ORIGINAL

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 CHANGES IN ITS ASSIGNED SERVICE AREA BOUNDARIES ON U.S.G.S. FACET 0-2-1 TO INCORPORATE AN ANNEXED AREA PURSUANT TO IC 8-1-2.3-6(1)	)	**CAUSE NO. 44588**
	)	**APPROVED:** MAR 25 2015
RESPONDENT: INDIANA MICHIGAN POWER COMPANY, INC.	)	

ORDER OF THE COMMISSION

Presiding Officer:
Marya E. Jones, Administrative Law Judge

On January 28, 2015, the City of Mishawaka, Indiana by its municipally owned electric utility ("Petitioner" or "City"), filed its Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission") seeking to change its assigned electric service area boundaries to include an annexed area ("Annexed Area") as provided in Ind. Code § 8-1-2.3-6(1). The Annexed Area consists of approximately 2.7 acres in total, all of which is located within the assigned service area of Indiana Michigan Power Company, Inc. ("Respondent" or "Incumbent"). The Annexed Area is adjacent to a corporate boundary line of the City.

The Petition indicated that Respondent is not currently serving any customers within the Annexed Area. Petitioner indicated that it intends to furnish and has the ability to render adequate and reliable retail electric service to all future customers that might locate within the Annexed Area upon Commission approval of the requested changes in Petitioner's assigned service area boundaries.

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

1. **Commission Jurisdiction.** The City owns and operates an electric utility system furnishing retail electric service to the public. Pursuant to Ind. Code § 8-1-2-1(h), Petitioner is a "municipally owned utility," and both Petitioner and Respondent are "electricity suppliers" pursuant to Ind. Code § 8-1-2.3-2(b). Petitioner purchases all of its requirements for electric power and energy from Respondent. 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 boundaries to include an annexed area by filing its petition not later than 60 days after the annexation becomes effective. The Petition states that Ordinance No. 5465 became effective on January 3, 2015. Accordingly, the Commission finds that

the Petition in this Cause was filed not later than 60 days after the annexation became effective and, therefore, the Commission has jurisdiction over the subject matter of this Cause.

2. Annexation. Pursuant to the petition of the property owners in the Annexed Area, the City's Common Council adopted and approved Ordinance No. 5465 on December 2, 2014, annexing a tract of land adjacent and contiguous to a boundary line of the City. Ordinance No. 5465 was published in *The Mishawaka Enterprise* on December 4, 2014, and pursuant to Ind. Code § 36-4-3-7(f) became effective on January 3, 2015.

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. The City included a certified copy of the annexation Ordinance, Ordinance No. 5465, as Exhibit 1 to its Petition. Accordingly, the Commission finds that the area has been lawfully annexed and is a part of the City.

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.

The Petition indicated that Petitioner would pay Incumbent the reproduction cost new depreciated value of property devoted to providing retail electric service in the Annexed Area within 30 days of filing its Petition.

B. Payment of Severance Damages.

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

The Petition indicated Petitioner would pay any severance damages that may be due to Incumbent pursuant to Ind. Code 8-1-2.3-6(1)(B)(i) for any properties located in the Annexed Area.

Pursuant to Ind. Code § 8-l-2.3-6(l)(B)(ii), if additional 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, the City shall pay the Respondent severance damages of $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 170,000 kilowatt hours per service account or service location for each monthly billing period. However, severance damages pursuant to Ind. Code § 8-l-2.3-6(1)(B)(ii) shall not be payable by the City to the Respondent if, at the time each annual payment otherwise would accrue, the City 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 Respondent.

4. <u>Approval of Requested Boundary Modification</u>. 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 finds that Petitioner's assigned service area boundaries shall be changed to include the Annexed Area described in Ordinance No. 5465.

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

1. The Petition filed in this Cause to change the assigned service area boundaries of the City's municipally owned electric utility to include the Annexed Area is approved, and said municipally owned electric utility shall have the right to serve the Annexed Area.

2. The assigned service area boundaries of the City and Respondent are changed to include the Annexed Area within the assigned service area of Petitioner. Within 30 days of the date this Order is approved, 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 Respondent the amounts, if any, 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), the City shall certify to the Electricity Division of the Commission and to Respondent that it has paid any amount required under Ind. Code § 8-1-2.3-6(1)(B).

5. In accordance with Ind. Code § 8-1-2-70, the City shall pay the following charge within 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:

6. In accordance with Indiana Code § 8-1-2-70, Petitioner shall, within 20 days from the date of this Order, pay into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

Commission Charges: $ 37.43

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

STEPHAN, MAYS-MEDLEY, HUSTON, AND ZIEGNER CONCUR; WEBER NOT PARTICIPATING:

APPROVED:

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission