

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company :
-vs- :
Illinois Valley Electric :
Cooperative : 88-0276
:
Complaint under Electric Supplier:
Act regarding service in La Salle:
County, Illinois. :

ORDER AUTHORIZING TEMPORARY ELECTRIC SERVICE

By the Commission:

On September 14, 1988, Illinois Power Company ("Illinois Power" or "Complainant") filed a Complaint with the Illinois Commerce Commission ("Commission") against Illinois Valley Electric Cooperative ("IVEC" or "Respondent") seeking the exclusive right to provide electric service to Unimin Mining Company ("Unimin") in Troy Grove, La Salle County, Illinois.

On March 3, 1989, Illinois Power filed a Motion for Temporary Authority to Furnish Electric Service to provide all of Unimin's electrical requirements. IVEC filed a Motion to Furnish Temporary Electrical Service to the new mining operation of Unimin located solely within IVEC's service area on March 17, 1989. Despite the Hearing Examiner's urging that the parties, in the interest of time and expense, agree between themselves that one of them provide temporary service with the understanding that the agreement would be without prejudice to any issue raised regarding the right of either electric supplier to provide permanent service to Unimin, no agreement was reached.

On April 12, 1989, a hearing was held to take evidence on the issue of temporary service to Unimin. Illinois Power's service area engineering supervisor for the La Salle service area testified on behalf of Complainant. The manager of IVEC and the plant manager for Unimin testified on behalf of IVEC.

The Hearing Examiner's Proposed Order Authorizing Temporary Electric Service was mailed by the Commission's Chief Clerk to all persons whose names appeared on the service list maintained for this docket under a cover letter dated May 16, 1989. Exceptions of Illinois Power Company to Hearing Examiner's Proposed Order were filed May 31, 1989, and Reply to Exceptions of Illinois Power Company to Hearing Examiner's Proposed Order for Temporary Electric Service was filed on behalf of Illinois Valley Electric Cooperative, Inc. on June 7, 1989. The Exceptions and Reply to Exceptions have been considered.

The record shows that the parties entered into a Service Area Agreement dated October 21, 1970, which was approved by the Commission in Docket No. ESA 136 on April 7, 1971, and by Joint Petition the Agreement was amended by the parties and approved by Commission Supplemental Orders thereafter. The Agreement delineates the territory to be served by the respective parties in Troy Grove and Dimmick Townships, La Salle County, Illinois.

Unimin operates a silica sand mining and processing business in parts of Troy Grove and Dimmick Townships, La Salle County, Illinois. Adjacent to the Unimin facility is Illinois Power's 34.5 KV transmission line. Under the Agreement, Illinois Power is authorized to serve in an area designated as the Large Line Corridor ("Corridor") which is a corridor being one quarter mile on either side of Complainant's 34.5 KV transmission line. Territory outside of the Corridor is generally to be served by IVEC pursuant to the Agreement.

The Unimin operation consists of a processing facility and open pit mining operations conducted at locations remote from the processing facility. Between 1963 and 1984, all of Unimin's processing and mining operations were conducted within the Corridor. Illinois Power, during that time, served Unimin through a customer substation located approximately 200 feet south and east of the 34.5 KV transmission line. This substation is located within the Corridor. From that substation, Unimin transported the electricity received from Complainant to its remote mining operations by a private customer distribution network. The private distribution network transported the electricity to the Unimin mine pits which were, at that time, all located in the Corridor.

Unimin proposes to open a New Pit No. 1 with electric service required for that mine pit immediately and a New Pit No. 2 with a need for electric service in June, 1989, sufficient to allow construction of the pit and sufficient for operation of the pit in 1990. Both of these pits are located outside the Corridor and in IVEC's territory. Electric service to Unimin's Center and East Pits is currently being provided by Illinois Power with the point of delivery of such electric service being at the Unimin customer substation located in the Corridor and then transported by Unimin's private distribution system to the Center and East Pits. The private distribution lines extend outside of the Corridor into the territory to be served by IVEC.

Unimin requested that IVEC establish a point of delivery for electric service in IVEC's territory sufficient to serve New Pit No. 1 and New Pit No. 2. IVEC constructed a 3,000 KW substation in IVEC's territory approximately 300 feet from the New Pit No. 1 and approximately 2,600 feet from the New Pit No. 2. Unimin

plans to construct a distribution line from the IVEC point of delivery to the New Pit No. 1 and the New Pit No. 2.

