ILLINOIS OFFICIAL REPORTS

Appellate Court

***Highland Supply Corp. v. Illinois Power Co.*, 2012 IL App (5th) 110014**

Appellate Court Caption	HIGHLAND SUPPLY CORPORATION, an Illinois Corporation, Plaintiff-Appellant, v. ILLINOIS POWER COMPANY, d/b/a AmerenIP, an Illinois Corporation, Defendant-Appellee.
District & No.	Fifth District Docket No. 5-11-0014
Filed	August 9, 2012
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	Plaintiff business had the right under the Public Utilities Act to change its "delivery service" from defendant electric utility to a utility owned and operated by the city in which some of plaintiff's facilities were located, since any claim defendant utility might have had to a legislatively approved monopoly on delivery service within its service area with respect to plaintiff's facilities was surrendered under the terms and conditions of the negotiated contracts between the parties.
Decision Under Review	Appeal from the Circuit Court of Madison County, No. 09-MR-421; the Hon. Clarence W. Harrison II, Judge, presiding.
Judgment	Reversed; cause remanded with directions.

Counsel on Appeal	Christopher P. Threlkeld, J. William Lucco, Joseph R. Brown, Jr., and Michael J. Hertz, all of Lucco, Brown, Threlkeld & Dawson, L.L.P., of Edwardsville, for appellant. Jeffrey R. Baron and Scott C. Helmholz, both of Bailey & Glasser, LLP, of Springfield, for appellee.
Panel	JUSTICE STEWART delivered the judgment of the court, with opinion. Justices Spomer and Wexstten concurred in the judgment and opinion.

OPINION

¶ 1 The plaintiff, Highland Supply Corporation (Highland Supply), is in the business of manufacturing and marketing decorative packaging. It owns two manufacturing/warehousing facilities in or near the City of Highland, Illinois. The defendant, Illinois Power Company, doing business as AmerenIP (Ameren), is an investor-owned public utility that furnishes electric service to various customers in Illinois. Highland Supply filed a complaint for a declaratory judgment against Ameren pursuant to section 2-701 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-701 (West 2008)), seeking a declaration that it had the right to change its electric service from Ameren to a utility that is owned and operated by the City of Highland, Illinois. Ameren objected to Highland Supply's request to the extent that it sought to change its "delivery service" from Ameren to the municipally owned utility. The circuit court ruled in favor of Ameren and entered a summary judgment in its favor based on the court's construction of the terms of the parties' contracts. Highland Supply filed a timely notice of appeal. For the following reasons, we reverse.

¶ 2 BACKGROUND

¶ 3 The furnishing of electric service involves two distinct elements: (1) the "supply" of electric power, *i.e.*, the electricity itself, and (2) the services necessary for the "delivery" of the electricity or "delivery service," *i.e.*, those services necessary for the transmission and distribution of electricity, including lines, meters, and billing. 17 Ill. L. and Prac. *Electricity & Gas* § 9 (2012). Prior to December 1997, electric utilities in Illinois, in general, enjoyed a legislatively approved monopoly on the furnishing of electric service to customers in their defined service areas.[1] Customers in a utility's defined service area purchased a single

[1]"Several sections of the [Electric Supplier] Act [(220 ILCS 30/1 to 16 (West 1996))] set forth a comprehensive scheme for determining which of two or more contending suppliers is entitled

"bundled" service that included the supply of electricity as well as delivery service. *Strategic Energy, LLC v. Illinois Commerce Comm'n*, 369 Ill. App. 3d 238, 247, 860 N.E.2d 361, 369 (2006).

¶ 4 On August 15, 1995, Highland Supply and Ameren entered into an "Electric Service Contract" that provided that Highland Supply would begin to purchase bundled electric service from Ameren for its two facilities. This contract is not at issue in the present case. Prior to this contract, Highland Supply purchased bundled service from an electric utility owned and operated by the City of Highland, Illinois. At the time of the 1995 agreement, Ameren believed that it had the right to provide electric service to Highland Supply's facilities but also believed that the City of Highland was likely to contest Ameren's right to provide the electric service.[2] The parties' contract included an indemnification agreement whereby Ameren agreed to indemnify Highland Supply and pay for any defense arising out of Highland Supply's discontinuance of electric service from the City of Highland. The record does not establish whether the City of Highland ever objected to or contested Highland Supply's switch to Ameren for its electric service.

