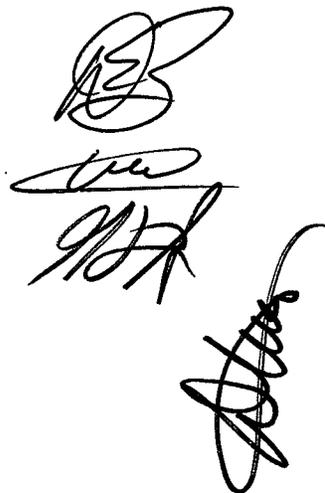


ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION



IN THE MATTER OF THE JOINT)
PETITION OF THE TOWN OF)
PENDLETON, INDIANA, AND ITS)
MUNICIPALLY OWNED ELECTRIC)
UTILITY AND DUKE ENERGY INDIANA,)
INC., FOR APPROVAL OF AN AGREED)
CHANGE IN THE BOUNDARIES OF)
THEIR RESPECTIVE ASSIGNED SERVICE)
AREAS ON U.S.G.S. FACETS R-15 AND)
R-16 PURSUANT TO IND. CODE § 8-1-2.3-6)
AND APPROVAL OF INTERIM CONSENT)
TO SERVE PURSUANT TO IND. CODE § 8-)
1-2.3-4)

CAUSE NO. 43619

IN THE MATTER OF THE PETITION OF)
THE TOWN OF PENDLETON, INDIANA,)
BY ITS MUNICIPALLY OWNED)
ELECTRIC UTILITY, FOR A CHANGE IN)
THE TOWN OF PENDLETON'S ASSIGNED)
SERVICE AREA BOUNDARIES ON)
U.S.G.S. FACET S-15, U.S.G.S. FACET S-16,)
U.S.G.S. FACET R-15, AND U.S.G.S. FACET)
R-16 PURSUANT TO IND. CODE § 8-1-2.3-6)

CAUSE NO. 43348

DUKE ENERGY)
Respondent.)

IN THE MATTER OF THE PETITION OF)
THE TOWN OF PENDLETON, INDIANA,)
AND ITS MUNICIPALLY OWNED)
ELECTRIC UTILITY, FOR A CHANGE IN)
THE TOWN OF PENDLETON'S ASSIGNED)
SERVICE AREA BOUNDARIES ON)
U.S.G.S. FACETS R-15, R-16, S-15, AND S-16)
PURSUANT TO I.C. 8-1-2.3-6)

CAUSE NO. 43541

CONSOLIDATED ORDER

APPROVED: APR 01 2009

BY THE COMMISSION:

Aaron A. Schmoll, Administrative Law Judge

On December 5, 2008, in accordance with Ind. Code § 8-1-2.3, Duke Energy Indiana, Inc. ("Duke Energy Indiana") and the Town of Pendleton, Indiana and its municipally owned utility (the "Town") (collectively "Joint Petitioners") filed their *Verified Joint Petition to Modify Service Area Boundaries/Consent to Serve and Consolidate Pending Actions* ("Joint Petition"). Pursuant to Ind. Code § 8-1-2.3-6(2), the Petition seeks Commission approval of changes to existing service area boundaries located on U.S.G.S. Facet Maps R-15 and R-16 in Madison County, Indiana. Joint Petitioners also seek to consolidate Cause Nos. 43348 and 43541 into this proceeding.

The Commission, having considered the evidence of record, the laws of Indiana, and being otherwise advised, now finds as follows:

1. **Commission Jurisdiction.** Pursuant to Ind. Code § 8-1-2.3, Duke Energy Indiana and the Town (collectively hereafter "Joint Petitioners") are engaged in the business of distributing, furnishing, and selling retail electric service to the public within Madison County, Indiana. Each Joint Petitioner is an "electricity supplier" as that term is defined by Ind. Code § 8-1-2.3-2(b). Joint Petitioners propose to change their currently assigned service area boundaries, pursuant to Ind. Code § 8-1-2.3-6(2). Therefore, the Commission has jurisdiction over the parties and the subject matter of this Cause.

2. **Relief Sought.** Joint Petitioners seek to consolidate the proceedings in Cause Nos. 43348 and 43541, matters also involving service territory changes, into this Cause. Joint Petitioners also request approval of proposed changes to the currently existing service areas outlined specifically in the Settlement Agreement of the parties which was filed with the Commission on December 5, 2008, in Cause Nos. 43619 and 43348. The parties' Settlement Agreement and boundary modifications are attached to the Joint Petition.

