ESA243

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Southwestern Electric Coop. Inc.	)	
-vs-	)	
Central Illinois Public Service Company	)	ESA 243
	)	
Complaint under the Electric Supplier Act regarding service in Fayette County, Illinois	)	

ORDER

By the Commission:

On February 13, 1987, Southwestern Electric Cooperative, Inc. ("Southwestern") filed a verified Complaint with the Illinois Commerce Commission ("Commission") against Central Illinois Public Service Company ("CIPS") and Exxon Company, U.S.A. ("Exxon") seeking: (1) an Order requiring Respondent Exxon to receive electrical service from Southwestern; (2) to require Respondent CIPS to cease the furnishing of electric service to Exxon in an area designated under the Electric Suppliers Act and the Service Area Agreement to be served by Southwestern; and (3) to order CIPS and Exxon to compensate Southwestern for all revenues lost through alleged violation of the Electric Supplier Act.

Exxon filed a special appearance on March 6, 1987 together with a Motion to Dismiss contending that the Commission lacks jurisdiction over Exxon on the grounds that Exxon is not an electric supplier under the Illinois Electric Supplier Act ("Act") and such Act does not provide or permit an electric supplier to file a complaint against an entity other than another electric supplier. Exxon filed a Brief in support of its Motion on April 6, 1987. Southwestern, on April 23, 1987, filed a Memorandum resisting Exxon's Motion to be dismissed for lack of jurisdiction. The Hearing Examiner granted the Motion to Dismiss Exxon as a party respondent and a Notice of Hearing Examiner's Ruling dated May 12, 1987 was mailed accordingly.

On March 10, 1987, CIPS filed a Motion to Strike the prayer of the Complaint seeking compensation from both CIPS and Exxon for lost revenues resulting from violation of the Act. Southwestern opposed CIPS' Motion to Strike in a Reply filed April 23, 1987. CIPS filed a Response on April 30, 1987. The Hearing Examiner granted the CIPS Motion to Strike the ad damnum paragraph of the damages relief sought in the Complaint, notice of which was served on the parties May 12, 1987.

Pursuant to notice duly given 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 March 8, June 9, and July 27, 1988. Appearances were entered by counsel on behalf of Southwestern and CIPS, respectively, and by a member of the Commission's Engineering Department. There were no other appearances. Evidence was presented and at the conclusion of the hearing on July 27, 1988, the record was marked "Heard and Taken."

Briefs were filed by Southwestern, CIPS and Staff on September 9, 1988 and October 7, 1988, respectively. Southwestern filed a Reply Brief on October 28, 1988. Oral Argument was requested, granted, heard by the Commission on February 1, 1989, and taken under advisement. CIPS filed a Motion for Leave to Supplement Brief on February 28, 1989, with material appearing in Docket No. 88-0276 which involves two different parties, a different Service Area Agreement with different terms, and a different set of facts; the Hearing Examiner denied said motion in a Notice of Hearing Examiner's Ruling dated March 20, 1989.

The Hearing Examiner's Proposed Order 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 March 28, 1989. Exceptions were filed on behalf of CIPS on April 10, 1989, and a Reply to the Exceptions of CIPS was filed on behalf of Southwestern on April 17, 1989. The Exceptions and Reply have been considered.

Evidence Presented by Southwestern and CIPS

Southwestern and CIPS have contracted between themselves, under Section 6 of the Act with Commission approval pursuant to an Order in ESA 78 dated May 22, 1968, to delineate exclusive service areas in which each would provide electric service.

In an area which the Service Area Agreement ("Agreement") provided was to be served by Southwestern, there are located two oil leaseholds known as the T.C. Clow lease and the Buzzard Brothers lease. Southwestern commenced serving the T.C. Clow lease on September 19, 1956 and the Buzzard Brothers lease on November 13, 1950. Exxon acquired these leasehold interests on May 9, 1986, and on February 26, 1987, Exxon terminated the electrical service continuously provided by Southwestern to these leaseholds since at least 1956; the electrical service termination was without Southwestern's consent.