¶ 5 Effective December 16, 1997, the legislature enacted the Electric Service Customer Choice and Rate Relief Law of 1997 (Customer Choice Law) (220 ILCS 5/16-101 to 16-130 (West 2010)). The Customer Choice Law was designed to move "the Illinois electric industry from a heavily regulated world toward a competitive marketplace." *Local Union Nos. 15, 51, & 702 v. Illinois Commerce Comm'n*, 331 Ill. App. 3d 607, 608-09, 772 N.E.2d 340, 341 (2002). The Customer Choice Law amended the Public Utilities Act in order to introduce competition with respect to the "supply" portion of electric service. The Customer Choice Law allows for the creation of entities called "alternative retail electric suppliers" (ARES) that are authorized to sell and market electricity to customers. *Illinois Power Co. v. Illinois Commerce Comm'n*, 316 Ill. App. 3d 254, 257, 736 N.E.2d 196, 199 (2000). Eligible retail customers can then purchase "unbundled" service, *i.e.*, electric "supply" from an ARES that is different than the entity providing the customer's delivery service. *Strategic Energy, LLC*, 369 Ill. App. 3d at 247, 860 N.E.2d at 369. Under the statute, customers can select unbundled service from an ARES, or they can continue to purchase bundled service from their local utility. *Id.*

¶ 6 Although the Customer Choice Law introduced competition with respect to the "supply" of electricity, under this new statutory scheme, the local electric utility continues to supply its customers with "delivery service." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 328 Ill. App. 3d 937, 939, 767 N.E.2d 504, 506 (2002). "Because facilities that transmit and distribute electricity are not easily replicated, the Customer Choice Law

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to serve a given customer or location." *Rural Electric Convenience Cooperative Co. v. Illinois Commerce Comm'n*, 75 Ill. 2d 142, 146, 387 N.E.2d 670, 672 (1979).

[2]Approximately 11 months after Highland Supply switched its electric service to Ameren, the legislature amended section 11-117-6 of the Illinois Municipal Code (65 ILCS 5/11-117-6(b) (West 1996)) to define the service boundaries between municipally operated utility companies and investor-owned utility companies.

provides that the existing utility companies will continue to control the transmission and distribution of electricity in their service areas, even after the introduction of competition to the market." *Illinois Power Co.*, 316 Ill. App. 3d at 257, 736 N.E.2d at 200.

¶ 7 In the present case, as noted above, prior to the enactment of the Customer Choice Law, Highland Supply purchased bundled service from Ameren for its two manufacturing/warehousing facilities pursuant to the August 15, 1995, Electric Service Contract. However, on December 17, 1997, one day after the enactment of the Customer Choice Law, Highland Supply and Ameren entered into two new contracts for bundled electric service for the two facilities. These two new contracts are at the heart of the current controversy between the parties. Pursuant to the terms of these contracts, Ameren agreed to provide electric energy to Highland Supply's facilities, and Highland Supply agreed to purchase its electric energy needs for its two facilities exclusively from Ameren during the terms of the contracts. Ameren agreed to furnish both the supply of electricity and the services necessary for delivery of the electricity.

¶ 8 The contracts provided Highland Supply with electric service at a rate discount that was unavailable to other customers under Ameren's tariff.[3] Each of the contracts included a recital that Highland Supply "would not have selected [Ameren] as electric supplier in the absence of this agreement." The discounted rates offered to Highland Supply in the contracts were authorized by the Illinois Commerce Commission by a separate "Electric Contract Service" tariff (ECS tariff) that allowed Ameren to provide the discounted rate to only a limited number of nonresidential customers and for only a limited period of time. The ECS tariff provided that the term of any contract under the tariff "shall be provided in the contract, but shall in no event exceed 5 years, except where service to Customer requires Utility to expend more than $1 million in transmission or distribution facilities. If such facilities are required, the term of the contract shall not exceed seven (7) years." The tariff limited Ameren to only three contracts in effect under this discounted rate at any one time.

