

ES4187

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Rural Electric Convenience Cooperative Co. :  
-vs- :  
Central Illinois Public Service Company : ESA 187  
Complaint under the Electric Supplier :  
Act regarding extension of electric :  
lines. :

ORDER

By the Commission:

On July 10, 1978, Rural Electric Convenience Cooperative Co. ("Rural Electric" or "Complainant") filed a verified Complaint under the Electric Supplier Act ("ESA" or "Act") with the Commission requesting that the Commission determine that Rural Electric and not Central Illinois Public Service Company ("CIPS" or "Respondent") is entitled to provide electric service to a proposed customer, the Freeman United Coal Mining Company ("Freeman United" or "mine") at an underground coal mine, known as the Crown III mine in Section 1, Township 11 North, Range 6 West of the Third Principal Meridian in Macoupin County, Illinois. CIPS filed its Answer to Complaint on July 26, 1978.

Pursuant to notice as required by law and by the rules and regulations of the Commission, hearings were held before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois, on November 19, 1980, January 13, April 29, June 26, July 8 and September 9, 1981. Appearances were entered on behalf of Complainant and Respondent and by a member of the Commission's Engineering Department, Electric Section. Evidence was presented by the parties in support of their respective positions. At the conclusion of the hearing on September 9, 1981, the record was marked "Heard and Taken."

Briefs were filed by Complainant and Respondent on October 19, 1981 and December 7, 1981 respectively. A Reply Brief was filed by Complainant on December 23, 1981.

Freeman United is constructing an underground coal mine in Macoupin County, Illinois. The mine owns 810 acres of surface area and has acquired mineral rights in approximately 17,500 subterranean acres. The mine's surface facilities are currently in place and the mine anticipates that it will be in full production by May, 1982. The mine expects to employ 12 continuous mining machines in its underground mining activity, 8 of which will normally be in operation on a 3 shift per day basis. This electrically powered mining equipment will be part of a continuously moving underground distribution system. The mine's anticipated electric load requirement is 7,000 KW of electricity at 34.5 KV.

Rural Electric and CIPS have entered into a Service Area Agreement pursuant to Section 6 of the Electric Supplier Act, which was approved by the Commission in ESA 100. Paragraph 1 of said Agreement reserves the right to each party to continue to be entitled to furnish service to customers at locations which each was serving on July 2, 1965. Paragraph 2 of said Agreement states, in pertinent part, as follows:

"\* \* \* Whenever the electrical load of a prospective consumer in any area outside of incorporated areas is such that its anticipated load during the first year of normal operation will require, as determined in accordance with accepted engineering practices, that the load be supplied through a connection to and/or extension of an existing as of July 2, 1965, line having a voltage of 34.5 KV or higher, the supplier shall be determined under the Electric Supplier Act as approved July 2, 1965."

It is undisputed that the Crown III mine is not in an incorporated area and that its anticipated load during the first year of normal operation will require, in accordance with accepted engineering practices, that the load be supplied through or connected to an extension of a line having a voltage of 34.5 KV. Due to the load required to be supplied to the mine, Paragraph 2 of said Service Area Agreement requires that the electric supplier for the mine be determined under the Electric Supplier Act as approved July 2, 1965.

Rural Electric was serving a customer farming 372 acres of the 810 surface acres acquired by the Crown III mine for its mining facilities and activity on July 2, 1965. Complainant provided this residential farm customer single phase 240 volt service through a 15 amp meter. The farm customer's principal activities were grain and livestock production.

Rural Electric contends that it is entitled to provide electric service to Freeman United under Section 5(a) of the ESA. This Section of the Act states:

"Each electric supplier is entitled, except as otherwise provided in this Act or (in the case of public utilities) the Public Utilities Act, to (a) furnish service to customers at locations which it is serving on the effective date of this Act ..."

The Commission is of the opinion that service by low voltage lines is inadequate to invoke the priority provisions of Section 5 of the Act as to new customers at a location requiring service by a line having a voltage of 34.5 KV or higher. In Rural Electric Convenience Cooperative Co. v. Illinois Commerce Commission, 56 Ill. App. 3d 281 (1978), the Court stated at page 283:

"... we do not conclude that farm buildings served by low voltage distribution lines and a coal mine requiring a 34.5 KV line can be equated as the same customer at the same location under the intent of Section 5 of the Electric Supplier Act. (Ill. Rev. Stat. 1975, ch. 111 2/3, par. 405.) If such an intent were to be attributed to the Act, it would have the same effect of allowing an electric supplier the absolute right to serve an area in which it was providing minimal service even though the new customer might require service of a completely different magnitude which would be entirely beyond the scope of the minimal supplier."

The Commission concludes that it should make its determination as to which electric supplier in this proceeding should furnish the proposed service to Freeman United pursuant to

Section 8 of the ESA. Section 8 of the Act states that "In making this determination, the Commission shall act in the public interest and shall give substantial weight to the consideration as to which supplier had existing lines in proximity to the premises proposed to be served, provided such lines are adequate. In addition, the Commission may consider, but with lesser weight, (a) the customer's preference as to which supplier should furnish the proposed service, (b) which supplier was first furnishing service in the area, (c) the extent to which each supplier assisted in creating the demand for the proposed service, and (d) which supplier can furnish the proposed service with the smaller amount of additional investment."

