

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

TRI-COUNTY ELECTRIC)
COOPERATIVE, INC.,)
)
Complainant,)
)
vs.) Case No. 05-0767
)
ILLINOIS POWER COMPANY, d/b/a)
AMEREN IP,)
)
Respondent.)

ILLINOIS COMMERCE
COMMISSION
2012 MAY 11 11P 3:21
CHIEF CLERK'S OFFICE

REPLY OF TRI-COUNTY ELECTRIC COOPERATIVE, INC. (TRI-COUNTY)
TO THE MEMORANDUM OPPOSING TRI-COUNTY'S
MOTION FOR JUDICIAL NOTICE OF CERTAIN DOCUMENTS

TRI-COUNTY ELECTRIC COOPERATIVE, INC. (Tri-County) by its attorneys
GROSBOLL BECKER TICE TIPPEY & BARR, herewith files its reply to the memorandum of
AMEREN ILLINOIS COMPANY formerly known as Illinois Power Company dba AmerenIP
(IP) to Tri-County's motion requesting the Illinois Commerce Commission and Administrative
Law Judge to take judicial notice of certain documents and in support thereof states as follows:

- I. TRI-COUNTY REQUESTS JUDICIAL NOTICE BE TAKEN OF THE FOLLOWING DOCUMENTS
 - A. COMMISSION ORDERS AND APPROVED SERVICE AREA AGREEMENTS BETWEEN ELECTRIC SUPPLIERS
 - 1. Illinois Commerce Commission Order in ESA 138 entered August 4, 1971 approving MJM Electric Cooperative, Inc. and Illinois Power Company Service Area Agreement dated March 18, 1971 and the Service Area Agreement between MJM Electric Cooperative, Inc. and Illinois Power Company dated March 18, 1971 and approved by the Commission August 4, 1971.
 - 2. Illinois Commerce Commission Order in ESA 88 entered July 3, 1968 approving the Wayne-White Counties Electric Cooperative and Central Illinois Public Service Company Service Area Agreement dated May 14, 1968 and the Service Area Agreement between Wayne-White Counties Electric Cooperative and Central Illinois Public Service Company dated May 14, 1968.

3. Illinois Commerce Commission Order in ESA 171 entered March 12, 1975 approving the Wayne-White Counties Electric Cooperative and Central Illinois Public Service Company Service Area Agreement dated October 15, 1974 and the Service Area Agreement between Wayne-White and Central Illinois Public Service Company dated October 15, 1974.
- B. CORPORATE RECORDS WITH RESPECT TO AMEREN CORPORATION AND AMEREN ENERGY MARKETING COMPANY AND AMEREN ENERGY RESOURCES COMPANY LLC.
1. The Missouri Secretary of State Business Services records showing the corporate status of Ameren Corporation.
 2. Ameren Corporation website showing Ameren Energy Marketing Company is a subsidiary of Ameren Energy Resources Company LLC and that Ameren Energy Resources Company LLC is a subsidiary of Ameren Corporation.
 3. Illinois Secretary of State Corporation Division records showing the corporate status of Ameren Energy Marketing Company and Ameren Energy Resources Company LLC.
 4. Bloomberg Businessweek January 13, 2012 Edition listing Ameren Energy Marketing Company as a subsidiary of Ameren Energy Resources Company LLC and listing Ameren Energy Resources Company LLC as a subsidiary of Ameren Corporation.

II. THE ABOVE DOCUMENTS ARE RELEVANT TO THIS DOCKET.

- A. THE ILLINOIS COMMERCE COMMISSION ORDER IN ESA 138 AND THE SERVICE AREA AGREEMENT BETWEEN MJM ELECTRIC COOPERATIVE, INC. AND ILLINOIS POWER COMPANY DATED MARCH 18, 1971 APPROVED BY THAT ORDER ARE RELEVANT.

