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CHIEF CLERK'S OFFICE

RURAL ELECTRIC CONVENIENCE )  
COOPERATIVE CO., and SOYLAND )  
POWER COOPERATIVE, INC., )

Complainants, )

vs. )

CENTRAL ILLINOIS PUBLIC SERVICE )  
COMPANY d/b/a AMERENCIPS, )

Respondent. )

DOCKET NO: 01-0675

CENTRAL ILLINOIS PUBLIC SERVICE )  
COMPANY d/b/a AMERENCIPS, )

Counter-claimant, )

v. )

RURAL ELECTRIC CONVENIENCE )  
COOPERATIVE, CO., and SOYLAND )  
POWER COOPERATIVE, INC., )

Counter-respondents. )

**BRIEF OF AMERENCIPS  
IN OPPOSITION  
TO SOYLAND'S PETITION FOR INTERLOCUTORY REVIEW**

Central Illinois Public Service Company d/b/a AmerenCIPS ("CIPS"), by and through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Scott C. Helmholz, submit the following points and authorities in opposition to Soyland Power Cooperative, Inc's ("Soyland") Petition for Interlocutory Review.

**I. OVERVIEW OF THE PLEADINGS**

The Complaint herein asserts a service entitlement on behalf of Rural Electric Convenience

Cooperative Co. (“RECC”) based on provisions of its Service Area Agreement (“SAA”) with CIPS (Counts II, V and VI) and §§5 and 8 of the ESA (Counts III and IV). Soyland claims that it is an intended third-party beneficiary of the CIPS-RECC SAA, and thus, may assert the same rights as RECC thereunder (Counts VII, X and XI). Soyland further asserts that §§5 and 8 of the ESA (Counts VIII and IX) authorize the Commission to enter an order “providing that Soyland shall provide all electric service in the territory designated by the Act and the Service Area Agreement to be served by Soyland and RECC . . .”

Soyland does not allege anywhere that it will have any privity of contract with the customer or that it will provide any form of direct electric service to the customer. Soyland does not allege that it will install metering facilities or require the customer to become a member of Soyland as a condition of service. Soyland does not allege that it owns RECC or that it has or will act as a joint venturer or partner with RECC to furnish electric service to Freeman.

## ***II. ARGUMENT***

### ***A. Soyland Does Not Claim Any Right to Serve The Customer***

Soyland’s standing to seek relief against CIPS from the Commission does not depend on whether it meets the definition of an electric supplier under §3.5 (it does) or whether it has a closely intertwined business relationship with RECC. Only if Soyland “claims that it should be permitted to serve any customer or premises . . . may [Soyland] . . . file its complaint with the Commission . . .” under §7 (emphasis added). Since Soyland has not pleaded that it will enter into any contractual relationship with the customer nor undertake any contractual obligation to furnish electricity to the customer, Soyland has not asserted any claim that the Commission should permit Soyland to serve Freeman. Since Soyland does not require any Commission authorization to furnish electricity to

RECC pursuant to its “All Requirements Contract”, Soyland has failed to identify any relief available to it and within the Commission’s jurisdiction to grant. Contemporaneous to its petition for interlocutory review herein, Soyland has filed a Petition for Leave to Intervene pursuant to Section 200.200 of the Commission’s Rules. Soyland’s intervention petition constitutes a tacit admission that it has no standing to seek relief against CIPS under the ESA as a complainant herein.

***B. Soyland’s Claim To Be Third-Party Beneficiary Of The CIPS-RECC Service Area Agreement Fails As A Matter Of Law***

Soyland’s attempt to state a cause of action against CIPS as a third-party beneficiary of the RECC-CIPS service area agreement fails as a matter of law because Soyland has not pleaded any facts that would confer third-party beneficiary status. “In order for a plaintiff third party to have standing to sue under a contract, the contract must be undertaken for the plaintiff’s direct benefit and the contract itself must affirmatively make this intention clear”. Reid v. Wells, 308 Ill.App.3d 831, 721 N.E.2d 163, 242 Ill.Dec. 195, 198 (3d Dist. 1999), citing Caswell v. Zoya International, Inc., 274 Ill.App.3d 1072, 654 N.E.2d 552, 211 Ill.Dec.90 (1<sup>st</sup> Dist. 1995). See also, Kruger v. Menard Electric Cooperative, 169 Ill.App.3d 861, 523 N.E.2d 708, 119 Ill. Dec. 952, 954 (4<sup>th</sup> Dist. 1988) (plaintiff “must show the purported agreement was intended to benefit him as a third party [and] [i]n order to do so, he must plead and prove his third-party beneficiary status is clearly identified in the contract and the benefit to him thereby is a direct one”.) “If the intent to benefit others is not explicitly provided for in the contract, its implication at least ‘must be so strong as to be practically an express declaration.’” Barney v. Unity Paving, Inc., 266 Ill.App.3d 13, 639 N.E.2d 592, 203 Ill. Dec. 272, 276 (1<sup>st</sup> Dist. 1994), quoting Ball Corp. v. Bohlin Building Corp., 187 Ill.App.3d 175, 177, 543 N.E.2d 106, 107, 134 Ill. Dec. 823, 824 (1<sup>st</sup> Dist. 1989). “In Illinois there is a strong

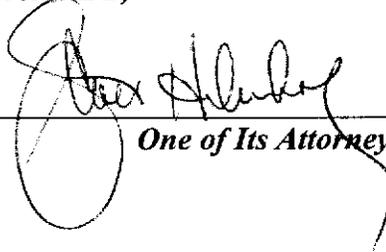
presumption that the parties to a contract intend that the contract's provisions apply only to them and not to third parties", *Id.* at 203 Ill. Dec. 276. Even "[t]he fact that the contracting parties may 'know, expect or *even intend* that others will benefit' from their agreement is not enough to overcome the presumption that the contract was intended solely for the *direct* benefit of the parties." *Id.* at 276, quoting Waterford Condominium Association v. Dunbar Corp., 104 Ill.App.3d 371, 373, 432 N.E.2d 1009, 1011, 60 Ill. Dec. 110, 112 (1<sup>st</sup> Dist. 1982) (emphasis in original). Nothing in the RECC/CIPS service area agreement remotely indicates any intent to provide a direct benefit to Soyland.

**III. CONCLUSION**

For the reasons set forth herein, the Administrative Law Judge properly dismissed Soyland as a complainant herein, and no compelling reason exists for the Commission to overturn that ruling.

***Central Illinois Public Service Company d/b/a  
AmerenCIPS,***

By: \_\_\_\_\_



***One of Its Attorneys***

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**PROOF OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *CIPS' Brief in Opposition to Soyland's Petition for Interlocutory Review* was served by placing same in a sealed envelope addressed:

Donald L. Woods, Esq. - *Hand Delivery*  
Administrative Law Judge  
Illinois Commerce Commission  
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Springfield, IL 62701

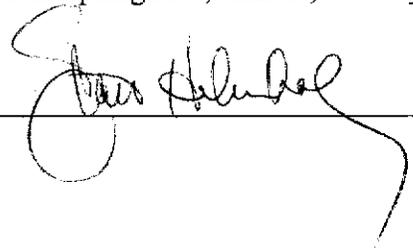
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and by depositing same in the United States mail in Springfield, Illinois, on the 24 day of *June*, **2002**, with postage fully prepaid.

  
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