file the petition not later than 60 days after the annexation becomes effective.

To support its position, Petitioner states that it lawfully annexed the Annexation Area as evidenced by the certified copy of the Annexation Ordinance included as Exh. 1 to its Verified Petition. Petitioner further points out that pursuant to Ind. Code § 36-4-3-8(b)(1)(A), the certified copy of the Annexation Ordinance serves as conclusive evidence that the Annexation Area has been

lawfully annexed by the Town. Petitioner asserts that its Verified Petition was timely filed not later than 60 days after the effective date of the Annexation Ordinance and that Duke Energy Indiana's argument is without merit. Petitioner asserts that the Commission must deny Duke Energy Indiana's Verified Motion and order the change in service area boundaries as requested.

The relevant statutes must be examined in order to address this issue. The primary goal of statutory construction is to determine, give effect to, and implement the intent of the Legislature. *Bailey v. Holliday*, 806 N.E.2d 6 (Ind. Ct. App. 2004). The best evidence of legislative intent is the language of the statute itself. *Id.* at 11. All words must be given their plain and ordinary meaning unless otherwise indicated by the statute. *Id.* Further, it is just as important to recognize what the statute does not say as it is to recognize what it does say. *Id.* We are required to determine and apply the legislative intent underlying the statute and to construe the statute in such a way as to prevent absurdity and hardship and to favor public convenience. *Id.* In so doing, we consider the objects and purposes of the statute as well as the effects and consequences of such interpretation. *Id.* However, when a statute is susceptible to more than one reasonable interpretation, it is ambiguous and must be construed to determine legislative intent. *Nieto v. Kezy*, 846 N.E.2d 327, 335 (Ind. Ct. App. 2006).

To determine legislative intent, we must also read the sections of an act together so that no part is rendered meaningless if it can be harmonized with the remainder of the statute. *City of N. Vernon*, 829 N.E.2d at 4. We also examine the statute as a whole. *Id.* at 4-5. We presume that the Legislature intended language in a statute to be applied logically so as to avoid unjust or absurd results. *Nieto*, 846 N.E.2d at 335. Another basic rule of statutory construction is that statutes relating to the same general subject matter are *in pari materia* and should be construed together so as to produce a harmonious statutory scheme. *Reeder Assocs. II v. Chicago Belle, Ltd.*, 807 N.E.2d 752, 755 (Ind. Ct. App. 2004), *trans. denied*.

There is no dispute among the parties that the statutory process for annexation was effective on February 26, 2015, when the Town completed the filing requirements of Ind. Code § 36-4-3-22(a). However, the parties disagree regarding the statutory requirements necessary for the Commission to approve a petition for change of service area boundaries. This issue is resolved by reviewing the language of the relevant annexation statute in effect when the Verified Petition was filed, Ind. Code § 8-1-2.3-6(1)(A). The plain and unambiguous language of Ind. Code § 8-1-2.3-6(1)(A) requires a petitioner seeking a change in its service area boundary to file a petition with the Commission not later than 60 days after the annexation is effective.

Duke Energy Indiana asserts that while it does not dispute that under Ind. Code § 8-1-2.3-6, if certain conditions are met, a municipal utility may lawfully take the certified service territory of an incumbent electric utility, in this case, certain required conditions were not met. Specifically, Duke Energy Indiana argues that under the law, such a taking of public service responsibility and the taking of a public utility business operations, assets, customers, and revenues requires more than just a municipal ordinance, a map, and a short petition to the Commission. Duke Energy Indiana states that it requires the financial, engineering, and operational planning needed on an informed basis to be sure the municipally owned utility can pay for the acquisition and can plan for, operate, and extend electric service in the annexation area, before it supplants the incumbent utility's current operations. Duke Energy Indiana asserts that at a statutory minimum, Ind. Code § 8-1-2.3-6(1)(B) requires that the municipal utility "shall determine ... and pay" the incumbent utility the RCNLD value of its electric service assets in the annexation area. Duke Energy Indiana contends that Petitioner has failed to clear even that low initial hurdle and therefore, its Petition must be dismissed.

