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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
 CITY OF GARRETT, BY ITS )  
 MUNICIPALLY OWNED ELECTRIC ) CAUSE NO. 44376  
 UTILITY FOR CHANGES IN ITS )  
 ASSIGNED SERVICE AREA BOUNDARIES )  
 ON U.S.G.S. FACET W-5-1 TO ) APPROVED:  
 INCORPORATE AN ANNEXED AREA )  
 PURSUANT TO IC 8-1-2.3-6(1) )  
 )  
 )  
 RESPONDENT: INDIANA MICHIGAN )  
 POWER COMPANY, INC. )

AUG 21 2013

ORDER OF THE COMMISSION

**Presiding Officer:**

**Gregory R. Ellis, Administrative Law Judge**

On July 31, 2013, the City of Garrett, Indiana, by its municipally owned electric utility (“Petitioner” or “Garrett”) filed its Verified 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 located in U.S. Geological Survey (“USGS”) Facet W-5-1 in DeKalb County, Indiana to incorporate additional territory which was recently annexed into the City of Garrett (“Annexed Area”). The Annexed Area contains approximately 22.51 acres, all of which is located within the service area assigned to Indiana Michigan Power Company, Inc. (“I&M” or “Incumbent” or “Respondent”). The Annexed Area is adjacent to the corporate boundary lines of the City of Garrett. I&M is currently serving no customers within the Annexed Area.

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

**1. Commission Jurisdiction.** The City of Garrett, Indiana owns and operates an electric utility furnishing retail electric service to the public. Pursuant to Ind. Code § 8-1-2-1(h), Petitioner qualifies as a “municipally owned utility,” and both Petitioner and Respondent are “electricity suppliers” pursuant to Ind. Code § 8-1-2.3-2(b). Therefore, the Commission has jurisdiction over the parties to this Cause.

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 Verified Petition states that Ordinance No. 2013-04 became effective on June 12, 2013. Accordingly, the Commission finds that the Verified 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 Garrett, Indiana adopted and approved Ordinance No. 2013-04 on February 5, 2013, annexing into the City approximately 22.51 acres of land, located adjacent and contiguous to the corporate boundary lines of the City of Garrett. Ordinance No. 2013-04 was published in *The Garrett Clipper* on March 14, 2013, and pursuant to Ind. Code § 36-4-3-7 became effective on June 12, 2013 after publication and upon the completion of the filings, as set forth in Ind. Code § 36-4-3-22(a).

Pursuant to Ind. 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 Ordinance No. 2013-04 with its Verified Petition and, accordingly, the Commission finds that the area has been lawfully annexed and is a part of the City of Garrett, 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.**

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.

Pursuant to Ind. Code § 8-1-2.3-6(1)(B), we find that within thirty (30) days of filing its Verified 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 Incumbent's assigned service areas.

B. **Payment of Severance Damages.**

In addition to the payment required above in paragraph 3A, Ind. 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.

We find that Petitioner should 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 Incumbent's gross revenues from electricity sales in the annexed area during the twelve (12) month period immediately preceding June 12, 2013, whichever is greater.

Pursuant to Ind. 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, 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 Ind. Code § 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.** The Petitioner proposes to furnish and has the ability to render adequate and reliable retail electric service to current and future customers within the Annexed Area currently served by I&M. 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 entirety of the annexed area as described in the certified copy of Ordinance No. 2013-04 filed herein.

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

1. The Verified Petition filed in the Cause to change the assigned service area boundaries of the City of Garrett owned electric utility to include the entirety of 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 and Respondent 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’s Electricity Division 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 Ind. 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 Ind. Code § 8-1-2.3-6(1)(B).

5. In accordance with Ind. Code § 8-1-2-70, the Petitioner shall pay within twenty (20) days from the date of this Order the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause.

Commission Charges           \$ 113.61

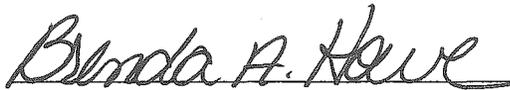
Petitioner shall pay all charges into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of this Commission.

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

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

APPROVED:       **AUG 21 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