

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>CENTRAL ILLINOIS PUBLIC SERVICE</b>	)	
<b>COMPANY d/b/a AmerenCIPS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No: 03-0723</b>
	)	
<b>COLES-MOULTRIE ELECTRIC</b>	)	
<b>COOPERATIVE, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	

***JOINT DRAFT ORDER***

**I. Background and Procedural History**

On November 3, 2003, Coles-Moultrie Electric Cooperative ("CMEC") delivered to CIPS a purported notice ("Notice") pursuant to Section 7 of the ESA of its intent to provide electric service to "a commercial business park called Coles Centre Business Park . . . located in the southwest quadrant of the intersection of Illinois Route 16 and Lerna Road in Section 21, Township 12 North, Range 8 East, of the Third Principal Meridian in Coles County, Illinois". See Compl. of Nov. 19, 2003, Ex. 1.

On November 19, 2003, CIPS filed a Complaint under the Electric Supplier Act (220 ILCS 30/1 et. seq.) (the "Act") after receipt of a Notice from CMEC pursuant to Section 7 of the Act (220 ILCS 30/7) in which Complainant CIPS seeks the sole and exclusive right and authority to furnish all electric requirements of Agracel, Inc. and/or Coles Centre Business Park which customer and premise is located in the southwest quadrant of the intersection of Illinois

Route 16 and Lerna Road in Section 21, Township 12 North, Range 8 East of the Third Principal Meridian, Coles County, Illinois. In its Complaint, CIPS seeks a determination that the CMEC Section 7 Notice is void and of no effect because it is premature (Count I); that the Notice is invalid because it fails to specify if the customer's premises is within a corporate boundary (Count II); that CIPS has the exclusive right pursuant to Section 5 to serve the customer (Count III); and, that the customer has the right to choose its supplier (Count IV).

On February 19, 2004, CMEC filed an Answer to the Complaint by CIPS and further filed a Counter-Complaint seeking the sole and exclusive right to furnish all electric service requirements of Agracel, Inc. and/or the premises known as Coles Centre Business Park situated on the following described property:

The North One Half (N ½) of the Southwest Quarter (SW ¼) and the Northwest Quarter (NW ¼) of the Southeast Quarter (SE ¼) except those portions previously conveyed for public highway purposes all in Section Sixteen (16), Township Twelve (12) North, Range Eight (8) East of the Third Principal Meridian, more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter (SE ¼) of said Section Sixteen (16); thence South 0 degrees 17'32" West (bearings based on F.A.I. Route 04 (I-57) R.O.W. plat) a distance of 1,331.09 feet along the East line of said Section Sixteen (16); thence South 88 degrees 16'20" West a distance of 1,329.10 feet to a point in the West right of way line of Lerna Road and the point of beginning; thence continue South 88 degrees 16'20" West a distance of 3,580.55 feet to a point in the East right of way line of F.A.I. Route 04 (I-57); thence North 04 degrees 25'49" East along said right of way line a distance of 234.86 feet; thence North 17 degrees 12'02" East along said right of way line a distance of 317.84 feet; thence North 47 degrees 55'25" East along said right of way line a distance of 404.60 feet; thence North 23 degrees 17'43" East along said right of way line a distance of 352.33 feet; thence North 73 degrees 03'10" East along the South right of way

line of F.A. Rt. 17 (IL. RT. 16) a distance of 286.40 feet; thence North 86 degrees 24'38" East along said right of way line a distance of 500.62 feet; thence North 85 degrees 50'22" East along said right of way line a distance of 250.45 feet; thence North 89 degrees 16'21" East along said right of way line a distance of 1,923.01 feet; thence South 32 degrees 09'38" East along said right of way line a distance of 152.36 feet; thence South 00 degrees 29'12" East along the West right of way line of Lerna Road a distance of 317.39 feet; thence South 02 degrees 22'33" West along said right of way line a distance of 200.25 feet; thence South 00 degrees 29'12" East along said right of way line a distance of 300.00 feet; thence South 05 degrees 13'26" West along said right of way line a distance of 100.50 feet; thence South 05 degrees 03'38" East along said right of way line a distance of 136.00 feet to the point of beginning, containing 91.531 acres more or less.