We agree that Ind. Code § 8-1-2.3-6(1)(B), requires a Petitioner to determine and pay an incumbent the RCNLD value of all electric utility property devoted to retail electric service within the portions of the annexed areas that fall within the incumbent's assigned service area within 30 days of filing its Petition. However, we disagree that this statutory provision is a condition upon which a service area boundary may be changed following the lawful annexation of an incumbent's service area. We further agree that should Petitioner fail to pay the RCNLD value of all electric utility property devoted to retail electric service within the portions of the annexed areas that fall within Duke Energy Indiana's assigned service area within 30 days of filing its Petition, Ind. Code § 8-1-2.3-6(1)(C) provides a means by which an incumbent may legally obtain that payment. Thus, we find no express statutory language in the law mandating any condition for the change of service area boundaries other than a certified copy of the annexation ordinance attached to the petition to prove to the Commission that the area has been "lawfully annexed." Therefore, we find that Duke Energy Indiana's interpretation of the statutory requirements of Ind. Code § 8-1-2.3-6(1)(A) is contrary to the unambiguous language of the statute itself. We find that the plain and unambiguous language of Ind. Code § 8-1-2.3-6(1)(A) only requires that a certified copy of the annexation ordinance be attached to the Petition to prove to the Commission that the area has been "lawfully annexed", and that the petition for change of service area boundaries must be filed not later than 60 days after the annexation is effective. Based on the foregoing determination, Duke Energy Indiana's Verified Motion is denied.

6. **Annexation.** The Pendleton Town Council adopted and approved Ordinance No. 2014-09 on, August 26, 2014, annexing into the Town a tract of land on the east side of the Town's then-existing corporate boundaries. As indicated in the Verified Petition, the Ordinance was published in The Herald Bulletin on November 9, 2014, and pursuant to Ind. Code 36-4-3-5.1(j) and Ind. Code 36-4-3-7(f), became effective on February 26, 2015, i.e., 30 days after publication and upon the completion of the filings required by Ind. Code § 36-4-3-22. Pursuant to Ind. Code § 8-1-2.3-6(1)(A), a certified copy of the annexation ordinance serves as conclusive evidence that the area has been lawfully annexed and is a part of the municipality. Petitioner included a certified copy of the Annexation Ordinance as Exh. 1 to its Verified Petition. Accordingly, the Commission finds that the area has been lawfully annexed and is a part of the Town.

7. **Payments to be Made by a Municipally Owned Electric Utility to an Incumbent Electricity Supplier.**

A. **Payment of the Value of the Incumbent Electricity Supplier's Electric Utility Property Devoted to Furnishing Retail Electric Service Within the Additional Assigned Service Area.**

Ind. Code § 8-1-2.3-6(1)(B) provides:

Not later than thirty (30) days after filing a petition under this subdivision, the municipally owned electric utility shall determine for each affected incumbent electricity supplier and pay to that supplier an amount not less than the value of all the electric utility property of the incumbent electricity supplier that is devoted to furnishing retail electric service within the additional assigned service area at its then reproduction cost new depreciated value.

In Petitioner's Submission of Affidavit filed on July 2, 2015, Tim McClintick, Town Manager of the Town, affirmed under oath that the Town made an offer to pay RCNLD to Duke Energy Indiana by letter dated June 12, 2014, which was attached to the Submission of Affidavit. On July 14, 2015, Duke Energy Indiana filed a Petition to Secure Payment if Preemptive Motion is Denied ("Petition to Secure Payment"). In rhetorical paragraph 3 of its Petition to Secure Payment, Duke Energy Indiana stated that the actual RCNLD statutory figure can be resolved with Petitioner, and that Duke Energy Indiana filed the Motion to Secure Payment to preserve its right to obtain payment pending the Commission's ruling on its Verified Motion. Within 30 days of the issuance of this Order, Petitioner and Duke Energy Indiana shall determine and Petitioner shall pay Duke Energy Indiana the RCNLD value of all electric utility property devoted to retail electric service within the portions of the annexed areas that fall within Duke Energy Indiana's assigned service area. We find that Duke Energy Indiana has preserved its right to secure payment pursuant to Ind. Code § 8-1-2.3-(6)(1)(C) should the parties fail to agree upon the amount due pursuant to Ind. Code § 8-1-2.3-6(1)(B).

B. Payment of Severance Damages. In addition to the payment required above in paragraph 7A, Ind. Code § 8-1-2.3-6(1)(B) provides:

In addition, the municipally owned electric utility shall pay the incumbent electricity supplier severance damages in an amount equal to:

(i) the value of the incumbent electricity supplier's distribution and substation facilities dedicated to and located within the annexed area or relocated by reason of the annexation or an amount equal to two and one-half (2½) times the incumbent electricity supplier's gross revenues from electricity sales in the annexed area during the twelve (12) month period immediately preceding the date the annexation ordinance became effective, whichever is greater; plus

(ii) if additional permanent service locations or service accounts are established in the annexed area during the five (5) year period beginning on the effective date of the annexation ordinance, one tenth of one cent (\$.001) for each kilowatt hour of electricity sold to each of those permanent service locations or service accounts for sales that occur during a five (5) year period beginning on the date each service location or service account is established, up to a maximum of one hundred seventy thousand (170,000) kilowatt hours per service account or service location for each monthly billing period.

