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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.	)	

APPLICATION BY TRI-COUNTY ELECTRIC COOPERATIVE, INC. FOR REHEARING REGARDING THE FINAL ORDER ENTERED BY THE ILLINOIS COMMERCE COMMISSION ON MARCH 9, 2016

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Tri-County Electric Cooperative, Inc. (Tri-County) (Complainant) by its attorneys GROSBOLL, BECKER, TICE & BARR, Jerry Tice of counsel, herewith files, pursuant to 83 Illinois Administrative Code Section 200.880, its Application for Rehearing with respect to the Final Order entered by the Illinois Commerce Commission (Commission) in the above docket on March 9, 2016 and in support thereof states as follows:

INTRODUCTION

A. TRI-COUNTY'S CLAIM

1. NATURE OF TRI-COUNTY'S COMPLAINT

Tri-County filed its complaint in this docket against Illinois Power Company d/b/a AmerenIP (IP) December 6, 2005 requesting the right to provide electric service to a new gas plant constructed by Citation Oil & Gas Corporation (Citation) (Customer) in Tri-County's service area. On February 7, 2007, Tri-County amended its complaint by adding an additional

request to provide electric service to seven new gas compressor sites constructed by Citation, also in Tri-County's service area. Tri-County's Amended complaint was based upon the Illinois Commerce Commission (Commission) approved March 18, 1968 Service Area Agreement (Agreement) (SAA) between Tri-County and IP.

2. TRI-COUNTY'S SUBSTANTIVE CLAIM

Tri-County claimed each of the new Citation gas plant and seven gas compressor sites were electric loads of 1500 KW or less located in Tri-County's territory and requiring step down transformers at each site to reduce the electric voltage delivered by Citation's 12,470 volt distribution line to 277/480 volts for use by the electric motors at each site. Thus, Tri-County asserted the sites were "points of delivery," as generally understood in the electric utility industry that did not exist on March 18, 1968 and were Tri-County's to serve pursuant to Section 3(a) and Section 2 of the Service Area Agreement. Even though Citation or its predecessor was an "existing customer" of IP as defined by Section 1(b) of the Agreement, Tri-County claimed Citation became a "new customer" under Section 1(c) of the Agreement when Citation "...applied for electric service at a point of delivery which is(was) ...not energized on the effective date of this (the) Agreement." Tri-County also claimed IP recognized the 1500 KW step down transformer located adjacent to the gas plant constituted a new "delivery point" in Tri-County's designated service territory and advised Citation that IP could not provide the electric service without the consent of Tri-County. Tri-County also claimed IP's action was consistent with Tri-County's and IP's previous application of the Service Area Agreement and the term "delivery point" as used therein.

3. APPLICABLE PROVISIONS OF THE SERVICE AREA AGREEMENT

The applicable provisions of the Service Area Agreement between Tri-County and IP are:

(a) An "existing customer" is one which is receiving electric service from either Tri-County or IP on the date of the Agreement, to wit: March 18, 1968 (Section 1(b) of the Agreement).

(b) A "new customer" is any person, corporation or entity who applies for electric service at a "point of delivery" which was not energized on the effective date of the Agreement, to wit: March 18, 1968 (Section 1(c) of the Agreement).

(c) An "existing point of delivery" is an electric service connection which is in existence and energized on the date of the Agreement, to wit: March 18, 1968 (Section 1(d) of the Agreement).

(d) When the demand for electric service at a new service connection point i.e. one that did not exist on March 18, 1968, does not exceed 1500 KW, the right to serve the new service connection point is controlled by the territory (map) boundary lines established by Section 2 of the Service Area Agreement and Section 1(c) and Section 3(a) of the Agreement (Section 1(c), Section 3(a) and Section 2 of the Agreement).

(e) An "existing customer" becomes a "new customer" if the existing customer applies for electric service at a new service connection point which was not energized or in existence on March 18, 1968, i.e. a "new point of delivery" (Section 1(b) and (c) of the Agreement).

(f) Each party has the right to serve all customers whose points of delivery are located within its Service Area. Neither party shall serve a new customer within the Service Area of the other party (Section 3(a) of the Agreement).

(g) Each party has the right to continue to serve all of its "existing customers" and all of its existing "points of delivery" which are located in the Service Area of the other party on the effective date of the agreement, i.e. March 18, 1968 (Section 3(b) of the Agreement).

B. IP'S CLAIM

IP claimed it did nothing but deliver electricity to Citation at the connection of IP's Texas Substation with Citation's new and reconstructed 12,470 volt distribution line which carried the electricity to the step down transformers located at each of the gas plant and gas compressor sites. IP claimed this arrangement had existed with Citation's predecessors for many years prior to the Service Area Agreement and with Citation since it acquired the Salem Oil Field from Texaco in 1998. Therefore, IP claimed the Texas Substation is the delivery point for the Salem Oil Field and it is the customer who has taken the IP electric service from the IP Texas Substation through the customer owned distribution line to serve each of the gas plant and the gas compressor sites located in Tri-County's service territory. IP further claimed its Texas Substation is a "delivery point" that existed on March 18, 1968 and had not been modified within the meaning of Section 1(d) of the Agreement.

