

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Public Service Company d/b/a AmerenCIPS :
:
-vs- :
Southern Illinois Electric Cooperative : **08-0371**
:
Verified Complaint for Exclusive Service Rights pursuant to the Electric Supplier Act. :

ORDER

By the Commission:

Background; Procedural History; Stipulation

Central Illinois Public Service Company, d/b/a AmerenCIPS ("CIPS") is a public utility within the meaning of the Public Utilities Act, 220 ILCS 5/1-101 et seq. Southern Illinois Electric Cooperative ("SIEC") is an electric cooperative within the meaning of Section 3.4 of the Electric Supplier Act, 220 ILCS 30/1 et seq. ("ESA"). Both entities are electric suppliers within the meaning of Section 3.5 of the ESA.

Pursuant to Section 6 of the ESA, SIEC and CIPS entered into a service area agreement, dated February 27, 1970 ("Agreement" or "1970 Agreement"), which was approved by the Illinois Commerce Commission ("Commission") in Docket ESA 126. As between CIPS and SIEC, the Agreement established territorial boundaries, and defined and delineated the service areas in which each party is entitled to furnish electric service, in portions of Union County.

In the instant proceeding, CIPS filed, with the Commission, a complaint against SIEC pursuant to the ESA. CIPS therein sought a determination that CIPS has the sole and exclusive right and authority to furnish all electric requirements to one Homer Cissell, at the following tract and/or location, pursuant to the terms of the Agreement:

Commence at a stone at the Northwest corner of the Northeast Quarter of the Southwest Quarter of said Section 7; thence North 89 degrees 52' 00" East, along the North line thereof, a distance of 815.46 feet to a ½" iron rod on the West right-of-way line of the Illinois Central Railroad; thence South 09 degrees 30' 13" East, along said right-of-way, a distance of 509.63 feet to a ½" iron rod and the Point of Beginning; thence continue South 09 degrees 30' 13" East, a distance of 228.08 feet to a ½" iron rod; thence departing from said right-of-way, South 88 degrees 41' 21" West, a

distance a 887.28 feet to a ½" iron rod; thence North 89 degrees 47' 18" West, a distance of 49.50 feet to a ½" iron rod on the West Line of said Quarter Quarter; thence North 00 degrees 03' 18" West, along said West line, a distance of 242.97 feet to a ½" iron rod; thence departing from said West line North 89 degrees 52' 00" East, a distance of 899.12 feet to the Point of Beginning. Containing 4.948 acres, more or less, in Union County Illinois. As per Survey by Scott A. Richards, Professional Land Surveyor #2996, dated July of 2007. Subject to existing Easements of Record.

Along with and subject to an easement for ingress and egress and utility purposes located across part of the Northeast Quarter of the Southwest Quarter of said Section 7, Township 12 South, Range I West of the Third Principal Meridian described by metes and bounds as follows:

Beginning at a stone at the Southwest corner of the Southeast Quarter of the Northwest Quarter of said Section 7; thence North 89 degrees 52' 00" East, along the Quarter Section line, a distance of 49.50 feet to a point; thence departing from said Quarter Section line, South 00 degrees 03' 18" East, a distance of 746.10 feet to a ½" iron rod; thence South 01 degrees 42' 00" East, a distance of 113.18 feet to a point on the North right-of-way line of the County Road; thence North 42 degrees 22' 09" West, along said right-of-way, a distance of 78.36 feet to a point; thence departing from said right-of-way, North 00 degrees 03' 18" West, a distance of 801.21 feet to the Point of Beginning. Containing 0.952 acres, more or less, in Union County, Illinois.

On June 24, 2008, SIEC filed an Answer to the CIPS Complaint, along with a Counter Complaint seeking the sole and exclusive right to furnish all electric service requirements to Homer Cissell at the above-described tract/location.

