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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS COMMERCE COMMISSION

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

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CHIEF CLERK'S OFFICE

Case No. 05-0767

TRI-COUNTY ELECTRIC COOPERATIVE, INC. (TRI-COUNTY)
MEMORANDUM IN RESPONSE TO ILLINOIS POWER COMPANY
dba AMERENIP (IP) AND CITATION OIL & GAS CORP (CITATION) MOTIONS TO
STRIKE PORTIONS OF TRI-COUNTY TESTIMONY BY ROBERT C. DEW, JR. P.E.

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TRI-COUNTY ELECTRIC COOPERATIVE, INC. (TRI-COUNTY)
MEMORANDUM IN OPPOSITION TO ILLINOIS POWER COMPANY
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STRIKE PORTIONS OF TRI-COUNTY TESTIMONY BY ROBERT C. DEW, JR. P.E.

TRI-COUNTY ELECTRIC COOPERATIVE, INC. (Tri-County) files herewith its Memorandum in opposition to the Motions by Illinois Power Company dba AmerenIP (IP) and Citation Oil & Gas Corp (Citation) to strike portions of the Robert C. Dew, Jr. P.E. testimony filed by Tri-County in this docket and in support thereof states as follows:

- I. IP AND CITATION HAVE MOVED TO STRIKE PORTIONS OF THE EXPERT REPORT OF ROBERT C. DEW, JR. P.E., TRI-COUNTY'S EXPERT ENGINEER ATTACHED AS TRI-COUNTY EXHIBIT D-1 TO THE PREPARED DIRECT TESTIMONY OF ROBERT C. DEW, JR. P.E. AS TRI-COUNTY EXHIBIT D FOR THE FOLLOWING REASONS:
 - (1) Inappropriate legal conclusions concerning interpretation of the parties' Service Area Agreement at issue in this docket.
 - (2) Inappropriate comments on the legal effect of statements by IP employees.
 - (3) Inappropriate legal opinion.

II. GENERAL LEGAL ARGUMENTS REGARDING IP'S AND CITATION'S MOTION TO STRIKE EVIDENCE

A. IP'S AND CITATION'S MOTIONS TO STRIKE ARE NOT TIMELY

The procedure followed in this docket for taking evidence required the parties to file prepared written direct and rebuttal testimony with copies of all written testimony and evidentiary exhibits served on opposing counsel at the time of filing. Tri-County filed its written testimony on the following dates:

September 29, 2009	Direct Testimony of all Tri-County witnesses
January 28, 2010	Rebuttal Testimony of all Tri-County witnesses
July 12, 2010	Supplemental Rebuttal testimony of Tri-County's Marcia K. Scott and Robert C. Dew, Jr. P.E.

IP did not file its objections to any part of the Tri-County written prepared testimony until the first day of the evidentiary hearing in this docket on January 12, 2011 (Tr date 1-12-11 p 493). Likewise, Citation did not file its objections to Tri-County's prepared testimony until January 19, 2011.

In a proceeding where all testimony is oral, counsel must object to a question or answer he or she considers improper as soon as it is asked, or as soon as the grounds for objection become apparent. Failure to object until the close of the witness' testimony to which the objection is made is not timely. See Sinclair vs Berlin 325 Ill App 3d 458; 758 NE2d 442; 259 Ill Dec 319, 327 (1st Dist 4th Div 2001) where opposing counsel's objection to witness' testimony at close of other counsel's examination of the witness was untimely and therefore waived; Holder vs Caselton 275 Ill App 3d 950; 657 NE2d 680; 212 Ill Dec 479, 485 (4th Dist 1995), where opposing counsel waited to object to witness' testimony until other counsel had

completed examination of the witness. In this docket, both IP and citation waited until the close of Tri-County's direct examination for each of its witnesses before objecting to any of the prepared testimony presented by Tri-County's witnesses (Tr dated 1-12-11 Marcia Scott Tr p 493; Dennis Ivers Tr p 628; Bradley Dale Grubb Tr p 696; Robert C. Dew Jr. P.E. Tr dated 1-13-11, Tr p 741). IP and Citation are required to file their objections to the portion of the prepared written testimony of Tri-County's Scott, Ivers, Grubb and Dew they believe are objectionable as soon as the objectionable question and answer becomes apparent. In this case, case, Tri-County's complete written prepared testimony was filed with the Commission and in the hands of IP on July 12, 2010 and Citation at least by September 2010. Yet IP waited until January 12 and 13, 2011, and Citation waited until January 19, 2011, to object to any part of Tri-County's testimony. By not filing the objections to Tri-County's testimony as soon as it was served on IP and Citation, when the objections raised by IP and Citation would have become apparent, IP and Citation have prevented timely rulings on the evidence objected to and prevented Tri-County from filing corrective testimony if necessary. Such procedure should should not be allowed. Both IP's and Citation's objections to Tri-County's testimony are untimely and therefore waived and should be denied.

B. THE IP AND CITATION OBJECTIONS DO NOT STATE SPECIFIC GROUNDS FOR EXCLUDING SPECIFIC STATEMENTS OF TRI-COUNTY'S WITNESSES.

It is Tri-County's position that should the Administrative Law Judge (ALJ) conclude that IP's and Citation's motions to strike portions of Tri-County's prepared testimony were timely filed, then the motions are not well taken. In the first place, the motions are based on multiple grounds and are not directed to specific questions or specific responses and in many

cases are directed to multiple sentences and/or multiple pages of the witnesses' answers. To be timely, the objection must state the specific ground for excluding the specific evidence (Illinois Rules of Evidence 103(a)(1) effective January 1, 2011). The ALJ is not required to sort through the testimony objected to and determine which reason IP or Citation assigns as the basis for the objection. In such instance, it is proper to deny the objection, First National Bank of Hayward, Wisconsin vs Gerry 195 Ill App 513, 520 (1915). In this case, IP and Citation allege three grounds for their objections, (1) legal opinion regarding interpreting the Service Area Agreement (2) opinion regarding legal effect of IP employee statements and (3) improper legal opinions. None of the grounds for the objections are assigned to specific questions or statements by Tri-County's witnesses. The ALJ and Tri-County are left to guess which ground for objection applies to which question and answer by the witnesses. On that basis alone, the IP and Citation objections should be denied.

C. TRI-COUNTY'S TESTIMONY DOES NOT CONTAIN INAPPROPRIATE LEGAL CONCLUSIONS OR LEGAL OPINIONS OR INTERPRETATIONS OF THE LEGAL EFFECT OF STATEMENTS BY IP EMPLOYEES.

Both lay and expert witnesses may express an opinion even though it may touch upon the ultimate issue in the case (Rule 701 and 704, Illinois Rules of Evidence effective January 1, 2011). The three grounds assigned by IP and Citation to exclude portions of Tri-County's testimony all pertain to legal opinions of the witnesses regarding interpretation of the Service Area Agreement or statements by IP employees. It is assumed these objections are based upon the claim such testimony impermissibly intrudes upon the trier of fact. However, even if the testimony objected to is found to contain opinions of the witness regarding the proper interpretation of the Service Area Agreement or the legal affect of statements by IP employees,

the modern trend allows such testimony, 3 Wigmore, Evidence Section 1920. See Zavala v Powermatic, Inc. 167 Ill 2d 542; 658 NE2d 371; 212 Ill Dec 889, 891 (1995), allowing reconstruction expert to testify as to how an accident happened. Also, In re marriage of Sieck 78 Ill App 3d 204; 396 NE2d 1214; 33 Ill Dec 490, 499 (1st Dist 2nd Div 1979) where psychologist was permitted to testify in child custody proceeding that child would be better off with the father. See also Richardson vs Chapman 175 Ill 2d 98; 676 NE2d 621; 221 Ill Dec 818, 822 (1997).