C. CITATION'S CLAIM

The initial evidentiary hearings were set for March and April 2010. On April 9, 2010, Citation, as the current owner (since 1998) of the Salem Oil Field, filed its Petition to Intervene. Citation claimed it started taking electric energy from an Alternative Retail Electric Supplier (ARES) in December 2008 pursuant to the Electric Service Customer Choice and Rate Relief Act of 1997 (220 ILCS 5/16-101 et seq) (Deregulation Act) and that by adopting the Deregulation Act, the Legislature gave Citation, as a customer of an electric supplier, the right to choose its electric supplier even though the Electric Supplier Act 220 ILCS 30/1 et seq does not allow customers the right to do so. Citation further claimed that the Legislature by adopting the Deregulation Act repealed the Electric Supplier Act 220 ILCS 30/1 et seq. and Citation's

preference for an electric supplier should take precedence over the Electric Supplier Act. Citation also claimed Tri-County had waived any right to serve the gas plant and gas compressor sites.

D. ISSUES PRESENTED

1. The principal issue is whether the step down transformers and associated apparatus located adjacent to the Citation gas plant and each of the gas compressor sites which were not in existence on March 18, 1968 and which are used to reduce the 12,470 volts on the Citation owned distribution line to 277/480 volts for use by the electric facilities at the gas plant and gas compressor sites constitute "points of delivery" within the meaning of the March 18, 1968 Service Area Agreement. The phrase "point of delivery" is not defined by the Service Area Agreement. Thus, the single issue is what does "point of delivery" as used in the March 18, 1968 Agreement mean?

2. Did the adoption of the Electric Service Customer Choice and Rate Relief Act of 1997 grant an electric customer the right to unilaterally choose an electric supplier in derogation of the Electric Supplier Act?

3. Had Tri-County waived any right to serve the gas plant and gas compressor sites as claimed by Citation?

CONCLUSIONS OF THE COMMISSION'S MARCH 9, 2016 FINAL ORDER

A. RIGHTS OF IP AND TRI-COUNTY UNDER THE SERVICE AREA AGREEMENT

The Final Order determined that the "delivery point" for the new Citation gas plant and the seven Citation gas compressor sites is IP's Texas Substation and not the location of the step down transformers located adjacent to the gas plant and each gas compressor site. The

Commission reasoned that to conclude otherwise would, based upon a practical construction of the Service Area Agreement, produce a result not intended by the parties on March 18, 1968 when the Service Area Agreement became effective.

B. RIGHTS OF CITATION TO SELECT ITS ELECTRIC SUPPLIER:

The Final Order denied Citation's claim that the adoption by the Legislature of the Deregulation Act repealed the Electric Supplier Act and further denied Citation had a right to choose its own electric supplier. The Final Order also concluded Citation has no standing to claim Tri-County waived any right to serve the gas plant or the compressor sites.

C. TRI-COUNTY'S POSITION REGARDING THE FINAL ORDER

Tri-County files its Motion for Rehearing because the Final Order interprets the Service Area Agreement in a manner that allows IP to treat its Texas Substation as the "delivery point" for the new Citation gas plant and each of the new Citation gas compressor sites. Such interpretation of Sections 1(b)(c) and (d) and 3(a) and (b) of the Service Area Agreement is contrary to the preponderance of the testimony regarding the definition of "point of delivery" within the industry and regarding the way Tri-County and IP had consistently interpreted "point of delivery" previous to this dispute.

Tri-County does not seek rehearing regarding any part of the Final Order denying all of Citation's claims.

TRI-COUNTY'S ARGUMENT IN SUPPORT OF ITS APPLICATION FOR REHEARING

I. THE FINAL ORDER'S DEFINITION OF "POINT OF DELIVERY" IS CONTRARY TO THE ENGINEERING TESTIMONY.

The Commission's Final Order found that when the SAA took effect, IP was providing electricity to Texaco by a connection at the Texas Substation with Texaco's 12,470 volt distribution line. From there the power was distributed by Texaco over its distribution system to sites that were located in areas which were assigned to Tri-County by the SAA, but within the Salem Oil Field. From 1968 until 2005 and thereafter, IP continued to supply Texaco and then Citation with electricity at the Texas Substation for delivery by Texaco and Citation to at least 98 new oil wells and associated pumping equipment in the Tri-County area of the Salem field without resistance from Tri-County until it objected in 2005.

The Commission then concluded that to accept Tri-County's interpretation of "point of delivery" as used in the SAA would mean the parties intended to immediately preclude IP from continuing its long-standing practice of supplying electricity to Texaco, at the Texas Substation, for distribution by Texaco to new wells and pumps sited in Tri-County's area. The Commission then presumed that if Tri-County believed the newly signed SAA was intended to put an end to such deliveries into what had just become its service area, its management then in place would have made that position known, but it did not. Based upon the foregoing presumption, the Commission concluded that the parties must have intended Ameren's point of connection with the Salem operator's distribution system at the Texas Substation as a "point of delivery" grandfathered by Section 3(b) of the Service Area Agreement.

