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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

TRI-COUNTY ELECTRIC)
 COOPERATIVE, INC.,)
)
 Complainant,)
 vs.)
 ILLINOIS POWER COMPANY, d/b/a)
 AMEREN IP,)
 Respondent.)

CASE NO. 05-0767

CHIEF CLERK'S OFFICE

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ILLINOIS COMMERCE COMMISSION

REPLY OF TRI-COUNTY ELECTRIC COOPERATIVE, INC. TO THE MOTION FOR SUMMARY JUDGMENT BY ILLINOIS POWER COMPANY d/b/a AMERENIP

TRI-COUNTY ELECTRIC COOPERATIVE, INC., (Tri-County) by its Attorneys, GROSBOLL, BECKER, TICE, TIPPEY & BARR, files herewith its Reply to the Motion for Summary Judgment by Illinois Power Company d/b/a AMERENIP (IP) and in support thereof states as follows:

A. REPLY TO IP'S BACKGROUND STATEMENT

IP makes several assertion in the "background" portion of IP's Motion for Summary Judgment which are not supported by any facts presented by IP in its Motion. Those unsupported assertions appear generally as follows:

1. IP asserts that Citation Oil & Gas Corporation (Citation Oil) is a "...14 square mile interconnected oil field..." (Salem Unit) "... which at one time involved more than 4,000 oil wells."

No facts are presented by IP supporting such assertion (Pg.1). While Don Forney's discovery deposition is attached as support for the number of oil wells (4000), his testimony was that there were 300 wells in operation when he arrived at the Salem Unit in 1971 as a production

supervisor (Forney Dep. Trans. p 14). Forney had no first hand knowledge of the number of wells prior to 1971. Further, Forney made no decisions regarding Texaco's electric distribution system since authority for the electric system and all decisions regarding the use, additions, or extension thereof were made by another person (Forney Dep. Trans. p 38-40). Thus, no facts admissible in evidence have been presented by IP to the effect that the Citation Oil electric system is an interconnected system.

2. IP asserts (pg 1-2) that its Texas substation "... has always been the single point of delivery where AmerenIP supplied and Citation Oil accepted, the electrical energy that Citation Oil distributed throughout the Salem Unit." As noted in Tri-County's Motion to Strike the Michael Tatlock Affidavit and in Part B hereof, no admissible facts are provided by IP in its Motion for Summary Judgement that the Texas substation has always been the single point of delivery for the Salem Unit. (Pg. 1-2). Also, as noted in Tri-County's Motion for Summary Judgment, the Citation Oil office, which is located in Citation's Salem oil field and is a part of the "interconnected" Salem Unit oil field, receives is electric service from an electric delivery point that is not IP's Texas substation.

3. IP asserts (pg 2) that "Although Citation Oil considered obtaining a new point of delivery to furnish electricity to the gas plant, Citation Oil ultimately decided to extend its own distribution system to provide electrical energy to the gas plant.". IP provides no witness with first hand knowledge of the Citation Oil corporate decision regarding use of its electric distribution system to provide IP electric service to the delivery point created for the gas plant. No Citation Oil representative appears as a witness or provides an Affidavit in support of such assertion. Further such claim by IP ignores the fact that in order to comply with accepted

engineering practices within the electric utility industry a “new” electric service delivery point was created in order for IP electricity to operate the motors and other machinery located at the Citation Oil gas plant.

4. IP’s claim, at Page 3, that IP can continue to serve all electric service connection points or “points of delivery” for Citation Oil in the Salem Unit because Citation Oil or its predecessor has always been and was on the date of the Tri-County/IP Service Area Agreement, March 18, 1968, taking delivery of electric service at the Texas substation, ignores the language of Section 1 of the Service Area Agreement that specifically states an “existing customer” is a “new customer” if electric service is requested “at a point of delivery” that was not energized on March 18, 1968. This is the fundamental issue in this case. It is not disputed that the delivery points for the Citation Oil gas plant and each of the compressor sites are “electric service delivery points” that did not exist on March 18, 1968 and therefore constitute a “point of delivery”. Since they are located in Tri-County’s service territory, Tri-County, not IP, has the right to serve the new “points of delivery” for electric service to Citation Oil. In essence IP asserts and requests this Commission to find that IP can follow Citation Oil wherever it may establish a delivery point for delivering electric service even though it is located in Tri-County’s service territory under the negotiated Service Area Agreement. Tri-County takes exception to the foregoing claim of IP and notes IP’s claim is not supported by language of the Service Area Agreement or any evidence provided by IP in its Motion for Summary Judgment.

