

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

**PETITION FOR REHEARING
OF CITATION OIL & GAS CORP.**

Pursuant to Section 200.880 of the Rules of Practice (83 Ill.Admin.Code 200.880) of the Illinois Commerce Commission (“Commission”) and 220 ILCS 5/10-113, Citation Oil & Gas Corp. (“Citation”) hereby Petitions for Rehearing and Reconsideration of the Commission Order dated March 9, 2016 (“Order”), and in support thereof, states as follows:

I. INTRODUCTION

The Order finds that Citation’s argument that it has a statutory right to choose its electric supplier under the CCL “notwithstanding the terms of the SAA” is not correct and will not be adopted (Order @ 83). Once the Commission determined that the Texas Substation was a point of delivery under the SAA and that Ameren was the lawful electric supplier¹, the Commission did not need to rule on Citation’s right to choose argument which was premised upon a contingent ruling that Tri-County Electric Cooperative, Inc. (“Tri-County”) would be declared the electric supplier under the SAA. This issue is moot.

¹ Ameren is an electric supplier for purposes of the SAA and Electric Supplier Act (220 ILCS 30/1 *et seq.*), but it is only a delivery company under the Customer Choice and Rate Relief Act of 1997 (220 ILCS 5/16-101 *et seq.*).

The language “notwithstanding the terms of the SAA” is confusing and subject to potential misinterpretation that Citation, even with Ameren as the appropriate electric supplier under the Service Area Agreement (“SAA”), does not have a statutory right to choose its alternative retail electric supplier (“ARES”). In that sense, the Order is internally inconsistent because Ameren, according to the uncontested evidence, is only a delivery company and, therefore, Citation must purchase its electric supply from another supplier.

Citation filed a Motion to Admit Late Filed Exhibit 2.2 on January 18, 2013, without any objection from any party. The Commission’s Order does not rule on that Motion despite the ordering paragraph that generally states that unresolved motions are to be disposed of in a manner consistent with the conclusions in the order. Attached to Citation’s Motion was Citation’s contract with an electric supplier, Ameren Energy Marketing Company (“AEM”), for the period from January 1, 2013, through December 31, 2015. The Commission should grant rehearing to rule on that motion. Citation also seeks rehearing to introduce evidence that was not available during the hearing, *i.e.*, its current contract with an electric supplier, Illinois Power Marketing Company, which obligates Citation to purchase electricity from January 1, 2016, to January 2020, together with the First Amendment to that agreement. That evidence demonstrates that Citation is bound under the contract with an electric supplier and that the Order should be clarified on rehearing to recognize Citation’s right to choose and fulfill its contractual obligation now that the Order holds that Ameren is the lawful delivery company.

A rehearing should be granted to find that Citation’s argument that it did have a right to choose “notwithstanding the SSA” is correct. Finally, the Commission should amend the ordering paragraph in the Order to correct a typographical error incorporating the wrong section of the Order.

II. THE ORDER IS INCONSISTENT IN DECLARING AMEREN AS THE ELECTRIC SUPPLIER AND DECLARING THAT CITATION DOES NOT HAVE A STATUTORY RIGHT TO CHOOSE.

A. Texas Substation is a point of delivery under the SAA.

Tri-County Electric Cooperative, Inc. ("Tri-County") filed a complaint under the Electric Supplier Act (220 ILCS 3011 et. seq.) seeking a declaration that it was the proper electric supplier to serve Citation's gas plant and compressors in the Salem Oil Field. Illinois Power Company, d/b/a Ameren ("Ameren"), has been the electric supplier to the Salem Oil Field since Ameren and Tri-County entered into their Service Area Agreement ("SAA"). After a thorough analysis, the Order correctly finds in Section XI(B) that the Texas Substation, where Citation's distribution system connects to the Ameren system, is a "point of delivery" within the meaning of the Service Area Agreement ("SAA") (Order @ 78-80), and the Commission finds that the parties intended for the Texas Substation to be a point of delivery under the grandfather clause in the SAA (Order @ 80).

The Order properly rejects Tri-County's argument that the Texas substation was modified under Section 1(d) of the SAA and finds that no modification has taken place whereby an additional phase or phases of electric current are added to the connection so that any otherwise applicable grandfather rights under Section 3(d) have not been relinquished (Order @ 81-82). The Order also properly rejects Tri-County's claim that Citation made a request for electric service because Citation did not communicate any acceptance of the offer (Order @ 82). Based on these findings the Order correctly concludes that Ameren is the lawful electric supplier to Citation under the Service Area Agreement.

