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BEFORE THE
ILLINOIS COMMERCE COMMISSION

TRI-COUNTY ELECTRIC COOPERATIVE,) DOCKET NO.
INC.) 05-0767
-vs-)
ILLINOIS POWER COMPANY)
d/b/a AmerenIP)
Complaint under the Electric)
Supplier Act.)

Springfield, Illinois
Tuesday, April 26, 2011

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

MR. LARRY JONES, Administrative Law Judge

APPEARANCES:

MR. JERRY TICE and
MR. KEVIN D. TIPPEY
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Tri-County Electric Cooperative,
Inc.)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl Reporter
CSR #084-002710

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14 (Appearing on behalf of Citation
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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
TODD MASTEN				
By Mr. Baron	1409		1520	
By Mr. Tice		1410		1538
By Mr. Smith		1518		
JOSH KULL				
By Mr. Helmholz	1557		1577/1586	
By Mr. Tice		1560		1583
JEFFREY LEWIS				
By Mr. Helmholz	1589		1652	
By Mr. Tice		1591		

EXHIBITS

	<u>MARKED</u>	<u>ADMITTED</u>
AmerenIP 3, 3.1, 3.2, 3.3	E-Docket	1555
AmerenIP 4, 4.1	E-Docket	1591
AmerenIP 9	E-Docket	1591
AmerenIP 11, 11.1, 11.2, 11.3, 11.4	E-Docket	1560
Tri-County J	E-Docket	1588
Tri-County M	1405	-
Tri-County O	1449	1517

1 So we have done our best to make sure
2 it is a full day, but we don't know one way or the
3 other if that will happen.

4 JUDGE JONES: Is there an order for these
5 witnesses today?

6 MR. HELMHOLZ: Yeah, that was the order, Masten
7 Kull and Lewis.

8 JUDGE JONES: Thank you. We will go ahead and
9 proceed with those witnesses. Before we do that, is
10 there anything else that needs attention?

11 MR. TICE: There is one matter, Your Honor. At
12 the conclusion of our February or of the direct
13 testimony of Marcia Scott and her cross and redirect,
14 there were questions asked of her regarding a policy
15 that Tri-County had in place that concerned a
16 requirement of members of Tri-County to provide
17 easements to the co-op for gaining access in the
18 event they were to provide electric service to them.
19 That easement was testified to -- or that policy was
20 testified to by Ms. Scott and she was cross-examined
21 with respect to that policy.

22 I had indicated at the request of

1 Mr. Smith on behalf of Citation that Tri-County would
2 provide that written policy to them. We have done
3 that. We have indicated the date that the policy
4 regarding the requirement of members to provide an
5 easement to the co-op for providing service to the
6 member was adopted.

7 And what Tri-County would like to do
8 now as a matter of housekeeping is submit that actual
9 policy of Tri-County as a Tri-County exhibit. It
10 would be Tri-County Exhibit M, and to stipulate that
11 the date that the portion of the policy dealing with
12 the required member easement was 9/22, September 22,
13 2010. I have not filed this yet at this point, but I
14 will do so. I have handed copies of the written
15 policy to each of counsel. I can furnish a copy of
16 the policy to you.

17 And with respect to this Policy 191,
18 the portion of it in question is under Paragraph 3a.
19 Prior to September 22, 2010, Paragraph 3a was not in
20 the policy. It was subsequently adopted or changed.
21 The policy was changed to add what is now Paragraph
22 3a on September 22, 2010. I would submit Tri-County

1 Exhibit M as an exhibit in this record and ask that
2 it be admitted.

3 JUDGE JONES: Do other parties have any
4 objection to the admission of so-called Tri-County
5 Exhibit M?

6 MR. SMITH: No.

7 MR. HELMHOLZ: No, sir.

8 MR. SMITH: And I agree with the stipulation.

9 JUDGE JONES: Okay, thank you. And you plan to
10 file this on e-Docket?

11 MR. TICE: Well, I don't know what the
12 procedure is. I guess I just take it to the Clerk's
13 Office. I suppose I need to put a heading on it with
14 the case number and a case heading before I file it
15 in the Clerk's Office, Judge. I assume that's what
16 they want.

17 JUDGE JONES: Do you have copies here?

18 MR. TICE: Yes.

19 JUDGE JONES: Does anybody have a problem if we
20 just have the court reporter mark the copy? We can
21 do it that way.

22

1 (Whereupon Tri-County Exhibit M
2 was marked for purposes of
3 identification as of this date.)

4 JUDGE JONES: Mr. Tice, did you have something
5 else?

6 MR. TICE: One other matter is with reference
7 to Mark Bing who is a witness tomorrow. I don't know
8 that it needs to be taken up today, but I discussed
9 that -- Mr. Smith and I discussed that before the
10 proceeding commenced this morning. He had filed, I
11 believe it is, supplemental testimony of Mr. Bing's.
12 I had filed objections to that and he had filed a
13 response to that.

14 I assumed that, from the way things
15 have been handled in this proceeding so far, that the
16 way that would be handled would be that Mr. Bing
17 would be allowed to testify with regard to the
18 supplemental testimony that was submitted, and
19 whatever objections were filed with respect to that
20 would simply be taken with the record. I assume
21 that's what your plans were. I didn't know whether
22 you wanted to make a decision regarding that or not

1 today or tomorrow, before he took the stand.

2 JUDGE JONES: Probably --

3 MR. TICE: Tri-County has no objections to
4 having it taken with the record.

5 JUDGE JONES: There was a written ruling with
6 regard to the earlier testimony by Mr. Bing. I think
7 there was some question about whether the
8 supplemental testimony was consistent with the
9 earlier ruling or went beyond it. At this point I
10 may or may not have a question or two of counsel in
11 that regard.

12 So if that is clarified, if it needs
13 to be clarified once I look back through it, then
14 there may simply be a ruling on that, similar to the
15 earlier ruling, prior to Mr. Bing being crossed. I
16 suppose another possibility is to take those
17 objections or some portion of them with the case.
18 But given the earlier ruling, I will probably make a
19 somewhat similar ruling or attempt to make a similar
20 ruling consistent with the previous ruling which may
21 or may not be preceded by a couple of questions of
22 counsel. And Mr. Bing is scheduled for tomorrow?

1 MR. SMITH: Correct.

2 JUDGE JONES: Anything else on that at this
3 time?

4 MR. TICE: Nothing further.

5 JUDGE JONES: Before we turn it back to
6 AmerenIP --

7 MR. SMITH: Do you want to ask the questions
8 tomorrow on Mr. Bing or will you do that later today?

9 JUDGE JONES: I am not sure. It will kind of
10 depend on how the scheduling goes today. Probably
11 tomorrow. Probably do it at the time he is called.

12 If there is some understanding or
13 agreement among the parties as to what portions of
14 that testimony would be includable and what portion
15 would be excludable consistent with the earlier
16 ruling, we can do it that way, too. So if you are in
17 agreement on that, that will simplify things to some
18 extent.

19 I realize there is disagreement over
20 the underlying issues there. But whether portions of
21 the testimony would be stricken if it were treated in
22 a manner the same or similar to the earlier ruling is

1 sort of the open question that we are discussing
2 here. And if you wish to discuss that among
3 yourselves and clarify that, then we can handle that
4 in a similar manner.

5 MR. TICE: I think the parties can reach
6 agreement on how to handle that, Judge. I need to
7 talk to Mr. Smith about it, but I think we can. We
8 will advise you of it later today.

9 JUDGE JONES: Sounds good. On to the AmerenIP
10 witnesses. So the first witness is who?

11 MR. BARON: AmerenIP asks to call Todd Masten
12 as its first witness.

13 MR. HELMHOLZ: Your Honor, may I be excused at
14 this point?

15 JUDGE JONES: Oh, sure. We will see you later.

16 Please stand and raise your right hand
17 and be sworn.

18 (Whereupon the witness was duly
19 sworn by Judge Jones.)

20 JUDGE JONES: Thank you. Please be seated.

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TODD MASTEN

called as a witness on behalf of Illinois Power
Company d/b/a AmerenIP, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARON:

Q. Can you state your name for the record,
please.

A. Todd Masten.

Q. If I could hand you AmerenIP Exhibit 3,
along with AmerenIP Exhibit 3.1, 3.2 and AmerenIP
Exhibit 3.3. Is AmerenIP Exhibit 3, along with the
accompanying exhibits, your prepared testimony in
this matter?

A. Yes, it appears to be.

Q. And is this a true and accurate copy of
your direct testimony?

A. It appears to be.

Q. And is this a true and accurate copy of the
exhibits attached to your direct testimony?

A. I believe so.

Q. And do you have any changes that you would

1 like to make to your direct testimony?

2 A. No.

3 MR. BARON: At this time, Your Honor, I would
4 like to tender the witness for cross examination.

5 JUDGE JONES: Thank you. Does Tri-County
6 Electric Cooperative have cross examination questions
7 for Mr. Masten?

8 MR. TICE: Yes, we do.

9 CROSS EXAMINATION

10 BY MR. TICE:

11 Q. Mr. Masten, you have worked with Ameren for
12 how long now?

13 A. Well, I began with CIPS in 1991. I
14 actually began work as an Ameren employee when the
15 merger occurred in 1997.

16 Q. And your capacity with or your duties with
17 CIPS when you were employed in 1991 were what?

18 A. I was in the accounting department at that
19 time in general accounting.

20 Q. Now, your prepared direct testimony
21 indicates on page 2, lines 11 and 12, that you are
22 what is called a Regulatory Specialist with Ameren

1 Services.

2 A. That was true in 2005.

3 Q. Prior to 2005 what were your duties?

4 A. Well, again, I was in the accounting
5 department, I was in the internal audit department,
6 and then joined the regulatory function in
7 approximately 2001.

8 Q. Two thousand what?

9 A. One.

10 Q. Now, was CIPS then merged with Ameren in
11 1997? Is that what happened?

12 A. No, CIPS merged with Union Electric to form
13 Ameren.

14 Q. I see. But that all occurred in 1997, did
15 it?

16 A. Approximately. Yeah, I think it was
17 official in '97.

18 Q. When you say regulatory specialist,
19 starting with 2001, what does that mean?

20 A. It is pretty generic, right? Well, you
21 know, at that time when I began in the regulatory
22 function, I had different responsibilities than I

1 have now. I was part of the deregulation team, and
2 so I worked on calculation of transition charges and
3 market values for customers who would later become,
4 you know, open access customers.

5 Q. Was that in 1997 or was that 2001?

6 A. 2001. And so then later I transitioned
7 into -- probably about 2003 I began working on
8 territorial issues and then also the other part of
9 what I now do, and that is I am the wholesale
10 customer liaison with co-ops and municipal utilities
11 who take service from us.

12 Q. Now, what are your duties in being a
13 liaison for Ameren Services with co-ops?

14 A. In most responsibilities I am more or less
15 their key account executive, their contact for any
16 service issues they may have between themselves and
17 Ameren, like metering issues or delivery point
18 issues. I mean, cooperatives take, as most of you
19 know, I think, take service off of Ameren, Ameren's
20 high voltage systems. And so as part of that service
21 I help them on behalf of Ameren to work through any
22 issues they may have.

1 Q. Now, Ameren Services is what? What's its
2 duty and function?

3 A. Ameren Services is a services company that
4 provides administrative services to any of the Ameren
5 companies. You know, the Ameren companies, of
6 course, have grown over the years. At that time and,
7 you know, when I began with the company, it was just
8 Union Electric and CIPS were operating companies.
9 And so Services provided kind of an umbrella
10 administrative function for those two companies. And
11 now, of course, that's grown. We also have CILCO and
12 IP in the family. So Services provides
13 administrative services for all of those Ameren
14 companies.

15 Q. When you say administrative services, you
16 mean services that would traditionally be office type
17 services rather than, let's say, engineering or
18 technical services, is that correct?

19 A. You know, it also includes some engineering
20 services but, yeah, accounting, information
21 technology, legal. But also gives some information
22 or, that is, some engineering services, technical

1 services.

2 Q. Do you have a certain area or a certain
3 group of co-ops within Illinois where you provide
4 this, you perform these duties as a regulatory
5 specialist for Ameren Services?

6 A. I provide that role for most co-ops in
7 Illinois, not those in the far north but otherwise
8 any co-op in Illinois.

9 Q. Now, you are familiar with Tri-County
10 Electric Cooperative Incorporated?

11 A. Yes.

12 Q. How long have you been familiar with them?

13 A. I probably began a relationship with them
14 in my role as a key account liaison probably in about
15 2003 time frame.

16 Q. Now, you say key account liaison, does that
17 include the territorial matters also?

18 A. No, it does not.

19 Q. When did you start having a relationship
20 with Tri-County with regard to territorial matters?

21 A. Tri-County was primarily taking service off
22 of Illinois Power. And so I would not have begun

1 that role with them until Illinois Power became part
2 of Ameren which was approximately the beginning of
3 2005.

4 Q. So the early part of 2005 then you would
5 say that your relationship with Tri-County Electric
6 Cooperative Incorporated commenced in terms of
7 dealing with them on territorial issues, is that
8 correct?

9 A. That would be my recollection.

10 Q. Was there someone -- and the reason that
11 your relationship with them with regard to those
12 kinds of matters commenced at that time was because
13 of what?

14 A. This case.

15 Q. No, there was a merger, was there a merger
16 with --

17 A. I am sorry, yes.

18 Q. You came into that role because IP merged
19 with Ameren, is that correct?

20 A. Correct, correct.

21 Q. Prior to that date of that merger of IP
22 with Ameren, was there someone else at IP that had

1 that sort of relationship on territorial matters with
2 Tri-County for IP?

3 A. Yes. That would be Bob.

4 Q. By IP, I mean Illinois Power Company.

5 A. Yes. Do you want that name?

6 Q. Yes.

7 A. Bob Perks.

8 Q. Did Bob Perks work with you at all or with
9 anyone at Ameren Services subsequent to the merger
10 date of Illinois Power with Ameren in early 2005
11 regarding the territorial matters?

12 A. Some territorial matters, yes. I mean,
13 specific ones.

14 Q. Was there a transition period, is what I am
15 saying?

16 A. Yeah.

17 Q. How long was that?

18 A. Some period of months.

19 Q. Would that have taken you into the middle
20 of 2005?

21 A. Oh, boy. No, I think that Bob was gone
22 pretty early along. I think he may have only been

1 around a few months after the merger.

2 Q. Now, the request by Citation in this case
3 for electric service at the gas plant, which request
4 commenced this matter, was in early 2000 --

5 MR. SMITH: Object to the form of the question.

6 MR. BARON: Concur.

7 BY MR. TICE: I will withdraw the question.

8 Q. Do you recall the date that Citation
9 commenced or made a request for electric service in
10 this matter?

11 A. No.

12 Q. Do you know when you first became familiar
13 with this case and the request of Citation for
14 electric service at its gas plant?

15 A. Well, I know that the e-mails began to be
16 traded about the beginning of March of 2005 that I
17 was copied on.

18 Q. At that point in time was Bob Perks still
19 working with you and Ameren Services regarding
20 territorial matters and the relationships with the
21 co-ops in Illinois?

22 A. No.

1 Q. Was Bob Perks ever involved in any of the
2 discussions regarding electric service to Citation in
3 this case?

4 A. Not that I am aware of.

5 Q. Now, in your duties as a regulatory
6 specialist, you, I presume, became familiar with the
7 Service Area Agreements that electric co-ops in
8 Illinois have with the Ameren companies?

9 A. Ultimately I have to, but there are a lot
10 of them. So I didn't immediately begin to
11 familiarize myself. Generally, I would familiarize
12 myself as needed.

13 Q. Now, when the request by Citation for
14 electric service at the gas plant occurred in this
15 case, you had or AmerenIP had a district engineer
16 involved that was dealing with that request, isn't
17 that correct?

18 MR. SMITH: Object to the use of the form
19 "request".

20 MR. BARON: Concur.

21 THE DEPONENT: Can you give me a specific name
22 so I can --

1 BY MR. TICE:

2 Q. Was there a district engineer involved?

3 A. Well, there is an engineer -- I am sorry.

4 JUDGE JONES: Just a minute.

5 MR. SMITH: I don't know that this was a
6 request for service as much as the issue is a request
7 for information. So, hence, the objection that I
8 had. And without interrupting him again, I mean, if
9 it could be a continuing objection.

10 JUDGE JONES: Any response?

11 MR. TICE: Well, there was a request made. It
12 involved -- by Citation. That is clearly the
13 evidence in this case at this point. It involved a
14 request to both IP and Tri-County. It involved
15 providing electricity to the gas plant in question.
16 I believe the question as it is phrased is
17 appropriate to this witness.

18 JUDGE JONES: All right. Well, I tell you
19 what, I think that after the objection there was sort
20 of a re-worded question that was partially answered
21 so I am not quite sure where the objection -- to what
22 the objection applies right there. So the simplest

1 thing is probably to ask another question and we will
2 see if there is a problem with it in the view of
3 others.

4 BY MR. TICE:

5 Q. Does AmerenIP have district engineers who
6 work throughout this Ameren or the AmerenIP service
7 area with regard to matters for electric service by
8 customers?

9 A. Yes.

10 Q. And you know the area or the division or
11 the district that Tri-County Electric Cooperative,
12 Inc., is located in, don't you?

13 A. Yes.

14 Q. What's the name of the district engineer
15 that was at work for AmerenIP in early March 2005?

16 A. I am sorry?

17 Q. What was the name of the district engineer
18 that was working for AmerenIP in the district in
19 which Tri-County Electric Cooperative, Inc., is
20 located?

21 A. Mike Tatlock.

22 Q. You became aware at some point in time, did

1 you not, Mr. Masten, that there had been a request
2 regarding some type of electric service from Citation
3 for a gas plant located in the district of AmerenIP
4 where Michael Tatlock works?

5 A. Yes.

6 Q. And you also became aware of the fact that
7 that was the same location or the service area of, in
8 general, of Tri-County Electric Cooperative, Inc.,
9 weren't you?

10 A. Yes.

11 MR. TICE: Now I am going to hand you Exhibit
12 A-5. It is Tri-County Exhibit A-5 which are copies
13 of a series of e-mails that were provided to
14 Tri-County in discovery in this case. I would like
15 to have you take a look at those.

16 Judge, do you need a copy of these?
17 They are with Marcia Scott's testimony. I am not
18 sure whether you -- I have extra copies.

19 JUDGE JONES: If you have an extra, go ahead
20 and give it to me. I am not sure I have it in the
21 room here.

22

1 BY MR. TICE:

2 Q. Would you take a moment and look at those
3 series of e-mails, Mr. Masten?

4 A. Okay.

5 Q. Now, in your direct testimony marked Ameren
6 Exhibit 3, page 2, line 16 or line 13, I am sorry,
7 you were asked the question, "What are your duties in
8 your position as Regulatory Specialist?" And your
9 answer said you were responsible for administering
10 Service Area Agreements between any one or more of
11 the Ameren Illinois Utility companies and other
12 providers of electric power. In that answer who do
13 you include within other providers of electric power?

14 A. Co-ops, municipal utilities.

15 Q. That would include then Tri-County Electric
16 Cooperative, Inc., in this particular case, is that
17 correct?

18 A. Sure.

19 Q. You were asked the question at line 16 on
20 page 2 of your direct testimony what others involved
21 or were others involved in administering those
22 Service Area Agreements, and your answer was, "Yes,

1 Mike Tatlock." And you said he had frontline
2 responsibility for addressing questions concerning
3 Service Area Agreements. What do you mean by
4 frontline responsibility?

5 A. Well, I would say it is a team effort.
6 They -- you know, these field representatives
7 understand the systems and they understand the
8 co-ops' or other utilities' systems. They have plat
9 maps, an understanding of areas that, you know, they
10 can look at a territorial agreement, the map
11 associated with that, and understand where the lines
12 may be, whereas I am not familiar with areas
13 specifically. So, again, it is just a team effort.

14 Q. Do you know how long Mike Tatlock had been
15 in his position as district engineer in this area or
16 the district where Tri-County Electric Cooperative is
17 located?

18 A. None whatsoever.

19 Q. Now, he was in that position when the
20 AmerenIP merger occurred, wasn't he?

21 A. As far as I know.

22 Q. And I think you have referred to Michael

1 Tatlock in your deposition as sort of "boots on the
2 ground" when it comes to resolving territorial
3 matters, is that correct?

4 A. Possibly. Sounds familiar.

5 Q. What do you mean by "boots on the ground"?

6 A. Well, again, it is someone who is familiar
7 with an area, is familiar with the systems in the
8 area, is familiar with county lines and roads and,
9 you know, they know things that I couldn't know
10 because I am not familiar with them.

11 Q. Did Michael Tatlock deal initially with
12 Tri-County and other electric co-ops in his district
13 regarding territorial issues?

14 A. I would say yes.

15 Q. To do that he would have to have some
16 familiarity with the Service Area Agreement, wouldn't
17 he?

18 MR. BARON: Objection, calls for speculation.

19 MR. TICE: He can answer yes or no.

20 JUDGE JONES: I think that's a proper cross
21 question. You can answer it if you have an answer.

22 THE WITNESS: A. I would assume he would have

1 to have some familiarity.

2 BY MR. TICE:

3 Q. Now, you have a copy of that Service Area
4 Agreement between Tri-County and IP attached to your
5 prepared direct testimony as AmerenIP Exhibit 3.1.

6 Do you have that with you there?

7 A. Yes.

8 Q. And do you know the date of that agreement?

9 A. March 18 of 1968.

10 Q. So this agreement that you have attached as
11 AmerenIP Exhibit 3.1 is the agreement that is at
12 issue in this case, isn't it?

13 A. Yes.

14 Q. That agreement has been in existence a long
15 time, hasn't it?

16 A. Sure has.

17 Q. And, in fact, as far as you know isn't it
18 true that Michael Tatlock had dealt with this
19 agreement longer than you had?

20 A. I can only assume that he would have.

21 Q. Now, in your direct testimony here on page
22 2, in your answer that begins at line 17, you say in

1 the second sentence on line 18, "And they would reach
2 out to me," I think you are referring to Michael
3 Tatlock, "for my input when they encountered issues
4 requiring more in-depth analysis." Is that in
5 reference to territorial issues?

6 A. Yes.

7 Q. Now, on Tri-County Exhibit A-5 that I have
8 handed to you, these are a series of e-mails, the one
9 being dated March 9, 2005, and it is from Michael
10 Tatlock to Conrad Siudyla who has also testified in
11 this matter, and with a copy to you, Mr. Masten, and
12 to a Kelly Ray Bauza, B-A-U-Z-A, is that correct?

13 A. I pronounce it Bauza.

14 Q. Bauza. Why would this e-mail of March 9,
15 2005, which tells of this inquiry by Citation
16 regarding electric service to this gas plant, why
17 would that have been forwarded to you or copied to
18 you by Michael Tatlock?

19 A. The first line refers to a territorial
20 issue between AmerenIP and Tri-County. So it would
21 make sense to copy me.

22 Q. And is that because of your position as a

1 regulatory specialist with AmerenIP at the time?

2 A. It's because I help administer Service Area
3 Agreements and territorial issues.

4 Q. And you, I assume, received this e-mail of
5 March 9, 2005, is that correct?

6 A. Yes, a copy of it.

7 Q. And then there was another e-mail by
8 Michael Tatlock to Conrad Siudyla. It is on the
9 second page of that exhibit, dated March 19, 2005,
10 again about the same subject.

11 JUDGE JONES: Is that a question?

12 Q. The question is, did you receive that
13 e-mail dated April 19, 2005?

14 A. It does appear so.

15 Q. Did you then receive a copy of the e-mail
16 dated April 25, 2005, from Michael Tatlock to Conrad
17 Siudyla?

18 A. It doesn't appear so. I don't believe so.

19 Q. There is an e-mail then of April 26 from
20 Conrad Siudyla directed to you. Did you receive that
21 e-mail?

22 A. I am sure I did.

1 Q. And then this is on a third page. There is
2 a fourth e-mail from Conrad Siudyla directed to you
3 and several others. Did you receive that e-mail
4 dated June 21, 2005?

5 A. Evidently, yes.

6 Q. Now, as to these e-mails that you received,
7 do you have any doubt in your mind as to the validity
8 or the truth of these e-mails, the ones that you
9 received?

10 A. Do I have any doubt that what I am seeing
11 here is what happened?

12 Q. That's what was being said.

13 A. Yeah, I mean, what is in e-mails is in
14 black and white.

15 Q. You don't doubt it?

16 A. No.

17 Q. All right. Now, on your direct testimony
18 on page 3, line 16, you were asked a question if you
19 were familiar with the dispute between Tri-County and
20 AmerenIP over the gas plant proposed by Citation.
21 Your answer was yes. Does your familiarity with that
22 issue or part of your familiarity with that issue

1 arise from these e-mails that you would have received
2 from Michael Tatlock and Conrad Siudyla that are
3 marked as Tri-County Exhibit A-5?

4 A. Yes.

5 Q. Were you familiar then with the fact that
6 Citation intended to build this gas plant, and the
7 gas plant was going to be located on Tri-County's
8 side of the territorial boundary line of the
9 territory agreement that's marked Exhibit 3.1 of your
10 prepared testimony?

11 A. Could you say that again? I am sorry.

12 Q. Were you familiar then when you answered
13 this question in your direct testimony on page 3 that
14 you were familiar with this dispute, were you
15 familiar with the fact that the Citation gas plant
16 was intended to be located by Citation on
17 Tri-County's side of the boundary line that existed
18 between IP and Tri-County?

19 A. Yes, that would have been covered in
20 e-mails.

21 Q. And were you familiar with the fact that
22 Citation intended to have a 1500kVA transformer put

1 in place to serve that gas plant?

2 A. I also think that may have been covered in
3 e-mails.

4 Q. In fact, it was covered in a March 9, 2005,
5 Michael Tatlock e-mail to Conrad Siudyla with a copy
6 to you, wasn't it?

7 A. Yes.

8 Q. And were you familiar then, Mr. Masten,
9 with the fact that Citation had advised IP through
10 Michael Tatlock that the expected approximate load at
11 peak for that gas plant was 750kW?

12 A. Yes, it is also in this e-mail.

13 Q. And were you also familiar then,
14 Mr. Masten, with the fact that Michael Tatlock as the
15 district engineer and sort of boots on the ground on
16 these territorial matters, had checked the
17 territorial map and found that the Citation gas plant
18 would in fact be located on Tri-County's side of the
19 territorial boundary line?

20 A. There again, it is stated in the e-mails
21 here.

22 Q. And you were familiar with that fact then?

1 A. Yes, based on Mike's understanding.

2 Q. You had knowledge of that -- did you have
3 knowledge of that fact?

4 A. It is right here in the e-mails.

5 Q. All right. Did you also have knowledge of
6 the fact when you received this March 9, 2005, e-mail
7 that Michael Tatlock had told Clyde Finch of Citation
8 that Citation needed to request electric service from
9 Tri-County because the plant was located on
10 Tri-County's side of the territorial boundary line
11 with IP?

12 MR. SMITH: Objection.

13 A. That's what Mike had said.

14 MR. BARON: Concur.

15 MR. TICE: What did he say?

16 MR. BARON: Hearsay objection.

17 JUDGE JONES: The witness answered the
18 question. The witness is answering questions pretty
19 quickly after the question comes out. So if he
20 answers it before the objection is lodged, then it is
21 actually your witness. I don't know that there is
22 really very much I can do about that.

1 BY MR. TICE:

2 Q. All right, now, Mr. Masten, did you also
3 have knowledge of the fact that Clyde Finch of
4 Citation had asked Mr. Tatlock if Citation could run
5 their own distribution line to the new proposed gas
6 plant?