The Commission's conclusion that the Texas Substation was intended by the parties to be a "delivery point" when the parties entered into the SAA is based upon the Commission's

presumption regarding what the parties intended in 1968. Yet, the Commission mentions nothing about the fact that the parties did not include any statement in the Service Area Agreement designating the Texas Substation as a delivery point to serve all of the Salem Oil Field. Based on that finding the Commission could just as easily concluded that the parties did not intend to treat the Texas Substation as a "point of delivery" for new facilities located in the Salem Oil Field and also in Tri-County's service area established by Section 2 (the territory maps) of the SAA.

Further, the Commission's conclusion that the connection of Ameren's Texas Substation to the customer owned 12,470 volt distribution line is a "point of delivery" under Sections 1 and 3 of the Service Area Agreement is simply not supported by the engineering witnesses or the substantial amount of evidence in the record detailing the interpretation given to "point of delivery' by Tri-County and IP when applying the Service Area Agreement in the resolution of actual territorial disputes.

The Commission's conclusion that the actual "point of delivery" is the point where the Citation 12,470 volt distribution line connects to the IP Texas Substation implies that the transformation of 69,000 volts at the high side of the Texas Substation to a voltage usable by the customer's electric motors is either unimportant or not necessary to the meaning of "point of delivery" as used in the Agreement. Such reasoning is not supported by the engineering testimony in this docket. IP's electricity enters the high side of the transformers located in the IP Texas Substation at 69,000 volts where it is reduced to 12,470 volts and then carried by the Citation owned distribution line at 12,470 volts several miles to another "point of delivery" downstream from the substation where other step down transformers are required to reduce the 12,470 volts to 277/480 volts before the electricity is usable by the electric motors at the gas

plant and the gas compressor sites (See Brief of Tri-County in Support of the Amended Complaint p 16-18, par 33-34; p 21-23, par 41-43). Dew, Tri-County's engineer and Malmedal, IP's engineer, both agreed the appropriate design of the electric facilities required a 12,470 volt distribution line to bring the electricity from the Texas Substation and the Citation/IP switching structure to the location of the gas plant and compressor sites (Malmedal Cross Exam Tr 4/28/11, pages 1863-1869; Dew Re-Direct Exam Tr 1/13/11 pages 993-994, 996, 1111-1112).

All of the electrical engineers, Dew, Tatlock, Siudyla, and Malmedal, agreed the use of step down transformers adjacent to the gas plant and compressor sites was standard practice in the industry and that without the necessary reduction of the voltage from 12,470 volts to 277/480 volts, none of the electric motors in the Citation gas plant and the Citation gas compressor sites would be able to operate. The preponderance of the engineering testimony in this docket reveals that the industry interpretation of "point of delivery" and/or "electric service connection" as used in the Tri-Count/IP Service Area Agreement is the point where transformers exist to reduce the voltage to a level usable by the customer's electric facilities. Ameren's own outside engineering expert, Mr. Malmedal, testified that if Ameren had constructed the distribution line in question instead of Citation upgrading and using its own 12,470 volt distribution line, the "point of delivery" for the gas plant and the seven gas compressor sites would not be at the Texas Substation but would be the location of the step down transformers reducing the Citation distribution line voltage of 12,470 volts to a voltage of 277/480 for use by the electrical motors at the gas plant and gas compressor sites (Malmedal Cross Exam, Tr 4/28/11, pages 1886-1887; 1892, 1907-1908).

II. THE FINAL ORDER DOES NOT CONFORM TO THE STANDARD OF PROOF REQUIRED BEFORE THE COMMISSION.

The standard of proof required in Commission proceedings is the preponderance of the evidence based upon the consideration of all the evidence 5 ILCS 100.10/15. Utilizing that standard of proof, there is little if any evidence to support the Commission's presumption regarding the meaning the parties intended in 1968 to place upon the phrase "point of delivery" as used in the SAA. For obvious reasons, no witness involved with negotiating the SAA testified that the parties intended Ameren's Texas Substation to be the "point of delivery" for the Salem Oil Field and the SAA is silent on the issue. Certainly there is no statement in the SAA stating that the parties intended the Texas Substation to be the "delivery point" for the Salem Oil Field.

The preponderance of the engineering testimony in this docket is that the standard definition of "point of delivery" within the industry is the point where the voltage is reduced to a level usable directly by the customer's electric motors. The meaning of "point of delivery" as used in the industry was the same in 1968 as it is now and there is no evidence in the record the negotiating parties intended a different meaning. The Commission has adopted the industry's definition of "point of delivery" when defining the phrase "normal service connection point" as used in Section 10/3.10 of the Electric Supplier Act, 220 ILCS 30/1 et seq. See Interstate Power Company v Jo-Carroll Electric Cooperative, Inc. Ill Com Comn 92-0450 and 93-0030 Consolidated on Remand, page 10 of the Order (October 9, 1996). If IP and Tri-County intended, as the Final Order finds, to identify the Texas Substation as a "point of delivery" for the Salem Oil Field, they would have in 1968 set forth that reservation in the SAA and modifications to a "point of delivery" would not have been limited to the sole method of adding additional phases as Section 1(d) provides.