B. REPLY BY TRI-COUNTY TO IP’S STATEMENT OF UNDISPUTED MATERIAL FACTS.

IP has noted a number of “material facts” which IP claims are undisputed. Many of these

facts are disputed and not supported by factual evidence presented with IP's Motion for Summary Judgment. They are:

1. In paragraph 2, IP asserts that in October 1952 AmerenIP constructed the Texas substation "...to provide electrical energy to Citation Oil's predecessor, Texaco, Inc. for use in the Salem Unit." Tri-County has objected to such statement in Michael Tatlock's Affidavit as being a conclusionary statement not supported by facts or documents as required by Supreme Court Rule 191. In addition such statement is beyond the scope of Michael Tatlock's personal knowledge and therefore constitutes hearsay. No factual evidence is presented by IP to show that the sole and only purpose of the Texas substation was to provide electric energy to the Salem Unit of Citation Oil's predecessor, Texaco Inc. In fact the documentation provided by IP in discovery shows that other customers besides the Salem Unit are served through the Texas substation.

2. At Paragraph number 3, IP asserts the Texas substation is connected to the 69 kV system through a transmission line identified as line number 6641. Tri-County has objected to Michael Tatlock's Affidavit containing that statement for the reason that such statement is not within the personal knowledge of Michael Tatlock and is not supported by any documentary evidence attached to the Tatlock Affidavit.

3. In Paragraph 4, IP describes the Texas substation as consisting of two transformer banks that reduce the voltage on the 69kV transmission line to a voltage of 12.47 kV. Tri-County notes that the Affidavit and Engineer's report of Robert E. Dew Jr., Tri-County's engineer, contain a much more detailed description of the Texas substation based upon IP documents and information provided in discovery and reviewed by Robert E. Dew Jr.. Tri-

County disputes IP's description of the Texas substation to the extent it is inconsistent with the description by Robert E. Dew Jr.

4. IP asserts in Paragraph 5 that the "point of delivery" at which AmerenIP supplies electrical energy to Citation Oil..." is the Texas substation. Tri-County has objected to that statement in the Tatlock Affidavit because of its conclusionary nature. In addition, Tri-County disputes IP's description of the Texas substation as a "point of delivery" for all of Citation Oil's Salem Unit.

5. At Paragraph Number 6, IP asserts Citation Oil has developed, constructed and operated its own electric energy distribution system for the Salem Unit. Tri-County has objected to such statement in the Tatlock Affidavit because it is unsupported by anyone with first hand knowledge of the same. Further, to the extent IP relies upon the discovery deposition of Don Forney, to support that statement, Tri-County notes Mr. Forney was an oil production supervisor at the Salem Unit. He admitted someone else, not he, had authority over the electric distribution system used by Texaco, Inc. or Citation Oil for the Salem Unit and admitted he made no decisions regarding the Salem Unit electric system (Forney Dep. Trans. P 38-40). He was employed at the Salem Unit from 1971 to April 1999 (Forney Dep. Trans. P 14 & p 41) and did not have first hand knowledge of the electric system's construction or development. In fact, Don Forney did not even know that electricity to the Citation Oil office complex was provided by Tri-County even though he worked at the Salem Unit when the office as built and electric service was connected to the office (Forney Dep. Trans. P 34 & p 36-37). Thus Don Forney is hardly a qualified witness to describe the development, construction, or operation of the Citation Oil electric distribution system.

6. At Paragraph Number 10, IP asserts that the "point of deliver" at which Citation Oil receives electrical energy for the Salem Unit is the Texas substation which was energized long before 1968. In addition, Tri-County has objected to the admissibility of that assertion by means of the Tatlock Affidavit and disputes the implication that the Texas substation is the "point of delivery" of electricity for Citation Oil's gas plant and gas compressor sites.

