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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE CITY OF)
WASHINGTON, INDIANA AND ITS) CAUSE NO. 44321
MUNICIPALLY OWNED ELECTRIC)
UTILITY FOR A CHANGE IN ITS)
ASSIGNED SERVICE AREA BOUNDARIES) APPROVED: MAY 22 2013
PURSUANT TO IND. CODE § 8-1-2.3-6)

ORDER OF THE COMMISSION

Presiding Officer:
Marya E. Jones, Administrative Law Judge

On March 15, 2013, the City of Washington, Indiana and its municipally owned electric utility (collectively, "City") filed a *Verified Petition to Modify Service Area Boundaries* ("Petition") with the Indiana Utility Regulatory Commission ("Commission") seeking, as provided in Ind. Code § 8-1-2.3-6(1), to change its assigned electric service area boundaries to include an annexed area that is currently beyond its assigned service area. The annexed area, which is adjacent to the eastern corporate boundary of the City, includes an area that is located within the service area ("Annexed REMC Area") currently assigned to Daviess-Martin County Rural Electric Membership Corporation ("REMC"). On May 6, 2013, Petitioner filed a Motion to Amend Petition to Substitute Exhibit and Notice of Payment.

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

1. Commission Jurisdiction. The City owns and operates a municipal electric utility with its principal place of business located at 2100 Memorial Avenue, Washington, Indiana 47501. It is engaged in the business of distributing, furnishing, and selling retail electric service to the public in and around its boundaries. The City is an "electric supplier" within the meaning of Indiana Code § 8-1-2.3-2(b).

REMC is a rural electric membership corporation organized and existing under the laws of the State of Indiana with its principal place of business located at 12628 E 75 N, Loogootee, Indiana 47533. It is engaged in the business of distributing, furnishing, and selling retail electric service to the public in Daviess, Martin and Lawrence Counties, and has charter authority to do so. REMC is an "electric supplier" within the meaning of Indiana Code § 8-1-2.3-2(b)

Pursuant to Ind. 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. 11-2012 became effective on February 21, 2013. Accordingly, the Commission finds that 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.** Pursuant to Indiana Code 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 the annexation Ordinance (City of Washington Ordinance No. 11-2012) with its Petition and, accordingly, the Commission finds that the area has been lawfully annexed and is a part of the City of Washington, 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 Annexed REMC Area.**

Ind. 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.

On May 6, 2013, consistent with Ind. Code § 8-1-2.3-6(1)(B), Petitioner filed with the Commission a Motion to Amend Petition to Substitute Exhibit and Notice of Payment, wherein the City documented payment to the REMC for the electric utility property devoted to retail electric service within the Annexed REMC Area in the amount of \$94,349.74.

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 (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 (\$.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.

On May 6, 2013, pursuant to Ind. Code § 8-1-2.3-6(1)(B)(i), Petitioner filed with the Commission a Motion to Amend Petition to Substitute Exhibit and Notice of Payment, wherein the City documented payment to the REMC of an amount equal to two and one half (2 ½) times the REMC's gross revenues from electricity sales in the Annexed REMC Area during the twelve (12) month period immediately preceding February 21, 2013 in the amount of \$166,611.53.

Pursuant to Ind. Code § 8-1-2.3-6(1)(B)(ii), if additional permanent service locations or service accounts are established in the Annexed REMC Area during the five (5) year period beginning on the effective date of the annexation ordinance, Petitioner shall pay the REMC

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 Ind. Code § 8-1-2.3-6(1)(B)(ii) shall not be payable by Petitioner to the REMC 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 the REMC.

Based on the above, and pursuant to Indiana Code § 8-1-2.3-6(1)(B), we find that Petitioner has paid Respondent the value of all of Respondent's electric utility property that is devoted to furnishing retail electric service within the additional assigned service area at its then reproduction cost new depreciated value, which Petitioner determined to be \$94,349.74. Petitioner has also paid Respondent \$166,611.53 in severance damages, which is two and one-half (2 ½) times Respondent's gross revenues from electricity sales in the annexed area during the twelve (12) month period immediately preceding the effective date of the annexation ordinance. The total of these two amounts paid to Respondent is \$260,961.27.

In addition, pursuant to Indiana Code § 8-1-2.3-6(1)(B), if additional permanent service locations or service accounts are established in the annexed area during the five (5) year period beginning on February 21, 2013, 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.

4. Approval of Requested Boundary Modification. 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." The Commission accordingly finds that Petitioner's assigned service area should be changed to include the Annexed REMC Area as described in Exhibit 2 to the Petition.

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 Washington's municipally owned electric utility to include the Annexed REMC Area is approved, and said municipally owned electric utility shall have the right to serve the Annexed REMC Area.

2. The assigned service area of the City and REMC is changed to include the Annexed REMC Area within the assigned service area of the City and, the City shall, within thirty (30) days of the effective date of this Order, coordinate with Commission Technical Staff to update the service territory mapping system to reflect the modified service area boundaries approved by this Order.

3 The City has paid REMC the amounts as described above in Finding Paragraph 3 of this Order and the City shall pay REMC any additional severance damages payable as a result of any additional permanent service locations or service accounts being established in the annexed area.

4. 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 REMC that it has paid any 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	\$ 224.66
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6. This Order shall be effective on and after the date of its approval.

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

APPROVED: MAY 22 2013

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



Brenda A. Howe
Secretary to the Commission