

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION )  
 OF THE CITY OF RENSSELAER, )  
 INDIANA BY ITS MUNICIPALLY )  
 OWNED ELECTRIC UTILITY FOR A )  
 CHANGE IN RENSSELAER'S ) CAUSE NO. 44039  
 ASSIGNED SERVICE AREA )  
 BOUNDARIES ON U.S.G.S. FACET G-8 )  
 TO INCORPORATE AN ANNEXED ) APPROVED: JUL 13 2011  
 AREA PURSUANT TO IND. CODE 8-1- )  
 2.3-6(1). RESPONDENT: JASPER )  
 COUNTY RURAL ELECTRIC )  
 MEMBERSHIP COOPERATIVE, INC. )

**BY THE COMMISSION:**

**Kari A.E. Bennett, Commissioner**  
**Aaron A. Schmoll, Senior Administrative Law Judge**

On June 13, 2011, City of Rensselaer, Indiana by its municipally owned electric utility, Rensselaer Municipal Electric Utility ("City" or "Petitioner") filed its Verified Petition ("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 located in U.S.G.S. Facet G-8 in Jasper County, Indiana. The annexed area consists of approximately 1,110 acres, all of which is located within the service area assigned to Jasper County Rural Electric Membership Cooperative, Inc. ("Respondent" or "Incumbent"). The area annexed by the City of Rensselaer, Indiana is contiguous to the corporate boundary of the City of Rensselaer. The Petition indicated that there are approximately fifteen residential customers and fourteen commercial customers currently served by Respondent located within the annexed area, and included proof of publication of the annexation ordinance.

Based on the Petition, the certified copy of the annexation ordinance, and applicable law, the Commission makes the following findings:

**1. Commission Jurisdiction.** The City owns and operates an electric 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 Incumbent 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 Petition states that Ordinance No. 17-2010 became effective on May 11, 2011. The 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.** The Common Council of the City of Rensselaer, Indiana adopted and approved Ordinance No. 17-2010 on February 1, 2011 annexing into the City a tract of land contiguous to a northern corporate boundary line of the City. As indicated in the Petition, Ordinance No. 17-2010 was published in the *Rensselaer Republican* on February 9, 2011, and pursuant to Indiana Code § 36-4-3-7 became effective on May 11, 2011, i.e., ninety days after publication and upon the completion of the filings required by Indiana Code § 36-4-3-22(a).

Pursuant to Indiana Code § 8-1-2.3-6(1)(A), a certified copy of the annexation ordinance serves as conclusive evidence that the area has been lawfully annexed and is a part of the municipality. Petitioner included a certified copy of Ordinance No. 17-2010 with its Petition and, accordingly, the Commission finds that the area has been lawfully annexed and is a part of the City.

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 shall 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 area.

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.

Pursuant to Indiana Code § 8-1-2.3-6(1)(B)(i), we find that Petitioner shall 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 the gross revenues from electricity sales in the annexed area during the twelve month period immediately preceding the effective date of the

annexation ordinance, i.e., May 11, 2011, 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, i.e., May 11, 2011, Petitioner shall pay Incumbent severance damages of one-tenth of one cent (\$.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.

**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.” The Commission accordingly finds that Petitioner’s assigned service area shall be changed to include the entirety of the annexed area as described in the certified copy of the annexation ordinance filed herein.

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

1. The Petition filed in this Cause to change the assigned service area of the City of Rensselaer’s municipally owned electric utility to include the annexed territory described in the certified copy of the annexation ordinance filed herein is approved, and said municipally owned electric utility shall have the right to serve and immediate possession of said annexed area.

2. The assigned service area of the Petitioner is changed to include the entirety of the annexed area within the assigned service area of Petitioner.

3. Within thirty (30) days of the effective date of this Order, 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.

4. Petitioner shall pay Respondent the amounts as described above in Finding Paragraph No. 3.

5. 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 Incumbent that it has paid an amount required under Indiana Code § 8-1-2.3-6(1)(B).

6. 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:	\$ 72.26
OUCG Charges:	<u>\$ 34.10</u>
TOTAL:	\$106.36

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

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

APPROVED: JUL 13 2011

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

  
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Brenda A. Howe  
Secretary to the Commission