Ameren claimed its electric agreements and tariffs with Texaco and Citation established the location of the connection between the Citation 12,470 volt distribution lines with the Ameren Texas Substation as the "point of delivery" intended by the SAA for the Salem Oil Field. However, Tri-County is not a party to those agreements, and Tri-County did not participate in the negotiations between the customers and Ameren as to the location of that connection point. Therefore, the designation by Ameren and the customer in their electric service agreements that the connection of the 12,470 volt distribution line to Ameren's Texas Substation is the "point of delivery" does not provide any evidence of Tri-County's intent as to the meaning of "point of delivery" as utilized in the SAA when the SAA was approved on March 18, 1968. The Commission in interpreting service area agreements has long followed the axiom that the Service Area Agreement alone will control the dispute Rural Electric Convenience Cooperative Co. vs Illinois Commerce Commission 75 Ill 2d 142; 387 NE2d 670; 25 Ill Dec 794, 796 (1979). Thus, IP's separate electric service agreements with Texaco and Citation or IP's separate tariffs, none of which Tri-County is a party to, do not control the meaning of "point of delivery" as used in the SAA.

It is also clear that the intent of the parties as expressed by the Agreement controls and there is no better evidence of the intention of the parties than the interpretation they themselves consistently placed on the Agreement Berry v. Blackard Construction Co 13 Ill App 3d 768; 300 NE2d 627, 630 (4th Dist 1973). Actions by the parties contemporaneously with or subsequent to the Agreement evidencing the parties interpretation of the Agreement may be considered to determine the intent of the parties regarding the Agreement Occidental Chemical Co. v Agri Profit Systems, Inc. 37 Ill App 3d 599; 346 NE2d 482, 484 (2nd Dist 1975). See also Mendelson v Flaxman 32 Ill App 3d 644; 336 NE 316, 319-320 (1st Dist 4th Div 1975) where the court held

that the interpretation placed on a contract by the parties as represented by their actions evidences the intention of the parties under the Agreement.

The Final Order finds that first, Texaco up to 1998, and then Citation, subsequent to 1998, connected new oil wells to and disconnected existing oil wells from the customer owned 12,470 volt distribution line. However, the evidence is undisputed that Tri-County was not made aware of and had no knowledge of the various new oil well connections to and disconnections from the customer owned distribution line by the operator of the Salem Oil Field post 1968. In fact, there is no evidence in the record that IP was even aware of the new oil well connections and disconnections of existing wells. Therefore, the failure of Tri-County to contest the post 1968 oil well connections is not evidence of Tri-County's interpretation of "point of delivery" as used in the SAA and applied to the Salem Oil Field

Additionally, Ameren never raised the affirmative defense of waiver or laches regarding Tri-County's claims and therefore cannot argue waiver or laches 735 ILCS 5/2-613(d); 83 Ill Adm Cod 200/180(b). Therefore, to the extent Ameren's claim that Tri-County never previously disputed Ameren's right to serve new oil wells connected in the Salem Oil Field to the customer owned 12,470 volt distribution line constitutes a wavier or laches argument, such argument is barred and the Commission cannot properly use Tri-County's failure to contest 1998 oil well connections as a basis for the Commission's conclusion the Parties intended the Texas Substation to be the "point of delivery" under the SAA for new service points in the Salem Oil Field post 1968.

Ameren also claimed, and the Commission found, that the connection between the Texas Substation and the customer's 12,470 volt distribution line constitutes a "point of delivery" to the Salem Oil Field protected by the "grandfather clause" found in Section 3(b) of the SAA.

However, based upon the preponderance of the testimony in this docket as to the meaning of "point of delivery," the connection between the Texas Substation and the customer 12,470 volt distribution line is not a "point of delivery" for purposes of the SAA because the customer's electric motors could not utilize the voltage level at that connection. Simply stated, the preponderance of the engineering testimony does not support the Commission's finding. Thus, Section 3(b) does not grandfather the Texas Substation connection to the customer's 12,470 volt distribution line.

