

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION


JLG
APR 08 2009

IN THE MATTER OF THE PETITION OF THE)
CITY OF GREENFIELD, INDIANA FOR)
PERMISSION TO CHANGE THE ASSIGNED)
SERVICE AREA OF THE MUNICIPALLY OWNED)
ELECTRIC UTILITY)

CAUSE NO. 43587

APPROVED: APR 08 2009

RESPONDENT: HANCOCK COUNTY REMC d/b/a)
CENTRAL INDIANA POWER)

BY THE COMMISSION:
Angela Rapp Weber, Administrative Law Judge

On October 15, 2008, the municipally owned electric utility of the City of Greenfield, Indiana ("City" or "Petitioner") filed its Petition to Change Assigned Service Area ("Petition") with the Indiana Utility Regulatory Commission ("Commission") as provided in Indiana Code § 8-1-2.3-6. The Petition was unclear regarding the type of annexation that occurred and the date upon which the Ordinance became effective. On November 10, 2008 and December 29, 2008, the Presiding Officer issued docket entries requesting clarification from Petitioner. On March 31, 2009, Petitioner filed with the Commission its Amended Verified Petition ("Amended Petition"), which provided the clarification sought by the Presiding Officer.

The Amended Petition explained that the City sought to change its assigned service area boundaries to include two tracts of land adjacent and contiguous to the City's western corporate boundary in Hancock County, Indiana. Specifically, the area annexed pursuant to Ordinance No. 2008-18 contains 138.87 acres and zero customers. The annexed area is located within the service area assigned to Hancock County Rural Electric Membership Corporation d/b/a Central Indiana Power ("CIP" or "Incumbent"). The Amended Petition stated that the owners of property located in the annexed area petitioned the City for annexation. Attached to the Amended Petition was a certified copy of Ordinance No. 2008-18, maps of the annexed area, certified copies of the proofs of publication and a letter from Thomas N. Seng, CIP's President and CEO, which detailed the amount of severance damages due to CIP as a result of the City's annexation.

Based upon the evidence and applicable law, the Commission makes the following findings:

- Commission Jurisdiction.** The City owns and operates an electric distribution utility furnishing retail electric service to the public. Pursuant to Indiana Code Section 8-1-2-1(h), Petitioner qualifies as a "municipally owned utility," and both Petitioner and CIP qualify as "electricity suppliers" pursuant to Indiana Code § 8-1-2.3-2(b). The Commission finds that it has jurisdiction over the parties to this Cause.

Pursuant to Indiana Code § 8-1-2.3-6(1), a municipally owned electric utility 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 sixty (60) days after the annexation becomes effective. The Amended Petition states that Ordinance No. 2008-18 was published on September 6, 2008 and, pursuant to Indiana Code § 36-4-3-7(f), became effective on November 6, 2008, sixty (60) days after publication and upon the completion of filings required by Indiana Code 36-4-3-22(a). However, Indiana Code § 36-4-3-7(f) provides that an ordinance becomes effective thirty (30) days after publication and upon the filings required by Indiana Code 36-4-3-22(a). Thus, Ordinance No. 2008-18 became effective on October 6, 2008. Petitioner filed its Petition on October 15, 2008. Accordingly, the Commission finds that the Petition in this Cause was filed not later than sixty (60) days after the annexation became effective. Therefore, the Commission has jurisdiction over the subject matter of this Cause.

2. **Annexation.** The City of Greenfield, Indiana adopted and approved Ordinance No. 2008-18 on August 13, 2008, annexing into the City approximately 139 acres of land located adjacent and contiguous to the corporate boundary line of the City. On September 6, 2008, Ordinance No. 2008-18 was published in accordance with Indiana Code § 36-4-3-7 in the *Daily Reporter*. It became effective on October 6, 2008, thirty (30) days after publication and upon the completion of the filings as set forth in Indiana Code § 36-4-3-22(a).

According to Indiana Code § 8-1-2.3-6(1)(A), a certified copy of the annexation ordinance, which must be filed with the petition, serves as conclusive evidence that the area has been lawfully annexed and is a part of the municipality. Petitioner included a certified copy of Ordinance No. 2008-18 with the Petition and the Amended Petition. For this reason, the Commission finds that the areas have been lawfully annexed and are a part of the City of Greenfield, Indiana.

3. **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.**

Indiana 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.

Pursuant to Indiana Code § 8-1-2.3-6(1)(B), we find that within thirty (30) days of filing its Petition, Petitioner should determine and pay Incumbent the reproduction cost new

depreciated value of all electric utility property devoted to retail electric service within the portions of the annexed areas that fall within Incumbent's assigned service areas.

B. Payment of Severance Damages.

In addition to the payment required above in paragraph 3A, Indiana 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 (\$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 (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.

The Amended Petition indicates that Petitioner paid severance damages to Incumbent in accordance with Indiana Code §§ 8-1-2.3-6(1)(B)(i) and 6(B)(ii). The Amended Petition also stated that Petitioner paid Incumbent the value of its electric utility property in accordance with Indiana Code § 8-1-2.3-6(1)(B).

In the event Petitioner has not paid Incumbent in accordance with Indiana Code § 8-1-2.3-6(1)(B)(i), the Commission finds that Petitioner should pay Incumbent an amount equal to the value of Incumbent'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 Incumbent's gross revenues from electricity sales in the annexed area during the twelve (12) month period immediately preceding October 6, 2008, whichever is greater.

Pursuant to Indiana 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 (5) year period beginning on the effective date of the annexation ordinance, Petitioner should pay Incumbent 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 (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, severance damages pursuant to Indiana Code 8-1-2.3-6(1)(B)(ii) shall not be payable by Petitioner to Incumbent if, at the time each annual payment otherwise would accrue, Petitioner 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 Incumbent.

4. 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.

Petitioner has annexed the entire 138.87 acres described in the Annexation Ordinance No. 2008-18, included in Petitioner's Petition filed on October 15, 2008 and in Petitioner's Amended Petition filed on March 31, 2009. The proposed service boundaries described by Exhibits A and B and depicted in Exhibits C-1 and C-2 are attached to the Petition and the Amended Petition. Accordingly, the Commission finds that Petitioner's assigned service area should be changed to include the areas described in Exhibits A and B and depicted in Exhibits C-1 and C-2, attached to the Petition and the Amended Petition.

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

1. The Petition filed in this Cause to change the assigned service areas of the City of Greenfield's municipally owned electric utility to include the territory described by Exhibits A and B and depicted in Exhibits C-1 and C-2 of the Petition and Amended Petition is hereby approved, and said municipally owned electric utility shall have the right to serve and take immediate possession of said annexed areas.

2. Within thirty (30) days of the date this Order is approved, 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.

3. Petitioner shall pay CIP the appropriate amounts as prescribed above in Finding Paragraph 3 of this Order.

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

5. In accordance with Indiana Code 8-1-2-70, Petitioner shall pay the following charge within twenty (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:

Commission Charges: \$ 117.48

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

HARDY, GOLC, LANDIS, SERVER and ZIEGNER CONCUR:

APPROVED: APR 08 2009

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



Brenda A. Howe
Secretary to the Commission