¶ 9 Highland Supply agreed that, during the contracts' terms, Ameren would "be the sole source of supply of electricity to [Highland Supply's facilities]." The contracts authorized Ameren to select the supply lines which would service the facilities and required Highland Supply to make space available for Ameren's transformers and meters that were necessary "to the delivery of service" to the facilities. In addition, under the contracts' terms, Ameren was to provide and maintain one "Point of Delivery" at each facility at which electric energy would be supplied and a "Metering Point" at each facility at which electric demand and energy was to be measured.

¶ 10 The contracts provided that their terms began on their effective date and ran for a period

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[3] A tariff is a public document setting forth services being offered, the rates and charges with respect to services, and the governing rules, regulations, and practices relating to those services. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 55, 809 N.E.2d 1248, 1263 (2004). Section 9-102 of the Public Utilities Act requires public utilities such as Ameren to file tariffs with the Illinois Commerce Commission. 220 ILCS 5/9-102 (West 2010). "A tariff is usually drafted by the regulated utility, but when duly filed with the Commission, it binds both the utility and the customer and governs their relationship." *Adams*, 211 Ill. 2d at 55, 809 N.E.2d at 1263.

of three years thereafter. Accordingly, the terms of the contracts expired on December 31, 2000.[4] The current dispute between Highland Supply and Ameren centers around the meaning of the following clause contained in each contract:

> "This Agreement shall terminate, and this Electric Service Contract shall become null and void, without notice by either party at the end of the third year following the Effective Date ('Expiration of Contract Term'). *Thereafter, [Highland Supply] may take electric service from any source, or may take electric service under any of [Ameren's] generally available service classifications for which [Highland Supply] qualifies by virtue of its load and usage characteristics.*" (Emphasis added.)

¶ 11 The record on appeal includes a December 16, 1997, correspondence from Highland Supply's president to the Illinois Commerce Commission (Commerce Commission or Commission) requesting approval of the "special contract" between Highland Supply and Ameren. The record, however, does not indicate whether the Commerce Commission approved the specific terms of the contracts. The ECS tariff required the contracts to be submitted to the Commerce Commission "for informational purposes." It also provided for submission of the contracts to the Commerce Commission's staff for review no less than 10 days before submitting the contract to the Commission. The record includes a transmittal letter dated December 31, 1997, from Ameren to the Commerce Commission for the filing of the contracts "for informational purposes pursuant to the provisions of Rate ECS-Electric Contract Service."

¶ 12 After entering into the contracts, Highland Supply received electric service from Ameren pursuant to the rate provided in the ECS tariff until the expiration of the contracts on December 31, 2000. The record does not reflect whether any discussions or negotiations took place between Highland Supply and Ameren leading up to the expiration of the contracts. In addition, Highland Supply did not notify Ameren that it intended to take electric service from a different source prior to the expiration of the contracts. After December 31, 2000, Ameren continued to furnish bundled service to Highland Supply's two facilities. However, Ameren furnished the bundled service at the rates generally available to all customers of Highland Supply's size as set forth in Ameren's tariff, Service Classification 19, not at the discounted rate provided in the ECS tariff. An affidavit attached to Ameren's motion for a summary judgment states that Highland Supply's electric bills after December 31, 2000, reflected that it was receiving "power supply and delivery services pursuant to tariff, Service Classification 19."

¶ 13 Highland Supply continued to receive and pay for bundled electric service from Ameren pursuant to tariff, Service Classification 19, until November 2008. On November 3, 2008,

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[4]The contracts defined the "Effective Date" as not "earlier than (1) the date of submission of [the agreements] to the Illinois Commerce Commission; (2) 45 days after [the agreements are] filed with the Illinois Commerce Commission; or (3) the effective date specified in an order of the Illinois Commerce Commission approving [the agreements]." According to Ameren, the effective date of the contracts came to be December 31, 1997, *i.e.*, the date Ameren submitted the contracts to the Illinois Commerce Commission.