III. PORTION OF ROBERT C. DEW, JR. P.E. ENGINEERING REPORT OBJECTED TO BY IP.

i. Pages 1, 2 and 3 of the Engineering Report of Robert C. Dew, Jr. PE marked Tri-County Exhibit D-2 (Tri-County has not attempted to restate the information contained in pages 1, 2 and 3 of the report but refers the reader to those pages of Tri-County Exhibit D-2).

ARGUMENT:

The three pages objected to by IP contain a section entitled Introduction and a section entitled Background. The Introduction section consists of one paragraph that explains who Tri-County is as an entity, that it provides electric service in the vicinity of Citation's Salem Oil Field, and notes the existence of the dispute between Tri-County and IP regarding electric service to a new Citation gas plant located in Tri-County's service territory. Nothing in this paragraph contains a legal conclusion regarding the proper interpretation of the Tri-County/IP Service Area Agreement. The section entitled Background consists of pages 1 through 14. IP, IP, for the above stated reasons, moved to strike all of pages 1, 2 and 3 and page 14. IP's objection is general without identifying specific comments, sentences, or paragraphs making it

difficult to respond to. It is noted however that Dew at the bottom of page 1 and again at the top of page 2 of his engineering report describes the physical connections that comprise the gas plant and the gas compressor sites and notes that a “point of delivery” as defined in the Service Area Agreement “could” consist of the type of electric service connection as he factually describes. IP moved to strike virtually identical language that appeared as paragraph 7 of Dew’s Affidavit in Support of Tri-County’s Motion for Summary Judgment. The ALJ refused to strike the testimony because there was sufficient foundation for the testimony (See p 2 of ALJ’s Order entered 2-20-09). Dew also recited at page 1 of the report, Section 1, paragraphs (a), (b), (c) and (d) of the Tri-County/IP Service Area Agreement, because he understood the dispute concerned the meaning of “point of delivery” as used in the Service Area Agreement. Dew testified on re-direct that he was reporting at pages 1, 2 and 3 of his report what his investigation disclosed in terms of the engineering aspects of the facts (Tr date 1-14-11 Tr p 1051-1052). Therefore, there is an adequate foundation, based on Dew’s qualifications, for allowing the objected to portion of Dew’s engineering report to stand.

2. Pages 14-16 of the Engineering Report of Robert C. Dew, Jr. PE marked Tri-County Exhibit D-2 (Tri-County has not restated the information contained in pages 14-16 of the report but refers the reader to those pages of Tri-County Ex D-2).

ARGUMENT:

At pages 14 through 16 of the Dew Engineering Report, Dew expresses his engineering opinion based upon his 40 years of electrical utility engineering experience as applied to the facts disclosed by his inspection of the Citation Salem Oil Field, the Citation gas plant, and Citation gas compressor sites when applied to the Service Area Agreement between Tri-County

and IP (Tr date 1-14-11 Tr p 1051-1056). Specifically, with respect to page 14, Dew's comments consist of what he found in his investigation of the physical site as well as what he found when he read Sections 1 and 3 of the Service Area Agreement. In paragraph number 1 at at page 14, Dew states the Texas Substation and Citation switching structures are physically located in Tri-County's service territory. No party in this docket has seriously disputed this observation. In paragraph numbers 2 and 3, Dew notes the Service Area Agreement identifies a new customer as one who needs a new point of delivery of electricity that has not been energized and that the Service Area Agreement states neither IP or Tri-County will serve a new customer in the service area of the other. Nothing in these comments constitutes a legal opinion by Dew regarding the interpretation of the Service Area Agreement but rather Dew's observations that the Service Area Agreement defines a "new customer" in relationship to a "point of delivery" which either exists or is energized or does not exist or is not energized on the date of the agreement and neither party will serve a "new customer" in the other party's service area. IP has not contested these observations and these observations are not a legal opinion by Dew but merely his observation made during his investigation that the Administrative Law Judge (ALJ) may either accept or reject.

Dew in paragraph number 4 notes IP contends its "delivery point" for the Citation gas plant is the Texas Substation. Surely IP does not object to this observation by Dew. This is the the sole defense put forth by IP to Tri-County's claim of right to serve the Citation gas plant and seven of the gas compressor sites. Since Section 1(d) of the Service Area Agreement provides that modifications to a "delivery point" may create a "new point of delivery", Dew provides in paragraph number 4 of page 14 of his engineering opinion that many modifications

through the years by IP to the Texas Substation have created many new delivery points. Dew detailed these modifications in his prepared direct testimony (Dew Prepared Direct Test Tri-Tri-County Ex D, p 7 lines 17-23, through p 12 lines 1-22) and in his October 2007 engineering report commencing in the last paragraph on page 3 through page 12, that supported his engineering opinion in paragraph number 4 page 14 that the modifications created new delivery points. IP has not moved to strike any part of that testimony by Dew, all of which provides foundation for Dew's opinion in paragraph number 4 of page 14. Dew is qualified to render his his engineering opinion regarding what is a "point of delivery" and what constitutes a modification that will create a "new point of delivery" at IP's Texas Substation. The ALJ is free to accept or reject the testimony. Thus, the testimony should stand.

In paragraph number 5 Dew observes that IP's view of the case, which IP does not dispute, appears to be that if Citation builds its own distribution line from the Texas Substation to serve the gas plant, IP is not serving the gas plant. He then notes that in the electric industry, the word "serve" means to provide electric energy and that the electric energy in this case is being provided by IP. This is Dew's opinion as an electric utility engineer and he is qualified to express the same and how in his opinion these engineering principles apply to IP's actions in this case.

Pages 15-16 of Dew's Engineering Report contain his conclusions and opinions. The first paragraph consists of a summary of his engineering observations regarding the engineering effect of the IP modifications to the Texas Substation and the physical characteristics of the electric service connections to the Citation gas plant and the seven gas compressor sites at issue in this case together with his engineering opinion that the electric service connections

constitute new “delivery points” creating a “new customer” under the Service Area Agreement.

The second paragraph on page 15 contains Dew’s statement the gas plant is an electric load that did not exist on March 19, 1968, which is the Service Area Agreement date. No one has disputed that fact. Dew further recites physical facts regarding how Tri-County would have constructed facilities to serve the gas plant, the proximity of the gas plant to Tri-County’s existing electric distribution facilities and the engineering effect of Tri-County’s electric service to the gas plant upon duplication of electric facilities. There is no legal opinion regarding the Service Area Agreement in the above comments by Dew. Rather, they express the facts disclosed by his investigation and his engineering opinions based on those facts which he is qualified to give.

