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

Complainants-Counter Respondents )

vs. )

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

Respondent-Counter Complainant )

DOCKET NO. 01-0675

**REBUTTAL OF**  
**RURAL ELECTRIC CONVENIENCE COOPERATIVE CO.(RECC)**  
**TO THE NEW ISSUES RAISED IN FREEMAN UNITED COAL**  
**MINING COMPANY (FREEMAN) REPLY TO RECC'S RESPONSE TO**  
**FREEMAN'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to authority granted by the Administrative Law Judge by Order entered March 5, 2003, RURAL ELECTRIC CONVENIENCE COOPERATIVE CO., (RECC) Complainant-Counter Respondent, by its attorneys GROSBOLL, BECKER, TICE & REIF, Jerry Tice of counsel, herewith files its Rebuttal to new material raised by FREEMAN UNITED COAL MINING COMPANY, (Freeman) Respondent-Counter Complainant, in Freeman's Reply to RECC's Response to Motion for Summary Judgment.

- I. SUMMARY OF THE ARGUMENTS PUT FORTH BY FREEMAN IN ITS MOTION OF SUMMARY JUDGMENT, INITIAL MEMORANDUM AND REPLY TO RECC'S RESPONSE IN SUPPORT THEREOF AND FREEMAN'S RESPONSE TO RECC'S MOTION TO STRIKE.

The arguments put forth by Freeman in its Initial and Reply Memorandums as

summarized by Freeman in its Response to RECC's Motion to Strike are as follows:

A. The borehole is located, and was constructed as a part of the mine because Freeman could not extend its underground lines any further without severe loss of voltage (Freeman Response to Mot. to Strike p. 2; Freeman' Mot. for S. J. p. 3).

B. The underground electric load is at many places at one time throughout the mine, (Freeman Response to Mot. To Strike p. 2; Freeman Mot. for S.J. p. 9; Freeman Reply on Mot. for S.J. p. 9).

C. Freeman possesses the right to mine 17,500 acres of coal and possessed those rights at the time of ESA 187, (Freeman Response to Mot. to Strike p. 2; Freeman Mot. for S.J. p. 4; Freeman Reply on Mot. for S.J. p. 7).

D. Freeman's main mine facility is located in RECC's service territory (Freeman Response to Mot. to Strike p. 2).

E. Because Freeman possesses 17,500 acres of coal reserves located in RECC's service territory, it is only logical to assume that mining of those reserves would take place in an area below RECC's territory (Freeman Response to Mot. to Strike p. 3; Freeman Mot. for S.J. p. 10-11; Freeman Reply on Mot. for S.J. p. 7-9).

F. When the Commission decided ESA 187 it re-designated the surface area of the main mine, which was a portion of RECC's service territory, as CIPS' territory (Freeman Response to Mot. to Strike p. 3).

G. The decision in ESA 187 contemplated that Freeman's 17,500 acres of coal reserves would be mined below RECC's territory (Freeman Response to Mot. to Strike p. 3; Freeman Mot. for S.J. p. 11-12; Freeman Reply to Mot. for S.J. p. 7-9).

H. The scope of the Commission's Order in ESA 187 is not limited solely to the surface area of the Crown III main mine at Section 1, Township 11 North, Range 6 West, 3<sup>rd</sup> P.M., Macoupin County, Illinois, since ESA 187 recognized the mining activity to be a continuously moving underground operation (Freeman Response to Mot. Strike p. 3; Freeman Mot. for S.J. p. 10).

I. The electric service to the lime injection/air shaft/borehole at issue in this docket is the same service as the service to the Freeman Crown III mine and this additional service was contemplated in ESA 187 (Freeman Response to Mot. to Strike p. 3; Freeman Mot. for S.J. p. 11; Freeman Reply on Mot. for S.J. p. 9).

J. The electric service to the underground moving equipment is different than fixed electric service to the surface (Freeman Response to Mot. to Strike p. 4; Freeman Mot. for S.J. p. 12).

K. The lime injection/air shaft/borehole and the main mine facility in Section 1, Nilwood Township, Macoupin County, Illinois constitute only one mine and not two mines (Freeman Response to Mot. to Strike p. 4; Freeman Mot. for S.J. p. 14).

