

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE TOWN)
OF SPICELAND, INDIANA, AND ITS MUNICIPALLY)
OWNED ELECTRIC UTILITY, FOR A CHANGE IN ITS)
ASSIGNED SERVICE 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)
CUSTOMERS WITHIN ITS ASSIGNED SERVICE AREA)
BOUNDARIES ON A TEMPORARY BASIS PURSUANT)
TO IC 8-1-2.3-4(A).)

CAUSE NO. 44459

APPROVED:

NOV 25 2014

RESPONDENT: DUKE ENERGY INDIANA, INC.)

ORDER OF THE COMMISSION

Presiding Officer:

Aaron A. Schmoll, Senior Administrative Law Judge

On February 21, 2014, the municipally-owned electric utility of the Town of Spiceland, Indiana (“Town” or “Petitioner”) 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 to include the portion of an annexed area in Henry County, Indiana. The annexed area is located within the service area assigned to Duke Energy of Indiana, Inc. (“Duke” or “Incumbent” or “Respondent”). On April 3, 2014, Petitioner filed its Notice of Submission of Certified Records.

On March 26, 2014, the Presiding Administrative Law Judge conducted an Attorneys’ Conference to discuss the requested relief. Pursuant to its commitment at the Attorneys’ Conference, Petitioner filed Status Reports with the Commission on April 16, 2014, April 25, 2014, September 3, 2014, and October 24, 2014.

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

1. Commission Jurisdiction. Petitioner owns and operates an electric utility system 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 Incumbent qualify as “electricity suppliers” pursuant to Ind. Code § 8-1-2.3-2(b). The Commission finds that it 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 60 days after the annexation becomes effective. The Verified Petition states that Ordinance No. 2012-4 became effective on December 31, 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 Town adopted and approved Ordinance No. 2012-4 on November 29, 2012, annexing into the Town a tract of land, located west of, and adjacent and contiguous to the corporate boundary line of the Town. Ordinance No. 2012-4 was published in the *Courier Times* on December 5, 2012, and pursuant to Indiana Code § 36-4-3-7 became effective on December 31, 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 provided a certified copy of Ordinance No. 2012-4 and, accordingly, the Commission finds that the area has been lawfully annexed and is a part of the Town.

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.

In Petitioner's October 24, 2014 Status Report, Petitioner stated that it made such payments to Incumbent on August 12, 2014.

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 subsection.

Pursuant to Petitioner's October 24, 2014 Status Report, Petitioner stated that it made payments to Incumbent pursuant to Ind. Code § 8-1-2.3-6(1)(B)(i) on August 12, 2014.

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-year period beginning on the effective date of the annexation ordinance, Petitioner should pay Respondent, within 30 days of the end of the calendar year, 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-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.** 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 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.** In its Verified Petition, Petitioner also requested 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.

In its October 24, 2014 Status Report, Petitioner stated that it has already extended its lines to serve the Incumbent’s existing customers, and will make those connections upon approval by this Commission. For this brief period following Commission approval of the boundary change, Petitioner has consented to Duke’s continued provision of electric service to ensure that customers continue to have electric utility service. Within 20 days of this Order, Petitioner shall make the final connections to complete the switchover of service and file notice with the Commission that the connections were made.

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

1. The request to change the assigned service area of the Town’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, and said municipally owned electric utility shall have the right to serve and immediate possession of said annexed area.

2. Petitioner and Respondent shall, within 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. Petitioner shall, with 20

days of this Order, file notice with the Commission that it is providing power to the customers within the modified service area boundaries.

3. Within 30 days from the end of each calendar year, Petitioner shall pay Respondent the amounts as described above in Finding Paragraph 3 of this Order.

4. Not later than 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, Petitioner shall pay the following charge within 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:

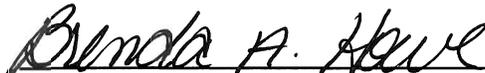
Commission Charge	\$ 592.28
-------------------	-----------

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

STEPHAN, MAYS-MEDLEY, WEBER, HUSTON, AND ZIEGNER CONCUR:

APPROVED: NOV 25 2014

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



Brenda A. Howe
Secretary to the Commission