And also,

The Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) and a part of the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) and a part of the Southeast Quarter (SE ¼) of the Southwest Quarter (SW ¼) all in Section Sixteen (16), Township Twelve (12) North, Range Eight (8) East of the Third Principal Meridian, more particularly described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE ¼) of said Section Sixteen (16); thence South 0 degrees 17'32" West (bearings based on F.A.I. Route 04 (I-57) R.O.W. plat) a distance of 1,331.09 feet along the East line of said Section Sixteen (16); thence South 88 degrees 16'20" West a distance of 1,329.10 feet to a point in the West right of way line of Lerna Road and the point of beginning; thence South 05 degrees 03'38" East along said West right of way line of Lerna Road a distance of 114.80 feet; thence South 00 degrees 29'12" East along said West right of way line of Lerna Road 1,218.21 feet to a point on the South line of said Section Sixteen (16); thence South 88 degrees 09'57" West along said South line of Section Sixteen (16) a distance of 1,875.50 feet; thence North 00 degrees 11'59" West a distance of 1,336.49 feet; thence North 88 degrees 16'20" East a distance of 1,859.57 feet to the point of beginning, containing 58.503 acres more or less.

For a total sum of 148.862 acres more or less, all situated in Lafayette Township, Coles County, Illinois.

and as more fully described on the plat attached hereto as Exhibit A and by reference incorporated herein and hereafter referred to as "the premises" or "Coles Centre Business Park". CMEC claimed the right to serve the premises pursuant to Section 5 of the Act (Count I); pursuant to Section 8 of the Act (Count II); pursuant to Section 14(i) of the Act )(Count IV).

On March 3, 2004, CIPS Filed a Motion for Judgment on Count I arguing, *inter alia*, that CMEC's Notice was null and void and of no force and effect because the potential customer described in Exhibit No. 1, had not made any firm commitment for the actual delivery of electric service; and, thus, the Notice CIPS received did not constitute notice of a proposed construction of an extension or service within the meaning of Section 7 of the Act (220 ILCS 30/7). CIPS further contended that the notice it received did not trigger the 20-day period provided for in Section 7 because, at the time of giving notice, CMEC did not have an agreement with the customer to provide electric service.

CIPS' Motion concluded that the ESA did not confer jurisdiction on the Commission to determine hypothetical electric service entitlements, and, consequently, CMEC's purported Notice did not trigger the 20-day response deadline set forth in Section 7. CIPS further requested that the Commission also dismiss all remaining Counts of the Complaint and terminate this docket.

On April 5, 2004, CMEC filed a Reply to CIPS' Motion, arguing, *inter alia*, that a motion for judgment on the pleadings must fail where the pleadings demonstrate a disputed issue of material fact, and that, here, such a dispute exists because CIPS had pleaded that a customer had not made a request for

electric service, and CMEC denied that assertion and that “. . . Agracel, Inc., as the customer, has requested that the electric service be constructed in the second quarter of 2004”. CMEC further that claimed nothing in the facts set forth in the pleadings indicated the customer's request that the electric service construction start in the second quarter of 2004 or that the notice provided by Coles-Moultrie to CIPS of that customer request was premature. Upon hearing of CIPS motion to dismiss and arguments of counsel, the Administrative Law Judge found there was insufficient evidence to determine whether CMEC's Section 7 Notice was premature.

On January 11, 2005, CIPS filed a Motion to Reconsider the ruling on the Motion for Judgement, noting that, a review of materials submitted by CMEC in discovery demonstrated that, based upon the totality of the circumstances, there had been no offer and acceptance of any contract for electric service between CMEC and Agracel for the Coles Center Business Park and that an offer and acceptance of the obligation to provide electric service is a condition precedent to a Section 7 Notice.

CMEC filed a response to the CIPS motion to reconsider, the response noting a contract for electric service was signed on March 9, 2005, between Coles-Moultrie and Agracel, Inc., requiring CMEC to provide electricity to Coles Centre (premises). On June 1, 2005, the Administrative Law Judge assigned to this matter served a Proposed Order, finding that the fact that the contract for electric service between Coles-Moultrie and Agracel, Inc. was executed in March of 2005 established there was no agreement for electric service between those

parties when the Notice issued—in November of 2003, and that Section 7 of the Act required an actual agreement to provide electricity, not just an intention to do so since the purpose of the Notice is to advise a competing electric supplier of a firm commitment to provide service, and without a firm commitment, there would be no actual controversy.