7 MR. BARON: Objection, hearsay.

8 MR. TICE: Well, Your Honor, it is in the
9 e-mail. I am simply asking him if he had knowledge
10 of that fact. He said he had knowledge of the facts
11 in the e-mail. I am simply asking if he had
12 knowledge of that specific fact that was in the
13 e-mail. I don't believe that's hearsay at all. It
14 is a question as to whether or not he has the
15 knowledge of it, either yes or no. He doesn't have
16 knowledge or he does have knowledge.

17 JUDGE JONES: Response?

18 MR. BARON: He is asking about -- he is not
19 asking about anything that Mr. Tatlock reported to
20 him. He is asking about information that Mr. Finch
21 supposedly told Mr. Tatlock.

22 MR. TICE: He has in fact acknowledged already,

1 this witness, that this information was reported to
2 him by Michael Tatlock, and in his own direct
3 testimony he talks about the fact that he is there
4 for Michael Tatlock, the boots on the ground, to ask
5 for this witness' input on territorial issues. He is
6 the regulatory specialist. I think it is appropriate
7 to ask him that question if he had knowledge of that
8 fact that he has already admitted was disclosed to
9 him.

10 JUDGE JONES: Could I have the question read
11 back, Ms. Reporter? Thank you.

12 (Whereupon the requested portion
13 of the record was read back by
14 the Reporter.)

15 JUDGE JONES: Why is that hearsay?

16 MR. BARON: Hearsay is he starts out with what
17 Mr. Finch told Mr. Tatlock. It is not what
18 information that Mr. Tatlock reported to the witness.
19 It is double hearsay, basically. It is something
20 that someone told someone else who then allegedly
21 reported back to the witness.

22 JUDGE JONES: Is this information in the record

1 somewhere at this time?

2 MR. TICE: Yes.

3 JUDGE JONES: You are asking this witness if he
4 has knowledge of something. There is a record in
5 this case. We have sort of this hearsay objection
6 that's pending against it, that's pending. Is this
7 information that you are asking him if he has
8 knowledge of in the record?

9 MR. TICE: It is in the record. Tri-County has
10 submitted it as a part of their direct case.
11 Mr. Tatlock was cross-examined with respect to this
12 same Exhibit A-5, this same e-mail, and asked if he
13 had forwarded it on to Mr. Masten, and he
14 acknowledged that he had. This witness has
15 acknowledged that he received it and he is familiar
16 with the content. That's been the testimony up to
17 this point. It is a document in the record and has
18 been admitted.

19 JUDGE JONES: Do you dispute that that's in the
20 record?

21 MR. BARON: No, I don't dispute that that's in
22 the record. And my objection is not to what

1 Mr. Tatlock told Mr. Masten.

2 JUDGE JONES: Well, rather than belabor this, I
3 mean, Mr. Tice has said that this -- he stated that
4 this information is in the record. I don't know that
5 that statement is being challenged. He appears to be
6 asking the witness if he has knowledge of some
7 information that Mr. Tice has said is in the record.

8 So I will allow the question. If the
9 witness is able to answer it, he can do so. And if
10 not, then he won't be required to do so.

11 Do you need it read back, sir?

12 THE WITNESS: A. I think I can remember it.
13 Again, what I am seeing in the e-mail seems to be in
14 line with what you have asked, Mr. Tice.

15 BY MR. TICE:

16 Q. So you had knowledge of that fact that --
17 yes or no, you had knowledge of the fact --

18 JUDGE JONES: You don't have to answer this yes
19 or no. If that's -- if the question is answerable
20 yes or no and there is an objection to an answer that
21 goes beyond yes or no, we can take that up. Some
22 questions can be answered yes or no; some can't.

1 But given where we are with this
2 question and this line, there is an objection to it,
3 etcetera, I am not going to allow the question that
4 demands of the witness an answer to this particular
5 question in a yes or no manner.

6 BY MR. TICE:

7 Q. And did you also have knowledge,
8 Mr. Masten, at the time of this e-mail, March 9,
9 2005, or shortly thereafter, that Mr. Tatlock had
10 advised Clyde Finch of Citation that they could not
11 run that distribution line to their gas plant without
12 asking Tri-County's permission?

13 A. I see that's also covered in the e-mail.

14 Q. Now, on April 26, 2005, I am going to draw
15 your attention to what is the third page of the
16 Tri-County Exhibit A-5. The e-mail from Conrad
17 Siudyla to you, Mr. Masten, provides certain
18 information about what Mike Tatlock and Conrad
19 Siudyla had passed on to or told Clyde Finch of
20 Citation. Is the information that is stated in that
21 e-mail of April 26, 2005, and the information -- or
22 does that contain the knowledge that you possessed

1 regarding the inquiry about electric service for the
2 gas plant that you possessed -- is that the knowledge
3 that you possessed at that time?

4 A. That question is confusing to me.

5 Q. Let me rephrase it. I want you to look at
6 the e-mail of April 26, 2005, from Mr. Siudyla to you
7 with a copy to Michael Tatlock. What is Mr. Siudyla
8 telling you in that e-mail?

9 MR. SMITH: Accumulative.

10 A. I wish I had brought my glasses, I can tell
11 you that. Basically, he appears to be telling me
12 what he and Mike Tatlock had spoken to Clyde Finch
13 about, reviewing position of a proposed 800kW load
14 located in Tri-County's territory. Tri-County has
15 the right to serve this load. If Citation extends
16 their distribution lines to the new load, it would
17 violate our agreement with Tri-County. AmerenIP will
18 not support this arrangement. He is giving me his
19 opinion on the situation.

20 Q. Did he also tell you that Michael Tatlock
21 and Conrad Siudyla had told Citation they needed to
22 contact Tri-County to discuss the matter?

1 A. That's what it says, yes.

2 Q. All right. Now, did you ever become
3 involved with any meetings with Tri-County yourself
4 personally regarding this dispute between IP and
5 Tri-County over the electric service to the gas
6 plant?

7 A. Yeah, at a later point, approximately the
8 first of July.

9 Q. Are you familiar with any meetings that
10 Citation had with Tri-County regarding electric
11 service to the gas plant?

12 A. No, I am not. I think I remember reference
13 to meetings later in June perhaps.

14 Q. Are you aware of the fact that Citation had
15 a meeting with -- Citation representatives, that
16 is -- had a meeting with Tri-County on or about June
17 22, 2005, concerning electric service to the gas
18 plant?

19 A. It rings a bell.

20 Q. How did you become aware of that meeting?

21 A. It may have been referenced in an e-mail.
22 It is in the June 21. There is reference to it in

1 the June 21 e-mail which I was copied on.

2 Q. That's the third page of Tri-County Exhibit
3 A-5?

4 A. Correct.

5 Q. And what's it say about that meeting of
6 June 21 or June 22, 2005?

7 A. Citation has a meeting scheduled with
8 Tri-County tomorrow. They wanted to meet with
9 AmerenIP prior to the Tri-County meeting to confirm
10 our position.

11 Q. And do you know what they meant by saying
12 "confirm our position"?

13 A. No.

14 Q. By "our" do they mean IP or do you know?

15 A. I do not know.

16 Q. Did you make any inquiry to find out what
17 was meant by "our position"?

18 A. No.

19 Q. Did you talk to either Conrad Siudyla or
20 Michael Tatlock regarding this proposed meeting that
21 Citation wanted with AmerenIP before they met with
22 Tri-County?

1 A. I do not recall.

2 Q. Now, again, were you aware from the June
3 21, 2005, e-mail that Citation had been advised by
4 either Conrad Siudyla or Michael Tatlock that they
5 could not serve their gas plant, that is Citation's
6 distribution line, without Tri-County's consent?

7 A. I would have to reread the e-mail.

8 Q. Would you do that?

9 A. I am sorry, would you restate the question?

10 Q. As a result of this June 21, 2005, e-mail,
11 were you knowledgeable of or aware of the fact that
12 either Michael Tatlock or Conrad Siudyla or both had
13 told Citation they could not serve the gas plant by
14 Citation's distribution line without consent of
15 Tri-County?

16 A. It appears to be covered in this e-mail,
17 yes.

18 Q. Now, were you also advised or did you
19 become aware of the fact that Conrad Siudyla and
20 Michael Tatlock had been asked by Jeff Lewis what the
21 steps would be that would be taken if Tri-County
22 didn't agree to allow the Citation distribution line

1 to be used to serve the gas plant?

2 MR. BARON: Object to the form of the question.

3 MR. TICE: Again, I am just asking if he became
4 aware of or had knowledge.

5 JUDGE JONES: Could we have the question read
6 back, Ms. Reporter? Thank you.

7 (Whereupon the requested portion
8 of the record was read back by
9 the Reporter.)

10 JUDGE JONES: Given the objection, I will
11 sustain it. It sort of starts out with two scenarios
12 there. So you can break it down if you want.

13 BY MR. TICE:

14 Q. Did you have knowledge as a result of this
15 June 21, 2005, e-mail, Mr. Masten, that Jeff Lewis of
16 Citation had been told by either Conrad Siudyla or
17 Michael Tatlock that they could not serve, that is
18 Citation, could not serve the gas plant by the
19 Citation distribution line?

20 A. If you are --

21 MR. BARON: Asked and answered. That's my
22 objection.

1 A. Yeah.

2 Q. He just answered it. Now, did you become
3 aware from this June 21, 2005, e-mail, Mr. Masten,
4 that Jeff Lewis of Citation had asked what steps
5 Citation could take if Tri-County didn't agree to
6 allow Citation to use their distribution line to
7 serve the gas plant?

8 A. I assume it is covered in this last line of
9 the e-mail here. Jeff wanted to know what steps
10 Citation could take if Tri-County does not agree to
11 allow Citation's line in Tri-County territory.
12 That's Jeff Lewis.

13 Q. You received this copy of the June 21,
14 2005, e-mail?

15 A. Yes, I am copied on this, yes.

16 Q. So is it fair to say then, Mr. Masten, that
17 as of at least June 21, 2005, you were aware of the
18 inquiry by Citation for electric service to a gas
19 plant to be located on Tri-County's side of the
20 territorial boundary line?

21 A. Yes.

22 Q. Is it also fair to say that as of June 21,

1 2005, you were aware of the fact that Michael Tatlock
2 and Conrad Siudyla of IP had on at least one other
3 occasion or more told Citation that the electric
4 service for the gas plant is to be provided by
5 Tri-County?

6 A. Yes.

7 Q. And were you aware -- is it fair to say
8 that you were aware of on June 21, 2005, that either
9 Michael Tatlock or Conrad Siudyla or both of them on
10 behalf of IP had told Citation representatives
11 Citation could not use their distribution line to
12 serve the gas plant without consent of Tri-County?

13 MR. BARON: Objection, asked and answered.

14 MR. TICE: This is a different question. I
15 asked him if it is fair to say that he was aware of
16 that fact.

17 JUDGE JONES: How is that different?

18 MR. TICE: Pardon?

19 JUDGE JONES: How is that different than any
20 questions that were asked and answered? I mean,
21 that's the objection, it's been asked and answered.

22 MR. TICE: I understand it is. And I think it

1 is a summary of what he has testified to, and I think
2 I have a right on cross examination to make sure that
3 that's exactly what he is testifying to.

4 JUDGE JONES: I will allow the question.

5 Objection over ruled.

6 Do you need it read back?

7 THE WITNESS: Please.

8 (Whereupon the requested portion
9 of the record was read back by
10 the Reporter.)

11 THE WITNESS: A. I don't like the question
12 because it holds this out as the position of
13 AmerenIP, and it is not the position of AmerenIP. It
14 is their position.

15 BY MR. TICE:

16 Q. That's not the question. The question is,
17 is it fair to say that you were aware or had
18 knowledge of the fact that as of at least June 21,
19 2005, Michael Tatlock and Conrad Siudyla or either
20 one or both had told Citation representatives that
21 they could not use the Citation distribution line to
22 serve the gas plant without consent of Tri-County?

1 Q. Is it reflected in e-mails?

2 A. It is not.

3 Q. So is it fair to say then that between
4 March 9, 2005, and June 21, 2005, Mr. Masten, you had
5 not communicated to either Michael Tatlock or Conrad
6 Siudyla that the information that they were providing
7 to IP, as evidenced by these -- or to Citation as
8 evidenced by these e-mails, was incorrect?

9 A. I think the answer is yes.

10 Q. Do you know what the outcome was of the
11 meeting between Citation representatives and
12 Tri-County on June 22, 2005?

13 A. No.

14 Q. Did you participate in a meeting between
15 Tri-County representatives, Marcia Scott, Brad Grubb
16 and Dennis Ivers, Citation representatives Jeff Lewis
17 and a Mr. Pearson, and IP representatives on July 5,
18 2005?

19 A. I believe I did.

20 Q. What was the purpose of that meeting?

21 A. To continue discussions between all the
22 parties about service to this gas plant.

1 Q. At the time that you -- now, you personally
2 participated in that meeting, is that correct?

3 A. I believe I was there.

4 Q. And at the time that you participated in
5 that meeting, did you at any time inform Tri-County
6 representatives or Citation representatives that any
7 of the information that's included in these March 9
8 through June 21, 2005, e-mails was incorrect?

9 A. I don't have a recollection of saying
10 anything to anybody at that meeting.

11 Q. The question is, did you during that
12 meeting state to the representatives there,
13 Tri-County or Citation representatives, that any of
14 the information in the March 9 through June 21, 2005,
15 e-mails, concerning this territorial dispute, was
16 incorrect?

17 MR. BARON: Objection, asked and answered.

18 A. I thought I just answered that. I don't
19 have a recollection of saying that.

20 Q. Now, after that meeting of July 5, 2005,
21 did you have a communication with Jeff Lewis of
22 Citation?

1 A. Yes.

2 Q. How was that communication made?

3 A. Well, as I recall we had a meeting,
4 possibly the same afternoon that we met with
5 Tri-County.

6 Q. Who was the meeting between?

7 A. As I recall, it was Jeff Lewis and Jon
8 Carls and myself.

9 Q. Where did that meeting take place?

10 A. I think it was in Springfield in our
11 offices.

12 Q. What was the purpose of that meeting?

13 A. The purpose of the meeting would have been
14 to better understand Citation Oil and the Salem Oil
15 Unit.

16 Q. The what?

17 A. And their Salem Oil Unit.

18 Q. Now, you don't make any reference to this
19 meeting between you, Jon Carls and Jeff Lewis of
20 Citation in your direct testimony, do you?

21 A. I don't know.

22 Q. Would you like to take a moment to review

1 it and see?

2 A. I will have to.

3 (Pause.)

4 I think there may be reference to it
5 in another document, but I don't see it in there.

6 Q. But did you make notes of that meeting of
7 July 5 between you and Jeff Lewis and Jon Carls?

8 A. Possibly. Probably.

9 MR. TICE: I want to mark as Tri-County Cross
10 Examination Exhibit -- just be Tri-County Exhibit O,
11 if I may.

12 (Whereupon Tri-County Exhibit O
13 was marked for purposes of
14 identification as of this date.)

15 BY MR. TICE:

16 Q. I have provided you what will be marked as
17 Tri-County Exhibit O, Mr. Masten. What is that?

18 A. That would be notes that I made on July 5.

19 Q. Notes of -- I am sorry.

20 A. On July 5, 2005.

21 Q. And are those notes in your handwriting?

22 A. Yeah, I am afraid I have to claim those.

1 Q. Do those notes represent what Mr. Lewis was
2 telling you and Jon Carls?

3 A. Most likely.

4 Q. Can you read the notes to us for the
5 record?

6 A. Maybe. Do you want me to read from the
7 top, all the notes?

8 Q. Yes, I think probably that might be best
9 because it is a little hard to read.

10 A. Thanks. "Citation Oil Company wants to add
11 a processing plant approximately 500 to 800kW load
12 that they feel is an extension of the series of oil
13 leases back in the 1940s before the SA or the SAA
14 between CIPS and Tri-County -- between IP and
15 Tri-County. IP had a substation within this unit
16 field made up of different landowners. Citation's
17 position is that this load is an extension or
18 addition to a load at the same unit or field. Since
19 IP is serving the rest of this field, they should
20 also have the right to serve this additional load.

21 "The analogy used by Citation was if a
22 supplier served the house under grandfather

1 arrangements, an owner puts in a pool or a garage,
2 would the same supplier serve this."

3 Q. Did Mr. Lewis tell you anything else in
4 that meeting other than what you have written in your
5 notes?

6 A. I would speculate there was probably a lot
7 of information traded.

8 Q. All right. Now, you have attached to your
9 prepared direct testimony what is marked as AmerenIP
10 Exhibit 3.2.

11 A. Okay.

12 Q. It is a letter written by you to Mr. Lewis.
13 Did Mr. Lewis ask you for such a letter that pertains
14 to this July 15, 2005, letter?

15 A. Yeah, it clearly says I am writing it at
16 his request.

17 Q. Now, before you wrote this letter July 15,
18 2005, had you ever communicated to Marcia Scott at
19 Tri-County anything different with regard to IP's
20 position on this electric service to this gas plant,
21 other than what had been indicated in the e-mails of
22 July -- or March 9, 2005 to June 21, 2005?

1 MR. BARON: Object to the form of the question.
2 You referenced AmerenIP's position. I am not quite
3 sure what position you are referring to.

4 MR. TICE: The position is as stated in the
5 e-mails of March 9, 2005, through June 21, 2005.

6 JUDGE JONES: Are you still objecting?

7 MR. BARON: Yeah, I think the way the whole
8 question is worded it is very confusing. It is not
9 clear exactly what is being asked of the witness.

10 JUDGE JONES: Do you want to rephrase it?

11 BY MR. TICE: I will restate the question.

12 Q. Prior to this July 15, 2005, letter to
13 Mr. Lewis, had you ever communicated to Marcia Scott
14 of Tri-County any different position by IP, regarding
15 electric service to the gas plant, than the position
16 that appears in the March 9, 2005, through June 21,
17 2005, e-mails?

18 A. I believe I had called Marcia on July 14,
19 if I am not mistaken. It would be customary for me
20 to communicate with her.

21 Q. All right. Prior to your phone call to her
22 on July 14, 2005 -- let me ask you this.

1 What was the content of your July 14,
2 2005, phone call to Marcia Scott?

3 A. Again, it would be customary for me to,
4 because of my relationship with Tri-County and with
5 Marcia, to let her know what our final position was
6 going to be going forward.

7 Q. Prior to that phone call with Marcia Scott
8 on July 14, 2005, had you ever communicated any
9 different position by IP on electric service to the
10 gas plant, other than the position that is indicated
11 by the March 9, 2005, through June 21, 2005, e-mails?

12 MR. BARON: Object to the form of the question
13 again. It talks about a different IP position. I
14 don't know if any position by IP has been established
15 by any testimony.

16 MR. TICE: Well, I am not sure. The question
17 is with regard to the position that is indicated by
18 IP as to the gas plant service in those e-mails of
19 A-5.

20 JUDGE JONES: Is that the same question you
21 just asked?

22 MR. TICE: That's the same question I just

1 asked.

2 JUDGE JONES: Is the objection still pending?

3 MR. BARON: The last thing, that's the pending
4 question? I guess I am confused now as to which
5 question is posed to the witness.

6 MR. TICE: The objection was first as to the
7 form, I think it was. I just restated the question.
8 He thought it was too confusing. I restated the
9 question. I think it is very clear. He has now
10 raised an objection that it refers to IP's position.
11 I referred to the position stated -- the question
12 refers to a position stated by IP in these e-mails.

13 JUDGE JONES: That's not quite a rephrased
14 question. That's sort of --

15 MR. TICE: No, I just tried to make it clearer.

16 MR. BARON: That objection is just it
17 referenced an AmerenIP position.

18 MR. TICE: Well, this is cross, Your Honor. I
19 think I have the right to ask this witness in terms
20 of -- a question in terms of what the position was
21 that's represented by these e-mails and what changes,
22 if any, were made in those.

1 JUDGE JONES: It's a question of -- I think, of
2 course, you are all circling around the same thing,
3 whether that is an IP position or whether that is a
4 position stated by persons at IP or something else.
5 I mean, is that what the objection is about?

6 MR. BARON: That is, Your Honor.

7 JUDGE JONES: I am not quite sure what the
8 question is and I am not sure what the objection is,
9 quite. But is that what you are objecting to?

10 MR. BARON: Yeah, the reference is that an
11 AmerenIP position or AmerenIP changed its position as
12 reference in earlier e-mails. I don't think it's
13 been established that what's referenced in those
14 earlier e-mails is an AmerenIP position versus
15 statements made by certain individuals.

16 MR. TICE: Your Honor, if I may respond, this
17 witness has referred to this March 15, 2005, letter
18 as a position of IP. I think I have the right to ask
19 this witness the question in terms of --

20 JUDGE JONES: I am sorry, which?

21 MR. TICE: The March 15, 2005, letter which is
22 his exhibit, Exhibit 3.2. He has referred to that as

1 IP's position.

2 MR. BARON: It is July.

3 MR. TICE: I mean July 15, as IP's position. I
4 think I have the right to ask the question in terms
5 of that letter concerning his characterization of
6 IP's position in relationship to the e-mails and the
7 IP position at that point in time.

8 JUDGE JONES: Well, I think part of what's
9 being debated here is whether it is a proper
10 characterization to refer to the content of earlier
11 e-mails as so-called IP position. That's really, I
12 think, what the objection is, although I am not
13 completely sure about that. Now, do you have any
14 response to that?

15 MR. TICE: Well, I think we have the right,
16 Tri-County has the right, to refer to it and
17 characterize it in any manner that they believe is
18 appropriate. That's more a question of argument
19 later, I think.

20 JUDGE JONES: But argument in a question?

21 MR. TICE: No.

22 JUDGE JONES: I mean, if you are going to use a

1 characterization in a question and then expect the
2 witness to answer it, that's kind of a first cousin
3 to a fact that may or may not be in evidence and
4 somebody refers or says are you aware of that or such
5 and such and then expect the witness to answer the
6 question. What's the witness supposed to do if he
7 disagrees with the characterization or what's the
8 witness supposed to do if he does not believe that an
9 assumption in a question is actually in evidence.

10 Those are similar things. That's
11 really what's going on here. It is not about your
12 right to conduct cross. It is whether that
13 characterization, whether it is right to require a
14 witness to answer a question with that
15 characterization in it unless there is some record
16 that establishes that is the IP position.

17 Now, you may believe that that is the
18 IP position from those e-mails and other sources, but
19 whether that is the IP position such as the witnesses
20 should be required to answer a question with that in
21 there or not, that's really what the problem is right
22 now.

1 Now, do you have any response to that,
2 to that issue?

3 BY MR. TICE: I will withdraw the question and
4 ask another question.

5 Q. Mr. Masten, prior to July 14, 2005, had you
6 ever communicated to Tri-County any other information
7 regarding the right of Tri-County to provide electric
8 service to the gas plant, other than what has been
9 expressed in the March 9, 2005, through June 21,
10 2005, e-mails?

11 A. I am sorry, I don't ever recall stating a
12 position to Marcia, except that which I stated to her
13 on July 14.

14 Q. Now, the information you are providing to
15 Mr. Lewis on July 15, 2005, indicates that AmerenIP
16 is not taking any action one way or the other with
17 respect to this electric service, is that correct?

18 A. You are referring to the letter from
19 Mr. Lewis?

20 Q. Your letter to Mr. Lewis.

21 A. And can you restate the question, Mr. Tice?

22 Q. Your letter of July 15, 2005, is stating to

1 Mr. Lewis that IP is not taking any action at all
2 with regard to the providing electric service to the
3 Citation gas plant...

4 A. That's correct.

5 Q. ..is that correct?

6 A. That is correct.

7 Q. And why is it you are saying that IP is
8 taking no action with regard to the providing of
9 electric service to the Citation gas plant?

10 A. Because the determination of right to serve
11 is based on the fact that this is an existing
12 customer, served from an existing delivery point.

13 Q. And you are saying in this letter that the
14 existing delivery point is what?

15 A. The letter says, "AmerenIP has for many
16 years provided one delivery point off of its 69kV
17 system for Citation to serve its Salem Unit. The
18 voltage is stepped down to 1247 four separate primary
19 distribution circuits owned by Citation to serve the
20 oil field load."

21 Q. Okay. What is the delivery point?

22 A. The delivery point would be where Citation

1 takes service from the Texas Substation.

2 Q. Is the delivery point the Texas Substation?

3 MR. SMITH: Asked and answered.

4 A. The delivery point is where their system
5 connects to our system, and that is at the Texas
6 Substation.

7 MR. SMITH: Withdraw the objection.

8 THE WITNESS: I am sorry.

9 MR. SMITH: It is all right.

10 BY MR. TICE:

11 Q. Are you familiar at all with Michael
12 Tatlock's testimony in this case?

13 A. Sure.

14 Q. Are you familiar with the fact that Michael
15 Tatlock has testified that Citation was requesting a
16 new delivery point for the gas plant?

17 A. That was covered in the earlier e-mails,
18 yes.

19 Q. And what do you interpret as being the new
20 delivery point for the gas plant that Michael Tatlock
21 was referring to?

22 MR. SMITH: Objection. Mr. Tatlock has already

1 A. I don't know.

2 Q. Did you ever ask Mr. Tatlock?

3 A. No.

4 Q. Now, Mr. Masten, are aware of the fact that
5 IP had electric service contracts with Texaco, the
6 predecessor to Citation, and then also with Citation?

7 MR. BARON: Objection, outside the scope of
8 this witness' testimony. There is nothing offered
9 about his familiarity or understanding of earlier
10 agreements.

11 MR. TICE: I just simply asked if he was aware
12 of those agreements.

13 JUDGE JONES: What's the relevance of it?

14 MR. TICE: The relevance of it is that he has
15 testified to what he considers to be the delivery
16 point for the Citation gas plant as being the service
17 connection with Citation to the Texas Substation.

18 JUDGE JONES: I will allow the question.
19 Objection overruled. You can answer the question if
20 you have an answer.

21 THE WITNESS: A. There was information
22 received by me about contracts that had existed.

1 BY MR. TICE:

2 Q. Are you aware of the fact that those
3 contracts have been put into evidence through
4 Mr. Tatlock's testimony in this case by IP?

5 A. I would take your word for it if you tell
6 me that's the case.

7 Q. Are you aware of -- do you have knowledge
8 of what those contracts refer to as the delivery
9 point for the delivery of electric service by IP to
10 Citation, first Texaco and then Citation?

11 A. I am not aware of what they say
12 specifically.

13 Q. If I were to tell you that the delivery
14 points as referenced in those contracts put into
15 evidence by IP through Michael Tatlock refer to the
16 delivery point of electric service from IP to first
17 Texaco, then Citation, as the connection of the
18 69,000kV transmission line with the Texas Substation,
19 would you have any reason to doubt that?

20 MR. BARON: Objection, again. Outside the
21 scope of this witness' testimony, and he has already
22 said he is not familiar with the language of the

1 agreement. Now he is asking him to speculate as to
2 whether or not he has any agreement or disagreement
3 with what's in it. He has already said he doesn't
4 know what's in it.

5 MR. TICE: I think I have a right to ask him
6 where what those agreements referenced as the
7 delivery point. These witness has testified the
8 delivery point is the service connection of
9 Citation's line to the Texas Substation. I think I
10 have a right to ask him if he is aware of the fact
11 that those contracts that IP has put into evidence in
12 this case refer to the delivery point as the high
13 side of the Texas Substation, that is, the connection
14 with the 69,000kV transmission line with the sub.

