

**ORIGINAL**

STATE OF INDIANA



**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE JOINT PETITION OF )  
WABASH VALLEY POWER ASSOCIATION, INC. AND )  
MARSHALL COUNTY RURAL ELECTRIC )  
MEMBERSHIP CORPORATION FOR APPROVAL OF )  
TRANSACTIONS ENTERED INTO PURSUANT TO A )  
TRANSFER POOLING SERVICES AGREEMENT AND )  
FOR WABASH VALLEY TO PURCHASE A SPARE )  
TRANSFORMER FROM HENDRICKS POWER )  
COOPERATIVE. )**

**CAUSE NO. 43659**

**APPROVED:**

**JUN 17 2009**

**BY THE COMMISSION:**

**David E. Ziegner, Commissioner**

**David E. Veleta, Administrative Law Judge**

On March 19, 2009, Wabash Valley Power Association, Inc. ("Wabash Valley") and Marshall County Rural Electric Membership Corporation ("Marshall REMC") (collectively "Joint Petitioners") filed their Joint Petition with the Indiana Utility Regulatory Commission ("Commission") for approval of transactions entered into pursuant to a Transformer Pooling Services Agreement ("Pooling Agreement") and for approval to purchase a spare transformer from Hendricks County Rural Electric Membership Corporation d/b/a Hendricks Power Cooperative ("Hendricks Power") for use in the transformer pool ("Pool").

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in this Cause was held at 9:30 a.m. on May 22, 2009 in Room 224, National City Center, 101 W. Washington Street, Indianapolis, Indiana. Joint Petitioners and the Indiana Office of Consumer Counselor ("OUCC") appeared and participated in the evidentiary hearing. Joint Petitioners offered the testimony of Gary R. Stein and the OUCC offered the testimony of Greg A. Foster. No members of the general public appeared.

Based upon the applicable law and evidence, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Joint Petitioners are public utilities within the meaning of the Public Service Commission Act, as amended, Indiana Code § 8-1-2, and subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana.
  
2. **Joint Petitioner's Characteristics and Business.** Wabash Valley is a non-profit corporation organized and existing pursuant to the Indiana Nonprofit Corporations Act which operates as a public utility certificated and authorized by the Commission to, among other things, serve as a power supplier to its members and construct, own and operate generation, transmission and related plants and facilities, pursuant to Order of this Commission issued January 13, 1978 in Cause No. 35091. Wabash Valley's Indiana members are all organized under the Rural Electric Membership

Corporations Act, Indiana Code § 8-1-13-1 *et seq.* Marshall REMC is an Indiana rural electric membership corporation with its principal offices located in Marshall County, Indiana. Marshall REMC provides retail electric distribution services to its member consumers in parts of Marshall, St. Joseph, Kosciusko, Fulton, Starke and Elkhart Counties, and has charter authority to do so.

3. **Relief Requested.** Wabash Valley has requested that the Commission approve the purchase of a transformer from Hendricks Power Cooperative under Indiana Code § 8-1-2-84 and Joint Petitioners Wabash Valley and Marshall REMC have requested the Commission pre-approve future transactions under the Pooling Agreement.

4. **Petitioner's Direct Evidence.** Gary R. Stein, Manager of Engineering at Wabash Valley Power Association, Inc., testified on behalf of the Joint Petitioners. Mr. Stein testified that on or about November 1, 2004, Joint Petitioners entered into a Pooling Agreement among themselves and seventeen (17) members of Wabash Valley ("Pool Members"). Mr. Stein testified that the Pooling Agreement allows Wabash Valley and its participating members access to a supply of spare three-phase power transformers of various voltages and capacities to use on a temporary basis in emergencies or during maintenance. Mr. Stein testified that the Pooling Agreement allows a Pool Member to quickly request and obtain a transformer to allow it to restore service as rapidly as possible and that the Pooling Agreement also contemplates a situation in which a pooling member or Wabash Valley might decide to purchase a transformer that it initially used on a temporary basis during an emergency or for maintenance.

Mr. Stein testified that Wabash Valley administers the pool program, purchases and arranges for the storage of transformers and assists with the delivery of transformers to a requesting REMC. Mr. Stein testified that Wabash Valley also orders replacement transformers and pays property taxes and insurance on the pool transformers. Mr. Stein further testified that Joint Petitioner Marshall REMC and the other Pool Members pay an annual levelized fixed charge ("LFC") to be members of the Pooling Agreement. Mr. Stein testified that the Pool Members are responsible for the transportation, installation, removal and return of the transformer when they no longer need it.

Mr. Stein testified that currently there are seventeen (17) other parties to the Pooling Agreement and that, with the exception of Marshall REMC and Wabash Valley, all of the other REMC parties to the Pooling Agreement have either withdrawn from the jurisdiction of the Commission or are located in states other than Indiana. Mr. Stein testified that the current value of the total transformer pool is approximately \$1.2 million dollars. Mr. Stein testified that there are two main types of transactions that can occur pursuant to the Pooling Agreement. He testified that parties to the Agreement may use, on a temporary basis, a spare transformer in the event of an emergency or for maintenance purposes. He also testified that the Pooling Agreement allows a party that uses a pool transformer to purchase that transformer subject to approval by a majority of the Pool Members and that the requesting party must pay to Wabash Valley the replacement cost of a new (identical) transformer within 30 days after invoiced by Wabash Valley. Mr. Stein testified that the most expensive asset held by the transformer pool is valued at approximately \$494,000 which constitutes less than 0.09% of Wabash Valley's Consolidated Net Utility Plant and less than 2.5% of Marshall REMC's book value.

