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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE JOINT PETITION)
OF THE CITY OF LEBANON UTILITIES AND)
BOONE COUNTY RURAL ELECTRIC)
MEMBERSHIP CORPORATION AND,)
PURSUANT TO IND. CODE § 8-1-2.3-6(2), FOR)
APPROVAL OF CHANGES TO THE SERVICE)
AREA BOUNDARIES WITHIN U.S.G.S.)
FACET M-15-1 IN BOONE COUNTY,)
INDIANA AND FOR APPROVAL OF)
LEBANON UTILITIES CONSENT TO ALLOW)
BOONE COUNTY RURAL ELECTRIC)
MEMBERSHIP CORPORATION TO SERVE)
CUSTOMERS WITHIN ITS ASSIGNED)
SERVICE AREA BOUNDARIES ON A)
TEMPORARY BASIS PURSUANT TO IC 8-1-)
2.3-4(A).)

CAUSE NO. 43983

APPROVED: MAR 30 2011

BY THE COMMISSION:

Gregory R. Ellis, Administrative Law Judge

On January 5, 2011, the City of Lebanon, Indiana by its municipal electric utility (“Lebanon Utilities”) and Boone County Rural Electric Membership Corporation (“Boone REMC”) (collectively, “Joint Petitioners”) filed a Verified Joint Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking approval of: (i) a mutual agreement to modify their respective assigned service area boundaries on U.S.G.S. Facet M-15-1 in Boone County, Indiana pursuant to Ind. Code § 8-1-2.3-6(2); and (ii) in accordance with Ind. Code § 8-1-2.3-4(a), Lebanon Utilities’ written consent to Boone REMC’s continued provision of retail electric service, on a temporary basis, to certain customers located in Lebanon Utilities’ assigned service area boundaries as a result of the modifications to Joint Petitioners’ assigned service area boundaries approved pursuant to the Commission’s September 29, 2010 Order in Cause No. 43857. An “Agreement to Change Electric Service Area Boundaries” between Joint Petitioners, which includes a copy of U.S.G.S. Facet M-15-1 with the service area at issue highlighted, was attached to the Verified Joint Petition. The Agreement indicated that there are five Boone REMC customers located in the affected area. A written “Consent to Serve” also was attached to the Verified Joint Petition.

The Commission, having considered the evidence and applicable law, now finds:

1. Commission Jurisdiction. The City of Lebanon is a municipality, duly organized and existing under the laws of the State of Indiana, located in Boone County, Indiana. The City of Lebanon owns and operates Lebanon Utilities which includes an electric utility system. Lebanon

Utilities qualifies as a “municipally owned utility,” as defined in Ind. Code § 8-1-2-1(h) and an “electricity supplier” within the meaning of Ind. Code § 8-1-2.3-2(b).

Boone REMC is a rural electric membership corporation organized and existing under the laws of the State of Indiana with its principal office in the City of Lebanon, Boone County, Indiana. Boone REMC is engaged in the business of distributing, furnishing, and selling retail electric service to the public and has the corporate authority to do so. Boone REMC is an “electricity supplier” within the meaning of Ind. Code § 8-1-2.3-2(b).

Joint Petitioners have sought the Commission’s approval to change their service area boundaries pursuant to Ind. Code § 8-1-2.3-6(2), which provides that the assigned service area boundaries of electricity suppliers may be changed upon a mutual agreement of the affected electricity suppliers and approval of this Commission. Joint Petitioners also seek the Commission’s approval of Lebanon Utilities’ written consent to Boone REMC’s provision of electric service to customers located in Lebanon Utilities’ service area pursuant to Ind. Code § 8-1-2.3-4(a).

Accordingly, the Commission has jurisdiction over the Joint Petitioners and the subject matter of their Joint Petition.

2. Relief Sought. The Commission approved changes to the assigned service area boundaries of Lebanon Utilities and Boone REMC to incorporate an annexed territory into the assigned service area of Lebanon Utilities by Order in Cause No. 43857 on September 29, 2010. The annexed territory was specifically described in the Verified Petition filed in Cause No. 43857 and consists of approximately 3,670 acres. Boone REMC serves approximately 270 retail electric service customers in the annexed territory.