B. The Order's ruling on Citation's right to choose is moot.

The Order holds that Citation's argument that it has a statutory right to choose, "notwithstanding the terms of the SSA" is not correct (Order @ 83). The Order's ruling on Citation's argument under the Electric Service Customer Choice and Rate Relief Act of 1997 ("Customer Choice Law" or "CCL") 220 ILCS 5/16-101 *et seq.*, is moot and entirely unnecessary. Once the Order reached the merits of the case and determined that Ameren is the proper electric supplier, and any further discussion or ruling with respect to Citation's argument concerning its rights under the CCL is unnecessary to the disposition of the case and should be deleted from the Order. Citation's argument is premised upon a *potential* finding by the Commission that: (1) the Texas substation was not the point of delivery under the SAA; or (2) that Ameren modified the Texas substation within the meaning of Section 1(d) as argued by Tri-County. Once the Commission determined that Ameren is the appropriate electric supplier, the Commission need not reach the issue of the applicability of the CCL since the argument was premised upon Tri-County as the possible electric supplier. The Order's discussion regarding the Customer Choice Law under Section X(D) should be stricken because it involves a hypothetical statutory interpretation that is not essential to the outcome of the case.

The Order notes that the CCL does not apply to cooperatives (Order @ 83). Citation readily conceded in its argument that the CCL does not apply to cooperatives under 220 ILCS 5/17-110 unless the cooperative files a Notice of Election (Citation Brief @ 12). The fact that the CCL does not apply to cooperatives has no bearing on the Commission's decision or the issues in the case. Citation's Salem Oil Field is not and never has been a customer of Tri-County so the discussion in Section XI(D) that the CCL does not apply to cooperatives is wholly unnecessary. Once the Commission decided that Ameren was the appropriate electric supplier to continue supplying electricity to Citation's oil and gas field, there was no purpose in rendering a

decision in interpreting Citation's rights under the Customer Choice Law *vis a vis* the Electric Supplier Act as applied to the SAA, and all of Section XI(D) should be deleted from the Order on rehearing.

C. The Order's findings are internally inconsistent.

If the Commission believes that it must address Citation's argument under the CCL, then the Order should be clarified on rehearing to affirmatively state that Citation has a right to choose its electric supplier since the Commission has ruled that Ameren is the proper delivery company under the SAA. The evidence shows that Citation has been choosing an ARES for many years (Order @ 20-21). While it may be that the Commission is ruling that Citation would not have the right to choose *had the Commission found Tri-County as the lawful electric supplier under the SAA*, the ruling is ambiguous and subject to misinterpretation that Citation does not have a right to choose *even when* Ameren has been determined to be the lawful electric supplier.

The language in Section XI(D) is confusing and conflicting and seems to impair Citation's right to choose even though the Order finds that Ameren is the electric supplier under the SSA. Ameren, as a party to the SSA, is a delivery company, and it no longer supplies electricity, but only the delivery service. Therefore, since Ameren is only a delivery company, Citation not only has the right, but the necessity of choosing a company that will sell it the electricity, and that has been the case since 2007. (See Order @ 14.). The language "notwithstanding the terms of the SAA," is unclear because it is a reference to a conflict between the Electric Service Customer Choice and Rate Relief Act of 1997 ("Customer Choice Law" or "CCL") 220 ILCS 5/16-101 *et seq.*, and the Electric Supplier Act, 220 ILCS 30/1 *et seq.* ("ESA") arising if, and only if, the Commission were to have ruled in Tri-County's favor under the meaning of the SAA. However, the present language could be interpreted to violate

Citation's right to choose its electric supplier even though the Order finds that Ameren is the lawful supplier. This ambiguity in its ruling should be removed on rehearing affirmatively by declaring Citation has a right to choose with Ameren as the delivery company.

On the effective date of the CCL, it is undisputed that Citation was receiving power from Illinois Power, an "electric utility" within the meaning of 220 ILCS 5/16-102. Citation, argued and the Order recites, that on the effective date of the CCL, Citation was a retail customer of Illinois Power. Under the explicit language of 220 ILCS 5/16-102, Citation was a "retail customer" thereunder receiving and eligible to receive tariffed delivery services from IP (Order @ 73-74). Accordingly, under the express terms of the CCL, Citation has a right to choose an ARES for the supply of electricity to Citation's Salem Oil Field.

