

Adopted	Rejected
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COMMITTEE REPORT

YES:	8
NO:	0

MR. SPEAKER:

*Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1085, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 8-1-2.3-6, AS AMENDED BY P.L.217-1999,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2002]: Sec. 6. The boundaries of the assigned service areas of
- 5 electricity suppliers may not be changed except under any one (1) of
- 6 the following circumstances:
- 7 (1) If a municipality which owns and operates an electric utility
- 8 system ~~and furnishes~~ **furnishing** retail electric service to the
- 9 public annexes ~~an~~ area beyond the assigned service area of its
- 10 municipally owned electric utility, ~~and the ordinance providing~~
- 11 ~~for the annexation provides that the annexing city has developed~~
- 12 ~~and adopted a fiscal plan and has established a definite policy to~~
- 13 ~~furnish the territory to be annexed within a period of three (3) or~~

1 four (4) years governmental and proprietary services substantially
2 equivalent in standard and scope to the governmental and
3 proprietary services furnished by the annexing city to other areas
4 of the city regardless of topography; patterns of land utilization
5 and population density similar to the territory to be annexed; then
6 the municipally owned electric utility may petition the
7 commission to change the assigned service area of the
8 municipally owned electric utility to include the annexed area, A
9 municipally owned electric utility shall exercise its right to
10 petition the commission to change its assigned service area within
11 sixty (60) days after annexation becomes final or lose its right
12 under this subdivision. The commission shall rule on the petition
13 of the municipally owned electric utility within ninety (90) days
14 after its filing. If, upon notice and after hearing, the commission
15 decides that it is in the public convenience and necessity for the
16 municipally owned electric utility to render service to the annexed
17 area; it shall order the assigned service area of the municipally
18 owned electric utility to be changed to include the annexed area
19 with the right to serve and immediate possession to the
20 municipally owned electric utility. The commission order is
21 enforceable in court pending an appeal of that order. An appellant
22 from a court order enforcing a commission order under this
23 subsection shall not be entitled to a stay of the court order
24 pending appeal. In determining public convenience and necessity,
25 the commission shall give consideration to all relevant matters;
26 including but not limited to the following:

27 (A) Preference of owners, occupiers, and consumers in the
28 annexed area.

29 (B) Ability of the municipally owned electric utility to render
30 service after the assignment of service area.

31 (C) Other utility services to be supplied in the annexed area by
32 the municipality.

33 (D) Proximity and capability of the service repair facilities of
34 the electricity suppliers involved.

35 (E) Preference of local government officials.

36 However, this subdivision does not apply to incorporations;
37 consolidations; mergers; or annexations that are under
38 IC 36-4-3-4(a)(3); IC 36-4-3-4(b); IC 36-4-3-4(h); or

1 IC 36-4-3-4.1, or that are not contiguous under
2 IC 36-4-3-13(b) or IC 36-4-3-13(c). If any change in an
3 assigned service area is ordered by the commission, all of the
4 electric utility property of another electricity supplier which is
5 devoted to retail electric service within such additional
6 assigned service area shall be acquired at its then reproduction
7 cost new depreciated value; in addition, the acquiring
8 electricity supplier shall pay severance damages limited to, if
9 applicable, the distribution and substation facilities dedicated
10 to and located within the annexed area or relocated by reason
11 of the annexation, or an amount equal to two and one-half ($2\frac{1}{2}$)
12 times the previous year's gross electric sales from the
13 newly assigned service area, whichever is greater. If the parties
14 do not agree on the amount the acquiring electricity supplier
15 is to pay, then the commission shall determine said amount
16 and order its payment in accordance with this subsection:
17 **according to the following procedures:**

18 **(A) The municipally owned electric utility shall file its**
19 **petition with the commission not later than sixty (60) days**
20 **after the annexation becomes effective. The petition must**
21 **include a certified copy of the annexation ordinance, which**
22 **serves as conclusive evidence that the area has been**
23 **lawfully annexed and is part of the municipality. After the**
24 **filing of a petition under this subdivision, the commission**
25 **shall promptly enter an order changing the assigned**
26 **service area facet maps of the municipally owned electric**
27 **utility and incumbent electricity suppliers to include the**
28 **annexed area within the assigned service area of the**
29 **municipally owned electric utility and giving the right to**
30 **serve and immediate possession to the municipally owned**
31 **electric utility. The commission order is enforceable in**
32 **court pending an appeal of that order. An appellant from**
33 **a court order enforcing a commission order under this**
34 **subdivision is not entitled to a stay of the court order**
35 **pending appeal. However, this subdivision does not apply**
36 **to incorporations, consolidations, mergers, or annexations**
37 **that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b),**
38 **IC 36-4-3-4(h), or IC 36-4-3-4.1 or that are not contiguous**

1 under IC 36-4-3-13(b) or IC 36-4-3-13(c).