The evidence is clear in this proceeding that both Ameren and Tri-County had in the past interpreted the same provisions at issue in this case in a manner that indicated the parties to the SAA followed the industry's definition of "point of delivery" that is the point where the step down transformers are located adjacent to the customer's electric facilities. In fact, the testimony indicates that in December 1998 when Citation requested electric service for Citation's office which had to be served by a step down transformer reducing the electric voltage from the Citation 12,470 volt distribution line to the 277/480 volt level for use by the electric facilities at the Citation office, the parties used the industry's definition of "point of delivery" and determined Tri-County to be the appropriate supplier instead of IP by way of IP's Texas Substation and Citation's 12,470 volt distribution line (Scott Direct Test. Page 3-4, Tri-County Exs A and A-2, Tr. 1/12/11 page 498; Lewis Cross Ex Tr 4/26/11 page 1612, 1647-1648). This evidence is unrefuted and clearly shows the parties to the SAA as well as Citation, the customer in this dispute, interpreted Section 1 of the SAA to mean an "existing customer" becomes a "new customer" when seeking a new "point of delivery" of electric service such as the electrical service connection for the Citation office (See Tatlock Cross Ex Tr 1/14/11 p 1206-1217, 1224-

1235, 1245-1246; 1352; Siudyla Cross Exam Tr 2/4/11 p 1316-1318, 1323-1326, 1328-1329, 1346-1347, 1349-1353, 1355-1356, 1375-1377).

No witnesses testified that Tri-County and Ameren had in the past interpreted the Service Area Agreement to mean Ameren's Texas Substation was the "point of delivery" as used in Sections 1 and 3 of the Agreement for the Salem Oil Field. If in fact the parties to the SAA intended the Texas Substation to be the "point of delivery" to the Salem Oil Field, then Tri-County would not have been allowed to serve the Citation office and Citation would simply have connected step down transformers for its office to Citation's 12,470 volt distribution line. Neither would Ameren engineers Tatlock and Siudyla have continually told Citation representatives when Ameren was approached to provide electric service to the gas plant that the gas plant was Tri-County's to serve under the Service Area Agreement. Such actions by the Ameren engineers is consistent with the Tri-County testimony regarding the prior application of Sections 1 and 3 of the Service Area Agreement by Tri-County and Ameren and is inconsistent with the "practical construction" of "point of delivery" adopted by the Final Order. Virtually all the evidence supports the proposition that the definition of "point of delivery" as used in the SAA is the industry definition of the phrase "point of delivery" which is the location of the step down transformers required to reduce the distribution line voltage to a usable voltage and located adjacent to the customer's electric facilities. Therefore, the Final Order's conclusion that the Texas Substation is the "point of delivery" for the Salem Oil Field fails under the preponderance of the evidence rule.

III. THE FINAL ORDER'S DEFINITION OF "POINT OF DELIVERY" DESTROYS THE STABILITY AND PURPOSE OF THE SERVICE AREA AGREEMENT

The interpretation of the Service Area Agreement regarding the "point of delivery" urged by IP and adopted by the Commission in the Final Order destroys the territorial stability of the SAA and the very purpose for such Agreements. It allows IP to utilize the Texas Substation to serve every new electric apparatus erected in Tri-County's service territory by the owner of the Salem Oil Field without regard to any limitations as long as the electric load can be connected to the customer owned distribution line. By allowing the Texas Substation to be a "point of delivery" for the Salem Oil Field, the Final Order finds by implication that there will never be a post 1968 "point of delivery" established within the Salem Oil Field. Nothing in the SAA supports that conclusion. Such is contrary to the SAA provisions that service rights are determined only by "points of delivery" and that "existing customers" become "new customers" by creating post 1968 "points of delivery."

As noted by IP's Malmedal, Citation can use its customer owned distribution line to move IP electricity from the Texas Substation to power a load similar to the gas plant located 20 miles distant (Malmedal Cross Ex, Tr 4/28/11, p 1951-1952). The Commission's Order also disregards the testimony in this docket that Citation requested Tri-County to provide electricity to the Salem Oil Field by way of Citation's electric distribution system connected to Tri-County's Salem Substation which is located adjacent to the Texas Substation (Scott Rebuttal Test. Tri-County Ex E pages 2-5; Tr 1/13/11 p. 498). Such evidence is undisputed and clearly shows the propensity of the customer to seek electric service from either Tri-County or IP, whichever seems at the time to satisfy its corporate purposes irrespective of the terms of the Tri-County and IP Service Area Agreement (Scott Rebuttal Test Tri-County Ex E p 2-5). As noted

by the Commission in Central Illinois Public Service Company v Spoon River Electric Cooperative, Inc. ESA 249, p 5-6 (Oct 4, 1989), to define "point of delivery" in a manner that allows such action in derogation of the valid Service Area Agreement between Tri-County and IP grants permission to any customer who is financially able to provide its own electric distribution system, to violate the public policy established by the Legislature and the Commission under the Electric Supplier Act. Accordingly, the Final Order's determination that the Texas Substation is a "point of delivery" under the SAA opens Pandora's Box regarding territorial issues as determined under this SAA.

