

IC 8-1-2.3

Chapter 2.3. Electricity Suppliers' Service Area Assignments

IC 8-1-2.3-1

Legislative findings and declaration of policy

Sec. 1. Legislative Findings and Declaration of Policy. It is declared to be in the public interest that, in order to encourage the orderly development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, to prevent the waste of material and resources, and to promote economical, efficient, and adequate electric service to the public, the currently unincorporated areas of Indiana shall be divided into designated geographic areas within which an assigned electricity supplier has the sole right to furnish retail electric service to customers.

As added by Acts 1980, P.L.69, SEC.1.

IC 8-1-2.3-2

Definitions

Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Electricity supplier" means a public utility, a local district rural electric membership corporation, or a municipally owned electric utility which furnishes retail electric service to the public.

(c) "Retail electric service" means electric service furnished to a customer for ultimate consumption, but does not include wholesale electric service furnished by an electricity supplier to another electricity supplier for resale.

(d) "Existing electric distribution line" means an electric conductor which on January 1, 1979, was being used for the distribution or delivery of retail electric service.

(e) "Assigned service area" means the designated geographic area within the boundaries of which an electricity supplier is authorized to furnish all retail electric service, as provided in this chapter.

(f) "Municipality" means a city or town.

(g) "Existing municipal limits" means the corporate boundaries of any municipality as such boundaries existed on January 1, 1979.

As added by Acts 1980, P.L.69, SEC.1. Amended by P.L.23-1988, SEC.30.

IC 8-1-2.3-3

Assigned service areas

Sec. 3. Assigned Service Areas. (a) Unless otherwise agreed upon between adjacent electricity suppliers, all areas inside existing municipal limits are hereby assigned to the electricity supplier serving a plurality of the electric meters within the municipality on January 1, 1979.

(b) Where two (2) or more electricity suppliers are rendering retail electric service within existing municipal limits, those suppliers shall take one (1) or more of the following actions to assure that only one

(1) electricity supplier shall serve within the existing municipal limits:

(1) The electricity supplier serving a plurality of electric meters within the municipality on January 1, 1979, may purchase the electric utility property of any other electricity supplier which is devoted to retail electric service and is located within the existing municipal limits, at its then reproduction cost new depreciated value plus severance damages.

(2) At the option of the electricity supplier serving a plurality of electric meters within the municipality on January 1, 1979, and subject to commission approval, the electricity suppliers may exchange all or part of the electric utility property located outside of the existing municipal limits for the electric utility property located within the existing municipal limits.

(3) If the affected electricity suppliers do not agree upon a purchase or exchange of the electric utility property before September 1, 1980, the commission shall determine the appropriate purchase price for the electric utility property according to subsection (b)(1) of this section.

(c) On or before July 1, 1981, each electricity supplier in each county shall exchange with all other electricity suppliers in the county a map or maps showing all of its existing electric distribution lines in the county which are relevant to the assignment of service areas outside existing municipal limits and any other information it considers useful in determining the boundaries of an assigned service area.

(d) Until otherwise agreed upon between electricity suppliers or ordered by the commission under section 3(g) of this chapter, the boundaries of the assigned service area for each adjacent electricity supplier outside existing municipal limits shall be set as a line equidistant from its existing electric distribution lines and the nearest existing electric distribution lines of any other electricity supplier; the resulting assigned service area outside existing municipal limits of an electricity supplier will be that area which is closer to the existing electric distribution lines of a supplier than to the existing electric distribution lines of any other electricity supplier.

(e) Each electricity supplier shall negotiate with all adjacent electricity suppliers as soon as practicable in an effort to agree on the boundaries of the service areas to be assigned.

(f) Maps depicting the boundaries of such proposed service area assignments shall be prepared by each electricity supplier for each county in which the electricity supplier provides electric retail service, and shall be filed, together with a petition requesting approval and assignment of such service areas with the commission on or before July 1, 1982, or on such other date as the commission may determine, but in any event on or before March 1, 1983. Thereafter, the commission shall hold a public hearing regarding the proposed service areas, after publication of notice of the hearing at least ten (10) days before the hearing in the county or counties in which such proposed service areas are located. If the commission

finds that the proposed service areas comply with this chapter, it shall issue an order within twelve (12) months of the filing of the petition and related maps, approving and assigning the service areas as designated on the prepared maps.

(g) If two (2) or more adjacent electricity suppliers cannot agree upon the boundary line or lines between their respective proposed service areas on or before July 1, 1982, or such other date as the commission may determine, but in any event on or before March 1, 1983, the commission on its own motion or upon petition of one (1) of the electricity suppliers shall hold a public hearing regarding the location of the boundary line or lines, after publication of notice of the hearing at least ten (10) days before the hearing in the county or counties in which the boundary line or lines are located. The commission shall determine the boundary line or lines based as nearly as practicable upon a line equidistant between the existing electric distribution lines of the adjacent electricity suppliers, consistent with good utility practice and public convenience and necessity. The commission shall issue an order determining the boundary line or lines and assigning the service areas, and shall direct the parties to file with the commission maps showing such assigned service areas. If the commission determines that the maps comply with its order, it shall issue a supplemental order approving the assigned service areas as designated on the maps.

(h) Once established according to this section, the boundaries of assigned service areas may not be changed except as provided in section 6 of this chapter.

As added by Acts 1980, P.L.69, SEC.1. Amended by Acts 1982, P.L.71, SEC.1.