The Proposed Order, however, concluded that granting CIPS' Motion for Judgement on Count I of its complaint still left a live case or controversy regarding Counts II-IV of the Complaint, and the entire Counter-Complaint and that Commission would have jurisdiction over the Counter-Complaint, even if the allegations in the entire Complaint were to be resolved, or dismissed (See, e.g., *Health Cost Controls v. Sevilla*, 307 Ill. App. 3d 582, 588-89, 718 N.E.2d 558 (1<sup>st</sup> Dist. 1999)), noting that a Section 7 Notice is not the only mechanism that confers jurisdiction on the Commission under the ESA. Section 7 also provides that, if no notice is received, an electric supplier that claims it should be permitted to serve a customer can file a complaint with this Commission, no later than 18 months after the completion of construction, extension or the commencement of service, seeking a determination as to which supplier should be permitted to furnish the proposed service. (220 ILCS 30/7 and 30/8). Accordingly, the Proposed Order concluded that judgment on the pleadings on Count I of the Complaint did not resolve the remaining issues alleged in the Complaint and in the Counter-Complaint.

The Administrative Law Judge set a schedule for the filing of Exceptions and Replies. CMEC filed a Brief on Exceptions. No Replies to Exceptions were filed.

A status hearing was held in this matter on August 17, 2005. Both parties appeared through counsel and indicated that they had reached an agreed disposition of this matter, which, if adopted by the Commission, would lead to the entry of a Commission order, affirming the proposed ruling of the ALJ on CMEC's section 7 Notice, but awarding the customer and the platted premises to CMEC. In support of their proposed settlement the parties noted that the stated purpose of the Electric Supplier Act is to "avoid the duplication of facilities and to minimize disputes between the parties." (220 ILCS 30/2) Both CIPS and CMEC asserted that awarding the customer to CMEC in this instance will further the purposes of the statute and would be in the public interest.

On \_\_\_\_\_, 2005, CMEC and AmerenCIPS filed a Joint Stipulation and Motion for Entry of Draft Order, reciting the fact that the Parties had reached an agreed disposition of this matter in accordance with the representations made at the August 17, 2005 hearing. This stipulation shows and the motion requests that this matter be marked "Heard and Taken" and that the Commission enter an order substantially similar to the Draft Order attached to the Stipulation and Motion. The Stipulation further waived the service of an Administrative Law Judge's Proposed Order in the event this Stipulation was accepted and the Motion for Entry of a Draft Order were granted.

## **II. Commission Conclusion**

The Commission notes further that the record here shows that Agracel, Inc. has entered into an electric supplier contract with CMEC for all of the electric service requirements with respect to "the premises" known as "Coles Centre Business Park" further supporting the decision that CMEC should be authorized to provide electric service to Agracel, Inc. and/or subsequent customers situated within "the premises" as described herein, all as more fully shown by the attached plat marked Exhibit A and by reference incorporated herein. The Commission has been provided with no reason to deny Joint Applicants' Motion for Entry of Draft Order and finds that entering the Order affirming the Administrative Law Judge's Proposed Ruling and awarding the customer to CMEC will be in the public interest.

The Commission, having considered the record herein, is of the opinion and finds that:

1. Coles Moultrie Electric Cooperative, is an Illinois not-for-profit corporation and is an electric supplier within the meaning of the Electric Supplier Act;
2. AmerenCIPS, is an Illinois corporation and is an electric supplier within the meaning of the Electric Supplier Act;
3. The Commission has jurisdiction over the parties and subject matter in this proceeding;
4. The facts recited and conclusions reached in the prefatory portion of this Order hereinabove are hereby adopted as findings herein;
5. The parties proposed resolution of this matter appears reasonable and in the public interest and should be approved.

IT IS THEREFORE ORDERED that the Proposed Order of the Administrative Law Judge granting the Motion for Judgement of Complainant on Count I of the Complaint filed in this matter is hereby affirmed and adopted by the Commission.

IT IS FURTHER ORDERED that Respondent is hereby authorized to provide exclusive electric service to the premises described on the plat attached hereto.

IT FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code 200.880, this Order is final, and it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_ day of \_\_\_\_\_, **2005.**

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**(SIGNED) EDWARD C. HURLEY**  
**Chairman**