Additionally, IP has made a general motion to strike page 16 of the Dew October 2007

- Engineering Report without identifying specific comments, sentences, or paragraphs.
- However, the only opinion expressed by Dew on that page is in the next to last paragraph which IP moved to strike when the Dew October 2007 Engineering Report was attached to Dew’s Affidavit filed in Support of Tri-County’s Motion for Summary Judgment. Both IP and Tri-County filed cross motions for summary judgment together with motions based on evidentiary rules to strike portions of the affidavits the respective engineers, Dew and Tatlock, used to support the summary judgment motions. The Administrative Law Judge denied the motions to strike (See p 2 of ALJ’s order entered 2-20-09). Sufficient foundational engineering evidence has been presented to support Dew’s opinions at page 16 of his report. Dew, as Tri-County’s expert consulting engineer, has a right to provide his engineering opinion as to the engineering meaning of various provisions of the Service Area Agreement and the

effect of those opinions on the actions of IP because the contents of the Agreement contain many references to the engineering aspects of providing electric service by the parties to the Agreement. The ALJ is free to accept or reject such expert opinion. Thus, IP's motion to strike pages 14-16 of Dew's October 2007 Engineer Report should not be granted.

IV. PORTIONS OF PREPARED REBUTTAL TESTIMONY OF ROBERT C. DEW, JR. OBJECTED TO BY IP

2. Page 4, Lines 21 through 23 and Page 5, Line 1

Q: Is the conclusion put forth by Mr. Tatlock that since the Texas substation has always been three phase, there has been no change or modification in the Texas substation that would cause the Texas substation to become a new point of delivery under the Service Area Agreement between Tri-County and IP?

Page 5, Lines 2 through 13 (Portion of testimony objected to by IP).

A: If, Mr. Tatlock's conclusion is correct and if the substations of Tri-County and IP are intended to be considered as delivery points under the Service Area Agreement for each of their respective customers served through a substation, then any modification or change to that substation to allow the electric supplier to serve additional electric load required by their customers would not constitute a change or modification to the substation delivery point under the Service Area Agreement because substations are initially constructed with the maximum number of phases utilized in our electric utility industry, that is three phases of electric energy. Using Mr. Tatlock's conclusion, Section 1(d) would have no meaning in the Service Area Agreement and each electric supplier could continue to increase the size of its three phase substation to provide for

additional load required of customers in the area without creating a change in the substation sufficient to create a new point of delivery.

ARGUMENT:

Dew's answer IP has asked to be stricken refers to the conclusion provided by Tatlock in his direct testimony page 4 lines 15-20 in which he states that no phases have been added to the Texas Substation and at page 7, lines 8 through 15 in which he states AmerenIP's position is that electrical service to the Citation gas plant is merely an extension of Citation's own existing primary distribution system and Citation is continuing to take power for the gas plant from the preexisting point of delivery provided by IP to Citation. While Tatlock does not identify the IP preexisting point of delivery he is referring to, it has been the position of IP throughout this docket that IP is providing electric service to the Citation gas plant through the "delivery point" existing at the Texas Substation. Accordingly, Dew's answer in his prepared rebuttal testimony at page 5, lines 2 through 13 when considered in connection with Dew's earlier testimony at pages 4 and 5 of his rebuttal testimony is proper testimony regarding the engineering effect of Tatlock's opinion that since the Texas Substation has always been three phase, there has been no modification to it as a delivery point and how Tatlock's opinion effects the determination of the electric delivery point for the Citation gas plant.

2. Page 5, Lines 20 through 23

Q: Has either Mr. Tatlock or Mr. Malmedal contradicted your conclusion that the modifications and changes to the Texas substation over that period of time allowed IP to serve additional electric load of its customers including Citation from the Texas substation?

Page 6, Lines 1 through 4 (Portion of testimony objected to by IP)

A: No. They have not and I take their failure to contest that point as an admission that in fact IP's modifications to the Texas substation over the period of time in question increased the capacity of the substation to provide additional electric service to the IP customers, including Citation, who are served through the Texas substation.

ARGUMENT:

The answer by Dew in his prepared rebuttal testimony at Page 6, Lines 1 through 4 is in response to the question found at Page 5, Lines 20 through 23, asking Dew if either Tatlock or Malmedal, both IP engineering experts, contradicted Dew's engineering opinion that modifications made by IP to the Texas Substation have allowed IP to serve additional electric load of customers, including Citation, served by the Texas substation. Dew is certainly qualified to answer yes or no whether Tatlock or Malmedal contradicted Dew's engineering opinion in that regard. He is further authorized to testify as to his understanding of the failure of both Tatlock and Malmedal as engineers to express any different engineering opinion about the effect upon IP's ability to serve additional electric load of its customers from the Texas substation by reason of IP's modification to that substation. As Dew noted in his January 14, 2011 redirect testimony, his opinions and conclusions rendered in his prepared rebuttal testimony are his opinions and conclusions based upon his 40 years experience as an electric utility system engineer and the electrical principles that are applied by him in his engineering practice and as applied to the facts his investigation disclosed in this case (Tr date 1-14-11; Tr p 1053-1054). Further, the comment by Dew that he understood the failure of Tatlock and Malmedal to contradict his opinions regarding the effect of IP's modification to the Texas

substation was an agreement on their part that his engineering opinion is proper since it relates to Dew's engineering opinion about the engineering effect of IP's modification to the Texas substation upon the ability of IP to serve additional electric load from that substation.

3. Page 6, Lines 21 through 23

Q: Does Section 1(d) of the Service Area Agreement between IP and Tri-County provide that in such an instance the existing delivery point consisting of a single phase transformer becomes a new delivery point because of the modifications made?

Page 7, Lines 1 through 4 (Portion of testimony objected to by IP)

A: Yes. It clearly does. The modification consisted of a transformer to step the voltage down from the distribution line to a voltage usable by the motors and equipment of the customer along with necessary upgrading of the distribution line to provide three phases of current rather than one phase or single phase current to the customer's location.

Page 7, Lines 5 through 7

Q: What if any difference is there in the previous example of a change to the customer's delivery point and the changes and modifications made by IP to the Texas substation in this docket?

Page 7, Lines 8 through 14 (Portion of testimony objected to by IP)

A: The changes in the immediate preceding example constitute an increase in both the capacity to serve as well as adding additional phases to the delivery point. However, the most important part of the modification is the increase in the capacity of the electric supplier to provide the additional electric energy to the customer. The additional capacity is provided by reason of modifications or changes to the distribution line to

handle the additional capacity as well as changes in the transformer and other associated equipment where the voltage is stepped down from the distribution voltage to the voltage that is usable by the customer's motors and equipment.

Page 8, Line 3

Q: What conclusion does this lead you to?

Page 8, Lines 4 through 16 (Portion of testimony objected to by IP)

A: It leads me to the conclusion that the parties did not intend substations to be "delivery points" within the meaning of the Service Area Agreement. It further leads me to the conclusion that the parties intended a "delivery point", as utilized in the agreement, to mean the location for the installation of step down transformers, whether it is a single phase transformer, two phase transformer, or a three phase transformer, and associated equipment that are installed at customers' locations and utilized to reduce the voltage delivered by the distribution line to a voltage usable by the customers at the location where the electricity is actually utilized by the customer's motors and equipment. Further, adding new transformers where none existed to serve a customer's new or additional electric load or changing a customer's electric service from single phase to two phase or three phase electric service because of a customer's need to increase the quantity or type of electric service are the most common changes in an electric supplier's point of delivery of electric service to a customer.