IV. SECTION 3(B) DOES NOT GRANDFATHER "POINTS OF DELIVERY" THAT DID NOT EXIST ON MARCH 18, 1968.

The Commission's conclusion that Section 3(b) of the Service Area Agreement grandfathers AmerenIP's Texas Substation as its "delivery point" for the Salem Oil Field begs the question at issue in this docket. The first question is: What is the meaning of "point of delivery as used in the SAA?" All engineering witnesses with the exception of Malmedal (Tri-County's Dew Direct Test pages 5-6, Tri-Country Exhibit D; Tr 1/13/11 page 745; IP's Tatlock Cross Exam Tr 1/14/11 p. 1207-1217, 1224-1228; IP's Siudyla Cross Exam Tr 2/4/11 p. 1316-1318, 1323-1326, 1328-1329) agreed that the step down transformers at the gas plant and compressor sites were "points of delivery" that did not exist on March 18, 1968. Even AmerenIP's expert engineer witness, Mr. Malmedal, agreed that if Citation's 12,470 volt distribution line had been owned by AmerenIP, the location of the step down transformers at the gas plant and the gas compressor sites would be the "points of delivery" within the meaning of Section 1 and Section 3 of the Service Area Agreement, for the gas plant and compressor sites rather than the Texas Substation (Malmedal Cross Ex Tr 4/28/11 page 1948, 1886-1887, 1892,

1907-1908). Thus the only logical conclusion that can be reached in this docket based upon the preponderance of the engineering testimony is that the step down transformers at the gas plant and gas compressor sites constituted a "point of delivery" within the meaning of Sections 1 and 3 of the Service Area Agreement rather than the Texas Substation. Thus, the Commission could not properly hold the Texas Substation to be a "point of delivery" within the meaning of the SAA and grandfathered by Section 3(b).

V. THERE IS NO LEGAL SUPPORT FOR THE COMMISSION'S INTERPRETATION OF "POINT OF DELIVERY" AS USED IN THE SERVICE AREA AGREEMENT

The Final Order's interpretation of "point of delivery" is not supported by any prior Commission decision involving the Service Area Agreement at issue in this docket. Nor is it supported by the preponderance of the testimony in this docket that "point of delivery" as utilized within Sections 1 and 3 of the Service Area Agreement had never been applied by any Tri-County employees or the AmerenIP employees in a manner different than the standard interpretation applied in the electric utility industry as testified to by Tri-County's engineering expert Robert C. Dew, Jr. P.E. (Dew Engineering Report p 1-2, 15; Tri-County Ex D-2; Dew Direct Test p 3-5,; Tri-County Ex D Tr 1/13/11 p 745; Dew Cross Ex Tr 1/13/11 p 888-889).

The Commission's interpretation of the Service Area Agreement based upon a presumption of what Tri-County and IP must have intended when the SAA was entered into on March 18, 1968, violates the common law rules for contract construction requiring the trier of fact to give meaning to all provisions of the Agreement and to construe all parts of the agreement in a manner that renders them consistent with each other Roubik v Merrill, Lynch, Piece, Fenner 285 Ill App 3d 217; 674 NE2d 35; 220 Ill Dec 764, 766 (1st Dist 3rd Div 1997); P.R.S. International v Shred Pax Corp. 292 Ill App 3d 956; 686 NE2d 1214; 227 Ill Dec 58, 64

(3rd Dist 1997). For example, Section 1(d) of the Service Area Agreement allows a "point of delivery" to be modified only by adding additional phases of electricity and if modified, a new "point of delivery" is created. IP's engineering expert Malmedal testified substations are only built as three phase and thus, never have an additional phase added even though the substation's' capacity may be increased from time to time by other means (Malmedal Cross Exam Tr 1/08/11 p 1934-1940). Tri-County's engineering expert concurred and rendered his engineering opinion that for that reason the parties drafting the SAA did not intend a substation to be a "point of delivery" because it would never have an additional phase added (Dew Rebuttal Test p 5-8, Tri-County Exhibit F, Tr 1/13/11 p 745). That testimony stands unrefuted. The Final Order rewrites Section 1(d) to include within the meaning of "point of delivery" a substation even though all the engineering testimony concludes a substation cannot be modified by adding phases of electricity. Such testimony does not support such rewrite and the Commission, when interpreting Sections 1 and 3, cannot simply change the Section to suit its own interpretation of "point of delivery."

Neither should the Commission interpret the meaning of "point of delivery" and the relevant parts of the Service Area Agreement (Sections 1(b), 1(c), 1(d) and 3(a) and (b) and Section 2) based upon the Commission's presumption of the intent of Tri-County and IP when the Service Area Agreement was entered into on March 18, 1968. There is absolutely no testimony in this record regarding what the parties intended "point of delivery" to mean on March 19, 1968. There is however, ample evidence in this record regarding the meaning of "point of delivery' as that phrase was used in the utility industry in March 1968 and today. That is, a "point of delivery" is the place where the step down transformers are located in order to reduce the distribution voltage to a level usable by the customer's electric motors. All of the engineering testimony in this record concurred with that definition. All of the testimony by the

Tri-County employees and the IP engineers noted that this industry definition of "point of delivery" had been consistently used by Tri-County and IP when applying the Service Area Agreement at issue in this case to territorial disputes.

VI. THE FINAL ORDER MISCONSTRUES THE COMMISSION'S MJM DECISION IN DOCKET 93-0150 AND THE UNIMIN DECISION IN DOCKET 88-0276.