Highland Supply executed an "Electric Service Contract" with the City of Highland, Illinois.[5] On July 8, 2009, Highland Supply filed a complaint seeking a declaratory judgment. The complaint alleged that pursuant to its contracts with Ameren, Highland Supply had the right to "take electric service from any source" after the expiration of the contracts, but that "Ameren has alleged that Highland [Supply] does not have the right under the contract to take electric service from any source except Ameren." Highland Supply's complaint defined the controversy as follows:

> "Actual controversies thus exist between Highland Supply and Ameren over: (a) [t]he meaning of [the December 17, 1997, contracts]; (b) [w]hether Ameren can now interfere with Highland Supply's right to, 'take electric service from any source'; (c) [w]hether Ameren can now interfere in the contractual relationship between Highland Supply and the City of Highland."

¶ 14 Highland Supply requested the circuit court to enter a declaratory judgment finding that it had the right to purchase electric service from any source and enjoining Ameren from interfering with Highland Supply's right to take electricity from any source.

¶ 15 Both parties moved for a summary judgment.

¶ 16 In support of its motion for a summary judgment, Ameren maintained that, after the effective date of the Customer Choice Law, customers who elected to take bundled service from investor-owned utilities (such as Ameren) also became subject to the terms of the Public Utilities Act. The Customer Choice Law contained within the Public Utilities Act, Ameren continued, allows customers of investor-owned utilities a choice with respect to the "supply" of their electricity, but preserves an investor-owned utility's monopoly on the "delivery" of electric service to customers in its service area.

¶ 17 Therefore, Ameren argued that after the contracts expired, Highland Supply was free to purchase its electrical "supply" from a competing ARES just as any other electric customer; however, Ameren was entitled to maintain its monopoly on delivery service to Highland Supply's facilities that are located in its service area. It argued that the contract language that allowed Highland Supply to "take electric service from any source" referred only to the supply of the electricity, not to delivery service. Such an interpretation, Ameren insisted, is consistent with the Customer Choice Law.

¶ 18 Alternatively, Ameren argued that if the contracts granted Highland Supply a right to change delivery service at the end of the expiration of the contracts, this right was a special one not available to other customers of an investor-owned utility. Accordingly, Ameren argued that, at most, the contracts granted Highland Supply this special one-time choice option and that Highland Supply was required to exercise the option immediately at the end of the three-year terms of the contracts. Under this construction of the contracts, Highland

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[5]Highland Supply alleged in its complaint that its "Electric Service Contract" with the City of Highland was attached to the complaint as "Exhibit C." However, the complaint in the record does not include an "Exhibit C," and the Electric Service Contract with the City of Highland is not otherwise contained anywhere in the record. Therefore, we do not know any of the terms of this contract.

Supply had a one-time option to either purchase electric service "from any other source" or, alternatively, purchase bundled service from Ameren pursuant to its tariff. Ameren concludes that Highland Supply made its election to become an Ameren tariff customer by taking bundled service from Ameren for over seven years pursuant to its Service Classification 19. Ameren concludes that once Highland Supply elected to become a tariff customer, it became the same as any of Ameren's other tariff customers, in that it may choose its supply of electricity from a competing ARES, but it must stay with Ameren for its delivery service.

¶ 19 In its motion for a summary judgment, Highland Supply argued that the clear and unambiguous language of the contracts granted it the right to take electricity from any source after the expiration of the contracts, including the right to take delivery service from any source. Highland Supply further argued that it had no obligation to exercise this contractual right within some limited time frame following the expiration of the contracts because the contracts' use of the word "thereafter" indicated that Highland Supply could switch electric providers at any time after the contracts expired. Highland Supply also noted the nonwaiver clauses in the contracts that provided as follows:

> "No delay on the part of any party in the exercise of any right, power, or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by either of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy."