7. At Paragraph 14, IP asserts that "construction of the gas plant has not caused Citation Oil to apply for a new point of delivery or request a modification of the existing electrical service connection located within the Texas substation." Tri-County has objected to that assertion in the Tatlock Affidavit as being inadmissable. No factual documents have been presented by IP with regard to such statement. Further, Tri-County disputes the fact that the gas plant has not created a "new point of delivery" in order to distribute electric energy generated by IP to the gas plant for the operation of its motors. As noted by Robert E. Dew Jr., Tri-County's engineer, such a claim by IP defies accepted engineering practices for establishing electric delivery points for facilities such as the gas plant and each of the gas compressor sites.

8. At Paragraph 15, IP claims that even though "...Citation Oil considered obtaining a new point of delivery to furnish electricity to the gas plant, Citation Oil elected to extend its own distribution system to provide electrical energy to the gas plant and compressors." Tri-County disputes such claim by IP to the extent IP implies that the electric service connection point established for the gas plant and each of the compressor sites does not constitute a "point of delivery" for electric service to those facilities as required by accepted engineering practices within the electric utility industry. IP does not explain why the Texas substation is a "point of delivery" for electric service but that the electric service connection points established for the gas

plant and each of the gas compressor sites do not also constitute "points of delivery" for electric service. Each contain transformers for the purpose of reducing voltage for use by electric motors at the gas plant and each of the compressor sites. No engineering testimony or opinions based upon accepted engineering practices within the utility industry are supplied by IP to support its claim. For that reason to the extent such an assertion is deemed a fact ascertain, Tri-County disputes the same.

9. In paragraph 18, IP claims that "from at least 1965 to the present day, the point of delivery at which AmerenIP supplied electrical energy to Citation Oil for the Salem Unit has remained the same." Tri-County has objected to that statement in the Tatlock Affidavit as being inadmissible because of the conclusionary nature of the same and being beyond the scope of personal knowledge by Michael Tatlock. Further, to the extent such an assertion is deemed a factual statement, Tri-County disputes the same.

10. In paragraph 20, IP claims that since 1965...Citation Oil has not applied to AmerenIP for electrical service at a point of delivery that was idle or not energized on July 3, 1968". Tri-County disputes that claim. Documentation provided with Tri-County's Motion for Summary Judgment shows that in fact Citation Oil requested electric service from Tri-County for a "delivery point" for electric service to the gas plant. That documentation also evidences the fact that Citation Oil made the same inquiry of IP and IP referred Citation Oil to Tri-County for the electric service because the new "point of delivery" for electric service at the gas plant was located in Tri-County's service territory under the March 18, 1968 Service Area Agreement.

11. At paragraph 21, IP asserts that since 1965 "... no modification, ie, adding a phase or phases of electric current, has been made to the electric service connection between AmerenIP

and Citation Oil.” Tri-County has objected to the admissibility of such a conclusory statement by means of the Tatlock Affidavit. Further, no documents are attached to the Tatlock Affidavit or IP’s Motion for Summary Judgment to support such a conclusion. In addition, Tri-County disputes the foregoing assertion by IP as noted by the engineering report and Affidavit of Robert E. Dew Jr., Tri-County’s engineer.

ARGUMENT

A. STANDARDS GOVERNING MOTIONS FOR SUMMARY JUDGMENT

Tri-County does not generally dispute the statement by IP as to the general standard by which Motions for Summary Judgment are reviewed. However, Tri-County notes that the cases cited by IP apply summary judgment principles to the interpretation of a statute not the interpretation of a contract (See Land v Board of Education of the City of Chicago 202 Ill 2d 414; 781 N.E. 2d 249; 269 Ill Dec 452, 463-464 (Nov 21, 2002) where the court denied summary judgment when applying the School Code’s statutory authority to a school’s layoff policy and Harrison v Hardin County Community Unit 197 Ill 2d 466; 758 NE2d 848; 259 Ill Dec 440, 445 (Oct 18, 2001) where the court granted summary judgment when applying the Local Governmental and Governmental Employees Tort Immunity Act to the school administrator’s decision regarding a student’s request for early dismissal.) Also, Tri-County notes that most of the facts relied upon by IP to support its summary judgment motion are in fact disputed or not properly supported by admissible evidence and therefore can not be relied upon to support IP’s summary judgement motion. Likewise, Tri-County does not generally dispute that when contract provisions are unambiguous, the contract is construed from its own terms. IP cites three cases on