220 ILCS 5/16-102 defines "retail customer" as follows:

"Retail customer" means a single entity using electric power or energy at a single premises and that (A) either (i) is receiving or is eligible to receive tariffed services from an electric utility, or (ii) that is served by a municipal system or electric cooperative within any area in which the municipal system or electric cooperative is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, . . . (Emphasis added.)

Sec. 16-102 defines "service area" as:

"Service area" means (i) the geographic area within which an electric utility was lawfully entitled to provide electric power and energy to retail customers as of the effective date of this amendatory Act of 1997, and includes (ii) the location of any retail customer to which the electric utility was lawfully providing electric utility services on such effective date. (emphasis added)

No party disputes that Citation was a customer of IP lawfully taking electricity from IP at the Texas Substation location on the effective date of the CCL whether that was on October 1, 1999, or December 31, 2000. Rehearing should be granted to affirm that Citation may continue to choose an ARES with Ameren as the delivery company to the Salem Oil Field.

III. CITATION SHOULD BE ALLOWED TO SUBMIT EVIDENCE THAT HAS OCCURRED SINCE THE EVIDENTIARY HEARINGS WERE CONCLUDED.

The evidentiary proceedings in this case were concluded on April 28, 2011, and on June 5, 2012, after briefs were submitted, the case was marked “heard and taken”. Citation presented the testimony of Mark Bing (Citation Ex. 2) who submitted Citation Ex. 1.4, an Electric Sales and Purchase Agreement with Sempra Energy Solutions, an ARES. That contract was for electric supply and expired on December 10, 2010. Mr. Bing then testified that Citation entered into a new electric supply contract with Ameren Energy Marketing Company (“AEM”) for AEM to supply all of Citation’s electric requirements at the Texas Substation for the Salem Unit (and other locations) from February 1, 2011, through December 31, 2012 (Citation Ex. 2 @ 3; Ex. 2.1). Ameren furnished Citation with delivery services as required by 220 ILCS 5/16-103 and pursuant to its tariffs on file with the Commission.

On January 19, 2013, after the close of the hearings, Citation filed a Motion to Admit Late Filed Exhibit. Attached to this Motion was Citation’s contract for electric supply from January 1, 2013, to December 31, 2015. No party objected to the Motion and the Commission failed to rule on the Motion in the Order, notwithstanding the ordering paragraph in the Order that generally states that unresolved motions are to be disposed of in a manner consistent with the conclusions of the Order. The Commission should allow rehearing and grant the motion. The contract with Ameren Energy Marketing Company has now expired, and rehearing should also be allowed to permit Citation to introduce its current contract into evidence. (See **Exhibit 1** attached.)

Citation has continued to exercise its right to select an ARES for the Salem Oil Unit, and a rehearing should be granted to allow Citation to present copies of its contracts for electric supply for the period from January 1, 2016, to January 2020, to demonstrate that Citation has

continued to choose its electric supplier for the Salem Oil Field Unit. (See Affidavit of Wayne Wiesen.) This evidence was not available on the date that the hearings concluded.

IV. THE COMMISSION’S FINDING THAT CITATION DID NOT HAVE A RIGHT TO CHOOSE NOTWITHSTANDING THE SSA IS ERRONEOUS.

Since Citation was taking “tariffed services” (as that term is defined in 220 ILCS 5/16-102) from Ameren on the effective date of the CCL and Ameren was an electric utility within the meaning of 220 ILCS 5/16-102, Citation had a statutory right within the meaning of Sec. 16-102 to choose its electric supplier, and the Commission is not authorized to abolish that statutory right via the SAA, especially since Tri-County did not file its Complaint in this case until 2005, well after the CCL was in effect.

At the time of the adoption of the ESA, the “service” referred to involved only bundled service, and the customer had no right to choose its electric supplier. See, *Central Illinois Service Co. v. Illinois Commerce Commission*, 202 Ill.App.3d 567, 574 (1990).² That changed with the passage of the CCL, which gives the consumer the right to purchase electricity from an ARES, while receiving delivery service from Ameren. The legislature has strongly expressed a competitive policy for electricity under the CCL, and Citation qualified to purchase from an ARES on the effective date of the CCL.

