Exhibit 1

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Tri-County Electric Cooperative, Inc.	:	
-vs-	:	
Illinois Power Company d/b/a AmerenIP	:	05-0767
	:	
Complaint under the Electric Supplier Act.	:	

ORDER

DATED: March 9, 2016

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ORDER

By the Commission:

I. NATURE OF PROCEEDING

In this proceeding, a Complaint, and then an Amended Complaint which was further amended in 2012, were filed with the Illinois Commerce Commission ("Commission") by Tri-County Electric Cooperative, Inc. ("Tri-County" or "TCEC") against Illinois Power Company d/b/a AmerenIP ("Ameren," "Ameren Illinois" or "IP") pursuant to the Electric Supplier Act, 220 ILCS 30/1 et seq. ("ESA"). In Docket No. 12-0388, Tri-County filed a closely related Complaint under the ESA against Ameren Illinois; that proceeding is currently stayed pending resolution of the instant docket.

On October 1, 2010, Illinois Power Company, d/b/a AmerenIP since 2004, and Central Illinois Light Company d/b/a/ AmerenCILCO were merged into Central Illinois Public Service Company d/b/a AmerenCIPS, which was then renamed Ameren Illinois Company d/b/a Ameren Illinois.

Tri-County is an electric cooperative within the meaning of Section 3.4 of the ESA. Both Tri-County and Ameren Illinois are electric suppliers within the meaning of Section 3.5 of the ESA. Tri-County and IP entered into a Service Area Agreement ("SAA" or "Agreement"), dated March 18, 1968 and approved by the Commission on July 3, 1968, "for the purpose of defining and delineating, as between themselves, service areas in which each is to provide electric service." In the current proceeding, Tri-County alleges that Ameren violated the provisions of that Agreement. Tri-County seeks a determination by the Commission that Tri-County is the appropriate electric supplier to a gas plant and seven gas compressors which were constructed in Tri-County's service area and are owned and operated by Citation Oil & Gas Corp. ("Citation"). A copy of the Agreement was presented as Tri-County (or "Tri") Exhibit A-1.

II. PROCEDURAL HISTORY

Pursuant to due notice, a prehearing conference was held in the instant docket before a duly authorized Administrative Law Judge ("ALJ") at the Commission's office in Springfield, Illinois, on February 15, 2006. Appearances were entered by Tri-County and

by Ameren. A schedule was set for discovery, and for filing an Answer, Motions for Summary Judgment, Responses, and Replies. Status hearings were held on a monthly basis from May 25, 2006 until October, 2007, at which time a motion was filed to continue and reset deadlines. Motions for Summary Judgment were filed on April 7 and 8, 2008. Each party filed a Motion to Strike portions of the supporting evidence attached to the opposing party's Motion for Summary Judgment. The Motions to Strike were briefed. Parties filed Responses and Replies to the Motions for Summary Judgment and a motion hearing was held. On February 20, 2009, the Motions for Summary Judgment were denied.

At the April 2, 2009 status hearing, a schedule was set for additional discovery and for the filing of testimony. In August of 2009, both parties filed motions for extensions of time. A schedule was agreed upon at the October 22, 2009 status hearing. On February 4, 2010, the dates March 31 through April 1, 2010 and April 28 through 29, 2010, were reserved for evidentiary hearings. On March 31, 2010, the matter was continued to April 9, 2010. On April 9, 2010, a schedule was set for the filing of additional testimony. On April 29, 2010, Citation filed a Petition to Intervene. On May 10, 2010, Tri-County filed a Response objecting to Citation's intervention, to which Citation responded on May 14, 2010. On May 24, 2010, Tri-County filed a Motion to Strike portions of Citation's Reply. The Petition to Intervene and the Motion to Strike were briefed. On August 12, 2010, the ALJ granted Citation's Petition to Intervene, noting the requirement that Citation accept the status of the record as it existed at the time of intervention. On August 27, 2010, Citation filed a Motion to Modify the Intervention Ruling, which was denied on October 5, 2010.

On June 2, 2010, the parties filed a Stipulation, delineating certain facilities within the Salem Oil Field for which Tri-County would not assert a claim to provide electric service. On June 15, 2010, a schedule was set for the filing of discovery motions and replies. The matter was set for evidentiary hearings on September 10 through 12, 2010. On June 21, 2010, Tri-County filed a Motion to Compel, which was briefed on July 2, 2010 and July 14, 2010. A ruling was issued on July 27, 2010, granting in part and deferring in part the Motion to Compel. At a status hearing on August 2, 2010, the evidentiary hearings were continued to October 7, 13, 19, or 21 and 27, 2010. On September 30, 2010, various motions were filed requesting administrative notice of certain documents and admission into evidence of depositions. A schedule was set for Responses and Replies, delaying the evidentiary hearings. The Motion for Admission of Deposition Testimony was resolved at a status hearing on December 10, 2010.

Evidentiary hearings were held on January 12 through 14, February 4, and April 26 through 28, 2011. Tri-County presents the testimony of its General Manager, Marcia Scott; Director of Engineering, Dennis Ivers; Superintendent of Operations, Bradley Grubb; and consulting engineer Robert Dew. Ameren presents the testimony of Todd Masten and engineers Michael Tatlock and Conrad Siudyla of Ameren; consulting engineer Keith Malmedal; Bob Herr; and Jeff Lewis, Mike Garden and Josh Kull of Citation. Citation presents the testimony of Mark Bing.

On January 12, 13, and 19 Motions to Strike and Objections were filed by Tri-County, Ameren and Citation. At the status hearing on May 6, 2011, a schedule was set for Responses and Replies to Motions to Strike and Citation's motion to adopt Ameren's evidence. On August 15, 2011, the ALJ issued a ruling denying in part and granting in part Ameren's Motion to Strike. On August 16, 2011, the ALJ issued a ruling denying Citation's Motion to Strike. Tri-County withdrew its Motions to Strike. Tri-County, Ameren, and Citation filed Initial Briefs on November 18, 2011. Each of the parties filed Reply Briefs on February 14, 2012. On February 14, 2012, Tri-County filed Motions seeking Administrative Notice of Certain Documents and to Amend the Pleadings to Conform to Evidence. Ameren and Citation filed responses to Tri-County's motions. On May 11, 2012 each of the parties filed Briefs in Response to Reply Briefs. On June 5, 2012, the record was marked Heard and Taken.

A Proposed Order ("PO") was issued on May 28, 2015. Tri-County and Citation filed Briefs on Exception ("BOEs") on July 17, 2015. Tri-County and Ameren Illinois filed Reply Briefs on Exception ("RBOEs") on September 4, 2015.

III. APPLICABLE PROVISIONS OF AGREEMENT

Section 3(a) of the SAA provides, in part, "Except as otherwise provided in or permitted by this Section ..., each party shall have the exclusive right to serve all customers whose points of delivery are located within its Service Area and neither party shall serve a new customer within the Service Areas of the other party." (Tri Ex. A-1)

Section 3(b) of the SAA provides, "Each party shall have the right to continue to serve all of its existing customers and all of its existing points of delivery which are located within a Service Area of the other party on the effective date."

Section 1(b) of the SAA provides, "'Existing customer' as used herein means a customer who is receiving electric service on the effective date hereof."

Section 1(c) provides, "'New customer' as used herein means any person, corporation, or entity, including an existing customer, who applies for ... electric service at a point of delivery which is idle or not energized on the effective date of this Agreement."

Section 1(d) states, "'Existing point of delivery' as used herein means an electric service connection which is in existence and energized on the effective date hereof. Any modification of such electric service connection after the effective date hereof by which an additional phase or phases of electric current are added to the connection, shall be deemed to create a new point of delivery."

IV. BACKGROUND

According to Ameren, the "Salem Oil Field" or "Salem Unit" is a large oil field occupying some 14 square miles in Marion County, Illinois. (Ameren or "Am" Ex. 8 at 3; Am Ex. 6.1 at 16-17; Am Ex.7.1, Para 10) The "discovery" well was completed in 1938

setting off a "boom" that resulted in several thousand oil wells across the field with total production of over 300,000 barrels of oil per year by 1940, and 450,000 by 1943. (Am Ex. 8 at 3) The Texas Company ("Texaco") combined over 245 separate leases or tracts with numerous operators into a single unit with Texaco as the sole "Unit Operator" in 1953. (Tr. 1775; Am Ex. 8 at 3) The Salem Unit today "is operated by a single operator and is owned by a single unit operator." (Am IB at 1, citing Tr. 845-846)

Ameren states that Tri-County Ex. I-1 depicts the boundaries of the Salem Unit's 245 contiguous tracts. (Am IB at 1) In response, Tri-County states that Mr. Ivers of Tri-County prepared Ex I-1 and he did not identify the boundaries of Salem's 245 oil tracts. (Tri-County or "Tri" 2B at 1, citing Tri Ex. I at 3)

Ameren states that Texaco formed the Salem Unit in order to implement a "secondary recovery" technique known as a "waterflood." (Am Ex. 8 at 2-3) This process involves converting many of the existing oil producing wells to water injection wells, which force pressurized water into the oil formation to recover additional oil that would not otherwise leave the formation because "primary" reservoir pressure had been depleted by previous pumping. (Am Ex. 8 at 3-4) Producing oil wells require a motorized pumping unit that can be powered by natural gas that is produced with the oil, or by electricity. Injection wells receive water pressurized at a central pumping station and do not require their own pump motors. (Am Ex. 8 at 3-4) The transition to waterflooding at the Salem Unit meant that sufficient natural gas was no longer available to power the pumping units on the producing wells. This circumstance, together with the installation of large motors, as much as 2500 horsepower, at the central pumping stations, required electricity to power the pumping units. (Am IB at 1-2, citing Am Ex. 8 at 4-5)

Ameren asserts that at or about the time Texaco became Unit Operator in 1952, Texaco chose to construct, install and operate its own electric distribution system throughout the entire unit. (Am Ex. 8 at 4, Am Ex. 1 at 5; see also Citation or "Cit" IB at 4, citing Tr. 1111) Thereafter, the Unit Operator had sole responsibility for designing, installing and maintaining all the circuits, conductors, poles, and transformers that distributed electricity throughout the Unit. (Am IB at 1-2, citing Am Ex. 8 at 4)

In response, Tri-County states that Ameren witnesses did not testify to a date when Texaco constructed its own electric distribution line, and Ameren witness Herr acknowledged that he did not know the exact date. (Tri 2B at 1-2, citing Tr. 1788)

Ameren asserts that Texaco chose to connect its entire distribution system to a nearby substation built by Illinois Power, Ameren's predecessor, in 1952. IP initially "fed" the "Texas Substation" from a single 69 kilovolt ("kV") transmission line, but later extended a second 69 kV line to it. (Am Exs.1 at 3; and 7.1 at Paras 5, 7) The Texas Substation transformed or "stepped down" the 69 kV power to 12.47 kV for delivery to the three circuits (Nos. 130, 131 and 132) that emanate out of the substation; one of these circuits (No. 130) connects to the Salem Unit private distribution system. (Am Ex.1 at 4; Tr. 1115) From the inception of this service to Texaco in 1952 to the present, all electricity used by the Salem Unit's electrified oil field facilities has been delivered via the Texas Substation

and metered by Ameren at the point where the Salem Unit conductors attach to the Substation. (Am Ex. 5.1 at 5; Am Ex. 1 at 4) Ameren Exhibit 5.1, Figures 2, 6 and 7, shows this connection and related facilities on the substation. (Am IB at 3)

As a consequence of the conversion from primary to secondary production, Texaco had reduced the number of producing wells from several thousand to around 296 by the time it sold the Salem Unit to Citation Oil & Gas Corp. in 1998. (Am Ex.4 at 3, 5) Witnesses stated that the field now has 310 producing wells and around 68 water injection wells. (Am Ex. 8 at 3; Am Ex. 4 at 3; Am IB at 3)

Ameren and Tri-County entered into the Service Area Agreement (Tri Ex. A-1) on March 18, 1968. The territorial boundaries of the SAA placed approximately 90% of the entire surface of the Salem Unit, as well as IP's Texas Substation, in Tri-County's designated territory. (Am IB at 3-4, citing Tr. 760 and Tri Ex. I-1)

Between 1968 and the present, Texaco and then Citation have continued to develop the oil and gas resources of the Unit. (Am Ex. 8 at 5; Tr. 1558) In the late 1960's, Texaco implemented an expansion of its Devonian Waterflood that required installation of a 2500-hp pump motor. (Am. Ex.8 at 6) In 1981, Texaco initiated an Enhanced Oil Recovery ("EOR") project, known as "tertiary" production, that resulted in the drilling and completion of 17 new producing wells, all connected to a water injection chemical mixing station installed for that project. (Am Ex. 8 at 6) In some years the operator drilled as many as 25 new producing wells. (Am Ex. 6.1 at 23; Am IB at 4)

From January 1, 1970 to the present, the Unit operator has drilled, completed and connected at least 98 new producing oil wells to the existing electric distribution system (Am Ex. 11 at 3-4; Am Exs. 11.1, 11.2, 11.3, and 11.4). Each one of these producing wells required an electrified motor to operate its pumping unit. (Am Ex. 8 at 5) Texaco and Citation's well-drilling activities are matters of public information. (Am Ex. 8 at 6; Am Group Ex. 13) Prior to the Complaint in this case, from 1968 to 2007 the Salem Unit Operator used its system to distribute IP energy received at the Texas Substation to wells and facilities situated in Tri-County's service area, and Tri-County has not served any of the wells or production facilities other than the Citation office complex. (Tr. 543, 636-637, 665; Am Ex. 11 at 3; Am Ex. 11.2; Am IB at 4-5)

Ameren delivers what is known as "three-phase" power to the Salem Unit connection at the Texas Substation. Three-phase service typically involves a three-wire facility such as depicted on Ameren Exhibit 5.1, Figure 7, showing the three wires emanating from the Texas Substation that connect to the Salem Unit distribution system, and Ameren Exhibit 5.1, Figure 6 depicting three wires going from a Citation transformer bank to a Citation oil well and a gas compressor. (Am IB at 5)

Ameren asserts that as of July, 1968, Tri-County had single-phase, two-phase and three-phase facilities; Ameren operated only single-phase and three-phase lines. (Am Ex. 12) The Texas Substation was designed and constructed to furnish three-phase current at all times. (Am Ex. 5.1 at 5; Am Ex. 7.2 at 4; Tr. 1269; Am IB at 5)