## II. FREEMAN'S "PREMISES" AND "LOCATION" ARGUMENT.

In its Reply on Motion for Summary Judgment filed January 29, 2003 to RECC's Response, Freeman for the first time put forth the argument that the 17,500 acres of underground coal reserves possessed by Freeman constitute a "premises" within the meaning of "premises" and/or "location" as defined by the Electric Supplier Act in Section 30/3.12 (220 ILCS 30/3.12) or as defined in Coles-Moultrie Electric Cooperative v Illinois Commerce Commission 76 Ill App 3d 165; 394 NE 2d 1068; 31 Ill Dec 750 (4<sup>th</sup> Dist. 1979) (Coles-

Moultrie). Further, Freeman claimed ESA 187 contemplated that Freeman's underground mining operation would require the mine to extend beyond its 810 surface acres located in Section 1 Nilwood Township, Macoupin County, Illinois and that the Commission decision in ESA 187 contemplated Freeman would construct the lime injection/air shaft/borehole requiring electric service at the "Arnold Premises". A thorough search of the decision by the Commission in ESA 187 reveals that the Commission did not make any determination that the mine operation would extend to areas under RECC's service area and nothing in the decision even hints at a contemplation by the Commission that the lime injection/air shaft/borehole would be constructed on the surface of the "Arnold Premises". Further, there is nothing in the ESA 187 decision that determines or even contemplates Freeman will require a new electric service delivery point on the surface of the "Arnold Premises". Such arguments were and are mere conjecture by Freeman unsupported by ESA 187 or by the record in this docket.

Further, because Freeman admits no one, let alone the Commission, knew of or contemplated the location of the lime injection/air shaft/borehole on the Arnold premises, ESA 187 could not possibly bar the issue regarding electric service in the instant case. It simply is not possible for an adjudicatory body to decide an issue of fact it knew nothing about and of which the parties did not even contemplate and therefore could not have raised. Freeman begs the question when it contends *ESA 187 decided the issue of electric service to the Arnold premises air shaft* at the same time it decided the supplier to the Crown III main mine "location" or "premises". The Commission must determine the "premises" and the "service connection point" among other factors before concluding who the supplier will be. While the issue of electric service rights starts with "premises" and/or "locations", it does not end there.

Freeman has made no effort in its Motion for Summary Judgment or in its Reply to RECC's Response to define where the 17,500 acres of coal reserves are in fact located in relationship to the electric service requirements at issue in this docket. Neither did Freeman provide any evidence where the underground mining has occurred, where it occurs presently or where it will occur in the future. In addition, Freeman cites ESA 187 for the proposition that by virtue of the Commission determination allowing CIPS to serve the Freeman main mine facilities in Section 1, Nilwood Township, Macoupin County, Illinois, the Commission re-designated a portion of RECC's service territory as the service territory of CIPS. A review of ESA 187 reveals that the Commission did not make such a finding or determination. Even if by the stretch of one's imagination such a conclusion can be drawn from ESA 187, ESA 187 did not conclude that the CIPS electric service provided to the service connection point located on the surface of the Freeman main mine facilities in Section 1, Nilwood Township, Macoupin County, Illinois would constitute service to the lime injection/air shaft/borehole located on the "Arnold Premises" in the South Half of the Southwest Quarter, Section 7, Township 11 North, Range 5 West, 3<sup>rd</sup> P.M., Pitman Township, Montgomery County, Illinois.

**III. THE UNDERGROUND COAL MINERAL INTERESTS DO NOT CONSTITUTE "PREMISES" OR "LOCATIONS" WITHIN THE MEANING OF THE ELECTRIC SUPPLIER ACT OR THE SERVICE AREA AGREEMENT BETWEEN RECC AND CIPS.**

**A. FREEMAN'S "PREMISE" ARGUMENT IS UNSUPPORTED BY LAW OR FACT.**

Freeman now advances the argument, that the underground coal mineral interests possessed by Freeman constitute a "premises" and/or "location" separate from the surface such as to constitute one "premises" between the main mine facilities in Section 1, (located on

the surface) and the lime injection/air shaft/borehole located on the surface of the “Arnold Premises” in the South Half of the Southwest Quarter of Section 7, Pitman Township, Montgomery County, Illinois. For instance Freeman claims:

1. That Freeman’s “...underground distribution system is continuously moving and is connected.” However, it is obvious that mechanical moving devices comprising an underground distribution system consist of mechanical devices which are in one place only temporarily do not satisfy any element of the definition of a “premises” under the Electric Supplier Act. Neither is there any evidence by affidavit or otherwise that the underground distribution system is “connected” or where it is located. Neither do coal mineral interests meet the definition of “premises” under the Act and even if they could conceivably do so, there is no factual basis provided in Freeman’s Motion for Summary Judgment to show where the underground coal mineral interests were located, whether they were compact and contiguous, their geographical boundaries if any, whether they were all one tract undivided by any *intervening public or private rights of way or easements or whether they constituted a single parcel within the meaning of the Act.*