¶ 20 On December 10, 2010, the circuit court denied Highland Supply's motion for a summary judgment and granted Ameren's motion. The court stated that it based its decision on its interpretation of the language of the contracts. Specifically, the court ruled as follows:

> "[Ameren's] Cross-Motion for Summary Judgment is GRANTED solely on the basis of the Court's limited interpretation of the contract phrase '[t]hereafter, customer may take electric service from any source' as naturally and reasonably creating a single opportunity to choose that arose the next logical time for an election to occur, i.e., upon the expiration of the single three-year contract term; and conversely that phrase did not create an ongoing or unlimited option to make other or additional choices after the agreements had terminated."

¶ 21 Highland Supply appeals the circuit court's judgment granting a summary judgment in favor of Ameren and requests this court to reverse the circuit court's judgment and to remand with directions for the circuit court to enter a summary judgment in its favor.

¶ 22 ANALYSIS

¶ 23 A reviewing court's analysis of a trial court's summary judgment is governed by well-established principles. Summary judgment is proper when the pleadings, depositions, and affidavits demonstrate that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 68-69, 896 N.E.2d 277, 284 (2008). "The court must construe the evidence strictly against the movant and liberally in favor of the opponent." (Internal quotation marks omitted.) *Gatlin v. Ruder*, 137 Ill. 2d 284, 293, 560 N.E.2d 586, 589 (1990). "A trial court may enter summary judgment in actions for declaratory judgment brought pursuant to section

2-701 of the Code (735 ILCS 5/2-701 (West 2006)), where there are no questions of material fact and where the only question for the trial court is one of legal interpretation of the parties' contract." *Bright Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 246, 931 N.E.2d 780, 791 (2010). The review of the grant of summary judgment is *de novo*. *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008).

¶ 24 In the present case, the circuit court's decision was based on its interpretation of the terms of the contracts between Highland Supply and Ameren. Highland Supply maintained that the contracts granted it the right to switch its electric service, including delivery service, from Ameren to any other source. It further maintained that under the contracts' language, there is no time limit with respect to when it may exercise this right. Ameren, however, argued that the contract language does not grant Highland Supply the right to switch delivery service for its two facilities, but only the source of the supply of electricity. Alternatively, Ameren argues that the contracts granted Highland Supply only a one-time option that had to be exercised at the end of the contracts' terms.

¶ 25 We agree with the circuit court that resolution of this issue centers around the interpretation of the parties' contracts. There is no dispute that Highland Supply's facilities are located within Ameren's service area and that Ameren began supplying electric service to the facilities in 1995. Although the Customer Choice Law later introduced competition into Illinois's electric industry, it did so only with respect to the "supply" of electricity, not delivery service. The issue we must decide is whether the parties' contracts granted Highland Supply a right to choose a different electric delivery service and, if so, whether Highland Supply was obligated to exercise the right within a specific time limit after the contracts expired. Resolution of these issues involves principles of contract construction.

¶ 26 In construing a contract, the court's primary focus is to ascertain and give effect to the intent of the parties. *Pielet v. Pielet*, 407 Ill. App. 3d 474, 507, 942 N.E.2d 606, 635 (2010). If no ambiguity exists in a contract, its construction is a question of law. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447, 581 N.E.2d 664, 667 (1991). However, "[w]here a court determines that a contract is ambiguous, its construction is then a question of fact, and parol evidence is admissible to explain and ascertain what the parties intended." *Farm Credit Bank of St. Louis*, 144 Ill. 2d at 447, 581 N.E.2d at 667. An ambiguous contract has language that is susceptible to more than one meaning or is obscure in meaning through indefiniteness of expression. *Wald v. Chicago Shippers Ass'n*, 175 Ill. App. 3d 607, 617, 529 N.E.2d 1138, 1145 (1988). "When a term is susceptible to two different interpretations, the court must follow the interpretation that establishes a rational and probable agreement." *In re Marriage of Hahn*, 324 Ill. App. 3d 44, 47, 754 N.E.2d 461, 463 (2001). The determination of whether a contract is ambiguous is a question of law. *City of Northlake v. Illinois Fraternal Order of Police Labor Council*, 333 Ill. App. 3d 329, 338, 775 N.E.2d 1013, 1021 (2002).

