

SANGAMON COUNTY, ILLINOIS

Paul Valera Clerk of the Circuit Court

CITATION OIL & GAS CORP.,)
)
 Plaintiff,)
)
 v.)
)
 ILLINOIS COMMERCE COMMISSION;)
 BRIEN J. SHEAHAN, in His Official)
 Capacity as Commissioner; JOHN R.)
 ROSALES, in His Official Capacity as)
 Commissioner; ANN McCABE, in Her)
 Official Capacity as Commissioner;)
 MICHAEL del VALLE, in His Official)
 Capacity as Commissioner; SHERINA)
 MAYE EDWARDS, in Her Official)
 Capacity as Commissioner; TRI-COUNTY)
 ELECTRIC COOPERATIVE, INC.; and)
 ILLINOIS POWER COMPANY, d/b/a)
 AMEREN IP,)
)
 Defendants.)

No. 2016MR000455

RECEIVED
JUN 01 2016

ILLINOIS COMMERCE COMMISSION
CHIEF CLERK'S OFFICE

COMPLAINT FOR ADMINISTRATIVE REVIEW

NOW COMES the Plaintiff, CITATION OIL & GAS CORP. ("Citation"), and states as follows for its Complaint for Administrative Review:

INTRODUCTION

1. On March 9, 2016, the Illinois Commerce Commission ("ICC" or "Commission") entered an Order finding that Illinois Power Company, d/b/a Ameren IP ("Ameren") was the appropriate electric supplier to Citation's Salem Unit Oil Field pursuant to the terms of a Service Area Agreement ("SAA") between Ameren and Tri-County Electric Cooperative, Inc. ("Tri-County" or "TCEC").

2. Citation filed a Petition for Rehearing on April 8, 2016, which was denied by the Commission on April 26, 2016.

PARTIES

3. Citation, intervenor, is a corporation organized under Delaware law with its principal place of business in Houston, Texas, is operator of the Salem Oil Field, and is the sole electric customer involved in the case.

4. The Illinois Commerce Commission is an administrative agency organized under Illinois law pursuant to the Public Utilities Act, 220 ILCS 5/1-101 *et seq.*

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

6. Illinois Power, d/b/a Ameren, is a corporation organized under Illinois law.

7. Tri-County Electric Cooperative, Inc., is a corporation organized and operating as a Cooperative.

JURISDICTION

8. The action below was brought under the Electric Supplier Act (“ESA”) (220 ILCS 30/1, *et seq.*), which is subject to administrative review. 220 ILCS 30/12. However, the ICC ruled on a matter involving the Public Utilities Act under the Electric Service Customer Choice and Rate Relief Act of 1997 (“Customer Choice Law” or “CCL”) 220 ILCS 5/16-101 *et seq.*

9. Matters involving decisions under the Public Utility Act go directly to the Appellate Court. (220 ILCS 5/10-201) Contemporaneously with the filing of this Complaint, Citation has filed a Notice of Appeal with the ICC and Petition for Direct Review to the

Appellate Court. The filing of this Complaint is made out of an abundance of caution to preserve subject matter jurisdiction whether it lays in the Circuit Court or the Appellate Court.

FACTUAL BACKGROUND

10. Tri-County Electric Cooperative, Inc., filed a complaint under the Electric Supplier Act (220 ILCS 30/1 *et. seq.*) seeking a declaration that it was the proper electric supplier to serve Citation's gas plant and compressors in the Salem Oil Field. Illinois Power Company, d/b/a Ameren, has been the electric supplier to the Salem Oil Field since the 1950's before the time Ameren and Tri-County entered into their Service Area Agreement in 1968. The ICC found in Section XI(B) of its Order that the Texas Substation, where Citation's distribution system connects to the Ameren system, is a "point of delivery" within the meaning of the SAA (Order @ 78-80), and that the parties intended for the Texas Substation to be a point of delivery under the grandfather clause in the SAA (Order @ 80). The Order concluded that Ameren is the lawful electric supplier to Citation under the Service Area Agreement. Citation does not challenge any of those findings.

LEGAL ERRORS

11. The last sentence of Section XI(D), page 83, of the ICC Order states:

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

12. On the effective date of the CCL, it is undisputed that Citation was receiving power from Illinois Power, an "electric utility" within the meaning of 220 ILCS 5/16-102. Citation entered into a new electric supply contract with Ameren Energy Marketing Company ("AEM") for AEM to supply all of Citation's electric requirements at the Texas Substation for the Salem Oil Field (and other locations) from February 1, 2011, through December 31, 2012

(Citation Ex. 2 @ 3; Ex. 2.1). Ameren furnished Citation with delivery services as required by 220 ILCS 5/16-103 and pursuant to its tariffs on file with the Commission. The Order acknowledges that on the effective date of the CCL (October 1, 1999, or December 31, 2000), Citation was a retail customer of Illinois Power. Under the explicit language of 220 ILCS 5/16-102, Citation was a “retail customer” thereunder receiving and eligible to receive tariffed delivery services from IP (Order @ 73-74). Accordingly, under the express terms of the CCL, Citation has a statutory right to choose an Alternative Retail Electric Supplier (“ARES”) for the supply of electricity to Citation’s Salem Oil Field.