this point. For instance, Air Safety, Inc. v Teachers Realty Corp. 185 Ill 2d 457; 706 NE2d 882; 236 Ill Dec 8, 10-12 (Jan 27, 1999) held a construction contract containing a clearly worded integration clause could not be construed as ambiguous in order to permit evidence of subsequent bid proposals. Likewise, Quake Const. Inc. v American Airlines 141 Ill 2d 281; 565 NE2d 990; 152 Ill Dec 308, 314 (1990) held a letter of intent to enter into a construction contract ambiguous and thus it was necessary to hear extrinsic evidence to determine the intent of the parties. And in Frederick v Pro. Truck Driver Training 328 Ill App 3d 472; 765 NE2d 1143; 262 Ill Dec 535, 542-543 (1st Dist. 1st Div Mar 4, 2002), the court held the omission from a contract of an affirmative duty to remove snow and ice from the step of the truck used to teach truck driving could not be inserted through extrinsic evidence.

However, IP's authority is not very helpful. The court has ruled that when a service area agreement approved by the Illinois Commerce Commission is at issue, the agreement controls the rights of the parties, Rural Electric Convenience Cooperative Co. v Illinois Commerce Commission 75 Ill 2d 142; 387 NE2d 670; 25 Ill Dec 794, 796 (1979)(Rural Electric). In Rural Electric, the court concluded that even though the service area agreement was clear and unambiguous, since the agreement required service rights to the disputed customer to be determined based upon "accepted engineering practices" and since that question was not answered by the agreement, the commission was required to admit evidence regarding "accepted engineering practices". In the instant case, service rights to the Citation Oil gas plant and gas compressor sites depend on the need to create an electric service connection point or a "point of delivery" in order for electricity to be used to operate motors at the gas plant and gas compressor sites. The service area agreement at issue is quite clear and unambiguous. When a "service

connection point” or “delivery point” is created or energized after the date of the Agreement (March 18, 1968), a “new” service connection point exists and a “new customer” is created at that “delivery point”. However, the Agreement does not define what a “delivery point” for electricity consists of in the utility industry. For that information, Tri-County submits that the Commission must turn to what accepted engineering practices require in the utility industry to enable Citation Oil's gas plant and gas compressor sites to utilize the electricity supplied by either Tri-County or IP. To the extent the failure to define “delivery point” in the service area agreement creates an ambiguity, extrinsic engineering testimony is admissible to define the same (See Shields Pork Plus v Swiss Valley Ag Service 329 Ill App 3d 305; 767 NE2d 945; 263 Ill Dec 219, 223-224 (4th Dist 2002) where the Court found the contract phrase “progeny from a Newsham line”, when used to described the genetic makeup of feeder pigs which were the subject to the contract, was susceptible of more than one meaning and thus extrinsic evidence was allowed to show the intent of the parties as to the meaning of that contract phase.

Additionally, proper contract interpretation requires that no provision of the Contract otherwise relevant to the issue, can be ignored when determining a contractual dispute Carrico v Delp 141 Ill App 3d 684; 490 NE2d 972; 95 Ill Dec 880, 884 (4th Dist 1986). In this regard, it is noted that IP’s argument ignores the section of the March 18, 1968 Service Area Agreement that provide as follows:

Section 1(c):

“A new customer” as used herein means a person, corporation or entity, **including an existing customer**, who applies for...electric service at a point of delivery which is idle or not energized on the effective date of this agreement. (Emphasis added).

IP claims throughout its Motion for Summary Judgment that because IP was providing electric

service to Texaco Inc. on March 18, 1968 by means of the electric service connection between IP's Texas substation and Texaco's distribution system, the electric service connection points created thereafter by Citation Oil in Tri-County service territory for the gas plant and gas compressor sites do not constitute a new "point of delivery" of electric service because Citation Oil or its predecessor was the customer on March 18, 1968 and the customer on the date the subsequent electric service "delivery points" were created. IP's argument fails because it assumes that an "existing customer" cannot, under the Service Area Agreement, be considered to have established a new "delivery point" for providing electric service to facilities that did not exist on March 18, 1968. However, the March 18, 1968 Service Area Agreement clearly notes that an "existing customer" will become a "new customer" when an electric service connection "delivery point" which did not exist on March 18, 1968 is created to provide electric service to new facilities. Such is the factual situation we find in this docket with the Citation Oil gas plant and each of the gas compressor sites.