2 (B) Not later than thirty (30) days after filing a petition
3 under this subdivision, the municipally owned electric
4 utility shall determine for each affected incumbent
5 electricity supplier and pay to that supplier an amount not
6 less than the value of all the electric utility property of the
7 incumbent electricity supplier that is devoted to furnishing
8 retail electric service within the additional assigned service
9 area at its then reproduction cost new depreciated value.
10 In addition, the municipally owned electric utility shall pay
11 the incumbent electricity supplier severance damages in an
12 amount equal to:

13 (i) the value of the incumbent electricity supplier's
14 distribution and substation facilities dedicated to and
15 located within the annexed area or relocated by reason
16 of the annexation or an amount equal to two and
17 one-half (2 1/2) times the incumbent electricity supplier's
18 gross revenues from electricity sales in the annexed area
19 during the twelve (12) month period immediately
20 preceding the date the annexation ordinance became
21 effective, whichever is greater; plus

22 (ii) if additional permanent service locations or service
23 accounts are established in the annexed area during the
24 five (5) year period beginning on the effective date of the
25 annexation ordinance, one-tenth of one cent (\$0.001) for
26 each kilowatt hour of electricity sold to each of those
27 permanent service locations or service accounts for sales
28 that occur during a five (5) year period beginning on the
29 date each service location or service account is
30 established, up to a maximum of one hundred seventy
31 thousand (170,000) kilowatt hours per service account or
32 service location for each monthly billing period.

33 However, the municipally owned electric utility is not
34 required to pay severance damages under item (ii) if, at the
35 time each annual payment otherwise would accrue, it is
36 purchasing all of its requirements for electric power and
37 energy, except for generation directly provided by the
38 municipally owned electric utility or by a customer, from

1 the incumbent electricity supplier. Severance damages
2 must be paid not later than thirty (30) days after the end of
3 each calendar year in which severance damages have
4 accrued. The municipally owned electric utility and
5 incumbent electricity suppliers shall cooperate to calculate
6 the amount of any severance damages and shall furnish to
7 each other all information and records reasonably
8 necessary for the determination and verification of
9 severance damages. If the municipally owned electric
10 utility and incumbent electricity suppliers cannot agree on
11 the amount of severance damages the municipally owned
12 electric utility is to pay, the commission shall determine the
13 amount and order payment in accordance with this clause.
14 Not later than twenty (20) days after making a payment,
15 the municipally owned electric utility shall certify to the
16 commission and to any affected incumbent electricity
17 supplier that it has paid the amounts required under this
18 clause.

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

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

36 If the commission finds against the incumbent electricity
37 supplier, it shall order the incumbent electricity supplier
38 to pay the costs incurred by the municipally owned electric

- 1 utility in defending against the incumbent electricity
 2 supplier's petition.
- 3 (D) A certified copy of a final commission order that:
- 4 (i) determines and orders the payment of severance
 5 damages under clause (B); or
- 6 (ii) orders the payment of delinquent payments, interest,
 7 and costs under clause (C);
- 8 may be filed with the clerk of the circuit or superior court
 9 of any county in which part or all of the annexed area is
 10 located. A commission order that is filed in a court under
 11 this clause may be enforced and executed in the same
 12 manner as if it were a final judgment of that court.
- 13 (2) Upon mutual agreement of the affected electricity suppliers
 14 and approval of the commission. **If notice of a verified request**
 15 **for a change of boundary lines by mutual agreement under**
 16 **this subdivision is published in a newspaper of general**
 17 **circulation in every county in which the boundary lines are**
 18 **located and an affected electricity customer does not request**
 19 **a hearing within twenty (20) days of the last date of**
 20 **publication, the commission may approve the change without**
 21 **a hearing. The commission shall approve a boundary line**
 22 **change under this subdivision unless the commission finds,**
 23 **after a public hearing, that the change would cause:**
- 24 (A) duplication of electric utility facilities;
- 25 (B) waste of materials or resources; or
- 26 (C) uneconomic, inefficient, or inadequate electric service
 27 to the public.
- 28 (3) In the case where a landowner owns a single tract of land
 29 **which that** is intersected by the boundary lines of two (2) or more
 30 assigned service areas, and retail electric service can best be
 31 supplied by only one (1) electricity supplier, or in the case where
 32 a customer or customers **which** are housed in a single structure or
 33 **which** constitute a single governmental, industrial, or institutional
 34 operation, and the electricity suppliers involved are unable to
 35 agree which shall furnish the electric service, any of the electricity
 36 suppliers may submit the matter to the commission for its
 37 determination based upon public convenience and necessity. If,
 38 after notice and hearing, the commission determines that one (1)

- 1 or more electricity suppliers are to supply the required retail
- 2 electric service and the boundaries of an assigned service area are
- 3 to be changed, the assigned service area maps of the electricity
- 4 suppliers shall be changed to reflect the new boundaries.
- 5 Renumber all SECTIONS consecutively.
(Reference is to HB 1085 as introduced.)

and when so amended that said bill do pass.

Representative Fry