Mr. Stein testified that Wabash Valley wishes to purchase a spare Westinghouse 69/12KV, 10/12/14MVA w/ LTC power transformer from Hendricks Power Cooperative for use in the transformer pool because the unit is still in good condition. Mr. Stein testified that Wabash Valley is

responsible for acquiring spare transformers for the pool and the Pool Members have determined that the Hendricks Power spare transformer will be useful to the pool. He testified that the sale price is \$41,000 and represents approximately 0.0082% of Wabash Valley's Consolidated Net Utility Plant as of January 31, 2009.

5. **OUCC's Direct Evidence.** Greg A. Foster, a Utility Analyst in the Electric Division of the OUCC's Energy Group, testified on behalf of the OUCC. Mr. Foster summarized the Pooling Agreement and elaborated on the annual cost paid by each Pool Member. He testified that the total cost of all transformers in the pool (\$1,287,865.70) is multiplied by a facility charge rate of 8.433%. He testified that the facility charge rate is designed to cover the cost of capital depreciation and property insurance and that the total annual cost per Pool Member is \$5,716.38. Mr. Foster testified that the Pooling Agreement results in improved reliability as well as efficiency in restoring electric service in the event of a substation transformer failure and that the Pooling Agreement reduces the need for each Pool Member to maintain its own supply of spare transformers. Mr. Foster testified that the agreement entered into by the transformer pooling members and Wabash Valley in this proposal appears to be reasonable.

Finally, Mr. Foster testified that the OUCC does not oppose Wabash Valley's request to purchase the spare transformer from Hendricks Power at a price of \$41,000. Mr. Foster testified that the purchase price was derived from Wabash Valley's review of offers from transformer reconditioning companies and, as such, the purchase price appears reasonable.

6. **Commission Discussion and Findings.** Indiana Code § 8-1-2-84 governs the Commission's review of property transactions between public utilities. Specifically, Indiana Code § 8-1-2-84(c) provides, "Any such public utility may purchase or lease the used and useful property, plant, or business, or any part thereof, of any other such public utility at a price and on terms approved by the commission."

Indiana Code § 8-1-2-84 does not contemplate the pre-approval of property transactions between public utilities. Instead, Indiana Code § 8-1-2-84 appears to contemplate Commission review at the time of the transaction because it requires that the Commission approve both the price and terms of such transactions. Wabash Valley asserts that the prices and terms of the potential property transactions are sufficiently identified in the Pooling Agreement which requires Pool Members to pay the replacement cost when purchasing transformers from the Pool. However, the replacement cost of a transformer will vary from transaction to transaction based on the market conditions at the time of the transaction. Furthermore, whether the price and terms of a particular property transaction are reasonable and in the public interest necessarily requires a review of the particular facts existing at the time of the transaction. Consequently, the Commission finds that it lacks sufficient evidence upon which to determine whether the price and terms of future property transactions under the Pooling Agreement are reasonable and should be approved. While Joint Petitioner's request for pre-approval may have been more appropriately considered under Indiana Code § 8-1-2.5-5, review under this statute was not requested in this matter. Therefore, the Commission denies Joint Petitioner's request for pre-approval of transactions pursuant to Indiana Code § 8-1-2-84.

The Commission further finds that a more appropriate alternative to filing a docketed proceeding may be for Joint Petitioners to use the Commission's thirty-day administrative filing procedures set forth in 170 IAC 1-6. The thirty-day administrative filing procedures were adopted to facilitate an expedited consideration of certain types of requests that do not require the filing of formal

pleadings or the scheduling of an evidentiary hearing and are otherwise noncontroversial. Although the Commission's thirty-day administrative filings are typically limited to changes in rates, rules and charges, it may include other filings ordered by the Commission. The Commission finds that property transactions which are entered into pursuant to the Pooling Agreement may be more efficiently reviewed through the Commission's thirty-day administrative filing procedures. Therefore, the Commission grants Joint Petitioners authorization to make subsequent requests for approval of property transactions based on the Pooling Agreement through the Commission's thirty-day administrative filing procedures.

In addition, we find that the purchase by Wabash Valley of the spare Westinghouse 69/12KV, 10/12/14MVA w/ LTC power transformer for use in the pool from Hendricks Power as proposed should be approved. The evidence shows that the sale price to Wabash Valley of \$41,000 is approximately 0.0082% of the book value of Wabash Valley's Consolidated Net Utility Plant as of January 31, 2009. The evidence shows that the purchase price is based upon Wabash Valley's review of offers from transformer reconditioning companies and, as such, the proposed asset purchase and the terms thereof are just and reasonable.

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

1. Wabash Valley Power Association, Inc.'s request that the Commission pre-approve transactions entered into pursuant to the Pooling Agreement is denied.
2. Wabash Valley Power Association, Inc. is authorized to request Commission approval of property transaction entered into pursuant to the Pooling Agreement through the use of the Commission's thirty-day administrative filing procedures in 170 IAC 1-6.
3. Wabash Valley Power Association, Inc.'s request for approval of the purchase of a spare Westinghouse 69/12KV, 10/12/14MVA w/ LTC power transformer for use in the pool from Hendricks Power Cooperative is approved.
4. This Order shall be effective on and after the date of its approval.

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

**APPROVED: JUN 17 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**