IP raised for the first time in its Initial Brief in this docket the argument that Section 3(b) of the Service Area Agreement at issue in this docket created grandfathered rights allowing IP to continue to serve the delivery points and/or service connection points at the Citation gas plant and each of the Citation gas compressor sites even though they are located in Tri-County's service area and even though they were created by Citation and did not exist on the effective date of the Service Area Agreement. As pointed out by Tri-County at page 11-12 in its Reply Brief to

IP's Initial Brief, this argument is inconsistent with the prior position taken by IP before the Commission in MJM Electric Cooperative vs Illinois Power Company Ill Com Comn Docket No. 93-0150 (May 10, 2000)(MJM/IP). In the MJM/IP docket, MJM claimed grandfathered rights under a service area agreement containing a Section 1 and Section 3 virtually identical to Section 1 and Section 3 of the Service Area Agreement at issue in this docket. In response to MJM's grandfathered claim, IP asserted that the Service Area Agreement did not create grandfathered rights under Section 3(b) of the Service Area Agreement. In order to fully understand the position taken by IP in this docket with respect to grandfathered rights that IP now claims exist by virtue of Section 3(b) of the Service Area Agreement at issue in this docket, there must be a comparison of Sections 1 and 3 of the Service Area Agreement in this docket to the virtually identical provisions of the MJM/IP Service Area Agreement at issue in the MJM/IP docket. A cursory review of Section 3(a) and 3(b) of the MJM/IP Service Area Agreement reveals that those Sections are identical to Section 3(a) and 3(b) of the Service Area Agreement at issue in this docket. IP has provided no explanation for its contention that the MJM/IP Service Area Agreement is not relevant to this docket. Further, IP did not raise its argument that the Service Area Agreement at issue in this docket granted IP grandfathered rights to continue to serve the delivery points/service connection points at issue in this docket until IP filed its Initial Brief. Tri-County has the right to counter IP's claim that it has grandfathered rights under the service area agreement at issue in this docket by showing to the ALJ and the Commission that IP has previously taken an inconsistent position before this Commission regarding a virtually identical Section 3(b) in a virtually identical Service Area Agreement and successfully persuaded the Commission to adopt IP's position that Section 3(b) of the Service Area Agreement at issue in this docket does not assign service rights on the basis of grandfathered rights.

B. WAYNE-WHITE COUNTIES ELECTRIC COOPERATIVE AND CENTRAL ILLINOIS PUBLIC SERVICE COMPANY SERVICE AREA AGREEMENTS DATED MAY 14, 1968 AND OCTOBER 15, 1974 AND THE ORDERS OF THE ILLINOIS COMMERCE COMMISSION IN ESA 88 AND ESA 171 APPROVING THOSE SERVICE AREA AGREEMENTS ARE RELEVANT

At page 20 of IP's Initial Brief, IP presented the proposition that the expansion of oil fields in general do not create new points of service. IP cited as authority for that proposition the decision in Central Illinois Public Service Company vs Wayne-White Counties Electric Cooperative Docket No. 92-0463 (July 7, 1994)(Wayne-White/CIPS 1994). This proposition was raised for the first time in IP's Initial Brief. However, the Wayne-White/CIPS 1994 Commission decision is not applicable because it pertained to an entirely different service area agreement that did in fact grant the respective electric suppliers grandfathered rights and did in fact assign service rights on the basis of "premises" being served by either electric supplier on July 2, 1965 even though the "premises" may be located in the other supplier's service area designated under the service area agreement. The Wayne-White/CIPS 1994 Commission decision referred to both the Wayne-White/CIPS Service Area Agreement dated May 14, 1968 and the Wayne-White/CIPS Service Area Agreement dated October 15, 1974 noting that paragraph 1 in both Agreements granted grandfathered rights at "locations" and/or "premises" that each supplier was serving on July 2, 1965. The provisions found in paragraph 1 of the Wayne-White/CIPS May 14, 1968 and October 15, 1974 service area agreements creating grandfathered rights do not appear in the service area agreement at issue in this docket. Accordingly, Tri-County has asked that judicial notice be taken of both the Wayne-White/CIPS Service Area Agreements dated May 14, 1968 and October 15, 1974 and the respective Commission orders in ESA 88 and ESA 171 approving each of the respective service area agreements. Both are relevant by reason of the incorrect application by IP of the Wayne-White/CIPS 1994 Commission decision to the service

area at issue in this docket. Therefore, the foregoing Commission orders and copies of the relevant service area agreements are relevant to this docket so that the record clearly shows there is a difference between the service area agreements regarding the manner in which service rights are assigned between the respective suppliers.

III. DOCUMENTS SHOWING THE RELATIONSHIP BETWEEN AMEREN CORPORATION, AMEREN ENERGY MARKETING COMPANY, AND AMEREN ENERGY RESOURCES COMPANY LLC.