15 JUDGE JONES: Well, that's a different question
16 as opposed to one that says would he agree or
17 disagree with your characterization of something from
18 the evidence. So if you want to proceed with that
19 question, we will see where it takes us, but it is a
20 different question.

21 BY MR. TICE:

22 Q. Are you aware of the fact that the

1 contracts put into evidence by IP in this case, that
2 is, contracts for electric service with first Texaco
3 then Citation, refer to the delivery point for that
4 service as being the connection of the 69,000kV IP
5 transmission line to the Texas Substation?

6 A. No.

7 Q. You are not aware of that?

8 A. I am not.

9 Q. Now, when you say you characterize the
10 delivery point as being the connection of the
11 Citation electric service to the Texas Substation,
12 what portion -- what side of the Texas Substation is
13 that? Is that the low side, what is characterized as
14 the low side of the Texas Substation, or the high
15 side?

16 A. It would depend upon their service
17 characterization. I believe they take -- and you are
18 getting into an area that, you know, I am not really
19 that familiar with. But I believe the voltage that
20 we charge them at would determine that.

21 Q. Would determine what, Mr. Masten?

22 A. Whether they are taking service on the low

1 side or the high side.

2 Q. Do you know whether they are taking service
3 on the high side or low side?

4 A. I believe they take service -- I believe
5 they take service at the high side, and they pay
6 rental on the transformation to the low side.

7 Q. And by the high side, is that the place
8 where the 69,000kV transmission line connects with
9 the Texas Substation? Is that what you mean by the
10 high side?

11 A. That would be.

12 Q. So am I correct then in understanding your
13 testimony to be that Citation takes electric service
14 on the high side of the Texas Substation?

15 MR. BARON: Objection, mischaracterizes his
16 earlier testimony. He wasn't stating any facts, just
17 what his belief was.

18 JUDGE JONES: He is asking him if that is his
19 understanding.

20 MR. TICE: That is correct.

21 JUDGE JONES: It is cross. So I think the
22 question is proper.

1 THE WITNESS: A. My understanding is that
2 Citation's wires connect to our substation which
3 would be -- which would create a delivery point. I
4 don't know if that's on the high side or the low
5 side.

6 BY MR. TICE:

7 Q. So you really don't know where the delivery
8 point is?

9 A. I wouldn't say that.

10 BY MR. BARON: Objection. Mischaracterizes his
11 testimony, argumentative.

12 Q. You don't know whether the connection is --
13 do you know whether the connection is at the high
14 side or the low side of the Texas Substation,
15 Mr. Masten?

16 A. That's not something I -- that's the job of
17 the engineers to tell me.

18 Q. And they haven't told you that, I take it?

19 JUDGE JONES: Is that a question?

20 Q. Have they told you that?

21 A. I am sure that they have. I don't recall
22 what that is specifically at this time.

1 Q. All right. Now referring to your direct
2 testimony, you have also attached to it IP Exhibit
3 3.3 which purports to be a July 8, 2005, letter
4 addressed to you from Mr. Lewis. Did you receive
5 that letter after your July 5 meeting with him?

6 A. I believe so.

7 JUDGE JONES: Just a minute here. We may have
8 covered this before. Where this says Personal and
9 Confidential, I am not sure what Personal means but I
10 think this was filed as part of the public record.

11 MR. TICE: IP did this.

12 JUDGE JONES: Right, I understand. So it is
13 filed as part of the public record. So is this to be
14 deemed as a public document?

15 MR. SMITH: If it has been, I didn't file it.
16 I assume this is an IP exhibit.

17 MR. BARON: It is an IP exhibit. I am not
18 familiar with how we filed this, if this was filed
19 pursuant to a protective order or --

20 JUDGE JONES: Well, this was filed on e-Docket
21 as just a public document, wasn't it?

22 MR. BARON: I think so. Maybe it had been an

1 oversight on our part.

2 MR. SMITH: Could we just take a five-minute
3 recess, Your Honor?

4 JUDGE JONES: You mean to deal with that
5 question?

6 MR. SMITH: Yeah.

7 JUDGE JONES: Do you have questions about this
8 document?

9 MR. TICE: Yes, I do.

10 JUDGE JONES: We hereby take a five-minute
11 recess.

12 (Whereupon the hearing was in a
13 short recess.)

14 JUDGE JONES: Back on the record. There was a
15 short recess taken. Part of that pertained to
16 whether IP Exhibit 3.3 was to be treated as a
17 confidential document. It is my understanding that
18 the answer to that is no. It is not to be treated
19 that way. Is that the case?

20 MR. BARON: Yes, Your Honor.

21 JUDGE JONES: So the confidential treatment is
22 unnecessary, is that correct?

1 MR. BARON: That's correct, Your Honor.

2 JUDGE JONES: All right. Thank you.

3 Mr. Tice?

4 BY MR. TICE:

5 Q. Mr. Masten, in the Jeff Lewis July 8, 2005,
6 letter, what is there within that letter that caused
7 you to change your mind with respect to the right of
8 Tri-County to provide electric service to the gas
9 plant?

10 MR. BARON: Objection to the form and the
11 characterization that there is a change of mind.

12 MR. TICE: This is cross examination, Your
13 Honor. This witness has testified he didn't do
14 anything to indicate that the view expressed in the
15 e-mails of IP representatives who were boots on the
16 ground for these territorial issues between March 9,
17 2005, and June 21, 2005, was not correct. We have --
18 he has testified and put in evidence a letter he
19 wrote on July 15, 2005, in which he expresses an
20 entirely different view of Tri-County's right to
21 provide electric service to the gas plant. He has a
22 letter that is put into evidence of July 8, 2005, to

1 Jeff Lewis of Citation expressing Citation's view of
2 this matter.

3 I believe I have the right to ask him
4 on cross examination, in view of all these documents,
5 what there is in this July 8, 2005, letter that
6 caused Mr. Masten, the regulatory specialist here, to
7 change the view that either he had or IP had up to
8 that point of time on Tri-County's right to serve.

9 JUDGE JONES: Once again, at the end of your
10 explanation you sort of formulated what's a little
11 different question than the one that was actually
12 objected to. You have the right to ask him about
13 these things. That's not the issue. Some of the
14 specific questions have been objected to due to the
15 form of them or the assumptions that are contained in
16 them or characterizations of them, and this is sort
17 of another one of those. But I am not sure what
18 question is on the table because sort of the end of
19 your response you reformulated it a little bit.

20 So why don't you proceed with the
21 question that you want to ask, and we will see where
22 it goes.

1 BY MR. TICE:

2 Q. Mr. Masten, what facts in this letter of
3 July 8, 2005, of Mr. Lewis caused you to write this
4 letter of July 15, 2005, to Mr. Lewis in which you
5 stated that IP would provide electric service to the
6 gas plant instead of Tri-County?

7 MR. SMITH: Objection to the "provides service
8 to the gas plant." I think that mischaracterizes
9 what the letter says. I don't think it says that IP
10 will provide service to the gas plant. So I object
11 to that assumption and characterization that is not
12 there.

13 MR. TICE: I think the witness can answer the
14 question. You know, I mean, the electricity is
15 coming from somewhere. It is not coming from out of
16 space. It is coming from IP's Texas Substation,
17 according to this witness. So I think the question
18 is appropriate.

19 JUDGE JONES: Well, again, there is a dispute
20 over a characterization in the question. And I
21 understand why a question will be asked with
22 assumptions in it and characterizations in it, if you

1 can. But here there is a dispute over the
2 characterization. I have not really heard a response
3 that indicates to me that you are really addressing
4 the objection itself, and that is that that
5 characterization is not in the document. Now, maybe
6 it is in there and maybe it is not. But that's the
7 objection.

8 What lines of questioning are
9 appropriate, I don't think, is really the issue in my
10 mind here. It is the question whether the
11 characterizations or assumptions that are in some of
12 these questions, how is the witness supposed to
13 answer those if he disagrees with those
14 characterizations.

15 Now, if the characterizations are in
16 the record and there is some indication that they
17 are, so be it. The witness may not like the
18 characterization, but if it is in the record, he is
19 being asked about it, well, that's life on the stand.
20 But right now I don't know that there is a response
21 to the objection of the characterization.

22 MR. TICE: Well, the characterization is in the

1 record, Your Honor. It is in Exhibit A-5 that
2 Tri-County has submitted and been admitted into
3 evidence. This witness has testified he has not
4 reason to doubt the accuracy or the truth of those
5 documents. Those documents say, those e-mails say,
6 that Tri-County is to provide electric service to the
7 gas plant. That is in the record.

8 I think I have the right then to ask
9 him what it is in the July --

10 JUDGE JONES: All right. Now, is this your
11 question?

12 MR. TICE: I was responding to --

13 JUDGE JONES: Right. But, I mean, we kind of
14 get -- the end of many of your responses sort of lay
15 out kind of what the question is or what questions
16 you are entitled to ask. And I don't know that
17 that's necessarily the same as the question that's on
18 the table.

19 MR. TICE: I will just leave it at that. The
20 characterization is in the record.

21 JUDGE JONES: Can I have the question read
22 back, Ms. Reporter?

1 (Whereupon the requested portion
2 of the record was read back by
3 the Reporter.)

4 JUDGE JONES: Now, you are referring to the
5 letter as containing a statement. Now, if you want
6 to tell me where that statement is in the letter,
7 because that's where that objection goes to, rather
8 than tell me about some other e-mail string that
9 contains similar information. The question refers to
10 something that's in the letter; that's what we need
11 to deal with.

12 BY MR. TICE: I was trying to short circuit it,
13 but let me withdraw the question. I will go back and
14 do a preliminary question.

15 Q. Mr. Masten, in your July 15, 2005, letter
16 you make reference to the fact that no action will be
17 required by IP, is that correct?

18 A. Correct.

19 Q. And that means no action will be required
20 by IP to serve the gas plant with electricity?

21 A. Correct.

22 Q. What did you mean by "No action will be

1 required by IP to serve the gas plant"?

2 A. What I mean is that service will be taken
3 for that new load as it is for all of the Salem Oil
4 Unit load.

5 Q. What do you mean by service?

6 A. In other words, providing electricity to
7 the new load.

8 Q. Who is providing electricity to the new
9 load in terms of your July 15, 2005, letter?

10 A. AmerenIP.

11 Q. Now, with reference to the July 8, 2005,
12 letter that you received from Mr. Lewis, what is
13 there in that letter that caused you to write the
14 letter of July 15, 2005, in which you say "No action
15 will be required by IP," and I am interpreting here,
16 "to provide electric service to the gas plant," that
17 is different than what you knew was being said by IP
18 representatives to Tri-County prior to that time?

19 MR. BARON: Objection, I don't think there has
20 been evidence about anything that AmerenIP
21 representatives said to Tri-County. I think that
22 their earlier e-mail stream I believe he is referring

1 to is referencing conversations between Citation and
2 AmerenIP.

3 MR. TICE: Your Honor, I am referring to the
4 fact that Tri-County is to provide the electric
5 service to the gas plant, and it is the references of
6 the e-mails, A-5.

7 JUDGE JONES: Could we have the question read
8 back, Ms. Reporter?

9 Let me ask, how much more cross do you
10 have of this witness?

11 MR. TICE: Not too much more, no.

12 JUDGE JONES: Could you give an estimate, range
13 or best guess.

14 MR. TICE: Thirty minutes.

15 JUDGE JONES: Ms. Reporter, could you read the
16 question back, please?

17 (Whereupon the requested portion
18 of the record was read back by
19 the Reporter.)

20 JUDGE JONES: Well, if there is an objection to
21 a question and you have an interpretation built in
22 it, even though that may be a good shortcut to

1 getting an answer sometimes, it complicates the
2 situation. Now we have another question with an
3 objection to it. The question contains your
4 interpretation of it. We don't know -- I am not
5 really sure whether you are asking the witness if he
6 agrees with that particular interpretation that is
7 embodied in that question or not.

8 So in a sense it is kind of similar to
9 some other questions. They are worth a try, but
10 where objections arise to a question that may work
11 better than six or seven questions that you might
12 take to get to the same place, if there is an
13 objection to it, we have to deal with the objection.
14 And all I can really tell you is rephrase the
15 question.

16 BY MR. TICE: All right. I will rephrase the
17 question.

18 Q. Mr. Masten, when you say in your July 15,
19 2005, letter that no action will be required by IP,
20 what is it you are referring to?

21 MR. SMITH: He has already asked that question,
22 Your Honor. This is accumulative.

1 JUDGE JONES: Well, overruled.

2 THE WITNESS: A. I mean, I don't mean this to
3 sound the wrong way. But, I mean, it is
4 self-explanatory. We don't have to take any action
5 for that new load to be served.

6 BY MR. TICE:

7 Q. And what do you mean by to be served?

8 A. For electric service to be provided.

9 Q. And who is providing the electric service?

10 A. AmerenIP.

11 Q. Okay. Are you saying then in your letter
12 of July 15, 2005, that no action will be required by
13 IP to provide electric service to the Citation gas
14 plant?

15 A. Yes.

16 Q. Now, what is there in the July 8, 2005,
17 letter from Mr. Lewis that caused you to write the
18 letter of July 15, 2005, in which you say, "No action
19 will be required of AmerenIP to provide electric
20 service to the Citation gas plant," that is different
21 than what was being said by IP representatives in the
22 e-mails of March 9, 2005, to June 21, 2005, regarding

1 Tri-County's right to provide that electric service?

2 A. Wow, that's -- you said a mouthful there.

3 I don't know. I mean, I can say this.
4 Hopefully this clarifies. This letter contains a lot
5 of information.

6 Q. Which letter are you referring to?

7 A. The one you just referred to, July of 2005.
8 It contains a lot of information to describe what
9 Citation Oil's Salem Oil Unit is. That, along with
10 other discussions, you know, at the earlier meeting
11 we referred to with Jeff Lewis and so on, is helping
12 to understand what this customer entails.

13 Q. What is there in the July 8, 2005, letter
14 that you claim helped you understand what the Salem
15 Oil Field was?

16 A. It is a two-page, a page and a half,
17 letter. It is an overall -- this is a complicated
18 customer. And I think that anybody that would read
19 this would have a better understanding of what the
20 customer is.

21 Q. Is there anything in the July 8, 2005,
22 letter that says anything about where the gas plant

1 is to be located in relationship to the territorial
2 boundary lines?

3 A. Well, I don't have this memorized but,
4 yeah, it does seem to have reference in the third
5 paragraph.

6 Q. Is that reference made with respect to the
7 location of the gas plant or the gas compressor sites
8 to the territorial boundary line of IP and
9 Tri-County?

10 A. No, not that I can find here.

11 Q. Is there anything in this July 8, 2005,
12 letter that has reference to the location of the
13 transformer, the 1500kVA transformer that was to be
14 used to serve the gas plant?

15 A. Again, I don't have this memorized.
16 Nothing jumps out at me.

17 Q. Is there any reference in that letter of
18 July 8, 2005, to a request by Citation to use their
19 customer-owned distribution lines to provide the
20 electric service from the IP Texas Substation to the
21 gas plant or the gas compressor sites?

22 THE WITNESS: Could I have that read back,

1 please?

2 (Whereupon the requested portion
3 of the record was read back by
4 the Reporter.)

5 THE WITNESS: A. I don't see that
6 specifically.

7 BY MR. TICE:

8 Q. There is a reference in the last paragraph
9 on the July 8, 2005, letter, the last two sentences,
10 that starts with "Since capital was invested by the
11 Salem Unit interest owners to construct the primary
12 distribution prior to any territorial agreement." Do
13 you know what Mr. Lewis was meaning by that reference
14 to the construction of the primary distribution
15 circuit?

16 MR. BARON: Object to the form of the question.
17 This is a reference to a primary distribution
18 circuit. That's not been testified about or even
19 asked about.

20 MR. TICE: It is in this letter that he is
21 sponsoring, Judge.

22 JUDGE JONES: There is a specific objection

1 pending. I am only going to rule with regard to that
2 objection. I believe the response to that objection
3 is satisfactory. The objection is overruled. I will
4 ask the witness to answer the question if he can.

5 THE WITNESS: Can you read that back, please?

6 (Whereupon the requested portion
7 of the record was read back by
8 the Reporter.)

9 THE WITNESS: A. Honestly, no, I don't know.

10 BY MR. TICE:

11 Q. Is there anything in the Service Area
12 Agreement between IP and Tri-County, Mr. Masten, that
13 references who constructs the primary distribution
14 circuit that a customer might use to deliver electric
15 service?

16 A. No.

17 Q. That sentence, again the next to the last
18 sentence in the last paragraph of this July 8, 2005,
19 letter, says that, "Since capital was invested by the
20 Salem Unit interest owners to construct primary
21 distribution prior to any territorial agreement, any
22 additional loads, no matter which territory the load

1 exists in, should be grandfathered to the company
2 supplying power to the existing loads of the Salem
3 Unit."

4 What did Mr. Lewis mean by
5 grandfathered?

6 A. This is not my letter. Why would I know
7 that? This is --

8 Q. Did you rely upon this letter in
9 formulating your decision that you expressed in your
10 July 15, 2005, letter to Mr. Lewis about IP providing
11 the electric service at the Texas Substation to be
12 delivered to the Citation gas plant, gas line or
13 Citation distribution line to the gas plant?

14 A. Well, I wasn't hanging on every word, I can
15 tell you that.

16 Q. Did you rely on any of the facts set forth
17 in this July 8, 2005, letter by Mr. Lewis to
18 formulate your decision that is expressed in your
19 July 15, 2005, letter?

20 A. Certainly this played a part. Some of what
21 was said here played a part.

22 Q. What part of what was said in the July 8,

1 2005, letter played a part in your decision that you
2 express in your July 15, 2005, letter?

3 A. You want me to tell you specifically. I am
4 not looking for Mr. Lewis to form an opinion for me.
5 I am looking for Mr. Lewis to inform me as to what
6 the customer entails.

7 Q. What in the July 8, 2005, letter that
8 Mr. Lewis sets forth in there was utilized by you to
9 formulate what the customer Citation entails?

10 A. Okay. It will take me a minute here.

11 (Pause.)

12 It is referring to what the Salem Oil
13 Unit is, what is the customer. And that is, he is
14 talking about oil wells that have come and gone, the
15 entire load that exists now and has existed. Again,
16 it is not a straight forward customer necessarily.
17 You have to understand what Citation Oil and the
18 Salem Unit is to interpret the Service Area
19 Agreement.

20 Q. What characterizations of the customer
21 Citation that you found expressed in this July 8,
22 2005, letter, Mr. Masten, were relied upon by you to

1 formulate your decision in your July 14 letter? What
2 characterizations?

3 MR. BARON: Objection, Your Honor. This has
4 been asked and answered numerous times now.

5 JUDGE JONES: Overruled.

6 THE WITNESS: A. I can't point you to any one
7 specific reference here. It is just an overall
8 understanding.

9 BY MR. TICE:

10 Q. And what was the overall understanding that
11 you got from this July 8, 2005, letter that led to
12 your decision that you made and expressed in your
13 July 15, 2005, letter?

14 A. You know, honestly, anybody that
15 understands this customer and understands the service
16 that has existed for 60 years would reach the
17 conclusion that it is an existing customer being
18 served from an existing delivery point.

19 Q. All right. And that's served from -- the
20 customer serves -- that is, Citation serves the gas
21 plant through use of its customer-owned distribution
22 line, is that correct?

1 A. Yes.

2 Q. And it serves each of the eight gas
3 compressor sites through its customer-owned
4 distribution line, is that correct?

5 A. Correct.

6 Q. And that customer -- does that customer
7 distribution line that you have referred to here
8 connect then to the IP Texas Substation?

9 A. Yes.

10 Q. And are you expressing your view that it
11 makes no difference -- in your letter of July 15,
12 2005, it makes no difference to IP whether the
13 customer uses the customer-owned distribution line to
14 take IP-supplied electric power to a location or a
15 facility of the customer in Tri-County's service
16 territory?

17 MR. BARON: Objection to the form of the
18 question. The question has been switched. First it
19 was going one direction, then he switches it over at
20 the end. I am not exactly even sure what he is
21 asking the witness to even testify about.

22 First it was a reference to the is it

1 your position either/or. And then at the end there
2 were not two positions to pick and choose from.

3 MR. TICE: I think that the question is
4 perfectly all right. I asked him if he is expressing
5 the view that this customer can --

6 JUDGE JONES: Well, you have got to rephrase
7 the question; I am not sure where you are going.

8 MR. TICE: I think the question is perfectly
9 all right.

10 JUDGE JONES: You can tell me why you think it
11 is okay, but please don't rephrase the question when
12 you do it.

13 BY MR. TICE: I will rephrase the question,
14 please.

15 Q. Are you expressing the view, Mr. Masten in
16 your July 15, 2005, letter that the customer such as
17 Citation can use a customer-owned distribution line
18 to carry IP electric service -- provide electric
19 service to a facility of the customer located on
20 Tri-County's side of the territorial boundary line?

21 MR. BARON: Objection, asked and answered. It
22 mischaracterizes the letter. The letter speaks for

1 itself.

2 JUDGE JONES: This is cross. He is asking him
3 about that. I don't think that contained -- what
4 characterization is in there that's incorrect?

5 MR. BARON: Well, first, I believe that we have
6 already essentially went over the July 15 letter and
7 Mr. Masten's opinion. But, second, the
8 characterization of -- basically, there is a general
9 assumption about any customer with a distribution
10 system provided electricity that is not specific to
11 this customer here, that has had its own distribution
12 system in operation for 60 years and how that's
13 operated.

14 JUDGE JONES: Can I have the question read
15 back, please?

16 (Whereupon the requested portion
17 of the record was read back by
18 the Reporter.)

19 JUDGE JONES: Thank you. He is asking him if
20 he is expressing that view. The witness has leeway
21 to indicate whether he is or whether he isn't. It is
22 just he is being asked if he is expressing that view.

1 He can tell us if he is expressing that view. If it
2 is not the view that he is expressing for whatever
3 the reasons, so be it. This is cross. Go ahead.

4 THE WITNESS: A. This is a complicated
5 customer with service over many decades that have
6 done just what you are asking me over those six
7 decades.

8 BY MR. TICE:

9 Q. Are you expressing the view, Mr. Masten,
10 that Citation can use its customer-owned distribution
11 lines to take IP-provided electric power from the
12 Texas Substation and use it at a location in
13 Tri-County's service territory?

14 A. Just as they have done over many decades,
15 yes.

16 Q. What is in the IP/Tri-County territorial
17 agreement that says a customer can use a
18 customer-owned distribution line to take electric
19 service delivered at a point in Tri-County's
20 territory and used in Tri-County territory?

21 MR. BARON: Objection. Calls for a legal
22 conclusion.

1 MR. TICE: This is a regulatory specialist.

2 MR. BARON: He is not a legal specialist. He
3 has asked for a legal conclusion.

4 JUDGE JONES: Again, I don't know that the
5 objection goes directly to the form of the question.
6 It may to some degree. The witness is not required
7 to give a legal opinion. We have had many witnesses
8 who have interpreted in their day-to-day duties
9 certain agreements, certain other documentation.
10 They are not giving legal opinions. We will advise
11 them not to give legal opinions. But they have some
12 working understanding of those documents due to their
13 job.

14 But, again, here the question asks
15 what is it in that document. The question isn't is
16 there something in that document. There is an
17 assumption in there that there is something in the
18 document that does that. And, therefore, I am going
19 to rule that the objection -- or that the question
20 needs to be rephrased.

21 So I will not allow the question in
22 its current form. You can rephrase it if you want to

1 and pursue the --

2 BY MR. TICE:

3 Q. Mr. Masten, does the Service Area Agreement
4 between IP and Tri-County discuss customer-owned
5 distribution lines?

6 A. It does not get into that specific detail.

7 Q. How far can a customer such as Citation
8 take their customer-owned distribution line and
9 utilize IP electric power a distance from the IP
10 Texas Substation?

11 MR. BARON: Objection. Calls for speculation.
12 These facts aren't into evidence at all, and he is
13 asking, I assume, some kind of expert opinion
14 testimony here that this witness is not qualified to
15 provide.

16 JUDGE JONES: Observation overruled. Answer
17 the question if you can.

18 THE WITNESS: Could you read that question
19 back, please?

20 (Whereupon the requested portion
21 of the record was read back by
22 the Reporter.)

1 THE WITNESS: A. I have no specific answer to
2 that question. These are very fact intensive
3 understandings.

4 BY MR. TICE:

5 Q. Well, do you know how far they took it in
6 this situation?

7 A. I am not sure what you are asking me here.

8 Q. Do you know how far they transported the IP
9 electric power from the Texas Substation across the
10 Citation distribution system to get it to the gas
11 plant?

12 A. No, I do not.

13 Q. You do agree, however, do you not, that the
14 IP electric power that's delivered as you claim at
15 the Texas Substation to the customer is being used at
16 the Citation gas plant?

17 A. Correct.

18 Q. And you do agree that that Citation gas
19 plant is located in Tri-County's service territory?

20 A. Correct.

21 Q. And do you also agree that seven of the
22 eight gas compressor sites to which electric power

1 from IP is being delivered by the Citation
2 distribution line are located in Tri-County's
3 territory?

4 A. I do not remember the number, but some part
5 of them are, I believe.

6 Q. Now, does the IP/Tri-County Service Area
7 Agreement make any reference to a premise?

8 A. Not that I recall.

9 Q. Does the Tri-County/IP Service Area
10 Agreement make any reference to the Salem Oil Field
11 specifically?

12 A. No, it would not.

13 Q. Does the Tri-County/IP service territory
14 agreement treat the Salem Oil Field the same as any
15 other generic customer?

16 MR. BARON: Objection. Calls for a legal
17 conclusion and also asks him to speculate as to any
18 other customer.

19 JUDGE JONES: Before we do anything more, we
20 are really not sure where to go with this line of
21 objections. Now, the witness has attached the
22 Service Area Agreement to his testimony, for

1 starters. And then for another thing, we have had
2 numerous witnesses who are telling what they think it
3 means. And then for another thing, we have all these
4 objections or motions to strike testimony because
5 they contain legal opinions.

6 But what is somebody supposed to do
7 with an objection that comes up during the course of
8 cross examination to a question under those
9 circumstances? I mean, what am I supposed to do with
10 that? What do you think that ruling should be, given
11 all of the above? If somebody has a procedural
12 suggestion on how that can best be dealt with, I
13 mean, when you have got the various written motions
14 that are pending so they are out there, but now -- we
15 have heard that this witness has attached the
16 agreement to his testimony, but now in the last
17 several minutes I have heard two objections that the
18 question about the agreement calls for a legal
19 opinion.

20 What process or procedure will best
21 get this teed up and properly addressed and allow us
22 to move on through the witnesses that we still have

1 today and many other days? How do you want to handle
2 this procedurally where you have problems with
3 questions or statements that you think contain legal
4 opinions which is the subject of numerous motions to
5 strike, as I understand it?

6 MR. BARON: Well, AmerenIP is objecting to any
7 and all legal conclusions. In the past what we have
8 done is take the objections with the case.

9 JUDGE JONES: Well, right. Is that what you
10 are suggesting here? That these be -- you want to
11 file a motion to strike the answers or what do you --
12 I am not sure what you are suggesting here. I am not
13 sure how you want this handled.

14 MR. BARON: I am going to strike or have the
15 objection as to the question before there is an
16 answer, if that's the only issue. And then there are
17 other matters --

18 JUDGE JONES: Well, for one thing, if the
19 question is asked and then it is answered, then you
20 can move to strike the answer.

21 MR. TICE: Your Honor, I have not raised any
22 question for this witness to give a legal opinion. I

1 ask to be able to move on.

