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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. 44221
FOR CHANGES TO ITS ASSIGNED SERVICE)
AREA BOUNDARIES ON U.S.G.S. FACET O-2-1)
TO INCORPORATE THREE) APPROVED:
CONTEMPORANEOUSLY ANNEXED AREAS)
PURSUANT TO IC 8-1-2.3-6(1))

JUL 31 2012

ORDER OF THE COMMISSION

Presiding Officer:
David E. Veleta, Administrative Law Judge

On July 13, 2012, the municipally owned electric utility of the City of Mishawaka, Indiana ("City of Mishawaka" 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 the portions of three annexed areas located on U.S.G.S. Facet O-2-1 in St. Joseph County, Indiana. In aggregate, the three areas annexed by the City of Mishawaka include approximately 249.62 acres, all of which are located within the assigned service area of Indiana Michigan Power Company, Inc. ("I&M"). Attached to the Verified Petition are certified copies of Ordinance Nos. 5340, 5341, and 5342; a certified copy of the proof of publication; and a copy of a map depicting the annexed areas.

Based upon the evidence and applicable law, the Commission makes the following findings:

1. Commission Jurisdiction. The Petitioner owns and operates an electric utility system furnishing retail electric service to the public. Pursuant to Indiana Code § 8-1-2-1(h), the Petitioner is a "municipally owned utility," and the Petitioner and I&M are "electricity suppliers" pursuant to Indiana Code § 8-1-2.3-2(b). The Petitioner purchases all of its requirements for electric power and energy from I&M. 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 boundaries to include an annexed 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 Nos. 5340, 5341, and 5342 became effective on June 30, 2012. Accordingly, the Commission finds that the Verified Petition in this Cause was filed not later than sixty (60) days after the annexation

ordinances became effective, and the Commission has jurisdiction over the subject matter of this Cause.

2. **Annexations.** Pursuant to the petitions of the property owners in the areas, the Common Council of the City of Mishawaka, Indiana adopted and approved Ordinance Nos. 5340, 5341, and 5342 on May 21, 2012, annexing into the City of Mishawaka three tracts of land adjacent and contiguous to a boundary line of the City. Ordinance Nos. 5340, 5341, and 5342 were published in *The Mishawaka Enterprise* on May 31, 2012, and pursuant to Indiana Code § 36-4-3-7(f), became effective on June 30, 2012.

Pursuant to Indiana Code § 8-1-2.3-6(1)(A), a certified copy of the annexation ordinances, which must be filed with a petition, serves as conclusive evidence that the area has been lawfully annexed and is a part of the municipality. The Petitioner included certified copies of Ordinance Nos. 5340, 5341, and 5342 with its Verified Petition and, accordingly, the Commission finds 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 Verified Petition, the Petitioner should determine and pay I&M the reproduction cost new depreciated value of electric utility property devoted to retail electric service within the annexed 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 the Petitioner would pay any severance damages that may be due to I&M under Indiana Code § 8-1-2.3-6(1)(B)(i) for the properties located in the areas annexed by Ordinance Nos. 5340, 5341, and 5342. No severance damages are due I&M under item (ii) so long as the Petitioner "at the time each annual payment otherwise would accrue, . . . 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 I&M.

Pursuant to Indiana Code § 8-1-2.3-6(1)(B)(i), we find that within thirty (30) days of filing its Verified Petition, the Petitioner should determine and pay I&M an amount equal to the value of I&M'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 times (2½) times the gross revenues from electric sales to the customers located in the annexed areas during the twelve (12) month period immediately preceding the effective date of Ordinance Nos. 5340, 5341, and 5342 (i.e., June 30, 2012).

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 the Petitioner's assigned service area boundaries should be changed to include the annexed areas described in the certified copies of the annexation ordinances filed herein.

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

1. The Verified Petition filed in this Cause to change the assigned service area boundaries of the City of Mishawaka's municipally owned electric utility to include the three annexed areas is approved, and Mishawaka Utilities shall have the right to serve and immediate possession of said annexed areas.

2. The assigned service area boundaries of Petitioner and I&M are changed to include the annexed areas within the assigned service area of the Petitioner. Within thirty (30) days of the date this Order is approved, the 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 any amounts due in accordance with the findings set forth in Paragraphs 3A and 3B.

4. Not later than twenty (20) days after making a payment under Indiana Code § 8-1-2.3-6(1)(B), the City of Mishawaka 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 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 Charge	\$ 69.84
OUCG Charge	<u>\$ 28.45</u>
Total Charges	\$ 98.29

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: JUL 31 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