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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE)
CITY OF MISHAWAKA, INDIANA, BY ITS)
MUNICIPALLY OWNED ELECTRIC UTILITY) CAUSE NO. 43852
FOR CHANGES IN ITS ASSIGNED SERVICE)
AREA BOUNDARIES ON U.S.G.S. FACET O-2-1) APPROVED:
TO INCORPORATE ADJACENT ANNEXED AREA)
PURSUANT TO I.C. 8-1-2.3-6(1).)
)
)
INDIANA MICHIGAN POWER COMPANY, INC.)

MAR 03 2010

BY THE COMMISSION:
David E. Veleta, Administrative Law Judge

On February 1, 2010, the municipally owned electric utility of the City of Mishawaka, Indiana ("City" or "Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") seeking, as provided in Indiana Code § 8-1-2.3-6(1), to change its assigned service area boundaries to include an annexed area that is located beyond its assigned service area. The annexed area is located on U.S.G.S. Facet O-2-1 in St. Joseph County, Indiana and includes approximately 1.9 acres, all of which is located within the assigned service area of Indiana Michigan Power Company, Inc. ("I&M" or "Incumbent").

Based upon the Verified Petition, a certified copy of the annexation Ordinance filed herein, and the applicable law, the Commission makes the following findings:

1. Commission Jurisdiction. The City owns and operates an electric distribution utility furnishing retail electric service to the public. Pursuant to Indiana Code § 8-1-2-1(h), Petitioner qualifies as a "municipally owned utility," and both Petitioner and I&M 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 Verified Petition filed in this Cause demonstrates that Ordinance No. 5220 became effective on January 2, 2010. Accordingly, the Commission finds that the Verified Petition in this Cause was filed not later than sixty (60) days after the annexation became effective and, therefore, the Commission has jurisdiction over the subject matter of this Cause.

2. Annexation. Pursuant to the petition of the property owners in the area, the Common Council of the City of Mishawaka, Indiana adopted and approved Ordinance No. 5220 on July 6, 2009, annexing into the City of Mishawaka an adjacent tract of land contiguous to a

northern boundary line of the City of Mishawaka. On July 16, 2009, Ordinance No. 5220 was published in accordance with Indiana Code § 36-4-3-7 in *The Mishawaka Enterprise*.

Pursuant to Indiana Code § 36-4-3-7(f), an annexation ordinance adopted pursuant to the petition of the property owners in the area “takes effect at least thirty (30) days after its publication and upon the filing required by section 22(a) of this chapter.” However, “[a]n ordinance . . . may not take effect during the year preceding a year in which a federal decennial census is conducted. An ordinance that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.” Indiana Code § 36-4-3-7(b). Calendar year 2009 was a year preceding a year in which a federal decennial census will be conducted. Moreover, Ordinance No. 5220 provides that it “shall be in full force and effect from and after its passage, due attestation and legal publication, but no sooner than January 1, 2010.” Pursuant to Indiana Code § 36-4-3-7(b) and its own terms, Ordinance No. 5220 became effective on January 2, 2010.

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 certified copies of Ordinance No. 5220 with its Verified Petition. For this reason, the Commission finds that the areas have been lawfully annexed and are a part of the City of Mishawaka, 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 Verified Petition indicates that Petitioner will pay severance damages to Incumbent in accordance with Indiana Code §§ 8-1-2.3-6(1)(B)(i) and 6(B)(ii).

In accordance with Indiana Code § 8-1-2.3-6(1)(B)(i), we find 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 January 2, 2010, 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 1.9 acres described in the Annexation Ordinance No. 5220 included in Petitioner's Verified Petition filed on February 1, 2010. The proposed service boundaries described by Exhibits 1 and 2 and depicted in Exhibit 3 are attached to the Verified Petition. Accordingly, the Commission finds that Petitioner's assigned service area should be changed to include the areas described in Exhibits 1 and 2 and depicted on Exhibit 3, attached to the Verified Petition.

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

1. The Verified Petition filed in this Cause to change the assigned service areas of the City of Mishawaka's municipally owned electric utility to include the territory described by Exhibits 1 and 2 and depicted in Exhibit 3 of the Verified 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 I&M 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 I&M 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:	\$ 95.01
OUCG Charges:	<u>\$ 17.43</u>
TOTAL:	\$112.44

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

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

APPROVED: MAR 03 2010

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



Brenda A. Howe
Secretary to the Commission