2 JUDGE JONES: Well, I mean, that's probably
3 your argument.

4 I don't know that my question has
5 really been answered here. I mean, I think the
6 preference of the parties with some of these many
7 motions that have been filed was to sort of preserve
8 their objections to some questions, many of them for
9 these reasons. But now we are getting questions sort
10 of on the fly here during cross examination.

11 To the extent you want all your
12 written motions on this to be addressed at some point
13 and ruled upon at some point as kind of a group in a
14 consistent manner, how does one do that when you want
15 rulings on these every few minutes with an objection?
16 How does a ruling on that objection not affect what
17 goes on in terms of rulings on all those written
18 motions that are out there? And that's what I am
19 trying to see, is how the parties think this should
20 be handled procedurally. Where does that leave all
21 those written motions that are out there on witness
22 testimony where there is objections on the legal,

1 so-called legal, statements being made by witnesses
2 when we are getting the same objections kind of on
3 the fly at this point?

4 I am not saying it is the wrong thing
5 to do, but a consistency issue arises here. If we
6 are going to rule on these on the fly, if that's how
7 you want it handled, I will just rule on these as we
8 go, I can do that.

9 Now, where that leaves all these
10 motions is something we can deal with later. But
11 there comes a point where there has to be some
12 recognition that if you are going to deal with these
13 things as we go, then that may create some
14 inconsistencies in the way these motions have been
15 handled and may also result in rulings on the very
16 same thing in the course of a hearing that you are
17 arguing in writing.

18 But if you want me to rule on them as
19 we go through here, I will do it and you can deal
20 with the other, the written motions, and figure out
21 what to do with those at some later time, if that's
22 how you want to handle it.

1 So having said all that, if you want a
2 ruling on your motion, that's fine, on your
3 objection, I will rule on it and we will go from
4 there.

5 MR. BARON: We could handle it the same way as
6 we handled the written testimony.

7 JUDGE JONES: I don't really care. I am happy
8 to accommodate the parties on this. You see what I
9 mean. If we are making rulings on the fly here, how
10 is that going to impact these pending motions out
11 there.

12 MR. BARON: We can just show that as a
13 continuing objection to opinions about the
14 interpretation, Your Honor.

15 JUDGE JONES: So you want to note them as we go
16 along and then address them along with any others
17 that are in written form a little later, is that what
18 you are suggesting?

19 MR. BARON: If we could, yes.

20 JUDGE JONES: Is that all right with the
21 others?

22 MR. SMITH: I will join.

1 JUDGE JONES: Are you all right with that? I
2 mean, as I understand it, if there is an objection,
3 the question you think calls for a legal answer, you
4 can note that objection and preserve it. But the
5 witness will answer the question, and then to the
6 extent that you want to incorporate that into
7 whatever motions are out there that need resolution
8 later, then you can.

9 But I need to know how you see this
10 work. Mr. Smith, did you want to --

11 MR. SMITH: Well, perhaps maybe it would be
12 more efficient then if you acknowledge the continuing
13 objection. We wouldn't even have to interrupt or
14 object, and it could be argued later on.

15 JUDGE JONES: If there is an objection to a
16 question, I want to know it, but we don't have to
17 argue it then.

18 MR. SMITH: Okay.

19 JUDGE JONES: I don't want to give parties the
20 right to raise a bunch of objections after the
21 hearings in writing when they go back through the
22 record and find some things they would like to object

1 to, so.

2 MR. SMITH: No, I only meant a continuing
3 objection on the legal conclusion part. But if you
4 want us to note it as we go along, that's fine.

5 JUDGE JONES: Yeah, if you have an objection to
6 a question on that basis, you go ahead and note it,
7 however you want to characterize it, as a part of
8 your -- as an objection or part of your continuing
9 objection. But we need to have it noted as we go,
10 and then it can be argued later, if that's the
11 preference.

12 Is that what you want to do?

13 MR. BARON: That's acceptable to me.

14 MR. SMITH: That's fine.

15 JUDGE JONES: Is that okay with anybody else?

16 MR. TICE: It puts the cross-examiner at a
17 disadvantage, Your Honor, because I don't know
18 whether the questions that I am asking or the answer
19 is going to stand or not. But if it speeds the
20 process up, then that's probably what we have to do.

21 Could I have that question read back?

22 It's been so long ago.

1 (Whereupon the requested portion
2 of the record was read back by
3 the Reporter.)

4 MR. BARON: I had a second objection to that,
5 too. It calls for speculation as to what --

6 JUDGE JONES: Well, I am sorry, you had your
7 chance to object to that question when you raised
8 one. Is that a new objection?

9 MR. BARON: No, Your Honor, I believe my
10 objection, if you read back, I had two objections.

11 JUDGE JONES: All right. Go ahead.

12 MR. BARON: One was to legal conclusion, and
13 the next one is it calls for speculation in the form
14 of what the generic customer is or what the other
15 customer is.

16 JUDGE JONES: Response?

17 MR. TICE: The agreement speaks of a customer.

18 JUDGE JONES: Well, I think the objection is to
19 the use of the term "generic customer." So if you
20 can respond to that and if you have a response to
21 that, let's just do it that way. Sorry to interrupt
22 you, but I have got to figure out some way to -- and

1 also I may have to put some other procedures in place
2 when we come back this afternoon. It is awful easy
3 to sit there and argue back and forth. And I know if
4 somebody else raises an argument, you want to respond
5 to it. That's part of doing your job. But it is
6 also part of my job to kind of make things move a
7 little more efficiently here.

8 MR. TICE: I will modify the question to refer
9 to a new customer or an existing customer.

10 JUDGE JONES: All right. So you want to
11 rephrase it?

12 BY MR. TICE: I will rephrase it.

13 Q. Mr. Masten, does the Service Area Agreement
14 make any reference to the Salem Unit as either a new
15 customer or existing customer?

16 A. The agreement talks about no specific
17 customer.

18 Q. Is the Service Area Agreement then designed
19 to apply to all types of customers?

20 A. Yes.

21 Q. And in your history as regulatory
22 specialist first with CIPS, then with AmerenIP, are

1 there territorial agreements with electric co-ops out
2 there that refer to specific customers, specifically
3 named customers?

4 A. Yes.

5 Q. And does the territorial agreement in this
6 instance, this case, name any specific territorial or
7 specific customer such as Salem Oil Field?

8 MR. BARON: Objection. Asked and answered.
9 Also I object to relevance. We have been on this
10 line of questioning for a long time. It doesn't have
11 anything to do with his direct testimony, and the
12 witness has already said that the Service Area
13 Agreement does not reference specific customers. I
14 think he has said this once or twice before. That's
15 the same question that is pending.

16 MR. TICE: The Service Area Agreement is
17 sponsored as an agreement. This man is characterized
18 as a regulatory specialist with AmerenIP. I think it
19 is an appropriate question to ask him.

20 JUDGE JONES: Part of the objection was that
21 the witness already answered that the agreement does
22 not identify any specific customers. There being no

1 response to that piece of the objection, the
2 objection is sustained.

3 BY MR. TICE:

4 Q. Now, Mr. Masten, in the July 8, 2005,
5 letter, in the third paragraph on the first page
6 there is a discussion about having the gas plant
7 connected to the same circuits as the oil wells. Do
8 you see that reference in the letter, in the third
9 paragraph?

10 MR. SMITH: This is 3.3?

11 MR. TICE: 3.3.

12 MR. BARON: 3.3?

13 MR. TICE: 3.3, July 2005.

14 A. "It is critical to the operation of the gas
15 plant to be interconnected with the same circuits
16 that power the producing wells." Is that it?

17 Q. That's correct. There is another sentence
18 that goes on after that.

19 A. Okay.

20 Q. Did that fact expressed by Mr. Lewis in
21 that July 8, 2005, letter play any part in the
22 decision you expressed in your July 15, 2005, letter?

1 A. Many of the facts in this letter play a
2 part.

3 Q. Is there any reference in the Tri-County/IP
4 Service Area Agreement that references the method of
5 operation of the customer as an item to consider in
6 service territorial matters?

7 MR. BARON: Legal question.

8 A. I don't understand the question.

9 Q. I will rephrase the question. Is there
10 anything, Mr. Masten, in the Service Area Agreement
11 between IP and Tri-County that you related that fact
12 about the gas plants should be interconnected with
13 the wells on the same circuit in coming to your
14 decision in your July 15, 2005, letter?

15 A. You are referring to again the statement
16 that if the gas plant operated on Tri-County's power,
17 and Tri-County lost power, the field gas would flair
18 up?

19 Q. Yes.

20 A. That really was not all that relevant to my
21 decision.

22 Q. To the decision that was expressed in your

1 July 15, 2005, letter?

2 A. Correct.

3 Q. Well, that brings me back to the point I
4 asked at the very beginning of this line of
5 questioning of you, Mr. Masten. What facts expressed
6 in the July 8, 2005, letter of Mr. Lewis were
7 utilized by you to come to your conclusion in your
8 July 15, 2005, letter?

9 MR. BARON: Objection. Asked and answered.

10 JUDGE JONES: Response?

11 MR. TICE: I have asked that question, and he
12 said just in general terms the whole letter. Now he
13 has come back and he has responded, as to when I pull
14 out specific facts, and said he didn't really rely
15 upon that fact. I think I have the right to go back
16 and find out specifically what particular facts in
17 this letter this witness relied upon to come to his
18 conclusion expressed in that July 15, 2005, letter.

19 JUDGE JONES: I will allow the question. I
20 think there have been some questions in the meantime
21 that have attempted to get some specific information
22 from the witness regarding the content. And so we

1 will see if the witness has any more specific
2 information to provide in his answer or whether he
3 doesn't.

4 THE WITNESS: A. I am trying to determine
5 whether we are dealing with an existing customer.
6 And in order to do that, I need to know what the
7 existing customer is. The facts contained in this
8 letter helped me to understand what this existing
9 customer consisted of. I can't point to anything
10 specific.

11 BY MR. TICE:

12 Q. And was your conclusion then that you came
13 to that you expressed in your July 15, 2005, letter
14 based solely upon the fact that you considered
15 Citation to be an existing customer of IP?

16 A. I don't like the use of the word "solely"
17 because you also have to be served from an existing
18 delivery point, an existing customer and an existing
19 delivery point.

20 Q. Did the factor that there was a transformer
21 placed, a 1500kV transformer placed, at the gas plant
22 enter into your decision at all as expressed in your

1 July 15, 2005, letter?

2 A. You know, I have heard a lot of discussion
3 about the transformer creating a new delivery point.
4 I have never, never seen that before this case, to be
5 honest with you.

6 Q. Never seen what?

7 A. Never seen that referred to as where a
8 transformer is located creating a delivery point.

9 Q. What was being expressed by Michael Tatlock
10 in his March 9, 2005, to June 25, 2005, e-mails about
11 the new delivery point?

12 MR. BARON: Objection. Calls for --

13 Q. Do you know?

14 A. No, I don't.

15 MR. BARON: Your Honor, I do not think that
16 there has been any --

17 BY MR. TICE:

18 Q. Could IP have built a distribution line
19 from the Texas Substation to the Citation gas plant
20 and served it in Tri-County's service territory?

21 A. So you are trying to paint a different
22 scenario because that would create a new delivery

1 point, a new connection.

2 Q. Between IP and the gas plant, is that
3 correct?

4 A. Correct.

5 Q. And that new delivery point would be
6 located on IP -- or Tri-County's side of the boundary
7 line?

8 A. That would require me to speculate where
9 the connection would occur, and I have no way of
10 knowing that.

11 Q. Where would the new delivery point be
12 located in relationship to the IP/Tri-County
13 territorial boundary line for the gas plant?

14 A. There again, I don't know the system well
15 enough to know whether that connection would occur.

16 Q. Would the IP/Tri-County territorial
17 agreement, under those circumstances if IP built the
18 distribution line to the gas plant, prevent IP from
19 serving the gas plant?

20 MR. BARON: Objection. Calls for legal
21 conclusion.

22 MR. TICE: This is the regulatory specialist.

1 MR. BARON: He --

2 MR. TICE: May I respond?

3 JUDGE JONES: Go ahead.

4 MR. TICE: Who has been presented as a
5 regulatory specialist, who has testified he made the
6 final decision, the official position of IP in this
7 case. I think I have the right to ask him,
8 particularly in view of the fact that he has
9 testified that it would create a new delivery point
10 as IP built the distribution line to that gas plant,
11 if the territorial agreement would prevent IP from
12 serving the gas plant in those circumstances.

13 JUDGE JONES: Now, all right, there is your
14 response. Are you not wanting to use the other
15 procedure? Is that what you are saying? Where these
16 objections are noted and then --

17 MR. TICE: Well, I thought I needed -- yes, I
18 want to make a response to it.

19 JUDGE JONES: But, I mean, are you wanting to
20 make a response now as opposed to --

21 MR. TICE: You can take it with the record if
22 you want. I just wanted my response in the record,

1 Your Honor.

2 JUDGE JONES: Well, I thought the idea is that
3 we weren't going argue this now. Rather, they would
4 be addressed later. Because if they are argued now
5 on the record, then somebody is going to have to pull
6 those arguments together at some point...

7 MR. TICE: That's correct.

8 JUDGE JONES: ..and lay them out. So if that
9 process is simply not going to work for you, then we
10 will have little recourse but to make rulings. And I
11 don't know if that's going to be really what the
12 parties had in mind. But if the process isn't going
13 to work to defer all this, then I will have to make
14 rulings, and sometimes that's the way it works.

15 So do you want to respond to the --
16 reply to Mr. Tice's argument there?

17 MR. BARON: So we are going to move forward now
18 with rulings?

19 JUDGE JONES: Well, I will ask the parties. I
20 mean, I don't know what you want to do. The idea was
21 you would note the objections and the witness would
22 answer the question and it would be argued and ruled

1 upon later. But Mr. Tice has had some misgivings
2 about that process and now apparently he wants to be
3 able to make his arguments on the record today as we
4 go through this.

5 So if that's the case, then we can do
6 it that way, too.

7 MR. BARON: Yeah, I am fine.

8 JUDGE JONES: I mean, it is difficult to say
9 what to do here, when there is agreement among the
10 parties to do things one way with all those motions
11 but now we get in cross examination and we have
12 different views about how that should be handled. So
13 we start out with an agreement, but yet we have what
14 appears to be something different than that.

15 And the reason I brought it to the
16 parties' attention was as a courtesy to the parties.
17 You have preserved a lot of these objections with
18 motions so that you could argue them later or at
19 least get them ruled upon later and move forward. If
20 I see a bunch of objections on some of the same bases
21 through cross examination, then I think I owe it to
22 the parties to say, well, I can rule on these as we

1 go but where does that leave the process that you all
2 agreed to, to handle it later. If I start making
3 these rulings, where does that leave all that stuff?

4 Now, nobody raised that to me, but as
5 a courtesy to the parties I brought it to your
6 attention just to see if you had a way that you
7 wanted to handle these where you wouldn't necessarily
8 be hearing rulings that you think could impact or
9 pertain to the very same things on some of the
10 motions that are pending.

11 But I can do it either way. I can
12 rule on these on the move. And I think the worst
13 thing is probably what we are doing now, and that is
14 taking a lot of time talking about the process for
15 it, not getting any questions asked and answered and
16 not getting any witnesses on and off the stand while
17 trying to figure out what's going to work the best.

18 MR. BARON: For the process it probably would
19 move smoother if I could just note the objection and
20 we could deal with it later, the objection, instead
21 of having the parties argue back and forth about
22 conclusions. I don't know if Mr. Tice though -- his

1 opinion.

2 JUDGE JONES: Well, it sounded like he wanted
3 to argue it today as we go. So I don't know.

4 MR. TICE: As I said, it puts the
5 cross-examiner at the disadvantage. But if that's
6 the pleasure, then we will move it that way. Move it
7 faster. I simply stated my response for the record
8 and expect to move on.

9 JUDGE JONES: All right. So there is a
10 question pending. Do you need the question read
11 back?

12 THE WITNESS: Please.

13 (Whereupon the requested portion
14 of the record was read back by
15 the Reporter.)

16 THE WITNESS: A. You know, that's a different
17 set of facts. So I think I have to consider the
18 facts as they are presented and based on the terms in
19 the Service Area Agreement make a determination.
20 Again, that's a different set of facts.

21 MR. TICE: I don't think I have any questions
22 at this point. Are you wanting to break for lunch at

1 this time? I just want to make a cursory review of
2 things and then I will tell you right after we get
3 back.

4 JUDGE JONES: I would just as soon wrap up the
5 cross. If you need a few minutes to see if you are
6 finished, we can give you that. But I don't really
7 want to go into a lunch hour break without even
8 having cross of this witness in the books.

9 MR. TICE: That's fine. That's fine. Give me
10 just a few minutes.

11 JUDGE JONES: How long do you need?

12 MR. TICE: Five minutes is fine.

13 JUDGE JONES: All right. We hereby take a
14 five-minute -- are you going to be ready for
15 redirect?

16 MR. BARON: Proceed with redirect, yes, when he
17 is done or after lunch, however you want to handle
18 it.

19 JUDGE JONES: Do you think you would be ready
20 to go before lunch?

21 MR. BARON: Yes.

22 JUDGE JONES: We hereby recess for five

1 minutes.

2 (Whereupon the hearing was in a
3 short recess.)

4 JUDGE JONES: Mr. Tice?

5 MR. TICE: I have no other questions, but I
6 would ask that the Tri-County Exhibit O which are the
7 notes taken by the witness of the July 5 meeting with
8 Jeff Lewis be admitted into evidence.

9 JUDGE JONES: Thank you. Any objection?

10 MR. SMITH: No.

11 MR. BARON: No.

12 JUDGE JONES: Let the record show that
13 Tri-County Exhibit O is hereby admitted into the
14 evidentiary record.

15 (Whereupon Tri-County Exhibit O
16 was admitted into evidence.)

17 MR. SMITH: Judge, I realize that there has
18 been extensive examination and objections. I only
19 have a couple of questions of this witness as to his
20 testimony regarding my client's activity. I will be
21 very brief.

22 JUDGE JONES: In his written testimony or

1 testimony today you are talking about?

2 MR. SMITH: His testimony today. This just
3 relates to whether Citation ever applied for service.
4 There are some questions that were sort of assuming
5 that, and I just want to clarify that point, whether
6 my client ever applied for service.

7 JUDGE JONES: Well, this question has come up
8 before to some extent. There were some questions
9 about responses to other parties' questions during
10 examination. We will see where it takes us here. I
11 think you did have a limited number of questions of
12 some witnesses. I will state right now that parties
13 do not have the right to follow up on other parties'
14 cross questions.

15 MR. SMITH: I understand.

16 JUDGE JONES: Certainly AmerenIP has the right
17 to conduct redirect, but to ask cross on other
18 parties' cross is a different story.

19 CROSS EXAMINATION

20 BY MR. SMITH:

21 Q. Mr. Masten, you have Exhibit 3.2 in front
22 of you?

1 A. Yes.

2 Q. And in the second paragraph you make
3 reference to service to the gas plant to be
4 constructed at that point in time as of July 15,
5 2005, correct?

6 A. Yes.

7 Q. Mr. Masten, just for clarification, did
8 Citation ever actually apply for and request electric
9 service from Ameren to the gas plant at that point in
10 time?

11 A. Well, that wouldn't be something that would
12 occur with me. That would have been through one of
13 the other witnesses. But it is my understanding they
14 would not have.

15 Q. There were discussions but no formal
16 application?

17 A. Correct.

18 MR. SMITH: That's all I have, Your Honor.

19 JUDGE JONES: Okay. Mr. Baron, do you have
20 some redirect?

21 MR. BARON: I do, Your Honor.

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REDIRECT EXAMINATION

BY MR. BARON:

Q. Mr. Masten, if you could turn to Exhibit A-5, I believe?

A. Okay.

Q. That stream of e-mails.

A. Sure.

Q. That first e-mail is dated March 9, 2005, from Michael Tatlock to Conrad Siudyla, and you were copied on that. After receiving this e-mail what was your understanding of what Citation wanted to do?

A. My understanding was that, you know, they were making an inquiry about service to a new gas plant load, and it appears as if they were planning to take a new connection.

Q. And just based on this e-mail did you have any concrete understanding of what it would entail AmerenIP to do at this point?

A. No, I did not.

Q. Was it your understanding that these were only general discussions at this point?

A. Yes.

1 Q. And in March through June of 2005 --
2 actually, let me take a step back.

3 When did you begin administering the
4 Service Area Agreement between AmerenIP and
5 Tri-County?

6 A. It would have been -- that would have come
7 under my responsibilities when the merger occurred
8 approximately the beginning of 2005.

9 Q. And prior to this gas plant issue had you
10 worked with Citation before?

11 A. Not at all.

12 Q. Did you have any understanding of what
13 Citation did out at the Salem Oil Field?

14 A. None whatsoever.

15 Q. And then March through June of 2005, during
16 this period did you have an understanding of what
17 Citation did out at that oil field?

18 MR. TICE: Your Honor, I am going to object to
19 the form of the question. It is leading. This is
20 redirect; it is not cross.

21 MR. BARON: I was just trying to get an
22 understanding of what Citation did.

1 MR. TICE: I object to the form of the question
2 as leading.

3 JUDGE JONES: Could I have the question read
4 back, Ms. Reporter?

5 (Whereupon the requested portion
6 of the record was read back by
7 the Reporter.)

8 JUDGE JONES: The objection is overruled. I do
9 not believe it is leading in its form. I agree with
10 Mr. Tice that Mr. Baron is not permitted over
11 objection to ask leading questions on redirect.
12 However, I think that question is not leading.

13 Do you need it read back?

14 THE WITNESS: No. I wasn't sure if you were
15 finished.

16 JUDGE JONES: Thank you.

17 THE WITNESS: A. No, I did not have an
18 understanding in that time period.

19 BY MR. BARON:

20 Q. And during this time period from March
21 until June of 2005, did you have any discussions with
22 anyone at Citation about service to the gas plant?

1 A. No, I did not.

2 Q. How about with anyone at Tri-County? Did
3 you have any conversations with anyone at Tri-County
4 during this time period?

5 A. No, I did not.

6 Q. And when was the first time that you spoke
7 to anyone at Citation about the gas plant?

8 A. My recollection would be at the July 5
9 meeting where all the parties were present.

10 Q. And also the first time that you had the
11 chance to speak with anyone at Tri-County?

12 A. That's my recollection.

13 Q. And what was your understanding of why the
14 parties were meeting on July 5?

15 A. We were meeting to try to gain a better
16 understanding of, you know, the issues at hand and
17 who should have the right to serve.

18 Q. And prior to this meeting did you have a
19 clear understanding of what Citation expected
20 AmerenIP to do?

21 A. I didn't have a clear understanding of many
22 things at that point. I was coming to understand the

1 whole situation better.

2 Q. And during this meeting did Citation
3 explain to all the parties how it operated the field?

4 MR. TICE: Again I am going to object, Your
5 Honor. That is a leading form of question. He is
6 asking this witness if Citation explained how they
7 were going to operate the field. Instead of asking
8 what Citation said, he is asking what the content --
9 explaining what the content of the subject matter was
10 of the discussion. I think that is leading.

11 JUDGE JONES: Any response?

12 MR. BARON: Again, I am not -- I am just
13 clarifying it to that one topic at hand to streamline
14 the questions, and also I don't believe that it is
15 leading. It is open ended.

16 JUDGE JONES: I think a lot of times when the
17 word "streamlining" is used, that means that there
18 may be some foundational questions that have been
19 skipped to streamline the process a little bit. Not
20 that that's a bad thing, but where there is
21 objection, you have to look at the objection. I
22 don't know the question -- it's sort of a combination

1 between not so much a leading question, but I think
2 the lack of a foundation for it gives it kind of a
3 leading tone.

4 So I will sustain the objection. You
5 can continue with the line of questioning if you want
6 to.

7 BY MR. BARON:

8 Q. Did Citation state what it did at the oil
9 field during this meeting?

10 MR. TICE: Objection. That's still leading,
11 Your Honor.

12 JUDGE JONES: Overruled. Go ahead.

13 THE WITNESS: A. You know, I think I said
14 earlier I don't have a great recollection of the
15 conversations that took place at that meeting. But I
16 would have to assume that, yes, there was Citation
17 explaining, you know, the facts of the situation.

18 BY MR. BARON:

19 Q. And do you recall anyone at the meeting
20 producing a copy of the Service Area Agreement?

21 A. No, I do not.

22 Q. And do you recall anyone discussing the

1 language in the Service Area Agreement during the
2 meeting?

3 MR. TICE: Objection. That is leading. He
4 asked them if there was a discussion and gives the
5 subject of the discussion in the question. That is
6 leading.

7 JUDGE JONES: Any response?

8 MR. BARON: I don't believe it is leading. I
9 am not suggesting an answer. It is open ended, and
10 he can respond however he recalls if he does recall.

11 JUDGE JONES: Can I have the question read
12 back, Ms. Reporter?

13 (Whereupon the requested portion
14 of the record was read back by
15 the Reporter.)

16 JUDGE JONES: Is that the question that's
17 objected to?

18 MR. TICE: That's correct.

19 JUDGE JONES: I do not believe that is a
20 leading question. So I will overrule the objection.
21 You may answer it.

22 THE WITNESS: A. I do not recall discussing

1 the specifics of the Service Area Agreement at that
2 meeting, no.

3 BY MR. BARON:

4 Q. And do you recall if any of the parties
5 took a final position at the meeting?

6 MR. TICE: Objection. That is leading. It
7 characterizes the type of position taken.

8 MR. BARON: I can withdraw that and rephrase
9 it.

10 JUDGE JONES: Go ahead.

11 BY MR. BARON:

12 Q. Do you recall any discussions by the
13 parties as to their position about service to the gas
14 plant?

15 A. I mean, that was the underlying reason for
16 the meeting. So I am sure there was some discussion
17 of that. I don't remember anybody stating a specific
18 position.

19 Q. And were any other meetings planned between
20 the parties?

21 A. Yes, I believe there was a subsequent
22 meeting planned or additional subsequent meetings

1 planned.

2 Q. And what was your understanding for the
3 purpose of those additional meetings?

4 A. Well, additional discovery and
5 understanding of who should have the right to serve,
6 would be my understanding of it.

7 Q. And then Mr. Tice also asked you about a
8 meeting you had subsequent to this with Mr. Lewis.
9 Do you recall those questions?

10 A. Yes.

11 Q. And at this meeting with Mr. Lewis what was
12 discussed?

13 A. Mr. Lewis was sharing with myself and Jon
14 Carls the history of the Salem Oil Unit.

15 Q. And had you learned about the Salem Oil
16 Field, the history of it, before this conversation
17 with Mr. Lewis?

18 A. No.

19 Q. And what was Mr. Lewis telling you about
20 the history of the oil field?

21 A. He was talking about -- I mean, he brought
22 some maps from the 1940s and '50s and talked about,

1 you know, the fact that the customer existed at that
2 point and the oil field had been developed and had
3 evolved, you know, with various oil wells and water
4 injection and just various facts about the history of
5 the field. It is complicated and it covers many
6 decades. He was helping us understand what the
7 customer is.

8 Q. And did he give you any details about was
9 it a static field where the wells were drilled
10 and then --

11 MR. TICE: Objection, Your Honor. That is
12 leading. It characterizes the field in his question.

13 MR. BARON: Again, it is not suggesting an
14 answer, though.

15 MR. TICE: It is suggesting an answer, Your
16 Honor, because --

17 JUDGE JONES: Direct your arguments to me. Can
18 I have the question read back, please?

19 (Whereupon the requested portion
20 of the record was read back by
21 the Reporter.)

