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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE)
CITY OF LAWRENCEBURG, INDIANA, FOR)
PERMISSION TO CHANGE THE ASSIGNED) CAUSE NO. 43889
SERVICE AREA OF THE MUNICIPALLY OWNED)
ELECTRIC UTILITY.) APPROVED:
)
RESPONDENT: DUKE ENERGY INDIANA, INC.) MAY 19 2010

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

On April 19, 2010, the municipally owned electric utility of the City of Lawrenceburg, 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 located in Dearborn County, Indiana begins at the existing old stone at the northwest corner of the northwest quarter of said section 21 and being the true point of beginning of the property herein described; thence along the north line of said quarter, North 88°06' 16" East, 825.00 feet to an existing iron rebar; thence leaving the north line of said quarter, South 1° 56' 43" East, 1165.90 feet to an existing iron rebar, passing an existing iron rebar at 547.16 feet; thence North 88° 16' 47" East, 645.93 feet to an existing iron rebar; thence South 12° 52' 38" East, 1592.03 feet to an existing iron rebar; thence South 87° 45' 50" West, 1081.91 feet to an existing iron rebar; thence South 2° 23' 50" East, 347.00 feet to the easterly bank of Wilson Creek; thence along the easterly bank of said creek for the following eight (8) courses: North 50° 00' 15" West, 138.56 feet; thence North 43° 30' 00" West, 135.10 feet; thence North 11° 30' 00" West, 148.26 feet; thence North 3° 27' 46" West, 122.82 feet; thence North 10° 00' 59" West, 120.53 feet; thence North 12° 48' 49" West, 75.74 feet; thence North 22° 23' 12" West, 93.29 feet; thence South 71 ° 54' 33" West, 410.78 feet to the west line of said Section 21; thence along the west line of said Section 21, North 2° 17' 24" West, 2455.22 feet to the point of beginning. The annexed area consists of approximately 77.661 acres, all of which is located within the assigned service area of Duke Energy Indiana, Inc. ("Duke Energy" 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 Duke Energy 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. 7-2010 became effective on April 11, 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 Lawrenceburg, Indiana adopted and approved Ordinance No. 7-2010 on February 3, 2010, annexing into the City of Lawrenceburg an adjacent 77.661 acres of land contiguous with the City of Lawrenceburg. On March 11, 2010, Ordinance No. 7-2010 was published in accordance with Indiana Code § 36-4-3-7 in the *Dearborn County Register*.

Pursuant 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. 7-2010 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 Lawrenceburg, 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.

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 April 11, 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 77.661 acres described in the Annexation Ordinance No. 7-2010 included in Petitioner's Verified Petition filed on April 19, 2010. The proposed service boundaries described by Exhibit 1 is attached to the Verified Petition. Accordingly, the Commission finds that Petitioner's assigned service area should be changed to include the areas described in Exhibit 1, 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 Lawrenceburg's municipally owned electric utility to include the territory described by Exhibit 1 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 Duke Energy 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 Duke Energy 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:	\$ 63.34
OUCG Charges:	<u>\$ 25.88</u>
TOTAL:	\$ 89.22

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

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

APPROVED: MAY 19 2010

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



**Sandra K. Gearlds,
Acting Secretary to the Commission**