

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Company
d/b/a AmerenIP

⋮
⋮
⋮
⋮
⋮
⋮

Reconciliation of revenues collected
under gas adjustment charges with actual
costs prudently incurred.

Docket No. 07-0572

**ILLINOIS POWER COMPANY D/B/A AMERENIP'S BRIEF IN REPLY
TO THE INITIAL BRIEF OF
THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Edward C. Fitzhenry
Managing Associate General Counsel
Matthew Tomc
Associate General Counsel
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, MO 63166
Telephone: (314) 554-3533
Facsimile: (314) 554-4014

Christopher W. Flynn
Albert D. Sturtevant
Mark W. DeMonte
JONES DAY
77 West Wacker Drive
Chicago, IL 60601-1692
Telephone: (312) 782-3939
Facsimile: (312) 782-8585

Dated: December 3, 2009

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	UNCONTESTED ISSUES	2
III.	CONTESTED ISSUES	3
A.	INJECTION METERING	4
1.	The evidence indisputably establishes that imprecise older injection meters caused an inventory discrepancy by over-recording injection volumes.....	4
2.	AmerenIP identified and corrected the injection metering issue prudently	5
3.	In fact, Staff’s own proposal embodies imprudence.....	7
4.	The Commission should approve the Company’s adjustment for the injection meter discrepancy	7
B.	VALVE LEAK	8
1.	The evidence also indisputably establishes that a valve leak caused gas to be delivered to AmerenIP customers unrecorded and free of charge.....	8
2.	AmerenIP acted prudently in maintaining the valve in question, and did not cause imprudent delay in detecting and addressing the valve leak	11
3.	Staff’s attempts at pinning blame on Hillsboro’s history are speculative and ineffective.....	13
C.	PART 500	14
1.	Staff’s attempt to shoehorn a storage meter prudence issue into the Commission’s rules for customer meter handling is improper and unavailing.....	15
D.	AMERENIP’S RECONCILIATION IS CONSISTENT WITH RELATED COMMISSION DECISIONS IN PRIOR PROCEEDINGS.....	16
1.	The alleged imprudence and rate base issues presented in AmerenIP’s last rate cases are distinguishable from the matters before the Commission in the present docket, but are not unrelated	16
2.	Contrary to the point made in Staff’s Initial Brief, Staff’s proposed disallowance is arbitrary and capricious, given the disallowance ordered in AmerenIP’s last rate case	17
IV.	CONCLUSION.....	19

I. INTRODUCTION

In 2007, AmerenIP exceeded industry standards and requirements by installing new ultrasonic meters at its Hillsboro storage field. The new meters revealed two discrepancies in the Hillsboro system: an inaccurate set of injection meters and a valve leak. As fully explained in AmerenIP's Initial Brief, these two discrepancies represent a value of \$4,840,196 that AmerenIP should be allowed to recover. Despite the record evidence establishing that AmerenIP properly adjusted its 2007 reconciliation period to include recovery of that amount, Staff objects and asks the Commission to reverse the AmerenIP accounting entries for the two contested adjustments. The Commission should accept AmerenIP's proposed adjustment, however, because it has proven by a preponderance of the evidence its prudence in dealing with both discrepancies; Staff's arguments to the contrary should be rejected.

For the injection discrepancy, AmerenIP provided evidence demonstrating that the installation of new meters in 2007 uncovered an inaccuracy in the old meters, which had over-reported the injection of gas into the Hillsboro storage field in 2004 and 2005 by 1.9%. Despite admitting that the installation of the new meters not only proved the precise amount of the old meters' inaccuracy but also immediately corrected that inaccuracy, Staff nevertheless contends that certain discretionary choices regarding the old meters were imprudent, and proposes what would be a useless investigation into the cause of their inaccuracy. Staff does not provide any evidence to support its opinions, and seeks to apply a prudence standard that improperly relies on hindsight and substituted judgment. The Commission should thus approve AmerenIP's proposed adjustment for the amount of \$1,461,264, the value of unrecovered gas resulting from the injection meter discrepancy.

The Commission should also approve AmerenIP's proposed adjustment for \$3,378,932 – the value of the gas it delivered to customers free of charge as the result of a valve leak – because

Staff fails to show any imprudence on AmerenIP's part in maintaining the valve, detecting the leak, or gauging the amount of gas that leaked. The record proves that AmerenIP prudently followed the operation and maintenance plan for the valve, and detected a leak hidden in such a way that only the installation of above-standard ultrasonic meters could find it. Upon discovery of the valve leak in 2007, AmerenIP logically, and consistent with Illinois law, applied the equal division rule used in similar situations to extrapolate the amount of the leak for one-half of the valve's lifespan. Staff fails to rebut AmerenIP's arguments in favor of its extrapolation. Instead Staff introduces a 6-month rule – never applied to proceedings like this one and, on its face, applicable only to retail customer meter handling – in an attempt to force a timeframe limitation onto this storage situation, ignoring evidence that the leak was older than 6 months. AmerenIP's calculation of the leaked gas is prudent, as were AmerenIP's actions in maintaining the valve and detecting the leak. The Commission should thus approve AmerenIP's proposed adjustment of \$3,378,932 for the value of the gas delivered to customers due to the valve leak, in addition to \$1,461,264 from the injection meter discrepancy, a total of \$4,840,196.