In response, Tri-County states that its witnesses testified Tri-County has three-phase and single-phase facilities, not two-phase facilities. (Tri Ex. A at 4; Tri Exs. A-2, B-2 and I-1) Tri-County witness Dew testified that all substations of the type used by IP and Tri-County are constructed to handle three phases of electric current because customers need three phases of electricity. (Tri Ex. F at 3-5; Tr. 745; Tri 2B at 2)

Ameren states that there are three points about eight to ten feet apart, one for each of the three phases, where the Ameren system ends and the Citation distribution system begins. (Tr. 783-784) Ameren asserts that Ameren Exhibit 5.1, Figure 11 depicts a definable point where Ameren energy is metered for purposes of sale and billing. (Am IB at 5, citing Tr. 783-787) Three circuits emanate from the Substation, Nos. 130, 131 and 132; only No. 130 furnishes the feed to the Salem Unit distribution system. (Am Ex. 5.1 at 3) The Texaco Substation is and has "always been a three-phase substation." (Tr. 939)

Ameren asserts that the Substation does not contain any "severable [or] segregated portions ... dedicated to each of the three circuits" so that "upgrading the transformers to provide service to other ... customers would not violate the [SAA]." (Am IB at 5-6, citing Tr. 949-951)

According to Ameren, after purchasing and receiving the electricity at the point of delivery at the Texas Substation, Citation's three-phase conductors traverse some 150 feet to an enclosed area that houses a set of four "reclosers" or switches, as depicted on Ameren Exhibit 5.1, Figure 3 Revised. The recloser structure, like the Texas Substation, lies within Tri-County's designated service area. Also referred to as a "distribution structure," the reclosers/switches function as fuses to stop the flow of electricity to the Salem Unit in the event of a fault on any of the circuits. (Tr. 1287-1288) There is one recloser/switch for each of the four circuits that exit the structure to distribute energy throughout the 14 square mile area of the Salem Unit. A number of the switches have electric motors and attached transformers that reduce the 12.47 kV voltage. The distribution structure also has lighting equipped with transformers to reduce the 12.47 kV voltage. (Am IB at 6)

In response, Tri-County states that none of the transformers located at the switching structure reduce the voltage from 12.47 kV to operate any of the gas compressor motors or the motors located at the gas plant at issue in this docket. Tri-County states that its consulting engineer Robert Dew, and Keith Malmedal who is Ameren's consulting electrical engineer, both agreed that appropriate design of the electric facilities required a 12.47 kV distribution line to bring the electric energy from the Ameren substation and the Citation/Ameren switching structure to the location of the gas compressor sites and gas plant where transformers reduce the 12.47 kV to a voltage usable by the electric motors at the gas plant and the gas compressor sites. (Tr. 1863-1869; 993-994, 996) Tri-County asserts that if Citation had placed step-down transformers at the connection of Citation's 12.47 kV line with Ameren's Texas Substation to reduce the voltage to 277/488 volts, the voltage drop by the time the current reached the gas plant and compressor sites would be so great Citation would not be able to

operate the electric motors. (Tr. 1111-1112) Tri-County adds that Malmedal testified that if Citation designed its 12.47 kV distribution line to carry 277/488 volts from the Citation switching structure to the gas plant and gas compressor sites, the conductor size and support structures would be so large and expensive, it would be prohibitive. (Tr. 1865-1866; Tri 2B at 2-3)

Ameren states that IP constructed the Texas Substation in 1952 and thereafter provided electrical service to Texaco pursuant to a contract dated April 6, 1955. The parties entered into a second service contract on January 12, 1965, which provided Texaco a capacity of 9370 kilowatts ("kW") of three-phase electric energy at 69 kV for the operation of Texaco's electrical equipment in the Salem Unit. (Am Ex. 7.2, at 2; Am Ex.1.3 at 1) The 1965 contract specified the "point of delivery" at which Ameren supplied and Texaco accepted electric energy as "the connection of the Customer's facilities to the 12,470 volt bus of said substation." (Am Ex. 1.3 at 1) The applicable tariff in 1965 for Texaco's receipt of electric energy provided that as a condition of service Ameren would "provide and maintain one point of delivery and metering equipment" for its customers. (Am Ex. 1.3 at 4) That tariff also defines "point of delivery" as "the point at which Utility's lines first connect with lines or facilities owned by customer." (Am Ex. 1.3 at 4; Am IB at 6-7)

In response, Tri-County states that it has never been a party to the IP electric service contracts mentioned by Ameren or the IP tariff nor were those documents referenced in the Tri-County/IP SAA. (Tri Ex. H at 5-6; Tr. 498; Tri 2B at 3)

Ameren asserts that it and Texaco renewed the Electric Service Contract on October 2, 1991 and made no change to "point of delivery" as used in the 1965 Contract. (Am Ex.1.3 at 18). After Citation purchased the Salem Unit, including Texaco's electrical distribution system, in December 1998, Citation contracted with Ameren for Salem Unit electricity on December 14, 1999 and again on December 14, 2004. (*Id.* at 22, 25) The definition of "point of delivery" remained the same as the preceding contracts. Ameren states that it has continuously provided electric energy for the Salem Unit, at the same point of delivery -- the point of contact between the Salem Unit private distribution system and the Texas Substation -- at all times since 1952. (Am Ex. 7.2 at 3) Both the 1965 and 1991 contracts specify that title to the electricity sold passes and shall be metered at the point of delivery. (Am Ex 1.3 at 1, Am. Ex. 5.1 at 7) After the point of delivery, Citation bears all risk of line loss and sole responsibility for maintenance and repair of its distribution system. (Am IB at 7-8)

In some years the Salem Unit oil wells produced some natural gas that could not be sold or used; consequently, the operator would simply "flare" the gas or vent it into the atmosphere. In 2005, Citation decided that it could economically remove and sell some liquid hydrocarbons from the gas and also sell the "dry" gas to the City of Salem. (Am Ex. 4 at 3; Am Ex. 6.1 at 30, 43) Citation began designing a "gas plant" where it would collect gas produced throughout the Unit and process the liquids and dry gas for sale. (Am Ex. 4 at 3) To accomplish this, Citation designed a gas "gathering" system of interconnecting pipelines and electrified compressors that would carry the gas from wells

throughout the Unit to the plant as one system. (Am Ex. 9 at 4, Am Ex. 10 at 2; Am IB at 8)

V. STATEMENT OF FACTS AND WITNESS OPINIONS

A. Events Giving Rise to the Dispute

In its "Factual Statement," Tri-County states that Citation constructed a gas plant and eight gas compressor sites for the purpose described above. The location of the gas plant and compressor sites are shown on a map marked as Tri-County Exhibit A-3. The gas plant has a total electric load of 566 kW. (Tri Ex. C at 2-3, Tr. 696) Gas compressor site number six is located in Ameren's service territory and the other seven compressors and the gas plant are located in Tri-County's service territory. (Tri Ex. A-3, Tri Ex. A at 4-5; Tr. 498; Tri IB at 3)

Tri-County has a three-phase electric distribution line "identified as a black line on Tri-County's Exhibits A-2 and A-3 maps" and located 200 to 250 feet immediately south of and adjacent to the gas plant facilities. (Tri Ex. D at 3; Tr. 745) The three-phase line was originally constructed as a single-phase line on June 17, 1939 and was upgraded to a three-phase line on November 30, 1948. On February 28, 1986, Tri-County erected a three-phase line located immediately to the west of the gas plant premises to serve Energy West; the line was retired in December 1997. (Tri IB at 4-5)

Tri-County provides electric service to the Citation office complex located immediately northwest of and adjacent to the gas plant premises by a single-phase line connected to Citation's office complex since December 29, 1998. (Tri Ex. A at 3-4; Tri Ex. A-2, Tr. 498) Tri-County states that Jeffrey Lewis, petroleum engineer for Citation and a member of the Citation management group responsible for managing the Salem Oil Field from December 1998 to January 2006, knew Tri-County provided electricity to the Citation office. (Tr. 1612) Tri-County asserts that Lewis acknowledged Citation wants a different power supplier to provide electricity to the Citation office at the Salem Oil Field so that when Ameren's electric power to the oil field is disrupted or an outage occurs, Citation's office will have electricity. (Tri IB at 4-5, citing Tr. 1647-1648)

Each of the new gas compressor sites numbered 1 through 8 and the new gas plant receive electric service by means of the Ameren Texas Substation from which the electricity is taken by Citation through its private 12.47 kV distribution line to the compressor sites and the gas plant. (Tri IB at 5; Tri Ex. D at 2-3)

Tri-County asserts that on February 18, 2005, Clyde Finch, Citation's production engineer, contacted Dennis Ivers, who is Tri-County's Director of Engineering, "requesting" electric service from Tri-County for the gas plant together with a 1500 kW transformer with delivery voltage of 277/480 volts. (Tri IB at 5-6) Tri-County states that on February 18, 2005, Bradley Grubb of Tri-County met with Michael Garden, Citation's electrical supervisor for the Salem Oil field, and then again with Garden and Finch on March 10, 2005 to discuss the location of the gas plant, the kW connected load for the

plant and the electrical facilities required, including the need for distribution lines and transformers, to provide electric service to the gas plant. (*Id.*, citing Tri Ex. A at 5-6; Tri Ex. B at 2 and Tr. 498, 630)

On February 18, 2005, Garden requested Tri-County to provide Citation an estimate of the cost to extend Tri-County electric facilities to the gas plant "which Grubb did" and mailed to Garden on February 18, 2005. (Tri IB at 6, citing Tri Ex. C at 2-3; Tr. 696) Ivers and Grubb reported these activities to Tri-County General Manager Marcia Scott. Tri-County asserts that Scott considered these discussions to be "requests" by Citation for electric service for the gas plant as a new facility. (Tri IB at 5-6, Para 6, citing Tri Ex. A at 6; Tr. 498)

Ameren and Citation dispute the assertion that the above-referenced discussions were "requests" by Citation for service. Ameren asserts that Citation never responded to Tri-County's estimate, did not communicate any acceptance of Tri-County's offer to construct a three-phase line, and did not pay any money to Tri-County to purchase a transformer or to construct the three-phase line. (Am IB at 9-10, citing Tr. 513, 652)

Ameren also states that Tri-County never made any detrimental reliance on any statements of Ameren representatives Tatlock or Masten such as purchasing line, transformers, or other equipment, or beginning construction of facilities to serve Citation. (Am IB at 9-11, citing Tr. 652-653) In response, Tri-County asserts that Tri-County's Scott and Grubb testified that Tri-County did not have to order the equipment because it had all of the equipment necessary to construct the service. (Tri 2B at 6, citing Tr. 533, 716)

Tri-County states that on Monday, March 7, 2005, Finch of Citation contacted Ameren's electrical engineer, Michael Tatlock, about providing electric service to the gas plant. Finch told Tatlock the gas plant would require a 1500 kW transformer but actual demand would not exceed 750 kW at peak plant operation. According to Tri-County, Tatlock understood that Citation's Finch was asking for a new point of delivery consisting of a 1500 kW step down transformer located within 200 feet of the gas plant to reduce the distribution line voltage of 12.47 kV to a lower voltage usable by the electric load of the gas plant which was in the 500-700 kW range. (Tr. 1207-1217) Tri-County further asserts that Tatlock told Finch the gas plant was located in Tri-County's service territory and that Ameren could not provide the electric service unless Tri-County consented, and also told Finch that Citation had to move the gas plant north into Ameren's service territory to get Ameren service. (Tri IB at 9, Para 6, citing Tri Ex. A at 7, Tri Ex. A-5, Tr. 498, 1245-1246)

In its response brief, Citation argues that Tri-County mischaracterizes Mr. Tatlock's testimony. (Citation or "Cit" 2B at 4) Citation states that although Mr. Tatlock testified about a transformer in response to numerous questions on cross-examination, those questions were premised upon Ameren building a new independent distribution line to the gas plant (Tr. 1214) and under those circumstances Mr. Tatlock testified that he understood that a new point of delivery would be through a meter at the gas plant. (Tr. 1210) Citation contends that Mr. Tatlock did not testify that Citation's own transformer

was a new point of delivery. (Cit 2B at 4) Citation argues that paragraphs 10-15 and 23 of Tri-County's factual statement also involve the hypothetical situation of AmerenIP constructing its own supply line from outside of Tri-County's service area up to the gas plant, and that no one is arguing that Ameren could have constructed a new line to the gas plant from outside the Tri-County service area. (*Id.*)

Tri-County states that Tatlock understood the gas plant's new point of delivery would consist of the 1500 kW transformer, the meter, and wiring or conductor from the transformer to the gas plant building. According to Tri-County, the electricity, after the voltage reduction, would be used to operate the customer's equipment which Ameren engineers Tatlock and Siudyla "envisioned" would be electric motors, lights, and facilities; Tatlock envisioned Ameren would serve the gas plant's 1500 kW transformer by building a new 12.47 kV Ameren distribution line at an estimated cost of $15,000 to $20,000 in a southerly direction from a point located near Citation's gas compressor site number 6 to the gas plant which is located approximately one-quarter mile south of gas compressor site number 6. (Tri IB at 7, Para 10-11, citing Tr. 1214-1215, 1224-1235, 1323)

Tri-County states that Ameren engineer Siudyla explained that kW is an electrical term meaning the peak demand or rate at which Citation's proposed gas plant would use power to operate electric motors, lights and facilities inside the plant. According to Tri-County, Siudyla understood on March 9, 2005 that Citation's Finch was requesting a 1500 kW step-down transformer for the gas plant located at a point near the gas plant to reduce the voltage from the distribution line or transmission line voltage to a voltage level needed by the customer which would be a new service and a new point of delivery in Tri-County's territory which Ameren could not serve, and Ameren could not extend its distribution line to the gas plant to provide the electric service. (Tri IB at 7, Para 12, citing Tr. 1316-1318, 1323-1326, 1328-1329, 1346-1351, 1375-1377)

Tri-County states that on April 25, 2005, IP's Tatlock confirmed Citation's gas plant was in Tri-County's service territory and asked IP's Siudyla to inform Citation's Finch that Citation would need to move the gas plant between one-quarter mile and one-half mile north of its existing location in order for IP to provide the electric service. Tri-County further states that on April 26, 2005, Siudyla communicated with employees of IP, including Ameren's then-regulatory specialist Todd Masten, that Tri-County had the right to serve the Citation gas plant electric load and that if Citation extended its distribution line to the gas plant load, it would violate the SAA between Tri-County and IP. The plant was never relocated in IP's territory. (Tri IB at 7-8, Para 13, citing Tri Ex. A at 7 and Tri Ex. A-5, Tr. 498, 1252, 1352-1353)