In order to provide adequate electric service to New Pit No. 1, a 600 KW substation would have to be constructed by either Illinois Power or Respondent. In addition, a tie line would have to be constructed by both electric suppliers tapping the Illinois Power 34.5 KV transmission line at the same location and extending approximately 1,500 feet to the location of the new substation. These distances and points of construction for the substation would be approximately the same for both IVEC and Illinois Power. In addition, the cost of constructing a 600 KW substation and the 1,500 of tie line would be the same for both electric suppliers.

IVEC has constructed a 3,000 KW substation in its territory. The substation size is to enable Respondent to provide adequate service for Unimin's New Pit No. 1 and additional mining pits currently in operation or anticipated to be in operation by Unimin and located in IVEC's territory as well as to provide for the electrical needs of other customers located in IVEC's territory.

The record also shows that to provide power to the new substation, IVEC was required to construct 3,400 feet of tie line at a cost greater than the cost would have been for the 1,500 feet of tie line. This additional cost was incurred by IVEC directly as a result of Illinois Power's denial of IVEC's request to tap Illinois Power's 34.5 KV transmission line for purposes of providing electricity to the new IVEC substation.

The distance from Illinois Power's customer substation to the New Pit No. 1 is approximately 3,000 feet and to the New Pit No. 2 approximately 4,400 feet. The Unimin Center Pit is approximately 3,600 feet from the Illinois Power customer substation and the Unimin East Pit is approximately 2,600 feet from the Illinois Power customer substation.

Section 8 of the Illinois Electric Supplier Act provides that the Commission "may issue a temporary authorization to a supplier permitting the making of extensions and furnishing of service while the dispute is pending." The issue of temporary authority is rarely litigated. Typically, parties agree to or acquiesce in temporary service and go forward to contest permanent service issues. The standards to apply to determine temporary authority are neither spelled out in the statute nor do they appear in any cases.

The record shows that the cost of providing adequate electric service for the Unimin mining operation is approximately

the same for Illinois Power and IVEC. The mining operations of Unimin are all located within the territory agreed by Illinois Power and IVEC to be in IVEC's territory. Unimin does not have adequate private distribution facilities for providing electric service to New Pit No. 1 and New Pit No. 2. Unimin needs electric service to New Pit No. 1 immediately and to New Pit No. 2 by June, 1989.

The Commission is of the opinion that the proper criteria for determining temporary electric service is which of the competing electric suppliers can lawfully provide electric service in the most expeditious and economical manner. It appears to the Commission, at this point in the proceeding, that New Pit No. 1 and New Pit No. 2 are located in the territory delineated in the Commission approved Service Area Agreement as the territory of IVEC. Therefore, IVEC appears to be the only electric supplier lawfully entitled to provide temporary electric service to the new mine sites.

The Commission, having considered the record for the purpose of authorizing temporary electric service and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Power is an electric utility within the meaning of the Illinois Public Utilities Act and is an electric supplier within the meaning of the Illinois Electric Supplier Act;
- (2) IVEC is an electric cooperative and is an electric supplier within the meaning of the Illinois Electric Supplier Act;
- (3) the Commission has jurisdiction over the parties hereto and of the subject matter hereof;
- (4) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;
- (5) the criteria for determining temporary electric service is which of the competing electric suppliers can lawfully provide electric service in the most expeditious and economical manner;
- (6) since New Pit No. 1 and New Pit No. 2 are located in the territory delineated in the Commission approved Service Area Agreement between the parties as the territory of IVEC, IVEC appears to be the only electric supplier lawfully entitled to provide temporary

electric service to Unimin's New Pit No. 1 and New Pit No. 2;

- (7) IVEC's Motion to Furnish Temporary Electrical Service should be granted;
- (8) Illinois Power's Motion for Temporary Authority to Furnish Electric Service should be denied.

IT IS THEREFORE ORDERED that Illinois Valley Electric Cooperative's Motion to Furnish Temporary Electrical Service be, and it is hereby, granted, and IVEC is hereby granted temporary authority to provide electric service to Unimin for all of its requirements at New Pit No. 1 and New Pit No. 2 in La Salle County, Illinois.

IT IS FURTHER ORDERED that Illinois Power Company's Motion for Temporary Authority to Furnish Electric Service be, and it is hereby, denied.