13. 220 ILCS 5/16-102 defines “retail customer” as follows:

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

Sec. 16-102 defines “service area” as:

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

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

15. Because Citation was lawfully obtaining electric power from Illinois Power, an electric utility, on the effective date of the CCL, the CCL created a statutory property right for Citation to continue to choose its electric supplier that the Commission was not authorized to impair. Citation has a valid statutory right and property interest to choose its electric supplier (220 ILCS 5/16-104 and 5/16-101(A)), and the Commission is not authorized to curtail that right. A legitimate claim of entitlement may arise from a statute. *Akmakjian v. Dept. of Prof. Reg.*, 287 Ill.App.3d 894, 896 (1997). See, *Mathews v. Eldridge*, 424 U.S. 319 (1976) (continued receipt of social security disability benefits is a statutorily created property interest protected by the Fifth Amendment).

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

17. Since Citation was taking "tariffed services" (as that term is defined in 220 ILCS 5/16-102) from Ameren on the effective date of the CCL and Ameren was an electric utility within the meaning of 220 ILCS 5/16-102, Citation had a statutory right within the meaning of Sec. 16-102 to choose its electric supplier, and the Commission is not authorized to abolish that statutory right via the SAA.

18. At the time of the adoption of the ESA, the "service" referred to involved only bundled service, and the customer had no right to choose its electric supplier. That changed with

the passage of the CCL, which gives the consumer the right to purchase electricity from an ARES, while receiving delivery service from Ameren. The legislature has strongly expressed a competitive policy for electricity under the CCL, and Citation qualified to purchase from an ARES on the effective date of the CCL.

19. On January 19, 2013, after the close of the hearings, Citation filed a Motion to Admit Late Filed Exhibit. Attached to this Motion was Citation's contract for electric supply from January 1, 2013, to December 31, 2015. No party objected to the Motion and the Commission's Order does not rule on that Motion despite the ordering paragraph that generally states that unresolved motions are to be disposed of in a manner consistent with the conclusions in the order. Attached to Citation's Motion was Citation's contract with an electric supplier, Ameren Energy Marketing Company ("AEM"), for the period from January 1, 2013, through December 31, 2015. It was error for the Commission to fail to grant that motion and admit the evidence.

20. Citation also moved in its Petition for Rehearing to introduce evidence that was not available during the hearing, *i.e.*, its current contract with an electric supplier, Illinois Power Marketing Company, which obligates Citation to purchase electricity from January 1, 2016, to January 2020, together with the First Amendment to that agreement. That evidence demonstrates that Citation is currently bound under the contract and that Citation is exercising its statutory right to choose an ARES and it was error for the Commission to refuse to admit that evidence. A rehearing should have been granted to allow Citation to present copies of its contracts for electric supply for the period from January 1, 2016, to January 2020, to demonstrate that Citation has continued to choose its electric supplier for the Salem Oil Field Unit.

21. The Order's ruling on Citation's argument under the CCL is moot and entirely unnecessary. Once the Order reached the merits of the case and determined that Ameren is the proper electric supplier under the SAA, and any further discussion or ruling with respect to Citation's argument concerning its rights under the CCL is unnecessary to the disposition of the case. Citation's argument was premised upon a *potential* finding by the Commission that: (1) the Texas substation was not the point of delivery under the SAA; or (2) that Ameren modified the Texas substation within the meaning of Section 1(d) as argued by Tri-County. Once the Commission determined that Ameren is the appropriate electric supplier under the SAA, the Commission need not reach the issue of the applicability of the CCL since the argument was premised upon a *potential* finding by the Commission that Tri-County, and not Ameren, was the proper electric supplier under the SAA. The Order's discussion regarding the Customer Choice Law under Section XII should be reversed because it involves a *hypothetical* statutory interpretation that is not essential to the outcome of the case. Once the Commission decided that Ameren was the appropriate electric supplier to continue supplying electricity to Citation's oil and gas field under the SAA, there was no purpose in rendering a decision in interpreting Citation's rights under the Customer Choice Law *vis a vis* the Electric Supplier Act as applied to the SAA.

22. Citation requests this Court to reverse the following part of the ICC's Order:

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

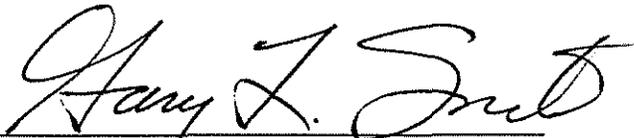
CONCLUSION

WHEREFORE, Citation Oil & Gas Corp., respectfully requests the Court grant the following relief:

- A. Require the Illinois Commerce Commission to file an Answer to this Complaint.
- B. Enter judgment in favor of Citation and against the Illinois Commerce Commission with respect to that portion of the March 9, 2016, Order that finds that Citation's argument that it has a statutory right to choose its electrical supplier under the CCL "notwithstanding the terms of the SAA" is not correct, and that the Court reverse the last sentence of Section XI(D) of the Order.
- C. For such other and further relief as the court deems just.

CITATION OIL & GAS CORP., Plaintiff

By:



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