Tri-County states that Tatlock has held the front-line responsibility since 1995 for dealing with the Tri-County/IP SAA and used it as a reference to determine territorial issues between Tri-County and IP several times each year. Tatlock normally dealt with Dennis Ivers of Tri-County regarding territorial issues and communicated with Tatlock's direct supervisor Kelly Bauza and with IP's regulatory specialist either by e-mail or in person. If Tatlock determined Tri-County should serve the customer, he would explain to the customer there was an issue and then refer the customer to Dennis Ivers at Tri-

County. Tatlock did not work with Todd Masten until early 2005. (Tri IB at 8, Para 14, citing Am Ex. 3 at 2-3; Tr. 1175-1176, et cetera; Tri 2B at 5)

Because of the IP and Ameren merger, Masten did not start dealing with the Tri-County/IP SAA until early 2005. Prior to that time, Bob Perks was the regulatory specialist dealing with Tri-County regarding territorial issues, but Perks left the company before the Citation territorial issue arose. (Tri IB at 8-9, Para 14-15; Tr. 1414-1417)

On April 26, 2005 Masten knew Citation intended to build the gas plant with an expected 750 kW electric load and a 1500 kW transformer located in Tri-County service territory. Tri-County asserts that Masten knew Citation would have to request electric service for the gas plant from Tri-County, and that Tatlock and Siudyla had told Citation it could not bring electricity from the Texas Substation to the gas plant by use of the Citation distribution line. (Tri IB at 8-9, Para 16, citing Tr. 1426-1431, 1436-1437)

Tri-County asserts that on June 21, 2005, AmerenIP employees were still advising Citation that IP could not provide electric service to the Citation gas plant without consent by Tri-County; that Tri-County would consider Citation's request to IP for electric service to the gas plant as a request for a new electric service delivery point; and that Citation could not use its own distribution line to bring electricity from the IP Texas Substation to the gas plant in Tri-County's service territory. (Tri IB at 9, Para 17, citing Tri Ex. A. at 8; Tri Ex. A-5; Tr. 498, 1355-1356) According to Tri-County, Masten also knew on June 21, 2005 that both Tatlock and Siudyla of IP were still telling Citation that IP could not serve Citation's gas plant and that Citation could not use its own distribution line to serve the gas plant. Tri-County states that between March 2005 and June 21, 2005, Masten never told Tatlock or Siudyla that the information they were providing Citation regarding Tri-County's right to provide electric service to the Citation gas plant was incorrect. (*Id.*, citing Tr.1440-1446)

In response to Tri-County paragraph 17, Ameren asserts that no Ameren witness ever testified that Citation made a "request to IP for electric service to the gas plant." (Am 2B at 3)

Tri-County next asserts that on June 22, 2005, Tri-County employees Scott, Ivers and Grubb met with Citation's Jeff Lewis and Edward Pearson, and that Citation advised Tri-County that Citation wanted to build its own distribution line to the gas plant. Tri-County states that it "did not consent to the Citation request." (Tri IB at 9, Tri Ex. A at 8; Tr. 498)

Ameren responds that "TCEC fails to explain how Citation's unilateral declaration of intent morphed into a 'request' for TCEC's 'consent.'" (Am 2B at 3)

Tri-County next asserts that between December 1998 and January 2006, Lewis was part of the Citation management group overseeing the Salem Oil Field, oil production, and profitability by minimizing utility rates and seeking reliable electric service. Lewis was aware that Finch met with Tri-County and that Finch had received cost estimates to

connect Tri-County electric to the gas plant. (Tri IB at 10, Para 19, citing Am Ex. 4 at 2, Tr. 1591, 1594-1598, 1603)

Lewis testified that he and Edward Pearson, Citation Production Engineer, met with Ms. Scott and others of Tri-County in Tri-County's office in Mt. Vernon in June or July to discuss electric rates, the cost to supply electricity to the gas plant, and to check if Tri-County had enough capacity and the right to supply electricity to the gas plant. Tri-County informed Lewis it did have the right to serve the gas plant and had adequate capacity to do so. (Tr. 1613-1618, Tri IB at 10, Para 20)

Tri-County states that when Lewis met with Scott on June 22, 2005, Lewis was aware Citation's gas plant was in Tri-County's service territory and he assumed Tri-County would claim the load. Lewis did not recall if he had seen the territorial agreement, but had seen a map of the territorial boundary between Tri-County and IP. He did not recall who provided the map to him nor if he had ever had a meeting with Tri-County prior to the June or July 2005 meeting. Lewis admitted he had contacted AmerenIP in June 2005 about IP providing electric service to the gas plant and that IP's Siudyla told Lewis that Citation's gas plant was in Tri-County's territory and that IP could not serve it. (Tri IB at 10, Para 21, citing Tr. 1624-1628, 1633-1634)

Scott testified she received a phone call from Lewis on January 8, 1999, during which Lewis asked if Tri-County could provide electricity to the entire Salem Oil Field which Lewis said Citation had recently purchased. Scott said Tri-County needed more information in writing from Citation. Scott made a note to check the SAA and the territory boundary. Scott was again contacted in August 1999 by Jack Edwards, Energy Manager for Citation, stating Citation was negotiating with IP regarding electric rates and wanted to know if Tri-County would serve part of the Salem Field. Scott said Tri-County could only serve the portion of the Salem Oil Field in Tri-County's service territory. Lewis called Scott on September 29, 1999 and told Scott that Tri-County's interruptible rate was higher than Citation wanted to pay. Edwards again contacted Scott in June 2001 asking if Tri-County could use an IP-built distribution line to serve part of Citation's oil field. Scott told him it depended on where the portion of the oil field Tri-County was being asked to serve was located in relationship to the territory boundary between Tri-County and IP. (Tri IB at 10-11, Para 22; Tri Ex. E. at 2-5; Tr. 498)

According to Tri-County, on July 5, 2005, when its representatives Scott, Ivers and Grubb met with Citations' Lewis and Pearson and IP's Tatlock and Masten to discuss service to the gas plant, Tatlock and Masten acknowledged the gas plant as then located was in Tri-County's service territory and Tri-County had the right to provide electric service to the gas plant. (Tri IB at 12, Para 23, citing Tri Ex. A at 8-9; Tri Ex. B at 3-4; Tri Ex. 6; Tr. 498, 1261) Tri-County states that Masten testified he did not have a great recollection of the conversations that took place at the July 5, 2005 meeting with Tri-County, IP, and Citation, and that Masten "testified that during that meeting he did not inform Tri-County that it did not have the right to provide electric service to the Citation gas plant." (*Id.*, citing Tr. 1446-1447, 1523, 1525) Masten further testified that his understanding that Citation wanted to take a new connection for electric service at the

gas plant was based on the March 9, 2005 e-mail between IP's Tatlock and Siudyla, and that if IP built the distribution line to the Citation gas plant, it would create a new delivery point between IP and the gas plant. (Tri IB at 11-12, Para 23, citing Tr. 1509-1510, 1520)

After the July 5, 2005 meeting with Tri-County, Lewis met with AmerenIP's Masten and Jon Carls during the afternoon of July 5, 2005, to discuss electric service to the gas plant. Masten made notes of the meeting "noting it was Citation's position that the gas plant was an extension of the same service to the oil field." (Tri IB at 12, Para 24, citing Tri Ex. O, Tr. 1447-1450, 1517, 1528-1529)

Lewis wrote a letter dated July 8, 2005 to Masten stating that Citation could not have two separate electric suppliers for the Salem Oil Field. Lewis claimed if IP served the gas wells and Tri-County served the gas plant and IP lost power, the gas wells would shut down but the gas plant would continue to operate. (Am Ex. 4 at 6, Tr. 1591) However, Lewis testified Citation has four separate circuits in the Salem Oil Field and the gas plant and the gas wells are not all on the same circuits. He also said Citation has a mechanism in place to shut down the gas plant or the gas wells if the circuits serving the gas plants or the wells suffer an outage. (Tr. 1645-1646) Tri-County witness Dew and Michael Garden, Senior Production Foreman for Citation, both testified the Citation Oil Field has four electric circuits identified as the South Circuit, Texas Circuit, Plant Circuit, and Magnolia Circuit. Garden identified these circuits. (Tri IB at 12-13, Para 25, citing Tri Cross Ex. G-4; Am Ex. 10 and Am Ex. 10.2, Tr. 1677; Tri Ex. G, Tr. 745)

Garden testified that gas compressor sites No. 1 and No. 5 are on the Magnolia Circuit; compressor sites No. 2 and No. 3 are on the Texas circuit; compressor sites No. 4, No. 7, and No. 8 are on the South circuit; and gas compressor site No. 6 and the gas plant are on the plant Circuit. Garden testified Citation experiences electric outages on its four circuits from time to time caused by storms, lightning and animals. The outages may be on just one, or on more than one, of the four circuits. (Tri IB at 12-13, Para 25, citing Tr. 1685-1690, 1694-1696)

Dew rendered his engineering opinion that using two different electric suppliers to provide electricity in Citation's oil field would not cause harm to the equipment if automatic switches were installed so that if power were lost at the gas plant, power to the compressor sites could be cut off or if power were lost to one or more of the gas compressor sites, power could be shut off at the gas plant. Dew testified that because the gas plant and gas compressor sites were not all on the same circuit, Citation's facilities were already at risk if Citation lost power on one or more of its circuits unless it had an automatic shut- off mechanism in place. (Tri IB at 13, Para 26, citing Tri Ex. F at 30-31; Tr. 745)

Tri-County states that IP's Masten did not consider relevant the claim by Citation's Lewis that if Tri-County served the gas plant and Tri-County lost power and IP served the gas compressors which would still have electric power, then the gas from the compressor sites would flare in the air. Also, Masten could not point to any specific facts in Lewis' July 8, 2005 letter to Masten "that made Masten formulate the decision in [his] July 15th

letter to Lewis that IP could serve the gas plant." (Tri IB at 13, Para 27, citing Tr. 1484-1486, 1506)

According to Tri-County, on July 14, 2005, "Masten called Tri-County's Scott and said IP had changed its mind and intended to provide electric service to the Citation gas plant on the basis of IP's service to the Citation oil field through its Texas Substation. (Tri IB at 13-14, Para 28, citing Tri Ex. A at 9, Tr. 498, 1452-1453) Masten further testified he did not reach the decision in his July 15, 2005 letter to Lewis on his own but that four people participated in the July 5, 2005 IP meeting with Citation. (Tr. 1534, 1536 and 1538) Tri-County states that while Masten testified the July 15, 2005 letter was to clarify IP's position (Tr. 1546), he acknowledged IP's position was clearly expressed in the March 9, 2005 through June 21, 2005 e-mails -- between IP's Tatlock and Siudyla, and Masten -- that IP could only serve the gas plant if Citation moved the gas plant to IP's service territory. (Tri IB at 13-14, Para 28, citing Tr. 1543-1552)

In its statement of facts, Ameren states that in the July 15, 2005 letter from Todd Masten to Citation's Jeff Lewis, Ameren notified Citation and Tri-County of Ameren's position. It states, "As we have discussed, service to the gas plant to be constructed and to be located adjacent to the South Battery of the Salem Unit will be taken from an extension of Citation's own existing 12.47 kV primary distribution system and no action will be required of AmerenIP." It further states, "AmerenIP has for many years provided one delivery point off its 69 kV system for Citation to serve its Salem Unit. The voltage is stepped down to 12.47 kV and four separate primary distribution circuits, all owned by Citation, serve the oil field load." (Am IB at 12, citing and quoting Am Ex. 3.2)

According to Ameren, until January 2007, it furnished "bundled" power supply and delivery service that Citation used for electrical power to the gas plant, all production wells, all injection pumps, and two oil and water separation facilities. There are no other electrified components of the production operations at Salem Unit. In January 2007, Citation began purchasing "unbundled" electric power supply from an Alternative Retail Electric Supplier ("ARES"). Citation entered into an "all requirements" contract with Sempra Energy Solutions for the Salem Unit in December 2008. Sempra thereafter supplied all electric power to the Salem Unit, including the gas plant and seven compressors until February 2, 2011, when Citation contracted with Ameren Energy Marketing Co. ("AEM") for unbundled power supply. Sempra sold the energy for delivery to Citation via the Ameren system and Texas Substation, which is the same location where Ameren has always delivered power to the Salem Unit. (Am IB at 12-13; see also Cit IB at 5-6)

In response, Tri-County states that AEM was incorporated in 2000 as a domestic Illinois Corporation and is a subsidiary of Ameren Energy Resources Company LLC which was organized in 2008 and in turn is a subsidiary of Ameren Corporation. All three companies are based in St. Louis. Further, Citation's Bing testified he was aware of the litigation in this docket when Citation entered into the contracts to purchase energy from Sempra and AEM. (Tri 2B at 6-7, citing Tr. 1744-1746)

B. Testimony Regarding Point of Delivery and Other Issues

Tri-County contends Tatlock's direct testimony that the term "point of delivery" for electric service is where the electricity is "handed off" to the customer contradicted both his statement that the 1500 kW transformer located 200 feet from the gas plant reduced the voltage from 12.47 kV distribution line to a voltage usable by the gas plant and thus constituted a new "delivery point," and his testimony that the request he received from Citation's Finch required a new point of delivery for the gas plant which was located in Tri-County's territory. (Tri IB at 14, Para 29, citing Tr. 1167, 1207-1217, 1224-1228)

In response to paragraph 29, Citation contends that the transcript references cited do not support the claim that Mr. Tatlock testified that a transformer constitutes a new delivery point for purposes of the SAA. (Cit 2B at 14)

Tri-County next states that its witness Mr. Dew testified, based on his engineering experience, that the "point of delivery" referred to by Tatlock in his direct testimony relates to the point at which assignment for liability resulting from electric energy is transferred from the electric supplier to the customer and takes into account only one purpose of "point of delivery" and fails to include the complete meaning of "point of delivery" as used in the electric utility industry. Dew testified that generally the "point of delivery" for purposes of assigning liability is the same location where the distribution line voltage is reduced to a voltage usable by the customer to operate equipment. (Tri IB at 14-15, Para 30, citing Tri Ex. D at 5-6, Tr. 745)

Dew investigated the Texas Substation. He stated that IP had made extensive modifications since March 18, 1968 which cost IP between $500,000 and $1,000,000 over the years and were made to enable IP to serve existing electric load and new electric load from the Texas Substation. Dew identified the modifications to the Texas Substation which in his engineering opinion constituted modifications which increased the capacity of the Texas Substation to serve additional and/or new loads. Those modifications are listed in paragraph 31 on pages 15-16 of Tri-County's initial brief.

