

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE)
TOWN OF CENTERVILLE, INDIANA BY ITS)
MUNICIPALLY OWNED ELECTRIC UTILITY FOR)
A CHANGE IN ITS ASSIGNED SERVICE TO)
INCORPORATE AN ANNEXED AREA PURSUANT)
TO IC 8-1-2.3-6(1) AND FOR APPROVAL OF A)
CONSENT TO ALLOW ANOTHER ELECTRIC)
UTILITY TO SERVE CUSTOMERS WITHIN ITS)
ASSIGNED SERVICE AREA BOUNDARIES ON A)
TEMPORARY BASIS PURSUANT TO IC 8-1-2.3-4(A).)
)
RESPONDENT: WHITEWATER VALLEY REMC)

CAUSE NO. 44125

APPROVED: AUG 15 2012

IN THE MATTER OF THE JOINT PETITION OF THE)
TOWN OF CENTERVILLE, INDIANA BY ITS)
MUNICIPALLY OWNED ELECTRIC UTILITY AND)
WHITEWATER VALLEY RURAL ELECTRIC)
MEMBERSHIP CORPORATION PURSUANT TO I.C.)
8-1-2.3-6, FOR APPROVAL OF AN AGREED)
CHANGE IN THE TOWN OF CENTERVILLE'S)
ASSIGNED SERVICE AREA BOUNDARIES WITHIN)
U.S.G.S. FACET X-17-1 AND FOR APPROVAL OF A)
CONSENT TO ALLOW ANOTHER ELECTRIC)
UTILITY TO SERVE CUSTOMERS WITHIN ITS)
ASSIGNED SERVICE AREA BOUNDARIES ON A)
TEMPORARY BASIS PURSUANT TO I.C. 8-1-2.3-4(A).)

CAUSE NO. 44216

APPROVED: AUG 15 2012

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On November 30, 2011, Town of Centerville, Indiana, by its municipally owned electric utility, Centerville Municipal Electric Utility ("Town" or "Centerville"), filed its Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission") seeking, as provided in Ind. 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 X-17-1 and U.S.G.S. Facet Y-17-1 in Wayne County, Indiana ("Annexed Area"). The Petition was docketed before the Commission as Cause No. 44125. The Annexed Area consists of approximately 372.32 acres, all of which is located within the service area assigned to Whitewater Valley Rural Electric Membership Corporation

("Respondent" or "Whitewater Valley"). The area annexed by Centerville is contiguous to the corporate boundary of the Town. Centerville must construct additional facilities in order to provide electric service to the Annexed Area. The construction of the necessary facilities is expected to take several months. Whitewater Valley has agreed to provide temporary service to the Annexed Area to allow for the construction of Centerville's facilities. By its Petition, Centerville also seeks Commission approval of Whitewater Valley's temporary provision of service to the Annexed Area, with Centerville's consent, as required by Ind. Code § 8-1-2.3-4(a).

On December 19, 2011, Whitewater Valley filed its Request for Evidentiary Hearing in Cause No. 44125 raising certain concerns relating to Centerville's Petition. On January 6, 2012, the Commission issued a Docket Entry granting Whitewater Valley's Request. On February 29, 2012, Centerville filed its Amendment and Supplement to Verified Petition ("Amendment"). By that filing, Centerville offered an amendment to correct the number of customers in the Annexed Area. Also by the Amendment, Centerville substantially revised the time necessary to extend its facilities to serve the Annexed Area from three (3) years to within six (6) to eight (8) months after the Commission's granting of the Petition.

Pursuant to notice, duly published as required by law, a Prehearing Conference was held at 10:30 a.m. on March 7, 2012, in Room 224 at the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Centerville, Whitewater Valley and the Indiana Office of the Utility Consumer Counselor ("OUCC") appeared and participated at the Prehearing Conference. At the Prehearing Conference, Centerville's Motion to file its Amendment was granted and counsel for Centerville and Whitewater Valley advised the Presiding Officers that discussions were underway which would likely resolve the respective concerns of Centerville and Whitewater Valley. These Parties indicated that resolution would involve the filing of a joint petition to further modify the Parties' service area boundaries. Centerville and Whitewater Valley stated they would advise the Commission upon the completion of their discussions.