II. UNCONTESTED ISSUES

Certain issues remain uncontested. First, Staff does not contest the prudence of AmerenIP's gas procurement activities for 2007. (AmerenIP Init. Br. at 5.) Second, the bulk of the incurred gas costs for 2007 is not in dispute – of the \$369,115,655 in gas costs for 2007, Staff has challenged \$4,048,380, which amount is addressed below in Sections III and IV. (AmerenIP Init. Br. at 5.) Third, the Company and Staff agree that if the Commission were to adjust AmerenIP's books for any part of this disputed amount, the correct accounting entries would be a credit to customers and a debit to cushion and inventory accounts. (AmerenIP Init. Br. at 6-7.)

Finally, Staff does not contest AmerenIP's adjustment or estimation methodology for the gas that flowed past an incorrectly installed orifice meter and was delivered, unrecorded, to AmerenIP customers. The uncontested record evidence establishes that AmerenIP installed new ultrasonic meters at Hillsboro, compared readings with the old orifice meters, and detected an 11% discrepancy. (AmerenIP Init. Br. at 6; Staff. Init. Br. at 4.) AmerenIP then estimated the timing of the incorrect installation to be October 2006, and the 11% discrepancy was calculated to be 203,804 MCF of gas, worth \$1,179,208. (AmerenIP Init. Br. at 6.) Staff agrees with this calculation and accepts AmerenIP's proposed adjustment for this unrecorded gas delivery. (Staff Init. Br. at 5-7.) In light of the above, the Commission should enter an order approving the Company's reconciliation statement on at least these uncontested issues.

III. CONTESTED ISSUES

What Staff is contesting is the unrecorded flow of gas via two other flaws in the AmerenIP system – a discrepancy in injection metering of 1.9%, and a leak in a deteriorated valve seat. These two flaws resulted in 1,158,713 MCF of gas, worth \$4,840,196, being either recorded on the books but not actually being injected (252,552 MCF, \$1,461,264), or delivered to customers free of charge via the gas leak (906,161 MCF, \$3,378,932). (AmerenIP Init. Br. at 7.) Staff disputes the entirety of the injection metering discrepancy, and all but the winter 2006-2007 portion of the valve leak – the disputed total being \$4,048,380. (Staff Init. Br. at 8.) Staff's arguments against recovery of these two items, however, relies on unacceptable *ex post*, circular reasoning without support in the record, the law, Commission precedent, or industry standards. Staff abandons the Commission's directions regarding prudence review, and settles on a patently unfair – and incorrect – result. Staff's positions should be rejected; the Commission should approve the Company's reconciliation statement.

A. INJECTION METERING

1. **The evidence indisputably establishes that imprecise older injection meters caused an inventory discrepancy by over-recording injection volumes.**

Staff has failed to reasonably dispute AmerenIP's evidence that an imprecision in older injection meters at the Hillsboro storage field caused injection volumes to be overstated during the 2005 and 2006 seasons. AmerenIP installed the original meters in 2003 and 2004. (Staff Init. Br. at 11.) New, more accurate meters were installed in 2007, and AmerenIP stopped using readings from the old meters to determine injection volumes. (AmerenIP Init. Br. at 24; ICC Staff Ex. 2.0 (Lounsberry Dir.) at 11.) However, since AmerenIP did not uninstall the old meters, it was able compare readings from the old meters with readings from the new meters. (AmerenIP Init. Br. at 24.) As Staff agrees, this analysis showed that the old meters were off by 1.9% – the old meters were recording a 1.9% higher injection volume than was actually being pumped into the storage field. (AmerenIP Init. Br. at 24; Staff Init. Br. at 10.)

AmerenIP applied this undisputed 1.9% metering discrepancy to the actual metering data from the 2005 and 2006 injection periods – two periods during which, as Staff agrees (ICC Staff Ex. 2.0 (Lounsberry Dir.) at 11), the older meters were used to measure injection volumes. (AmerenIP Init. Br. at 24.) AmerenIP's resulting calculation showed an estimated discrepancy of 252.552 MCF of gas over that span. (AmerenIP Init. Br. at 24.) The value of this amount of gas is \$1,461,264. (AmerenIP Init. Br. at 24.) Staff does not dispute any part or aspect of this methodology and calculation. Staff provides no record evidence weighing against AmerenIP's investigation, methodology, or conclusion. Instead, Staff objects only to AmerenIP's request for an inventory adjustment reflecting this discrepancy. (Staff Init. Br. at 10.)