Page 9, Line 3

Q: Why not?

Page 9, Lines 4 through 12 (Portion of testimony objected to by IP)

A: If the Texas substation is in fact the delivery point for the utilization of electricity by Citation Gas & Oil Corporation in the Salem oil field, then all Citation would have to do is disconnect its distribution line from IP's Texas substation and connect it to the Tri-County Salem substation located a very short distance away. The Tri-County Salem substation would then become the delivery point for the Citation Salem oil field and that delivery point would be located in Tri-County's service territory under the Tri-County/IP Service Area Agreement. This would result in a switch in the electric service used by Citation from IP to Tri-County and would not be in keeping with my understanding of the intent of the Service Area Agreement between the parties.

ARGUMENT:

The series of questions and answers which IP has moved to strike with regard to Dew's prepared rebuttal testimony start with Page 6, Lines 21 through 23, and include Page 7, Lines 1 through 15, Page 8, Lines 3 through 16, and Page 9, Lines 3 through 12. In this series of questions Dew is asked to respond to the effect, based upon engineering principals, of the claim by IP that it can utilize the Texas substation as the delivery point for the delivery of electric service by IP to the Citation gas plant as well as the seven gas compressor sites at issue in this docket. The questions and answers follow the question and answer which IP did not object to found at Page 6, Lines 5 through 20, asking Dew for his engineering opinion, based upon electric utility industry engineering principles, regarding the effect on the "delivery point" when changes are made in phases of electric current provided to the customer. In the questions and answers that follow, Dew states his opinion from an engineering point of view regarding the effect of an increase in the transformer phase from a single phase to a three phase

transformer and whether that would constitute a modification from an engineering point of view under Section 1(d) of the Service Area Agreement. He is then asked to render his engineering opinion whether such action would also increase the capacity of the electric utility to provide electric service to the customer. The next questions and answers which are objected to by IP asked Dew to render his engineering opinion regarding what difference exists between changing the transformer from single phase to three phase on the one hand and adding transformers of the same phase or making similar modifications to the Texas Substation on the other hand in order to increase the ability to serve additional electric load to its customer. The answer relates his engineering opinion that the most important part of those types of changes is the increase in the capacity of the substation or other point of delivery to serve the additional electric load of customers. Nothing in those answers render a legal opinion as to the proper interpretation of the Service Area Agreement. Rather, Dew provides his engineering opinion of the engineering meaning of various provisions of the Service Area Agreement.

IP has objected to the answer provided by Dew at Page 9, Lines 4 through 12 of his prepared rebuttal testimony. This answer is in response to the question found at Page 8, Lines 20 through 23 and Page 9, Lines 1 asking if the engineering opinion rendered by Malmedal, one of the IP's engineering experts, that the Texas substation is the IP delivery point for the Citation gas plant and gas compressor sites at issue in this case, is correct. Dew's answer was "no". His answer, objected to by IP, states Dew's engineering opinion that the Texas Substation cannot be the delivery point from an engineering point of view for the gas plant and compressor sites because if it were, Tri-County's Salem Substation, located very closely to the IP Texas Substation, could become the delivery point for the whole Citation Salem Oil Field

should Citation disconnect its 12,470 volt distribution line from the Texas Substation and reconnect it through cut-offs and switches to Tri-County's Salem substation. The engineering ability of Citation to disconnect its distribution line from IP's substation and connect it to Tri-County's substation was confirmed by IP's engineering expert, Malmedal, in his cross examination (Tr date 4-28-11, Tr p 1951-1953). Dew notes this would not be in keeping with Tri-County's expressed understanding of the Service Area Agreement. Dew's engineering opinion regarding the effect upon the Service Area Agreement by reason of the disconnection of the Citation line from the Texas Substation and reconnection to the Salem Substation is proper and is one the ALJ can either accept or reject.

4. Page 10, Lines 10 through 11

Q: Does Mr. Malmedal correctly rely upon the National Electrical Code for a definition of electric service delivery point?

Page 10, Lines 12 through 16 (Portion of testimony objected to by IP)

A: No. Mr. Malmedal refers to the 2008 National Electrical Code in the last paragraph on page 6 and at the top of page 7 of his engineering report attached to his Prepared Direct Testimony. In so doing, he states that the National Electrical Code covers most types of electrical installations including the electrical installations comprising Citation's Salem oil field.

Page 11, Lines 24 through 27

Q: Mr. Malmedal refers to the 2007 National Electrical Safety Code (NESC) in the next to last paragraph on page 6 of his engineering report attached to his Prepared Direct Testimony and implies that the definition for "service point" and "service" codified by

the NESC is applicable to the case in this docket. Is this conclusion accurate?

Page 13, Lines 26 through 34 (Portion of testimony objected to by IP)

Mr. Malmedal does not properly acknowledge that each of the definitions regarding “service” or “service point” refers to the connection of the medium voltage (12.47kV) electric distribution line with the customer’s place of usage of the electricity. At that point of delivery, there is a step down transformer and associated attachments allowing the reduction of the distribution line voltage to a voltage level capable of being utilized by the customer’s motors and equipment. Thus, one can only properly conclude from the definitions of “service-point” or “service” in the National Electrical Safety Code publications and the National Electrical Code publications refers to the point where the distribution line voltage is stepped down by a transformer to a voltage level capable of

Page 14, Lines 1 through 2 (Portion of testimony objected to by IP)

being used by the customer’s motors and equipment at the location for the end usage of the electric current.

Page 14, Lines 14 through 26 (Portion of testimony objected to by IP)

Both the 2000 IEEE 100 Authoritative Dictionary and the 2002 NEC Handbook talk about the premises wiring, and thus the premises, being located at the load end of the service drop from a transformer to the electrical outlets. Therefore, clearly a premise is a house or a building, or a factory, etc. and not a several thousand acre oil field with individual wells scattered about.

Page 14, Lines 19 through 20 (Portion of testimony objected to by IP)

Q: Is the National Electrical Code even applicable to the electric facilities of Tri-County,

IP or Citation Oil & Gas Corporation?

Page 14, Lines 21-26 (Portion of testimony objected to by IP)

A: The National Electrical Code is sponsored by the National Fire Protection Association and was first published in 1897 and every three years thereafter as a standard to help guard against loss of life and property. It is not generally applicable to the facilities of an electric utility. The National Electrical Safety Code sets forth the standards followed by electric utilities such as Tri-County and IP and it is the Code followed by electric utility engineers.