22 JUDGE JONES: I am going to sustain the

1 objection to that. I don't know that we really have
2 anything in the record about -- unless you want to
3 point to it -- about static fields. That just sort
4 of jumps into the question. And even though the rest
5 of the questions, if you were to read carefully, were
6 to be as non-leading as possible, I think that on
7 redirect kind of crosses the line.

8 BY MR. BARON: I will move on then.

9 Q. If you could, this is Exhibit 3.3, turn to
10 the last page.

11 A. Okay.

12 Q. If you go to the last paragraph of Exhibit
13 3.3?

14 A. Okay.

15 Q. If you go to the second sentence, it says,
16 "A precedent would be set if AmerenIP agrees with
17 Tri-County Electric Co-op on this issue. As the
18 responsible operator for the Salem Unit, additional
19 load will be added in order to officially exploit oil
20 and gas reserves. New wells will be drilled and
21 existing wells will be activated as the water flood
22 pushes oil and gas to new areas."

1 Did Mr. Lewis discuss these topics
2 with you also on July 5?

3 A. I think in general that we talked about the
4 changing nature of the Salem Oil Unit over the many
5 years.

6 Q. And how wells are drilled, was that
7 discussed through the years?

8 A. Yeah.

9 Q. Mr. Tice also asked you some questions
10 about a July 14 telephone call with Marcia Scott?

11 A. Right.

12 Q. Do you recall those?

13 A. Yes.

14 Q. During this conversation did Marcia Scott
15 tell you that Tri-County had taken these steps to
16 supply power to the gas plant?

17 A. No.

18 Q. Were you aware of any steps that Tri-County
19 took to supply power to the gas plant?

20 A. No.

21 Q. And how many days was it between the July 5
22 meeting with all the parties and your telephone call?

1 questions that are more problematic and draw
2 objections, we will deal with them. But the
3 objection to that question is over ruled.

4 A. No.

5 Q. And so when Tri-County and AmerenIP met on
6 July 5, 2005, with Citation to discuss service to the
7 gas plant, was this the first instance when such
8 conversation occurred?

9 A. I believe it was.

10 Q. About service to the unit operator period?

11 A. I believe it was.

12 Q. I believe you mentioned about a merger that
13 occurred in 1997 and that was with CIPS and Union
14 Electric?

15 A. Correct.

16 Q. And what was the company name after the
17 merger?

18 A. Ameren.

19 Q. And you were with Ameren during that
20 period?

21 A. Correct.

22 Q. And then when did the merger occur with IP?

1 A. I believe it was official either the end of
2 2004 or at the beginning of 2005.

3 Q. And it is your understanding that Mike
4 Tatlock and Conrad Siudyla were on the IP side?

5 A. Yes, that would be my understanding.

6 Q. And when you sent the July 15, 2005, letter
7 to Mr. Lewis, was that a decision that you reached
8 all on your own that was set forth in that letter?

9 MR. TICE: Objection. That is leading.

10 JUDGE JONES: Response?

11 MR. BARON: I don't believe it suggests the
12 answer at all, Your Honor. I am asking if that was
13 the sole decision. The foundation has been set by
14 the extensive questioning already about this July 15
15 letter.

16 JUDGE JONES: Could I have the question read
17 back, Ms. Reporter.

18 (Whereupon the requested portion
19 of the record was read back by
20 the Reporter.)

21 JUDGE JONES: That's a little borderline. I am
22 going to allow it.

1 And I would say when disputes arise
2 over leading questions, I just want to make one
3 comment. Whether a question suggests an answer is
4 certainly a relevant consideration. It is not quite
5 that simple.

6 If the question suggests an answer,
7 then it is probably leading and the objection will be
8 sustained. But merely because the question does not
9 suggest an answer does not mean the question is
10 permissible, if there is an objection to it on the
11 basis that it was a leading question.

12 Otherwise, there wouldn't be many,
13 many pages from legal experts on legal questions.
14 They would just simply state the one rule and it
15 would be a very short chapter in the book.

16 But it is a relevant consideration.
17 It is just not the only consideration.

18 But if it does suggest an answer, then
19 the objection is pretty much sustained right off the
20 top. You don't really get to the other factors in
21 the process.

22 You may answer the question. Do you

1 recall it?

2 THE WITNESS: A. No, I would not have reached
3 that on my own.

4 BY MR. BARON:

5 Q. And did you meet with anyone else to reach
6 that decision?

7 A. I would have met with my supervisor and
8 with legal at that point.

9 Q. And so was this a company decision?

10 A. Yes.

11 MR. TICE: Objection.

12 JUDGE JONES: Basis?

13 MR. TICE: I think that was leading.

14 JUDGE JONES: Response?

15 MR. BARON: Again, it is not suggesting the
16 answer. And, two, I have already laid the foundation
17 of who he discussed this with, and he says his boss
18 and legal.

19 JUDGE JONES: All right. Well, this is pretty
20 well along in these lines of questioning. This is
21 redirect. I give the benefit of the doubt to
22 Mr. Tice on this one. I think that probably does

1 cross the line. So the objection is sustained.

2 MR. TICE: I don't know whether the answer got
3 out simultaneously or not. But if it did, I would
4 ask that it be stricken.

5 JUDGE JONES: I don't think there was an answer
6 to that one. In any event, you can proceed with the
7 line of questioning, but the ruling only goes to that
8 specific question and the objection to it.

9 BY MR. BARON:

10 Q. Earlier you testified that this was not
11 your sole decision; you met with other individuals,
12 is that correct?

13 A. Correct.

14 Q. And was it your understanding that sending
15 this July 15 letter whose decision that was?

16 MR. TICE: I am going to -- I will withdraw the
17 objection.

18 A. I mean, when that letter was issued, it was
19 the Company's position after consultation with my
20 boss and legal.

21 MR. BARON: No further questions.

22 JUDGE JONES: Mr. Tice, any recross?

1 15, 2005, letter to Citation?

2 A. Not that specific statement.

3 Q. You weren't concerned then that this
4 particular decision would lead to some precedent
5 under this Service Area Agreement?

6 MR. BARON: Objection. Argumentative and also
7 outside the scope of redirect.

8 JUDGE JONES: Response?

9 MR. TICE: He was asked questions about this
10 particular reference, that particular sentence, in
11 the July 8 letter and I believe I have a right to
12 follow up with questions regarding to what extent he
13 relied upon it and whether or not he was concerned
14 that it would result in a precedent.

15 MR. BARON: And the witness has already
16 testified.

17 MR. TICE: He has testified that he didn't rely
18 upon that totally. But I have the right to ask a
19 question about whether he was concerned it would lead
20 to a precedent because that's exactly what Mr. Lewis
21 is saying to this witness.

22 JUDGE JONES: You are talking about testimony

1 on redirect?

2 MR. TICE: Yes, and the use of that statement
3 in the letter.

4 JUDGE JONES: Objection overruled.

5 THE WITNESS: A. I am always worried about
6 precedent. You have to be worried about precedent.

7 BY MR. TICE:

8 Q. So you did take that into account in making
9 your decision, is that correct?

10 A. Not specifically.

11 Q. In your meeting on July 5 with Tri-County,
12 Citation, Mr. Tatlock from IP and yourself, did you
13 make any statement to the people assembled in that
14 meeting that Tri-County did not have a right to serve
15 the gas plant in question?

16 A. Not that I recall.

17 Q. Did you make any statement in that meeting
18 to the people assembled, that is the July 5, 2005,
19 meeting, that Citation did not have a right to serve
20 the gas plant with IP electric power provided at the
21 Texas Substation via Citation's customer-owned
22 distribution line?

1 A. Not that I recall.

2 Q. There was a discussion at that July 5,
3 2005, meeting, was there not, by Citation
4 representatives attending that meeting, that they
5 wanted to serve the gas plant with IP power from the
6 Texas Substation via the customer-owned Citation
7 distribution line?

8 A. I would assume.

9 Q. You would assume that there was?

10 A. Yes.

11 Q. Was there discussion at that meeting of
12 July 5, 2005, with the people assembled, that is
13 Tri-County, Citation and your IP folks, that
14 Tri-County in fact would not allow Citation to serve
15 or bring IP electric power from the Texas Substation
16 to the gas plant in Tri-County's service territory by
17 their distribution line?

18 A. You put a lot into there. I mean, knowing
19 Marcia, I would guess that she probably said
20 something like that, yeah.

21 Q. And did you ever dispute that statement by
22 her...

1 MR. BARON: Objection to the form.

2 Q. ..at that meeting?

3 MR. BARON: He did not say that that statement
4 was actually said. He said he guessed. Now you
5 assumed with the next question that that statement
6 actually was made.

7 MR. TICE: He said that she would have said it.
8 I think I have a right to follow up with that
9 question.

10 JUDGE JONES: Interesting question there. I
11 think Mr. Tice is right. I mean, the witness can
12 qualify his answer if he needs to or if he can't
13 answer that, so be it. We will allow the question.

14 THE WITNESS: A. Well, I do not have
15 recollection of that. And I am totally honest, it
16 was a long time ago. I do not have a recollection of
17 that.

18 BY MR. TICE:

19 Q. A recollection of what?

20 A. A response to that being said.

21 Q. Okay. So if Marcia Scott indicates in her
22 testimony that in fact that was said, you would have

1 no basis as you sit there today under oath to deny
2 that statement by Marcia Scott, is that correct?

3 A. I can't confirm or deny it if I don't
4 remember.

5 Q. Right. Now, you were asked on -- I don't
6 know whether this is direct or cross by Mr. Smith --
7 whether Citation made an application for electric
8 service from IP. Do you recall that question from
9 Mr. Smith?

10 A. Yes.

11 Q. If Citation didn't make an application to
12 IP for electric service, why was it necessary for you
13 to write that July 15, 2005, letter to Citation?

14 A. Well, I would think that would be
15 self-explanatory, given everything we have seen and
16 heard. A customer needs to have an understanding of
17 what our position is going to be.

18 Q. Why would the customer have to have an
19 understanding of what IP's position was going to be
20 if the customer didn't have to make an application
21 for electric service?

22 MR. BARON: Objection. Asked and answered.

1 JUDGE JONES: I don't think that one was asked
2 and answered. You can answer it if you have an
3 answer.

4 THE WITNESS: A. I guess I am a little
5 confused, but, I mean, there has been a lot of
6 discussion at that point and so it needs to be
7 clarified what position AmerenIP is going to take.

8 BY MR. TICE:

9 Q. Would you have to make this clarification
10 July 15 because prior to that time IP had taken the
11 position that it was Tri-County's to serve, that is
12 the gas plant?

13 MR. SMITH: Objection. He is yelling and he is
14 arguing with the witness.

15 MR. BARON: Concur. And also
16 mischaracterization of earlier testimony and exhibits
17 about what, quote unquote, position AmerenIP took
18 versus individuals or whether individuals took
19 positions.

20 MR. TICE: Your Honor, this is cross
21 examination. This witness has already said that
22 there had to be clarification of IP's position which

1 implies that there are other positions of IP.
2 Otherwise, there would be no need to have a
3 clarification. I think I have a right to ask him why
4 he had to have the clarification.

5 JUDGE JONES: Do you want to ask him that
6 question?

7 MR. TICE: I think that's what I asked him.
8 Could I have the question read back?

9 JUDGE JONES: Read it back, Ms. Reporter.

10 (Whereupon the requested portion
11 of the record was read back by
12 the Reporter.)

13 JUDGE JONES: I will allow the question. I
14 think the way it is worded the witness has room to
15 answer that question if he has an answer to give. He
16 is not limited to yes or no. I don't think the
17 question assumes a fact so much as it poses that
18 scenario to the witness. So if that doesn't fit with
19 the witness' understanding, then he can tell us.

20 THE WITNESS: A. AmerenIP had not given an
21 official position up to that point.

22 BY MR. TICE:

1 Q. Why was it necessary then to make a
2 clarification on July 15, 2005, of IP's position?

3 A. I think everybody wanted to have a clear
4 understanding at that point.

5 Q. A clear understanding of what?

6 A. I am not sure how many different ways I can
7 say this. I am trying to clarify for the customer
8 AmerenIP's position.

9 Q. Is that position different than what was
10 expressed in the e-mails of March 9, 2005, through
11 June 21, 2005, by Mr. Tatlock and Mr. Siudyla which
12 are Tri-County Exhibit A-5?

13 A. I consider that to be very general. I
14 mean, there are a lot of different positions taken,
15 and those are two individuals. That's not AmerenIP's
16 position.

17 Q. Well, what other positions were taken,
18 other than what are expressed in your July 15, 2005,
19 letter, Mr. Masten, and those e-mails of March 9,
20 2005, through March 21, 2005?

21 A. I guess we will have to go back through the
22 e-mails because there were a lot of positions taken

1 in those e-mails.

2 Q. All right. Look at those e-mails you have
3 in there. What other positions were taken besides
4 the fact that Tri-County could serve the gas plant?

5 MR. BARON: Objection, Your Honor. This is
6 outside the scope of redirect. We just keep going
7 and going and going on this line. It has nothing to
8 do with what was raised, Your Honor.

9 JUDGE JONES: Overruled. The witness opened
10 the door on this one, so counsel is entitled to
11 probe.

12 THE WITNESS: Okay. Can I have the question
13 again, please?

14 MR. TICE: Do you want to read it back, please?

15 (Whereupon the requested portion
16 of the record was read back by
17 the Reporter.)

18 THE WITNESS: A. There was talk of -- I guess
19 in general that was the conclusion being reached by
20 Mike Tatlock and Conrad Siudyla. But there was talk
21 of various ways of serving the gas plant, clearly,
22 talk about IP serving it, Citation extending their

1 own system to serve it, all kinds of scenarios.

2 Q. What was the talk, Mr. Masten, about IP
3 serving the gas plant?

4 A. It is in there somewhere, I believe, about
5 the possibility of IP serving the gas plant depending
6 upon the location.

7 Q. How would IP serve the gas plant?

8 A. That's a different set of facts. I have no
9 idea.

10 Q. I am just asking, how would IP serve the
11 gas plant?

12 A. I am not understanding the question.

13 Q. You said there was talk about IP serving
14 the gas plant. How would IP make the service to the
15 gas plant?

16 A. Are you referring to these e-mails,
17 Mr. Tice?

18 Q. I am referring to your comments, what you
19 just told me.

20 A. It is in the e-mails.

21 Q. Well, what does it say that you are
22 referring to?

1 electric power from the Texas Substation to the
2 Citation gas plant, by what means, if the plant were
3 physically moved to the IP side of the territorial
4 boundary line?

5 A. I have no idea.

6 Q. Would IP use its own distribution line?

7 A. I have no idea.

8 Q. What other discussions were ongoing during
9 this time frame that you have referred to as means of
10 serving this gas plant, other than what you have
11 expressed in your testimony here or that's in the
12 e-mails?

13 A. Could you restate that?

14 Q. What other methods of serving the gas plant
15 in question were discussed during the period of these
16 e-mails, March 9, 2005, through April -- or June 21,
17 2005, for providing electric service to the gas
18 plant, other than what's expressed in there?

19 A. Other than what's expressed here, none that
20 I am aware of.

21 Q. Okay. So is it fair to say then what was
22 discussed during that time frame, March 9, 2005, to

1 June 21, 2005, was only three -- or two different
2 alternatives, one Tri-County serves it or that
3 Citation moves the plant and IP serves it?

4 MR. BARON: Objection to the form of the
5 question. The witness responded to the last question
6 that this is what he is aware of, and that's it. Now
7 the question that is pending now is more universal,
8 saying that there was no other discussions, period.

9 JUDGE JONES: I am sorry, I am going to allow
10 the question. He is asking if the witness thinks it
11 is fair to say. If the witness doesn't think that is
12 fair to say or a fair characterization, he can tell
13 us, all with the benefit of counsel's comments. Go
14 ahead.

15 THE WITNESS: A. All I can say is what we can
16 all clearly see here in these e-mails. At this point
17 I am three or four hours on the stand. I am hungry
18 and, frankly, we have covered this over and over. I
19 am a little frustrated. But it is clearly right here
20 in these e-mails.

21

22 BY MR. TICE:

1 Q. So when you answered the questions here
2 that there were a number of discussions of ways to
3 provide electric service, it is limited to
4 whatever -- those discussions were limited to the
5 type of service or means of service that are in the
6 e-mails, is that correct, Mr. Masten?

7 A. You know, I don't know what to say to that.
8 I don't have an answer for that.

9 Q. Now, you testified on redirect that there
10 were additional meetings planned after this July 5,
11 2005, meeting. Do you recall that statement?

12 A. Yes.

13 Q. Were those additional meetings held?

14 A. I do not believe so.

15 Q. Who were they to be held with? When were
16 they to occur?

17 A. I think it was going to be Citation,
18 Tri-County and IP representatives.

19 Q. And what was to be the purpose of those
20 meetings, if you know?

21 A. Continuing discussion as we had had on July
22 5 and beyond.

1 Q. Why would there have been a need for
2 continuing discussions on this matter after the July
3 5, 2005, meeting, Mr. Masten?

4 A. Well, at that point, as we heard, there was
5 probably not necessarily agreement between Tri-County
6 and Citation and AmerenIP.

7 MR. TICE: I don't have any other questions.

8 JUDGE JONES: Any redirect?

9 MR. BARON: No, Your Honor.

10 JUDGE JONES: Thank you, Mr. Masten. Your
11 examination is concluded.

12 (Witness excused.)

13 MR. BARON: Your Honor, just to make sure, when
14 I tendered the witness, I just want to make sure that
15 we also moved for the admission of all the testimony
16 and exhibits, and that's clear for the record.

17 JUDGE JONES: The witness' exhibits and
18 testimony have been identified. Now they have been
19 offered into the evidentiary record. Are there any
20 objections to the admission of those exhibits
21 sponsored by Mr. Masten?

22 MR. TICE: I have no objections.

1 JUDGE JONES: Let the record show that
2 Mr. Masten's direct testimony and attached exhibits
3 3, 3.1, 3.2 and 3.3 are admitted into the evidentiary
4 record as filed on e-Docket and appearing in e-Docket
5 records on November 6, 2009.

6 MR. TICE: I assume, Your Honor, that that's
7 taken with the objections that were made during the
8 -- I am not sure exactly what the procedure is going
9 to be to handle the objections that have been made
10 during the questioning. I assume --

11 JUDGE JONES: Well, I don't think there is any
12 objection to the filed testimony, correct? It was to
13 some questions. Unlike the others, I don't think
14 that those -- well, let me back up a minute.

15 Was there a motion filed?

16 MR. TICE: I didn't file a motion with respect
17 to those.

18 JUDGE JONES: Okay. So were you intending to
19 file a motion with respect to the typewritten
20 testimony?

21 MR. TICE: I didn't with respect to Mr. Masten,
22 no.

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AFTERNOON SESSION

JUDGE JONES: Back on the record. I think we are ready for the next witness to be called by AmerenIP. Is there anything that needs attention before we do that?

MR. SMITH: I don't think so, Judge.

MR. HELMHOLZ: No, sir.

JUDGE JONES: So AmerenIP calls whom?

MR. HELMHOLZ: AmerenIP calls Josh Kull, Your Honor, and that's K-U-L-L for the record.

JUDGE JONES: Please stand and raise your right hand and be sworn.

(Whereupon the witness was duly sworn by Judge Jones.)

JUDGE JONES: Thank you. Please be seated.

MR. HELMHOLZ: Your Honor, may I approach the witness?

JUDGE JONES: Yes, sir.

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JOSH KULL

called as a witness on behalf of Illinois Power Company, d/b/a AmerenIP, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HELMHOLZ:

Q. Mr. Kull, I am going to hand you five documents here total for the record. The first one I will hand you has previously been identified as AmerenIP Exhibit 11, and the next one is an exhibit to Exhibit 11 which is identified as 11.1, and the next one is a series of three maps that are 11.2, 11.3 and 11.4.

Now, with regard to Exhibit 11 which is the testimony, I note on the proof of service that that was filed almost exactly one year ago today, April 26, 2010.

Is that your recollection?

A. It is.

Q. Okay. Do you have any substantive or material changes to the testimony that's in Exhibit 11?

1 A. I do not.

2 Q. Now, Exhibit 11.1, 11.2, 11.3, 11.4, is it
3 fair that those depicted events that existed at or
4 about the time of your testimony?

5 A. They were accurate as of the time of the
6 testimony, yes.

7 Q. Do they remain accurate?

8 A. They do not. There have been subsequent
9 wells drilled since that was filed.

10 Q. Can you give us an order of magnitude?

11 A. As to the number of wells that have been
12 drilled?

13 Q. Yes.

14 A. Approximately seven wells were drilled last
15 year. No, I am sorry, excuse me. I believe 12
16 wells.

17 Q. And each one of those would be a new
18 producing oil well?

19 A. That is not true.

20 Q. How many of those would be producing oil
21 wells?

22 A. Six, I believe.

1 Q. Other than that correction to your
2 exhibits, is there anything else substantive or
3 important that has changed since those documents were
4 prepared?

5 A. Not that I can think of, no.

6 MR. HELMHOLZ: All right. Your Honor, with
7 that I will move admission of Ameren Exhibits 11
8 through 11.4, and tender the witness for cross
9 examination. And, of course, the exhibits are
10 offered subject to motions to strike.

11 JUDGE JONES: Thank you. Are there any
12 objections to the admission of those exhibits
13 sponsored by Mr. Kull?

14 MR. SMITH: No objection.

15 MR. TICE: No objection.

16 JUDGE JONES: Now, is Mr. Kull's testimony
17 subject to any motions to strike?

18 MR. TICE: No, it is not.

19 JUDGE JONES: All right. Thank you. Let the
20 record show that the exhibits sponsored by Mr. Kull
21 are admitted into the evidentiary record. Exhibit 11
22 as well as 11.1, 11.2, 11.3, 11.4 were all filed on

1 April 26, 2010. So the exhibits are admitted as they
2 were filed on that date as reflected in the e-Docket
3 system.

4 (Whereupon AmerenIP Exhibits 11,
5 11.1, 11.2, 11.3 and 11.4 were
6 admitted into evidence.)

7 JUDGE JONES: The witness is tendered for cross
8 examination. Mr. Tice, do you have some questions
9 for Mr. Kull?

10 MR. TICE: I do.

11 CROSS EXAMINATION

12 BY MR. TICE:

13 Q. Mr. Kull, you have been employed by
14 Citation, your testimony indicates, since 2005, is
15 that correct?

16 A. That's correct.

17 Q. And your duties are that of a geologist?

18 A. That is correct.

19 Q. Is that your formal training?

20 A. Yes.

21 Q. What type of a degree do you hold?

22 A. I have a Bachelors of Science degree in

1 Geology from Auburn University and a Masters in
2 Science in Geology from the University of Louisiana
3 at Lafayette.

4 Q. And you refer to yourself as a development
5 geologist?

6 A. Yes, sir.

7 Q. Is that a title that's conferred upon you
8 by Citation?

9 A. That's correct.

10 Q. So that's a position title sort of thing?

11 A. Yes, sir.

12 Q. Have you held that position as development
13 geologist since your employment in 2005 by Citation?

14 A. No. I believe my first title was something
15 on the order of production geologist. I believe my
16 first title was production geologist.

17 Q. And so what's the difference between
18 production --

19 A. It's an internal. It's an internal title.

20 Q. I assume you don't consider the differences
21 of any significance?

22 A. Not in responsibilities or duties.

1 Q. You have attached -- the gist of your
2 testimony is that there have been a certain number of
3 wells drilled in the Salem Illinois Oil Field since
4 the 1970s, is that correct?

5 A. Yes.

6 Q. And is the purpose of your testimony simply
7 to indicate to the Commission the number of wells
8 drilled by Citation in the Salem Oil Field since, I
9 believe you refer to the date as, the 1970s?

10 MR. HELMHOLZ: Your Honor, I am going to object
11 to the form of that question. It is really invading
12 the province of the Commission. They will really
13 decide what the purpose of his testimony is.

14 MR. TICE: Do you want me to respond?

15 JUDGE JONES: Sure.

16 MR. TICE: I think this witness, it is his
17 testimony. It is his words. I think he can explain
18 to me if I ask the question of what the purpose is of
19 his testimony in an explanatory manner.

20 JUDGE JONES: I will allow the question, this
21 being cross. If the witness has an answer to the
22 question, he can give it.

1 THE WITNESS: A. Citation took over ownership
2 of the unit in 1998, I believe. And so any wells
3 drilled prior to that date would not have been
4 Citation. They would have been drilled by Texaco,
5 the previous operator. So any wells post that would
6 have been drilled by Citation.

7 BY MR. TICE:

8 Q. Is the purpose of your testimony then to
9 indicate the number of wells drilled in the Salem Oil
10 Field since the 1970s?

11 A. Correct.

12 Q. All right. If you look at -- do you have
13 your testimony there?

14 A. Yes, sir.

15 Q. Do you have the exhibits that you have
16 attached?

17 A. Yes, sir.

18 Q. Looking at Exhibit 11.2?

19 A. I have it here.

20 Q. As I understand your testimony, Exhibit
21 11.2 reflects the boundaries of the Salem Oil Field,
22 the geographical boundaries of the Salem Oil Field,

1 is that correct?

2 A. The blue lines indicates the Salem Unit
3 boundaries.

4 Q. And then there are a number of circles
5 colored red, green, blue and yellow?

6 A. Yes, sir.

7 Q. And those indicate wells drilled, is that
8 correct?

9 A. Yes, by decade.

10 Q. And by 1970s you mean from 1970 to 1979?

11 A. Correct.

12 Q. And the same with 1980s, 1990s and 2000
13 through April 26, 2010?

14 A. Through December 31, 2009.

15 Q. You were asked on your direct as a
16 correction to your prepared direct testimony how many
17 wells had been drilled since April 26, the date of
18 filing your testimony in 2010 to April 26, 2011, and
19 you said 12 wells, is that correct?

20 A. From memory, yes.

21 Q. All right. Is that 12 wells drilled from
22 January 1, 2010, through April 26, 2011?

1 A. That's correct.

2 Q. Or is that for the calendar year 2010?

3 A. From January 1, 2010.

4 Q. To when?

5 A. To present, notwithstanding any permits
6 that have been filed.

7 Q. Out of those 12 you said six are producing
8 wells?

9 A. From memory, yes.

10 Q. Now, on this 11.2 there is a legend called
11 Well Symbols. Can you tell me what the Well Symbols
12 legend means?

13 A. So a green circle is an oil well; it means
14 it is an active well producing. A shut-in oil well
15 is a well that's just been shut in; it is not
16 producing.

17 Q. Let me interrupt you. What does shut-in
18 mean?

19 A. I would consider that outside of my
20 expertise. But in general it means that there is no
21 mechanical barrier in place to prevent production,
22 but it is shut in due to either mechanical condition

1 or economics.

2 Q. Is it a non -- does it mean a non-producing
3 well?

4 A. It does not produce. It does not produce,
5 that is correct.

6 Q. And what is a TAD oil well?

7 A. A TAD is a temporarily abandoned which
8 means that typically there is a mechanical barrier so
9 that not by just by turning a valve can you make the
10 well produce. There would be some sort of a
11 work-over required to make that well produce again.

12 Q. And then Plugged and Abandoned Oil Well,
13 what does that mean?

14 A. Plugged and Abandoned is basically the
15 location has been reclaimed, the surface casing cut
16 and, again, the surface reclaimed so as to not be
17 able to re-enter the well, and to provide, I guess,
18 abandonment.

19 Q. Well, of that legend then, the only -- of
20 the wells that are marked or identified by that
21 legend called Well Symbols on 11.2 or Exhibit 11.2,
22 only the round green circle indicates a producing oil

1 well, is that correct?