On May 4, 2010, SIEC filed its Amended Counter Complaint under the ESA, asserting the sole and exclusive right to provide all of the electric service to the aforesaid Homer Cissell tract for the reason that the Homer Cissell tract was part of the J.J. Boyd farm premises as the geographical boundaries of such premises existed prior to and on July 2, 1965 and prior to and on February 27, 1970 and more particularly described as follows:

Tract I:

Part of the East Half of the Southwest Quarter of Section 7, Township 12 South, Range I West of the Third Principal Meridian, Union County, Illinois described as follows:

Commencing at the Southwest corner of the said East Half; thence South 89 degrees 47' 18" East along the South line of the said East Half a distance of 313.50 feet to the Point of beginning; thence North 5 degrees 37' East a distance of 1141.12 feet; thence North 89 degrees 47' 18" West a distance of 353.82 feet; thence North 1 degrees 42' West a distance of

799.53 feet; thence North 88 degrees 41' 21" East a distance of 887.28 feet to the Westerly right-of-way line of the Illinois Central Railroad; thence South 9 degrees 30' 13" East along the said right-of-way line a distance of 1987.20 feet to the South line of said East Half; thence North 89 degrees 47' 18" West along the said South line a distance of 949.31 feet to the Point of Beginning; the tract containing 38.416 acres more or less and being subject to the Public's right of use of the existing public road along the South and West lines of the herein described tract.

Tract II:

Part of the East Half of the Southwest Quarter, and part of the Southeast Quarter of the Northwest Quarter of Section 7, Township 12 South, Range 1 West of the Third Principal Meridian, Union County, Illinois, described as follows:

Commencing at the Southwest corner of the said Southeast Quarter of the Northwest Quarter; thence North 89 degrees 52' East along the South line of the said Quarter Quarter a distance of 434.94 feet; thence North 0 degrees 03' 18" West a distance of 720.72 feet; thence North 89 degrees 52' East a distance of 260.60 feet to the Westerly right-of-way line of the Illinois Central Railroad; thence South 9 degrees 30' 13" East along the said right-of-way line a distance of 1468.17 feet; thence South 88 degrees 41' 21" West a distance of 887.28 feet; thence North 89 degrees 47' 18" West a distance of 49.50 feet to the West line of the said East Half; thence North 0 degrees 03' 18" West along the said West line a distance of 745.80 feet to the Point of Beginning; the tract containing 20.148 acres more or less.

Tract III:

Part of the East One-Half (E 1/2) of the Southwest Quarter (SW1/4) of Section Seven (7), Township Twelve (12) South, Range One (1) West of the Third (3rd) Principal Meridian, Union County, Illinois described as follows:

Beginning at a point in the South line of the East One-half (E 1/2) of the Southwest Quarter (SW1/4) that lies 313.50 feet from the Southwest corner thereof; thence Northwesterly a distance of 165.0 feet to a point lying 181.5 feet East of the West line of the said East One-half (E 1/2) as measured along a line parallel with the South line of the said East One-half (E 1/2); thence Northwesterly a distance of 231.0 feet to a point lying 92.40 feet East of the West line of the said East One-half (E1/2) as measured along a line parallel with the South line of the said East One-half (E 1/2); thence Northerly a distance of 330.0 feet to a point lying 52.80 feet East of the said West line as measured along a line parallel with the South line of the East One-half (E1/2); thence Northerly a distance of 264.0 feet to a point lying 79.20 feet East of the said West line as measured along a line parallel with the South line of the said East One-half (E 1/2); thence Northerly a distance of 234.86 feet to a point lying

71.91 feet East of the said West line as measured along a line parallel with the South line of the aid East One-half (E1/2); thence Easterly along a line parallel with the said South line a distance of 353.82 feet to a point; thence Southerly along a line with a deflection angle of 95 degrees 09' 05" a distance of 1139.62 feet to the point of beginning, containing 7.057 acres, more or less.

