

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY

TRI-COUNTY ELECTRIC COOPERATIVE, )  
INC. )

Plaintiff, )

vs. )

ILLINOIS COMMERCE COMMISSION of the )  
State of Illinois; BRIEN J. SHEAHAN, in His )  
Official Capacity as Commissioner; JOHN R. )  
ROSALES, in His Official Capacity as )  
Commissioner; ANN McCABE, in Her Official )  
Capacity as Commissioner; MIGUEL del VALLE, )  
in His Official Capacity as Commissioner; )  
SHERINA MAYE EDWARDS, in Her Official )  
Capacity as Commissioner; ILLINOIS POWER )  
COMPANY dba AMEREN IP; and CITATION )  
OIL & GAS CORP. aka Citation Oil & Gas )  
Corporation; )

Defendants. )

2016MR000458

Case No. 16-MR-

FILED

MAY 26 2016

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*David P. [Signature]*

Clerk of the  
Circuit Court

CHIEF CLERK'S OFFICE

2016 MAY 31 A 10:29

ILLINOIS COMMERCE  
COMMISSION

COMPLAINT FOR ADMINISTRATIVE REVIEW

TRI-COUNTY ELECTRIC COOPERATIVE, INC. (Tri-County), Plaintiff, by its attorneys, GROSBOLL, BECKER, TICE & BARR, Jerry Tice and Steve Courtney of counsel, herewith files its Complaint for Administrative Review, pursuant to 735 ILCS 5/3-101 et seq against the Defendants, ILLINOIS COMMERCE COMMISSION of the State of Illinois (Commission); BRIEN J. SHEAHAN, in His Official Capacity as Commissioner; JOHN R. ROSALES, in His Official Capacity as Commissioner; ANN McCABE, in Her Official Capacity as Commissioner; MIGUEL del VALLE, in His Official Capacity as Commissioner; SHERINA

MAYE EDWARDS, in Her Official capacity as Commissioner; ILLINOIS POWER COMPANY dba AMEREN IP (IP of Ameren); and CITATION OIL & GAS CORP. aka Citation Oil & Gas Corporation (Citation), and in support thereof states as follows:

**PARTIES**

1. Tri-County is an Illinois general not-for-profit corporation engaged in the business of the sale and distribution of electrical energy in Jefferson, Marion, and Washington Counties, Illinois, and is an electric supplier with the meaning of Section 3.4 and 3.5 of the Illinois Electric Supplier Act, 220 ILCS 30/1 et seq (Act).

2. Tri-County is the Complainant in a “contested case” before the Illinois Commerce Commission (Commission) entitled “Tri-County Electric Cooperative, Inc. vs Illinois Power Company dba AmerenIP, Docket No. 05-0767 (“contested case”).

3. Defendant Illinois Commerce Commission (Commission) is an Illinois Administrative Agency of the State of Illinois as defined in Section 101 of the Administrative Review Law, 735 ILCS 5/3-101.

4. Brien J. Sheahan is the Chairman of the ICC; John R. Rosales is a Commissioner of the ICC; Ann McCabe is a Commissioner of the ICC; Miguel del Valle is a Commissioner of the ICC; Sherina Maye Edwards is a Commissioner of the ICC, and they are each sued solely in their official capacity.

5. Defendant Illinois Power Company dba AmerenIP (IP of Ameren) is an Illinois corporation engaged in the business of transmission, distribution and sale of electrical energy in the State of Illinois and is an electric supplier within the meaning of Section 3.5 of the Act.

6. Defendant Citation Oil & Gas Corp. aka Citation Oil & Gas Corporation (Citation) is the customer to which service is at issue in the aforementioned “contested case” and whose

intervention in the “contested case” was allowed by the Administrative Law Judge on April 29, 2010 and thereafter Citation participated in the “contested case.” Citation is named as a party Defendant in this Complaint for Administrative Review.

7. Tri-County is the Complainant in the aforementioned “contested case.” Illinois Power Company dba AmerenIP (IP) is the Respondent in the aforementioned “contested case.” Citation Oil & Gas Corp. aka Citation Oil & Gas Corporation (Citation) is an Intervenor in the “contested case.”

### **JURISDICTION**

8. The “contested case” was a proceeding under the Illinois Electric Supplier Act, 220 ILCS 30/1 et seq (Act) administered by the Illinois Commerce Commission.

9. Pursuant to Section 12 of the Act, 220 ILCS 30/12, any appeal from a final decision of the Illinois Commerce Commission in a “contested case” under the Act is subject to judicial review under the Administrative Review Law.

10. On March 9, 2016, the Commission entered its Order attached hereto as Exhibit 1 adverse to Tri-County from which Order Tri-County filed a timely Petition for Re-hearing on April 7, 2016.