CIPS provides service to a CIPS meter adjacent to an Exxon substation at the end of a 69 KV line on the east line of Section 29, Township 8 North, Range 3 East of the Third Principal Meridian, Fayette County, Illinois ("Section 29 meter point"). Exxon owns a private electrical distribution system which it uses to distribute electricity to the various oil wells in the Loudon Oil Field.

Exxon constructed tie lines from its privately owned distribution system to the T.C. Clow lease and to the Buzzard Brothers lease. When the construction was completed, Exxon disconnected Southwestern's distribution system to the leaseholds and connected Exxon's tie lines to the leaseholds. Thereafter, CIPS provided electric service to Exxon from its Section 29 meter point and Exxon distributed that electical energy through Exxon's private distribution system to the newly constructed tie lines and to the oil wells on the T.C. Clow and Buzzard Brothers leaseholds.

The Loudon Oil Field area, relevant to this proceeding, lies entirely in territory allocated to Southwestern under paragraph 2 of the Agreement. The T.C. Clow lease and the Buzzard Brothers lease are designated as part of the areas under the Agreement to be served by Southwestern.

Position of Southwestern

Southwestern seeks a Commission Order finding that CIPS is providing electrical service to the subject leaseholds in violation of the Agreement between the parties which was approved by the Commission on May 22, 1968 in Docket No. ESA 78. Southwestern contends that such action by CIPS is also in violation of the Act in that it creates duplicate electrical distribution facilities in the same general area and has created excess distribution facilities for Southwestern increasing the cost of providing electrical service to Southwestern's remaining members-customers and otherwise having a negative financial impact upon Southwestern.

Position of CIPS

CIPS' position is that it has grandfather rights to serve the meter in Section 29 under Paragraphs 1(a) and 1(b) of the Agreement which states:

"1. The parties hereto convenant and agree that each shall continue to be entitled to (a) furnish service to

customers at locations which each were serving on July 2, 1965, (b) furnish service to customers or premises which it had agreed to serve under contracts in existence on July 2, 1965..."

In addition, CIPS argues that it had a rate contract in existence as of May 15, 1964, to provide Exxon with electricity that was to last not less than 10 years. CIPS claims that it has a continuing right to serve the location or premises connected with the Section 29 meter through Exxon's privately owned distribution system including the T.C. Clow and Buzzard Brothers leases.

CIPS contends that Exxon is free to operate its private network on Exxon's side of the CIPS meter as its own private electrical distribution system which is beyond the Commission's jurisdiction. CIPS argues that private electrical distribution facilities are not regulated by the Act nor are such facilities regulated by service area agreements authorized by Section 6 of the Act. CIPS argues that the Agreement is limited to spelling out the rights and duties of the contracting parties who are electric suppliers, but not customers.

Conclusion

Pursuant to Section 6 of the Act, Southwestern and CIPS entered into a Service Area Agreement approved by Commission Order dated May 22, 1968 in Docket No. ESA 78. The Act contemplates that relations between electric suppliers with a Service Area Agreement approved by the Commission under Section 6 of the Act should be governed by such Agreement to the exclusion of the Act itself except in so far as the Agreement incorporates the Act. Rural Electric Convenience Coop. v. Illinois Commerce Commission, 75 Ill. 2d 142, 25 Ill. Dec. 794, 796, 387 N.E. 2d 670 (1979). Therefore, the Service Area Agreement between Southwestern and CIPS is controlling in the resolution of the present service area dispute between Southwestern and CIPS.

The Loudon Oil Field area, relevant to this proceeding, lies entirely within the exclusive service territory delineated, defined and granted to Southwestern under the Agreement. The Commission is of the opinion that Southwestern is entitled to serve the T.C. Clow and Buzzard Brothers leases pursuant to the Commission approved Agreement between the parties.