2. That RECC points only to the surface ownership for determining “premises” or “locations” and ignores Freeman’s underground coal mineral interests. RECC refers to the surface ownership for determining “premises” or “locations” for several reasons. First, the Electric Supplier Act (Act) defines “premises” by references to the surface only 220 ILCS 30/3.12. Secondly, Coles-Moultrie Electric Cooperative v Illinois Commerce Commission 76 Ill App 3d 165; 394 NE 2d 1068; 31 Ill Dec 750 (4<sup>th</sup> Dist. 1979) (Coles-Moultrie), using surface features, defines “location” as a single piece of property not divided by some feature of

the area in question which would set it apart from surrounding parcels such as a public road, a body of water or a legal division that could distinguish one location from the surrounding area (See p. 751). Thirdly, when construing Section 5 of the Act with the definition of “premises” as found in the Act and “location” as found in Coles-Moultrie, it is clear that the Act is written on the presumption that electric service issues will be determined based upon the surface ownership of land with common geographical boundaries marked by physical features, or public and private rights of way, or roads, or bodies of water, or other features of the surface of the land which tend to separate one location from another. It is obvious that all of these distinguishing factors in determining what is a “premise” or “location” are determined from the surface features of the land and not underneath the surface. Nothing in the Act or in the cases interpreting the Act, including those which have determined the electric service issues to underground coal mines, give the slightest hint that the parties are to look to anything below the surface for determining electric service rights. While Freeman now makes that claim in this case, it has not pointed to any authority to support the claim. Fourth, even if Section 5 grandfathered rights are not at issue, when service rights are determined based upon proximity, the Act requires the issue to be decided based upon the “proximity of a supplier’s July 2, 1965 existing lines (See 3.13 of the Act) to the customer’s “normal service connection point” on the customer’s “premises” (Sec 3.10 of the Act). The “normal service connection point” is the place where electricity is delivered by the supplier to the customer based upon accepted engineering practices (Menard Electric Cooperative v Central Illinois Public Service Co., Ill. Com. Comn. No. 90-0217; Jul 19, 2000). Essentially, the “normal service connection point” is determined in accordance with accepted engineering practices” as required by Sec 3.10 of

the Act, and is ultimately a place on the surface. Thus, “premises” and “location” for purposes of the Act are intended to be the surface of the land. It appears very clear from the minimal facts now before the Commission that “accepted engineering practices” requires a substation and a new service connection point to deliver electricity to the new Freeman lime injection/air shaft/borehole all located on the surface of the Arnold premises.

3. Freeman claims RECC’s argument that the Freeman main mine facility is at a separate “premises” and/or “location” from the lime injection/air shaft/borehole at the “Arnold Premises” is not factually accurate with respect to the subsurface because of the underground coal reserves. Freeman points to the map provided by Freeman in discovery attached as Exhibit 2 B to RECC’s Reply as evidence of the “interconnected features of the Freeman coal reserves”. What Freeman ignores is that what constitutes a “premises” under the Act is confined to the surface of the land. But even if features under the surface of the land are considered when determining if a “premises” exists, the map shows a separate sandstone channel which bisects the location of the main Freeman mine facility to which electric service was at issue in ESA 187 and located in Section 1, Nilwood Township, Macoupin County, Illinois from the “Arnold Premises” located in the South Half, Southwest Quarter, Section 7, Pitman Township, Montgomery County, Illinois. Under Coles-Moultrie a separate “premises” is created by any feature of the area that sets one portion of the “premises” apart from the other Coles-Moultrie 31 Ill Dec 750, 751. If in fact underground coal reserves were intended to be such “premises” under the Act, the sandstone channel certainly depicts a “feature” that divides the “underground coal reserves” into two premises.

B. UNDERGROUND MINERAL INTERESTS ARE NOT WITHIN THE DEFINITION OF PREMISES.

Freeman contends in its reply to RECC's Response to Motion for Summary Judgment that the underground coal reserves constitute a "premises" connecting the surface of the "Arnold Premises" with the surface of the Crown III main mine facility in Section 1, Nilwood Township, Macoupin County, Illinois. This is not the law.

As earlier noted by RECC, underground coal mineral interests are not within the definition of "premises" as defined in the Act nor within the definition of "location" as defined by the Coles-Moultrie decision. And, Freeman cited no authority for the claim that the Freeman underground coal mineral interests constituted a "premises" under the Act. Neither did Freeman provide any evidence in the record that the geographical boundaries of the coal mineral interests are such as to constitute a "premises" tying the surface of the "Arnold Premises" with the premises occupied by the main Crown III mine facility located in Section 1, Nilwood Township, Macoupin County, Illinois.

Even if Freeman's "premises" argument were legally correct, Freeman readily admits that there may be more than one point of delivery of electric service to the same "premises". However, Freeman ignores the fact that those separate points of delivery for electric service situated upon the same "premises" may be served by two different electric suppliers Menard Electric Cooperative v Central Illinois Public Service Co. Ill. Com. Comn. No. 90-0217 (July 19, 2000 ALJ Larry Jones) and Menard Electric Cooperative v Central Illinois Public Service Co. Ill. Com. Comn. No. 94-0504 (November 1, 2000 ALJ Donald Woods) and Illinois Rural Electric Cooperative v Central Illinois Public Service Co. Ill. Com. Comn. 97-0287 (June 16,

1999 ALJ William Showtis) which in all three decisions both suppliers were authorized to serve customers located within the same premises as established by the July 2, 1965 boundaries. See also Spoon River Electric Cooperative, Inc., v Central Illinois Public Service Company ESA 249 (June 30, 1989), wherein the Commission authorized both electric suppliers to establish electric service delivery points on the same July 2, 1965 established geographic “premises” known as the Gavenda farm in order to furnish electric service to the Canton prison located on a portion of the Gavenda farm; affirmed on appeal in Central Illinois Public Service Company v Illinois Commerce Commission and Spoon River Electric Cooperative, Inc. 219 Ill App 3d 291; 579 NE 2d 1200; 162 Ill Dec 386 (4<sup>th</sup> Dist. 1991).

Freeman contends that the Commission decision in Docket No. 89-0420 (Old Ben Mine) holds that the complete mine constitutes an interconnected tract so as to be a geographical “premises” under the Act. The commission did not make such a finding or determination in “Old Ben Mine”. The issue was electric service to a borehole located on a “premises” separate from and not connected by surface features to the Old Ben Mine No. 24 to which CIPS delivered electricity under a pre-July 2, 1965 electric contract. What the Commission determined was that CIPS could provide the service to the connection point for the new borehole located on “premises” separated from Old Ben Mine No. 24 by surface geographical features and boundaries because CIPS was grandfathered per a pre July 2, 1965 electric service contract. This written contract with Old Ben Mine No. 24 granted CIPS the right to serve all Old Ben’s service facilities even though located on the surface of “premise” situated in the competing supplier’s territory under the Service Area Agreement. In essence, service rights were determined to the new borehole in Southeastern’s service territory because

the Service Area Agreement between the suppliers dictated the Act applied and because of CIPS' grandfathering electric service agreement per Section 5(b) of the Act. Such is not the situation in the instant case, because CIPS does not possess a pre July 2, 1965 Electric Service Agreement to serve the Freeman Crown III mine. Thus, CIPS does not, if service rights are to be determined outside of the RECC/CIPS Agreement and under the Act, possess any grandfathered rights to serve the lime injection/air shaft/borehole situated on the "Arnold Premises". "Old Ben" simply is not authority for Freeman's claims. Freeman's quote from the Old Ben decision, found at page 2 of Freeman's Reply on Summary Judgment, does not provide the legal basis for the Commission's decision. Rather, the Commission notes that the Service Area Agreement between the suppliers allowed each to extend lines through the territory of the other to serve "premises" of a customer which the extending supplier had contracted to serve by means of a grandfathered electric service contract. Simply stated, the right to serve was based upon the grandfathered electrical service contract.

- C. THE FREEMAN COAL MINERAL RIGHTS IF SEPARATE FROM THE SURFACE CANNOT BE CONSTRUED AS AN INTEREST SITUATED ON THE SURFACE OF THE LAND SO AS TO BE CONSTRUED A "PREMISES" AND/OR "LOCATION" WITHIN THE MEANING OF THE ACT.

Freeman argues that the Freeman coal mineral interests which lie underneath the surface are a separate real estate right and are treated at least for taxing purposes and conveyancing purposes separate from the surface ownership 765 ILCS 505/6 and 7. This principal is not helpful to Freeman for the reason that the Electric Supplier Act determines electric service rights based on surface ownership rights, the geographical boundaries thereof, intervening public and private rights of way, and other physical features distinguishable upon

the surface of the land such as to separate one “location” from another “location”. Indeed, the very fact Freeman’s underground mineral interests are treated for conveyancing purposes and tax purposes as separate from the surface of the land, precludes the mineral interest from comprising a “premises” or “location” under the Act or the RECC/CIPS Service Area Agreement.

Further, there is no need to do so in order to determine service rights in this case since Freeman has ownership rights on the surface of the land. These ownership rights exist in Section 1, Nilwood Township, Macoupin County, Illinois and at the “Arnold premises” in the South Half of the Southwest Quarter of Section 7, Pitman Township, Montgomery County, Illinois. At these respective locations, Freeman maintains surface facilities for mining, processing and loading coal, electric service connection points as defined in the Act (220 ILCS 30/3.10); substations whereby electricity is delivered by an electric supplier (in this case CIPS) to the substation where the voltage is reduced to a usable level and then delivered from CIPS to Freeman. All of these facilities exist on the surface of the land. All of these facilities, including the distribution lines and substations, historically have existed on the surface and do yet today. Thus the parties based upon their historical transportation and delivery of electricity intend for the electricity to be transported to and exchanged at a point on the surface of the “location” where the electricity is then reduced to a usable voltage also on the surface of the location. Where, as in this case, the intention of the parties is at issue Summary Judgment is inappropriate, Quality Lighting, Inc. v Benjamin 277 Ill App 3d 880; 592 NE2d 377; 169 Ill Dec 890, 893 (1<sup>st</sup> Dist, 5<sup>th</sup> Div 1992).

The definition of a “mine” and “coal mine” cited by Freeman 225 ILCS 705/1.03 is

intended to encompass all of the physical aspects of a mine whether such facilities consist of real estate or personal property, whether they are temporarily or permanently located, whether there are physical features of the land surface or not, and whether such exist on the surface of the land or below the surface. Thus, the definition of a mine is not intended to define a mine within the meaning of a "premises" and/or "location" under the Electric Supplier Act but rather to define a mining operation for regulatory and administrative purposes. Therefore, the definition of a "coal mine" as referenced by Freeman is of little support to Freeman's claim that the underground coal mineral interests constitute a "premises" and/or "location" within the meaning of the Act.

**D. EVEN IF THE UNDERGROUND COAL MINERAL INTERESTS  
CONSTITUTE A "PREMISE" SUCH DOES NOT AUTHORIZE CIPS TO  
SERVE THE ARNOLD PREMISES.**

Even if for argument purposes the Freeman underground coal mineral interests constitute a "premises" and/or "location" such as to connect the main mine facilities in Section 1, Nilwood Township, with the lime injection/air shaft/borehole at the "Arnold premises", such would not cause CIPS to be the electric supplier at the Arnold premises. Freeman does not provide any evidence that indicates that CIPS commenced service to the Crown III main mine facilities in Section 1 prior to July 2, 1965. Thus, there is no electric service grandfathered to the particular "underground" "premises" sought to be established by Freeman in its Reply.

Since Section 5 would not apply to the "Freeman underground coal mineral interests because no electric service was provided to such "underground premises" on July 2, 1965, service would be determined under Section 8 or proximity of the Act. Under Section 8, more

than one electric supplier can provide electric service to more than one "service connection point" as determined by the Commission in the Spoon River case. In such instance, the issue of electric service is determined on the basis of proximity of 1965 existing distribution lines (located on the surface) to the "normal service connection point" of the customer (located on the surface of the "premises" and/or "location"). Since Freeman and CIPS have already established the "normal service connection point" which is the substation located on the Arnold premises and since that substation is located on the surface of the Arnold premises and not underground, proximity for purposes of Section 8 will be determined from the July 2, 1965 existing lines of RECC and/or CIPS to that substation and/or normal service connection point at the Arnold premises. All of these identifying elements are located on the surface of the Arnold premises or the adjoining tracts of land and not under the surface. Thus, the claim by Freeman that the underground coal mineral interests dictate that CIPS must be the electric provider to the normal service connection point at the Arnold premises is unsupported by any fact now before this Commission or by the law.

E. THE SERVICE AREA AGREEMENT AT ISSUE IN THIS CASE REQUIRES SERVICE RIGHTS TO BE DETERMINED BASED ON SURFACE FEATURES OF THE LAND.