2. AmerenIP identified and corrected the injection metering issue prudently.

AmerenIP installed the new meters in January 2007 (AmerenIP Init. Br. at 24, 30), and detected the discrepancy in July of the same year. (AmerenIP Exhibit 5.4 at 3.) AmerenIP promptly recorded the corresponding inventory adjustment. (AmerenIP Exhibit 5.4 at 3.) The discrepancy did not necessitate any repair because, as Staff itself notes, once the new meters were installed in 2007, the old meters were no longer used to measure and record injections into Hillsboro. (ICC Staff Ex. 2.0 (Lounsberry Dir.) at 11.) Thus, the discrepancy was automatically corrected once the more accurate meters were installed. Staff does not dispute *any* of the above facts and therefore cannot credibly argue that AmerenIP was imprudent in detecting and rectifying the injection metering issue.

Rather, Staff raises a host of red herrings. Staff's claim that the older injection meters were installed "in the wrong location" (Staff Init. Br. at 12) is unsupported by the record. The evidence shows that AmerenIP predecessor Illinois Power ("IP") selected strategically advantageous locations for these meters. (AmerenIP Init. Br. at 26.) The chosen locations allowed IP to further test certain parts of its system. (AmerenIP Init. Br. at 26.) The locations also minimized installation cost. (AmerenIP Init. Br. at 26.) The location leveraged existing gas filtering functionality, and allowed operators to control each compressor by flow. (AmerenIP Init. Br. at 26.) Staff's argument relies on what is basically an assumption – that choice of location *may* be improper, and therefore may signify imprudence – but provides no evidence to support this assumption, or to dispute or contradict the facts regarding strategic choice of location stated above.

Moreover, Staff's claim that the older injection meters were "not installed properly" (Staff Init. Br. at 12) is equally unsupported by the record. The record shows that the older

meters were installed according to the requirements provided by the American Gas Association (“AGA”). (AmerenIP Init. Br. at 27.) The meter was designed to minimize flow disturbances. (AmerenIP Init. Br. at 27.) The corresponding meter tube assemblies were also designed and assembled per guidelines that are consistent with AGA recommendations. (AmerenIP Init. Br. at 27.) The meter manufacturer even performed initial tests on the meters to confirm that the instruments had been installed and configured correctly, and were operating as required. (AmerenIP Init. Br. at 27.) A review of Staff’s Initial Brief exposes a lack of evidence supporting the claim of improper installation; Staff’s assumption that AmerenIP *may* have acted imprudently in installing the meters is without merit.

Staff’s third summary claim – that the older injection meters were not maintained prudently – is similarly unsupported. As the record establishes, the older meters have multiple built-in self-diagnosis systems that detect problems and alert the user when attention is required. (AmerenIP Init. Br. at 27.) The storage field control system monitored valve measurements regularly, and records show that no problems were detected, that the meters were working correctly, and that the meters required no maintenance throughout the 2005-2006 period. (AmerenIP Init. Br. at 27.) Staff can point to *no* contradictory evidence to bolster their assumption that the meters failed because some specific maintenance activity was not performed.

Finally, Staff’s criticism of AmerenIP’s gas loss estimation relating to the meter discrepancy falls flat. Staff recognizes that newer meters help improve metering accuracy, and that AmerenIP implemented the new measurement standard once the new meters were installed. (Staff Init. Br. at 11-12.) The record shows that the new ultrasonic meters installed in 2007 are the most accurate meters yet: the meters are calibrated to be more accurate than the predecessors, have a built-in real-time self-checking function to improve accuracy, and are also installed in a manner designed to enhance accuracy by simplifying the process and making the calculation

more direct. (AmerenIP Init. Br. at 25.) Staff even agrees with the measured improvement in precision (1.9%) that the new meters provide. (Staff Init. Br. at 10.) Thus, Staff’s conclusion that AmerenIP “failed to demonstrate that its gas estimate was reasonable” (Staff Init. Br. at 13) is patently unsupported.

3. In fact, Staff’s own proposal embodies imprudence.

Staff’s own recommendation is the imprudent choice. Staff insists on an investigation into the reasons for the slight imprecision in the older meters. However, Staff skips over the fact that regardless of the *cause* of the imprecision, its existence has been confirmed, and further, the imprecision has been eliminated. To expend additional resources to satisfy this idle curiosity regarding the cause of the imprecision cannot be justified as the course of action a reasonable person would undertake. Staff’s recommended expense would be unnecessary, and without measurable benefit to any party – indeed, it would cause the Company to expend precious resources determining the root of an issue that has been resolved.