Tri-County has asked the Commission and ALJ to take judicial notice of the Missouri Secretary of State Business Records showing the corporate status of Ameren Corporation, the Ameren Corporation website showing that Ameren Energy Marketing Company is a subsidiary of Ameren Energy Resources Company LLC which in turn is a subsidiary of Ameren Corporation, the Illinois Secretary of State corporation division records showing the corporate status of Ameren Energy Marketing Company and Ameren Energy Resources Company LLC and Bloomberg Business Week January 13, 2012 Edition listing Ameren Energy Marketing Company as a subsidiary of Ameren Energy Resources Company LLC and also listing Ameren Energy Resources Company LLC as a subsidiary of Ameren Corporation. The above records are relevant to show the interrelationship of Illinois Power Company dba AmerenIP and now known as Ameren Illinois Company to Ameren Corporation and Ameren Energy Marketing Company which in turn is a subsidiary of Ameren Energy Resources Company LLC which in turn is a subsidiary of Ameren Corporation. The relationship of these entities is important because Citation claimed in the second paragraph at page 13 of its Initial Brief that any transfer of electric service for the gas plant and the gas compressors from IP to Tri-County will interrupt Citation's electric service from its current ARES, Ameren Energy Marketing. Citation also claimed in the last paragraph on page 13 that since IP is not selling power to Citation, IP did not

do anything that allows Tri-County to claim the right to serve the gas plant and gas compressor sites. However, Citation bought the Salem Oil Field from Texaco in December 1998 (Lewis Direct Test p 2 IP Ex 4). Citation purchased all of its electric services, with the exception of the Citation office, under bundled rates from IP until December 2008 when it contracted with Sempra Energy Solutions, an ARES, for power which contract ended in February 1, 2011 and then contracted with Ameren Energy Marketing, a different ARES, for power until February 2013 (Bing Direct Test Citation Ex 1 p 3-5 and Supp Test Citation Ex 2 p 1-2). Citation's Lewis knew in June 2005 that IP could not serve the gas plant located in Tri-County's territory (Lewis Cross Exam Tr 4/26/11 p 1627-1628) and that Tri-County would claim the right to serve the gas plant (Lewis Cross Exam Tr 4/26/11 p 1624-1626). Bing of Citation was aware of the litigation in this docket when Citation entered into the ARES contracts with Sempra in December 2008 and Ameren Energy Marketing in February 2011 (Bing Cross Exam Tr 4/27/11 p 1744-1746). Bing's Prepared Supplemental Testimony in which Citation disclosed that it had entered into ARES contract with Ameren Energy Marketing Company was not filed until January 11, 2011. The evidentiary hearings commenced in this docket on January 12, 2011.

Likewise, IP raised the argument in Point D of its Responsive Brief at page 17-18 that IP only furnishes delivery service to Citation at the Salem Oil Field and therefore, IP has no presence in the Salem Oil Field past the meter point and cannot be accused of indirectly serving the Citation Salem Oil Field by using Citation's 12,470 volt distribution line as a proxy to circumvent the territorial boundaries established for the benefit of Tri-County and IP under their Service Area Agreement. However, neither IP nor Citation disclosed the complete picture of the relationship between IP and Ameren Energy Marketing. In 2005, when this docket was initiated, IP provided bundled electric services, that is both delivery services and electric energy, to

Citation for use in the Salem Oil Field for use at the gas plant and each of the gas compressor sites located in Tri-County's territory. In December 2008 Citation commenced purchasing its energy component from Sempra Energy Solutions and in December 2011 and shortly before the evidentiary hearings in this docket Citation gave notice that it receives energy from a subsidiary of Ameren, but still takes delivery service from IP. Therefore, the corporate documents as shown by the Missouri and Illinois Secretary of State's Office, Ameren Corporation's own web site, and Bloomberg Business Week, January 13, 2012 Edition, are relevant to show this complete picture of the relationship between the entities since both Citation and IP have advanced their arguments that IP has done nothing and IP is providing no service to Citation for use at the gas plant and each of the respective gas compressor sites.

IV. IP'S CLAIM THAT TRI-COUNTY SHOULD HAVE PRESENTED ITS REQUEST FOR JUDICIAL NOTICE OF THE DOCUMENTS EARLIER IN THE PROCEEDINGS IS UNREALISTIC

As noted above, the need for judicial notice of the Commission orders and service area agreements became necessary only because IP, in support of its grandfathered claim, cited Commission decisions interpreting service area agreements containing entirely different provisions regarding grandfather rights from the service area agreement at issue in this docket. Those arguments and those Commission decisions were not made known to Tri-County until the filing of IP's Initial Brief. IP did not make known in any evidence or argument that IP intended to request the Commission to interpret Section 3(b) of the Service Area Agreement as assigning service rights on the basis of "premises" and "locations". It is disingenuous for IP to now argue that Tri-County knew, or should have known, what formal arguments and the authorities to support the same IP would present in its brief and after the evidentiary hearing. It is both impractical and unreasonable to hold Tri-County to such a standard.

