

MJM/FP

COPY

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

AGREEMENT entered into as of the 18th day of March, 1971
between ILLINOIS POWER COMPANY, an Illinois corporation (Illinois Power)
and M.J.M. ELECTRIC COOPERATIVE, INC., an Illinois not-for-profit corpora-
tion (M.J.M.).

Illinois Power and M.J.M. have existing electric facilities and
are providing electric service to consumers in an area comprised of parts
of Macoupin, Montgomery, Jersey, Madison, Bond, and Fayette 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 M.J.M., 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 M.J.M. 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
customer who is receiving electric service on the effective date hereof.
- (c) "New customer" as used herein means any person,
corporation, or entity, including an existing customer, who applies for a
different electric service classification or electric service at a point of
delivery which is idle or not energized on the effective date of this
Agreement.
- (d) "Existing point of delivery" as used herein means
an electric service connection which is in existence and energized on the
effective date hereof. Any modification of such electric service connection

after the effective date hereof by which an additional phase or phases of electric current are added to the connection, shall be deemed to create a new point of delivery.

(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 M.J.M. 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 through 5 and incorporated herein by reference. Exhibits 1 through 5 show the location of the electric lines which each party owns 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, 5, and 8 of this Agreement, each party shall have the exclusive right to serve all customers whose points of delivery are 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 this 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 based on the provisions of the Electric Supplier Act approved July 2, 1965.

Section 4. (a) Except as otherwise provided in Sections 5 and 6 hereof, 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 hereof 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. If the tracts of land shown on Exhibit 3 and Exhibit 4, and the tract identified as the St. Cln Subdivision of 56 lots on Exhibit 1, attached hereto (and subsequently any other tract of land mutually agreed to by Illinois Power and M.J.M. in which the party acquiring the right to serve such tract releases to the other party therefor one or more tracts of land it was entitled to serve), shall, after the effective date, be annexed by, or otherwise incorporated into, an incorporated municipality and the party entitled to provide electric service in such annexed, or otherwise incorporated into, area (in this paragraph referred to as "first party") does not have and is unable to obtain any necessary franchise or other authorization to provide electric service to new customers in such annexed area, the other party (in this paragraph referred to as "second party") shall have the right to provide electric service to all new customers within such annexed area provided that such other party has or obtains the necessary franchise or other authorization to provide such service. In such event, the Service Areas of first party shall be enlarged to include additional territory or shall be otherwise adjusted so as to equitably take into account the decrease in electrical load potential of its Service Areas resulting from such annexation. Any adjustment in the Service Areas of the parties shall be subject to the approval of the Illinois Commerce Commission and shall be effected by an amendment to this Agreement. If the parties are unable to agree on the addition of territory to its Service Area or other equitable adjustment to compensate the first party for the electrical load potential the first party is unable to serve because it was unable to obtain the necessary franchise or other required authorization to serve in a territory annexed or otherwise incorporated into a municipality allocated to it by the provisions of this Section 5, then any dispute shall be settled by arbitration before three arbitrators, one of whom shall be named by the first party, one of whom shall be named by the second party and the third shall be named by the two arbitrators. The appointment of the third arbitrator, if not agreed upon by the two arbitrators, shall be made by the American Arbitration Association.

Arbitration proceedings shall be governed by the commercial arbitration rules of the American Arbitration Association then in effect. The arbitrators shall be governed by the laws of the State of Illinois. Subject to the provisions of Sections 10 and 11, the award shall be final and binding upon the parties. Each party shall pay for the services and expenses of the arbitrators appointed by it. All other costs, except legal fees, shall be paid in equal parts by the parties hereto, unless the award shall specify a different division of costs.

Section 6. 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 7. 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 M.J.M.'s customers and is intended to be enforced in accordance with the Public Utilities Act by Illinois Power's customers.

Section 8. If either party should request the other to furnish electric service to a customer who the requesting party is entitled to serve by reason 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 9. The parties hereto previously entered into an Agreement Defining Service Areas on March 10, 1966, and said Agreement was approved by the Illinois Commerce Commission on May 3, 1966 under Docket ESA 18. Upon approval of this Service Area Agreement by the Illinois Commerce Commission, the rights and obligations of the parties to the aforementioned Agreement Defining Service Areas shall be deemed merged into this Service

Area Agreement, and the said Agreement Defining Service Areas shall be deemed terminated and of no force or effect.

Section 10. Any agreement between the parties which is made pursuant to the provisions of Sections 3, 4, 5, or 8 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 11. Illinois Power and M.J.M. 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 12. This Agreement shall be executed in four counterparts, each of which shall constitute an original.

Section 13. 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 *N. G. Meenen*
Senior Vice President

ATTEST:

Blay
Assistant Secretary
(SEAL)

M.J.M. ELECTRIC COOPERATIVE, INC.

By *Henry T. Egeloff*
President

ATTEST:

Wayne Harris
Secretary
(SEAL)

executed a Service Area Agreement, dated March 18, 1971, which said agreement is attached to and made a part of the petition filed in this cause and marked as Exhibit A, defining and delineating areas where each electric supplier may provide electric service in parts of Macoupin, Montgomery, Jersey, Madison, Bond and Fayette Counties, Illinois, all as shown by plats attached to said agreement and marked joint petitioners' Exhibits 1, 2, 3, 4 and 5;

- (5) 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 on the effective date of the agreement;
- (6) prior to the execution of said Service Area Agreement, dated March 18, 1971, the parties hereto had entered into an Agreement Defining Service Areas, approved by this Commission in Docket No. ESA 18; the terms of said Service Area Agreement 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 and said service Area Agreement heretofore approved is deemed terminated;
- (7) the terms of said Service Area Agreement, marked as Exhibit A in this cause, together with the plats marked as Exhibits 1, 2, 3, 4 and 5 in this cause, 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 applicable section of the Electric Supplier Act;
- (8) 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 March 18, 1971, together with the plats marked Exhibits 1, 2, 3, 4 and 5, all being attached to the joint petition filed 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 Macoupin,
Montgomery, Jersey, Madison, Bond and Fayette 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 agree-
ment.

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 appli-
cable section of the Electric Supplier Act, approved July 2,
1965.

By order of the Commission this 4th day of August,
1971.

EXAMINER <i>RHS.</i>
SECTION CHIEF
<i>[Signature]</i> Supervisor of Orders RHB/pt

David H. Armstrong
Chairman