On June 15, 2012, Centerville and Whitewater Valley (collectively "Joint Petitioners") filed their Verified Joint Petition ("Joint Petition") with the Commission seeking, as provided in Ind. Code § 8-1-2.3-6(2), approval of electric service area boundary changes to an area located in U.S.G.S. Facet X-17-1 in Wayne County, Indiana, upon which the Town and Whitewater Valley have mutually agreed ("Agreed Area"). The Joint Petition was docketed before the Commission as Cause No. 44216. Drawings of the agreed upon boundary changes were attached to the Joint Petition. Joint Petitioners also seek the Commission's approval of Whitewater Valley's temporary provision of electric service to customers located in the Agreed Area, at Centerville's request and with Centerville's consent, pursuant to Ind. Code § 8-1-2.3-4(a). Also, on June 15, 2012, Joint Petitioners filed a Joint Motion to consolidate Cause Nos. 44125 and 44216, which was granted by Docket Entry on June 25, 2012.

Based on the Petition, the Joint Petition, the evidence herein, and applicable law, the Commission now finds:

1. Commission Jurisdiction. Centerville is a municipality which owns and operates an electric utility furnishing retail electric service to the public and is a "municipally owned utility" within the meaning of Ind. Code § 8-1-2-1(h). Whitewater Valley is a rural

electric membership corporation organized and existing under the laws of the State of Indiana. Whitewater Valley is engaged in the business of furnishing retail electric service to the public in several Indiana counties, including Wayne County. Both Centerville and Whitewater Valley are “electricity suppliers” pursuant to Ind. Code § 8-1-2.3-2(b).

Relative to the Petition filed in Cause No. 44125, a municipally owned electric utility may petition the Commission to change its assigned service area to include an annexed area beyond its currently assigned service area by filing a petition not later than sixty (60) days after the annexation becomes effective, pursuant to Ind. Code § 8-1-2.3-6(1). The Petition states the annexation ordinances became effective on October 3, 2011. The Petition in this Cause was filed within sixty (60) days after the annexation became effective. Also, by its Petition, Centerville seeks Commission approval for Whitewater Valley to provide temporary service, at Centerville’s request and with Centerville’s consent, to the Agreed Area after the Agreed Area has become Centerville’s assigned service area. Ind. Code § 8-1-2.3-4(a) expressly authorizes the Commission to approve such an arrangement. Therefore, the Commission has jurisdiction over the parties and the subject matter of Cause No. 44125 in the manner, and to the extent, provided by law.

Relative to the Joint Petition filed in Cause No. 44216, Joint Petitioners seek the Commission’s approval to change their respective 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 the approval of this Commission. Also by the Joint Petition, Centerville seeks Commission approval for Whitewater Valley to provide temporary service, at Centerville’s request and with Centerville’s consent, to the Agreed Area after the Agreed Area has become Centerville’s assigned service area. Ind. Code § 8-1-2.3-4(a) expressly authorizes the Commission to approve such an arrangement. The Commission has jurisdiction over the parties and the subject matter of Cause No. 44216 in the manner, and to the extent, provided by law.

2. Determinations Pertinent to Cause No. 44125.

A. Annexation. The Town Council of the Town of Centerville, Indiana adopted and approved Ordinance No.’s 2011-02, 2011-03, 2011-04, 2011-05, and 2011-06 (collectively “Ordinances”) on June 27, 2011 annexing the Annexed Area into the Town of Centerville, which is contiguous to the Town’s northern corporate boundary line. As indicated in the Petition, the Ordinances were published in the *Palladium Item* on July 5, 2011, and pursuant to Ind. Code § 36-4-3-7 became effective on October 3, 2011, i.e., ninety days after publication and upon the completion of the filings required by Ind. Code § 36-4-3-22(a). Pursuant to Ind. Code § 8-1-2.3-6(1)(A), certified copies of the annexation ordinances serve as conclusive evidence that the area has been lawfully annexed and is a part of the municipality. Centerville included certified copies of the Ordinances with its Petition and, accordingly, the Commission finds that the Annexed Area has been lawfully annexed and is a part of the Town.