IT IS FURTHER ORDERED that Illinois Power be, and it is hereby, barred from providing temporary service to Unimin for use at its New Pit No. 1 and New Pit No. 2 in La Salle County, Illinois.

IT IS FURTHER ORDERED that the orders and findings herein are limited to the determination of temporary electric service and have no precedential bearing on the permanent issue to be litigated herein on the merits; this grant of temporary authority is without prejudice to any issue which may be raised concerning the right of either electric supplier to provide permanent electric service to Unimin at its facilities in La Salle County, Illinois.

By order of the Commission this 21st day of June, 1989.

(SIGNED) MARY B. BUSHNELL

Chairman

(S E A L)

SERVICE AREA AGREEMENT
BETWEEN
ILLINOIS POWER COMPANY
AND
ILLINOIS VALLEY ELECTRIC COOPERATIVE, INC.

AGREEMENT entered into as of the 31st day of October 1970, between ILLINOIS POWER COMPANY, an Illinois corporation (Illinois Power) and ILLINOIS VALLEY ELECTRIC COOPERATIVE, INC., an Illinois not-for-profit corporation (Illinois Valley).

Illinois Power and Illinois Valley have existing electric facilities and are providing electric service to consumers in an area comprised of parts of Bureau, Henry, Kendall, Knox, LaSalle, Marshall, Putnam, and Stark Counties, Illinois. In order to avoid duplication of facilities and to minimize disputes which may result in inconvenience and diminished efficiency of electric service to the public, Illinois Power and Illinois Valley, each being an "Electric Supplier" as that term is defined in the Electric Supplier Act, approved July 2, 1965, do enter into this Agreement for the purpose of defining and delineating, as between themselves, service areas in which each is to provide electric service.

In consideration of the mutual covenants and undertakings herein contained, Illinois Power and Illinois Valley AGREE as follows:

Section 1. (a) "Party" as used herein refers to one of the parties to this Agreement.

(b) "Existing customer" as used herein means a consumer who is receiving electric service on the effective date hereof.

(c) "Existing point of delivery" as used herein means an electric service connection which is in existence on the effective date hereof. An electric service connection which is idle on the effective date hereof or which thereafter becomes idle shall be deemed to be an existing point of delivery provided the transformer and electric service drop have not been removed prior to the time electric service is resumed at such electric service connection.

(d) "New customer" as used herein means any person, corporation, or entity, who applies for electric service at a location which does not have an existing point of delivery on the effective date of this Agreement.

(e) "Large line corridor" as used herein means an area one-quarter of a mile in width on each side of the center line of a 34.5 Kv or higher voltage electric line, which electric line was energized on July 2, 1965, and owned by a party hereto or subject to use or operation pursuant to a contract between said party and the owner thereof, and which electric line, by virtue of the terms of this Agreement, is not located within a Service Area of the party who has said rights of ownership or operation.

(f) "High voltage line" as used herein means an electric line having a voltage of 34.5 Kv or higher.

(g) "Effective date" as used herein means the date of the approval of this Agreement by the Illinois Commerce Commission.

Section 2. Illinois Power and Illinois Valley hereby establish territorial boundary lines delineating the Service Areas (the Service Area or Areas) of each party. The territorial boundary lines and the respective Service Areas are shown on the maps attached hereto and marked Exhibits 1 and 2 and incorporated herein by reference. Exhibits 1 and 2 show the location of the electric lines which each party owned on July 2, 1965, including the 34.5 Kv or higher voltage electric lines which each party owns or is entitled to use or operate and are prima facie evidence of the location of such lines.

Section 3. (a) Except as otherwise provided in or permitted by this Section and Sections 4 and 7 of this Agreement, each party shall have the exclusive right to serve all existing customers and new customers whose points of delivery are or will be located within its Service Areas and neither party shall serve a new customer within the Service Areas of the other party.

(b) Each party shall have the right to continue to serve all of its existing customers and all of its existing points of delivery which are located within a Service Area of the other party on the effective date.

(c) A new customer whose point of delivery is or would be located within a large line corridor and whose demand within the 12 months following the construction period is estimated, based upon the application of accepted engineering practices, to be 150 kilowatts or more if the high voltage line is 34.5 Kv, 375 kilowatts or more if such line is 69 Kv, and 500 kilowatts or more if such line is in excess of 69 Kv, shall be served by the party owning or entitled to operate from the high voltage line; provided, however, that where the party in whose Service Area the

large line corridor is located also has a high voltage line within one-quarter of a mile of the high voltage line in the large line corridor, the party whose high voltage line was first installed shall provide electric service to any customer whose demand within 12 months following the construction period is estimated as aforesaid to exceed 150 kilowatts. For the purposes of applying Sub-paragraph 3(c), all high voltage lines shall be deemed to have the same voltage characteristics, location and rights which said lines had on July 2, 1965, even though said line or lines are subsequently rebuilt, relocated, removed, or operated at a different voltage.