2 A. That's correct.

3 Q. All the rest of those symbols indicate oil
4 wells that are no longer producing?

5 A. At the present, correct.

6 Q. Even though they were drilled within the
7 decades that you have listed there, is that correct?

8 A. And have produced at some point.

9 Q. Now, can you tell us by looking at the
10 11.2, Exhibit 11.2, which one of those circles within
11 the confines of the Salem Oil Field are still oil
12 producing or producing wells? Can you tell from the
13 symbols?

14 A. I can, yes, but it is difficult to see.

15 Q. Yeah, it is difficult for me to see. Maybe
16 you have got better eyes. Can you tell us how many
17 of those circles are still currently, as shown on
18 Exhibit 11.2, producing wells?

19 A. If I may, it may be easier to use Exhibit
20 11.1 which is a spreadsheet.

21 Q. Can you give us a number?

22 A. Certainly we can just count by, again,

1 looking at the symbol code here which ones say oil.
2 So 64 oil wells, if my count is correct.

3 Q. How many did you list as having been
4 drilled during those decades listed?

5 A. Back to Exhibit 11.2, beside the legend
6 where the decades are listed there is a count. They
7 are listed for each decade, and 16 from 1970 to '80
8 and then 40, 32 and 10.

9 Q. That totals what?

10 A. The sum of that would be --

11 Q. Ninety-eight?

12 A. Yes, sir.

13 Q. Referring you to Exhibit 11.3, IP Exhibit
14 11.3, does that display the same information as is
15 found on IP Exhibit 11.2?

16 A. No, it does not.

17 Q. What's different?

18 A. The individual tract boundaries are listed.

19 Q. What are the individual tract boundaries?

20 A. These were -- the tract boundaries from
21 prior to the land being established, the land tracts
22 that were integrated into the unit.

1 Q. Do these tract boundaries that you have
2 indicated on the map, are they shown by the black
3 lines with a number in the middle of the tract?

4 A. That is correct.

5 Q. And do those -- what do those represent
6 then?

7 A. So, again, prior to unitization they had
8 much more meaning for assets and things like that.
9 Post-unitization they are more a method to keep track
10 of well locations, you know, and well numbering
11 methodologies.

12 Q. So they represent an internal method by
13 Citation to just keep track of where their wells are?

14 A. What the well nomenclature is.

15 Q. Well nomenclature?

16 A. Well numbers. So if a new well is drilled,
17 it would be sequentially named such that if, let's
18 just for instance, if the last well in Tract 122
19 which is not even a well on this map, if the last
20 well were -- if there were 20 wells in that tract, so
21 the last well would be the 122-20. So if we drill
22 another well on Tract 122, it would become 21.

1 Q. Now, do those tract boundaries represent
2 property owned by individuals or do you know?

3 A. I do not believe that that's necessarily
4 the case. I do not know the specifics.

5 Q. Tract boundaries then, is it fair to say
6 tract boundaries then are a separate internal
7 administrative method of Citation for keeping track
8 of its well numbers?

9 A. Currently I would say so, yes.

10 Q. Is that true since the time Citation
11 acquired the Salem Oil Field from Texaco?

12 A. I believe so.

13 Q. Now, with respect to the well symbols
14 identified on IP Exhibit 11.3, would those symbols
15 have the same meaning as on IP Exhibit 11.2?

16 A. Yes, they are exactly the same.

17 Q. Referring you to IP Exhibit 11.4, can you
18 tell me if that exhibit is the same as the exhibit
19 11.3 and 11.2?

20 A. It is not exactly the same.

21 Q. What's the difference with 11.4 from the
22 other two?

1 A. I took a document that was provided to me
2 which it is my understanding is the territorial
3 boundaries of, I guess, Ameren and Tri-County. And I
4 scanned that image in and placed it into the software
5 that I use, Petra, and tried to overlay that boundary
6 with the unit boundary. There are obvious
7 discrepancies. I could not get them to line up
8 exactly. That is the only difference. But I made a
9 reasonable attempt to make them overlay, but there
10 was no way to make them perfect.

11 Q. All right. And does that 11.4 indicate
12 locations of other items within the Salem Oil Field
13 such as the compressor sites?

14 A. As provided on that map that was already
15 submitted.

16 Q. And does it also indicate the location as
17 provided on that Tri-County map of the IP Texas
18 Substation and the Tri-County Salem Substation?

19 A. Would you repeat the question?

20 Q. Does 11.4 also give the location of the IP
21 Texas Substation and the Tri-County Salem Substation,
22 if you know?

1 A. If you say so. I didn't review the map for
2 that purpose because that's not my expertise.

3 Q. All right. Are the well symbols on Exhibit
4 11.4, do they have the same meaning as they do with
5 respect to 11.2 and 11.3?

6 A. They are the same, yes.

7 MR. TICE: I am going to hand you -- may I
8 approach the witness, Judge?

9 JUDGE JONES: Yes.

10 BY MR. TICE: I am going to hand you what's
11 been marked as Tri-County Group Exhibit J.

12 MR. HELMHOLZ: Excuse me, counsel, has this
13 been filed before?

14 BY MR. TICE: Yeah.

15 Q. Do you have that exhibit in front of you,
16 Mr. Kull?

17 A. That you just handed to me, yes.

18 Q. Tri-County Group Exhibit A is a group of
19 Ameren -- or J, I am sorry. Group Exhibit J is a
20 group of AmerenIP maps identified as 001063 through
21 001070. Do you see that identification at the bottom
22 of the maps?

1 A. Could you repeat that? I am sorry.

2 Q. Group Exhibit J has a series of maps
3 attached to it that have been identified as AmerenIP
4 Map Exhibit 001063 through 001070. Do you see that?

5 A. Yes, sir.

6 Q. Have you ever seen those maps before?

7 A. They are the ones I provided copies of.

8 Q. And you provided those at the request of
9 Tri-County in a discovery request?

10 A. I don't recollect who the request was made
11 by.

12 Q. But you provided them as a result of it?

13 A. Yes.

14 Q. And did you prepare these maps attached to
15 this Group Exhibit J?

16 A. I prepared them, yes.

17 Q. Calling your attention to AmerenIP Map
18 Number 001063, do you know what that represents?

19 A. It is a subsequent version of Exhibit 11.2.
20 You can see by the date marked that it was made
21 August 23, 2010.

22 Q. What does it represent? What does that map

1 represent that is 001063?

2 A. Wells drilled by decade with only active
3 oil wells shown.

4 Q. And if we counted those oil wells in which
5 you have the list of those by decade in the legend,
6 that would total 64, is that correct?

7 A. I assume so.

8 Q. Turning to AmerenIP Map Number 001064, did
9 you prepare that map?

10 A. Yes.

11 Q. And it is similar to or taken from AmerenIP
12 Exhibit 11.3?

13 A. Yes.

14 Q. What does it display?

15 A. The same information as 11.3 but only
16 active oil wells shown.

17 Q. With respect to AmerenIP Map Number 001065,
18 what does that display?

19 A. The same information as the previous except
20 for the well numbers are shown.

21 Q. Those numbers would tie into what document
22 or any exhibit that you furnished in your testimony,

1 the well numbers?

2 A. In that spreadsheet probably with what well
3 number. It actual lists -- the Document 11.1
4 actually lists the well label, and so the well number
5 would be the number that comes after the dash in the
6 well nomenclature, and the number before the dash
7 would actually be the tract number.

8 Q. IP Map Number 001066, what does that
9 represent?

10 A. Wells by decade, and it would be only the
11 shut-in, TA and plugged wells, not including the
12 active oil wells.

13 Q. In other words, those are the wells that
14 are no longer producing that were drilled during that
15 decade or decades, is that correct?

16 A. Effective as of the date of the map, yes.

17 Q. And AmerenIP Map Number 001067, what does
18 that represent?

19 A. The same as the previous map with the tract
20 overlays with only shut-in, TA, and PA wells shown.

21 Q. And AmerenIP Map Number 001068, what is
22 that purporting to represent?

1 A. The same as the previous maps with the
2 provided territorial boundary map overlay with only
3 shut-in, TA and PA wells.

4 Q. Now I would like to have you look at
5 AmerenIP Map 001069. What does that represent?

6 A. The shut-in, PA and TA wells by decade with
7 the well number listed.

8 Q. And the tract location?

9 A. And the tract, yes, sir.

10 Q. And, finally, AmerenIP Map 001070, what
11 does that represent?

12 A. The overlay with the tract boundaries and
13 the territory boundaries, wells by decade, and only
14 the active oil wells shown.

15 Q. Does the Tri-County Group Exhibit J then
16 with these maps that you have identified, AmerenIP's
17 Map Number 001063 through 001070, represent true
18 copies of those particular maps as you had prepared
19 them?

20 A. True copies?

21 Q. Yes, correct copies.

22 A. I prepared the maps, that is correct, to my

1 knowledge, and they are correct to my knowledge.

2 MR. TICE: I have no other questions.

3 REDIRECT EXAMINATION

4 BY MR. HELMHOLZ:

5 Q. When you talk about active oil wells, what
6 exactly do you mean?

7 A. An active oil well, I am sure there is a
8 standard definition, but I believe it means it is
9 producing in paying quantities.

10 Q. And I believe you were asked about the
11 wells that have been drilled since -- what was the
12 time frame? I believe there are 12 wells, and is
13 that from January 1, 2010, to the present?

14 A. That is correct.

15 Q. And that is from your best recollection?

16 A. Yes.

17 Q. And you think approximately six of those
18 are currently active producing wells?

19 A. From my recollection, yes.

20 Q. What type of wells were the other six?

21 A. A combination. Three of the wells are
22 injection wells so they are not an active oil well;

1 they are an active injection well. There were two --
2 let's see.

3 Three wells were drilled as part of
4 another project, and they are not classified as
5 active oil wells. I believe they are classified as
6 observation wells.

7 Q. Now, if you would for a moment look at
8 Ameren Exhibit 11.2, do you have that?

9 A. 11.2? I have it.

10 Q. I would like to direct your attention to
11 Section 29. And if you would just explain clearly
12 for the record what is depicted on 11.2 in Section
13 29?

14 MR. TICE: Objection, beyond the scope of cross
15 examination.

16 MR. HELMHOLZ: Well, redirect got into the
17 types of wells, Your Honor, so I want to make sure
18 that this is clear.

19 MR. TICE: The cross examination only got into
20 the number of wells, Your Honor, and that were either
21 active or -- either producing or non-producing. It
22 did not get into the particular wells in any

1 particular section. This is beyond the scope of
2 cross examination.

3 JUDGE JONES: Response?

4 MR. HELMHOLZ: Well, Your Honor, I think as I
5 look at my notes on cross, I believe there was
6 reference to some of the questions to, quote, wells
7 and I believe that leaves the record unclear. So
8 this question is designed to insure that there is
9 clarity.

10 JUDGE JONES: I will allow the question. If it
11 evolves into a line of questioning that is deemed
12 objectionable, objections can be made. At this point
13 it seems like a permissible question, given the
14 cross.

15 BY MR. HELMHOLZ: Do you recall the question?

16 THE WITNESS: Can you repeat it?

17 MR. HELMHOLZ: I would ask the reporter to
18 re-read it, Your Honor.

19 JUDGE JONES: Ms. Reporter?

20 (Whereupon the requested portion
21 of the record was read back by
22 the Reporter.)

1 THE WITNESS: A. What is depicted is six wells
2 that were drilled from January 1 of 2000 to December
3 31 of 2009, which are currently active producing
4 wells.

5 BY MR. HELMHOLZ:

6 Q. And can you explain why they are clustered
7 the way they appear on Exhibit 11.2?

8 MR. TICE: Objection, Your Honor. That is
9 beyond the scope of cross examination, getting into
10 specific wells, why they are grouped in certain
11 areas. This is going far beyond what was ever
12 questioned with respect to the wells in general on
13 cross examination. Cross examination only dealt with
14 wells producing or non-producing and the symbols
15 indicated in the legend. It had nothing to do with
16 location of wells or particular purpose of the wells.

17 JUDGE JONES: Response?

18 MR. HELMHOLZ: Well, in fact, Your Honor, the
19 cross examination got into the significance of the
20 tract designations and touched upon the nature of a
21 unit. And so I believe this is proper redirect to
22 pursue what was opened with that line of questioning.

1 JUDGE JONES: Well, it is a close call. I am
2 going to let you ask the question and get an answer.
3 But if the line of questioning continues and there
4 are further objections, we will address them.

5 BY MR. HELMHOLZ: I don't have much further.

6 Do you recall the question?

7 THE WITNESS: I am sorry, can you please repeat
8 the question?

9 (Whereupon the requested portion
10 of the record was read back by
11 the Reporter.)

12 THE WITNESS: A. These six wells as shown the
13 effect date of this map are part of an EOR pilot that
14 Citation is currently researching and conducting in
15 the Salem Unit. EOR stands for Enhanced Oil
16 Recovery.

17 BY MR. HELMHOLZ:

18 Q. What do you mean by the word "pilot"? I
19 assume that's P-I-L-O-T.

20 MR. TICE: Objection, Your Honor. This is
21 beyond the scope of cross examination. I did not get
22 into specific programs run or operated by Citation

1 with respect to this oil field or with respect to
2 particular oil wells. This is opening up a whole new
3 line. It wasn't even proposed by this witness as
4 part of their direct testimony.

5 JUDGE JONES: Okay. The ruling is the same as
6 the one I made to the previous objection.

7 MR. HELMHOLZ: Do you recall the question?

8 THE WITNESS: I am sorry, I don't.

9 JUDGE JONES: Would you read it back, Ms.
10 Reporter?

11 (Whereupon the requested portion
12 of the record was read back by
13 the Reporter.)

14 THE WITNESS: A. Pilot suggests a research and
15 development phase, I guess, for economic
16 sustainability of the program or a new technology.
17 And if it is considered successful, then the program
18 will be considered on a unit-wide basis.

19 MR. HELMHOLZ: That's all I have, Your Honor.

20 JUDGE JONES: Is there any recross?

21 MR. TICE: Yes.

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RECROSS EXAMINATION

BY MR. TICE:

Q. Mr. Kull, are these six wells located in Section 29 on IP Exhibit 11.2 producing wells?

A. They are, yes.

Q. Are they included within the number of 64 that you said are producing wells?

A. Yes.

Q. And are you responsible for this or in charge of this pilot program?

A. I am a member on the team. I am the geologic member on the team.

Q. You were asked about the 12 wells that were drilled by Citation from January 1, 2010, through April 26, 2011, and specifically you were asked with respect to the six that were not producing wells. Do you recall that question...

A. Yes.

Q. ..from your counsel? You said three wells were drilled -- let me ask you this.

Are those six wells of those 12 wells non-producing wells at the current time?

1 A. I am sorry, repeat the question.

2 Q. Are those six wells which you earlier
3 indicated were not producing, are they non-producing
4 wells at the current time?

5 A. That's not exactly -- that's not true.
6 Three of the wells are injection wells, and I believe
7 they are located in Section 20. The other three
8 wells are located in Section 29 inside the pilot
9 area. Of those three wells inside the pilot area
10 that are non-producing, I believe they are classified
11 as observation wells. Two of them are set up as
12 sampling wells, so they actually do produce but very
13 limited quantities and on a non-retained basis for
14 sampling purposes and observation. And then another
15 well is -- I am sorry. One well is a sampling well
16 and observation. Two wells are only monitoring wells
17 that will be logged to monitor the progress of the
18 pilot and will not produce as currently configured.

19 Q. I am confused. You classified the 12 wells
20 when you were first asked this question on direct
21 examination by your counsel.

22 A. The --

1 Q. Just a moment. You were first asked how
2 many drills had been drilled; you said 12 and of
3 those you were asked how many were producing and you
4 said six?

5 A. Correct.

6 Q. What did you mean by producing wells in
7 those six?

8 A. The sampling well inside the pilot, as I
9 understand it, had special classification with the
10 State. It is considered a sampling well. It has
11 only recently been configured as such to produce.
12 But it was drilled as an observation, though, not as
13 a producing oil well. It is part of the observation
14 of the pilot.

15 Q. Well then, is it correct to say that of
16 those 12 wells drilled in the last 16 months
17 approximately, only six are what you would classify,
18 as a geologist, producing wells.

19 A. I believe so, yes. Six are classified as
20 producing wells, yes.

21 MR. TICE: I have no other questions.

22 JUDGE JONES: Any re-redirect?

1 MR. SMITH: I have nothing.

2 MR. HELMHOLZ: Just briefly, Your Honor.

3 RE-REDIRECT EXAMINATION

4 BY MR. HELMHOLZ:

5 Q. Do you have an understanding as to the
6 regulatory distinction between an oil well that
7 produces oil for sale and an oil well that produces
8 oil for testing or sampling purposes?

9 A. That is not my area of expertise. For the
10 record, I believe that there is --

11 MR. TICE: I am going to object to this witness
12 testifying beyond his area of expertise.

13 JUDGE JONES: Response?

14 MR. HELMHOLZ: Well, first of all, he
15 interrupted before the answer was complete, which I
16 have a problem with. Second of all, he has not been
17 tendered as an expert witness. He is here to talk
18 about production data and status. And if he can
19 answer the question, he can. He is a geologist so he
20 certainly knows what a producing well entails.

21 MR. TICE: Well, then he should be asked the
22 question whether or not he has expertise to answer

1 that question. I object to the form of the question
2 then as tendered to this witness if he is not being
3 tendered as an expert on the area of the question.

4 JUDGE JONES: Objection overruled.

5 BY MR. HELMHOLZ:

6 Q. I think you were in the middle of your
7 answer.

8 A. The one well in question that was drilled
9 since these maps were made is a very special case,
10 and I believe it has a special designation with the
11 State Department of Natural Resources and it is
12 classified separately. It was certainly drilled as
13 an observation well and not as a normal oil producing
14 well as it is. But that well is -- again, that's the
15 only one that is that special case.

16 MR. HELMHOLZ: That's all I have, Your Honor.

17 MR. TICE: I don't have any cross.

18 JUDGE JONES: Thank you, sir.

19 (Witness excuse.)

20 MR. TICE: I would ask that Tri-County Group
21 Exhibit J be admitted into evidence.

22 MR. HELMHOLZ: No objection.

1 MR. SMITH: No objection.

2 JUDGE JONES: Let the record show that
3 Tri-County Exhibit Number J is hereby admitted into
4 the evidentiary record.

5 (Whereupon Tri-County Exhibit J
6 was admitted into evidence.)

7 JUDGE JONES: Off the record.

8 (Whereupon there was then had an
9 off-the-record discussion.)

10 JUDGE JONES: Back on the record. Is AmerenIP
11 ready to call its next witness?

12 MR. HELMHOLZ: We are, Your Honor.

13 JUDGE JONES: Sir, please stand and raise your
14 right hand to be sworn.

15 (Whereupon the witness was duly
16 sworn by Judge Jones.)

17 JUDGE JONES: Thank you. Please be seated.

18 MR. HELMHOLZ: Your Honor, this witness is
19 Jeffrey Lewis, J-E-F-F-R-E-Y, last name is L-E-W-I-S.

20 May I approach the witness?

21 JUDGE JONES: Yes, sir.

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JEFFREY LEWIS

called as a witness on behalf of Illinois Power Company d/b/a AmerenIP, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HELMHOLZ:

Q. Welcome to Springfield, Mr. Lewis. I am going to approach you and I am going to hand you three stapled pieces of paper. The first one is AmerenIP Exhibit 4 which is transcribed, your testimony, and the second one is Ameren Exhibit 4.1 which is a fax cover sheet, and the third one is AmerenIP Exhibit 9 which is some supplemental testimony.

First of all on Exhibit 4, that testimony was prepared and shows a filing date of November 6, 2009. Would you take a look at that quickly and let us know if there has been any significant or material change in your testimony or if there is any typographical errors or anything in that nature?

A. Not that I see.

1 Q. Just take a second.

2 A. All right.

3 (Pause.)

4 Q. We are looking for any substantial change
5 in your position, title and duties.

6 A. No.

7 Q. Same question with respect to AmerenIP
8 Exhibit 9, your supplemental testimony. Just take a
9 moment and see if there are any glaring typographical
10 errors or anything you would want to correct before
11 that is submitted to the Commission.

12 (Pause.)

13 A. Same thing.

14 MR. HELMHOLZ: Your Honor, I would move for
15 admission of AmerenIP Exhibits 4, 4.1 and 9, and I
16 tender the witness for cross examination.

17 JUDGE JONES: Are there any objections to the
18 admission of those AmerenIP exhibits sponsored by
19 Mr. Lewis?

20 MR. SMITH: No objection.

21 MR. TICE: No objection.

22 JUDGE JONES: Let the record show that exhibits

1 sponsored by Mr. Lewis, including his testimony
2 AmerenIP Exhibit 4 and attachment to that, 4.1, are
3 admitted into the evidentiary record as filed on
4 e-Docket on November 6, 2009. The supplemental
5 testimony, Ameren Exhibit 9, is admitted into the
6 evidentiary record as filed on e-Docket on April 26,
7 2010.

8 (Whereupon AmerenIP Exhibits 4,
9 4.1 and 9 were admitted into
10 evidence.)

11 JUDGE JONES: Mr. Tice, do you have some
12 questions for Mr. Lewis?

13 MR. TICE: I do.

14 CROSS EXAMINATION

15 BY MR. TICE:

16 Q. Good afternoon, Mr. Lewis.

17 A. Good afternoon.

18 Q. What's your education or training?

19 A. Petroleum Engineering Degree, Bachelors,
20 from the University of Texas and been employed by
21 Citation Oil and Gas since 1987.

22 Q. Petroleum engineer, does that mean you hold

1 a BS degree in petroleum engineering?

2 A. Yes.

3 Q. That was the curriculum?

4 A. Yes.

5 Q. How long have you been employed by
6 Citation?

7 A. Since 1987.

8 Q. And was that the year you graduated from
9 college?

10 A. I graduated in '86.

11 Q. Is Citation the only employer you have had
12 since graduation?

13 A. I worked for a drilling company for one
14 year, from '86 to '87.

15 Q. In the Texas area?

16 A. Yes.

17 Q. Are you still currently the engineering
18 manager for the Southern Oklahoma region of Citation?

19 A. Yes, I am.

20 Q. And you indicated in your direct testimony,
21 AmerenIP Exhibit 4, that you had been in that
22 position for 15 years?

1 A. Correct.

2 Q. Is that 15 years as of the date of that
3 filing?

4 A. That's as of 2009, yes.

5 Q. And you are still currently in that
6 position?

7 A. Yes, sir.

8 Q. As engineering manager what really are your
9 duties?

10 A. I oversee the technical field work, the
11 technical aspects for field work that we do. I
12 oversee any kind of technical duties that involve our
13 field operations.

14 Q. What do you mean by technical duties?

15 A. For instance, calculating IV hydrostatic
16 pressures for, if we get into a situation where we
17 need to cement a well, cement calculations where we
18 are dealing with yields. I will also look at
19 designing pumps, you know, that produce the wells,
20 looking at the calculations to make sure we have the
21 right size pumps, surface facilities, look at the
22 design of the pumps and surface facilities, etcetera.

1 That's not typically somebody in the field's duties
2 to run those calculations.

3 Q. As a petroleum engineer then are your
4 functions generally to deal with the actual
5 production of the oil well through the mechanical
6 devices that comprise the well itself?

7 A. The production as well as the whole
8 facility, the whole field operation. There is a lot
9 of moving parts. So I deal with the team to look at
10 the designs of the specific pumps and stuff within a
11 field, utility grid, whatever we may have. And I
12 will add, too, look at the overall expenses of the
13 field, the economics. We are responsible for the
14 field making money.

15 Q. When you say utility grid, what do you
16 mean?

17 A. I am just looking at how the system is set
18 up most efficiently.

19 Q. How what system is set up most efficiently?

20 A. The utility.

21 Q. Do you mean by the electric lines?

22 A. Electric lines, the utility company that we

1 are getting the best rates. We are set up in a
2 manner in which we can minimize our utility rates.

3 Q. So you are out -- one of your functions
4 then is to shop for the most favorable rate for
5 electricity?

6 A. Yes.

7 Q. And how do you go about doing that?

8 A. Bids.

9 Q. Pardon?

10 A. Bids.

11 Q. Bids from who?

12 A. Utility companies.

13 Q. Is the utility rate or cost of electricity
14 a paramount factor to the operation of your oil
15 fields?

16 A. Reliability. It is not necessarily, no.
17 It has -- it's a large part, but reliability is an
18 issue and the ability to supply service, have enough
19 equipment.

20 Q. What do you mean by reliability?

21 A. Reliability is such that you have minimal
22 down time due to power failures or power outages.

1 Q. Now, power failures by whom?

2 A. The utility company. You may have trees in
3 the lines, a long length of a line to service you
4 that's not maintained, for instance. That's an issue
5 of reliability.

6 Q. Not maintained by who?

7 A. The utility company.

8 Q. Okay. You talk then about service. What
9 do you mean by service?

10 A. Service is, for instance, willing to give
11 us information, willingness to work with us as far as
12 to make sure we are always on the best rate schedule
13 at any given time.

14 Q. Anything else in relationship to service,
15 other than being on the best rate schedule at any
16 given time?

17 A. Not that I can think of.

18 Q. Is reliability part of service to you?

19 A. Reliability is reliability.

20 Q. Is having sufficient manpower to maintain
21 proper maintenance on the power lines, power
22 company's lines, part of service to you?

1 A. I don't look at that, no.

2 Q. What do you look at when you look at
3 reliability then, to determine reliability?

4 A. Past history.

5 Q. Pardon?

6 A. Past history.

7 Q. Past history of what?

8 A. The amount of time you have -- up time
9 that, you know, power -- I call them power grids.
10 For instance, you lose -- you have a voltage dip that
11 knocks you offline, your field. And historically
12 that's an issue as far as, you know, reliability.

13 Now, you know, cost is a huge factor,
14 though. Because most utility companies, my
15 experience has been that a lot of utility companies
16 are very similar on being able to supply pretty
17 consistent power, and so cost becomes pretty much the
18 major and closing factor.

19 Q. So you don't look at reliability?

20 A. No, I just said I did. I am just saying
21 cost weighs more than reliability because in my
22 experience I have seen reliability runs fairly

1 equivalently across different companies. There have
2 been a few where reliability has been a problem, but
3 it's been resolved.

4 Q. What factors do you look at, Mr. Lewis, to
5 determine reliability?

6 A. Again, it's the amount of time that a
7 utility can supply you good quality power that
8 doesn't knock our fields down.

9 Q. How do you, though, determine whether or
10 not they had or their history is in that regard? How
11 do you determine that? Do you ask them for records?

12 A. Yeah, just how many times the power supply
13 to a given area has been disrupted through historical
14 data.

15 Q. So you ask for outage records...

16 A. Right.

17 Q. ..for that particular area of the power
18 grid?

19 MR. HELMHOLZ: Your Honor, I am just going to
20 object at this point. I have been fairly patient,
21 but there is absolutely nothing in the witness'
22 direct exam about comparing utility suppliers or rate

1 shopping or reliability.

2 MR. TICE: Well, he talks about in his direct
3 testimony, Your Honor, overseeing the engineering and
4 technical work of the region. I asked him then what
5 the technical work that he did was comprised of, and
6 that's when he explained to me that it involved these
7 various areas, including rate, reliability of the
8 power grid of the power company, as well as other
9 factors. And I think I have -- once he tells me
10 that, I think I have a right to explore that to find
11 out exactly what the witness relies on. He is the
12 one that makes those decisions, apparently, in this
13 region.