SIEC further claims in its Amended Counter Complaint that on or about April 4, 1968 and prior to February 27, 1970, it had commenced electric service to the J.J. Boyd farm premises by extending electric service from a 12.5KV distribution line owned by SIEC to a pump at a farm pond located on the aforesaid J.J. Boyd farm premises. SIEC further alleges that subsequent to April 4, 1968 and after February 27, 1970, SIEC extended the aforesaid electric facilities installed at the J.J. Boyd farm premises pump to the Joe Boyd residence located on the aforesaid J.J. Boyd farm premises as described herein. SIEC further claims that in or about 1993, the transformer, meter, meter loop and electric distribution facilities utilized by SIEC to provide electric service to the pond pump on the J.J. Boyd farm premises were removed from the pond and relocated to a barn located on the J.J. Boyd farm premises as described herein.

Section 1 of the 1970 Agreement between SIEC and CIPS provides as follows, "The parties hereto covenant and agree that each shall continue to be entitled to ... serve ... such locations or premises as to which each has lawfully commenced service since July 2, 1965, and prior to the effective date of this Agreement."

By reason of the aforesaid provision of Section I of the 1970 Agreement, SIEC and CIPS agree that SIEC is grandfathered to provide electric service to all of the premises of the J.J. Boyd farm premises as described herein by reason of the fact that SIEC commenced electric service to the J.J. Boyd farm premises prior to February 27, 1970, the date of the Service Area Agreement between the parties, and has continued such service from the date of commencement until the current time.

In a Stipulation filed May 4, 2010, SIEC and CIPS stipulate and agree to the entry of an Order authorizing SIEC to provide all of the electric service to the J.J. Boyd farm premises as described herein, and specifically to the Homer Cissell tract as described herein, and to provide any further electric service to any premises and/or locations located within the geographical boundaries of the J.J. Boyd farm premises as described herein as the same existed prior to and on July 2, 1965 and prior to and on February 27, 1970.

SIEC and CIPS further stipulate that the grandfathered claim of electric service to the J.J. Boyd farm premises and the Homer Cissell tract included within the geographic boundaries of the J.J. Boyd farm premises supersedes any right or claim of CIPS to provide electric service to any customer located within the J.J. Boyd farm premises as the geographical boundaries thereof existed prior to and on July 2, 1965 and prior to and on February 27, 1970, including the Homer Cissell tract at issue in this docket.

Commission Conclusions, Findings and Ordering Paragraphs

The Commission concludes that SIEC commenced providing electric service to the J.J. Boyd farm premises as its geographical boundaries existed prior to and on July 2, 1965 and prior to and on February 27, 1970 and that such electric service commenced prior to the Service Area Agreement between SIEC and CIPS dated February 27, 1970

The Commission further agrees with the following joint assertions by CIPS and SIEC:

Section 1 of the Service Area Agreement provides that any party shall continue to be entitled to serve all locations or premises to which such party lawfully commenced service subsequent to July 2, 1965 and prior to the effective date of the Agreement. Since SIEC commenced electric service to the J.J. Boyd farm premises subsequent to July 2, 1965, but prior to the effective date of the Agreement on February 27, 1970, SIEC shall continue to be entitled to serve all premises or locations situated within the geographical boundaries of the J.J. Boyd farm premises as those boundaries existed prior to and on July 2, 1965 and prior to and on February 27, 1970. Since the Homer Cissell tract is a location or premises situated within the J.J. Boyd farm premises, SIEC is entitled to provide all electric service to the Homer Cissell premises as described herein.

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

- (1) CIPS is a corporation engaged, among other things, in the distribution of electrical energy to the public in portions of the State of Illinois and is a public utility within the meaning of the Public Utilities Act;
- (2) SIEC is an Illinois not-for-profit corporation organized on a cooperative basis for the purpose of furnishing and distributing electric energy, and is an electric supplier within the meaning of the Electric Supplier Act;
- (3) the Commission has jurisdiction over AmerenCIPS and the subject matter of this proceeding;
- (4) the facts recited and conclusions reached in the prefatory portion of this Order above are supported by the record and are hereby adopted as findings herein;
- (5) the proposed resolution of the parties to this matter appears reasonable and in the public interest and should be approved.

IT IS THEREFORE ORDERED that Southern Illinois Electric Cooperative is hereby authorized to provide exclusive electric service to the Homer Cissell premises as described herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is subject to the Administrative Review Law.

By order of the Commission this 23rd day of June, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman