

ORDINANCE NO. 828

AN ORDINANCE AUTHORIZING SETTLEMENT OF LITIGATION

WHEREAS, the Village of Chatham has received the sum of Three Hundred Forty Thousand One Hundred Ninety-four (\$340,194.00) Dollars of principal and Eleven Thousand Seven Hundred Forty-seven and 98/100 (\$11,747.98) Dollars of interest as a product of the settlement with Central Illinois Light Company in proceedings brought before the Federal Energy Regulatory Commission in case number ER76-819; and

WHEREAS, Allen Milner, et al., heretofore have brought action against the Village of Chatham and others in Case Number 82-MR-6 in the Circuit Court of the Seventh Judicial Circuit of Sangamon County, Illinois, seeking that the Court order the Village of Chatham to comply with the terms of Ordinance No. 77-1 and to refund or credit the settlement proceeds from the Central Illinois Light Company case in accordance with said Ordinance; and

WHEREAS, the Court has been made aware of Ordinance 79-22 wherein the Village is required to make improvements and adjustments to the Chatham electric distribution system and substation and to complete such adjustments within three years of July 17, 1979, or in the event they are not completed by said date, the Village is required to purchase Central Illinois Light Company's existing substation near Mulberry Street and Illinois State Route 4; and

WHEREAS, Allen Milner, et al. purporting to represent themselves and all customers of the Chatham Electric System, by and through their attorneys, have agreed that the Court shall enter a final judgment order in Case No. 82-MR-6 substantially as follows:

I. Judgment is hereby entered in favor of Defendants and for costs of suit. Each party shall pay its respective costs.

II. The preliminary injunction heretofore entered in this cause on February 17, 1982, is hereby dissolved.

III. The Stipulation heretofore presented to the Court is hereby adopted as the Order of this Court.

IV. Defendant, VILLAGE OF CHATHAM, shall pay to Giffin, Wirning, Lindner, Newkirk, Cohen & Bodewes, P.C. their attorneys' fees and reimburse to them their out-of-pocket expenses incurred in respect of this action from the principal amount of the funds realized from the CILCO settlement.

V. The VILLAGE OF CHATHAM shall repay and reimburse the Water and Sewer Fund of the VILLAGE OF CHATHAM in the sum of \$59,740.17 for advances heretofore made by such Fund to the Electric Fund of the VILLAGE OF CHATHAM and such repayment and reimbursement shall be allocated and deducted from the principal amount of the funds realized from the CILCO settlement.

VI. The balance of the principal amount of the funds realized from the CILCO settlement and interest earned thereon subsequent to February 8, 1982, shall be utilized, applied to and expended solely and exclusively to the improvements and adjustment of the electric distribution system of the VILLAGE OF CHATHAM and all soft costs and expenses ordinarily and necessarily incurred and required in respect thereof.

VII. All members of the class are hereby ordered bound by this Judgment Order which shall be an absolute bar and estoppel to any further cause of action by any class member against Defendants, jointly or severally, and arising out of Ordinance 77-1 of the VILLAGE OF CHATHAM or any part or portion thereof, and, in the event of such repeal, cancellation, revocation or rescission, all members of the class are hereby ordered bound by this Judgment Order which shall be an absolute bar and estoppel to any further cause of action by any class member against Defendants, jointly or severally and arising out of such repeal, cancellation, revocation or rescission.

VIII. All interest earned upon the principal amount of the VILLAGE OF CHATHAM's share of the CILCO refund prior to February 9, 1982, and paid to the VILLAGE by the Escrow Agents with principal, within the sole discretion of the Defendants, may be utilized and applied to make improvements and adjustments to the electric distribution system of the VILLAGE OF CHATHAM, or may be utilized, expended and applied by Defendants for any other lawful municipal and governmental purpose.

IX. All interest earned on the principal amount of such fund commencing on February 9, 1982, shall be utilized, applied and expended as is set forth in paragraph VI of this Order.

X. This Order shall constitute a final, appealable Order, and there is no just reason for delaying appeal.

XI. The Court shall retain jurisdiction of this cause for purposes of compliance with this Order.

XII. As funds are expended for the purposes set forth in paragraph VI of this Order records of such expenditures shall be available for public inspection at the Chatham Village Hall, 117 East Mulberry Street, Chatham, Illinois.

XIII. An accounting of the principal balance of the proceeds of the CILCO refund remaining from time to time, accumulated interest earned thereon after February 8, 1982, until the fund is depleted, and the nature and amount of expenditures made from that fund of principal and interest pursuant to this Order, shall be included in the monthly Treasurer's Report until the proceeds of the CILCO refund and interest earned thereon have been depleted in compliance with this Order."

and

WHEREAS, Allen Milner, et al., and the Village of Chatham have mutually acknowledged that there are numerous and complex issues of law

and fact raised by the pleadings, all of which are disputed by the parties; that Ordinance No. 77-1 of the Village of Chatham does not define with particularity the class of customers who might be entitled to a refund or credit if Allen Milner, et al. should prevail; and expensive practical problems with the cost of determining the class of customers who might be entitled to a refund or credit if the plaintiffs should prevail and complex problems with effecting a refund or credit exist; and that the cost of effecting such a refund or credit must necessarily be paid from the fund and would substantially deplete and reduce the fund to the detriment of the class; and

WHEREAS, the time for the Village of Chatham to perform its contractual obligations to make improvements and adjustments to the Chatham Electric System as set forth in Ordinance 79-22 shall expire on July 12, 1982; and

WHEREAS, the Village of Chatham has no funds with which to purchase from Central Illinois Light Company the ownership of Central Illinois Light Company's substation site in the manner and at the price set forth in Ordinance 79-22; and

WHEREAS, in the event the Village of Chatham performs its contract and makes improvements to such electrical substation, upon knowledge and belief, the loss of power, brown-outs and inability of basic electrical appliances to operate should be rectified and no longer exist because electrical energy in the form of a 3-phase alternating current of a frequency of approximately 60 hertz and a potential of approximately 7,200/12,470 volts shall be available from Central Illinois Light Company and should vastly improve the electric load problems in the Village of Chatham; and

WHEREAS, the Village of Chatham is without funds to enable it to hire the consulting engineer to prepare the studies and prepare the bid specifications to enable contractors to bid and a contract let and awarded and a contractor to purchase the materials and perform the work to enable such improvements and adjustments to be made to the electric distribution system of the Village of Chatham, all of which could be done in the event adequate funds were available therefor; and

WHEREAS, upon knowledge and belief, funds may not be available

in direct borrowings from banks or, in the alternative, in the event of such borrowings the rates therefor, upon knowledge and belief, would be exorbitant, excessive and require substantial increases in electric rates, fuel adjustments, purchased power adjustments and other charges sufficient to enable the Village of Chatham to pay principal and interest therefor; and

WHEREAS, upon knowledge and belief, funds may not be available through bonding, and such bonding, if available at all, is limited to short amortization and repayment terms, the repayment of which would be substantially burdensome and oppressive to the subscribers to electric service of the Village of Chatham; and

WHEREAS, it has always been the intention of the current Board of the Village of Chatham to utilize the principal amount of any refund from Central Illinois Light Company to pay for all or at least the substantial cost of all such improvements and adjustments to its electric system required by Ordinance 79-22 and all soft and related costs incidental thereto and thereby save the substantial repayment of interest occasioned by borrowing from banks or bonding; and

WHEREAS, it has always been the intention of the current Board of the Village of Chatham that if the settlement proceeds were utilized to make the improvements and adjustments to its electrical distribution system, insignificant, if any, borrowing from banks or through bonding would be required, and the substantial interest rates would not be required to be paid; and

WHEREAS, it has always been the intention of the current Board of the Village of Chatham that if the settlement proceeds were utilized to make the improvements and adjustments to its electrical distribution system electric rates, fuel adjustments, purchased power adjustments and other charges for electrical service from the Village of Chatham would be increased insignificantly, if at all, to the subscribers to electrical service of the Village of Chatham; and

WHEREAS, if such settlement proceeds could be utilized to make improvements and adjustments to the electrical distribution system of the Village of Chatham, then substantial payments of interest and principal of borrowed or bonded money would not be required to be made and

electric rates, fuel adjustments, purchased power adjustments and other charges for electrical services to subscribers of the electrical service of the Village of Chatham would not be required to be increased; and

WHEREAS, if the Village of Chatham is required to credit or refund said settlement proceeds as requested by Allen Milner, et al., so that it cannot be utilized to make the improvements and adjustments to the electrical distribution system, then the rates for electric services to subscribers of the Village of Chatham would necessarily be raised substantially to pay the cost therefor and substantial sums would be required to be borrowed or bonded and substantial interest would be required to be repaid therefor, all to the detriment of all the subscribers to electrical service of the Village of Chatham; and

WHEREAS, if the Village of Chatham is required to credit or refund said settlement proceeds as requested by Allen Milner, et al., then the Village of Chatham will likely be in default of its said contract with Central Illinois Light Company and, by reason thereof, be required to purchase Central Illinois Light Company's existing substation site and all transformers, switches, lightning-conductors, regulators, protective devices and other apparatus installed at the site, to the great detriment of all subscribers to the electrical services of the Village of Chatham; and

WHEREAS, it is now incumbent upon the Village of Chatham to accept or reject such final judgment order;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:

Section 1: The Village hereby acknowledges that it has received full and complete disclosure of the rights of the Village and its Trustees to proceed upon the merits of said Court action and each Court and issue thereof and to defend the entry of and appeal any judgment against the Village and its Trustees, and that it has received copies of the Stipulation and proposed Final Judgment Order.

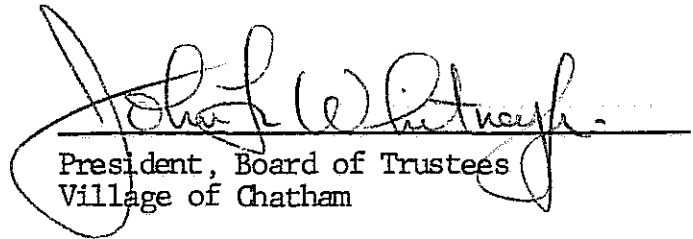
Section 2: The Village hereby authorizes and directs and does hereby give permission to its attorney to execute and sign on behalf of the Village the Stipulation attached hereto, and hereby confirms, adopts and ratifies the execution by the Village Attorney on behalf of the Village

the Stipulation attached hereto, and the Village agrees to be bound by and acquiesces in such Stipulation and agrees to be bound by the Judgment Order attached as an Exhibit thereto in the event said Judgment Order is entered by the Court in said cause.

Section 3: This Ordinance shall be effective upon passage and approval as provided by law.

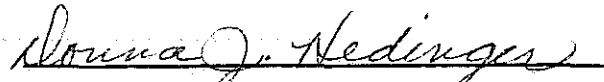
PASSED 3-23, 1982

APPROVED 3-23, 1982



President, Board of Trustees
Village of Chatham

ATTEST:



Village Clerk