The record also shows that Southwestern constructed, in 1984 and 1985, Wright's Corner Substation to serve the Loudon Oil Field including the subject leaseholds. The cost of the

substation was $650,000. The T.C. Clow and Buzzard Brothers leases used approximately one-third of the substation capacity prior to Exxon's termination of Southwestern's electrical service in February, 1987. At the present time there is 50% excess capacity at the substation as a result of losing the electrical service to the subject leaseholds to CIPS.

The Commission is of the opinion that the electrical service CIPS is providing to the T.C. Clow and Buzzard Brothers leases results in the duplication of electrical distribution facilities and has created excess capacity for Southwestern resulting in diminished efficiency in electric service to the public contrary to the provisions of the Act.

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

(1) Southwestern Electric Cooperative, Inc. is an Illinois corporation engaged in the business of transmitting, distributing, furnishing, selling and disposing of electrical energy to its customers within the State of Illinois and is an electric supplier within the meaning of the Act;

(2) Central Illinois Public Service Company is an Illinois corporation engaged in the business of generating, transmitting, distributing, furnishing, selling and disposing of electric energy to its customers within the State of Illinois and is a public utility within the meaning of the Illinois Public Utilities Act and is an electric supplier within the meaning of Act;

(3) Exxon Company, U.S.A. (and its predecessors in interest), is a "customer" within the meaning of the Act and is a customer of CIPS and is a member/customer of Southwestern;

(4) the Commission has jurisdiction over Southwestern and CIPS and of the subject matter hereof;

(5) 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;

(6) Southwestern is entitled to provide service to properties and customers, in general, in the Loudon Oil Field pursuant to the Agreement;

(7) Southwestern is entitled to provide exclusive electric service to the premises and locations identified as the T.C. Clow and Buzzard Brothers leases;

(8) CIPS should not provide electric service to the premises and locations identified as the T.C. Clow and Buzzard Brothers leases;

(9) any objections or motions made during the course of these proceedings that remain undisposed of should be considered disposed of in a manner consistent with the ultimate conclusions herein contained.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Southwestern be, and it is hereby, entitled, as against CIPS, to serve customers requesting electric supplier service in the Loudon Oil Field.

IT IS FURTHER ORDERED that Southwestern be, and is hereby, entitled, as against CIPS, to provide exclusive electric service to the premises and locations identified as the T.C. Clow and Buzzard Brothers leases.

IT IS FURTHER ORDERED that CIPS discontinue furnishing electric service to Exxon for its use on the premises and locations identified as the T.C. Clow and Buzzard Brothers leases.

IT IS FURTHER ORDERED that CIPS and Southwestern cooperate in providing and/or removing facilities which currently allow Exxon to use CIPS furnished electricity upon the T.C. Clow and Buzzard Brothers leased premises, consistent with this Order and in a manner which will reasonably enable Exxon to have a continuity of service from the appropriate electric supplier designated under this Order.

IT IS FURTHER ORDERED that any objections or motions made during the course of these proceedings that remain undisposed of be, and they are hereby, disposed of in a manner consistent with the ultimate conclusions herein contained.

By order of the Commission this 1st day of June, 1989.

(SIGNED) MARY B. BUSHNELL

Chairman

(S E A L)

Commissioner Manshio, dissenting:

This case involves consumer choice and the emerging competitive environment in electric generation and transmission. The complaint, here, is under the Electric Supplier Act (ESA). That Act is intended to resolve disputes between electric suppliers. This case involves an electric consumer's ability to choose his supplier. My dissent is based on the majority's failure to appreciate this distinction.

Where appropriate I incorporate by reference my dissenting opinions in ESA 239 and 252.

Here, the electric suppliers, Southwestern Electric Cooperative, Inc. ("Southwestern") and Central Illinois Public Service Company ("CIPS") provide service pursuant to two distinctly different principles. Southwestern is composed of members, who cooperate to obtain electric power. CIPS is a public utility that provides service to ratepayers. The relationship of each to their respective consumers proceeds from different premises and statutes.