In this case, the Commission found the Texas Substation to be a grandfathered "delivery point" per Section 3(b) of the SAA and agreed IP can serve the "point of delivery" at the gas plant (admittedly a service connection point or "point of delivery" that did not exist on March 18, 1968) by way of IP's Texas Substation, which did exist on March 18, 1968, through use of Citation's customer owned 12,470 volt distribution line. In the MJM docket 93-0150, MJM claimed it could serve VFW's new "point of delivery" by reason of Section 3 (b) of the SAA utilizing MJM's existing "Grandfathered" "point of delivery" which was energized. IP urged and the Commission agreed that Section 3(b) did not grandfather MJM to use its energized pre-agreement "point of delivery" which had served a Service Area Agreement defined geographic service territory to serve a new point of delivery also located within the Service Area Agreement defined geographic area but on IP's side of the territory line created by the Agreement. In this docket, the Commission's Final Order erroneously distinguishes AmerenIP's position in the MJM docket from AmerenIP's position in this case concluding that neither supplier in the MJM decision was serving the disputed new "delivery point" in the MJM case while in the instant case, AmerenIP has served the Salem Oil Field since prior to March 18, 1968 through the connection between the Texas Substation and the Citation/Texaco 12,470 volt distribution line. However, in this docket, neither Tri-County or IP is serving the new disputed "delivery point" to the gas plant and gas compressor sites and the question is what is the "delivery point" for the

Citation gas plant and gas compressor sites located in the Salem oil Field, but in Tri-County's designated service territory. The Final Order's attempt to distinguish the MJM decision begs the question in this docket as to what is the definition of "point of delivery." The SAA, both in the MJM decision and in the instant case, provides in Section 1(c) that an "existing customer" such as Citation in the instant case can also be a "new customer" when a "point of delivery" that did not exist on March 18, 1968 is created by the "existing customer." In other words, you have to first determine what the "point of delivery" is under the SAA and then determine if a "point of delivery" has been created before you can determine if the "point of delivery" was created before or after March 18, 1968.

All witnesses agree the service connection point at the gas plant and compressor sites did not exist on March 18, 1968. Thus, they are new service connection points. Accordingly, the Commission should apply its MJM decision to this docket and hold the Texas Substation is not grandfathered by Section 3(b) of the SAA to serve the new service connections ("delivery points") at the gas plant and compressor sites.

The Final Order improperly distinguishes the Unimin decision in Docket 88-0276 from the facts in this case. At each of the locations where the Unimin distribution line connected with its electric motors, there were step down transformers reducing the distribution line voltage to a voltage level usable by Unimin's electric motors. The Commission found at page 2 of the Commission Order that prior to the issue in the Unimin Docket arising, Unimin's private distribution line extended outside of IP's large line corridor, which was IP's service area, and into Illinois Valley's service area allowing IP to serve Unimin mine locations in Illinois Valley's service area. However, when Unimin decided to open a new strip mine in Illinois Valley's service area, Unimin decided to request service from Illinois Valley instead of taking IP

electricity through Unimin's private distribution line connected to IP's substation in IP's large line corridor. IP objected contending the connection of Unimin's distribution line to IP's substation in the large line corridor was Unimin's delivery point. The Commission found otherwise. The Unimin decision arose because Unimin, the customer, decided on that occasion not to use its own distribution system to move IP electricity to a strip mine located in Illinois Valley's service territory. The facts of the Unimin decision are virtually identical to the facts in this case except the customer, Unimin, complied with Sections 1 and 3 of the SAA while in this case Citation did not. Therefore, the Final Order incorrectly fails to apply the Commission's Unimin decision to this case.

VII. TREATING THE TEXAS SUBSTATION AS A "POINT OF DELIVERY" FOR PURPOSES OF SECTIONS 1 AND 3 IS NOT SUPPORTED BY THE PREPONDERANCE OF THE EVIDENCE.

AmerenIP's claim that there has been no change to the Texas Substation and therefore the Texas Substation, as a "point of delivery" to the Salem Oil field, has not been altered in a fashion to create a new "service connection point" as contemplated by the Service Area Agreement is spurious at best. As previously noted, the parties to the Service Area Agreement have never interpreted a "point of delivery" to be at any location other than the place where the final electric transformation occurs to reduce the voltage to a level that can be utilized by the customer's electric motors.