4. The Commission should approve the Company’s adjustment for the injection meter discrepancy.

In summary, AmerenIP has presented uncontested evidence as to the prudence of discovering the injection meter discrepancy, as well as estimating the gas volumes associated with it. Staff’s objections are based not on the evidence, but on assumptions and beliefs that the Company should have done something else – and these are not proper reasons to make adjustments to AmerenIP’s reconciliation statement. The Commission should approve AmerenIP’s adjustment for the gas volumes ultimately consumed by AmerenIP ratepayers due to the injection meter discrepancy.

B. VALVE LEAK

1. The evidence also indisputably establishes that a valve leak caused gas to be delivered to AmerenIP customers unrecorded and free of charge.

Staff has failed to produce a *shred* of evidence to counter AmerenIP's position – and showing – that a leak in a deteriorated valve seat caused unrecorded delivery of gas to its customers. As demonstrated by the record, AmerenIP's 2007 side-by-side tests of its old and new withdrawal meters revealed circumstantial evidence of a low-volume leak in the metering system. (AmerenIP Init. Br. at 9, 12.) AmerenIP's analysis showed that one set of older meters was under-recording the amount of gas being withdrawn from the storage field. (AmerenIP Init. Br. at 8-9.) This gas was thus being delivered to customers without first registering on these older meters. (AmerenIP Init. Br. at 8.) AmerenIP determined that the resulting metering discrepancy ranged from 2.75% to 6.25%, based on flow rate through that particular "run" or pipe route. (AmerenIP Ex. 5.4 at 3.) Staff agrees with the existence of this metering discrepancy. (Staff Init. Br. at 7.)

AmerenIP investigated, discovering a deteriorated seat valve that was allowing gas to flow around these particular withdrawal meters. (AmerenIP Init. Br. at 8.) The valve had been rebuilt in 1993; physical evidence of pitting and scarring established that the deterioration was not recent, but had likely existed for several years. (AmerenIP Init. Br. at 20; AmerenIP Ex. 9.0 (Underwood Surreb.) at 10-11, 14.) Extrapolating the measured rates of loss against the recorded gas flows through this run, AmerenIP calculated that from 2000 to 2007 – or over the second half of the valve's lifespan – 906,161 MCF of gas had been delivered to AmerenIP customers (but not recorded). (AmerenIP Init. Br. at 8.) The value of this gas is \$3,378,932 – the amount AmerenIP is proposing to recover. (AmerenIP Init. Br. at 8.) Staff concedes the correctness of AmerenIP's extrapolation for winter 2006-2007 (Staff Init. Br. at 7-8), and agrees

with AmerenIP's recovery of \$802,229 for that period, but perplexingly rejects the same extrapolation for prior periods. (Staff Init. Br. at 14.) Staff's arguments against the use of this consistent extrapolation do not pass muster.

First, Staff's attempt to shoehorn this storage meter issue into the Commission's 6-month framework for *customer* meter handling is improper and unavailing. While problems with this proposal are discussed at length below, in Section C, Ameren's proposed equal division rule, which extends recovery to only half the lifespan of the meter, is logical and industry-accepted. This rule is commonly applied in cases of uncertainty such as we have here, where the precise start date of the leak is not known. (AmerenIP Init. Br. at 19.) It is consistent with gas-industry precedent for determining meter corrections on interstate pipelines. (AmerenIP Init. Br. at 20.) And its outcome is supported by the evidence, which suggests that the leak had likely been in existence for longer than 6 months. (AmerenIP Init. Br. at 20; AmerenIP Ex. 9.0 (Underwood Surreb.) at 10-11, 14.) In sum, Staff has not meaningfully challenged AmerenIP's showing that \$3,378,932 worth of gas has been delivered unrecorded to customers owing to a valve leak.

Second, contrary to Staff's interpretation (Staff Init. Br. at 18-20), the 2004 Hillsboro Report *does not* account for the metering discrepancies being recovered for here because the inventory adjustment recommended in that report only accounted for metering issues up to the year 2000. (AmerenIP Init. Br. at 30; AmerenIP Ex. 5.0 (Underwood Reb.) at 25-26.) In fact, data for the period 2000-2003 were accepted at face value in that report. (AmerenIP Init. Br. at 30; AmerenIP Ex. 5.0 (Underwood Reb.) at 25-26.) Thus, contrary to Staff's implication, the report did *not* definitively establish gas volumes net of all metering discrepancies for the 2000-2003 period. (AmerenIP Init. Br. at 30; AmerenIP Ex. 5.0 (Underwood Reb.) at 25-26.)