B. Payments To Be Made Upon Annexation of Electric Service Area.

1. 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.

Ind. Code § 8-1-2.3-6(1)(B) provides, in pertinent part:

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.

Ind. Code § 8-1-2.3-6(1)(B) requires Centerville to determine and pay to Whitewater Valley the reproduction cost new depreciated value of all of its electric utility property devoted to retail electric service within the portions of the annexed areas that fall within Whitewater Valley's assigned service area. On July 13, 2012, Centerville filed written certification with the Commission that it has paid the amounts to Whitewater Valley required by Ind. Code § 8-1-2.3-6(1). Therefore, the Commission finds that Centerville has paid to Whitewater Valley the amounts due under the above-referenced provision of Ind. Code § 8-1-2.3-6(1)(B) by virtue of its annexation and its Petition.

2. Payment of Severance Damages.

In addition to the payment required above, Ind. Code § 8-1-2.3-6(1)(B) also 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 (2-½) 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 Ind. Code § 8-1-2.3-6(1)(B)(i), we find that Centerville is required to pay Whitewater Valley an amount equal to the value of Whitewater Valley'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., October 3, 2011, whichever is greater. Pursuant to Ind. Code § 8-1-2.3-6(1)(B)(ii), we further 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., October 3, 2011 ("New Service"), Centerville should pay Whitewater Valley 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.

As noted above, on July 13, 2012, Centerville filed written certification with the Commission that it has paid to Whitewater Valley the amounts currently required under Ind. Code § 8-1-2.3-6(1)(B)(i). Therefore, the Commission finds that Centerville has paid to Whitewater Valley all amounts currently required to be paid by Ind. Code § 8-1-2.3-6(1)(B).

C. Approval of Requested Change to Assigned Service Area. Ind. 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.

Based on our foregoing findings and consistent with Ind. Code § 8-1-2.3-6(1), the Commission finds that Centerville's assigned service area should be changed to include the entirety of the annexed area as described in the certified copies of the annexation ordinances attached to the Petition, i.e., the Annexed Area.

3. Determinations Pertinent to Cause No. 44216.

A. Service Area Agreement. Joint Petitioners assert that since approval of the present service area boundaries on June 25, 2008, in Cause No. 43456, certain modifications have been agreed upon to the boundaries set forth therein. Exhibit A attached to the Joint Petition reflects the respective areas currently authorized to be served by the Joint Petitioners and the proposed modifications thereto. Joint Petitioners propose modifications on U.S.G.S. Facet Map No. X-17-1 resulting in Centerville gaining service territory and Whitewater Valley losing service territory in some locations.

Joint Petitioners aver in the Joint Petition that the proposed modification will not cause a duplication of electric utility facilities, waste of materials or resources, or uneconomic, inefficient, or inadequate electric service to the public. There is no evidence to the contrary before the Commission in this proceeding.

B. Notice and Waiver of Hearing. 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 filings show that notice of the Joint Petition for a change of boundary lines located on U.S.G.S. Facet Map No. X-17-1 was published on June 27, 2012, in the *Palladium Item*, and on June 27, 2012, and July 4, 2012 in the *Western Wayne News*. These are both newspapers of general circulation in Wayne County, which is the county where the affected boundary lines are located. Sworn proofs of publication of these notices were filed with the Commission on July 16, 2012, and are hereby incorporated into the record of this Cause. Further, written notice of the Joint Petition was provided to the two customers who would be directly affected by the change in service area, by U.S. Mail, Certified/Return Receipt Requested June 13, 2012. The Return Receipts for these notices were filed with the Commission on July 16, 2012, and are hereby incorporated into the record of this Cause. Twenty (20) days have passed since the last 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 boundary line change requested by the Joint Petition without a hearing.

C. **Approval of Agreed Boundary Line Modification.** Based on the Joint Petition and the foregoing findings, the Commission finds that the agreed upon change to Joint Petitioners' respective assigned service area boundaries located on U.S.G.S. Facet Map No. X-17-1, as specifically depicted in the Joint Petition and the Exhibits attached thereto, i.e., the Agreed Area, will promote economical, efficient, and adequate electric service to the public consistent with the legislative policies set forth in Ind. Code § 8-1-2.3-1 and, therefore, should be approved.