(d) A party who receives a written application for electric service from a new customer whose demand within the 12 months following the construction period is estimated, based upon the application of accepted engineering practices, to exceed 1,500 Kw, and whose point of delivery would not be located within a large line corridor, shall, within 10 days, notify the other party of such request. The parties shall, within 30 days thereafter, seek to determine which party shall provide the proposed electric service and, in such connection, shall be guided by the provisions of the Electric Supplier Act approved July 2, 1965. If the parties are unable to make such determination, either party may initiate proceedings under the Electric Supplier Act for the purpose of having such determination made by the Illinois Commerce Commission.

Section 4. (a) If any territory in a Service Area of either party shall, after the effective date, be annexed to a municipality in which the other party holds an electric franchise in effect on the date of such annexation, the territorial boundary line delineating Service Areas provided for in Section 2 shall not apply to any new customers in such annexed territory. Within thirty days after the date of such annexation, the parties shall seek to determine which party shall provide electric service to any such new customers, and, in that connection, shall be guided by the provisions of the Electric Supplier Act approved July 2, 1965, and the general principle that the Service Areas as determined in this Agreement shall continue to be Service Areas of the respective parties. If the parties are unable to make such determination, either party may initiate proceedings under the Electric Supplier Act for the purpose of having such determination made by the Illinois Commerce Commission.

(b) The parties shall not oppose by official action each other's efforts to secure authorization to provide electric service, which either may be required to obtain from any incorporated municipality under the provisions of the Electric Supplier Act, approved July 2, 1965, for any annexed area assigned by any amendment to this Agreement or for any annexed area which the Illinois Commerce Commission determines that either party is entitled to serve.

Section 5. Either party may construct new lines and may maintain, operate, renew and replace existing electric facilities in the Service Areas of the other party. New construction shall not establish a large line corridor or corridors, nor alter or affect the right of either party to provide electric service to any new customer. Each party shall cooperate with the other party in obtaining rights of way and construction clearances for new lines through its Service Area.

Section 6. The parties undertake to furnish reasonable and adequate service to the customers each is or may be entitled to serve under this Agreement, provided that this undertaking is solely for the benefit of the respective customers and is intended to be enforced in accordance with the provisions of Section 9 of the Electric Supplier Act approved July 2, 1965, by Illinois Valley's customers and is intended to be enforced in accordance with the Public Utilities Act by Illinois Power's customers.

Section 7. If either party should request the other to furnish electric service to a customer who the requesting party is entitled to serve by virtue of this Agreement and the other party does render such service, this Agreement shall not thereby be voided but shall otherwise remain in full force and effect.

Section 8 Any agreement between the parties which is made pursuant to the provisions of Sections 3, 4, or 7 shall be in the form of an amendment to this Agreement and shall be made subject to the approval of the Illinois Commerce Commission.

Section 9. Illinois Power and Illinois Valley shall jointly submit this Agreement to the Illinois Commerce Commission for its approval. On the date of approval by the Commission, this Agreement shall become effective and shall continue in full force and effect until or unless it is amended or rescinded by a written agreement and such amendment or rescission is approved by the Illinois Commerce Commission.

Section 10. This agreement shall be executed in four counterparts, each of which shall constitute an original.

Section 11. The obligations and rights of this Agreement shall be binding upon and shall inure to the benefit of the assigns or successors of the parties.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed and its corporate seal to be affixed by its duly authorized officers, as of the day and year first above written.

ILLINOIS POWER COMPANY

By J. G. Meenan
Senior Vice-President

ATTEST:

J. G. Meenan
Secretary

(SEAL)

ILLINOIS VALLEY ELECTRIC COOPERATIVE, INC.