Rural Electric proposes to serve the mine by purchasing electricity from Western Illinois Power Cooperative ("WIPCO"). WIPCO would obtain electricity from CIPS to provide to Rural Electric to serve the mine. Rural Electric proposes to utilize the CIPS 1 mile north-south extension to serve a new substation to be completed in late 1983 or early 1984, and have WIPCO construct a 34.5 KV extension .35 miles west to a proposed metering structure at the mine's delivery point.

CIPS' service to the mine is from its substation which is energized by a 34.5 KV transmission line owned by CIPS approximately 1 1/4 miles to the north of the substation. Both electric suppliers intend to use this same line for their plan of service. The line was in existence on July 2, 1965 being itself an earlier extension of CIPS lines placed in the area in 1913.

Rural Electric did not as of July 2, 1965 or does it now have a 34.5 KV or higher transmission line in the vicinity of the proposed mine, nor does it contend that its existing lines could be made adequate. CIPS has been serving in the Village of Girard, 4.85 miles from the mine location, and Farmersville, 3.85 miles from the subject location, since 1913. A representative of Freeman United stated that the mine prefers service from CIPS. No evidence was presented to indicate that either electric supplier assisted in creating the demand for the proposed service.

Rural Electric presented evidence estimating its plan of service, including cost to WIPCO, to be approximately \$80,000. It contends that the estimated cost of CIPS' plan of service is \$85,408.56 in 1981 dollars. CIPS estimated its present cost to be \$82,970 and contends that Rural Electric's cost, including that of WIPCO, totaled \$87,500 including approximately \$21,000 for the cost of connection with the CIPS 34.5 KV line. The Commission is of the opinion that both Rural Electric and CIPS can furnish the proposed service for approximately the same amount of additional investment.

The Commission, having considered all the evidence presented in this proceeding and being fully advised in the premises, is of the opinion and finds that:

- (1) Central Illinois Public Service Company is an Illinois corporation engaged in the generation, transmission, distribution and sale of electric energy in the State of Illinois, is a public utility within the meaning of the Illinois Public Utilities Act, and is an electric supplier as defined by Section 3.5 of the Electric Supplier Act;

- (2) Rural Electric Convenience Cooperative Co. is an Illinois general not-for-profit corporation, is an electric cooperative as defined in Section 3.4 of the Electric Supplier Act and is an electric supplier as defined by Section 3.5 of said 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 are hereby adopted as findings of fact;
- (5) on June 26, 1978, CIPS served notice of a proposed extension of an electric 34.5 KV line in Montgomery and Macoupin Counties, Illinois, on Rural Electric pursuant to Section 7 of the Electric Supplier Act; within 20 days after receipt of said notice, Rural Electric filed its Complaint with the Commission seeking a determination of the issues as provided in said Act;
- (6) the purpose of the proposed extension is to provide electric service to Freeman United Crown III mine in Macoupin County, Illinois, which has a load requirement of 7,000 KW served by a 34.5 KV transmission line;
- (7) Complainant and Respondent have entered into a Service Area Agreement dated February 19, 1969, pursuant to Section 6 of the Electric Supplier Act which was approved by the Commission in ESA 100; the provisions of Paragraph 2 of said Agreement require that the electric supplier entitled to serve the Freeman United Crown III mine shall be determined under the Electric Supplier Act;
- (8) as construed by the Fourth District Appellate Court referred to in the prefatory portion of this Order, neither Rural Electric nor CIPS is entitled to provide electric service to Freeman United Crown III mine under Section 5(a) of the Electric Supplier Act, because neither was furnishing service to a customer at the location herein proposed to be served on the effective date of said Act;
- (9) CIPS has proximity to the premises for delivery of electric power to the Crown III mine at 34.5 KV, by virtue of its existing, since 1959, 34.5 KV line located approximately 1¼ miles from the mine's substation;
- (10) the customer prefers that CIPS furnish the proposed service;
- (11) CIPS was first furnishing service in the area; neither supplier assisted in creating the demand for the proposed service which was created by the coal underlying

the premises proposed to be served; each supplier can furnish the proposed service for approximately the same amount of additional investment;

- (12) CIPS should furnish the 34.5 KV electric service for the Crown III mine of Freeman United in Macoupin County, Illinois, under Section 8 of the ESA.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Central Illinois Public Service Company be, and it is hereby, authorized to provide electric service at 34.5 KV to the Crown III mine of the Freeman United Coal Mining Company in Section 1, Township 11 North, Range 6 West of the Third Principal Meridian in Macoupin County, Illinois:

By Order of the Commission this 17th day of February, 1982.

*Alvin H. ...*  
Chairman

EXAMINER
<i>[Signature]</i>
SECTION CHIEF
<i>[Signature]</i>
Supervisor of Orders