IC 8-1-2.3-4

Service area rights

Sec. 4. Service Area Rights. (a) 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. This subsection does not prevent the commission from exercising its authority under IC 8-1-2-69.

(b) If an electricity supplier unlawfully renders or extends retail electric service within the assigned service area of another electricity supplier, the electricity supplier which has the sole right to furnish retail electric service in that assigned service area may bring an action in the circuit or superior court of the county where such assigned service area is located to enjoin the other electricity supplier from rendering or extending such unlawful retail electric service.

If a violation is proved, the violator shall pay to the aggrieved electricity supplier the gross revenues derived by the violator from the sale of electric service within the assigned service area of the

aggrieved electricity supplier, all witness fees, court costs and reasonable attorneys' fees incurred in any litigation brought to enforce this section. Payment of damages, fees and costs does not entitle a violator to furnish retail electric service in such assigned service area. All such actions or proceedings must be brought within three (3) years after the violation occurs.

As added by Acts 1980, P.L.69, SEC.1.

IC 8-1-2.3-5

Effect of incorporation, annexation, consolidation, or merger

Sec. 5. Effect of Incorporation, Annexation, Consolidation or Merger. After January 1, 1979, the inclusion by incorporation, annexation, consolidation, or merger of any part of the assigned service area of an electricity supplier does not impair or affect the rights of an electricity supplier to continue to solely furnish and extend retail electric service throughout any part of its assigned service area, except as provided in section 6 of this chapter.

As added by Acts 1980, P.L.69, SEC.1.

IC 8-1-2.3-6

Change of service area boundaries

Sec. 6. The boundaries of the assigned service areas of electricity suppliers may not be changed except under any one (1) of the following circumstances:

(1) If a municipality which owns and operates an electric utility system furnishing retail electric service to the public annexes an area beyond the assigned service area of its municipally owned electric utility, the municipally owned electric utility may petition the commission to change the assigned service area of the municipally owned electric utility to include the annexed area, according to the following procedures:

(A) The municipally owned electric utility shall file its petition with the commission not later than sixty (60) days after the annexation becomes effective. The petition must include a certified copy of the annexation ordinance, which serves as conclusive evidence that the area has been lawfully annexed and is part of the municipality. 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 order is enforceable in court pending an appeal of that order. An appellant from a court order enforcing a commission order under this subdivision is not entitled to a stay of the court order pending appeal. However, this subdivision does not apply to incorporations, consolidations, mergers, or annexations that are under IC 36-4-3-4(a)(3),

IC 36-4-3-4(b), IC 36-4-3-4(h), or IC 36-4-3-4.1 or that are not contiguous under IC 36-4-3-13(b) or IC 36-4-3-13(c).

(B) 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 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 1/2) 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.

(C) If the municipally owned electric utility fails to make a payment under clause (B), an affected incumbent electricity supplier may, not later than sixty (60) days after the payment is due and after giving the municipally owned electric utility reasonable notice of and an opportunity to cure the defect, file with the commission a petition alleging that a payment due under clause (B) has not been made. If the commission finds after notice and hearing that any payments owed to the incumbent electricity supplier have not been timely and fully paid, the commission shall order the municipally owned electric utility to pay:

- (i) the delinquent payments by a date determined by the commission;
- (ii) accrued interest at the rate set forth in IC 24-4.6-1-102; and
- (iii) the incumbent electricity supplier's costs of filing and prosecuting a petition under this clause.

If the commission finds against the incumbent electricity supplier, it shall order the incumbent electricity supplier to pay the costs incurred by the municipally owned electric utility in defending against the incumbent electricity supplier's petition.

(D) A certified copy of a final commission order that:

- (i) determines and orders the payment of severance damages under clause (B); or
- (ii) orders the payment of delinquent payments, interest, and costs under clause (C);

may be filed with the clerk of the circuit or superior court of any county in which part or all of the annexed area is located. A commission order that is filed in a court under this clause may be enforced and executed in the same manner as if it were a final judgment of that court.

(2) Upon mutual agreement of the affected electricity suppliers and approval of the commission. If notice of a verified request for a change of boundary lines by mutual agreement under this subdivision is published in a newspaper of general circulation in every county in which the boundary lines are located and an affected electricity customer does not request a hearing within twenty (20) days of the last date of publication, the commission may approve the change without a hearing. The commission shall approve a boundary line change under this subdivision unless the commission finds, after a public hearing, that the change would cause:

- (A) duplication of electric utility facilities;

- (B) waste of materials or resources; or
- (C) uneconomic, inefficient, or inadequate electric service to the public.

(3) In the case where a landowner owns a single tract of land that is intersected by the boundary lines of two (2) or more assigned service areas, and retail electric service can best be supplied by only one (1) electricity supplier, or in the case where a customer or customers are housed in a single structure or constitute a single governmental, industrial, or institutional operation, and the electricity suppliers involved are unable to agree which shall furnish the electric service, any of the electricity suppliers may submit the matter to the commission for its determination based upon public convenience and necessity. If, after notice and hearing, the commission determines that one (1) or more electricity suppliers are to supply the required retail electric service and the boundaries of an assigned service area are to be changed, the assigned service area maps of the electricity suppliers shall be changed to reflect the new boundaries.

As added by Acts 1980, P.L.69, SEC.1. Amended by P.L.91-1985, SEC.1; P.L.19-1986, SEC.27; P.L.79-1996, SEC.1; P.L.255-1997(ss), SEC.7; P.L.217-1999, SEC.1; P.L.56-2002, SEC.1.