ARGUMENT:

The answer by Dew in his prepared rebuttal testimony Page 10, Lines 12 through 16 refers to the question at Page 10, Lines 10 through 11 and deals with Dew's engineering opinion that Malmedal has not properly relied upon the 2008 National Electrical Code (NEC) for the definition of an electric service delivery point in this case. Dew is an electric utility engineer who has applied electric utility engineering principals since 1974 in his work with the electric utility industry. IP objected to only part of Dew's answer. The rest of Dew's answer points out that the 1965 edition of the NEC was in existence on the date of the 1968 Service Area Agreement between the parties in this case and that the 1965 NEC did not define "delivery point" but did define "service", "service conductor", and "service drop". Dew quotes the 1965 NEC and attaches relevant portions as a part of his testimony, none of which have been objected to by IP.

IP has objected to a portion of Dew's answer at Page 13, Lines 26 through 34 and Page 14, Lines 1 through 2 of Dew's prepared rebuttal testimony. The complete answer by Dew

refers to a question that appears at Page 11, Lines 24 through 27 regarding the application by Malmedal of the 2007 NESC definitions of “service point” and “service”. Dew’s testimony is that Malmedal has not properly acknowledged that the definition of “service and “service point” in the 2007 NESC refer to the “point” where a medium voltage (12,470 volt) electric distribution line connects with the customer’s place of usage of the electricity and that from an engineering standpoint one can only properly conclude that the definition of “service point” and “service” in the 2007 NESC refers to the point where the distribution line connects with a transformer to reduce the voltage to a level capable of being used by the customer’s electric equipment. It is proper for Dew to state his engineering opinion as to whether or not Malmedal, IP’s expert engineer, has properly applied definitions from the NESC to the meaning of “point of delivery” that is at issue in this case. This case in effect consists of a battle of engineering opinions on such matter. It is proper for one engineer to say that the other other engineer has not rendered a valid engineering opinion and give the reasons why. In addition, Dew is properly qualified to render his engineering opinion whether the National Electric Code is applicable to the facilities of an electric utility and if not, whether the National Electrical Safety Code sets the standards followed by electric utilities. In fact, both IP’s engineering experts, Tatlock at (Tr date 1-14-11, Tr. 1172) and Malmedal at (Tr date 4-28-11, Tr P. 1986), agreed with Dew’s opinion that the NESC is applicable to both IP and Tri-County and Malmedal admitted on cross examination that the NEC is not applicable in this case (Tr date 4-28-11, p 1896).

5. Page 15, Lines 16 through 18

Q: Is Mr. Malmedal’s statement in the first full paragraph on page 7 of his engineering

report attached to his Prepared Direct Testimony that the “point of delivery” is the place where the utility meters the electricity being supplied to the customer correct?

Page 15, Lines 19 through 23 (Portion of testimony objected to by IP)

A: No. Mr. Malmedal implies that the location of the utility meters used to measure the amount of electricity used by the customer is an indicator of the “point of delivery”. However, this assertion is not supported by any of the definitions of “service” or “service point” as used in the National Electrical Safety Code or the National Electrical Code that was in effect at the time the Service Area Agreement was entered into.

Page 16, Lines 1 through 11 (Portion of testimony objected to by IP)

Rather, the location of the meters is determined by which of the two, the electric utility or the customer, will assume the line loss that occurs when electricity is transported across distribution lines for delivery to the actual point of use of the electricity. That location is generally negotiated between the customer and the electric utility. As a general practice, the utility meters are located where the step down transformers are located. However, that is not always the case. Instead, the generally common practice in the utility industry is to consider the “point of delivery” of electrical current to the customer as being the point where the electric distribution line voltage is stepped down by a transformer and associated equipment to a voltage that can be used by the customer’s electric motors and equipment. That location is uniformly the place where the end use of the electricity occurs, which is the location of the customer’s electric motors and equipment.

Page 16 lines 12 through 17

Q: Is Mr. Malmedal correct in his conclusion that the “point of delivery” as between Citation and IP can only be at the connection of the Citation 12.47 kV distribution line to the IP Texas substation because Citation rather than IP owns the 12.47 kV distribution line and the step down transformers and associated equipment used to reduce the distribution line voltage to a voltage usable by the gas plant, motors and equipment and the compressor site motors and equipment?

Page 16 lines 18 through 23 (Portion of testimony objected to by IP)

A: No. Neither the National Electrical Safety Code nor the National Electrical Code definitions of “service” or “service point” depend upon ownership of the facilities because ownership of the facilities can vary depending upon the negotiated arrangements between the electric utility and the customer. Further, if the “point of delivery” depended upon which of the customer or electric utility owned the facilities necessary to distribute the electric current to the customer’s point of usage and reduce the voltage so it could be

Page 17, Lines 1 through 7 (Portion of testimony objected to by IP)

used by the customer’s equipment, then the customer could always dictate who its electric provider would be under the Tri-County/IP Service Area Agreement since those service rights are dependent upon where the “delivery point” is situated in reference to the territorial boundary lines negotiated between Tri-County and IP. Such a definition for “point of delivery” would be subject to manipulation by the customer and/or utility without regard to the rights of either electric supplier under the service area agreement in question or the territorial boundaries established by the service area agreement.

ARGUMENT:

IP has objected to Dew's prepared rebuttal testimony commencing with the answer to the question which appears at page 15 lines 16 through 18. The answer appears at Lines 19 through 23 of Page 15 and Lines 1 through 11, Page 16. Dew in his answer states his engineering opinion that the definitions of "service" and "service point" as used in the National Electrical Safety Code (NESC) and the National Electrical Code (NEC) do not support Malmedal's engineering opinion that the location of the utility meter is the "point of delivery" of electric service to the customer. Dew notes that the meter location is generally negotiated between the electric utility and the customer and is based upon which one will assume line loss that occurs when the electricity is transported across the distribution lines to the point where the electricity is actually used by the customer. Dew is qualified to render his understanding, based upon his many years as an electric utility engineer, of the practice followed for locating electric meters and "delivery points" as between the customer and the utility. Such testimony does not constitute a legal opinion as to the proper interpretation of the Service Area Agreement or improper comment on the engineering opinions rendered by IP's engineering expert, Keith Malmedal. Dew has a right to give his engineering opinion regarding whether Malmedal's engineering opinion is correct. The ALJ is free to accept either opinion.

IP further objected to Dew's testimony found at Page 16, Lines 18 through 23 and Page 17, Lines 1 through 7, which is responsive to a question regarding Malmedal's conclusion that the "point of delivery" between Citation and IP can only be at the connection of the Citation 12,470 volt distribution line to the IP Texas Substation. Dew's answer, based upon his engineering interpretation of "service" and "service point" in the NESC and NEC, is that the

“point of delivery” does not depend upon ownership of electric facilities but rather depends upon the point where the customer actually utilizes the electricity. It is proper for Dew to render his engineering opinion that the definitions of “service” and “service point” as used in the NESC and NEC are not based upon where ownership of the electric facility ends as between the electrical utility and the customer.

6. Page 17, Lines 8 through 11

Q: Why is it customary for electric suppliers to distribute electric energy from each electric supplier’s substation along distribution lines at a higher voltage, as in this case at 12.47 kV, than is necessary for operation of a customer’s electrical motors and other equipment?

Page 17, Lines 18 through 21 (Portion of testimony objected to by IP)

This is the standard by which all electric suppliers operate. It is also why all editions of the National Electrical Safety Code and the National Electrical Code define “service” and “service point” as the point where the electric usage occurs.