The Verified Joint Petition filed in this Cause stated that following the changes to the assigned service area boundary lines approved in Cause No. 43857, Joint Petitioners have agreed to an additional boundary change to allow Lebanon Utilities to serve five additional properties located in an area adjacent to and contiguous to the annexed territory. A copy of the “Agreement to Change Electric Service Area Boundaries” (“Agreement”) was attached to the Verified Joint Petition as Joint Petitioners’ Exhibit “A.” The Agreement includes as an exhibit, a map depicting the agreed-upon changes to the assigned service area boundary lines.

The Verified Joint Petition further stated that Lebanon Utilities and Boone REMC have been collaborating to smoothly transition the approximately 270 customers in the annexed territory from Boone REMC to Lebanon Utilities. However, Joint Petitioners have determined it may take between approximately six to ten months to perform the “make ready” work and other necessary steps to effectuate the complete transfer to Lebanon Utilities of the approximately 270 customers in the annexed territory. Pursuant to Ind. Code § 8-1-2.3-4, Joint Petitioners seek Commission approval of Lebanon Utilities’ written consent to Boone REMC’s continued provision of retail electric service, on a temporary basis, to certain customers located in Lebanon Utilities’ assigned service area boundaries as a result of the modifications to Joint Petitioners’ assigned service area boundaries approved pursuant to the Commission’s September 29, 2010 Order in Cause No. 43857.

3. Notice. Ind. 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 line located on U.S.G.S. Facet Map M-15-1 was published on January 11, 2011, in the *Lebanon Reporter*. This is a newspaper of general circulation in Boone County, Indiana, which is the county in which the affected boundary lines are located. Proof of publication of the notice was filed with the Commission on February 2, 2011, 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 Ind. Code § 8-1-2.3-6(2), the Commission may approve the requested boundary line changes without a hearing.

4. Approval of Requested Boundary Modifications. 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 Map M-15-1, and described 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 Ind. Code § 8-1-2.3-1 and, therefore, should be approved.

5. Approval of Written Consent. Joint Petitioners also seek relief pursuant to Ind. 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 in Cause No. 43857 on September 29, 2010, Lebanon Utilities has the sole right to furnish retail electric service to the annexed area. The Verified Joint Petition indicates that since the issuance of the Order, Lebanon Utilities and Boone REMC have determined that it may take approximately six to ten months to perform the "make ready" work and other necessary steps to effectuate the complete transfer of the 270 customers located in the annexed area to Lebanon Utilities. A similar transition period may be necessary with respect to the customer changes requested in this Cause. Until the transfer is complete, Boone REMC will continue to serve those customers and Lebanon Utilities has consented to Boone REMC's continued service to those customers pending extension of Lebanon Utilities' facilities.

In *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 § 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 Verified Petition was published in the *Lebanon Reporter* on January 11, 2011. 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 Lebanon Utilities’ request for approval of its consent to allow Boone REMC to continue serving the customers pending extension of Lebanon Utilities’ facilities to the customers. *See, City of Mishawaka*, Cause No. 43521 (approved August 7, 2008).

Based upon the applicable law and evidence presented, the Commission finds that Lebanon Utilities’ consent to allow Boone REMC to temporarily provide electric service to customers located in Lebanon Utilities’ assigned service area boundaries as a result of the Commission’s September 29, 2010 Order in Cause No. 43857 and the Agreement should be approved.

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

1. Joint Petitioners’ agreed-upon service area boundary line modifications as set forth above and in the Verified Joint Petition and exhibits attached thereto are hereby approved.
2. Within thirty (30) days of the date this Order is approved, Joint Petitioners shall coordinate with the Commission Technical Staff to update the service territory mapping system to reflect the modified service area boundaries approved by this Order.
3. Lebanon Utilities’ consent in writing to Boone REMC’s provision of retail electric service to customers located in Lebanon Utilities’ assigned service area boundaries as a result of the Agreement approved herein and the Commission’s September 29, 2010 Order in Cause No. 43857 is hereby approved. Within thirty (30) days of the date that service in the area is completely transferred from Boone REMC to Lebanon Utilities following Lebanon Utilities’ extension of its facilities, Lebanon Utilities shall file notice with the Commission that it is providing electric service to the area.
4. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within twenty days from the date of the Order to the Secretary of this Commission, as well as any additional costs which were incurred in connection with this Cause:

Commission Charges:	\$	\$70.16
OUCC Charges:	\$	<u>\$42.43</u>
Total:	\$	\$112.59

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

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

APPROVED: MAR 30 2011

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



**Brenda A. Howe
Secretary to the Commission**