By J. G. Meenan
President

ATTEST:

Edith Kaye
Secretary

(SEAL)

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Valley Electric Cooperative, Inc.	:	
and	:	
Illinois Power Company	:	ESA 136
	:	
Joint petition for approval of an Agreement	:	
defining service areas pursuant to the	:	
Electric Supplier Act.	:	

O R D E R

By the Commission:

On December 3, 1970, Illinois Valley Electric Cooperative, Inc., and Illinois Power Company, hereinafter sometimes referred to as petitioners, filed a verified joint petition seeking the approval of the Illinois Commerce Commission of an agreement defining and delineating service areas in certain parts of Bureau, Henry, Kendall, Knox, LaSalle, Marshall, Putnam and Stark Counties, Illinois, pursuant to the provisions of Section 6 of the Electric Supplier Act.

Hearings were scheduled by a duly authorized examiner of the Commission, at various times, to be held at the offices of the Commission in Springfield, Illinois, and subsequently continued by the examiner to February 25, 1971. At said hearing, petitioners were represented, each by counsel, and presented evidence, both oral and documentary, in support of the joint petition. A member of the engineering staff of the Commission was present and participated in said hearing. At the conclusion of the hearing on February 25, 1971, the cause was marked "heard and taken."

The Commission, having considered the joint verified petition and the evidence, both oral and documentary, submitted in said cause and now being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Valley Electric Cooperative, Inc., 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, approved July 2, 1965;

- (2) Illinois Power Company is an Illinois corporation organized and duly authorized, among other things, to generate, transmit, distribute and sell electric energy in the State of Illinois and is a public utility within the meaning of "An Act concerning public utilities," approved June 29, 1921, as amended, and is an electric supplier within the meaning of the Electric Supplier Act, approved July 2, 1965;
- (3) notice, of all hearings scheduled by the examiner, was mailed by the Secretary of the Commission to all parties in accordance with the requirements of the Rules of Practice of the Commission in such case made and provided;
- (4) the Commission has jurisdiction of the parties hereto and of the subject matter hereof;
- (5) pursuant to the provisions of Section 6 of the Electric Supplier Act, petitioners, by their duly authorized officers, have executed a service area agreement, dated October 21, 1970, which said agreement is attached to and made a part of the petition filed in this cause and admitted into evidence, defining and delineating areas where each electric supplier may provide electric service in parts of Bureau, Henry, Kendall, Knox, LaSalle, Marshall, Putnam and Stark Counties, Illinois, all as shown by plats marked joint petitioners' Exhibits 1 and 2, admitted into evidence in this cause;
- (6) the said service area agreement will tend to prevent duplication of facilities and increase the efficiency of the petitioners in rendering electric service to the public and constitutes a total service area agreement in all areas wherein a controversy could arise between petitioners when rendering service to the public; the terms of said agreement, as entered into between the parties, will not change the electric supplier of any customer being provided service by either party;
- (7) prior to the execution of said service area agreement, dated October 21, 1970, the parties hereto had entered into two partial service area agreements approved by this Commission in docket number ESA 5 and docket number ESA 34; the terms of said partial service area agreements heretofore approved by this Commission are incorporated into the terms of the service area agreement for which approval is sought in the instant case and are not changed thereby;

- (8) the terms of said service area agreement, together with the plats marked Exhibits 1 and 2, sought to be approved herein, appear to incorporate the meaning and intent of the Electric Supplier Act and do not appear in any way to limit or restrict in any manner the right, duty or obligation of this Commission to make a determination or render a decision under any section of the Electric Supplier Act;
- (9) the said service area agreement appears to be reasonable, is in the public interest and should be approved by this Commission.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the service area agreement, dated October 21, 1970, attached to the joint petition filed in this cause, together with the plats marked Exhibits 1 and 2 admitted into evidence in this cause be, and the same are hereby, approved insofar as they relate to the definition and delineation of service areas between the respective parties hereto in Bureau, Henry, Kendall, Knox, LaSalle, Marshall, Putnam and Stark Counties, Illinois.

IT IS FURTHER ORDERED that the approval of said service area agreement shall not affect the rights, if any there be, of any third party electric supplier to serve the public within the areas defined and delineated by said agreement.

IT IS FURTHER ORDERED that the approval of said service area agreement, pursuant to Section 6 of the Electric Supplier Act, by this Commission shall not limit or restrict in any manner the right, duty or obligation of this Commission to make a determination or render a decision under any other section of the Electric Supplier Act, approved July 2, 1965, as amended.

By order of the Commission this 7th day of April, 1971.

(SIGNED) DAVID H. ARMSTRONG
Chairman

(S E A L)

REB/kw