Third, there is no evidence that only a small leak started over an extended period of time, and that that leak "worsened over time" (Staff Init. Br. at 24.) As explained above, the record

supports – and Staff agrees with – the fact that the valve leak existed, that these particular older meters were allowing gas to flow through to customers unrecorded, and that physical evidence of pitting and scarring indicates that the leak had been in existence, at minimum, for an extended period longer than 6 months. (AmerenIP Int. Br. at 20.) What the record does not contain is evidence of variable leak rates over periods of time, or any conclusive support for Staff’s assertion of gradual worsening of the leak.

Fourth, Staff’s argument that identification of additional causes of the metering discrepancy somehow affects the amount of discrepancy is also off the mark. (Staff Init. Br. at 24-25.) Staff illogically asserts that eliminating other potential causes could lead to under- or overstatement of the discrepant amount. (Staff Init. Br. at 25-26.) But, identifying whether there were any additional causes of the withdrawal discrepancy will not, *per se*, alter the *measurement* of that discrepancy. The same holds true for Staff’s argument that AmerenIP should determine that there is some residual discrepancy even when the leaky valve is fully open. (Staff Init. Br. at 25.) Regardless of the cause of the metering discrepancy, the fact is that a certain, measured amount of gas was delivered unrecorded to AmerenIP customers, and the record establishes that the value of this gas, for the 2000-2007 period, is \$3,378,932. Expending additional resources to confirm whether there are other causes of this metering discrepancy does not advance the ball on the issues that require the Commission’s attention, particularly because installation of the new meters has eliminated the possibility of future recurrence of this particular discrepancy.

Fifth, while Staff contends that in “reality . . . all meters have some variance” (Staff Init. Br. at 26), Staff does not offer any evidence of this purported fact. On the other hand, Staff agrees that in theory, two meters placed in series will show no variance whatsoever. (Staff Init. Br. at 26.) And regardless, the Commission has not denied recovery on such a basis – that some amount of variance is natural and therefore unrecoverable – in the past.

Sixth, Illinois law recognizes extrapolation using a temporal snapshot as a valid method of estimation of the impact of metering error. See, e.g., Illinois Power Co. v. Champaign Asphalt Co., 19 Ill. App. 3d 74 (4th Dist. 1974). In Champaign, Illinois Power ‘s meter tests indicated that a faulty meter was registering only 50% of the actual flow of power along Champaign Asphalt’s line. (Id. at 74.) Illinois Power extrapolated that 50% loss back for a period of three years; the appellate court affirmed Illinois Power’s recovery of this extrapolated value. Staff provides little reason to not allow recovery on the basis of the same manner of extrapolation in this case.

2. AmerenIP acted prudently in maintaining the valve in question, and did not cause imprudent delay in detecting and addressing the valve leak.

Despite Staff’s scattered allegations of imprudence vis-à-vis the leaky valve (Staff Init. Br. at 27-38), it remains true that there is no evidence of imprudent acts by AmerenIP with regard to the maintenance of this valve. The record shows that AmerenIP’s operation and maintenance of the valve was in accordance with its operation and maintenance plan. (AmerenIP Ex. 5.0 (Underwood Reb.) at 15.) Further, Staff mistakes the “block and bleed” method that AmerenIP used to confirm the existence of the leak *once* a leak had been suspected (ICC Staff Ex. 2.0 (Lounsberry Dir.) at 36-37) for a regular maintenance technique that should have been used to detect the existence of the leak in the first place. In fact, the manufacturer’s manual recommends this procedure only for situations where the valve ceases operating entirely, not for ongoing maintenance. A third-party expert consultant (Peterson Engineering), upon reviewing the field’s metering practices, also did not recommend the “block and bleed” method for ongoing maintenance. (AmerenIP Init. Br. at 2; AmerenIP Ex. 9.0 (Underwood Surreb.) at 9-10.)

Staff's position regarding maintenance of the valve is improper. Hindsight review allows Staff to point to a possible test which, if performed, might have led to the detection of the valve leak, but such hindsight review is patently impermissible. Commission v. Commonwealth Edison Company, Docket No. 84-0395, (Oct. 7, 1987 Order, p.34). In fact, it is unreasonable to expect AmerenIP to test every part of its system for any possible flaw or malfunction, using every conceivable technique available. Instead, to demonstrate prudence, AmerenIP need only show that it acted as would have a reasonable person under the same circumstances. Illinois Power Co. v. Illinois Commerce Commission, 245 Ill. App. 3d 367, 371 (3d Dist. 1993). Accordingly, AmerenIP's reasonable course of action – adhering to its operating and maintenance procedures, following manufacturers' guidelines in designing, installing, and testing the metering system, complying with third-party experts' recommendations, and using state-of-the-art technology in innovative manner – establishes the prudence of AmerenIP's maintenance of this valve.