The Order acknowledges that at the time of the hearings, Citation was under contract with AEM to purchase electricity from AEM, and that electricity was delivered by Ameren (Order @ 14, 20). Citation presented undisputed evidence that it has purchased electricity under contract from different ARES providers since 2007. No party disputes that fact, and Ameren confirmed such (Order @ 20).

² The 1990 *Central Illinois* case, predates the effective date of the Customer Choice Law. Under the Customer Choice Law, electric customers have not been legislatively foreclosed from taking service from a power supplier of their choice, and *Central Illinois* has been overruled by statute.

In Section XI (D), page 83, the Order states:

Accordingly, Citation's argument that it has a statutory right to choose its electric supplier under the CCL "notwithstanding the terms of the SAA is not correct and will not be adopted."

Citation submits that this conclusion is wrong because Citation has a valid statutory right and property interest to choose its electric supplier (220 ILCS 16/104 and 16-101(A)), and the Commission is not authorized to curtail that right. A legitimate claim of entitlement may arise from a statute. *Akmakjian v. Dept. of Prof. Reg.*, 287 Ill.App.3d 894, 896 (1997). See, *Mathews v. Eldridge*, 424 U.S. 319 (1976) (continued receipt of social security disability benefits is a statutorily created property interest protected by the Fifth Amendment).

If there is a conflict between the terms of the Electric Supplier Act and the CCL, the CCL prevails, because it is a more specific and more recent statutory provision of the legislature. A later enactment prevails over an earlier one as the later expression of legislative intent. *Jahn v. Troy Fire Protection District*, 255 Ill.App.3d 933, 941 (1994). There can be no dispute that Illinois has strongly embraced competition as the state policy for electricity, and that policy is the most recent expression of the legislature. Therefore, to the extent that Citation's right to choose under the Customer Choice Law conflicts with the Electric Supplier Act, the Customer Choice Law must prevail, and the Commission has no power or authority to annul or modify Citation's vested right to choose.

Because Citation was lawfully obtaining electric power from IP on October 1, 1999 (or December 31, 2000), the CCL created a statutory property right for Citation to continue to choose its electric supplier, thus preempting any private SAA contract dispute between Tri-County and Ameren that may otherwise impact Citation. The Commission should grant rehearing to amend its Order to rule in Citation's favor on this issue.

Citation also hereby incorporates as part of this Petition for Rehearing, the arguments made in the Brief of Citation Oil and Gas Corp., pages 1 – 42, and the Responsive Brief of Citation Oil and Gas Corp., pages 1 – 33.

V. THE ORDERING PARAGRAPH ERRONEOUSLY INCORPORATES THE ARGUMENTS OF THE PARTIES, INSTEAD OF THE COMMISSION ANALYSIS AND CONCLUSIONS.

In Section XII (2), the Commission ordering paragraph incorporates Section X as its findings. Section X is a summary of the arguments of the parties regarding the Consumer Choice Law. Citation believes that the Commission intended to incorporate the Analysis and Conclusions in Section XI and, therefore a hearing should be allowed to amend ordering paragraph 2 to incorporate Section XI rather than Section X.

WHEREFORE, Citation Oil & Gas Corp. respectfully prays that its Petition for Rehearing be granted and for such other and further relief as is deemed just.

Respectfully submitted,

LOEWENSTEIN & SMITH, P.C.



Gary L. Smith

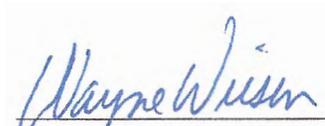
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VERIFICATION

I, WAYNE WIESEN, being first duly sworn on oath, depose and state that I am the Senior Vice President, General Counsel and Secretary for Petitioner herein; I have read the foregoing Petition for Rehearing, and the facts contained herein are true and correct to the best of my information and belief, and that the attached Exhibit is a true and accurate copy of the contract between Citation Oil & Gas Corp. and Illinois Power Marketing Company, d/b/a Homefield Energy.



WAYNE WIESEN

Subscribed and sworn to before me, a notary public, this 7th day of April, 2016.



Notary Public



PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause at their address as follows:

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via e-mail on this 8th day of April, 2016.



Gary L. Smith