Finally, the Joint Petitioners ask the Commission's approval of the Town's consent for Duke Energy Indiana to continue to provide electric service in the areas to be reassigned until the Town is able to install its own electric service facilities and connect those customers in the near future.

The electric service area boundaries proposed for modification are located in Madison County. Facet Maps R-15 and R-16 currently show the service area boundary between Duke and the Town. Joint Petitioners' mutual agreement would modify the existing boundary as depicted in Exhibit 1, attached to the Joint Petition. This modification would result in the Town gaining territory.

Joint Petitioners state that the proposed modifications will not cause duplication of facilities, cause a waste of materials or resources, or cause uneconomic, inefficient or inadequate electric service to the public. There is no evidence to the contrary before the Commission in this proceeding.

3. **Motion to Consolidate Proceedings.** The Joint Petition reflects Joint Petitioner's ongoing efforts to reach closure on a number of common issues which involve Cause Nos. 43619, 43348 and 43541. No objection to the motion to consolidate has been presented to

the Commission. Accordingly, and supported by the Commission's desire to improve efficiency whenever reasonable, we find that the motion to consolidate should be approved.

4. **Notice.** Indiana Code 8-1-2.3-6(2) provides:

If notice of a verified request for a change of boundary lines by mutual agreement under this subdivision is published in a newspaper of general circulation in every county in which the boundary lines are located and an affected electricity customer does not request a hearing within twenty (20) days of the last date of publication, the commission may approve the change without a hearing.

The evidence shows that notice of Joint Petitioners' intent to file for a change of boundary lines located on U.S.G.S. Facet Number R-15 and R-16 was published on December 10, 2008, in Madison County in the *Herald Bulletin*. This is a newspaper of general circulation in Madison County, which is the county in which the affected boundary lines are located. Proof of publication of the notice was filed with the Commission on March 11, 2009, and is hereby incorporated into the record of this Cause. Twenty (20) days have passed since the date of publication of the notice and no affected electricity customer has requested a hearing. Therefore, pursuant to Indiana Code 8-1-2.3-6(2), the Commission may approve the requested boundary line change without a hearing.

5. **Approval of Requested Boundary Modifications.** Ind. Code § 8-1-2.3-6 provides that changes of assigned electric service areas may occur for a variety of reasons. Included in those reasons are municipal annexations or mutual agreement among the affected electricity providers. The evidence of record reflects that annexation has been completed, is pending, or is being planned, for the geographic area referenced in Cause 43619, Cause No. 43348, and Cause No. 43541. Over the past few years, the Town has expanded its municipal boundaries through various annexations. After each annexation, the Town filed a Petition for change in service territory boundaries in accordance with Ind. Code § 8-1-2.3-6(1). Some of these annexations and subsequently filed petitions gave rise to Cause Nos. 43206, 43348, 43488, 43489, and 43541.

In Cause No. 43206, the Town requested a change in its service area boundaries following a completed annexation that included territory within Duke Energy Indiana's assigned service area. On January 24, 2007, the Commission issued an order granting the Town's request. On October 2, 2007, Duke Energy Indiana filed a Verified Motion for Rescission and Modification of Order or in the Alternative Verified Complaint. After a response and reply were filed by the respective parties, an attorney's conference was held by the Commission on December 5, 2007. After that conference, the Parties agreed the pending Motions should be held in abeyance while the Parties engaged in settlement negotiations. Accordingly the Commission took no further action on the pending Motions.

Cause No. 43348 was initiated on September 5, 2007, when the Town filed a Verified Petition requesting a change in its service area boundaries to include additional territory annexed by the Town. The Commission had not yet issued a final order when Duke Energy Indiana filed

its Answer in Opposition to the Requested Relief on September 25, 2007. Thereafter, the Town filed a reply and Duke Energy Indiana filed a response to that reply. In addition, the Town filed a motion for summary judgment, to which Duke Energy Indiana filed a response. The Commission has taken no further action while the Parties engaged in settlement negotiations and that Cause remains pending before the Commission.

In addition, Cause No. 43541 was initiated on July 24, 2008, and involves a request by the Town for a change in its service area boundaries to include territory annexed by the Town, but currently within Duke Energy Indiana's service area. This Cause has remained pending before the Commission due to the ongoing settlement negotiations.

