

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 FOR A CHANGE IN ITS)
ASSIGNED SERVICE AREA BOUNDARIES ON U.S.G.S.)
FACET O-2-1 TO INCORPORATE AN ANNEXED AREA)
PURSUANT TO I.C. 8-1-2.3-6(1) AND FOR APPROVAL OF)
A CONSENT TO ALLOW ANOTHER ELECTRIC)
UTILITY TO SERVE A CUSTOMER WITHIN ITS)
ASSIGNED SERVICE AREA BOUNDARIES ON A)
TEMPORARY BASIS PURSUANT TO IC 8-1-2.3-4(A))

CAUSE NO. 44239

APPROVED: OCT 31 2012

RESPONDENT: INDIANA MICHIGAN POWER)
COMPANY, INC.)

ORDER OF THE COMMISSION

Presiding Officer:

Aaron A. Schmoll, Senior Administrative Law Judge

On August 22, 2012, the municipally owned electric utility of the City of Mishawaka, Indiana ("City" or "Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") seeking, as provided in Indiana Code Section 8-1-2.3-6(1), to change its assigned service area boundaries to include the portion of an annexed area located in U.S.G.S. Facet O-2-1 in St. Joseph County, Indiana. The annexed area is located within the service area assigned to Indiana Michigan Power Company, Inc. ("I&M," "Incumbent," or "Respondent"). The annexed area is adjacent to the northern boundary of the City.

On September 20, 2012, pursuant to Indiana Code 8-1-2.3-4, Petitioner filed its Amended Petition seeking, in addition to the above-requested relief, Commission approval of its consent to allow I&M to continue to serve one existing customer within the annexed area until such time as Petitioner is able to provide facilities to serve other customers in that location. On October 10, 2012, Petitioner filed proof of publication related to the consent request.

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

1. **Commission Jurisdiction.** The City of Mishawaka, Indiana owns and operates an electric utility system furnishing retail electric service to the public. Pursuant to Indiana Code Section 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 Section 8-1-2.3-2(b). The Commission finds that it has jurisdiction over the parties to this Cause.

Pursuant to Indiana Code Section 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 states that Ordinance No. 5344 became effective on July 28, 2012.. Accordingly, the Commission finds that the Verified Petition in this Cause was filed not later than sixty (60) days after the annexation became effective.

Petitioner also seeks the Commission’s approval for I&M to continue to serve one customer in the annexed area. Pursuant to Indiana Code Section 8-1-2.3-4, no electric supplier shall extend retail electric service into another supplier’s assigned service territory unless the electric supplier with the sole right to furnish electric service consents in writing and the Commission approves. Therefore, the Commission has jurisdiction over the subject matter of this Cause.

2. **Annexation.** The City of Mishawaka, Indiana adopted and approved Ordinance No. 5344 on June 18, 2012, annexing into the City a tract of land located east of, and adjacent and contiguous to, the corporate boundary line of the City. Ordinance No. 5344 was published in the *Mishawaka Enterprise* on June 28, 2012, and pursuant to Indiana Code Section 36-4-3-7 became effective on July 28, 2012, 30 days after publication and upon the completion of the filings required by Indiana Code Section 36-4-3-22(a).

Pursuant to Indiana Code Section 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 a certified copy of Ordinance No. 5344 with its Petition. Accordingly, the Commission finds that the area has been lawfully annexed and is 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 Section 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 Section 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 Incumbents’ assigned service areas.

B. **Payment of Severance Damages.**

In addition to the payment required above in paragraph 3A, Indiana Code Section 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.

We find that Petitioner should pay Incumbent an amount as indicated in (i) above.

Pursuant to Indiana Code Section 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 Respondent 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 Section 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 Section 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 should be changed to include the entirety of the annexed area as described in the certified copy of the annexation Ordinance filed herein.

5. **Approval of Written Consent.** Petitioner also seeks relief pursuant to Indiana Code Section 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, the City has the sole right to furnish retail electric service to the annexed area. However, in its Petition, the City states that the City and I&M have agreed that I&M will continue to serve one existing customer in the annexed area until temporary service is needed to serve additional customers, and accordingly has consented to I&M’s continued service of that customer, pending extension of the Town’s facilities.

In *In re 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 Indiana Code Section 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 Petition was published in the *Mishawaka Enterprise* on October 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 the City’s request for approval of its consent to allow I&M to continue serving the sole existing customer in the annexed area, consistent with the relief requested.

Based upon the law and evidence discussed above, the Commission finds that the City’s consent to allow I&M to temporarily provide electric service within the annexed area should be approved.

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 of the City of Mishawaka's municipally owned electric utility to include the entirety of the annexed territory described in the certified copy of the annexation Ordinance filed herein is approved.

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 and, Petitioner and Respondent shall, within thirty (30) days of the date this Order is approved, 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 Respondent the amounts as described above in Finding Paragraph 3 of this Order.

4. Not later than twenty (20) days after making a payment under Indiana Code Section 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 Section 8-1-2.3-6(1)(B).

5. The City's consent to allow I&M to temporarily provide electric service within the annexed area is hereby approved. Within thirty (30) days of the date that service is transferred from I&M to the City following the City's extension of its facilities, the City shall file notice with the Commission that I&M is no longer providing electric service to the annexed area.

6. In accordance with Indiana Code Section 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 Charge	\$ 106.03
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7. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: OCT 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