B. THE SERVICE AREA AGREEMENT DOES NOT AUTOMATICALLY PERMIT IP TO PROVIDE ELECTRIC SERVICE TO A NEW ELECTRIC SERVICE DELIVERY POINT CREATED BY CITATION OIL EVEN THOUGH IT IS AN "EXISTING CUSTOMER OF IP".

IP claims the Service Area Agreement expressly provides in Section 3(b) that:

"Each party shall have the right to continue to serve all of its existing points of delivery which are located within a service area of the other party on the effective date."

Based upon that contractual provision IP reasons that because Citation Oil is an "existing" customer taking service through its private distribution system from the Texas substation and because the Texas substation is located in Tri-County's service territory, IP can continue to provide electric service to all "points of delivery" of Citation Oil as IP's existing customer

whether the service connection points existed on March 18, 1968 or not. Such a contractual interpretation ignores the following Service Area Agreement provisions:

Section 1(c): "A new customer" as used herein means a person, corporation, or entity **including an existing customer**, who applies for... a point of delivery which is idle or not energized on the effective date of this agreement" (Emphasis added)

Section 3(a): Except as otherwise provided in or permitted by this Section and Sections 4 and 7 of this Agreement, each party shall have the exclusive right to serve all customers whose points of delivery are located within its Service Area and **neither party shall serve a new customer within the service areas of the other party**. (Emphasis added)

Reading the above contractual provisions together one clearly acquires the understanding that the parties intend that an "existing customer" can create a new delivery point for electric service and thus become a "new customer" for purposes of determining rights of service. If that new "delivery point" for electric service is located in the other supplier's electric service territory, in this case Tri-County's territory, Tri-County becomes the proper electric supplier for providing that electric service. Additionally, Section 3(a) makes it clear that IP can not provide electric service to a "new customer" whose point of delivery for that electric service is located in Tri-County's Service Area. That is exactly the factual situation we find in the instant case.

Accepted engineering practices within the electric utility industry provide that a "point of delivery" for electric service consists of a transformer reducing the electric voltage of the distribution or transmission line to a voltage that is usable by the electric motors and equipment located at the facility to be served with that electric service. Citation Oil created the gas plant with electric motors and other equipment located therein. The 12.47 kV distribution line voltage is too large to operate those motors and therefore requires the installation of transformers and other devices commonly used at electric delivery points in order to allow IP's electricity to

operate the gas plant and the gas compressor sites. Robert E. Dew, Jr., Tri-County's engineer, makes it perfectly clear this is a classic electric service delivery point as defined by accepted engineering practices within the electric utility industry. IP does not dispute the definition of an electric service delivery point as used in the electric utility industry. Further, IP does not dispute the fact that the electric service delivery points created for providing electric service to the gas plant and each of the gas compressor sites constitute delivery points for electric service as commonly defined and used in accordance with accepted engineering practices by the electric utility industry. Thus, if each of the electric service delivery points for the gas plant and the gas compressor sites constitute delivery points within the electric utility industry, the only question that remains is, did those delivery points exist on March 18, 1968? The resounding answer is **no**. Accordingly under Section 1(c) of the Service Area Agreement, Citation Oil becomes a "new customer" once it creates the new delivery points for electric service at the gas plant and the compressor sites. Because the delivery points are located in Tri-County's service area under the Service Area Agreement and because they did not exist on March 18, 1968, each delivery point so created becomes Tri-County's to serve and accordingly, IP's claim to the contrary is not supported by the plain meaning of the Service Area Agreement.

C. "EXISTING CUSTOMERS" BECOME "NEW CUSTOMERS" UNDER THE SERVICE AREA AGREEMENT WHEN A NEW ELECTRIC SERVICE DELIVERY POINT IS CREATED.