With respect to the documents concerning the corporate relationships of Ameren Corporation, Illinois Power Company dba AmerenIP (IP), and now known as Ameren Illinois Company, Ameren Energy Resources Company LLC and Ameren Corporation, it is simply noted that those corporate relationships are relevant because both Citation and IP have presented the argument that IP is not doing anything or otherwise providing any electric service to Citation at the Salem Oil Field other than delivery services and that IP is not providing any energy to Citation for use at the Salem Oil Field and therefore cannot be accused of using Citation's distribution system as a proxy for providing electric service to the gas plant and gas compressor sites. The documentation reveals the corporate relationship between IP and Ameren Energy Marketing and that, for all practical purposes, the same services are taking place that were being provided by IP at the time this docket commenced and the dispute arose, that is, bundled electric service to Citation for use at the gas plant and gas compressor sites.

IP contends that if judicial notice of the documents is allowed, it will have to conduct additional discovery, file additional testimony and exhibits, and have additional evidentiary hearings. Such argument is without merit. There is nothing to discover about the documents. They speak for themselves. IP does not dispute the accuracy of the documents revealing the corporate relationship nor does IP dispute the accuracy of the Commission orders and service area agreements to which IP's own authorities refer. Further, IP took the identical position in Rural Electric Convenience Cooperative Company vs Illinois Commerce Commission 118 Ill App 647; 454 NE2d 1200; 73 Ill Dec 951 (4th Dist 1983) that Tri-County takes in this docket when Central Illinois Public Service Company, during administrative review, requested the reviewing court to take judicial notice of various service area agreements between other rural electric cooperatives and CIPS and the Commission orders approving the same because CIPS

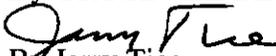
maintained that RECC in that particular case was taking a position inconsistent with positions taken by other rural electric cooperatives on the same issues. CIPS maintained that the service area agreements with other rural electric cooperatives were similar to the service area agreement at issue in that particular case. Judicial notice was granted at CIPS' request. CIPS is now the same company as Ameren Illinois Company, the Illinois regulated utility of Ameren Corporation (See Ameren web-site attached to Tri-County's Motion for Judicial Notice). Thus, it is disingenuous for IP in this case to maintain that the service area agreements referenced by IP's case authorities and Commission decisions relied upon by IP in their briefs are not relevant to this docket.

Wherefore, Tri-County Electric Cooperative requests the Illinois Commerce Commission and the Administrative Law Judge to grant the prayer of Tri-County's motion to take judicial notice of the documents attached to Tri-County's motion.

Respectfully submitted,

TRI-COUNTY ELECTRIC COOPERATIVE, INC.
Complainant,

By GROSBOLL BECKER TICE TIPPEY & BARR


By Jerry Tice

GROSBOLL BECKER TICE TIPPEY & BARR

Attorney Jerry Tice

Attorney Kevin Tippey

101 East Douglas Street

Petersburg, Illinois 62675

Telephone: 217/632-2282

ticej@ticetippeybarr.com

tricountyreplytomemoopposingjudicialnoticemay2012/jtelec

PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 11th day of May, 2012, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the REPLY OF TRI-COUNTY ELECTRIC COOPERATIVE, INC. (TRI-COUNTY) TO THE MEMORANDUM OPPOSING TRI-COUNTY'S MOTION FOR JUDICIAL NOTICE OF CERTAIN DOCUMENTS attached hereto, addressed to the following persons at the addresses set opposite their names:

Gary Smith
Lowenstein, Hagen, & Smith
1204 S. 4th Street
Springfield, IL 62703

lexsmith@lhoslaw.com

Jeffrey R. Baron
Bailey & Glasser LLP's
Suite 520
One North Old State Capitol Plaza
Springfield, IL 62701

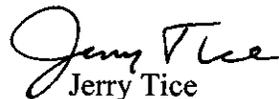
jbaron@baileyglasser.com

Scott Helmholz
Bailey & Glasser LLP's
Suite 520
One North Old State Capitol Plaza
Springfield, IL 62701

Shelmholz@baileyglasser.com

Larry Jones
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

ljones@icc.illinois.gov


Jerry Tice