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CHIEF CLERK'S OFFICE

TRI-COUNTY ELECTRIC COOPERATIVE, INC.	)	
	)	
Complainant,	)	
	)	
vs.	)	DOCKET NO. 05-0767
	)	
ILLINOIS POWER COMPANY d/b/a AMERNIP,	)	
Respondent.	)	

REPLY OF TR-COUNTY ELECTRIC COOPERATIVE, INC. (TRI-COUNTY) TO THE RESPONSE OF ILLINOIS POWER COMPANY d/b/a AMERENIP (IP) TO TRI-COUNTY'S MOTION TO COMPEL

Tri-County Electric Cooperative, Inc., (Tri-County) (Complainant) by its Attorneys, GROSBOLL, BECKER, TICE, TIPPEY and BARR, herewith fillies its Reply to the Response by Illinois Power Company d/b/a AMEREIP (IP) (Respondent) to Tri-County's Motion to Compel and in support thereof states as follows:

1. IP's response to Tri-County's Motion to Compel is the same as the answers provided to Tri-County's Fourth Data Request. In each instance IP states it has produced all information and documents in its possession and that it is not required to produce any documents or information in the possession of others.

2. However, IP has filed prepared Direct Testimony presented by three employees of Citation Oil & Gas Corp., to wit: Jeffrey Lewis, Josh Kull, and Michael Garden supplementing IP's earlier Direct Testimony. Those witnesses have voluntarily come forward, at the request of IP, and provided written testimony and documents which have been filed in the record of this docket. IP contends that it has no control over the documents or information requested by Tri-County in its Supplemental Data Request directed to the Supplemental Prepared Direct Testimony filed by IP through the Citation employee witnesses. However, IP had sufficient

control over the Citation employee witnesses without the need for subpoenas issued by this Commission to obtain the written testimony and documents IP desired to present through the Supplement Prepared Direct Testimony of those witnesses. For all practical purposes the three Citation witness are within the control of IP. Only Michael Garden has been deposed by Tri-County primarily because he resides at Mt. Vernon, Illinois, and is the Senior Production Forman for Citation's Salem oil field. Josh Kull and Jeffrey Lewis are located at Citation offices located outside Illinois.

3. Witness Josh Kull presented written testimony and prepared Exhibits stating the number of oil wells opened by Citation since the 1970's to the present. Mr. Kull's Prepared Testimony states those exhibits were prepared from business records of Citation under his control. Now IP states in its Response to Tri-County's Motion to Compel that additional documents created by the operator of the Salem oil field exist with respect to wells drilled as follows:

A. OG-10 permit application;

B. OG-9 well completion report;

C. OG-5 well drilling report.

None of those documents were produce by IP in response to Tri-County's Data Request even though Citation is the operator of the Salem oil field and according to the prepared testimony of Josh Kull he would have control of the same.

4. All of the case authority cited by IP in its Response deal with discovery in the Circuit Courts of Illinois prior to the time that any witness has presented testimony. Written Prepared Testimony is not an accepted procedure under the Illinois Civil Practice Act in the Courts of this State. However the Illinois Commerce Commission through its rules authorizes written Prepared

Testimony which is the custom for proceedings before the Commission. With that in mind each of the parties in this docket have prepared written Direct and Rebuttal Testimony presented by witnesses which have been filed in this docket and served upon all parties. Tri-County's Supplemental Data Request at issue is designed to obtain clarifying information from IP regarding Supplemental Prepared Direct Testimony produced by the witnesses presenting such testimony without the need for deposing those witnesses. Written Interrogatories and/or Data Request are an authorized method under the Illinois Commerce Commissions Rules of Practice for obtaining such information.

5. IP should not be allowed to claim that it does not have the ability to obtain information that may be responsive to Tri-County's Supplemental Data Request from the three Citation employees IP has presented because IP does not have control over the witness or the information requested. Al l of Tri-County's Supplemental Data Request are directed to the testimony presented by those IP witnesses. IP provided absolutely no substantive answers to Tri-County's Supplemental Data Request pertaining to the prepared written testimony of those witnesses. Discovery is controlled by the Commission Rules, not the Illinois Civil Practice Rules regarding discovery. Section 200.340 of the Commission rules on discovery 83 Ill. Adm. Code Sec. 220.340 states:

> "It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Further, it is the policy of the Commission to encourage voluntary exchange by the parties and staff witnesses of all relevant and material facts to a proceeding through the use of requests for documents and information. Formal discovery by means such as depositions and subpoenas is discouraged unless less formal procedures have proved to be unsuccessful. It is the policy of the Commission not to permit requests for information, depositions, or other discovery whose primary effect is harassment or which will delay the proceeding in a manner which prejudices any party or the Commission, or which will disrupt the proceeding."

Since IP controls the three Citation employee witnesses, all IP has to do is have the Citation witnesses provide written information requested by Tri-County's Data Requests or provide the name of the Citation employees possessing the same. To allow IP to avoid responding to the discovery request of Tri-County would make a mockery of the Commissions discovery rules and the use of written prepared testimony.

6. With the foregoing in mind Tri-County would note the following with regard to IP's response to Tri-County's Fourth Supplemental Data Request:

Data Request No. 1: IP in its response to Tri-County's Motion to Compel now states there are additional documents prepared by the operator of the Salem oil field pertaining to wells drilled which is the subject of the Prepared Supplemental Direct Testimony of Josh Kull. Those documents now identified by IP are as follows:

A. OG-10 permit application

B. OG-9 well completion report;

C. OG-5 well drilling report;

None of those documents have been produced by IP even though they apparently are under the control of the IP witness Josh Kull.