Nor is there any evidence to give credence to Staff's allegation (Staff Init. Br. at 27-28) that AmerenIP should have detected this leak sooner. Despite Staff's expectations that the error should have been discovered simply because AmerenIP had conducted prior studies of the Hillsboro field (Staff Init. Br. at 27), the leak was clearly not as obvious as Staff makes it out to be. The record establishes that leak occurred in a hard-to-reach interior portion of a valve, and presented no external manifestations of gas loss. (AmerenIP Init. Br. at 9.) Industry-standard orifice metering did not – and indeed, would not – signal the presence of the leak either. (AmerenIP Init. Br. at 9.) Had AmerenIP not installed above-standard ultrasonic meters in an innovative serial configuration, this leak would not have been readily detectable and AmerenIP would have had no reason to suspect the existence of any leak. (AmerenIP Init. Br. at 9.)

Thus, AmerenIP did not, as Staff asserts, “fail[] to review the operation of its valves” (Staff Init. Br. at 29.) Rather, it is AmerenIP's continued monitoring of its valves – actively, and

in the absence of any indication of a leak – that led to the discovery of this leak. (AmerenIP Init. Br. at 9.) AmerenIP’s new ultrasonic metering cured the metering error and eliminated future discrepancies. (AmerenIP Init. Br. at 9.) Denying Ameren recovery for its cutting-edge diagnostic measures would be counterintuitive.

3. Staff’s attempts at pinning blame on Hillsboro’s history are speculative and ineffective.

Staff’s reliance on “past problems” at the Hillsboro storage field (Staff Init. Br. at 29-38) does not assist in the resolution of any issue in this proceeding and does not even circumstantially suggest imprudence with regard to this particular leaking valve. Staff’s claim that the 1998-2003 seismic surveys and well-stimulation treatments “should have” revealed a low-volume leak in a meter valve (Staff. Init. Br. at 28) is as baffling as it is unsupported. Staff’s contention that references to malfunctioning valves at a Mississippi River Transmission storage field should have caused AmerenIP to realize that Hillsboro had a leaky valve (Staff Init. Br. at 28) is equally baffling. Staff’s repeated pointing at the use of the “block and bleed” method (Staff Init. Br. at 28) remains circular – the method is only used once a leak is suspected, and cannot therefore also be used to generate the suspicion that would trigger its use. Staff correctly points out that AmerenIP has been reviewing deliverability issues at Hillsboro since 1999 (Staff Init. Br. at 29); however, one can only infer a single point from Staff’s own discussion of AmerenIP’s subsequent actions – that AmerenIP has steadily worked to study and improve the condition of the Hillsboro field, culminating in the current innovative and above-standard ultrasonic metering set-up, which is the only way this low-volume leak could have been detected.

Staff’s continued parade of “horribles” remains unpersuasive. Reduction in peak-day capacity at Hillsboro (Staff Init. Br. at 30) does not equal imprudent valve maintenance. Staff’s contention that personnel reduction correlates with storage field “problems” (Staff Init. Br. at 31)

is equally unsupported speculation that cannot be given credence in the abstract. And improved capital expenditures signal efficiency in AmerenIP's operations, not, as Staff suggests (Staff Init. Br. at 32), some sort of passive-reactive stance adopted by AmerenIP.

Contrary to Staff's position, the record shows that AmerenIP identifies system issues in active and timely fashion. Staff incorrectly asserts (Staff Init. Br. at 35) that AmerenIP has not pulled or inspected orifice meters since installation. (AmerenIP Ex. 9.0 (Underwood Surreb.) at 13.) Staff unfairly speculates that AmerenIP "did not place a high priority on accurate measurement" (Staff Init. Br. at 36), where this entire proceeding stems from AmerenIP's vigilant and innovative testing of its measurement apparatus. Staff is incorrect in asserting that AmerenIP did not "conduct a thorough review" of the Hillsboro storage field in 2000 (Staff Init. Br. at 37), because AmerenIP hired an outside consultant to evaluate the field and then addressed the report's findings.

Staff's baffling logic is encapsulated, simply, by the fact that Staff asserts that it has no "current concerns with the manner in which AmerenIP is currently operating its storage fields" (Staff Init. Br. at 29), but does not then credit AmerenIP for using modern techniques to improve its operations by identifying and eliminating issues such as hard-to-detect leaks. Regardless of Staff's inconsistencies, the record remains clear on one point: AmerenIP acted reasonably in installing cutting-edge meters and eliminating a newly-detected leak. Staff's hindsight-based position – without support or reasonable basis – is simply that Ameren could and should have done all of this "sooner." (Staff Init. Br. at 15, 27, 29.) But to not approve AmerenIP's adjustment on this basis is impermissible and so Staff's recommendation should be rejected.