ARGUMENT:

IP has objected to the last two sentences of Dew’s answer to a question that appears at Page 17, Lines 8 through 11. The portion of the answer objected to appears at Lines 19 through 21 on Page 17. The answer by Dew which IP did not object to explains the engineering principle which requires electric suppliers, such as IP and Tri-County, to utilize higher voltage distribution lines to distribute electricity to a customer at a physical location where the voltage is reduced to a level usable by the customer. Dew explains that this engineering principle is why all editions of the NESC and the NEC apply the definitions of “service” and “service

point” to the location where the electricity is utilized by the customer, not where the electrical connection of the medium voltage distribution line is connected to the electric supplier’s substation. It is proper for Dew to render his engineering opinion based upon his experience regarding the application of the definition of “service” and “service point” as found in the NESC and the NEC to his engineering work for electric suppliers and their customers.

7. Page 21, Lines 10 through 23

Q: Is the assertion correct by Mr. Malmedal in the last two paragraphs on page 8 and the first paragraph on page 9 of Mr. Malmedal’s engineering report attached to his Prepared Direct Testimony that the only way the connection of Citation’s gas plant and the eight compressor sites to the Citation 12.47 kV distribution line would be a “delivery point” is when IP owns all of the equipment up to the gas plant and compressor sites including the distribution lines, transformers, fuses, etc.?

Page 21, Lines 16 through 23 (Portion of testimony objected to by IP)

A: No. Neither the National Electrical Safety Code (NESC) or the National Electrical Code (NEC) mention ownership of facilities when defining “service” or “service-“service-point”. Rather, the NESC and the NEC talk about “service” or “service-point” “service-point” as the location of conductors and equipment necessary for delivery of electric energy from the secondary distribution or the street main, or from transformers to the service equipment of the premises supplied. These definitions support the conclusion that electric current delivered at distribution voltage by secondary distribution lines or street mains to transformers that reduce the distribution voltage to a voltage level that can be utilized by

Page 22, Lines 1 through 2 (Portion of testimony objected to by IP)

electric motors and equipment at the site of the electric usage are service connections which in turn conforms with the standard understanding of the electric utility industry for “point of delivery” of electric service.

Page 22, Lines 4 through 8

Q: Is the statement correct by Mr. Malmedal in the first paragraph on page 10 of his engineering report attached to his Prepared Direct Testimony that a “point of delivery” or a “service” is not the connection between the distribution line and the step down transformers used to reduce the distribution line voltage to a level that can be used by the customer’s motors and equipment unless the electric utility owns the distribution line?

Page 22, Lines 9 through 23 (Portion of testimony objected to by IP)

A: No. As noted earlier, nothing in the National Electrical Safety Code or the National Electrical Code or in the Service Area Agreement between Tri-County and IP specifies that either IP or Tri-County must own the electric distribution line utilized to bring the electric current to the customer’s location. Further, there is no standard in the electric utility industry that defines “point of delivery” or “service” in that manner. Ownership of a distribution line simply does not enter into the general understanding of a “point of delivery” or “service” within the electric utility industry. If this assertion by Mr. Malmedal that ownership of the distribution line for purposes of distributing electricity from the electric supplier’s substations to the point of actual use of the electricity by the customer determines where the point of delivery is, then any customer could determine who its electric supplier is under the Tri-County-IP Service Area Agreement by

building its own 12.47 kV distribution line from the substation to the actual location of use of the electricity. If the location of the customer's electric motors is in Tri-County's Tri-County's service area under the agreement, the customer owned distribution line would allow IP to serve the electric load. On the other hand, it is obvious under the Service Area Agreement, IP

Page 23, Lines 1 through 4 (Portion of testimony objected to by IP)

could not build the 12.47 kV distribution line from IP's substation to the customer's electric load in Tri-County's service area and provide the electric service. Thus, Mr. Malmedal's interpretation of delivery point would simply render the Service Area Agreement meaningless.

Page 23 lines 5 through 8

Q: Is Mr. Malmedal's statement correct in paragraph 1 on page 10 of his engineering report attached to his Prepared Direct Testimony when he states: "a point of delivery and a service is limited in definition to the place where ownership changes between the utility and the customer."?

Page 23, Lines 9 through 23 (Portion of testimony objected to by IP)

A: No. Ownership of the electric energy is a matter which is negotiated between the customer and the electric utility providing the electric service. The place where the ownership of the electric energy changes between the electric utility and the customer is not considered an element in the definition of "service" or "service-point" as provided in the National Electrical Safety Code or the National Electrical Code. Neither is the point at which ownership of the electric energy changes from the electric utility

providing the electric energy to the customer utilized in the Service Area Agreement between Tri-County and IP to define the “point of delivery”. If the place where the ownership of the electric energy changes from the electric utility to the customer is the definition of a “point of delivery” of electric energy or of a “service” or of a “service-“service-point”, then the meaning of “point of delivery”, “service”, and “service-point”, would always be changing in accordance with the definition negotiated between the customer and the electric utility. Those definitions would always be based upon the needs of the individual electric utility and the individual customer and not take into account the broader picture of providing electric utility services to all customers of electric utilities. Such a definition of “point of

Page 24, Lines 1 through 2 (Portion of testimony objected to by IP)

delivery” would not provide any stability in the electric utility industry and would make the Service Area Agreement between Tri-County and IP meaningless.

Page 24, Lines 3 through 8

Q: Is Mr. Malmedal correct when he states at paragraphs 2 and 3 on page 10 of his engineering report attached to his Prepared Direct Testimony that the place where the voltage is reduced to a level that can be utilized by the customer’s equipment at a particular location or that the proximity of electrical loads to the “point of delivery” has no bearing on the electric utility industry meaning of a “point of delivery”, “service”, or “service-point” correct?

Page 24, Lines 9 through 12 (Portion of testimony objected to by IP)

A: No. Again, both the National Electrical Safety Code and the National Electrical Code

define “service”, and “service-point” in terms of the point at which electrical energy is delivered by a secondary distribution line or street main or transformers to the service equipment of the customer at the premises.

ARGUMENT

The answer of Dew that IP has objected to at Page 21, Lines 16 through 23 and the top of Page 22, Lines 1 through 3 refers to a question asked of Dew regarding Malmedal’s opinion in his engineering report at page 8 and the first paragraph of Page 9 stating that the only way the connection of Citation’s gas plant and the eight compressor sites to the Citation owned 12,470 volt distribution line would be a “delivery point” is if IP, instead of Citation, owned the 12,470 volt distribution line from the Texas Substation to the connection of that distribution line to the step down transformer at the gas plant and gas compressor sites. Dew expresses his engineering opinion that Malmedal’s opinion is incorrect and states the reasons which include the fact that neither the NESC nor the NEC mentions ownership of facilities in the definition of “service” and “service point.” Dew further mentions the fact that based upon his engineering experience the point where the service connections physically exist between the distribution line and the customer’s use of electricity is the engineering accepted definition of “point of delivery” within the electric utility industry. Such comments by Dew as Tri-County’s engineering expert are proper to explain why he differs in this engineering opinion regarding the meaning of “point of delivery”, “service”, and “service point” as used in this case from the engineering opinion with regard to the same matters by IP’s expert engineer. It is further proper for Dew to express his engineering opinion as he does in his answer at Page 22, Lines 9 through 23 and Page 23, Lines 1 through 4 that there is no standard in the electric utility