14 JUDGE JONES: Anything further?

15 MR. HELMHOLZ: There is nothing in his
16 testimony on this subject, Your Honor. It is not
17 material to any issue in the case.

18 JUDGE JONES: I am going to allow the question.
19 You have sort of built up to it. But I guess the
20 objection would go to the overall line of questioning
21 at this point. It is kind of sort of a link that's
22 been established between the witness' description of

1 what he does and this line of questioning. I think
2 the witness did indicate the technical work he does
3 extends into these areas, and that's really what sort
4 of triggered this line of questioning, as near as I
5 can tell.

6 So that will be the ruling. To the
7 extent that the line of questioning gets beyond that
8 or other concerns arise within it, then we will deal
9 with them as they come up.

10 MR. HELMHOLZ: Thank you, Your Honor.

11 MR. TICE:

12 Q. Now, Citation Oil and Gas Corporation is a
13 different company than Texaco, is that correct?

14 A. Yes, sir.

15 Q. Citation bought this Salem Oil Field in
16 1998, is that correct?

17 A. Yes, sir.

18 Q. Is that when you first became aware of the
19 Salem Oil Field?

20 A. Yes, sir.

21 Q. How many wells were active producing wells
22 in the Salem Oil Field in 1998?

1 Q. Does he still work under you?

2 A. Yes, he does.

3 Q. Still an employee of Citation?

4 A. That's correct.

5 Q. Are you aware of the fact that he contacted
6 Tri-County and Illinois Power, AmerenIP, in early
7 2005 about the electric service to the gas plant?

8 A. I am not aware that he contacted AmerenIP,
9 no, sir.

10 Q. Were you aware that he contacted
11 Tri-County?

12 A. Yes.

13 Q. Did he report back to you that he had
14 contacted Tri-County?

15 A. Yes.

16 Q. Did he contact Tri-County to ask if they
17 would provide electric service to the gas plant?

18 A. I don't know that he asked them if they
19 would supply. I know that he asked for a cost.

20 Q. Do you know whether he met with Tri-County
21 and showed the site where the gas plant was proposed
22 to be?

1 A. I don't know that he met with them, no,
2 sir.

3 Q. Do you know anything of his contacts with
4 Tri-County regarding the electric service to the
5 Citation gas plant that's at issue in this case?

6 A. I know that there was a conversation where
7 he received a cost estimate to hook up Tri-County
8 into the gas plant.

9 Q. Do you know anything other than that about
10 the service to the gas plant from Tri-County?

11 A. No.

12 Q. Now, in your capacity as a production or
13 engineering manager for the Salem Oil Field, are you
14 familiar with the electric circuits of the Citation
15 distribution system in the Salem Oil Field?

16 A. I am aware of them. I couldn't --
17 familiar, yes, I am aware of it.

18 Q. Do you know how many circuits there are?

19 A. There were at the time that I looked over
20 it four circuits.

21 Q. Do you know if there are still four
22 circuits?

1 A. I could not answer that.

2 Q. Do you know the names of those circuits?

3 A. There was -- I don't think I could name all
4 of them. I could name a few.

5 Q. Are you familiar also with the dispute in
6 this case as it involves the electric service to the
7 Citation gas plant as well as seven of the eight
8 Citation gas compressor sites that feed gas to that
9 gas plant?

10 A. Yes.

11 Q. Are you aware of the locations of those
12 eight gas compressor sites?

13 A. I would have to look at it on a map to be
14 exact.

15 MR. TICE: May I approach the witness, Judge?

16 JUDGE JONES: Yes, sir.

17 BY MR. TICE:

18 Q. I am going to show you what's been marked
19 and admitted into evidence as Tri-County's Exhibit
20 A-3 which purports to be a map of the Salem oil
21 Field, the Tri-County/IP service territory
22 boundaries, the eight gas compressor sites, the

1 Citation gas plant, the Citation office, the AmerenIP
2 Texas Substation, the Salem Tri-County Substation.
3 Have you ever seen that map before?

4 A. No, sir.

5 Q. Now, you testified that you were generally
6 familiar with the location of the eight gas
7 compressor sites. Those are marked on this map. Is
8 that the general understanding that you have as shown
9 on this map as to the location of those eight gas
10 compressor sites?

11 A. Yeah, my general understanding, yes.

12 Q. Exhibit A-3 also displays the location of
13 the Citation gas plant, do you see that?

14 A. Uh-huh.

15 Q. Is that your general understanding of the
16 location of the Citation gas plant?

17 A. Yes.

18 Q. And this map also shows the location of the
19 Citation office at the Salem Oil Field?

20 A. Right.

21 Q. Are you generally familiar with the
22 location of the Citation office at the Salem Oil

1 Field?

2 A. I am.

3 Q. Does this map purport to show the location
4 of the Citation office in the Salem Oil Field as you
5 understand it?

6 A. Yes.

7 Q. This map also shows the location of the
8 Citation three-phase distribution line running from
9 the Texas Substation of IP down to the Citation gas
10 plant. Do you see that on the map?

11 A. Yes, I do.

12 Q. Are you familiar with the general location
13 of that Citation distribution line?

14 A. Yes.

15 Q. Is that Citation distribution line that
16 feeds electricity from the Texas Substation of IP to
17 the gas plant part of one of the Citation-owned
18 electric distribution facilities?

19 A. Yes, it is.

20 Q. Have you examined that particular line
21 that's shown or depicted on Tri-County Exhibit A-3?

22 A. The whole line, the whole circuit?

1 Q. The whole line running from the Texas IP
2 Substation to the gas plant?

3 A. Have I physically examined it?

4 Q. Yes.

5 A. No, sir.

6 Q. Have you examined any of it?

7 A. Yes.

8 Q. What portion?

9 A. The portion as it comes into the plant
10 which is the injection plant which is not marked. It
11 is at the very end of the red, where it says existing
12 40ATSR on the -- it would be the far west side where
13 it dead ends.

14 Q. Is that the water plant?

15 A. Yes.

16 Q. So you examined -- I want to make sure I
17 understand this right. You have examined that part
18 of the Citation distribution line depicted on
19 Tri-County Exhibit A-3 as it runs from the IP Texas
20 Substation to the water plant?

21 A. Just the portion -- I have not examined the
22 whole line, no.

1 Q. Tell me again which portion.

2 A. I have just seen the line as it comes into
3 the water plant.

4 Q. Just at the location of the water plant?

5 A. Right.

6 Q. Are you familiar with the fact that a
7 portion of that distribution line of Citation as is
8 depicted on Exhibit A-3 was constructed by Citation?

9 A. Yes, I was aware of that.

10 Q. And it was constructed for what purpose?

11 A. It was constructed to connect into the gas
12 plant.

13 Q. Did you play any part in the design of that
14 construction of that portion of the Citation
15 distribution line?

16 A. A small amount. I had an electrician that
17 works for us that actually did the design on the
18 line.

19 Q. You yourself are not an electrical
20 engineer, is that correct?

21 A. No, I am not.

22 Q. So do you sign off on these designs or does

1 Citation have a particular engineering supervisor
2 from your electrical facilities that signs off on
3 those designs?

4 A. We do not have an electrical facility
5 design engineer that signs off on it. The
6 electrician through his experience and we, if we are
7 okay with it, yes, we will sign off on it and
8 recommend it.

9 Q. You don't have any outside electrical
10 engineer consultants who help you with that?

11 A. This particular design, no.

12 Q. Now, were you familiar with which circuits
13 of the Citation electrical distribution service --
14 electrical distribution circuits that serve the gas
15 compressor sites one or five that are shown on this
16 map?

17 A. Am I familiar with the circuits?

18 Q. Yes, that serves gas compressor sites one
19 and five.

20 A. I am not sure what you mean by familiar. I
21 am aware of the circuits.

22 Q. Do you know which circuit -- let me ask you

1 this.

2 How many electrical circuits do you
3 have in the Citation electrical distribution
4 facilities for the Salem Oil Field?

5 A. I believe there is four.

6 Q. Of those four which circuit serves the gas
7 compressor sites numbers one and five?

8 A. I am not sure.

9 Q. Which circuit within those four circuits
10 serves gas compressor sites two and three?

11 A. I am not sure of the name of that circuit.

12 Q. Is that circuit a separate circuit from the
13 circuit that serves gas compressor sites one and
14 five?

15 A. From this map it appears that two and three
16 and one -- well, I can't tell five. One, two and
17 three look like they are on the same circuit.

18 Q. Do you know?

19 A. No, not particularly, no, I don't.

20 Q. All right. Do you know which circuit among
21 the four electrical distribution circuits of Citation
22 that serve gas compressor sites four, six, seven or

1 eight?

2 A. Four and six, just by this map, it looks
3 like it is served by what they call the plant
4 circuit.

5 Q. Four and six are served by the plant
6 circuit?

7 A. That's what it appears, yes.

8 Q. Do you know?

9 A. No.

10 Q. Do you know which circuit of the four
11 electrical circuits operated by Citation in the Salem
12 Oil Field serve gas compressor sites seven and eight?

13 A. No.

14 Q. Do you know, Mr. Lewis, if the plant, the
15 gas plant, is on any of the same circuits that any of
16 the eight gas compressor sites are on, if you know?

17 A. I couldn't tell you for sure.

18 Q. Are you familiar with the fact that there
19 is a Service Area Agreement that exists between IP
20 and Tri-County?

21 A. I am aware that an agreement exists, yes.

22 Q. Have you ever seen that agreement?

1 A. Not that I recall.

2 Q. If you haven't seen it, then I take it you
3 haven't read it?

4 A. Not that I recall.

5 Q. Now, again referring you to the Tri-County
6 Exhibit A-3, do you know which of either IP or
7 Tri-County serves or provides electric service to the
8 Citation office in the Salem Oil Field?

9 A. Yeah, I know Tri-County provides service to
10 the office.

11 Q. Okay. And are you aware of the fact that
12 Citation is a member of Tri-County?

13 A. No, I am not aware they are a member.

14 Q. Yeah. Do you know how long Tri-County has
15 provided electric service to the Citation office in
16 the Salem Oil Field?

17 A. No.

18 Q. Were you aware before today, your testimony
19 here today, about the territorial boundary lines that
20 exist under the territorial agreement between IP and
21 Tri-County?

22 A. I was aware that there were boundaries,

1 yes.

2 Q. And were you ever made aware by Clyde Finch
3 or anyone else that the Citation gas plant as it was
4 proposed by Clyde Finch when he talked to Tri-County
5 was in fact physically located on Tri-County's side
6 of that territorial boundary line?

7 A. Yes. Yes, I was aware.

8 Q. Were you ever made aware that Citation,
9 because of that, needed to request electric service
10 from Tri-County?

11 A. Was I aware that they needed to request?

12 Q. Yes.

13 A. No.

14 Q. No one told you that?

15 A. No one told me that we needed to request
16 service from Tri-County, that is correct.

17 Q. Did anyone tell you that you needed to take
18 electric service from Tri-County for the gas plant
19 because the gas plant was located in Tri-County's
20 territory?

21 A. Not that I am aware of, no.

22 Q. Did you ever become aware of that fact?

1 A. I was told by Tri-County that I needed to
2 take service from them.

3 Q. And when were you told that by Tri-County?

4 A. It was a meeting -- can I reflect in my
5 notes -- I think we had in 2005. I don't see the
6 exact date in here. But it was in roughly July 2005
7 or June 2005.

8 Q. Well, you don't speak of any meeting that
9 you had with Tri-County in your prepared direct
10 testimony, do you?

11 A. I don't believe there was any question
12 asked about it.

13 Q. Are you telling us that you did have a
14 meeting, that is you personally, with Tri-County
15 sometime in June or July regarding electric service
16 to the Citation gas plant?

17 A. Yes, myself as well as Ed Pearson.

18 Q. And where did that meeting take place?

19 A. In Tri-County's office.

20 Q. At Mt. Vernon, Illinois?

21 A. If that's where their office is. I don't
22 recall exactly where their office is.

1 Q. And who attended that meeting, if you
2 recall?

3 A. Myself, Ed Pearson, Marcia, and I don't
4 recall any of the others.

5 Q. Were there other people from Tri-County
6 there as you recall?

7 A. I believe so.

8 Q. All right. And do you recall what the
9 purpose of the meeting was?

10 A. It was to discuss the feasibility or the
11 cost to supply utility to the plant.

12 Q. What do you mean by the feasibility or cost
13 to supply utility to the gas plant?

14 A. How much the electricity would cost and if
15 they could hook up to the plant. I recall that. As
16 well as if they felt like they had the right to have
17 the power hooked into it.

18 Q. Well, let's take the latter one of those.
19 What did Tri-County tell you about their right to
20 bring the power to the gas plant?

21 A. They felt like they did.

22 Q. So as of that time you personally knew that

1 Tri-County believed they had the right to bring the
2 electric power to the gas plant, is that correct?

3 A. Yes.

4 Q. Is that the first time, that date of that
5 meeting, that you had that knowledge that Tri-County
6 believed they had the right to bring electric power
7 to the gas plant?

8 A. I believe so.

9 Q. Had Clyde Finch ever briefed you on that
10 subject before that date?

11 A. Not to my recollection, no.

12 Q. Why did not Clyde Finch attend this meeting
13 between the Citation representatives and the
14 Tri-County when you were discussing the right to
15 bring power to the plant, the cost and the
16 feasibility with Tri-County?

17 A. That is not his responsibility.

18 Q. Whose responsibility is it?

19 A. Myself and Ed Pearson at the time.

20 Q. Now, what did you mean that you were there
21 to discuss the cost of the electric power with
22 Tri-County on that date that you had this meeting?

1 A. If there was -- if we hooked up to
2 Tri-County, what kind of rates that they could offer.

3 Q. And by cost is simply rate, the cost of
4 electricity, is that correct?

5 A. That is correct.

6 Q. Per kilowatt hour?

7 A. Or however they would cost it to us.

8 Q. And what do you mean by discuss the
9 feasibility of connecting electric power to the gas
10 plant by Tri-County?

11 A. If they had enough capacity to supply
12 power.

13 Q. Did Tri-County discuss with you on that
14 date the feasibility or their ability to provide
15 electric power to the gas plant?

16 A. I believe they said they were able to, yes.

17 Q. So on that date you knew that Tri-County
18 was able to furnish the electric power to the gas
19 plant?

20 A. That is correct.

21 Q. And on that date that you held this meeting
22 with Tri-County, you knew that they believed they had

1 the right to bring the power in, is that correct?

2 A. That is correct.

3 Q. And did they discuss any rate with you?

4 A. Not at that meeting. I think I was told
5 they would look into it and get back with us.

6 Q. Did you have a discussion with Tri-County
7 on that date in June 2005 when you had this meeting
8 about Citation being allowed to use their electric
9 distribution circuit to bring electric power from the
10 IP Texas Substation to the gas plant site?

11 MR. SMITH: Objection to the characterization
12 of allowed.

13 BY MR. TICE: I will rephrase it.

14 Q. Did you have any discussion with the
15 Tri-County representatives on that date in June 2005
16 about Citation using its customer-owned distribution
17 line to bring electric power from the IP Texas
18 Substation to the gas plant site?

19 A. I believe I did.

20 Q. And what was that discussion?

21 A. The fact that we had existing facilities
22 and we were looking at it that this was an extension

1 of a unit and it is operations and we had a line that
2 was available to tie into the gas plant.

3 Q. Were you aware of the fact at that time
4 when you had that discussion on that day in June 2005
5 that IP had informed Citation representatives that
6 they would have to -- Citation would have to talk to
7 Tri-County to get their consent to use the Citation
8 distribution line to bring IP power to the gas plant
9 site?

10 MR. HELMHOLZ: Your Honor, I object to that
11 question. First, it is hopelessly compound. I don't
12 know that it can be understood reasonably. Second,
13 it assumes facts not in evidence. It does not even
14 identify the date of the conversation he is referring
15 to. As you know, the dates are significant. So that
16 to ask him if he is aware that IP did X and Y without
17 specifying a date range is really mischaracterizing
18 the facts.

19 MR. SMITH: I join.

20 MR. TICE: He has already testified the meeting
21 took place either in July or June. He doesn't know
22 the exact date. And the questions have all been

1 asked of him of that particular meeting that he has
2 referred to as occurring between he and his Citation
3 reps and Tri-County reps in either June or July.
4 That's the meeting I am referring to.

5 With respect to the facts not in
6 evidence, it is certainly in evidence that Citation
7 people have been informed that at that point that
8 Citation had to talk to Tri-County about use of
9 Citation's own distribution lines to bring that power
10 in.

11 JUDGE JONES: What evidence are you referring
12 to?

13 MR. TICE: The e-mails of March 9, 2005, to
14 June 21, 2005, as well as the testimony of Mr. Masten
15 that's been here, Conrad Siudyla that's been here,
16 Mike Tatlock that's been here, all IP witnesses.

17 MR. HELMHOLZ: Therein lies the entire problem.
18 The question presumes he has knowledge of all of
19 those things Mr. Tice just recited.

20 MR. SMITH: Exactly. Without asking him.

21 JUDGE JONES: Could I have the question read
22 back, Ms. Reporter?

1 (Whereupon the requested portion
2 of the record was read back by
3 the Reporter.)

4 JUDGE JONES: "Aware of the fact" may be part
5 of what has triggered the objection here in terms of
6 whether that information is in the record.

7 Now, whether the witness should be
8 given more to work with if you are going to ask him a
9 question based on something in the record like that
10 is sort of a little different issue. I think that if
11 something is in the record and that's what is being
12 referred to in the question, then I don't know that
13 those objections, at least the underlying objections,
14 would apply. But I think that to the extent they put
15 the witness in a position of having to just accept
16 Mr. Tice's question as correct that it is in there
17 may be a little harder.

18 So given the objection that has been
19 placed, I think that at a minimum the witness should
20 be given some reference to what you are referring to
21 is in evidence and shown it if need be, so that he
22 will have the context to be able to answer the

1 question.

2 But I don't know if anyone is saying
3 since you -- I mean, is anyone still saying that the
4 information is not in the record at this point that
5 Mr. Tice is referring to? It is a little different
6 question than whether the witness should be expected
7 to answer a question about it, you know, if he hasn't
8 seen it.

9 MR. TICE: Your Honor, I was just asking if he
10 was aware of that fact, that information had been
11 provided to Citation representatives by IP
12 representatives concerning that subject. If he's not
13 aware of it, he can tell me he is not aware of it.
14 If he is aware of it, then he can tell me he is aware
15 of it.

16 The objections came because I was
17 referring to the fact that these representations had
18 been made by IP to Citation. I think that was the
19 basis of the objection. Then it got switched to,
20 well, the witness can't be aware of that and somehow
21 it got to whether or not it was in the record or not.
22 There is no question that that information is in the

1 record. I was simply asking this witness if he was
2 aware that this information had been provided to
3 Citation representatives. I am trying to lay a
4 foundation here about his knowledge. That's all I am
5 asking.

6 JUDGE JONES: All right. Mr. Helmholtz, did you
7 have anything more to say on that?

8 MR. HELMHOLTZ: Well, Your Honor, I think there
9 is an unfortunate tendency by Mr. Tice to at times
10 equate IP as the party with the acts of particular IP
11 employees. I think it is an important issue in this
12 case. As far as I am concerned it won't be really in
13 dispute. Individuals of IP do not bind IP and Mr.
14 Tice is really commingling that question.

15 JUDGE JONES: Let's hear the beginning of that
16 question again and see if Mr. Tice is referring to IP
17 or individuals from IP. Could we have the beginning
18 of that question again, Ms. Reporter? Thank you.

19 (Whereupon the requested portion
20 of the record was read back by
21 the Reporter.)

22 JUDGE JONES: All right. That's back to the

1 characterization we have run into earlier today when
2 the characterization of IP as having informed as
3 opposed to, let's say, representatives or individuals
4 from IP or other references. So we have run into
5 this one earlier today.

6 Given the objections I think that that
7 characterization poses some problems, and the
8 objections are sustained without prejudice to
9 Mr. Tice to rephrase the question and go from there.

10 BY MR. TICE:

11 Q. Mr. Lewis, were you aware at the time that
12 you had this meeting with Tri-County representatives
13 that you have testified to as having, that
14 representatives of IP had advised representatives of
15 Citation that Citation had to obtain the consent of
16 Tri-County before Citation could use its own electric
17 distribution line to bring power from the IP
18 substation to the gas plant?

19 A. I don't recall if they asked me to get
20 their permission. I do not recall that.

21 Q. Then why were you there to bring that
22 subject matter up with Tri-County about the use of

1 the Citation distribution line for delivering IP
2 electric power from the IP Texas Substation to the
3 gas plant?

4 A. Because I was aware that it was in their
5 territory.

6 Q. In whose territory?

7 A. In Tri-County's territory.

8 Q. What difference would that make?

9 A. Because I knew that would cause some issue,
10 and I was trying to settle it without issue.

11 Q. What issue would it cause that you were
12 aware of?

13 A. That they would claim the load potentially.

14 Q. How did you find out that they would claim
15 the load potentially?

16 A. Because it was in their territory. That's
17 just an assumption I made.

18 Q. Had anyone told you prior to that time that
19 because the gas plant was located physically in
20 Tri-County's territory that Tri-County would claim
21 the load?

22 MR. HELMHOLZ: Your Honor, I object to the

1 question. First of all, his voice is rising. He is
2 becoming argumentative. Also, the witness just
3 answered the question previously. He is trying to
4 argue him out of his previous answer.

5 MR. TICE: I am not trying to argue. He said
6 he became aware. I believe I have a right to ask him
7 how he became aware, whether someone told him or not
8 of that subject matter. This is cross examination.

9 JUDGE JONES: I think it is appropriate cross,
10 given what preceded it. So you may answer the
11 question if you can.

12 THE WITNESS: A. No, it was just through the
13 meeting with Tri-County and it was in their
14 territory. I assumed at that point that they would
15 take their load. I think I answered the question
16 earlier when you asked me was I aware. I was made
17 aware that day by Tri-County.

18 I also knew that it was in the
19 territory. You asked me that question, and I
20 answered that I did know that the gas plant was in
21 Tri-County's territory. So I knew that that would be
22 an issue potentially from Tri-County.

1 BY MR. TICE:

2 Q. Now, at the time that you had that meeting
3 with Tri-County, Mr. Lewis, you had never seen the
4 Service Territory Agreement between IP or Tri-County,
5 is that correct?

6 A. I think I answered I don't recall if I had
7 seen the agreement.

8 Q. And had you ever seen a map with a
9 territorial boundary line on it between Tri-County
10 and IP?

11 A. Yes.

12 Q. And who had provided you that map prior to
13 this meeting?

14 A. I don't recall who provided me that map.

15 Q. Did it come from Tri-County?

16 A. I don't recall.

17 Q. Had you ever had any meeting with
18 Tri-County prior to this meeting of June or July 2005
19 regarding this issue of electric service by either
20 Tri-County or IP to this gas plant?

21 A. Could you repeat that again?

22 Q. Had you ever had any other meeting prior to

1 this meeting in June or July of 2005 with Tri-County
2 regarding service to the gas plant?

3 A. I don't recall. We may have had a phone
4 conversation, but I had never been to the Tri-County
5 office for a meeting until this time.

6 Q. Do you know who the phone call was with or
7 do you recall that?

8 A. It seems like Marcia and I had a phone
9 conversation.

10 Q. Do you know when that occurred
11 approximately?

12 A. No, sir.

13 Q. Was it during the time period of March 9,
14 2005, and this meeting of June or July 2005?

15 A. Was the phone call in March?

16 Q. Was it during that time period?

17 A. I don't recall.

18 Q. Do you know -- or did you arrange for
19 Citation to take electric power from Tri-County for
20 the Citation office?

21 A. No.

22 Q. Do you know who did that?

1 A. No.

2 Q. Is that a matter which would have been
3 subject to your review or final decision?

4 A. No, not if it was done prior to Citation's
5 operation of the Salem Unit.

6 Q. Do you know when the electric power was
7 hooked up to the Citation --

8 A. Prior to Citation operating the Salem Unit.

9 Q. Are you certain?

10 A. Fairly certain.

11 Q. Can you tell me when the transaction
12 between Texaco and Citation occurred for the purchase
13 of the Salem Oil Field?

14 A. December of '98.

15 Q. Now, I want you to refer to your direct
16 testimony. On page 5 at line 13 there is a question
17 asked of you, "Did Citation add any new electrical
18 wires after it purchased the facility". Do you see
19 that question?

20 A. Yes.

21 Q. And do you see your answer was, "No, to
22 take power from IP, no"?

1 A. Not to take power from AmerenIP, no.

2 Q. By facility do you know what was meant in
3 that question?

4 A. I believe I assumed it was the Salem Unit.

5 Q. All right. In fact, Citation did add new
6 electric wires within the Salem Oil Field after it
7 acquired that Salem Oil Field from Texaco, didn't it?

8 A. I think in my testimony the wires were away
9 from the substation. It was on Citation's
10 distribution lines.

11 Q. My question is, in fact Citation did add
12 new wires in the Salem Oil Field after it acquired
13 the Salem Oil Field from Texaco, didn't it?

14 A. Yes.

15 Q. In fact, it added a new distribution line
16 in order to bring IP electric power to the gas plant,
17 didn't it?

18 A. It was an extension of an existing line,
19 yes.

20 Q. Do you know how long that extension was?

21 A. I have seen reports. I couldn't testify or
22 verify that that's the length of it.

1 Q. Prior to the construction of that
2 extension, no line, no electric distribution line,
3 had existed at that location owned by Citation, is
4 that correct?

5 A. Say that question again.

6 MR. SMITH: I think you mean at the gas plant.

7 Q. At the time of the construction of that
8 extension by Citation of the electric line to the gas
9 plant, no electric distribution facilities had
10 existed prior to that construction?

11 A. Well, there was four electric distribution
12 systems.

13 Q. The extension that Citation added was a new
14 extension, was it not?

15 A. Yes, it was new construction.

16 Q. Does that mean that there was not existing
17 distribution facilities at that location where the
18 new construction occurred?

19 A. I am a little confused on the question.

20 Q. If it is new construction, does that mean
21 there existed electric distribution facilities prior
22 to new construction, Mr. Lewis?

1 A. No, it was new build. It was new line
2 built.

3 Q. You are not familiar with the length of
4 that newly constructed line that was necessary to
5 bring the electricity to the gas plant, is that
6 correct?

7 A. That is correct.

8 Q. Now, did Citation also have to rebuild part
9 of its existing circuits from the Texas Substation
10 down to the gas plant in order to provide electric
11 power to the gas plant?

12 A. If we did, I am not aware of it.

13 Q. You say you did?

14 A. If we did, I am not aware of it.

15 Q. Sorry. Now, on page 6 of your direct
16 testimony, line 3, you were asked the question if you
17 ever contacted anyone at IP about having IP supply
18 power to the gas plant. You answered yes. You did
19 contact IP?

20 A. Yes.

21 Q. For the purpose of having them provide
22 electric power to the gas plant, is that correct?

1 A. Yes.

2 Q. And that was June of 2005?

3 A. Yes.

4 Q. Do you know the approximate date in June or
5 you just don't recall now?

6 A. No, I don't recall the exact time.

7 Q. And did you talk to Conrad Siudyla of IP?

8 A. Yes.

9 Q. What did he tell you?

10 A. He told me that the plant was in
11 Tri-County's territory and that AmerenIP couldn't
12 serve it.

13 Q. Were you aware or had you had that
14 conversation with Mr. Siudyla of IP before you had
15 this meeting in June or July that you and Ed Pearson
16 had with Tri-County, Marcia Scott?