Data Request No. 2: Tri-County inspected the Salem oil field on June 3, 2010 and deposed Citation employee Michael Garden who gave a brief explanation of the mechanical operation of the tank batteries which was minimally responsive to Data Request No.2. However since Michael Garden is IP's witness IP should not be allowed to produce more extensive information regarding the Salem oil field tank batteries than that presented through Tri-County's inspection of the oil field and deposition of Michael Garden.

Date Request No. 3: Tri-County was allowed to inspect the Salem oil field and electric facilities of Citation in the Salem oil field on June 3, 2010. Tri-County also deposed Citation's Senior Production Forman for the Salem oil field, Michael Garden, who did not possess expansive knowledge of the Salem oil field electric facilities. Accordingly, if IP is not ordered to provide a more complete response to Data Request No. 3, IP should be foreclosed from providing additional Prepared Testimony in this docket regarding information requested by Data Request No. 3.

Data Request No. 4: Tri-County inspected the Salem oil field on June 3, 2010 and deposed Michael Garden, Senior Production Forman for Citation at the Salem oil field. Michael Garden had limited knowledge with respect to the electrical power devices and motors utilized to operate the oil field collection components identified on IP's Respondent Exhibit 10.1, sponsored by Michael Garden. Therefore, to the extent IP is not required to provide the written information requested by Data Request No. 4, IP should not be allowed to produce additional Prepared Testimony regarding the subject matter of Data Request No. 4.

Data Request No. 5: Tri-County inspected the Salem oil field electric facilities on June 3, 2010. Tri-County deposed Michael Garden, Senior Production Forman for the Salem oil field who had limited knowledge with respect to the electric facilities operating the Salem oil field. To the extent IP is not required to respond fully to Data Request No. 5, IP should not be allowed to provide additional Prepared Testimony regarding the electric facilities of the Salem oil field beyond that provided Tri-County through the June 3, 2010 inspection and deposition of Michael Garden.

Data Request No. 6: Tri-County inspected the Salem oil field electric facilities on June 3, 2010 and deposed Robert C. Herr, IP's independent engineer witness who testified there were 68

water injection wells in operation in the Salem oil field that did not use electric facilities. To the extent IP is not required to provide a further response to Data Request No. 6 IP should be prevented from providing additional prepared testimony as to the subject matter of Data Request No. 6.

Data Request No. 7: Tri-County inspected the Salem oil field facilities on June 3, 2010 and obtained some information sought by Data Request No. 7 regarding electric facilities utilized to operate water injection wells. No Citation witness deposed by Tri-County was able to provide any additional information regarding the subject matter of Data Request No. 7. Therefore, to the extent IP is not required to more fully respond to Data Request No. 7, IP should be foreclosed from presenting additional prepared testimony regarding the subject matter of Data Request No. 7.

Data Request No. 8: Tri-County inspected the Salem oil field electric facilities on June 3, 2010 and through that inspection and the deposition of Michael Garden, Senior Production Forman for the Salem oil field, was able to obtain some information regarding electrical facilities used to operate oil wells in the Salem oil field. To the extent IP is not required to fully respond to Data Request No. 8, IP should be foreclosed from providing additional Prepared Testimony regarding the subject matter of Data Request No. 8.

Data Request No. 9: Tri-County inspected the Salem oil field electric facilities on June 3, 2010 and obtained information regarding the Citation electric distribution system in the Salem oil field through that inspection and through the deposition of Michael Garden, Senior Production Forman. However not all of the information requested by Data Request No. 9 could be obtained by Tri-County through the inspection of the facilities and deposition of Michael Garden. To the extent IP is not required to fully respond to the Data Request No. 9, IP should be

foreclosed from providing additional Prepared Testimony regarding the subject matter of Data Request No. 9.

Data Request No. 10: Tri-County was unable to obtain any information requested by Data Request No. 10 through its June 3, 2010 inspection of the Salem oil field or through its deposition of Robert Herr or Michael Garden, both of whom are IP witnesses. To the extent IP is not required to fully respond to Data Request No. 10, IP should be foreclosed from providing additional Prepared Testimony regarding the subject matter of Data Request No. 6.

WHEREFROE, TRI-COUNTY ELECTRIC COOPERATIVE, INC., requests the following relief:

A. That the Administrative Law Judge enter an Order requiring Illinois Power Company d/b/a AMERENIP to more fully respond to the foregoing Fourth Supplemental Data Request of Tri-County.

B. In the event IP does not provide a complete response to Tri-County's Fourth Supplemental Data Request then IP should be foreclosed from providing additional Prepared Testimony regarding the subject matter of Tri-County's Fourth Supplemental Data Request.

C. For such other and further relief as the Administrative Law Judge and the Illinois Commerce Commission deems equitable.

TRI-COUNTY ELECTRIC COOPERATIVE, INC.,
Complainant,

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PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 13 day of July, 2010, I served a copy of the Reply of Tri-County Electric Cooperative, Inc. (Tri-County) To The Response By Citation Oil & Gas Corp. (Citation) To Objections by Tri-County to Citation's Petition to Intervene, attached hereto to the following persons at the e-mail addresses as shown below:

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