Dew rendered his engineering opinion that if the Texas Substation is considered a "delivery point" for the gas plant and gas compressor sites, which Tri-County disputes, then the many modifications to the Texas Substation by IP would cause the Texas Substation to become a new point of delivery under Section 1(d) of the SAA. (Tri Ex D-2 at 14, Tr. 745) Dew testified that neither Tatlock, nor Malmedal who is a consulting engineer testifying for Ameren, contradicted Dew's opinion that the modifications made by IP to the Texas Substation allowed IP to increase the capacity of the Texas Substation to provide additional electric service to IP customers including Citation. (Tri IB at 16, Para 31, citing Tri Ex. F at 5-6; Tr. 745)

Tatlock, however, testified that there had been no "modifications" to the Texas Substation within the meaning of Section 1(d) of the SAA because there had been no change in the "phases" of the electricity at the substation which was originally built as a

three-phase substation and had always been a three-phase substation. (Tri IB at 16, Para 32; Am Ex. 7.2 at 4; Tr. 1167)

Tri-County states that "Dew testified that if Tatlock's opinion that the Texas Substation was the 'delivery point' for Citation's gas plant and gas compressor sites and no modification occurred to the Texas Substation as a 'delivery point' unless a phase was added or taken away at the substation, then there could never be any modifications to substations under Section 1(d) of the [SAA]." He stated that substations are the heart of the electric supplier's distribution system with electric power delivered from the generating station at 34.5 kV or 69 kV to the substation where transformers reduce the voltage to 12.47 kV for distribution across 12.47 kV distribution lines to transformers at the customer's site which reduce the distribution line voltage to a voltage usable by the customer's motors. (Tri IB at 16-17, Para 33)

Dew testified that the only phases of electricity utilized in the electric utility industry are single phase for residences and small motors, two phase or V phase for larger motors, and three phase for customers who have motors that only operate on three phases of electricity. Thus, he stated, all substations of the type used by Ameren and Tri-County are constructed to handle three phases of electric current because some customers need three phases. Tatlock's interpretation that the Texas Substation could only be modified by the addition of or removal of a phase led Dew to the engineering conclusion that "delivery point," as utilized in the SAA, does not mean the substation location but means the step-down transformers and associated equipment installed to reduce the distribution line voltage to a voltage usable at the location of the customer's motors and equipment. (Tri IB at 16-17, Para 33, citing Tri Ex. F at 3-8, Tr. 745)

Dew said his opinion is further supported by the fact that adding new transformers where none existed to serve a customer's new or additional electric load, or changing a customer's electric service from single phase to two phase or three phase electric service to increase a customer's quantity or type of electric service, are the most common changes in an electric supplier's point of delivery of electric service to a customer. Dew testified that in such instances, a new delivery point under Section 1(d) of the SAA is created because the modifications consisted of a transformer to step the voltage down from the distribution line to a voltage usable by the motors and equipment of the customer along with necessary upgrading of the distribution line to provide three-phase current rather than single-phase current to the customer's location. Dew further stated that such changes constitute an increase in both the capacity to serve as well as adding additional phases to the delivery point and the most important part of the modification is the increase in the capacity of the electric supplier to provide the additional electric energy to the customer at a voltage usable by the customer's motors and equipment. (Tri Ex. F at 5-8, Tr. 745; Tri IB at 17-18, Para 33)

In its responsive brief, Citation takes issue with various assertions contained in Paragraphs 31-33 on pages 15-18 of Tri-County's initial brief. (Cit 2B at 5-8)

Dew also testified that if the Texas Substation is the delivery point for the utilization of electricity by Citation in the Salem Oil Field, then Citation could disconnect its distribution line from Ameren's Texas Substation and connect it to the Tri-County Salem Substation located nearby which would become the delivery point for the Citation Salem Oil Field resulting in a switch in the electric service used by Citation from Ameren to Tri-County. (Tri Ex. F at 9, Tr. 745) Malmedal, Ameren's outside electrical engineer, agreed that from an engineering standpoint, Citation could disconnect its 12.47 kV distribution line from the switching station at the Texas Substation and reconnect it to the Tri-County Salem Substation and take electricity from Tri-County -- and power the Citation gas plant, gas compressors and all of the Salem Oil Field -- or even serve an electric load similar to the gas plant electric load located 20 miles distant. (Tri IB at 18, Para 34, citing Tr. 1951-1952)

Malmedal expressed his opinion that the delivery point for the gas plant and gas compressor sites was where Citation's 12.47 kV distribution line connects to Ameren's Texas Substation because that is where the ownership of the electricity changed and where the electricity was handed off by Ameren to Citation. (Am Ex 5.1 at 6, Tr. 1815) According to Tri-County, Malmedal based his opinion on the 2008 National Electrical Code ("NEC") and the 2007 National Electrical Safety Code ("NESC") although Malmedal said the NEC does not apply to Citation, Ameren or Tri-County but the NESC does apply to Ameren and Tri-County. (Tri IB at 18, Para 35, citing Am Ex. 5.1 at 7, Tr. 1815, 1894-1896)

Dew testified that Malmedal incorrectly relied on the 2008 NEC and the 2007 NESC because neither defined "delivery point" and neither was in existence when the 1968 SAA between Tri-County and IP became effective. Rather, the 1965 edition of the NEC then in effect did not define "delivery point" but did define "service," "service conductors," and "service drop" at page 13 of Tri-County Exhibit F-1. Service is defined as "the conductors and equipment for delivering energy from the electricity supply system to the wiring system of the premises served."

Service Conductors are defined as "the supply conductors which extend from the street main, or from transformers to the service equipment of the premises supplied. In an overhead distribution system, the service conductors begin at the line pole where connection is made." The publication further states, "If a primary line is extended to transformers installed outdoors on private property, the service conductors begin at the secondary terminals of the transformers. ... In every case the service conductors terminate at the service equipment."

Service Drop is defined as "the overhead service conductors between the last pole or other aerial support and the first point of attachment to the building or other structure."

Dew also testified that while the 1961 NESC does not define "delivery point," the 1961 NESC edition, Definition Section, at page 10, Item No. 63 of Tri-County Exhibit F-3, defines "service" as follows, "Service means the conductors and equipment for delivering electric energy from the secondary distribution or street main, or other distribution feeder,

or from the transformer, to the wiring system of the premises served." It continues, "For overhead circuits, it includes the conductors from the last line pole to the service switch or fuse. The portion of an overhead service between the pole and building is designated as 'service drop.'" (Tri Exs. F at 10-12, F-1, F-2, and F-3; Tr. 745; Tri IB at 18-19, Para 36)

Dew opined that Ameren witness Malmedal does not properly acknowledge that each of the definitions regarding "service" or "service point" in the NEC and NESC refers to the connection of the medium voltage (12.47 kV) electric distribution line with the customer's place of usage of the electricity. At that point of delivery, there is a step-down transformer and associated attachments allowing the reduction of the distribution line voltage to a voltage level capable of being utilized by the customer's motors and equipment. Thus, he stated, one can only properly conclude the definitions of "service-point" or "service" in the NESC publication and the NEC publication refer to the point where the distribution line voltage is stepped down by a transformer to a voltage level capable of being used by the customer's motors and equipment at the location of the end usage of the electric current. Dew also explained that the NEC is sponsored by the National Fire Protection Association and was first published in 1897 and every three years thereafter as a standard to help guard against loss of life and property, and is not generally applicable to the facilities of an electric utility. The NESC sets forth the standards followed by electric utilities such as Tri-County and Ameren and it is the code followed by electric utility engineers. (Tri Ex. F at 10-14; Tr. 745; Tri IB at 19-20, Para 37)

According to Dew, Malmedal's statement in the first full paragraph on page 7 of his engineering report, that the place where the utility meters the amount of electricity used by the customer is an indicator of the "point of delivery," is not supported by any of the definitions of "service" or "service point" as used in the NECS or the NEC that were in effect at the date of the SAA. Rather, the location of the meters is determined by which of the electric utility or the customer will assume the line loss that occurs when electricity is transported across distribution lines for delivery to the actual point of use of the electricity. That location is generally negotiated between the customer and the electric utility. However, the common practice in the utility industry is to consider the "point of delivery" of electrical current to the customer as being the point where the electric distribution line voltage is stepped down by a transformer and associated equipment to a voltage usable by the customer's electric motors and equipment and is uniformly the location of the customer's electric motors and equipment. (Tri Ex. F at 15-16, Tr. 745; Tri IB at 20-21, Para 38)

Dew testified that Malmedal's conclusion that the Texas Substation is the delivery point because IP has no ownership in Citation's distribution line ignores the generally understood meaning of "delivery point" within the electric supplier industry which is that the transformer and associated equipment used to reduce the voltage delivered at the place of the end use of the electricity is the general location for the delivery point between the electric supplier and the customer. (Tri IB at 21, Para 39, citing Tri Ex. F at 9; Tr. 745)

Malmedal testified that he drove most of the line Citation constructed or rebuilt to bring power to the gas plant. According to Tri-County, he confirmed the line was a 12.47 kV distribution line which had to be rebuilt by Citation to serve the gas plant because it was under-conducted or too small and lacked capacity to carry the additional current required by the gas plant, and if the distribution line had not been rebuilt, it is very likely that at peak load for the distribution system the conductor would have overheated and sagged too close to the ground. (Tri IB at 21, Para 40, citing Tr. 1820-1833)

Malmedal also examined the Citation compressor site depicted in Figure 6 at page 6 in his engineering report, in Ameren Exhibit 5.1 and in Tri-County's Exhibit K, and he also inspected the 1500 kW pad-mounted transformer that fed the gas plant. Malmedal testified the gas compressor site depicted was typical of all eight Citation gas compressor sites. He explained that electricity arrives at the gas compressor site and the gas plant on Citation's 12.47 kV distribution line which connects to the primary or high side of the transformers. The transformers reduce the voltage to 277/480 and the electricity leaves the transformers at the secondary or low side and travels by a conductor to a 480 volt, 20 to 50 horsepower electric motor to operate the compressor or to motors in the gas plant. Malmedal testified that the electrical design was appropriate for the facilities and if the voltage was not reduced by a transformer at the gas compressor sites and gas plant, the voltage would destroy the electric motors. (Tri IB at 21-22, Para 41, citing Tr. 1820, 1822, 1836-1848)

Dew explained that the electricity used to operate the electric motors at the compressor site number 6 depicted in Ameren Exhibit 5.1, figure 6, comes from the IP Texas Substation by traveling across the 12.47 kV distribution line which dead ends at the cross arms on the pole in figure 6. The electricity then travels through jumpers and fuses to the high voltage side of the transformer where the voltage is reduced and exits the transformer's low side at 277/480 volts and enters a green colored breaker box. From there the electricity travels by underground service wires to the motor that powers the compressor. The 12.47 kV of electricity entering the high voltage side of the transformer had to be reduced to a voltage of 277/480 volts before Citation's electric motors running the gas compressor could use the electricity. He said failure to do so would cause the gas compressor's electric motors to burn up or explode. Dew identified the service breaker on the conductor emanating from the low voltage side of the three transformers as the "service point" for the gas compressor pictured in Ameren Exhibit 5.1 figure 6 and marked the location by writing "Service Point" by the breaker box. (Tri IB at 22, Para 42, citing Tri Ex. K, Tr. 987-989, 1003-1006)

Tri-County states that Malmedal also "admitted" that if the 12.47 kV of electricity fed from Ameren's Texas Substation to the Citation switching structure adjacent to the Texas Substation was reduced by Citation at the switching station to a voltage usable by the gas plant and gas compressor motors and then the voltage was distributed at 277/480 volts across the distribution line to the gas plant and gas compressors, the distribution line would have to be designed with such a tremendously large conductor size and support structures that it would be too expensive. Malmedal testified that the use of a 12.47 kV distribution line from the Citation switching structure and Ameren Texas

Substation to the transformers at the gas plant and each gas compressor site was in accordance with customary electric design for such facilities in the United States and is the most economical design. Tri-County states that Malmedal agreed that if Citation owned the 12.47 kV distribution line, it could build the line 30 miles and serve an electrical load similar to the gas plant and up to 70 miles and serve an electric load similar to the gas compressor sites. (Tri IB at 22-23, Para 43, citing Tr. 1863-1869, 1902-1904, 1925-1927)

According to Tri-County, Malmedal further testified the "service point" is the point where the electric supply system connects to the premises wiring and the "delivery point" is the point where the power is delivered from seller to buyer, and if in this case Ameren owned the 12.47 kV distribution line and the transformer, the service point would be at the low side of the transformer and the "delivery point" would be at the meter which in this case would be located in Tri-County's territory at the location of the transformer for the gas plant and the transformers for the gas compressors. (Tri IB at 23, Para 44, citing Tr. 1886-1887, 1892, 1907-1908, 1944-1948)

Malmedal agreed the Texas Substation had been built as a three phase substation and it was not customary to build substations with less than three phases. Malmedal also agreed that the addition of the Citation gas plant to the electric circuit taking electricity from the Texas Substation would increase the electric load of the substation. (Tri IB at 23, Para 45; Tr. 1934-1940)

Citation expended an estimated $76,335 to rebuild 1,161 feet of No. 4 CU three phase line to 2/0 ACSR three phase line, and to build 4,119 feet of new 2/0 ACSR three phase distribution line so that Citation could bring electricity from Ameren's Texas Substation to serve the gas plant by means of the Texas Substation. (Tri IB at 23-24, Para 46, citing Tri Ex. D at 13-14, Tri Ex. B at 4, Tr. 630, 745)

Tri-County asserts that its Salem Substation and its three-phase line emanating therefrom located adjacent to the Citation gas plant are adequate to serve the Citation gas plant. The estimated cost for Tri-County to extend its electric service from that three phase line to the gas plant is $28,051. (Tri Ex B at 3; Tr. 630; Tri IB at 24, Para 47)

Mark Bing, Central Region Manager for Citation, testified that Citation first purchased electric energy from an ARES for the Salem Oil Field in December 2008 when it contracted with Sempra Energy Solutions for a term ending February 1, 2011. He testified that Citation entered into a second two-year contract with AEM, an ARES, for electric power for the Salem Oil Field commencing February 1, 2011. (Cit Ex. 1 at 3-5, Cit Ex. 2 at 1-2, Tr. 1740, 1742) Bing testified that at the time Citation entered into the ARES contracts with Sempra in December 2008 and with AEM in February 2011, he was aware of the litigation in this docket and that Tri-County was seeking the right to provide the electricity to the gas plant and seven of the eight gas compressors located in Tri-County's service territory. (Tri IB at 24, Para 48, citing Tr. 1744-1746)