11. On April 26, 2016, the Commission denied Tri-County’s Petition for Re-hearing, a copy of such denial being attached hereto as Exhibit 2 and the Administrative Order in the “contested case” became final.

### **BACKGROUND TO TRI-COUNTY’S CLAIM**

12. Pursuant to the provisions of Section 6 of the Act, Tri-County and IP entered into a Service Area Agreement dated March 18, 1968 and approved by the Illinois Commerce Commission (Commission) by an Order entered July 3, 1968 which defines and delineates

between Tri-County and IP one or more service areas in which each of the contracting electric suppliers are entitled to furnish electric service to customers (Service Area Agreement). A copy of that Service Area Agreement between Tri-County and IP dated March 18, 1968 is of record in the “contested case.” The Service Area Agreement was approved by the Illinois Commerce Commission in Docket No. ESA 87 by an Order dated July 3, 1968.

13. In entering in to the Service Area Agreement, Tri-County and IP intended to benefit themselves with stable, defined, geographical areas in which each would supply electric energy to their respective assigned service areas under the Service Area Agreement.

14. The customer namely Citation Oil & Gas Corp. aka Citation Oil & Gas Corporation (Citation) developed a gas plant located on the following described property to wit: Sections 5 and 6, Township 1 North, Range 2 East of the Third P.M., Marion County, Illinois, all as more fully described in plats and maps made of record in the “contested case.” The gas plant as constructed by Citation is located in the area that has been designated as the territory to be served by Tri-County under the Tri-County/IP Service Area Agreement.

15. IP advised Tri-County that IP intended to provide electric service to the gas plant of Citation at the location of that plant in Tri-County’s designated service territory by means of a service connection point at IP’s Texas Substation and from which connection point, the customer Citation transmitted such electricity by a Citation private distribution line to the newly constructed service connection point located in Tri-County’s designated service territory adjacent to the Citation gas plant.

16. Tri-County filed its complaint with the Commission in this docket against IP on December 6, 2005 requesting the right to provide electric service to the new Citation gas plant constructed in Tri-County’s service territory. 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, as designated under the Tri-County/IP 1968 Service Area Agreement.

17. The gas plant and gas compressor sites constructed by Citation are "new customers" within the meaning of Section 1(c) of the Service Area Agreement as to both Tri-County and IP in as much as neither electric supplier was providing electric service to Citation for the gas plant or the gas compressor sites at the location of each of such facilities by use of an electric service connection in existence or energized on the date of the Service Area Agreement, March 18, 1968.

#### **TRI-COUNTY'S SUBSTANTIVE CLAIM**

18. 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 located adjacent to the newly constructed facilities at each site to reduce the electric voltage delivered by Citation's 12,470 volt private distribution line from 12,470 volts 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 because the new "points of delivery" were physically in Tri-County's designated service territory. 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 the preponderance of the evidence showed 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 in acknowledging Tri-County was the appropriate electric supplier for the new “points of delivery” was consistent with Tri-County’s and IP’s previous application of the Service Area Agreement and the term “delivery point” as used therein.

**APPLICABLE PROVISIONS OF THE SERVICE AREA AGREEMENT**

19. 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).

#### **IP’S CLAIM**

20. IP claimed it delivered electricity to Citation at the connection of IP’s Texas Substation with Citation’s new and reconstructed private 12,470 volt distribution line which carried the electricity to the step down transformers located adjacent to 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. IP claimed 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 and that the step down transformers located adjacent to the gas plant and gas compressor site were not “points of delivery” even though the step down transformers were required to reduce the 12,470 volts delivered by the Citation distribution line to the voltage level of 277/480 for use by Citation’s facilities. IP further claimed its Texas Substation is a “delivery point” rather than the

step down transformers adjacent to the gas plant and gas compressor sites and had existed on March 18, 1968 and had not been modified within the meaning of Section 1(d) of the Agreement.

### **CITATION'S CLAIM**

21. Citation, as the current owner (since 1998) of the Salem Oil Field, filed its Petition to Intervene which Petition was granted April 29, 2010. 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.

### **ISSUES PRESENTED**

22. The principal issue presented by Tri-County's Administrative Review are:

A. 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?

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

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

23. 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**

24. 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**

25. Tri-County files its Complaint in Administrative Review of that portion of the Final Order which interpreted 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. It is Tri-County’s position that 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 evidence 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. The Commission’s Final Order is further contrary to 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 that renders them consistent with each other.

26. Tri-County does not seek Administrative Review regarding any part of the Final Order denying all of Citation's claims and instead concurs with that part of the Commission's Final Order denying all of Citation's claims.