IP asserts that it is not subject to the provisions of Section 1(c) of the Agreement which provides that "existing customers" become "new customers" when establishing an electric service delivery point which did not exist on March 18, 1968. The basis for IP's claim is that the gas plant and gas compressor sites are not a separate or different corporate entity from Citation

Oil and thus the gas plant and compressor sites constitute a part of the facility of the corporate customer Citation Oil. This argument fails for the simple reason that such a distinction between an "existing customer" and a "new customer" is not set forth in the Service Area Agreement. This is a distinction that IP desires the Illinois Commerce Commission to incorporate into the Service Area Agreement between the parties. No authority is provided by IP for this assertion and in fact, none can be found. The Agreement simply provides in very clear and precise terms that when an "existing customer" creates a point of delivery for electric service which did not exist on March 18, 1968, that "existing customer" becomes a "new customer". If that new point of delivery is located in Tri-County's service area, Tri-County becomes the authorized electric service provider for that new electric service point of delivery.

It is not disputed that the electric service point of delivery for the gas plant and each of the compressor sites located in Tri-County's service area constitute delivery points for electric service as commonly understood and practiced in the electric utility industry based upon accepted engineering practices. Because those electric service delivery points did not exist on March 18, 1968, they are new. Since they exist in Tri-County's service area, Tri-County is authorized to provide electric service to them.

IP asserts that such an interpretation of the Service Area Agreement creates an "absurd" result. However, that was exactly the interpretation placed upon the Service Area Agreement by IP and Tri-County when Citation Oil applied for electric service from Tri-County for its new office facility located less than 100 yards from the electric service delivery point for the gas plant. Tri-County provides the electric service to the Citation Oil office. Additionally, that was IP's interpretation of the Service Area Agreement when citation Oil initially applied to IP for

electric service at the gas plant (Marcia Scott Affidavit).

Tri-County also has single phase and three phase electric service distribution lines located closer to the gas plant than either Citation Oil with its own distribution system or IP with its distribution system. Further, Tri-County's cost of extending electric service to the gas plant is less than what the cost was, as estimated by Tri-County's engineers, for Citation Oil to bring electric service generated by IP to the gas plant by means of the Citation Oil distribution system. Further, Tri-County can provide service to the "new" electric service connection points for the gas compressor sites located in Tri-County's service area by using Tri-County's distribution system existing in the area adjacent to the gas compressor sites as shown by the attached affidavit of Dennis Ivers. Thus, the course of conduct followed by Tri-County and IP in applying the same service area agreement provisions in prior situations when dealing with Citation Oil cannot be ignored and belie the claim that such an interpretation creates an "absurd" result. Occidental Chemical Co. v Agri Profit Systems, Inc. 37 Ill App 3d 599; 346 NE2d 482, 484 (2nd Dist 1975); Medelson v Flaxman 32 Ill App 3d 644; 336 NE2d 316, 319-320 (1st Dist 4th Div. 1975) Carrico v Delp 141 Ill App 3d 684; 490 NE2d 972, 883 (4th Dist 1986); 95 Ill Dec 880, 883-884 (4th Dist. 1986).

D. A CUSTOMER MAY HAVE MORE THAN ONE DELIVERY POINT

IP's argument assumes that a customer such as Citation Oil can have only one delivery point. That is not the case. The Commission has held in the past that a customer can, for purposes of the Electric Supplier Act, have more than one delivery point to which service is provided by more than one electric supplier. See Central Illinois Public Service Company v Spoon River Electric Cooperative, Inc. Ill. Com. Comn. ESA 249 (October 4, 1989) where the

Commission authorized both Spoon River and CIPS to serve separate electric service delivery points, both located on the prison site, but each of Spoon River's and CIPS' electric service delivery points were located in their respective authorized service territories. 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 NE2d 1200; 162 Ill Dec 386 (4th Dist 1991). See also Menard Electric Cooperative s Central Illinois Public Service Co. Ill. Com. Comn. No. 90-0217 (July 19, 2000) and Illinois Rural Electric Cooperative v Central Illinois Public Service Co. Ill. Com. Comn. No. 90-0287 (June 16, 1999) Affirmed on appeal in Central Illinois Public Service Company v Illinois Com. Comn. 342 Ill App 3d 617; 795 NE2d 865; 277 Ill Dec 197 (4th Dist 2003) (Pittsfield/Pleasant Hill) where in both decisions different suppliers were authorized to serve different customers located within the same premises.