Lewis of Citation testified that when Citation bought the Salem Oil Field in 1998, there were 296 producing wells and at the time of his testimony the producing wells had increased to 310 wells (Tr. 1601). Josh Kull, Developmental Geologist for Citation, testified that since 1978, 98 wells had been drilled of which 64 were currently producing wells. (Tri IB at 24-25, Para 49, citing Am Exs. 11.1 and 11.2; Tri Ex. J; Tr. 1559, 1567-1568, 1572-1573, 1588)

Ameren's witness Robert Herr, a petroleum consulting engineer, testified regarding the history of well drilling in the Salem Oil Field from 1969, when he started as an employee for Texaco, Inc., through 1978 when he left Texaco's employment. Herr testified there were currently approximately 310 producing wells in the Salem Oil Field. He testified regarding the components of producing wells in the Salem Oil Field and the techniques for producing oil at the field. Herr testified that all the producing oil wells require pumping equipment either at the surface or by a submersible pump powered by electric motors between 5 and 50 horsepower depending on the amount of fluid produced by a given well and receiving electricity through distribution or step-down transformers located next to where the electricity is used. He stated that the transformers are necessary to operate the oil field. (Tri IB at 25, Para 50, citing Am Ex. 8 at 2-4, Tr. 1754-1755, 1778-1781)

Tri-County witness Ivers testified that Tri-County has many miles of electric distribution lines located throughout the Salem Oil Field from which Tri-County can provide electric service to Citation's gas compressors and gas plant. (Tri Ex B at 5-6, Tri Ex. B-2, Tr. 630) Mr. Dew testified that Tri-County's electric distribution facilities are constructed and maintained to higher standards than the Citation electric distribution facilities which Dew observed during his June 3, 2010 inspection trip. (Tri Ex. G at 17-18, Tr. 745; Tri IB at 25, Para 51)

Mr. Dew also testified that based on his inspection of the Citation Salem Oil Field, he determined that most oil wells were operated by 25 horsepower electric motors which do not create a large electric load. Dew noted that while Herr testified that Texaco as the prior owner of the oil field had projects utilizing large electric motors, Dew's inspection of the Salem Oil Field disclosed only one water pumping station with a large electric load. (Tri IB at 25-26, Para 52; Tri Ex. G at 18, Tr. 745)

Mr. Herr testified that the unitization of the oil field maximized oil production from the field to benefit both the mineral interest owners and the operators. (Tr. 1777) Tri-County asserts that there is no real relationship between the electric distribution system that distributes electricity to the various wells and other electrically operated facilities in the Salem Oil Field and the unitization of the oil field, and that Herr testified you could have unitization of the mineral interests in the Salem Oil Field even if you had multiple electric suppliers to the oil field. (Tri IB at 25-26, Para 52, citing Tr. 1781)

According to Ameren's "Statement of Facts," Citation's decision to extend its own distribution system was based in part on its own business judgment concerning public safety and economics. Citation stated it was critical to the operation of the Salem Unit

that the gas plant and compressors are interconnected with the rest of the field, and that the entire Salem Unit receive electricity from one supplier. Mr. Lewis of Citation stated that in theory one supplier could provide power to the gas plant and another supplier could provide power to the rest of the Unit, but such a division introduces variables and potential problems not present with a one supplier system. For example, if electricity to the gas plant goes down, the wells and compressors would continue producing and pushing gas to the plant, which could not process it. Instead, safety valves would vent the gas into the atmosphere wasting a valuable resource. On the other hand, if power to the wells and compressors failed, but the gas plant remained in operation, equipment at the plant could overheat and sustain damage. These risks are minimized, in Citation's judgment, if the Salem Unit is supplied by one electric supplier. (Am IB at 13, citing Am Ex. 9 at 2-3)

In response, Tri-County cites testimony from Mr. Dew that Citation's distribution line was not constructed or maintained to the high standards of Tri-County's electric distribution facilities. (Tri 2B at 7-8, Ex. G at 17-18; Tr. 745) Lewis acknowledged Tri-County told him it had adequate capacity to serve the Citation gas plant. (Tr. 1613-1618) Tri-County's Ivers testified that Tri-County had adequate capacity to serve the Citation gas plant and the Citation gas wells. (Tri Ex. B at 3; Tr. 630) Tri-County states that Lewis acknowledged his primary concern was electric rates noting that cost of electricity is the most important and outweighs reliability of the electric service. (Tri 2B at 7-8, citing Tr. 1595-1598) Ms. Scott of Tri-County also testified that Lewis and Jack Edwards, Energy Manager of Citation, had between January 8, 1999 and June of 2001 asked if Tri-County could serve all of the Citation Salem Oil Field because Citation was negotiating with Ameren regarding electric rates and wanted to know if Tri-County would serve part of the Salem Oil Field. (*Id.*, citing Tri Ex. E at 2-5; Tr. 498)

Ameren next asserts that Citation has not installed automated switches to shut down power to the gas compressors if power to the gas plant failed and vice-versa, which it would need to do for two suppliers to provide electricity to the Salem Unit. To implement this option, Lewis said Citation would need to purchase and install at least nine automated switches -- one for each of the eight gas compressors and one at the gas plant -- along with any equipment needed to monitor and operate the switches. (Am Ex. 9 at 2) This increases Citation's cost of business, and adds nine switches that need to operate if power fails in order to protect Citation from loss of resources and equipment. Lewis stated that this risk is not present when only one supplier provides electricity. In addition, Citation currently has the ability to shut down the entire Salem Unit at the Ameren Texas substation if there is an oil or gas leak. Lewis stated that this failsafe is necessary to protect against environmental damage and harm to the public, and that dividing the field between two electric suppliers would complicate Citation's ability to act quickly and effectively mitigate potential damage. (Am IB at 14, citing Am Ex. 9 at 2-3)

In response, Tri-County reiterates testimony that is described in Paragraph 25 of its factual statement and is summarized above. (Tri 2B at 8; Tri IB at 12-13)

Ameren next asserts that Citation receives electricity for the Salem Oil Field and gas plant through its distribution system that is connected to Ameren's Texas substation.

The distribution system does not connect to a Tri-County substation. To divide the field between two electric suppliers, Citation would need to duplicate its distribution system to connect it both to Ameren and Tri-County's substations. Citation would not only incur costs to duplicate its system, it would also have to pay both suppliers for electric service even though it needs electricity from only one source. Lewis said Citation also has not investigated and does not know whether Tri-County can supply sufficient and reliable energy to the entire Salem field so this may not be a workable option. (Am IB at 14-15, citing Am Ex. 9 at 3; see also Cit IB at 5-6)

In response, Tri-County states that its claim is not to serve the whole Salem Oil Field but only the gas plant and gas compressor sites in Tri-County's service territory. Tri-County adds, "Further, Lewis testified that during his meeting with Scott, he inquired and was told Tri-County had sufficient capacity (energy) to serve the same...." (Tri 2B at 8-9, citing Tr. 1613-1618)

VI. TRI-COUNTY ARGUMENT AND POSITION

A. Issues Presented

Tri-County asserts that there are two "issues presented in the docket." Tri-County states, "First, do each of the step down transformers and associated apparatus located adjacent to the Citation gas plant and each of the gas compressor sites which are used to reduce the [12.47 kV] 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 new 'delivery points' within the meaning of the March 18, 1968 [SAA]?" (Tri IB at 28)

Tri-County states that with respect to the first issue, the only questions to be decided are "(1) do each of the step down transformers and associated apparatus at the gas plant and gas compressor sites constitute delivery points and (2) were they created after March 18, 1968." (Tri 2B at 15-16)

Regarding the second issue, Tri-County states, "Second, 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?" (Tri IB at 29)

B. Service Area Agreement

Tri-County's first argument is that "the [SAA] dated March 18, 1968 controls the issues in this docket." (Tri IB at 29) The provisions of the SAA receiving the most attention from the Parties, Sections 1(b), 1(c), 1(d), 3(a) and 3b), are set forth above.

Citation established a gas plant and eight compressor sites that are used to feed gas to the gas plant. The gas plant and seven of the compressor sites are located in Tri-County's territory. Each site requires a transformer capable of stepping down the distribution line voltage from 12.47 kV to 277/480 to operate the electric facilities at each

site. All the engineers agreed that without the step-down transformers and the associated electrical apparatus needed for the same, the distribution line voltage would be unusable at each of the sites. Robert Dew, an outside engineer testifying for Tri-County, opined that the apparatus installed for stepping down the voltage from the distribution line to a usable voltage for the compressor sites and the gas plant represents a typical delivery point as accepted for engineering purposes in the electric utility industry. According to Tri-County, the Commission has determined that a normal service connection point for delivery of electric service is deemed to be where the transformers are located that are used to reduce the voltage to the level usable by the customer. (Tri IB at 29, citing *Interstate Power Company v. Jo-Carroll Electric Cooperative, Inc.*, Dockets 92-0450 and 93-0030 Cons. on Remand, Order at 10 (October 9, 1996) ("*Jo Carroll*"))

Tri-County states that each of the service connection points identified by its engineer at each of the eight compressor sites and the gas plant were created by Citation, the customer, after March 18, 1968 and require step-down transformers and associated equipment for the purpose of reducing distribution line voltage at 12.47 kV to a voltage usable by the appropriate electric motors and equipment operated by Citation at each of the compressor sites and the gas plant. A plain reading of the SAA leads Tri-County to the conclusion that Citation has in fact created a new point of delivery as customarily defined in the electric utility industry, for each of the eight compressor sites and the gas plant. Consequently, Citation, as an existing customer of IP, becomes a "new customer" by reason of establishing the new electric points of delivery that did not exist on March 18, 1968. (Tri IB at 30-31)

The electricity is generated by Ameren or by a third party and then transmitted across Ameren's transmission line at 69 kV to its Texas Substation. There it is reduced from 69 kV to 12.47 kV and carried by the Citation distribution line to the distribution transformers at the gas plant and each gas compressor site. Tri-County argues, "Thus, IP becomes the provider of the electricity used by Citation to serve the gas plant and eight compressor sites through the new delivery points for each." (Tri IB at 31) Section 3(a) of the SAA states that "neither party shall serve a new customer within the service area of the other party." Yet, "compressor sites 1 through 5 and 7 through 8 as well as the gas plant are all located within the exclusive service territory of Tri-County." (Tri IB at 31)

C. Determining Point of Delivery

Section II of Tri-County's argument is titled, "The Commission is entitled to receive extrinsic evidence to determine the meaning of 'point of delivery' as used within the service area agreement." (Tri IB at 31)

The phrase "point of delivery" as used within Section 1(c) and (d) of the SAA is not defined within the SAA itself. The court in *Central Illinois Public Service Company v. Illinois Commerce Commission and Spoon River Electric Cooperative, Inc.*, 219 Ill. App. 3d 291; 162 Ill. Dec. 386, 390 (1991) ("*Spoon River*"), held that the failure to define the word "locations" in a service area agreement between Central Illinois Public Service Company ("CIPS") and Spoon River Electric Cooperative, Inc. created an ambiguity in

the Agreement authorizing the Commission to consider parole evidence as to the meaning of the term "locations." Tri-County argues that because the phrase "point of delivery" as used in Sections 1(c) and (d) is not otherwise defined within the Agreement, the term is ambiguous allowing parole evidence to be considered when interpreting and applying the SAA. (Tri IB at 31-32)

Both Tri-County and Ameren have offered testimony by their respective electrical engineers regarding the meaning of "point of delivery" within the electric utility industry and as used within the SAA at issue in this docket. According to Tri-County, the electrical engineers, Dew for Tri-County and Tatlock and Siudyla for Ameren, understand that a "point of delivery" as customarily used within the electric utility industry normally consists of a step down or distribution transformer located adjacent to the site where the customer intends to utilize the electricity so that the electricity received from the 12.47 kV distribution line can be reduced to a voltage usable by the customer's facilities at the site. Tri-County states that even Michael Tatlock, IP's electrical engineer in charge of applying the SAA to territorial disputes, understood Citation was asking for a new point of delivery when Citation's Clyde Finch told him Citation was building the gas plant and that a 1500 kW transformer located no more than 200 feet from the gas plant would be necessary to reduce the voltage from the 12.47 kV distribution line to voltage usable by the electric motors and facilities located at the gas plant. (Tri IB at 32, citing Tr. 1207-1217, 1228)

Tri-County asserts that Conrad Siudyla, also an IP electrical engineer, understood Citation's request for electric service for the gas plant constituted a new point of delivery of electricity (Tr. 1316-1318, 1323-1325, 1328-1329); and that Keith Malmedal, Ameren's outside electrical engineer, also agreed that the 1500 kW pad-mounted transformer adjacent to the gas plant and the transformers adjacent to each of the gas compressor sites were necessary to reduce the 12.47 kV of electricity from the distribution line to 277/480 volts at the secondary or low side of the transformer for use by the electric motors at each site. He acknowledged the electrical design at the gas plant and each gas compressor site was appropriate and in accordance with the standard design for similar facilities in the U.S. (Tri IB at 32, citing Tr. 1839-1848)

According to Tri-County, all electrical engineers, with the exception of Malmedal, agreed that the electrical design for delivery of electric services to the gas plant and gas compressor sites constituted "delivery points" created after March 18, 1968 and since the delivery points were physically located in Tri-County's service territory, electricity could not be delivered from the Ameren Texas Substation by either an AmerenIP distribution line or the Citation-owned distribution line. Malmedal opined that because the Texas Substation constituted the "delivery point" of electricity, IP could provide electricity from its Texas Substation to the Citation-owned distribution line for use at Citation's gas plant and gas compressor sites. Yet, Malmedal agreed that if IP owned the 12,47 kV distribution line used to deliver electricity to the transformers at the gas plant and gas compressor sites, then the "point of delivery" would shift from the Texas Substation to the location of the step-down transformers at the gas plant and the gas compressor sites. The only reason Malmedal could give for this distinction was that IP was the owner of the 12.47 kV distribution line instead of Citation. (Tri IB at 33)