4. **Determination Applicable to Both Cause Nos. 44125 and 44216.** Centerville, in Cause No. 44125, and Joint Petitioners, in Cause No. 44216, 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 these consolidated Causes, the Town would have the sole right to furnish retail electric service to the Annexed Area and the Agreed Area. The evidence indicates that from the time of the issuance of the order in these consolidated Causes, it will take approximately six (6) to eight (8) months for the construction of the facilities and other necessary steps for Centerville to provide service to the Annexed Area and the Agreed Area. Whitewater Valley has agreed to continue to provide temporary service to the Annexed Area and the Agreed Area to allow for the construction of Centerville's facilities. By the Petition in Cause No. 44125 and the Joint Petition in Cause No. 44216, Centerville has requested and consented to Whitewater Valley's provision of temporary service in the Annexed Area and Agreed Area.

In *Joint Petition of Electricity Suppliers*, Cause No. 42868, 2006 Ind. PUC LEXIS 275, at *11 (Sept. 28, 2006), the Commission noted that requests for approval of consents of temporary extraterritorial retail service, under Indiana 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.* Notice of the filing of the Petition was published in the *Western Wayne News* on December 21, 2011. Notice of the filing of the Joint Petition was published in the *Palladium Item* on June 27, 2012 and in the *Western Wayne News* on June 27 and July 4, 2012. 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 Whitewater Valley's consent to temporarily serve in Centerville's service area.

Whitewater Valley has been successfully providing service to the Annexed Area and the Agreed Area for many years and we expect that it can, and will continue to do so, for the temporary period contemplated herein. The Commission finds that Centerville has requested and

consented to Whitewater Valley providing service within Centerville's assigned electric service area as required by Ind. Code § 8-1-2.3-4(a). Based on all of the foregoing, the Commission further finds that Whitewater Valley's provision of temporary service to the Annexed Area and the Agreed Area, as described herein, should be approved, as allowed by Ind. Code § 8-1-2.3-4(a).

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

1. The Petition filed in Cause No. 44125 to change the assigned service area of the Town of Centerville's municipally owned electric utility to include the annexed territory described in the certified copies of the Ordinances filed herein shall be, and hereby is, approved, and Centerville's municipally owned electric utility shall have the right to serve and immediate possession of the Annexed Area.

2. Centerville shall pay to Whitewater Valley additional severance damages of one-tenth of one cent (\$0.0001) for each kilowatt hour of electricity sold to the New Service accounts during the five (5) year period beginning on the date each New Service location is established, up to a maximum of one hundred, seventy thousand (170,000) kilowatt hours per New Service account, consistent with Finding No. 2.B.2 herein.

3. Not later than twenty (20) days after making a payment under Ind. Code § 8-1-2.3-6(1)(B), Centerville shall certify to the Electricity Division of the Commission and to Whitewater Valley that it has paid an amount required under Ind. Code § 8-1-2.3-6(1)(B).

4. Joint Petitioners' agreed upon service area boundary line changes as set forth above and in the Joint Petition in Cause No. 44216, and Exhibits attached thereto, shall be, and are hereby approved, and the assigned service area of Centerville shall be, and hereby is modified to include the Agreed Area.

5. Within thirty (30) days of the effective date of this Order, Centerville and Whitewater Valley shall coordinate with Commission Technical Staff to update the service territory mapping system to reflect the modified service area boundaries approved by this Order.

6. Whitewater Valley's temporary provision of electric service to the Annexed Area and the Agreed Area, pursuant to Centerville's request and consent, shall be, and hereby is approved consistent with Finding No. 4 herein. Within thirty (30) days of the date that Centerville begins providing electric service to the Annexed Area and the Agreed Area, Centerville shall make a filing in these Causes so notifying the Commission that it is providing service.

7. In accordance with Ind. Code § 8-1-2-70, Centerville 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 these Causes:

Commission Charges:	\$431.77
Legal Advertising Charges:	<u>\$111.06</u>
TOTAL:	\$542.83

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

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

APPROVED:

AUG 15 2012

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



Brenda A. Howe

Secretary to the Commission