However, the municipally owned electric utility is not required to pay severance damages under item (ii) if, at the time each annual payment otherwise would accrue, it is purchasing all of its requirements for electric power and energy, except for generation directly provided by the municipally owned electric utility or by a customer, from the incumbent electricity supplier. Severance damages must be paid not later than thirty (30) days after the end of each calendar year in which severance damages have accrued. The municipally owned electric utility and incumbent electricity suppliers shall cooperate to calculate the amount of any severance damages and shall furnish to each other all information and records reasonably necessary for the determination and verification of severance damages. If the municipally owned electric utility and incumbent electricity suppliers cannot agree on the amount of severance damages the municipally owned electric utility

is to pay, the commission shall determine the amount and order payment in accordance with this clause. Not later than twenty (20) days after making a payment, the municipally owned electric utility shall certify to the commission and to any affected incumbent electricity supplier that it has paid the amounts required under this clause.

Pursuant to Ind. Code § 8-1-2.3-6(1)(B)(i), we find that Petitioner shall pay Duke Energy Indiana an amount equal to the value of its distribution and substation facilities dedicated to and located within the annexed area or relocated by reason of the annexation or an amount equal to two and one-half times the gross revenues from electricity sales in the annexed area during the 12 month period immediately preceding the effective date of the annexation ordinance, i.e., February 26, 2015, whichever is greater. Pursuant to Ind. Code § 8-1-2.3-6(1)(B)(ii), we find that if new permanent service locations or service accounts are established in the annexed area during the five-year period beginning on the effective date of the annexation ordinance, i.e., February 26, 2015, Petitioner shall pay Duke Energy Indiana severance damages of one-tenth of one cent (\$0.001) for each kilowatt hour of electricity sold to each of those permanent service locations or service accounts for sales that occur during a five-year period beginning on the date each service location or service account is established, up to a maximum of one hundred seventy thousand (170,000) kilowatt hours per service account or service location for each monthly billing period.

C. Approval of Requested Change to Assigned Service Area. Indiana Code § 8-1-2.3-6(1)(A) provides: “After the filing of a petition under this subdivision, the commission shall promptly enter an order changing the assigned service area facet maps of the municipally owned electric utility and incumbent electricity suppliers to include the annexed area within the assigned service area of the municipally owned electric utility and giving the right to serve and immediate possession to the municipally owned electric utility.” The Commission accordingly finds that Petitioner’s assigned service area shall be changed to include the entirety of the annexed area as described in the certified copy of the annexation ordinance filed herein.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Duke Energy Indiana’s Verified Motion is denied.
2. The Verified Petition filed in this Cause to change the assigned service area of the Town of Pendleton’s municipally owned electric utility to include the annexed territory described in the certified copy of the annexation ordinance filed herein is approved, and said municipally owned electric utility shall have the right to serve and immediate possession of the annexed area.
3. The assigned service area of the Petitioner is changed to include the entirety of the annexed area within the assigned service area of Petitioner.
4. Within 30 days of the issuance of this Order, Petitioner and Duke Energy Indiana shall determine and Petitioner shall pay Duke Energy Indiana the RCNLD value of all electric utility property devoted to retail electric service within the portions of the annexed areas that fall within Duke Energy Indiana’s assigned service area.

5. Petitioner shall pay Duke Energy Indiana the amounts as described above in Finding Paragraph No. 7B of this Order.

6. Duke Energy Indiana has preserved its right to secure payment pursuant to Ind. Code § 8-1-2.3-6(1)(C) should the parties fail to determine the amounts due pursuant to Ind. Code § 8-1-2.3-6(1)(B).

7. Not later than 20 days after making a payment under Ind. Code § 8-1-2.3-6(1)(B), Petitioner shall certify to the Energy Division of the Commission and to Duke Energy Indiana that it has paid an amount required under Ind. Code § 8-1-2.3-6(1)(B).

8. Within 30 days of the effective date of this Order, Petitioner shall coordinate with Commission Technical Staff to update the service territory mapping system to reflect the modified service area boundaries approved by this Order.

9. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following charges within 20 days from the effective date of this Order to the Secretary of the Commission, as well as any additional costs that were or may be incurred in connection with this Cause:

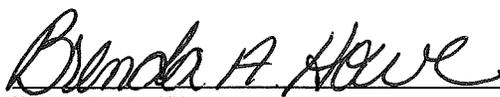
IURC Charges:	\$ 1,105.86
OUCG Charges:	\$ 29.57
TOTAL:	\$ 1,135.43

10. This Order shall be effective on and after the date of its approval.

STEPHAN, MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: FEB 10 2016

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Brenda A. Howe
Secretary to the Commission