C. PART 500

1. Staff’s attempt to shoehorn a storage meter prudence issue into the Commission’s rules for customer meter handling is improper and unavailing.

Staff spends considerable time arguing that the Commission should rely on Part 500 as a reasonable reference from which one should determine a prudent extent of recovery for any of the storage-field discrepancies at issue, an argument that Staff’s own brief undercuts. Staff opens their brief by admitting that Part 500 does not apply directly to storage meters. (Staff Init. Br. at 7.) Staff next admits that Part 500 does not apply to storage fields *entirely*. (Staff Init. Br. at 35 n.1.) Staff then concedes that the Commission has never applied Part 500 to storage field issues. (Staff Init. Br. at 7.) In fact, Staff admits that “there is no direct Commission authority to address testing for meters at storage field.” (Staff Init. Br. at 7.) Neither the regulation nor the underlying statute includes any time limit or period of operation for granting of prudently incurred costs. (AmerenIP Init. Br. at 15.) And Staff grants that it is not aware of any prior application of the proposed 6-month time-limit in any PGA proceeding; indeed, Staff’s own testimony lists several examples of the Commission granting meter adjustment and recovery for periods far longer than 6 months. (AmerenIP Init. Br. at 16.)

Disregarding this overwhelming evidence to the contrary, Staff then plucks out one of the 25 customer-oriented rules contained in Part 500 (Section 500.240) and decides that that specific rule should be used to govern storage meters as well, because “Staff finds it reasonable to analogize those rules to storage field metering.” (Staff Init. Br. at 7.) However, the analogy is inapt.

On its face, Section 500.240 applies to customer meter testing. It therefore responds to concerns regarding customer meters, which concerns are quite separate from storage-field metering concerns. It also accounts for customer metering precepts which find no purchase in

the context of storage meters. For instance, storage meters are not all in continuous use from the moment of installation. In fact, storage field is operated in the two different modes, namely injection and withdrawal. (AmerenIP Init. Br. at 29.) When the new meters came on-line in January 2007, the field was in withdrawal mode (AmerenIP Init. Br. at 30); injection season had ended in September, and would not begin again until April. (AmerenIP Ex. 5.0 (Underwood Reb.) at 24-25.) By Staff's analogized rule, were AmerenIP to test the injection meters on the promptly on the first day of that season, they would be able to recover for injection volumes from the immediately prior 6 months only – *a period of time during which there could not have been any injection activity*. This paradox illustrates the fact that customer metering rules are based on fundamental assumptions, concerns and characteristics that do not apply to storage meters. This contextual mismatch renders Staff's analogy untenable.

Staff does not expend any effort in constructing the analogy, identifying divergences within the analogy, and rationalizing the mitigation of any impact these differences have on the rules being applied. Instead, Staff appears to be saying no more than the following: gas storage meters are a kind of utility meter, and it is believed that the Commission intends to treat all utility meters the same, applying the same rules to customer meters, storage meters, and any other category of meters, when it comes to standards of gas service (the context of Part 500). This simple juxtaposition does not equate with any "reasonable" level of analogy or analysis.

D. AMERENIP'S RECONCILIATION IS CONSISTENT WITH RELATED COMMISSION DECISIONS IN PRIOR PROCEEDINGS.

1. The alleged imprudence and rate base issues presented in AmerenIP's last rate cases are distinguishable from the matters before the Commission in the present docket, but are not unrelated.

Staff cites the Commission's language related to a Hillsboro storage disallowance in AmerenIP's last rate case. AmerenIP's rate case was part of the broader review of all the

Ameren Illinois Utilities' gas and electric utility rates as part of a consolidated filing. Docket 07-0585-07-0590 (cons.). (Staff Init. Br. at 39-40.) The matters at bar are distinguishable. The rate case issues involved the valuation of rate base cushion and base gas, whereas the present issues presented in this docket relate to the approval of the reconciliation of AmerenIP's transactions with regard to gas purchases during the reconciliation period. (Tr., p. 65, September 9, 2009.) Both matters have distinctive evidentiary records, and accordingly, must be reviewed upon their own merits in terms of the facts at issue.

However, it can be said that the matters are not entirely unrelated. Important facts asserted and adjudicated by the Commission have a bearing on the reasonableness of the Commission's decision in the present case. In pertinent part, the calculation of any disallowance and ultimate reconciliation should not run counter to the adjudicated calculation of values approved by the Commission.

2. Contrary to the point made in Staff's Initial Brief, Staff's Proposed disallowance would be arbitrary and capricious, given the disallowance ordered in AmerenIP's last rate case.

It is impermissible in Illinois for administrative agencies to sustain arbitrary and capricious actions. Agency action is arbitrary and capricious if the agency: (1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. Greer v. Illinois Housing Authority, 122 Ill.2d 462, 524 N.E.2d 561, 505-507; 551-582 (1988).