Exxon is a member of Southwestern and also a ratepayer of CIPS. Exxon chooses to be both. Membership in Southwestern confers certain rights upon Exxon, it also imposes certain duties. On the other hand, Exxon's relationship with CIPS is based upon the statutory obligation found within the Public Utilities Act (PUA). This case does not involve a conflict between the Electrical Suppliers Act and the PUA. On the contrary, this docket is about consumer choice, not geographic territory.

In order to resolve potential territorial disputes, Southwestern and CIPS entered into a Commission approved Service Area Agreement. Under the terms of that agreement, the geographic territories of the parties were defined. The agreement clearly entitled Southwestern to serve the two Exxon leaseholds geographically located within its designated area. CIPS, on the other hand, was required to provide electricity to its service territory, which included the Section 29 Meter Point.

The agreement appears to have been satisfactory until 1987, when Exxon, the cooperative member, decided to become a ratepayer and constructed tie lines from its privately-owned distribution system to the leaseholds in question. Exxon then terminated electric service from

Southwestern and sought service from CIPS through its Section 29 Meter Point. The majority's decision to order CIPS to "discontinue furnishing electric service to Exxon's T.C. Clow and Buzzard Brothers leases" is wrong from both a legal, as well as, a policy point of view.

The majority reliance on the agreement would be correct if this were a geographic dispute. It is not. The issue is not location, but a customer's ability to choose his electrical supplier. Likewise, reference to Rural Electric Convenience Cooperative v. Illinois Commerce Commission, 75 Ill. 2d 142, 387 N.E.2d 670 (1979) is misplaced. There, the public utility extended certain of its existing lines to provide service to a new customer despite a service area agreement. The Court found the Commission's interpretation of the language of the agreement contrary to established principles of contractual interpretation, and thus not to be left solely to the administrative agency. As the Court noted:

> The utility of legally binding agreements between private parties depends upon the degree of certainty with which the parties can predict the meaning of the various terms of their agreement. A greater degree of certainty can be obtained by adherence to established principles of contractual interpretation than by undue deference to a given agency's particular expertise. 387 N.E2d at 673.

Here, the agreement contains no provisions for this particular situation; i.e. where Exxon builds its own transmission lines and wheels power between service areas. Given this lack of consideration by the parties and its questionable enforcement upon a third party customer, how can the Commission, here, say that the Service Area Agreement between CIPS and Southwestern has been violated by CIPS?

The issue is not whether there has been a violation of the agreement, nor does it involve a conflict between the PUA and the ESA. The issue arises from the emergence of competition, not between electrical suppliers, but between a supplier and his customer. Individual customers, who spend the resources, do have a choice. If a choice is to be denied the consumer, it

should not be based upon implication. Section 2 Electric Supplier Act.

The PUA, Section 8-101 provides that public utilities have an obligation to serve on a nondiscriminatory basis whomever requests service within their service territory. CIPS has a legal obligation to provide service at its Section 29 Meter Point. The ability to prohibit or to waive the statutory obligation to serve is not within the Commission's powers. CIPS has met their obligation to serve Exxon and must continue to do so. What Exxon does with the electricity after it reaches the meter is strictly up to the customer and is clearly beyond the jurisdiction of this Commission. Neither the PUA nor the ESA gives the Commission authority to regulate what a customer does with the electricity after it receives it; this includes wheeling the power to another service territory. Furthermore, it is foolish to think that CIPS can somehow police Exxon and prevent them from wheeling legally purchased power to the T.C. Clow and Buzzard Brothers leases in the Southwestern territory.

While Section 5 of the ESA prohibits electric suppliers from constructing new lines to furnish electrical service to a customer or his premises which another supplier is entitled to serve, it does not in any way prohibit a customer from constructing their own transmission line to another part of their property which lies within another service territory. From a strict legal interpretation of the ESA Sections 5 - 7, the Commission has no authority to tell Exxon (which is a private company, not an electric supplier) to remove its transmission facilities or to discontinue wheeling power to the T.C. Clow and Buzzard Brothers leases (which power it lawfully purchased from its CIPS Section 29 Meter Point).