17 A. I don't recall.

18 Q. Now, you also testified here that you spoke
19 to Todd Masten on July 5, 2005, about the issue.
20 What was the issue you discussed with Todd Masten on
21 July 5, 2005?

22 A. The issue was that we couldn't have two

1 electric suppliers in one unit, and that Conrad had
2 told me that they couldn't supply it. And so I had
3 to explain how the Salem Unit was integral. In other
4 words, the operation of the field needed one
5 supplier, and so I wrote the letter to explain why.

6 Q. That's the letter of July 8, 2005?

7 A. Yes.

8 Q. Now, did you have a meeting on July 5,
9 2005, with anyone else other than Todd Masten about
10 this matter?

11 A. I don't recall.

12 Q. Did you have a meeting at any time in which
13 representatives of IP, Todd Masten and Michael
14 Tatlock, and representatives of Tri-County, Marcia
15 Scott, and you and Mr. Pearson of Citation met?

16 A. I remember having a meeting with Marcia at
17 the office. I don't recall if Todd was there.

18 Q. Do you recall if Michael Tatlock was there?

19 A. No.

20 Q. Do you recall who was there from Citation
21 besides yourself?

22 A. Ed Pearson.

1 Q. So the only ones you recall being at this
2 -- let me ask you this.

3 Do you know when that meeting
4 occurred?

5 A. That's the previous question. I said June
6 or July.

7 Q. Okay. So you have no recollection then --
8 or let me ask you this.

9 Am I correct in saying that you have
10 no recollection as you sit here today about a meeting
11 between yourself and Ed Pearson for Citation, Marcia
12 Scott, Brad Grubb and Dennis Ivers of Tri-County, and
13 Todd Masten and Michael Tatlock of IP regarding
14 electric service to the gas plant?

15 A. No. I answered that question previously
16 that I recall myself and Ed Pearson and Marcia being
17 there. I wasn't sure who the others were.

18 Q. All right. I will refer you to your direct
19 testimony at page 6, lines 11 through 22. And you
20 talk about the fact that it is important that
21 Citation have only one electric supplier because you
22 are concerned about, is it, safety or what are you

1 concerned about in that answer?

2 A. Safety is an issue. That's not the only
3 issue.

4 Q. Pardon?

5 A. That's not the only issue.

6 Q. Okay. What other issue is there?

7 A. Economics, efficiency.

8 Q. Economics has to do with electric rates?

9 A. Yes.

10 Q. Okay. Any other issue?

11 A. Efficiency.

12 Q. And what is it about efficiency?

13 A. If we already had a hard line in place,
14 that would send an alarm to shut down the field off
15 that same circuit if there was a problem.

16 Q. Off of what --

17 A. Go ahead.

18 Q. Off of what circuit?

19 A. The plant circuit. There is a hard line
20 that runs from the plant circuit back to the Texas
21 Substation. And if there was a problem in the field,
22 for instance, low tank level due to wells being down,

1 the hard line would send a signal to shut down the
2 field. And, therefore, it was much more efficient to
3 use controls that were already in place.

4 Q. That's to shut it down at the Texas
5 Substation, is that correct?

6 A. Uh-huh.

7 Q. So you have one switch and that's at the
8 Texas Substation?

9 A. I think there is more than one switch.

10 Q. At the Texas Substation?

11 A. Yes.

12 Q. Is there a switch for each circuit?

13 A. I believe so.

14 Q. Now, referring to your AmerenIP Exhibit 9,
15 your supplemental prepared testimony, and I am
16 referring you to the bottom of page 1, line 12 or
17 line 9 through line 14 and then your response on the
18 next page, Mr. Dew had given testimony which you
19 reviewed and read, is that correct?

20 A. Yes.

21 Q. And he indicated -- and in his testimony
22 you are saying that testimony is incorrect by Mr. Dew

1 because why?

2 A. Which testimony by Mr. Dew?

3 Q. The one you are referring to at the bottom
4 of page 1 and going over to the next page?

5 MR. SMITH: I don't understand the question
6 that's pending.

7 Q. Let me ask you this question, Mr. Lewis.
8 You were asked the question if Mr. Dew is correct
9 that two different electric suppliers can provide
10 electric power to the Citation gas plant and
11 compressor sites, and you say yes, is that correct?

12 A. Yeah, I said that's a possibility.

13 Q. Okay. But then you find fault with that
14 possibility in your answer?

15 A. Yes, I do.

16 Q. And what is the problem that you are
17 referring to there?

18 A. The problem is the amount of communication
19 that would have to take place between two separate
20 suppliers in order to shut down both the plant and
21 the wells and the compressors.

22 Q. Okay. Now, do you know -- I don't know

1 whether you -- you appear to be not aware of the
2 fact, according to your testimony, that the
3 compressor sites and the gas plant are not all on the
4 same circuit?

5 A. That's correct.

6 Q. And are you aware of the fact that Citation
7 has outages on its circuits from time to time?

8 A. Uh-huh, I am aware.

9 Q. Now, if you have an outage on one of your
10 circuits that shuts down the gas compressor sites,
11 what happens at the gas plant?

12 A. It will shut down.

13 Q. So you have some mechanism in place for
14 that?

15 A. Uh-huh.

16 Q. And what happens --

17 MR. SMITH: I am sorry, I don't think we got a
18 verbal answer to that.

19 THE WITNESS: A. Yes.

20 MR. TICE: We got an uh-huh.

21 MR. SMITH: Thank you.

22

1 BY MR. TICE:

2 Q. And what happens if electric service on the
3 circuit that feeds the gas plant goes down on
4 Citation's circuit? Not at the power provider's
5 substation but on the Citation circuit. What happens
6 with respect to gas coming from the compressor sites
7 on other circuits of Citation?

8 A. It could go down. You will get a low level
9 in the water tank which will shut down the other
10 circuits.

11 Q. So then why is there a problem if you have
12 two different suppliers to different circuits of
13 Citation?

14 A. Because that one circuit would have to
15 communicate to the others. You would have -- as I
16 said in the testimony, you would have eight or nine
17 communications going on instead of one.

18 Q. So it is just a matter of communication
19 then?

20 A. Logistics, yes.

21 Q. Now, on your supplemental testimony at the
22 bottom of page 3 you say that Mr. Dew's testimony

1 that because the gas plant is on one circuit of the
2 Citation distribution system and the gas wells are on
3 a different circuit, that his argument that one -- or
4 his statement that one electric supplier is not
5 credible is not an accurate statement, is that
6 correct?

7 A. That's correct.

8 Q. And your response to that is that Mr. Dew's
9 statement is incorrect and you say the gas plant is
10 not on a circuit independent from wells producing
11 gas, is that correct?

12 A. That's correct.

13 Q. Are all the gas wells producing gas on the
14 same circuit that the gas plant is?

15 A. Not all wells, no.

16 Q. So that statement that the gas plant is not
17 on a circuit independent from the gas producing
18 wells, is that a correct statement?

19 A. Would you repeat that question?

20 Q. Does the gas plant share the same circuit
21 with the producing wells?

22 A. The gas plant circuit shares the circuit

1 with some producing wells, not all.

2 Q. Okay. You state in your answer on page 4,
3 line 2, the gas plant shares the same circuit with
4 producing wells. Do you see that?

5 A. Yes.

6 Q. Now, that's different than what you just
7 testified to that the gas plant is not on the same
8 circuit as all the producing wells?

9 MR. HELMHOLZ: I am going to object.

10 MR. SMITH: Objection. He is mischaracterizing
11 the testimony.

12 MR. TICE: This is cross, Your Honor, and I
13 have got two different statements.

14 MR. SMITH: But he is mischaracterizing. The
15 witness' testimony is consistent with what's in his
16 prepared direct.

17 BY MR. TICE: Let me rephrase the question.
18 Let me ask you this.

19 Q. Is the gas plant on the same circuit as the
20 producing wells?

21 MR. HELMHOLZ: It's been asked and answered,
22 Your Honor.

1 MR. TICE: Well, I am going back and trying to

2 --

3 MR. HELMHOLZ: It's been answered. That's the
4 problem with going back.

5 MR. TICE: The objection has been made. I
6 think I have a right to go back and clarify with the
7 witness.

8 JUDGE JONES: In this instance I think that
9 would be an appropriate thing to do.

10 BY MR. TICE:

11 Q. Is the gas plant on the same circuit as the
12 producing wells?

13 A. It is on the same as some producing wells.

14 Q. What do you mean in your prepared testimony
15 when you say at line 2, page 4, the gas plant shares
16 the same circuit with producing wells?

17 A. It means that Mr. Dew's statement was that
18 it is independent. It is on one circuit and the gas
19 wells are on different circuits. I am saying the gas
20 plant shares the same circuit with producing wells.
21 There are producing wells that are on that circuit.

22 Q. Okay. So what you are saying there then is

1 you are not saying all the producing wells are on the
2 same circuit as the gas plant?

3 A. That is correct.

4 Q. If the electricity goes down or there is an
5 outage on one of the Citation circuits that serves
6 producing wells that are on a circuit different than
7 the gas plant, does Citation have mechanisms for
8 shutting down the gas plant?

9 A. Yes.

10 Q. If the gas plant is on a circuit that loses
11 electricity because of an outage on the Citation
12 circuit, does Citation have mechanisms in place for
13 shutting down the gas wells that are getting
14 electricity?

15 A. Repeat that question one more time, please.

16 Q. If the gas plant is on a circuit that loses
17 electricity because of an outage on the Citation
18 circuit serving that gas plant and electricity
19 remains on the Citation circuits serving other gas
20 wells, does Citation have a mechanism in place to
21 shut down those gas wells still receiving electricity
22 that would be providing gas to the gas plant?

1 A. Yes.

2 Q. On page 4 of your supplemental rebuttal you
3 were asked about Mr. Dew's statement about the fact
4 that Citation did not connect the gas plant to a
5 Citation circuit located approximately 500 feet to
6 the south of the gas plant, but instead extended its
7 distribution line from the north with a 4119-foot
8 extension which we talked about.

9 Now, do you know the name of the
10 circuit that Citation had that came from the Texas
11 substation within 500 feet of the gas plant?

12 A. The South Circuit.

13 Q. Now, why is it that Citation did not
14 connect the gas plant to that South Circuit?

15 A. We felt like the reliability of that
16 circuit, because of the amount of load that was on
17 it, risked more shutdowns than the other circuits.

18 Q. So that necessitated -- or did that then
19 necessitate the construction of the over 4,000 feet
20 of new distribution line by Citation to get IP power
21 to the gas plant?

22 A. We constructed that to power the gas plant

1 with our own lines, yes.

2 Q. Well, you had to construct -- did you have
3 to construct that 4100 feet in order to get the IP
4 power to the gas plant?

5 A. We had to get the power, yes.

6 Q. Do you know, Mr. Lewis, whether or not the
7 South Circuit that was within 500 feet of the gas
8 plant's physical location could have been used to
9 also serve the Citation office when the office was
10 hooked up?

11 A. No. Well, repeat the question, please.

12 Q. Do you know whether or not that Citation
13 South Circuit that you talked about that was within
14 500 feet of the gas plant could have been used to
15 provide electric service to the Citation office when
16 it was hooked up to electricity?

17 A. No, we wouldn't use it.

18 Q. You what?

19 A. We would not use it.

20 Q. Why is that?

21 A. Because the office is separate from the
22 field. And if we were to have a power outage with

1 IP, in that case the office is nice to have up so we
2 can send a fax for communication.

3 Q. So it is to the purpose or benefit of
4 Citation to have two separate independent suppliers
5 with respect to the Citation office, is that correct?

6 A. Yes.

7 Q. And the Citation office is part of the
8 Salem Oil Field?

9 A. No, not necessarily.

10 Q. Is it located within the physical confines
11 of the Salem Oil Field?

12 A. Yes.

13 Q. Is it owned by Citation?

14 A. Yes.

15 Q. Is it staffed by Citation employees and
16 personnel?

17 A. Yes.

18 Q. Does it contain records of the Citation oil
19 field?

20 A. Yes.

21 Q. Is it where you conduct all of your
22 administrative functions with respect to the Salem

1 Oil Field?

2 A. Not necessarily.

3 Q. Do you perform administrative functions
4 within the Salem Oil Field from the Citation office?

5 A. Yes.

6 Q. And you have a senior manager of production
7 at the Salem Oil Field, do you not?

8 A. Yes.

9 Q. Michael Garden?

10 A. Yes.

11 Q. Is his office at the Citation office
12 located in the Salem Oil Field?

13 A. Yes.

14 Q. Do you visit the Salem Oil Field at any
15 time?

16 A. I have.

17 Q. Do you go to the Citation office at the
18 Salem Oil Field?

19 A. I have.

20 Q. Do all visitors that visit the Salem Oil
21 Field have to report to any particular place on the
22 Salem Oil Field before they are allowed to enter or

1 move about the Salem Oil Field?

2 A. Not to my knowledge.

3 Q. Does the employee and staff at the Salem
4 Oil Field conduct safety meetings at the Salem Oil
5 Field?

6 A. Not to my knowledge. I am not aware of
7 where they conduct their meetings.

8 Q. When you have a meeting with the Citation
9 staff that works at the Salem Oil Field, do you ever
10 utilize the Citation office for the purpose of those
11 meetings?

12 A. Yes, we have had a meeting there that I am
13 aware of, yes.

14 Q. Now, at one time did you have an
15 interruptible rate for the Salem Oil Field from IP?

16 A. Yes.

17 Q. And you didn't want an interruptible rate
18 at the Citation office, did you?

19 A. No.

20 Q. That's another reason why you wanted a
21 different, separate electric supplier for the
22 Citation office, isn't it?

1 REDIRECT EXAMINATION

2 BY MR. HELMHOLZ:

3 Q. Mr. Lewis, you got some questions about the
4 Citation office building, do you recall those?

5 A. Yes.

6 Q. And you still have Tri-County Exhibit A-3,
7 the map, handy?

8 A. Yes.

9 Q. Do you know when that office was
10 constructed, the one that's depicted on Exhibit A-3?

11 A. No.

12 Q. Was that there to your knowledge when
13 Citation purchased the unit?

14 A. Yes.

15 Q. Now, are the pump jacks or pumping unit
16 in-house built?

17 A. No.

18 Q. Are there high horsepower equipment that
19 are necessary to operate the pumping in the field?

20 MR. TICE: Object to the leading form of the
21 question. This is redirect. It suggests that what
22 may be in the building, instead of asking what is in

1 the building.

2 JUDGE JONES: Response?

3 BY MR. HELMHOLZ: We can do it that way, Your
4 Honor. I will withdraw it.

5 Q. You are familiar with the building?

6 A. Yes.

7 Q. What production facilities are in the
8 building?

9 A. There are no production facilities in the
10 building.

11 Q. If that building were blown down in a
12 tornado, would any oil stop flowing?

13 A. No.

14 Q. Would any water stop being pumped
15 throughout the unit?

16 A. No.

17 Q. Would any gas stop flowing to the
18 compressors?

19 A. No.

20 Q. You had, I believe -- you discussed the
21 meeting at which Marcia Scott was present?

22 A. Yes.

1 Q. And I believe you said Ed Pearson was
2 present as well?

3 A. Right.

4 Q. Was that the only time you were at a
5 meeting with Marcia Scott and others from Tri-County?

6 A. To my recollection, yes.

7 Q. And to your recollection you date that
8 around June of '05?

9 A. Right.

10 Q. Now, at that meeting was there discussion
11 of a territorial service area boundary map?

12 A. Yes, I believe so.

13 Q. And on Exhibit A-3 do you see some
14 references to TCEC and IPC?

15 A. Yes.

16 Q. Now, that green area up there is to be the
17 IPC, do you see that?

18 A. Yes.

19 Q. Had you seen any map like this at or prior
20 to this June '05 meeting we are talking about?

21 A. Not to my recollection.

22 Q. Have you seen Exhibit A-3 prior to your

1 testimony today?

2 A. Exhibit A-3, no.

3 Q. When you were at the meeting in June of
4 '05, did anyone make you aware that there were some
5 number of existing Citation production facilities
6 that were located at that moment in time in
7 Tri-County's service area?

8 A. I believe so.

9 Q. So you understood when you were at the
10 meeting that at that moment in time there was
11 Citation's own distribution system was powering
12 facilities that were at that moment situated within
13 the TCEC territory?

14 MR. TICE: Objection, leading form.

15 THE WITNESS: A. Yes.

16 MR. TICE: I have made an objection, Your
17 Honor. Leading form of the question. I move to
18 strike the answer until there is a ruling.

19 JUDGE JONES: Response?

20 MR. HELMHOLZ: I did not suggest the answer to
21 him, Your Honor. I think it is back to foundation.

22 MR. TICE: The question, he listed a whole

1 bunch of different physical items, asking him about
2 those physical items and asking if they were within
3 one or the other supplier's territory. I think that
4 is a leading form of question.

5 JUDGE JONES: Ms. Reporter, could you read the
6 question back, please?

7 (Whereupon the requested portion
8 of the record was read back by
9 the Reporter.)

10 JUDGE JONES: I will sustain the objection. I
11 think it sort of starts off in a way that is somewhat
12 leading in nature. It is a close call, but you can
13 continue with a different question. So the question
14 and the answer is stricken without prejudice to
15 continuation of the line of questions.

16 BY MR. HELMHOLZ:

17 Q. Well, did Marcia Scott tell you that your
18 system was serving electric facilities anywhere
19 within the areas depicted on A-3?

20 MR. TICE: Again I am going to object, Your
21 Honor, because that asks this witness and suggests
22 what Marcia Scott would have told this witness. This

1 is redirect. He can ask the witness what Marcia
2 Scott may have told him, but I don't think the
3 examiner can include in the question what it is he
4 wants the testify to about what was told by Marcia
5 Scott. That's leading.

6 JUDGE JONES: Could I have the question read
7 back, Ms. Reporter?

8 (Whereupon the requested portion
9 of the record was read back by
10 the Reporter.)

11 JUDGE JONES: Response?

12 MR. HELMHOLZ: Your Honor, the cross
13 examination expressly asked the witness about
14 statements that were made to him about the
15 applicability of the Service Area Agreement, asked
16 him what he was told about it and who told him. So
17 the cross thoroughly went into what Tri-County told
18 him. I want to know what Tri-County did not tell
19 him. I think that's perfectly appropriate redirect.

20 MR. TICE: I am not questioning what is
21 appropriate redirect here, Your Honor. I am
22 questioning the form of the question and to suggest

1 what the answer was, was expected to be by the
2 witness, I think is the best reason. That's my only
3 objection.

4 JUDGE JONES: All right. Objection overruled.
5 You may answer.

6 MR. HELMHOLZ: Do you need it read back?

7 THE WITNESS: Repeat the question, please.

8 (Whereupon the requested portion
9 of the record was read back by
10 the Reporter.)

11 THE WITNESS: A. I don't recall her telling me
12 where our facilities were.

13 BY MR. HELMHOLZ:

14 Q. On Exhibit A-3 do you see the various --
15 you are familiar with section, township, range
16 numbering?

17 A. Yes.

18 Q. Do you see that type of system depicted on
19 A-3?

20 A. Do I see the sections, township and ranges?
21 Yes.

22 Q. Now, as of this June '05 meeting did you

1 have any knowledge or understanding as to which of
2 those numbered sections Citation had electrified
3 operations in?

4 A. Yes, I was aware of what sections we had
5 operations in.

6 Q. The gold on the outside of this exhibit,
7 what does that represent?

8 A. I believe that's the unit boundary.

9 Q. And does that mean you were conducting
10 operations throughout the unit?

11 A. Yes.

12 Q. So basically is it fair to say you had
13 operations in every single one of the numbered
14 sections?

15 MR. TICE: Again objection to the leading form
16 of the question.

17 JUDGE JONES: Sustained.

18 BY MR. HELMHOLZ:

19 Q. Did you have operations in every one of the
20 numbered sections on Exhibit 3 as of June '05?

21 MR. TICE: Objection, leading.

22 JUDGE JONES: Response?

1 MR. HELMHOLZ: Your Honor, it is a unit. I
2 mean, there has been a lot of testimony. Just kind
3 of confirming what's reality.

4 MR. TICE: It is still leading, Your Honor.

5 JUDGE JONES: Sustained.

6 BY MR. HELMHOLZ:

7 Q. Were there any sections on A-3 that you did
8 not have operations in in June of '05?

9 A. Yes, the sections outside the yellow line.

10 Q. Outside the gold?

11 A. Outside the gold.

12 Q. Now, at this meeting with Marcia was the
13 boundary the only issue that was discussed as
14 creating rights or claims for Tri-County?

15 A. Which boundary?

16 Q. The service area boundary that's on Exhibit
17 A-3?

18 A. I am not sure if you mean the Tri-County
19 service boundary or the unit boundary or what you are
20 referring to.

21 Q. Well, let me break it down a little bit.
22 Did you come away from the meeting with Marcia with

1 the understanding that this two dimensional boundary
2 map would dictate the right to serve your gas plant?

3 MR. TICE: Objection. I think that is a
4 leading form of a question. It suggests again the
5 answer that is anticipated by the question from this
6 witness.

7 JUDGE JONES: Response?

8 MR. HELMHOLZ: It is just trying to find out if
9 he had an understanding and did he come away with one
10 from the meeting, not any particular one.

11 MR. TICE: He doesn't ask what the
12 understanding was. He says what the understanding
13 was and asks if that's what he thought. That's
14 leading.

15 MR. HELMHOLZ: Your Honor, I think at this
16 point I am going to ask for an adjournment to go get
17 some evidence, too, so I can write a brief on this.
18 I think we need to brief the issue. It's become very
19 difficult and it is important. I want to make sure
20 we have the correct law. I don't have it at my
21 fingertips.

22 JUDGE JONES: We are not going to take a recess

1 so there can be extensive research done on this
2 matter at this point in time. But do you actually
3 have a substantive response to the most recent
4 objection?

5 MR. HELMHOLZ: I just don't think it is well
6 founded.

7 JUDGE JONES: Could we have the question read
8 back, Ms. Reporter?

9 (Whereupon the requested portion
10 of the record was read back by
11 the Reporter.)

12 JUDGE JONES: I will allow the question.

13 THE WITNESS: A. Yeah, the two dimensional
14 boundary map did not dictate who would serve, in my
15 opinion.

16 BY MR. HELMHOLZ:

17 Q. The question is not about your opinion. It
18 is about what information you would have gathered
19 from the Tri-County side of the equation.

20 A. Okay. The Tri-County -- you are asking if
21 Tri-County said that whatever is in their boundary
22 would have to be served by them, is that the

1 question? I felt --

2 JUDGE JONES: All right. The question has to
3 be rephrased. The witness is having problems with
4 the question. If he has to sort of ask you what you
5 meant, then I think that is time to go ahead with a
6 different question. I think it also, I guess, would
7 suggest the question did not necessarily suggest an
8 answer, either.

9 BY MR. HELMHOLZ: Thank you, Your Honor.

10 Q. Was there discussion at the meeting with
11 Marcia Scott about the territorial boundary map?

12 A. I believe so, yes.

13 Q. And was there discussion about whether the
14 territorial boundary map had any particular legal
15 significance?

16 A. Yes.

17 Q. And what do you recall about that
18 discussion?

19 A. That the gas plant was in their territory
20 and they should serve the gas plant.

21 Q. And what was the connection as you
22 understood it from them between the location of the

1 gas plant and their territory and a service right?

2 MR. TICE: I am going to object. It's been
3 asked and answered. He said that they said the map
4 was in their side of the territory and it was theirs
5 to serve. It was his answer. This question asks the
6 same question again.

7 JUDGE JONES: Response?

8 MR. HELMHOLZ: It was a different question. It
9 was trying to establish the linkage between the two.

10 JUDGE JONES: It is a slightly different
11 question. I will allow it.

12 THE WITNESS: Can you have her --

13 (Whereupon the requested portion
14 of the record was read back by
15 the Reporter.)

16 THE WITNESS: A. That the gas plant was in
17 their territory and they had the right to serve it.

18 BY MR. HELMHOLZ:

19 Q. Was there any discussion at the meeting
20 from Marcia Scott or anyone else at Tri-County as to
21 whether the territory map was absolutely governing?

22 MR. TICE: I am going to object again, Your

1 Honor. That has been asked and answered. The
2 witness has given his answer twice, that he came away
3 from the meeting, that it was in Tri-County's
4 territory and it was theirs to serve.

5 JUDGE JONES: The witness has had two shots at
6 this, essentially two questions before it which drew
7 the very same answer from the witness. I think that
8 the objection should be sustained, and we can move
9 ahead with the line of questioning.

10 BY MR. HELMHOLZ:

11 Q. Was there any discussion at the meeting
12 with Marcia Scott that other provisions not relating
13 to the territorial boundary might have some
14 significance?

15 A. Ask the question again, please.

16 Q. Yeah. Let me just try to rephrase it. Was
17 there a discussion that there were other aspects of
18 the Service Area Agreement other than the boundaries
19 that might have some significance to the service
20 claim?

21 A. No.

22 Q. Now, who at Tri-County explained to you

1 what the impact would be on your right to obtain
2 third-party power supply if you were to accept co-op
3 service to this?

4 MR. TICE: I am going to object. That's beyond
5 the scope of my cross examination, and it is not even
6 part of his direct testimony. Further, it is not
7 even relevant to this case.

8 MR. SMITH: Well, I will object to that.

9 JUDGE JONES: Response?

10 MR. HELMHOLZ: Well, Your Honor, it is apparent
11 that Tri-County went to this meeting and started
12 explaining their views on legal rights of the parties
13 and how they might impact Tri-County. I want to give
14 the full picture. It is really a completeness type
15 question.

16 JUDGE JONES: We will rule on it in a minute.

17 Off the record.

18 (Whereupon there was then had an
19 off-the-record discussion.)

20 JUDGE JONES: Back on the record. There was a
21 short off-the-record discussion regarding scheduling.
22 It looks as though we could still finish up this

1 witness in pretty good shape this evening time-wise
2 and so on, so we will attempt to do that. I am going
3 to figure out where we are there with the most recent
4 question and objection.

5 Ms. Reporter, would you read the
6 current question and objection, please?

7 (Whereupon the requested portion
8 of the record was read back by
9 the Reporter.)

10 JUDGE JONES: It appears that that question
11 contains some assumptions of fact. Are you saying
12 that those are in evidence, that the record shows
13 that's what he did?

14 Really the objection doesn't go
15 directly to that, but I will sustain the objection to
16 the question without prejudice to the question being
17 reformulated, and we will see where we are at at that
18 point.

19 BY MR. HELMHOLZ:

20 Q. During this one meeting you had with Marcia
21 Scott did the subject of third-party power supply
22 come up?

1 A. No.

2 Q. Did the subject of alternative retail
3 electric suppliers come up?

4 MR. TICE: Again objection, same basis.

5 JUDGE JONES: I will allow it. I will allow
6 the question, overrule the objection. Sort of
7 preliminary in nature so we will see where it goes.

8 THE WITNESS: A. No.

9 MR. HELMHOLZ: That's all I have, Your Honor.

10 JUDGE JONES: Thank you, Mr. Helmholtz.

11 Mr. Tice, do you have some recross?

12 MR. TICE: I don't believe so.

13 JUDGE JONES: Thank you, sir. Off the record
14 regarding scheduling, mainly tomorrow.

15 (Whereupon there was then had an
16 off-the-record discussion.)

17 JUDGE JONES: Back on the record. Let the
18 record show there was an off-the-record discussion
19 for the purposes indicated, and we now conclude for
20 today and we will resume at 9:30 in the morning.

21 (Whereupon the hearing in this
22 matter was continued until April
 27, 2011, at 9:30 a.m. in
 Springfield, Illinois.)