¶ 27 In the present case, neither party argues that the contracts are ambiguous, and the circuit court did not find any ambiguity. In addition, the contracts contain integration clauses. An integration clause in a contract manifests the parties' "intention to protect themselves against misinterpretations which might arise from extrinsic evidence." *Air Safety, Inc. v. Teachers*

Realty Corp., 185 Ill. 2d 457, 464, 706 N.E.2d 882, 885 (1999). We agree with the circuit court that the contracts are not ambiguous and that their construction does not require extrinsic evidence.

¶ 28 Unambiguous contract terms should be given their "plain and ordinary meaning." *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 174, 886 N.E.2d 976, 982 (2008). Where the words of the contract are clear, the contract should be enforced as written. *McLean County Bank v. Brokaw*, 119 Ill. 2d 405, 412, 519 N.E.2d 453, 456 (1988). Therefore, our construction of the contracts will be based on their plain and ordinary language, and we will enforce the contracts as written.

¶ 29 The contracts at issue state that, after their terms expire, Highland Supply "may take electric service from any source, or may take electric service under any of [Ameren's] generally available service classifications for which [Highland Supply] qualifies by virtue of its load and usage characteristics." The circuit court interpreted this contractual language as allowing Highland Supply only "a single opportunity to choose that arose the next logical time for an election to occur, i.e., upon the expiration of the single three-year contract term."

¶ 30 In support of the circuit court's decision, Ameren notes that after the three-year terms expire, the agreements "terminate" and become "null and void." Ameren, therefore, concludes that all of Highland Supply's rights and privileges under the agreements terminated upon expiration of the contracts, including its right to choose a new source for electric service. According to Ameren and the circuit court, Highland Supply was required to exercise its right to choose the moment the contracts expired. We disagree with the circuit court's and Ameren's interpretation of the contract language.

¶ 31 The language of the contracts between Highland Supply and Ameren unquestionably granted Highland Supply the right to make some sort of a selection relevant to electric service after the contracts expired. In addition, the language of the contracts does not allow Highland Supply to make this selection prior to the expiration of the contracts, only afterward. Accordingly, by the express terms of the contracts, Highland Supply's contractual right to make a choice must, by necessity, survive for some period of time *after* the expiration of the contracts. We will not construe the contractual language in a way that provides for Highland Supply's right to ripen and expire at the exact same moment in time. That would be an illogical construction of the language of the clauses, and a court will not place an illogical and ridiculous construction upon the language of a contract. *Omnitrus Merging Corp. v. Illinois Tool Works, Inc.*, 256 Ill. App. 3d 31, 37, 628 N.E.2d 1165, 1170 (1993). Interpreting the contract to allow Highland Supply only a fleeting moment to choose, at the precise moment that the contracts expired, is not a reasonable construction of the plain language of the agreements.

¶ 32 Highland Supply's right to make a selection, therefore, begins after the expiration of the contracts' terms. That is provided in the clear and unambiguous language of the contracts. In addition, the plain language of the contracts does not establish any time limitation on Highland Supply's right to make its selection after the contracts expired. A time limitation is not found within the plain and unambiguous language of the contract, and we are compelled to enforce unambiguous contractual language as written. Where the terms of a

contract are clear and unambiguous, the contract must be enforced as written, "and no court can rewrite a contract to provide a better bargain to suit one of the parties." *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 112, 618 N.E.2d 418, 423 (1993).

¶ 33 Accordingly, we disagree with the circuit court's decision and hold that the contracts place no time limit on Highland Supply's right to choose electric service "from any other source" after the expiration of the contracts. Had the parties intended to impose a time limit on Highland Supply's right to choose, they could have incorporated a limitation into the plain language of the agreements. We will not amend the terms of the contracts to add such a limitation when the parties themselves chose not to do so. In addition, such a construction is inconsistent with the nonwaiver clauses the parties included in their contracts that provided, "No delay on the part of any party in the exercise of any right, power, or remedy shall operate as a waiver thereof ***."

¶ 34 Ameren argues that Highland Supply made its choice by taking electric service pursuant to its tariff, Service Classification 19, after the contracts expired. However, this assertion is essentially the same as asserting that Highland Supply's failure to exercise its right to choose resulted in a waiver of the right to choose. Ameren has not provided us with any authority to establish that the nonwaiver clause is unenforceable.