The Joint Petition states that the Joint Petitioners have engaged in negotiations to facilitate an efficient, equitable, and technically sound means of providing service and transferring electric facilities and customers in the areas at issue in Cause Nos. 43619, 43348, and 43541, and in contiguous areas which resulted in a Settlement Agreement memorializing the parties' resolution of all outstanding issues in these Causes. The Joint Petition further states the proposed changes in service area boundaries as requested will not cause duplication of electric facilities, waste of materials or resources, or uneconomic, inefficient or inadequate electric service to the public, as described by Ind. Code § 8-1-2.3-6(2). Given that Joint Petitioners resolution of their disputes is consistent with Ind. Code § 8-1-2.3-6(2) and recognizing the efficiency to be obtained by reassignment involving all of these areas, we find the Joint Petitioners proposed reassignments of these areas by mutual agreement is reasonable.

Further, the agreed upon boundary changes sought in Cause 43619 address all of the boundary changes sought in Cause Nos. 43348 and 43541. Accordingly, the Commission addresses these changes in the context of Ind. Code § 8-1-2.3-6(2) rather than Ind. Code § 8-1-2.3-6(1).

Based upon the foregoing findings, the Commission concludes that the agreed-upon changes to Joint Petitioners' respective assigned service area boundaries located on U.S.G.S. Facet Number R-15 and R-16, as specifically depicted in the Joint Petition and exhibits attached thereto, will promote economical, efficient and adequate electric service to the public consistent with the legislative policy set forth in Indiana Code 8-1-2.3-1 and, therefore, should be approved.

6. Approval of Written Consent. Joint Petitioners also seek relief pursuant to Indiana Code 8-1-2.3-4(a) which, in part, provides:

As long as an electricity supplier continues to provide adequate retail service, it shall have the sole right to furnish retail electric service to each present and future consumer within the boundaries of its assigned service area and no other electricity supplier shall render or extend retail electric service within its assigned service area unless the electricity supplier with the sole right consents thereto in writing and the commission approves.

Upon Commission approval of the service boundary changes, the Town has the sole right to furnish retail electric service within its service territory. However, Joint Petitioners state that

the Town will consent to Duke's continued provision of electricity within the modified boundaries until the Town can extend its facilities to serve the new service area.

In *In re Joint Petition of Electricity Suppliers*, Cause No. 42868 (Sept. 28, 2006), the Commission noted that requests for approval of consents of temporary extraterritorial retail service, under Ind. Code Section 8-1-2.3-4, have been considered and acted upon by the Commission following a hearing. However, the Commission acknowledged that if certain conditions were met, it may be appropriate to act upon requests for approval of consent to serve without a hearing, "as long as such petitions evidence publication of the request in each impacted county ten (10) days prior to Commission action." *Id.* at 5. In this case, notice of the filing of the Joint Petition, indicating this requested relief, was published on December 10, 2008 in the *Herald Bulletin*. More than ten days have passed since publication of the notice, and no hearing was requested. Accordingly, the Commission did not conduct a hearing on Joint Petitioners' request for approval of the Town's consent to allow Duke to continue serving the customers within the modified service area boundaries, as set forth in the Joint Petition.

Based upon the law and evidence discussed above, the Commission finds that the Town's consent to allow Duke to temporarily provide electric service within the modified service area boundaries, as set forth in its Joint Petition, should be approved.

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

1. Cause Nos. 43348 and 43541 shall be and hereby are consolidated into Cause 43619.
2. Joint Petitioners' agreed-upon service area boundary line modifications, as set forth in the Joint Petition, Settlement Agreement, and Exhibits filed in this Cause, shall be and are hereby approved.
3. Duke Energy Indiana shall continue to provide electric service to the customers in the service area transferred to the Town until such time as the Town has installed its electric service facilities and is able to connect the customers in that area. The Town shall install its facilities in a timely manner. Within thirty (30) days of the date that service is transferred from Duke Energy Indiana to the Town, the Town shall file notice with the Commission that the Town is providing electric service to the annexed area
4. This Order closes all proceedings in Cause Nos. 43206, 43348, 43488, 43489 and 43541.
5. Within thirty (30) days of the date this Order is approved, Joint Petitioners shall coordinate with Commission Technical Staff to update the service territory mapping system to reflect the modified service area boundaries approved by this Order.
6. In accordance with Indiana Code 8-1-2-70, the Town 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:

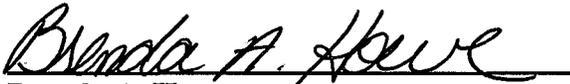
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|-------------------|--------------------|
| Commission Charge | \$ 1,000.00 |
| OUCG Charge | <u>\$ 2,000.00</u> |
| Total Charges | \$ 3,000.00 |

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

HARDY, LANDIS, SERVER AND ZIEGNER CONCUR; GOLC ABSENT:

APPROVED: APR 01 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