All the electrical engineers, including Malmedal, agreed the physical and mechanical requirements and the electrical design for the gas plant and gas compressor sites are the same whether Ameren or Tri-County or Citation owns the 12.47 kV distribution line. Tri-County argues, "Thus it is hard to rationalize Malmedal's use of ownership of the distribution line as the sole basis for determining the meaning of 'delivery point' in this docket." (Tri IB at 33) Malmedal's definition of "point of delivery" is dependent upon what the customer and the electric supplier negotiate. In Tri-County's view, that makes "point of delivery" illusionary and ignores the fact that the SAA at issue is between Tri-County and Ameren. The Agreement makes no reference to ownership of the distribution line or the location Ameren and Citation may negotiate for the hand-off of electricity as defining "delivery point." Further, Tri-County did not agree Ameren could provide the electric service by using Citation's distribution line. (Tri IB at 33)

Tri-County believes the SAA establishes Tri-County's right to serve in this case. It argues that even if there is a question as to the intent of the parties under the Agreement, the "course of conduct" of both Tri-County and IP in applying the SAA provides convincing evidence supporting Tri-County's position. In December 1998, Citation requested and Tri-County provided electric service to Citation's office complex by use of an electric service connection point, consisting of a transformer and associated apparatus customary for electric service connection points, which is located in Tri-County's territory and did not exist on March 18, 1968. IP agreed that Tri-County was authorized to serve Citation's new electric service connection point for the office complex even though IP was providing electricity to Citation at the IP Texas Substation. Similarly, Tri-County asserts, AmerenIP's engineers applied the same interpretation to the Agreement in the present case and advised Citation that the gas plant was located in Tri-County service territory and IP could not serve the gas plant without Tri-County's consent. Tri-County states that when Citation stated its intent to take the AmerenIP electric service at the Ameren Texas Substation and distribute the electricity through the Citation-owned distribution line to the gas plant and the eight compressor sites "ignoring Tri-County's service rights," IP's engineers advised Citation that IP could not allow that to happen without the consent of Tri-County. Tri-County did not acquiesce to such service. (Tri IB at 34)

Tri-County contends that the Commission in interpreting service area agreements has long followed the axiom that the agreement will control the dispute, *Rural Electric Convenience Cooperative Co. vs [ICC]*, 75 Ill. 2d. 142; 25 Ill. Dec. 794, 796 (1979). Thus, Tri-County argues, 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 "delivery point." Tri-County believes it is "clear that the intent of the parties as expressed by the [SAA] controls" and there is no better evidence of the intention of the parties than the interpretation they themselves place on the Agreement, *Berry v. Blackard Construction Co*, 13 Ill. App. 3d 768 (1973). (Tri IB at 34-35) Actions by the parties contemporaneously with or subsequent to the Agreement evidencing the "practical construction" placed upon the Agreement by the parties may be considered to determine the intent of the parties regarding the Agreement. (Tri IB at 34-35, citing *Occidental Chemical Co. v. Agri Profit Systems, Inc.*, 37 Ill. App. 3d 599 (1975); and *Mendelson v Flaxman,* 32 Ill. App. 3d 644 (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. (Tri IB at 34-35)

Tri-County states that from February 18, 2005 through July 13, 2005, AmerenIP's interpretation of the relevant provisions of the SAA coincided with Tri-County's interpretation and was in accordance with the plain meaning of the Agreement. That interpretation remained intact until AmerenIP's July 15, 2005 letter in which IP changed its interpretation of the SAA and claimed the IP Texas Substation is the delivery point for the newly established electric service connection points for the gas plant and seven of the eight gas compressor sites located in Tri-County's service territory because the 12.47 kV distribution line is owned by Citation instead of IP. (Tri IB at 35)

D. Defining Point of Delivery as the Place where Electricity is handed off to the Customer and Electric Supplier

Section III of Tri-County's Argument is titled, "The Commission has rejected the definition of 'point of delivery' as the place where electricity is handed off to the customer or negotiated by the customer and electric supplier." (Tri IB at 35)

According to Tri-County, the Commission has previously refused to define "point of service" or "point of delivery" to mean the place where the customer elects to connect its distribution system to the facilities of the electric supplier. (*Id.* at 35-36, citing *Spoon River,* 219 Ill. App. 3d 291) In *Spoon River*, CIPS and Spoon River were contesting electric service to the Canton Prison site. Tri-County states that CIPS and Spoon River had entered into a service area agreement "that provided each was entitled to serve territories divided by boundaries and in addition were entitled to serve premises in the other party's territory which they were serving on July 2, 1965 which were otherwise grandfathered by the agreement." Both Spoon River and CIPS were grandfathered to serve locations included within the Canton Prison site. In addition, the Canton Prison site included territories that each of CIPS and Spoon River were entitled to serve based upon their territorial boundary lines. (Tri IB at 35-36)

CIPS maintained that since both had equal grandfathered rights under the agreement, the territorial dispute should be determined by the point where the customer elected to connect its distribution system to CIPS' facilities to accept delivery of electric service from CIPS. That point was located on CIPS' side of the territorial boundary line. Spoon River on the other hand maintained that the disputed territorial issue should be determined by where the electricity was being utilized and since most of the electricity was being utilized within Spoon River's designated territory, then Spoon River should be the electric supplier for the prison.

Tri-County states that in its Order in the *Spoon River* case, ESA 249, the Commission determined that "point of service" or "point of delivery" as proposed by CIPS should be rejected because (1) it would frustrate the purposes of the ESA in that it would destroy the integrity of territorial boundary lines under SAAs adopted pursuant to the Act and would encourage disputes between electric suppliers resulting from the location of a

"point of service"; (2) it could result in the development of unregulated private electrical distribution lines in this State, contrary to Section 2 of the Act in which the Illinois Legislature declared it to be in the public interest to avoid duplication of electric facilities; (3) it could result in discrimination against small residential and small commercial customers who do not have the financial ability to construct and maintain their own private electric distribution system; (4) it would allow customers along the territorial boundary lines of two electric suppliers to choose the electric supplier they wanted based upon the short term goals of the customer rather than the long term legislative purposes of the Act; and (5) it would encourage the demise of relative boundary certainty under service area agreements adopted by electric suppliers pursuant to the Act, in direct contravention of the expressed purpose of the Act. (Tri IB at 36-37)

In Tri-County's view, the reasons stated by the Commission in the *Spoon River* case for rejecting CIPS' proposed definition for "point of delivery" aptly apply as a basis for the Commission rejecting Ameren's proposed definition of "point of delivery," as used in the subject SAA, as being the place where Citation elects to connect its distribution line to Ameren's facilities. Tri-County claims there is ample testimony in this record that both Tri-County and IP interpreted "point of delivery" as used in the SAA as the place where the distribution line voltage is reduced by a transformer to a voltage level usable by the customer at that particular site. Tri-County argues that the evidence in this docket illustrates the accuracy of the Commission's stated reasons in *Spoon River* for rejecting the definition for "point of delivery" that Ameren seeks in this docket. Tri-County contends that substantial weight should be accorded the Commission's long standing interpretation of "point of delivery," *Radio Relay Corp. v. [ICC],* 69 Ill. 2d. 95 (1977), and that Ameren has not provided any logical reason for now discarding the *Spoon River* definition for point of delivery. (Tri IB at 37-38)

E. Use of Customer-Owned Distribution Line to Provide Service to Citation's Gas Plant and Compressor Sites

In Section IV of its Argument, Tri-County contends that "use of the customer owned distribution line to provide electric service to Citation's gas plant and gas compressor sites defeats the purpose of the [ESA]." (Tri IB at 38)

The Agreement was in furtherance of the legislative declaration upon which the ESA was prefaced and as expressed in 220 ILCS 30/2 as follows, "The General Assembly declares it to be in the public interest that, in order to avoid duplication of facilities and to minimize disputes between electric suppliers which may result in inconvenience and diminished efficiency in electric service to the public, any 2 or more electric suppliers may contract, subject to the approval of the ... Commission, as to the respective areas in which each supplier is to provide service." (Tri IB at 38)

Tri-County Exhibit A-2 shows that Tri-County has a three phase distribution line located immediately south of and adjacent to the Citation gas plant. The distribution line was constructed in 1939 as a single phase line and upgraded in 1949 to a three phase line. Citation requested Tri-County to provide electric service by way of a single phase

line to the Citation office complex which lies to the north and west of and adjacent to the gas plant. Tri-County continues to provide this electric service. Thus, Tri-County has facilities within a few hundred feet of the gas plant which are adequate for and could be used to supply the electric service to the gas plant. (Tri IB at 38)

No electric service lines of Ameren exist near the gas plant or the eight compressor sites. Tri-County states that Citation expended over $76,000 to upgrade its own distribution line and construct over 4,100 feet of a new 12.47 kV distribution line to allow Ameren to provide electric service to the gas plant and gas compressor sites. At the same time, the cost to Tri-County to extend electric service to the gas plant was $28,051 and Tri-County already has an extensive network of 12.47 kV distribution lines in the Salem Oil Field adjacent to the gas compressor sites as shown by the Tri-County map Exhibit B-2. Thus, Tri-County argues, the providing of electric service by Ameren whether through its own facilities or those of Citation's facilities constitutes a duplication of facilities in violation of the expressed legislative declaration regarding service area agreements and the intended general purpose of the Tri-County/IP SAA designating specific service territories. (Tri IB at 38-39)

Tri-County further argues that the Commission has long held that the customer does not have a right to choose its electric provider except in limited circumstances, none of which apply in this case. Tri-County cites *Central Illinois Public Service Company v. [ICC] and Southwestern Electric Cooperative, Inc.*, 202 Ill. App. 3d 567; 148 Ill. Dec. 61, 66 (1990) ("*Southwestern*"), where the court prohibited use of a customer-owned distribution line to change suppliers and held that consumers have been legislatively foreclosed from seeking electric service from a supplier beyond their service territory. According to Tri-County, "to the same effect" is *Central Illinois Public Service Company v. [ICC] and Wayne-White Counties Electric Cooperative, Inc.*, 223 Ill. App. 3d 718; 166 Ill. Dec. 280, 282 (1992) ("*Wayne-White*"). (Tri IB at 39)

Tri-County argues that *Illinois Power Company v. Illinois Valley Electric Cooperative,* ICC Docket 88-0276 (June 21, 1989) ("*Unimin*") presented an identical issue to the one in this case. The customer, Unimin, was served by IP under a service area agreement in which Sections 1 and 3 are very similar to Sections 1 and 3 of the SAA in this case. Unimin operated a silica sand mine consisting of a processing plant and adjoining strip mines, and IP served the processing plant. Unimin took electric service provided to it by IP at its processing plant and distributed it by means of the Unimin-owned distribution system to various strip mines located in IP's designated service territory. When Unimin opened a new strip mine located in Illinois Valley's (a/k/a "IVEC") service territory, IP requested authority from the Commission to move electricity supplied by IP at the processing plant to the new mining location by means of the Unimin-owned distribution facilities.

At the new strip mine operation, a new service delivery point was required, including transformers and other associated apparatus. The new delivery point as well as the new strip mine were both located in Illinois Valley's designated service territory under the agreement. The Commission determined the new strip mine and delivery point

were both located in Illinois Valley's designated service territory and therefore, only Illinois Valley was authorized to serve the new delivery point. Tri-County asserts that while the Commission decision dealt with temporary service authority, it effectively terminated the dispute denying IP the authority to serve the new electric service connection point for the new strip mining operation by means of the customer-owned distribution system and found that Illinois Valley was the appropriate electric supplier for the new electric service delivery point. (Tri IB at 39-40)

According to Tri-County, Ameren seeks the same authorization in the instant case to serve the new Citation delivery points for the new gas plant and compressor sites located in Tri-County's designated service territory by use of the customer-owned distribution line. Tri-County contends nothing in the Agreement allows Ameren to do this and the Commission decision in *Unimin* confirms that point. Generally, Commission decisions are entitled to great deference because they are the judgment of a tribunal appointed by law and possess expertise born of informed experience, *Sunset Trails Water Company v. [ICC],* 7 Ill. App. 3d 449 (1972). Tri-County argues that the Commission should be consistent and again prohibit Ameren's claim. (Tri IB at 40-41)

In Section V, Tri-County argues that Ameren "should not be allowed to do indirectly what it cannot do directly." (Tri IB at 41)

Tri-County states that Ameren's engineers and Todd Masten, Ameren's regulatory specialist, testified that Ameren cannot utilize its own electric distribution lines to take electric service from the Texas Substation to the Citation gas plant or to the seven gas compressor sites located in Tri-County's service territory. Likewise, Tri-County argues, Ameren should not be allowed to do so through the Citation-owned distribution system because it subverts the intent of the SAA as exemplified by the "course of conduct" of Tri-County and Ameren in interpreting the SAA. (Tri IB at 41)

According to Tri-County, such action by Ameren and the customer does not conform to the intent of the Legislature in adopting the ESA and should not be allowed. For instance, Ameren's electrical engineer Malmedal testified that Citation could extend its own 12.47 kV distribution line 30 miles and serve a load the size of the Citation gas plant. (Tr. 1902-1904, 1925, 1927) There is no way to know in whose territory the electric service would be used. Tri-County states that Citation has historically shown its propensity to seek electric service from either Tri-County or Ameren, whichever seems at the time to satisfy its corporate purposes irrespective of the terms of the SAA. (Tri Ex. E at 2-5) According to Tri-County, to allow such action in derogation of the valid SAA between Tri-County and IP grants permission to any customer who is financially able to provide its own electric distribution system to violate public policy as established by the Legislature and the Commission under the ESA. (Tri IB at 41-42)

F. Modification of Texas Substation

In Section VI of its Argument, Tri-County argues that Ameren "has modified its Texas substation such that it constitutes a new point of delivery." (Tri IB at 42)

Tri-County states that Ameren maintains it has not established a new service connection point for the gas plant and the eight compressor sites and has simply continued to provide its electric power to Citation at the Texas Substation. However, Dew testified there have been numerous "modifications" to the IP Texas Substation since the SAA which have enabled Ameren to serve additional electric loads for customers through the Texas Substation. Dew opined that each time Ameren modifies its Texas Substation so that it can serve additional load, whether for an existing customer or a new customer, it creates a new point of delivery or a new service connection point at the Texas Substation within the engineering meaning of Section 1(d) of the SAA. Tri-County argues, "The failure to interpret the Agreement in that manner would allow Ameren, by reason of its existing Texas Substation, to continually add to the Texas Substation additional load of existing customers through changes in the customer's electrical phases and new load of new customers with new transformers and serve customers located in territory designated by the [SAA] to be served by Tri-County through a customer owned distribution line." (Tri IB at 42-43)

Further arguments by Tri-County on the modification issue are contained in its reply brief to Ameren's initial brief and are summarized below.