In the Ameren Illinois Utilities' last rate case, Staff successfully argued for an AmerenIP Hillsboro gas storage field disallowance related to rate base investments in cushion and base gas. The value of that adjustment was premised on data related to the same metering discrepancies at

issue in the present case. As Staff notes in its Initial Brief, the Commission ultimately approved Staff's proposed rate base disallowance which was equal to the incremental cost of replacement gas that AmerenIP acquired due to the injection error and metering discrepancies at issue in this case. (Init. Br. 39; See Final Order, Docket 07-0585-07-0590 (cons.), p. 153).

While Staff acknowledges the Commission's Order regarding Hillsboro, Staff fails to recognize several important points. Having already secured the denial of AmerenIP's *return on* incremental investment in the Storage facility, it would be unreasonable to further deny AmerenIP *the return of* AmerenIP's investment in gas, given the fact that the gas was furnished to customers who presumably consumed it. By denying both the return on, and return of, the investment, Staff's proposal is arbitrary and capricious both on its face and for the reasons more thoroughly described below.

Further, it would be arbitrary and capricious to deny AmerenIP recovery of the cost of gas provided to customers (in addition to its already secured denial of the return on replacement cushion gas) by excluding such value from rate base. It cannot be ignored that the volumes at issue in this case were relied upon by the Commission in the Ameren Illinois Utilities' last rate case in calculating a material rate base disallowance. Staff essentially asks the Commission to ignore the same volumes it used to support AmerenIP's calculation of its adjustment resulting from the same metering discrepancy losses. By failing to account for the logical acceptance of the impact of metering losses on both rate base and inventory, Staff is asking the Commission to ignore an important consideration in addressing the problem at hand.

Moreover, Staff's calculation of disallowance in the Ameren Illinois Utilities' last rate case was supported by a differential calculation that subtracted the historic weighted cost of gas from the market cost of gas purchased by AmerenIP due to metering discrepancies. This calculation was intended to hold customers harmless from AmerenIP's alleged imprudence in

maintaining the Hillsboro metering facilities. In stark contrast to the issues presented in the rate case, Staff has not offered any such differential calculation to support its disallowance in the present docket. In fact, evidence provided by AmerenIP demonstrates that due to prevailing market price conditions at the time the metering errors went undetected, the furnishing of unmetered gas to customers actually reduced costs borne by customers because the cost of market gas was actually higher than the gas served to customers. (AmerenIP Ex. 7.0 (Dothage Surreb.) at 11-12.)

Any disallowance should be calculated to make ratepayers whole, not to penalize the Company for past actions, and Staff simply has not provided any such calculation on the record. Therefore, the proposed calculation of disallowance in the present case cannot be sustained as it is both arbitrary and capricious, and cannot appropriately form the basis of a proper Commission decision.

IV. CONCLUSION

AmerenIP has met its burden to produce evidence that its reconciliation statement should be approved. This record evidence shows that AmerenIP accurately and prudently detected, measured and eliminated the injection-metering discrepancy. The record also establishes that the valve leak caused gas to be delivered to customers free of charge, and that AmerenIP acted prudently in detecting and eliminating the discrepancy resulting from the leak. Both parties agree that some recovery is warranted for the valve leak; AmerenIP's equal-division rule, however, is more reasonable, logical, relevant and supported than Staff's attempts to shoehorn a storage meter into a customer meter's shoes.

Having met its burden under the PUA, as well as the applicable precedent, AmerenIP's reconciliation statement should be approved without counter-adjustment. Staff's requests to the contrary are without merit and should be rejected.

Respectfully Submitted,

Illinois Power Co. d/b/a AmerenIP

By: /s/ Mark W. DeMonte
One of its attorneys

Christopher W. Flynn
Albert D. Sturtevant
Mark W. DeMonte
JONES DAY
77 W. Wacker, Suite 3500
Chicago, Illinois 60601
(312) 782-3939 (voice)
(312) 782-8585 (fax)
cwflynn@jonesday.com
adsturtevant@jonesday.com
mdemonte@jonesday.com

Edward C. Fitzhenry
Matthew R. Tomc
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63166
(314) 554-3533 (voice)
(314) 554-4014 (fax)
efitzhenry@ameren.com
mtomc@ameren.com

PROOF OF SERVICE

I, Mark W. DeMonte, an attorney, hereby certify that on December 3, 2009, I served Illinois Power Company d/b/a AmerenIP's Brief In Reply to the Initial Brief of the Staff of the Illinois Commerce Commission by electronic mail to the individuals on the Commission's Service List for Docket No. 07-0572.

/s/ Mark W. DeMonte

Attorney for the Ameren Illinois Utilities