industry that defines “point of delivery” or “service” as those terms are defined by Malmedal as IP’s engineer. Dew states the basis for his differing engineering opinion and gives his opinion as to the engineering effect of applying Malmedal’s engineering definition of “point of delivery” in the instant case. IP has objected to Dew’s opinion that IP could not provide the electric service to the Citation gas plant and seven gas compressor sites if IP owned the 12,470 volt distribution line from the Texas Substation to the location of usage of electricity at the gas plant and compressor sites. Yet IP’s engineering experts, Tatlock and Malmedal, both affirmed on cross examination that IP could not provide electricity to the gas plant and the seven gas compressor sites if IP owned the 12,470 volt distribution line under the terms of the Service Area Agreement between Tri-County and IP. (Tri-County exhibit A-5; Tr date 1-14-11, Tatlock x-exam, Tr p 12-08-1215, 1238); (Malmedal x-exam, Tr date 4-28-11, p 1907-1908). Thus, it is proper for Dew to state his opinion, based upon engineering principals and his understanding of the Service Area Agreement and facts in this case, about the effect of applying the engineering opinions rendered by Malmedal, regarding “service”, “point of service”, and “point of delivery” when applied from a practical engineering point of view to the Service Area Agreement in this case.

8. Page 27, Lines 4 through 14(Portion of answer objected to by IP)

A. To the extent “point of delivery” or “existing point of delivery” as referred to in Section 1 of the Service Area Agreement between Tri-County and IP is intended to include the Texas substation as a “point of delivery”, then it is simply unrealistic not to take into account such changes or additions to the Texas substation when determining if the Texas substation has been modified within the meaning of Section 1 of the Tri-County/IP Service Area Agreement.

To the extent Section 1 of the Tri-County/IP Service Area Agreement is not intended to apply to utility substations like the Texas substations, but only to the delivery point where electricity is actually delivered for use by the customer's motors and equipment such as at the gas plant and eight compressor sites, then in that instance, the modifications to the Texas substation by IP would have no bearing on this case.

Page 27 lines 15 through 18

Q: Is Mr. Malmedal correct when he asserts in the first four paragraphs on page 11 of his engineering report attached to his Prepared Direct Testimony that adding phases does not equate to adding capacity?

A: No.

Page 28, Lines 2 through 7 (Portion of answer objected to by IP)

Simply stated, if the adding of an additional phase or phases of electric current which in turn almost invariably adds capacity to provide electric service to a customer constitutes a modification under Section 1 of the Tri-County/IP Service Area Agreement then by direct analogy the adding of capacity without adding additional phases of current constitutes a modification under Section 1 also.

Page 29, Line 23

That is why I concluded that the adding of capacitors to the substation creates

Page 30, Lines 1 through 3 (Portion of answer objected to by IP)

additional phases of current making the substation available to serve additional capacity and thus constitutes a modification within the meaning of Section 1 of the Tri-County/IP Service Area Agreement.

ARGUMENT:

The portion of Dew's answer that IP has objected to located at Page 27, Lines 4 through 14 of his prepared rebuttal testimony is located at the end of an answer that starts on Line 4, Page 26. This answer is in response to a question found at Page 25, Lines 19 through 23 and the top of Page 26, Lines 1 through 3 dealing with whether Dew has an engineering opinion regarding Malmedal's engineering opinion found in the last paragraph on Page 10 of his engineering report stating that no modifications of any kind were made and no additional phases of electric current were added to the IP Texas Substation and therefore there was no modification to that Texas Substation that would be relevant to a "service" or "point of delivery". Dew commences his answer to that question on Page 26, Line 4 and continues his answer on Page 27, Lines 1 through 14. IP has chosen to object only to the portion of the answer found on Page 27, at Lines 4 through 14. That portion of Dew's answer states that it is his engineering opinion that it is simply unrealistic from an engineering point of view to consider the Texas Substation as a "point of delivery" under the Service Area Agreement between Tri-County and IP and not take into account modifications that increase the ability of the substation to serve additional electric load of customers. On the other hand, modifications to the substation are not important from an engineering point of view in this case if the "delivery point" of the electricity is where the electricity is actually used by the customer at the gas plant and gas compressor sites. Dew is certainly qualified to render his engineering opinion based upon his years of engineering experience in the electric utility industry regarding the effect of Malmedal's interpretation with regard to the Texas Substation modifications in this case. Also, Dew is qualified to render his engineering opinion regarding the engineering

meaning of the relevant provisions of the Service Area Agreement.

IP has objected to Dew's answer on Page 28, Lines 2 through 7 of his prepared direct testimony. That answer is in response to a question regarding the accuracy of Malmedal's engineering opinion that adding phases to the Texas Substation does not add capacity. Certainly Dew, based upon his years of engineering experience, is qualified to render his engineering opinion as to the accuracy of Malmedal's engineering opinion on that point and to state his engineering opinion whether the adding of phases to the Texas Substation constitutes a modification in terms of the Service Area Agreement between Tri-County and IP.

IP has further objected to the same type of testimony by Dew found in his answer at the top of Page 30, Lines 1 through 3. That answer was given in response to a question to Dew regarding the accuracy of Malmedal's engineering opinion that the addition of both leading three phase current and lagging three phase current does not add additional phases to the Texas Substation. Dew in his response explains why he has reached the engineering conclusion that the adding of leading three phase current and lagging three phase current has in fact increased the phases of current at the substation and made available additional capacity to serve the electrical needs of IP customers leading Dew to the engineering opinion that there has been an engineering modification to the Texas Substation within the meaning of Section 1 of the Tri-County/IP Service Area Agreement. Dew is certainly qualified to render his engineering opinion of the effect of these modifications by IP to the Texas Substation upon the Tri-County/IP Service Area Agreement.

V. PORTIONS OF THE PREPARED SUPPLEMENTAL REBUTTAL TESTIMONY OF ROBERT C. DEW, JR. OBJECTED TO BY IP

1. Page 4, Lines 3 through 4

Q: What, if anything else of interest did you note in the April 7, 2008 Affidavit of Mr. Tatlock?