G. Construing Contracts to Avoid Unfair Results

According to Tri-County, "To construe the [SAA] as IP proposes so that IP can utilize a customer owned distribution system to serve new electric service delivery points located in Tri-County's designated exclusive service territory is a grossly unfair interpretation of the Agreement." (Tri IB at 44) Every contract contains the implied covenant of good faith and fair dealing between the parties to it. Where a contract or portion thereof is susceptible to two conflicting constructions, one of which imputes bad faith to one of the parties and the other does not, the latter construction should be adopted. (Tri IB at 44, citing *Carrico v. Delp*, 141 Ill. App. 3d 684 (1986))

In Tri-County's view, "It would be an absurd construction of the Agreement and would imply bad faith on the part of IP to interpret 'point of delivery' as used in the Agreement to mean a different location than the site where the electricity is transformed down to a voltage usable by the customer's facilities at that site or to interpret the agreement to allow IP to deliver electricity not by an IP distribution line but by the customer owned distribution system to new service connection points located in Tri-County's service territory." (Tri IB at 44)

VII. AMEREN POSITION AND ARGUMENT

A. Whether Salem Unit remains an "Existing Customer" that Ameren has the Right to Continue Serving under Section 3(b) of the SAA

Section 3(b) of the SAA provides, "Each party shall have the right to continue to serve all of its existing customers and all of its existing points of delivery which are located within a Service Area of the other party on the effective date."

Ameren states that subject to the qualifying phrase "[e]xcept as otherwise provided in ... this Section," Section 3(a) creates an "exclusive right to serve all customers whose points of delivery are located within [designated] Service Areas" and also sets forth the restriction that "neither party shall serve a new customer within the Service Areas of the other party." In Ameren's view, "The prefatory exception language in §3(a) evinces a clear intent that the §3(b) grandfathered service to 'existing customers and ... existing points of delivery' trumps the (otherwise) exclusive territorial service rights." (Am IB at 15)

Section 1(b) of the SAA provides that "'[e]xisting customer' as used herein means a customer who is receiving electric service on the effective date hereof." The SAA does not define "customer" but Section 3.3 of the ESA states, "'customer' means any person receiving electricity for any purpose from an electric supplier."

Ameren states that Illinois courts presume the parties contract with knowledge of the existing law, and the statutes in existence at the time a contract is executed are considered part of the contract. (Am IB at 15-16, citing *Fox v. Heimann*, 375 Ill. App. 3d 34-35 (1st Dist. 2007)) Ameren argues, "Since statutes accordingly furnish implied contract terms, there can be no dispute that the Salem Unit oil field constituted Ameren's 'existing customer' as of [the effective date] under the SAA." (Am IB at 15-16)

According to Ameren, the Section 3(b) grandfather clause differentiates between "existing customers" and "existing points of delivery" to furnish two categories of broad protection for their continuing service rights regardless of the new territorial boundaries. A "customer" is a "person" and can be an "individual" or an entity such as a "corporation [or] partnership." (*Id.* at 16, citing ESA Sec. 3.11)

Ameren argues, "The dual protection for both 'existing customers' and 'existing points of delivery' ensures that the grandfathered service rights include not only persons or entities 'receiving electricity' on July 3, 1968, but also the place or spot where a supplier had an 'energized' 'electric service connection' on July 3, 1968; the 'existing point of delivery' protection means that even though an 'existing customer' might later go out of business or otherwise vacate the premises, its supplier retains a continuing right to re-establish service to a different customer at any point of delivery that was 'energized' on July 3, 1968." Ameren further argues, "Since the Salem Unit has remained Ameren's continuous customer at all times since 1952, Ameren has a continuing right to serve its 'existing customer' and thus no need to rely on the §3(b) language grandfathering service to 'existing points of delivery.'" (Am IB at 16)

B. Whether Customer "Applied" for Service within the Meaning of Section 1(c) of the SAA

Section B of Ameren's Argument is titled, "The Customer never 'Applied' for Service within the Meaning of §1(c) of the [SAA]." Ameren states that "in order to defeat Ameren's prima facie grandfather right to continue serving the Salem Unit regardless of its location in TCEC's service area," Tri-County claims the gas plant/compressors constitute "new customer[s]" within the meaning of Section 1(c) of the SAA which, in turn,

triggers Tri-County's exclusive territorial service rights because Section 3(a) prohibits Ameren from serving "new customer[s] within the Service Areas of [TCEC]". (Am IB at 16-17)

According to Ameren, "Section 1(c) recognizes two scenarios in which an 'existing customer' can morph into a 'new customer': [1] when an 'existing customer ... applies for a different electric service classification or [2] electric service at a point of delivery which is idle or not energized on [July 3, 1968].'" Ameren states that Tri-County claims both of these scenarios have occurred. Ameren argues, "The evidence, however, fails to establish that Ameren's existing customer (Citation) 'applie[d] for' either of the two stated objects. Tri-County's failure to establish the predicate event, i.e., an application tendered by Citation, means the Commission need not construe or apply the 'different service classification' or 'idle point of delivery' clauses." (Am IB at 17)

Ameren asserts, "While Citation explored the possibility of severing the gas plant from its distribution system and taking separate service to it from Tri-County, the evidence makes clear that Citation did so in order to evaluate its options in the exercise of prudent business judgment." Tri-County maintains a form on its website entitled "Applying for Service" (Am Cross Ex.1) but Citation never tendered that form to Tri-County. Ameren states that Tri-County witnesses "acknowledge that Citation never requested TCEC service to the gas plant/compressors and TCEC never took any concrete steps to purchase or set aside the transformers, poles, conductors or other equipment required to serve the gas plant." (Am IB at 17)

In Ameren's view, the undisputed evidence establishes that, while Citation explored the possibility of "carving out" the gas plant from its distribution system and taking separate service from Tri-County, to avoid extending its own system, Citation ultimately decided not to pursue that service configuration for its own business reasons. (Am IB at 17-18, citing Am Ex. 9 at 3-4) In Ameren's view, the record "unequivocally establishes" that Citation did not "apply" to Tri-County for service at or to the gas plant/compressors. (Am IB at 17-18)

According to Ameren, Tri-County's attempt to expand the exploratory communications with Citation into an "application" for service under Section 1(c) in order to divest Ameren of its grandfathered service rights falls short of the applicable standard. Illinois courts abhor forfeitures of contractual rights and typically hold, e.g., that "...a party may declare a forfeiture only where the contract expressly grants that right." (Am IB at 18, citing *Hettermann v. Weingart*, 120 Ill. App. 3d 683, 689 (1983)) Ameren asserts that these principles operate to bar Tri-County from attempting to stretch the "application" requirement of Section 1(c) to reach routine discussions and information exchanges. (Am IB at 18)

Ameren claims the undisputed evidence establishes that the Salem Unit constitutes a single customer that for over 60 years has regularly reconfigured and extended its electric distribution system to adapt to changes in technology, depleting reservoir pressures, and new opportunities to market previously valueless hydrocarbons.

(Am IB at 18-19) Citation's extension of its existing distribution system to its gas plant and compressors cannot alter the fundamental fact that after construction of those facilities, Citation continued to "operate a single, indivisible" electric distribution system. Ameren states that the Illinois Supreme Court decision in *Ragsdale v. The Superior Oil Company* eliminates any doubt as to the singular nature and indivisibility of a unitized oil field:

> A unitization of separate tracts for the purpose of sharing in the production of oil creates a single ownership of the entire unit by the owners of the several tracts making up the unit... When the lessees of the separate leasehold tracts making up the unit join in the unitization for the purpose of operation and production of oil, a single leasehold ownership is created of the unitized tract... The oil produced is pooled, regardless of the separate tract or tracts upon which the wells are located and from which the oil is produced [and] ... all share in the oil ... sold in the proportion which each owner's tract bears to the entire unitized tract. For all practical purposes the same situation exists as though there was a single owner-lessor and a single lease. 40 Ill.2d 68, 70-71 (1968).
> (Am IB at 19)

Ameren argues that the language of Section 3.12 of the ESA further bolsters this conclusion because the Salem Unit falls within its definition of "premises." It provides, "'Premises' means a physical area (a) which except for any intervening public or private rights of way or easements, constitutes a single parcel or unit and (b) which a single customer ... uses..." (Am IB at 19)

Citation owns the entire electrical distribution system and all of the electrified pumps and motors connected to it. The Salem Unit combined over 245 contiguous oil and gas leases for management by a single "unit operator." (Am Ex. 8 at 3) Ameren states that an oil and gas lease constitutes a "severed" estate, i.e., a real property interest that is separate and distinct from the surface estate. An oil and gas leasehold estate is considered "dominant" to the "servient" surface estate, and conveys to the Lessee the right to occupy and use so much of the surface as may be reasonably necessary to recover the oil and gas reserves. Ameren contends that the Salem Unit unquestionably constitutes "a physical area (a) which...a single customer...uses...." (Am IB at 19-20)

According to Ameren, the Commission has previously considered and rejected arguments that oil field expansions create new points of service. Ameren states that In *Central Illinois Public Service Co. v. Wayne-White Counties Electric Cooperative*, Docket No. 92-0463, (July 7, 1994), the Commission construed a substantially similar grandfather provision in an SAA and rejected the cooperative's argument that "new wells" drilled in a "unitized operation" create new customers. The Commission held that the operator's decision "to rearrange its [electrical] distribution facilities" does not "require a finding that each change in electric service to a well since the effective date of the 1974 SAA constitutes a new point of service [and] [t]he Commission finds that it is reasonable to treat the entire disputed area as a single location..." Ameren argues that this decision

comports with the ESA definition of "premises" and conforms to the Supreme Court's characterization in *Ragsdale* of a unitized oil field. (Am IB at 20)

C. Modification of Texas Substation within the meaning of Section 1(d) of the SAA

Section III.C of Ameren's initial brief is titled, "Ameren never modified the Texas Substation so as to add a phase or phases of electricity within the meaning of §1(d) of the [SAA]." (Am IB at 21)

Ameren states that Tri-County tries to defeat Ameren's grandfathered right to continue serving the Salem Unit by "resorting" to the language of Section 1(d) which provides, "'Existing point of delivery' as used herein means an electric service connection which is in existence and energized on the effective date hereof." It next states, "Any modification of such electric service connection after the effective date hereof by which an additional phase or phases of electric current are added to the connection, shall be deemed to create a new point of delivery."

This language that the "modification" is "deemed to create a new point of delivery" arguably nullifies an otherwise "existing point of delivery" and defeat a Section 3(b) grandfather right to continue to serve what would otherwise constitute "existing points of delivery ... located within a Service Area of the other party...." Ameren argues, "Since the record contains no evidence that Ameren has ever modified the three-phase 'electric service connection' between the Texas Substation and the Salem Unit system so as to add 'an additional phase or phases of electric current ... to the connection,' that 'existing point of delivery' remains in effect and no 'new point of delivery' has occurred." (Am IB at 22)

Ameren also argues that Tri-County must "concede" that the point where Citation's system connects to the Texas Substation constitutes "an electric service connection which is in existence and energized on [July 3, 1968]" in order to attempt to prove that "modification[s] of such electric service connection ... by which an additional phase or phases of electric current are added to the connection" have occurred. Ameren asserts that only "an electric service connection ... in existence and energized on [July 3, 1968]," can be the subject of "phase adding" modifications that transform an "existing point of delivery" into a "deemed ... new point of delivery." (Am IB at 22)

Ameren states that Tri-County appears to suggest Ameren cannot deliver any electric service to the Salem Unit distribution system because of the supposed phase-adding modifications that have transformed the Citation/IP "electric service connection" into a "new point of delivery" which because of its location in Tri-County territory, Tri-County possesses an "exclusive right" to serve under Section 3(a). Tri-County then "leaps to the conclusion" that this transformation extinguishes Ameren's Section 3(b) grandfathered right because the Substation no longer constitutes one of Ameren's grandfathered "existing points of delivery... within [TCEC's] service area...." (Am IB at 22-23)

According to Ameren, modifications and upgrades within the Texas Substation do not constitute the addition of "a phase or phases of electric current" at the place where the Salem Unit distribution system contacts Ameren facilities. Since 1952, the three-phase conductors of the Salem Unit distribution system have continuously contacted the Ameren system at the same place on the three-phase Texas Substation. Modifications "behind" that point and wholly within the substation do not modify the point where the Citation conductors fasten to, or join with, the Texas Substation and do not add any "phases" to what is now and always has been a three-phase substation. Likewise, "downstream" load expansions or changes to the configuration or makeup of the Salem Unit's array of electrified pumps and compressor motors make no modification to the actual point of connection at the Substation. (Am IB at 23)

Ameren asserts that the evidence shows Ameren has always furnished electricity for use by the Salem Unit distribution system via a connection point at its Texas Substation where the Salem Unit conductors physically attach to the bolt and clamp assembly depicted on Ameren Exhibit 5.1, Figure 7. This is the junction where "title" to the electricity passes to the customer – meaning that the customer becomes solely responsible for any line losses, outages, or equipment failure that occur past that point; that is also the place where Ameren meters the power delivered to Citation for billing purposes. Citation is solely responsible for any line loss or diminution of voltage that occurs past that point of connection between the two systems. Citation owns the electricity and all facilities "downstream" of the connection between its conductors and the Ameren substation. (Am IB at 23-24)

According to Ameren, the record shows that the "electric service connection" constituting its "existing point of delivery" to the Salem Unit in 1968 has at all times occurred at the place where the Salem Unit distribution system contacts the Ameren system. All electric service contracts between Ameren and the Salem Unit operators have specified and defined the "point of delivery" as the Texas Substation, consistent with all applicable Commission-approved tariffs. These contracts further specify that title to the electricity sold to the Salem Unit passes at the metering point on the Texas Substation. (Am IB at 24)

Ameren next asserts that the Illinois Supreme Court consults dictionaries to "ascertain the ordinary and popular meaning of words..." (Am IB at 24, citing *Valley Forge Ins. Co. v. Swiderski Electronics*, 223 Ill. 2d 352, 363 (2006))

Ameren states that Webster's New World College Dictionary (Fourth Ed. 2010) defines the following: "Connection: a joining or being joined; coupling; union"; "Delivery ... giving or handing over; transfer"; "Point ... a particular or precisely specified position, location, place, or spot..."; "Service ... a system or method of providing people with the use of something, as electric power, water, transportation, mail delivery, etc." Ameren argues, "The plain language of the SAA thus establishes that the 'point' [place/spot] where Ameren 'delivers' [hands over/transfers] 'service' [a system providing the use of electric power] is the 'connection' [i.e., union or junction] between the Ameren and Citation systems at the Texas Substation...." (Am IB at 25)