¶ 35 Ameren argues, alternatively, that Highland Supply's contractual right to "take electric service from any source" after December 31, 2000, refers only to the right to take any "supply" of electricity from a competing ARES, consistent with the Customer Choice Law, not the right to choose "delivery service" from any source. Ameren states in its brief that it has no objection to Highland Supply taking its power "supply" from another authorized source, but objects to Highland Supply disconnecting from Ameren's delivery service.

¶ 36 However, the contract language defined Highland Supply's right to choose in terms of "electric service," not in terms of "supply," and there is no language in the contracts that indicates that "electric service" excludes "delivery service." Both contracts are titled "Electric Service Contract," and the terms of the contracts provide for both the supply of electricity and the delivery of electricity. This clearly indicates that the term "electric service" includes both the supply of electricity and the delivery service.

¶ 37 In addition, the ECS tariff that authorized the contracts also utilizes the term "service" in a context that includes the supply of electricity as well as the delivery of electricity. We agree with Highland Supply that the plain and ordinary meaning of "electric service" includes the delivery of electricity, as there is no electric "service" without the delivery of electricity. The contracts grant Highland Supply the right to take electric service from any source, and we construe the term "electric service" to include delivery service.

¶ 38 Ameren also argues that under the Customer Choice Law and under its tariff, Highland Supply could never have the authority to change its delivery service under any scenario. We disagree.

¶ 39 The ECS tariff that authorized the contracts states that the contracts must specify "the nature of the service to be supplied, the prices to be paid, and *such other Terms and Conditions of Service as are mutually agreeable*." (Emphasis added.) In addition, section 9-102.1(a) of the Public Utilities Act (220 ILCS 5/9-102.1(a) (West 1996)) provides that the

Commission "may approve one or more rate schedules filed by a public utility that enable the public utility to provide service to customers under contracts that are treated as proprietary and confidential by the Commission notwithstanding the filing thereof." The statute requires that the contracts be "*on such terms and for such rates or charges as the public utility and the customer agree upon*, without regard to any rate schedules the public utility may have filed with the Commission." (Emphasis added.) 220 ILCS 5/9-102.1(a) (West 1996). The contracts themselves provide that they "control if there is any conflict between the provisions hereof and the provisions of any applicable Service Classification and/or Rider, Standard Terms and Conditions, or Rules, Regulations and Conditions Applying to Electric Service."

¶ 40 Therefore, the Public Utilities Act and the ECS tariff authorized Ameren and Highland Supply to negotiate the specific terms and conditions of their contractual relationship. By granting the parties the right to negotiate the terms and conditions of their contracts, the Public Utilities Act and the ECS tariff allowed the parties to negotiate contract terms that included Highland Supply's right to take delivery service from any other source when the contracts expired. Any claim Ameren would have had to a legislatively approved monopoly on delivery service for customers in its service area was surrendered with respect to Highland Supply's two facilities under the negotiated terms and conditions of the contracts. Nothing prevented Ameren from agreeing to these terms in its contracts with Highland Supply.

¶ 41 Accordingly, we believe that the circuit court erred in granting a summary judgment in favor of Ameren and in denying Highland Supply's motion for a summary judgment. We believe that the contracts clearly and unambiguously grant Highland Supply the right to choose its provider of electric service, including delivery service, after the contracts terminated and that the contracts do not place a time limitation on when it has to exercise this contractual right. Contrary to the circuit court's ruling, we do not believe that the courts should impose a time limitation when the parties have not agreed to a time limitation within the plain and ordinary meaning of the terms of their contracts. The circuit court should have granted Highland Supply's motion for a summary judgment and denied Ameren's motion. There is no genuine issue of material fact regarding Highland Supply's right to take electric service from any source of its choice, and a summary judgment should have been entered in its favor.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the circuit court's judgment in favor of Ameren is reversed. We remand this case to the circuit court with directions that it enter a summary judgment in favor of Highland Supply.

¶ 44 Reversed; cause remanded with directions.