#### **CLAIMS OF TRI-COUNTY IN ADMINISTRATIVE REVIEW**

27. The Commission's determination in its Final Order whereby the Commission interpreted the Service Area Agreement in a manner that allowed IP to treat its Texas Substation as the "delivery point" for the new Citation gas plant and each of the Citation gas compressor sites that were constructed in Tri-County's designated service territory is erroneous for one or more of the following reasons:

A. The Commission's Final Order regarding definition of "point of delivery" is contrary to the preponderance of the testimony of record and violates the standard of proof required in Commission proceedings, 5 ILCS 100.10/15.

B. The Commission's Final Order is based upon the presumption made by the Commission regarding the meaning the parties intended to place upon the phrase "point of delivery" when entering into the March 18, 1968 Service Area Agreement. Such presumption is not supported by any competent evidence and therefore does not conform to the preponderance of the evidence standard required to support the Final Order.

C. The Commission found that since the signing of the March 18, 1968 Service Area Agreement, Citation and its predecessors at the Citation oil field had connected and disconnected electricity to numerous oil wells in the Citation oil field without objection by Tri-County. Based upon that alone, the Commission improperly found that Tri-County and IP must have intended

the “point of delivery” or any structure within the Citation oil field was the IP Texas substation. Such finding was in error because IP never raised any affirmative defense of waiver or laches regarding Tri-County’s current claims to the gas plant and gas compressor sites and therefore, the waiver or laches argument was without any legal basis, 735 ILCS 5/2-613(d); 83 Ill Adm Code 200/180(b).

D. The Commission’s finding that the IP Texas substation which delivered electricity at 12,470 volts to the Citation private distribution line constituted a “point of delivery” to the Salem oil field and was protected by the “Grandfather Clause” found in Section 3(d) of the Service Area Agreement does not conform to the engineering testimony of record which concluded that the electrical apparatus at the gas plant and gas compressor sites would not be able to operate utilizing 12,470 volts. All of the engineering testimony of record concluded that such voltage would have to be reduced from the 12, 470 volt distribution line to the 277/480 volt level for use by the electric facilities at the gas plant and each gas compressor site. Thus the preponderance of the engineering testimony concluded that “point of delivery” as used within the industry and routinely followed by Tri-County and IP in resolving other service territory disputes was consistent with defining “point of delivery” as the location where the voltage is reduced to a level usable directly the customer’s electric motors.

E. The Commission’s Final Order interpreting the Service Area Agreement to define “point of delivery” to include IP’s Texas substation as a means of providing direct electric service to any new electric apparatus erected in Tri-County’s service territory by the owner of the Salem oil field has the effect of destroying the stability and purpose of the Service Area Agreement and violates public policy.

F. The Commission's conclusion in the Final Order that Section 3(b) of the Service Area Agreement grandfather's IP's Texas substation as its "delivery point" for the Salem oil field erroneously expands the definition of "point of delivery" as used in the Service Area Agreement and as used within the industry. Such conclusion is contrary to the preponderance of the testimony in the record and is against the public policy as established by the Commission prohibiting customer's from using private distribution facilities to circumvent Commission approved Service Area Agreements.

G. The Commission's Final Order finding that the IP Texas substation is a "point of delivery" as used in the March 18, 1968 Service Area Agreement is not supported by the law and therefore such finding is in error.

H. The Commission's finding in the Final Order that the customer Citation never made a request for electric service is not supported by any of the evidence of the record and is contrary to the preponderance of the testimony showing that IP's electric engineer Michael Tatlock as well as Tri-County's management and staff considered contacts by Citation personnel regarding electric service to the gas plant were requests for electric service at a new point of delivery to be located adjacent to Citation's gas plant in Tri-County's designated service territory.

I. The Commission's Final Order defining "point of delivery" as used in the Tri-County/IP March 18, 1968 Service Area Agreement to include the IP Texas substation erroneously sanctions the use by customers of private distributions facilities to take electricity from IP's Texas substation to a point located in Tri-County's designated service area contrary to the public policy and the law.

WHEREFORE, Tri-County requests the following relief from the Court:

A. That the Court reverse the Illinois Commerce Commission Order of March 9, 2016 and to award service rights to Tri-County with respect to the Citation gas plant and seven Citation gas compressor sites.

B. Or in the alternative that the Court reverse the Illinois Commerce Commission Order of March 9, 2016 and remand the same to the Illinois Commerce Commission for further proceedings in accordance with the law.

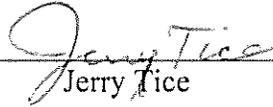
C. That the Illinois Commerce Commission file the record of the proceedings before the Commission including the complete transcript of evidence.

D. For such other and further relief as the Court deems just and equitable.

TRI-COUNTY ELECTRIC COOPERATIVE, INC.

By GROSBOLL BECKER TICE & BARR

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Jerry Tice

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