All of the engineers who testified in this docket agreed that substations are only built with three phases. Accordingly, if all substations are built for three phase service and if as Ameren claimed the only way a "point of delivery" can be altered under the Service Area Agreement is by adding an additional phase, there would never be any modifications under the Service Area Agreement to a substation and therefore a substation would always be an existing "delivery

point" even though additional capacity is added to the substation to provide increased electric service to a customer as was done at the Texas Substation in this case. Since the Service Area Agreement provides in Section 1(d) that an "existing point of delivery" can become a "new point of delivery" if modified by adding an additional phase, it is clear from the Service Area Agreement itself that the parties intended in 1968 that a "point of delivery" would be limited to a service connection point that could be modified by adding a phase of electricity. Thus, the only proper conclusion the Commission could draw from the Service Area Agreement is that the parties negotiating the 1968 Service Area Agreement never intended that a substation would be considered a "point of delivery." To hold as the Final Order does that Ameren's Texas Substation is a "delivery point" under the Service Area Agreement makes the language in Section 1(d) regarding modifications to an electric service connection by adding an additional phase or phases meaningless and violates the common law principals for construing contracts Roubik v Merrill, Lynch, Piece, Fenner 285 Ill App 3d 217; 674 NE2d 35; 220 Ill Dec 764, 766 (1st Dist 3rd Div 1997); P.R.S. International v Shred Pax Corp. 292 Ill App 3d 956; 686 NE2d 1214; 227 Ill Dec 58, 64 (3rd Dist 1997).

VIII. THE FINDING THAT CITATION NEVER MADE A REQUEST FOR ELECTRIC SERVICE IS NOT SUPPORTED BY ANY EVIDENCE IN THE RECORD.

Michael Tatlock, IP's electrical engineer, charged with the responsibility of dealing with the service territorial issues under the Tri-County/IP Service Area Agreement considered the contact by Finch of Citation with IP regarding electric service for the Citation gas plant to be a request for electric service at a new point of delivery to be located adjacent to the gas plant (Tatlock Cross Exam Tr 1/14/11 pages 1207-1217, 1224-1228). Scott, the General Manger of Tri-County, considered the request by Finch and Gardner, both of Citation, with Tri-County's

Dennis Ivers and Bradley Grubb, as requests for electric service for the gas plant (Scott Direct Test Tri County Ex A page 6; Tr 1/12/11 page 198). Lewis, of Citation, knew Citation employees contacted Tri-County about electric service at the gas plant. Lewis himself met with Tri-County's Scott and also with IP about electric service for the gas plant (Lewis Cross Ex Tr 4/26/11 p 1624-1626, 1627-1628, 1633-1634; Scott Direct Test Tr-County Ex A p 8 Tr 1/12/11 p 498). No testimony by any one on behalf of Tri-County and AmerenIP or on behalf the customer Citation, disputed that testimony. In fact, the Final Order finds such to be the testimony in this docket:

> "Michael Tatlock, Ameren's electric engineer charged with the responsibility of dealing with the service territory issues under the SAA, considered the contacts by Finch of Citation with Ameren as requests for electric service at a new point of delivery to be located adjacent to the gas plant. Marcia Scott, the General Manager of Tri-County, considered the request by Finch and Gardner, both of Citation, with Tri-County's Dennis Ivers and Bradley Grubb as requests for electric service for the gas plant. (Tri 2B at 14, citing Tr. 498, 1224-1228; Tri Ex. A at 6)." (See page 54 of the Final Order).

Accordingly, the preponderance of the evidence based upon the consideration of all the evidence regarding the issue of whether a request for electric service was made by Citation requires the Commission to determine that Citation in fact did make a request for electric service for a new delivery point at the location of the gas plant, 5 ILCS 100.10/15.

The Service Area Agreement provides in Section 1(c) that an existing customer becomes a "new customer" when the customer applies for electric service at a "point of delivery" that was not energized on the effective date of Service Area Agreement. Since both Tri-County witnesses and IP's engineering witnesses considered requests by Citation employees for a delivery point for electric service at the location of the new gas plant to be applications for electric service and which Citation witnesses did not deny, it is clear from the Service Area Agreement that Citation, even though it was an "existing customer" of AmerenIP at other electric points of delivery within

the Salem Oil field, was applying for electric service from either or both Tri-County and IP at a "new point of delivery" as defined by the Service Area Agreement. Thus, the Final Order's determination that Citation did not request electric service for the gas plant from either or both Tri-County and IP ignores the preponderance of the evidence and the reasonable understandings of the events creating such facts by the people who participated in those events.

CONCLUSION

WHEREFORE, for the foregoing reasons, Tri-County Electric Cooperative, Inc. requests the Illinois Commerce Commission to grant a re-hearing in the above docket with respect to the Final order's dismissal of Tri-County's Amended Complaint and for such other relief as may be deemed just and equitable.

Respectfully submitted,

TRI-COUNTY ELECTRIC COOPERATIVE, INC.

By GROSBOLL BECKER TICE & BARR

Jerry Tice

By Jerry Tice

Tri County Brief Application for Rehearing April 2016/jtelec

PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 7th day of April, 2016, I e-mailed a copy of the attached "Application by Tri-County Electric Cooperative, Inc for Rehearing Regarding the Final Order Entered by the Illinois Commerce commission on March 9, 2016" addressed to the following persons at the e-mail addresses set opposite their names:

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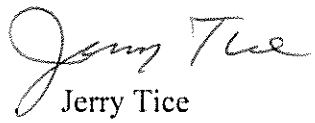

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