RECC and CIPS have entered into a Service Area Agreement which covers the area upon which is located the various Freeman mine facilities. The Agreement is authorized by Section 6 of the Act and has been approved by the Commission after a hearing thereon pursuant to authority granted by the Act. As such, the Agreement controls the determination of service rights as between RECC and CIPS as to the lime injection/air shaft/borehole located on the "Arnold premises". The Agreement defines territories in which each of RECC and

CIPS have exclusive service rights. These territory rights are identified by virtue of maps and boundaries designated on the surface of the land and not identified under the surface. Based on these territorial boundary lines, virtually all of the Freeman mine facilities are within the area designated to be served by RECC. As provided in paragraph 2 of the Agreement, there is an exception to service rights based upon the map boundaries if service to the customer is required from a 34.5 kV line in existence on July 2, 1965. Whether that exception applies is an issue of fact to be yet decided. Such is not an issue in Freeman's Motion for Summary Judgment and even if it were, based on the record and the Affidavits, such issue is not amenable to Summary Judgment because there is a question of fact whether the service must be provided from a 34.5 kV line existing July 2, 1965. Suffice it to say that nothing in the RECC/CIPS Agreement contemplates that service rights to a designated "premises" or "location" are to be determined on boundaries or physical features of land that exist anywhere but on the surface. Underground mining interests per se are simply not an element to be considered when deciding service rights under the Agreement. And, Freeman has not and cannot point to any element evidencing that the mineral interests constitute a separate premises for purposes of the Service Area Agreement that justifies CIPS crossing RECC's service boundary established by the Agreement to serve the lime injection/air shaft/borehole at the "service connection point" located on the surface of the Arnold premises.

**F. IN THE CONTEXT OF "PREMISES" AND "LOCATION", THE SOUTHWESTERN DECISION DOES NOT AID FREEMAN.**

Freeman maintains in its January 29, 2003 Reply on Summary Judgment that the decision in Southwestern applied the "functional utilization test", that is where the electricity is

used, to prevent customer Exxon from taking electric service from CIPS in CIPS' service territory and transmitting it to oil wells in Southwestern's territory. Freeman claims the underground coal mineral interests constitute separate "premises" within the meaning of the Act, and that those mineral interests or "premises" are, as admitted by Freeman, located in RECC's service territory. Accordingly, if the "functional utilization test" is the basis for determining electric service rights to the "Arnold premises" those service rights would be awarded to RECC since virtually all the coal is mined within RECC's territory. Frankly, RECC cited the Southwestern case for the proposition that a customer does not have a right to choose its supplier and cannot by its own electric system transmit electricity it takes delivery of from one supplier and use the electricity in another electric supplier's territory. RECC made this point because Freeman in its initial argument for summary judgment asserted Freeman could distribute the electricity, after taking delivery at the normal service connection point, to any location Freeman wished by means of its underground system. When Freeman does this, as it admits at p. 12-13 of its Reply on Summary Judgment, to develop the Crown III mine, it violates the Southwestern principle when the electricity is used to develop a separate mine premises in RECC's territory. Freeman also asserts that allowing it to choose CIPS instead of RECC to serve additional mine facilities on "premises" in RECC's territory because CIPS already serves part of the mine will not authorize other customers to flee RECC's territory. Freeman does not explain why such a principal would not apply to other customers with "premises" and /or "location" crossing supplier boundaries. Mines are not given prefatory treatment by the Act or for that matter by the RECC/CIPS Service Area Agreement. As noted earlier, even if Freeman's coal mineral interests constitute a single "premises" such can be

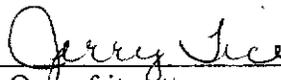
served by more than one supplier at more than one location.

### CONCLUSION

In summary, the Freeman underground coal mineral interests do not constitute a “premises” and/or “location” connecting the Crown III main mine with the Arnold premises so that CIPS is automatically the supplier of electricity to the Arnold premises because underground real estate interests do not comprise “premises” under the Act. Even if they do the coal mineral interests in the instant case do not comprise a single “premises”. Further, the analysis of the service issue does not stop with the determination of what is a “premises” . That is only the beginning. Accordingly, RECC requests the Commission to deny the claim of Freeman for Summary Judgment.

RURAL ELECTRIC CONVENIENCE  
COOPERATIVE, CO., Complainant-Counter  
Respondent

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PROOF OF SERVICE

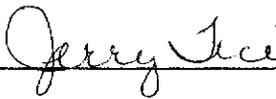
I, JERRY TICE, hereby certify that on the 19th day of March, 2003, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the document attached hereto and incorporated herein, addressed to each of the following persons at the addresses set opposite their names:

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