Page 4, Lines 5 through 23 (Portion of testimony objected to by IP)

A: I noted that in fact Citation Oil did discuss with IP the need to establish a new electric service connection point for providing electric service to the gas plant. This without any doubt indicates to me that both Citation and IP, including Mr. Tatlock as the engineer dealing with Citation at this time of reference for electric service to the gas plant, knew that there would have to be installed transformers to step down the 12.47 kV distribution line voltage to a voltage usable by the motors at the gas plant as well as the installation of necessary cut outs, fuses, electrical service conductors, and switches at the point where the electricity would leave the distribution line to be used by the motors at the gas plant. This is the classic definition of a point of delivery or service connection point within the electric industry. This discussion by Mr. Tatlock also makes it perfectly clear to me that both the representatives of Citation as well as Mr. Tatlock and the other representatives of IP dealing with this request by Citation for electric service to the gas plant were well aware of the standards within the electric utility industry for providing electric service. It also is abundantly clear to me from that that conversation Mr. Tatlock had with the Citation representatives that Mr. Tatlock knew that since the Citation gas plant was located in Tri-County's service territory under the Service Area Agreement in question, the placement of the service connection point, that is the step down transformers, switches, service conductors, and other

apparatus associated with the reduction of 12.47 kV distribution line voltage to a voltage usable by the gas plant electric motors, would be

Page 5, Lines 1 through 8 (Portion of testimony objected to by IP)

located within Tri-County's service territory and under the Service Area Agreement would be Tri-County's electric service to provide. This explains to me why the various e-mail communications between Michael Tatlock and other representatives of IP as well as representatives of Citation during this time period noted very clearly that electric service to the gas plant should be provided by Tri-County under the Service Area Agreement and not IP and if Citation wanted IP to provide the electric service, Citation had to move the physical location of the gas plant so that it would be located within IP's service territory under the agreement.

Page 5 lines 9 through 11

Q: What if anything does the comment by Mr. Tatlock in his April 7, 2008 Affidavit at paragraph 18, page 4, wherein he states that Citation ultimately decided to extend its own distribution system to provide electric energy to the gas plant, indicate?

Page 5 lines 12 through 23 (Portion of testimony objected to by IP)

A: This clearly indicates that IP and Citation were attempting to avoid the terms of the Service Area Agreement at issue in this case by allowing Citation to use its privately owned distribution system to take IP electricity from the Texas substation into the new service connection point established by Citation for the Citation gas plant all located in the Tri-County service territory. It is also important to remember that Citation did not have a distribution line located close enough to the Citation gas plant which was

suitable for delivering electric service to the gas plant. Thus, Citation had to construct 4,119 feet of new 2/O ACSR three phase line and rebuild 1,161 feet of #4 CU three phase line to 2/O ACSR three phase line in order to be able to distribute IP's electric energy i.e. electricity from the Texas substation to the service connection point for the gas plant located in Tri-County's service territory. It certainly appears from Mr. Tatlock's April 7, 2008 Affidavit that IP and Citation concluded they could avoid the requirements of the

Page 6, Lines 1 through 4 (Portion of testimony objected to by IP)

IP/Tri-County Service Area Agreement if IP did not construct a distribution line, but allowed Citation to construct a new distribution line and rebuild older, inadequate distribution lines to deliver IP's electricity to the new gas plant located in Tri-County's service territory allowing IP to do indirectly what it could not do directly.

ARGUMENT

The answers or portions of answers that IP has objected to in Dew's prepared supplemental rebuttal testimony refer to his understanding from an engineering point of view what the effect is of the actions taken by IP and Citation in this case. The first answer which is objected to by IP appears at page 4 lines 5 through 23 and page 5 lines 1 through 8 in which Dew responds to what he found of interest in the April 7, 2008 affidavit of Tatlock which is part of the supplemental testimony of Mike W. Tatlock on behalf of IP and identified as IP Exhibit 7 with the affidavit being IP Exhibit 7.2. Certainly, Dew can render his understanding of what Tatlock, as the engineer for IP, had knowledge of and how he interpreted that knowledge with respect to the need for a "new delivery point" for the Citation gas plant when

the request for electric service was first made by Citation to IP on March 7, 2005. Dew has a right to refer to the IP e-mails from March 5, 2005 through June 21, 2005, which are in evidence to render his opinion that from an engineering stand point Tatlock, who is also an engineer, understood what a "point of delivery" was in reference to the request for electric service by Citation for the gas plant. Dew can also make reference to the fact that Tatlock was well aware that IP could not serve the gas plant located in Tri-County's service territory as the request for electric service was then being made to IP by Citation. These facts are already admitted in the record by IP's witness Tatlock and these facts clearly show how IP was interpreting Citation's request for electric service between March 7, 2005 and until July 14, 2005 when Todd Masten called Marcia Scott and told her IP had changed its position.

2. Page 6 lines 5 through 7

Q: Is this conclusion by you, that IP is trying to be the electric service provider for the Citation gas plant located in Tri-County service territory by indirect methods through use of the Citation private distribution line, supported by any other testimony in this docket?

Page 6, Lines 17 through 22 (Portion of answer objected to by IP)

Thus, it is very clear that Citation representatives and IP representatives met and determined that they believed they could circumvent the rules of the Service Area Agreement between Tri-County and IP by having Citation construct a new distribution line and upgrade an older existing distribution line in order to deliver IP electricity from the IP Texas substation to the Citation gas plant situated in Tri-County's service territory.

ARGUMENT

It is clear that IP's own engineering experts, Malmedal and Tatlock, have agreed that IP could not serve the gas plant or the seven gas compressor sites if IP owned that distribution line. It is further clear from the IP e-mails between March 9, 2005 and July 14, 2005 that IP's engineering experts Tatlock and Siudyla were both of the opinion that Citation could not even serve the gas plant by use of Citation's own distribution line because of the engineering need to install a "new delivery point" at the Citation gas plant located in Tri-County's service territory.

Therefore, it is appropriate for Tri-County's engineering expert to render his opinion regarding the engineering effect upon the Service Area Agreement of Citation's use of its own distribution line to bring electric service from the Texas Substation to the gas plant "delivery point" and the delivery points for the seven gas compressor sites located in Tri-County's service territory.

3. Page 16, Lines 19 through 21

Q: Does the testimony of Mr. Herr deal with any matters regarding the providing of electric service to the Citation Salem oil field?

A: No.

Page 17, Lines 2 through 7 (Portion of testimony objected to by IP)

Nothing in that testimony deals with the use of electric power provided by electric providers operating under electric service territory agreements whereby each of their respective service territories are defined in such a manner so that each electric provider has the exclusive right to provide all electric service to those customers located within the electric provider's electric service territory.

ARGUMENT

The testimony IP has objected to relates to testimony by IP's geological engineer, Mr. Herr explaining why oil companies combine or unitize the oil interest held by land owners to extract oil from the lands of numerous owners of the mineral interests. Dew has a right to state his opinion based upon his engineering training whether or not the unitization of oil fields has any relationship to the manner in which electric utility companies provide electric service to customers. Dew's engineering opinion that it does not was in fact verified by Herr on cross examination (Tr date 4-27-11 Tr p 1781).

CONCLUSION

For the foregoing reasons, the Motion by Illinois Power Company d/b/a AmerenIP to strike portions of the prepared testimony of Robert C. Dew, Jr., P.E. should be denied.

TRI-COUNTY ELECTRIC COOPERATIVE, INC.

By GROSBOLL BECKER TICE TIPPEY & BARR

By _____



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PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 8th day of June, 2011, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the TRI-COUNTY ELECTRIC COOPERATIVE, INC. (TRI-COUNTY) MEMORANDUM IN OPPOSITION TO ILLINOIS POWER COMPANY dba AMERENIP (IP) AND CITATION OIL & GAS CORP (CITATION) MOTIONS TO STRIKE PORTIONS OF TRI-COUNTY TESTIMONY BY ROBERT C. DEW, JR. P.E. attached hereto, addressed to the following persons at the addresses set opposite their names:

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