To construe the Service Area Agreement any differently would allow the customer, Citation Oil, to choose its electric service provider contrary to the very provisions of the Service Area Agreement and contrary to the public policy of the State of Illinois as expressed through the Electric Supplier Act affective July 1, 1965, 220 ILCS 30/1 et seq. Additionally, it would allow IP to follow Citation Oil as its "existing customer" and to serve areas allocated by the Service Area Agreement as Tri-County's exclusive service area by use of customer owned distribution systems. IP would, with that argument, be allowed to ignore the carefully negotiated service territories between Tri-County and IP denying Tri-County the consideration it received when entering into the Service Area Agreement in the first place. Such a construction of the service area agreement would allow IP, through the use of the customer distribution system, to abrogate Tri-County's negotiated service territories which interpretation would violate the implied

covenant of good faith existing in all contracts. DeWitt County Public Building Commission v County of DeWitt 128 Ill App 3d 11; 469 NE2d 689; 83 Ill Dec 82, 88 (4th Dist 1984)

Such was not the intent of the parties as noted by the expressed provision set forth in Section 3(a) of the Service Area Agreement that provides "...neither party shall serve a new customer within the Service Area of the other party." It is hard to understand IP's assertion that it has the right to follow Citation Oil as its "existing customer" to serve new electric service delivery points not located in IP's service territory but located in Tri-County's service territory particularly in view of the foregoing contractual covenants to the contrary. It is further difficult to rationalize IP's argument that it can follow its "existing customer" Citation Oil to "new electric service delivery points" located in Tri-County's carefully negotiated service territory in view of the prior interpretation placed upon the Agreement by the parties when Tri-County was designated as the appropriate electric service provider for Citation Oil's office. That structure required a transformer and a new service delivery point for providing electric service. That new electric service delivery point is located in Tri-County's service area. It could have easily been served by IP through Citation Oil's existing customer owned distribution system connected to the IP Texas substation thereby allowing IP to provide its electricity to operate the Citation Oil office. However, the parties did not do that but followed the foregoing covenants of the Service Area Agreement. Lastly, IP's argument is difficult to rationalize in view of the fact that IP concurred in Tri-County's interpretation of the Service Area Agreement with respect to the initial request by Citation Oil for electric service to its gas plant. It is IP who is putting forth a tortuous and absurd argument to allow it to follow the customer, Citation Oil, wherever Citation Oil's distribution system will allow IP to provide electric service irrespective of the location of the

electric service delivery point in Tri-County's negotiated exclusive service area under the Service Area Agreement.

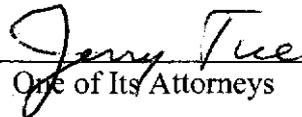
E. CONCLUSION

IP has not provided any admissible evidence to show that in fact the electric service delivery point for the Citation Oil gas plant and its gas compressor sites are anything but an electric service delivery point that did not exist on March 18, 1968 and therefore they are "new" electric service delivery points. Even though Citation Oil is an "existing customer" of IP, Citation Oil becomes a "new customer" by reason of the "new electric service delivery points" for the gas plant and each of the gas compressor sites. Since those "new electric service delivery points" are located in Tri-County's exclusive service territory as negotiated by Tri-County and IP under the Service Area Agreement, Tri-County is the appropriate electric supplier to each of those delivery points situated in Tri-County's service area. Since there is no dispute about these basic facts and since Tri-County's interpretation conforms with the prior course of conduct of Tri-County and IP in similar situations dealing with the customer Citation Oil, Tri-County's Motion for Summary Judgment should be granted and the Motion for Summary Judgment filed by IP should be denied.

Respectfully submitted,

TRI-COUNTY ELECTRIC COOPERATIVE, INC.

By GROSOLL BECKER TICE TIPPEY & BARR

By 
One of Its Attorneys

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PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 6 day of June, 2008, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the attached Reply by Tri-County Electric Cooperative, Inc. to the Motion for Summary Judgment by Illinois Power Company d/b/a AmerenIP, addressed to the following persons at the addresses set opposite their names:

Elliott M. Hedin
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Larry Jones
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Avenue
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A handwritten signature in cursive script, reading "Jerry Tice", is written over a horizontal line.