If we don't have the ability to curb a public utility's service obligation or authority over a private user, we have created an order that is null. Southwestern, on the other hand, is not without remedies. Cooperative membership imposes duties, contractual and otherwise, on its members. Southwestern's recourse is to take action against Exxon for possible breach of contract, not CIPS for fulfilling its obligation to serve.

As a final point, Section 1-102 of the PUA directs the Commission to ensure the provision of efficient,

least-cost public utility services. Section 2 of the ESA also seeks to ensure that the public will enjoy "efficient" low cost electricity. Hence, the intent of the PUA and the ESA is to see that electrical suppliers provide service at the least cost possible, not to ensure monopoly profits to electrical service providers. If a consumer decides for whatever reason that he wants the services of someone beyond his service territory and is willing to pay to connect to that service, is it in the public interest to deny him the ability to do so? A majority of this Commission appears to believe so.

In the past, however, this Commission has supported measures, such as wheeling, the ability to purchase power from another and transmit it over lines to where it is needed. We believed, wheeling increases competition and thus, lowers the price to consumers. While recognizing we cannot order wheeling, we recognize its inherent benefits to consumers. Exxon, at its own expense, did what we believed should be possible. Exxon's situation is analogous to a large gas customer building their extension and tapping into a nearby pipeline in order to bypass their higher priced LDC. True, facilities are duplicated; however, the cost of the facilities is less than the price savings the customer will receive by taking energy from another supplier. Here, it should be emphasized the cost of the extension and tap have been borne by the private customer, not the ratepayers.

The majority's interpretation of the agreement and the law leads to a poor outcome for the customer. He, in effect, is told he has no choice among suppliers. It allows Southwestern to charge a higher rate than it could if it were to compete with CIPS. Southwestern remains free to win back Exxon as a customer by offering a lower rate. Instead, they chose to have the Commission force Exxon to take their higher priced electricity. Should the commission force Exxon to take service from the higher priced utility or allow Exxon the freedom to choose the lower priced provider? The answer, here, is not consistent with the idea of least cost energy planning.

The Commission's response to Exxon's exercise of choice is pure regulation. The adherence to tradition in the face of changing circumstances will not stop competition. Instead of imposing an artificial barrier, we should attempt to shape competition through recognition that end users who have the ability will attempt

to reduce their costs. CIPS should be allowed to provide unrestricted service to their Section 29 Meter Point. The restriction imposed by the majority could lead to a loss of load for both Southwestern and CIPS if Exxon decides to leave the system and self-generate its own power. Thus, the majority's decision may cause destructive competition to return in which case everyone will lose in the long run.

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Illinois Commerce Commission
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May 12, 1987

SOUTHWESTERN ELECTRIC COOP., INC. -VS- CENTRAL ILLINOIS PUBLIC SERVICE COMPANY and EXXON COMPANY, U.S.A.	:	
Complaint under the Electric Suppliers Act regarding service in Fayette County, Illinois	:	ESA 243

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NOTICE OF HEARING EXAMINER'S RULING

Dear Sir/Madam:

Notice is hereby given that the Hearing Examiner in the above captioned cause grants the Motion to Dismiss Exxon Company, U.S.A. as a party respondent, filed on behalf of Exxon Company, U.S.A., on March 6, 1987.

Notice is also given that the Hearing Examiner grants the Motion to Strike the ad damnum paragraph of the relief sought in the complaint, filed on behalf of Central Illinois Public Service Company, on March 10, 1987.

Kindly acknowledge receipt of this Notice.

Very truly yours,

Rose M. Claggett

Rose M. Claggett
Chief Clerk

sv
Hearing Examiner: Mr. Lippa
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