

**REPORT TO THE COMMISSION  
PURSUANT TO SECTION 200.520 OF THE RULES OF PRACTICE  
OF THE ILLINOIS COMMERCE COMMISSION**

**Docket No.:** 01-0651

**R. O. M. Date:** 12-17-02

**R E P O R T** \_\_\_\_\_

**TO:** The Commission

**FROM:** Donald L. Woods, Administrative Law Judge

**DATE:** December 10, 2002

**SUBJECT:** Illinois Rural Electric Co.  
-vs-  
Central Illinois Public Service Company (AmerenCIPS)

Complaint pursuant to the Illinois Electric Supplier Act 220  
ILCS 30/1.

**RECOMMENDATION:** Deny the petition for interlocutory review.

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This case is a complaint under the Electric Supplier Act ("ESA") and involves a residential tract that was annexed to the city of Pittsfield, Illinois on October 19, 1999. The annexation created the instant complaint in the following manner. At the time of annexation there existed a service area agreement under which the geographic area in question lies within the boundaries granted to the co-op. The co-op was not franchised to operate within the boundaries of the City, while the utility was. The utility began serving the premises on January 8, 2002.

The complaint was filed on October 19, 2001, alleging the right to serve in the co-op, based upon the geographic designation of the service area agreement. The utility filed an answer and counterclaim. On May 28, 2002, Pittsfield adopted an ordinance granting the co-op a franchise to operate within the city boundaries. On August 12, 2002, the co-op filed a Motion for Judgment basically asserting that with the granting of the franchise, there was no basis upon which the Commission could conclude that the co-op was not the party with the exclusive right to serve the premises.

The utility opposed the Motion for Judgment, asserting that the granting of the franchise did not, *ipso facto*, determine the rights of the parties, because of possibly ambiguous language in the service area agreement, concerning the opportunity of one party to (in the language of the contract) "qualify to serve in an area" after the date of the execution of the agreement. CIPS argued that the contract terms must be subjected to a reasonableness test, which could include proof concerning the intent of the parties,

particularly in light of the fact that here, the co-op did not become qualified to serve in the area until approximately one and one half years after the utility commenced service. The utility asserted that the resolution of this matter may call for the introduction of parole evidence, which in this matter might include oral representations made by the parties in negotiating the service area agreement. The utility went on to argue that, because the resolution of this matter might pend upon the weight and believability of witnesses who were involved in the negotiations, the docket includes mixed questions of law and fact making it, according to relevant case law, not amenable to what is in essence, a motion for summary judgment.

After reviewing the arguments of the parties and the service area agreement in question, I denied the Motion for Judgment. The co-op has now filed an interlocutory appeal of that ruling. I continue to believe that the denial of the motion, which simply allows this matter to proceed in due course, was appropriate and, accordingly recommend that the appeal be denied.

DLW/lw