Ameren also asserts, "TCEC's contention that adding capacity to the Texas Substation forfeits Ameren's right to continue serving its existing customers would effectively bar Ameren from improving a facility that serves many customers other than Citation." (Am IB at 25) Ameren argues that Illinois courts will not strictly construe older instruments to bar a utility from taking advantage of improvements in modern technology. (*Id.*, citing *Talty v. Commonwealth Edison Company*, 38 Ill. App. 3d 273, 276 (1976))

Ameren next argues that Tri-County's opinion testimony as to what the phrase "point of delivery" means "in the electric utility industry" has no relevance because the parties have declared what an "[e]xisting point of delivery as used herein means" which is "an electric service connection ... which is in existence and energized on the effective date hereof." (Am IB at 25-26) Illinois decisions make it well settled that "contract terms must be given their plain, ordinary, popular and natural meaning." (Am IB at 26, citing *Hartford Ins. Co. of Illinois v. Jackson*, 206 Ill. App. 3d 465, 470 (1990)) Ameren states that a corollary principle holds that "[p]arties in entering into an agreement are presumed to have used terms having no technical meaning ... and the words are to be construed according to their common understanding and common usage." (Am IB at 26, citing *Wolf v. Schwill*, 282 Ill. 189, 191 (1917)) Ameren argues that by applying the phrase "as used herein" to define "[e]xisting point of delivery," the parties expressly chose not to reach outside the Agreement to avoid the type of "self-serving subjective opinion testimony" Tri-County now offers. (Am IB at 26)

D. Use of "Utilization Voltage" Argument in Determining Point of Delivery

Section III.D of Ameren's initial brief is titled, "TCEC's 'utilization voltage' argument lacks evidentiary support and legal foundation." (Am IB at 27) According to Ameren, Tri-County argues that "point of delivery" constitutes the place where a transformation to utilization voltage occurs in an attempt to carve out the plant/compressors as "new point[s] of delivery" that somehow defeat Ameren's Section 3(b) grandfather right to continue serving "existing points of delivery." (Am IB at 27)

Ameren claims Tri-County does not link its "point of delivery" argument to a particular section in the SAA and, having established a right to serve the Salem Unit as its "existing customer," Ameren has no need to also establish a second grandfather right to serve under the "existing points of delivery" entitlement. Ameren argues, "'Points of delivery' do not exist nor receive service in the abstract: §3(a) territorial rights extend to 'customers whose points of delivery are located within [designated] Service Areas'; §3(b) grandfathers the utility's, i.e., 'its existing points of delivery,' without reference to customer facilities." (Am IB at 27) Ameren asserts, "Under TCEC's decentralized definition, the Salem Unit has created hundreds of new customers (every oil well and pump motor) in TCEC territory since 1968. This argument ... ignores the incontestable fact that transformers and electrified motors cannot constitute 'person[s] receiving electricity...' within the meaning of §3.3 of the ESA." (*Id.*)

In Ameren's view, "TCEC's 'utilization voltage' argument also suffers from fatal inconsistencies: the Texas Substation ... constitutes a 'step down' transformer that

reduces 69kV voltage to 12.47 kV – Citation accepts delivery of the 12.47 kV at its connection to the substation, takes legal title to it at that point, and carries it a matter of feet to a recloser station that divides the current and distributes it over Citation's four separate circuits." (Am IB at 27-28) The recloser facility contains both lights and switches with "step-down" transformers. Ameren argues that Citation "utilizes" the energy immediately upon accepting delivery at the Substation or at the recloser station where transformation to "utilization voltage" for the lights and switches occurs. (Am IB at 28)

Ameren asserts, "In TCEC's strained formulation, 'utilization voltage' (and hence 'point of delivery') only occurs where Citation uses its own facilities to create voltage acceptable to motors at the compressors and gas plant...." In Ameren's view, "TCEC's contention that Citation is not 'utilizing' the 12.47 kV energy immediately upon purchasing that electricity and conducting it over its own premises wiring system lacks any discernible merit; the claim that Citation only 'utilizes' the electricity miles downstream where it transforms it for use in other motors constitutes a self-serving ... contrivance that impermissibly ignores [testimony] that no law or engineering practice bars a large industrial customer from purchasing high voltage energy and using its own distribution system to move that energy anywhere on its premises." (Am IB at 28)

Ameren states that Tri-County claims Ameren has no grandfather right to serve the plant/compressors because they did not constitute "an electric service connection ... in existence and energized on [July 3, 1968]." In Ameren's view, "This argument fails for two reasons: (1) Ameren had a grandfathered right to continue to serve its July 3, 1968 'existing customers' in TCEC territory regardless of whether those customers added to, subtracted from, or reconfigured their electrified facilities and, in any event, (2) the Salem Unit's single 'existing point of delivery' as of July 3, 1968 occurred at the junction between the utility (Ameren) and the customer (Salem Unit) systems." (Am IB at 28-29)

Ameren next argues that Tri-County knew or had constructive knowledge that as of July 3, 1968, Ameren and Texaco had contractually defined the customer's "point of delivery" as "where the Utility's [69 kV] lines connect to the substation." (Am IB at 29, citing Am Ex. 1.3 at 1) The Ameren/Texaco Electric Service Agreement incorporated the definition of "point of delivery" contained in Ameren's then-applicable tariff. (Am Ex. 1.3 at 4) The provisions of these tariffs "are part of the terms and conditions upon which [utility] service is rendered, [and are] ... necessarily a component and integral part of the [utility's] contracts and relationship with its subscribers, expressly or by implication or by operation of law ... the [subscribers], whether they have actual knowledge or not, are, of course, presumed to know the law and are chargeable with notice thereof...." (Am IB at 29, citing and quoting *Illinois Bell Telephone Co. v. Miner*, 11 Ill. App. 2d 44, 52 (1956)) Further, "A tariff is a public document ... governing rules, regulations and practices relating to these [utility] services ... [and] [o]nce the Commission approves a tariff it is law, not a contract, and has the force and effect of a statute." (Am IB at 29, citing and quoting *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 55 (2004))

Ameren asserts that the Commission's decision in *Southeastern Illinois Electric Cooperative v. [CIPS]*, Docket No. 89-0420 ("*Old Ben*"), although involving a coal mine,

confirms the Commission's reluctance to divide longstanding, geographically dispersed customers who later expand across service area boundaries between two suppliers. The Commission wrote that "the service requirement of Mine 24 involv[ed] a transient load moving as the mining operations progressed" and concluded that "[t]he [disputed] service at [new] drill hole No. 7 was a portion of the same load that CIPS had provided to Old Ben for 27 years" and authorized CIPS to serve that facility "even though drill hole 7 was in Southeastern's service area." Ameren states, "The Commission construed the SAA as 'indicating that the parties intended that each was authorized to extend service into the other's area to provide electrical service to the premises of a customer of the contracting supplier as of the date of execution of the [agreement].'" (Am IB at 29-30)

Ameren contends that the more recent decision in *Rural Electric Convenience Cooperative, Inc. v. [CIPS]*, Docket No. 01-0675 (July 17, 2003) ("*Freeman Coal*") reiterated the Commission's approval of the *Old Ben* principles. The Commission noted that "there is no dispute that CIPS is entitled to serve Freeman at the connection point established [in earlier litigation] [and] [h]ad Freeman been able to extend its own distribution line further ... without losing voltage, RECC would not have filed this complaint ... [and] RECC would have no claim." (Am IB at 30)

E. Ameren Response to Tri-County

1. Grandfather Rights under SAA

Section III.A of Ameren's response brief is titled, "The SAA unambiguously creates a 'grandfather' right to continue serving existing customers in the other supplier's territory." (Am 2B at 4) In Section A.1, Ameren argues, "The plain language of the SAA contains no ambiguity."

Tri-County argues that because "the phrase 'point of delivery' as used within Section 1(c) and 1(d) of the [SAA] is not defined within the [SAA], the term is ambiguous allowing parole evidence to be considered when interpreting and applying the [SAA]." (Tri IB at 31-32) Ameren responds that disagreements over the meaning of a phrase do not create ambiguity, and that the Commission can construe the plain language of the SAA guided by traditional rules of contract construction. (Am 2B at 4)

Ameren states that Tri-County argues an ambiguity exists because of extrinsic evidence in the form of the opinion of its witness Dew about how the phrase "point of delivery" is "customarily used within the electric utility industry." (Tri IB at 32) According to Ameren, Tri-County ignores the threshold requirement that it first demonstrate why the contract language has textual ambiguity. (Am 2B at 4-5)

In Section A.2 of its Argument, Ameren asserts, "Illinois Courts presume the parties employed commonly understood language." (*Id.* at 5) Ameren states that Tri-County offered no evidence to suggest that the parties employed the phrases "point of delivery" and "electric service connection" in Sections 1(c) and 1(d) as technical terms. (*Id.* at 5-6)

In Section A.3 of its Argument, Ameren asserts that Tri-County "fails in its attempt to manufacture ambiguity." (*Id.* at 6) Ameren cites language in Tri-County's brief, "It is fair to say that electrical engineers, Dew, Tatlock and Siudyla, understand that a 'point of delivery' as customarily used within the electric utility industry, normally consists of a step-down or distribution transformer located adjacent to the site where the customer intends to utilize the electricity so that the electricity received from the [12.47 kV] distribution line can be reduced to a voltage usable by the customer's facilities at the site." (Am 2B, citing Tri IB at 32)

According to Ameren, the record does not support that contention because the facts reveal the Texas Substation actually "steps down" 69 kV to 12.47 kV immediately adjacent to the Salem Unit site "where the customer intends to utilize" that voltage. Since Citation has designed its system to receive 12.47 kV electricity at the point where Ameren transforms 69 kV to deliver 12.47 kV, Citation begins utilizing that electricity immediately. Once the electricity sold to Citation leaves Ameren's facilities and energizes Citation's conductors, Citation's "utilization" has begun. Ameren states that Dew asserted that a new point of delivery occurs any time Citation extends its distribution system to new electrified motors even where those motors do not require "step down" transformation simply "[b]ecause you have a new load and you are supplying power in someone else's territory." (Am 2B at 6-7, Tr. 898)

Ameren argues that by abandoning step-down transformation as a requisite for a "new point of delivery," Dew and Tri-County betray their desire to rewrite the SAA to eliminate the "existing customer" grandfather provision of Section 3(b). If a 1968 "existing customer" with unitary facilities simultaneously operating in both service areas morphs into a "new customer" every time it unilaterally extends conductors to a new motor or security light, Section 3(b) grandfather rights would evaporate. Ameren argues, "Even though Tri-County purports to use §1(c) for the right to serve only the gas plant/compressors as 'new customers,' §1(c) converts the entire 'existing customer' into a 'new customer' if the prerequisite 'appli[cation] for ... classification or electric service [etc.]' is proven." Ameren asserts that the "existing customer" to "new customer" transformation is not divisible and accepting Tri-County's interpretation would transform the entire Salem Unit into a "new customer" and prohibit Ameren from serving 90% of it. (Am 2B at 7-8)

Ameren also argues that Tri-County's claim that "point of delivery" in Section 1(d) "is not defined" ignores the plain language of the SAA declaring, '"Existing point of delivery' as used herein means an electric service connection...." (Am 2B at 8)

In Section III.A.4 of its response brief, Ameren argues, "TCEC's interpretation leads to an absurd outcome" because it would transform the entire Salem Unit into TCEC's "new customer" every time it adds any new electrified equipment. (Am 2B at 10)

In Section III.A.5 of its response brief, Ameren argues that neither party acted on the Ameren employees' territorial admission. Ameren asserts that *Berry v. Blackard Construction*, cited by Tri-County, confirms this principle: "Where all the parties adopt and

act on a certain construction of the contract, there is not better extrinsic evidence of their intention than the interpretation they themselves placed on it." Ameren contends Tri-County never "acted on" the interpretation that the territory map defeated Ameren's grandfathered right to continue serving "existing customers." (Am 2B at 10-11)

According to Ameren, Tri-County's "practical construction" argument actually "boomerangs in favor of Ameren because TCEC stood by for over 37 years while Texaco and Citation repeatedly extended the distribution system to new pumps for some 98 new wells and two central pumping stations, all in TCEC's service area." Ameren claims the evidence shows Tri-County's own system serves residences interspersed throughout the oil field; Tri-County regularly inspects its system; and Texaco/Citation's post-1968 oil well developments are matters of public record. (Am 2B at 11)

Tri-County cites the Commission's 1996 decision in *Jo-Carroll*, Dockets 92-0450 and 93-0030, as authority for the proposition that a "'normal service connection point' for delivery of electric service is deemed to be where the transformers are located that are used to reduce the voltage to the level usable by the customer." (Tri IB at 29) Ameren states that *Jo-Carroll* did not concern the interpretation of a service area agreement and the Commission had to construe the statutory definition of "normal service connection point" in ESA Section 3.10 because of its appearance in the definition of "Proximity" in Section 3.13 which in turn appears in Section 8. The phrase "normal service connection point" does not appear in the Tri-County/IP SAA. Ameren argues that in any event, the evidence established that Ameren's Texas Substation transforms 69 kV electricity to 12.47 kV, which is a "level usable by the customer." (Am 2B at 11-12)

Section III.A.6 of Ameren's response brief is titled, "Circumstances surrounding execution of the SAA in 1968 reflect the parties' intent to let Ameren continue to serve the Salem Unit as it evolved." (Am 2B at 12)

According to Ameren, the circumstances reflect that in 1968, the parties drew boundaries that placed 90% of the Salem Unit in Tri-County territory and presumably knew that the operation was not static, but constantly evolving. Ameren contends that Tri-County's interpretation would mean the parties intended to bar the Salem Unit from extending its existing distribution system to reach every new well or pumping station sited in Tri-County territory after 1968 and force the unit operator to purchase Tri-County electric power and distribution. Ameren argues that given the parties' expressed intention to grandfather service rights to existing customers despite territorial boundaries, an implied intention to the contrary cannot stand. (Am 2B at 12-13)

In Ameren's view, other "circumstances surrounding the execution of the contract" make it unreasonable to infer that Ameren had any intent to interpret "point of delivery" any differently than as stated in its contemporaneous tariffs and electric service agreements. Tri-County protests that Ameren's "tariffs, none of which Tri-County is a party to, do not control the meaning of 'delivery point.'" (Tri IB at 34) Ameren responds that tariffs function much the same as statutes. (Am 2B at 13)