STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Amcor Flexibles, Inc.	)	
-vs-	)	**11-0033**
Commonwealth Edison Company	)	
	)	
Complaint pursuant to Section 9-250 and 10-108 of the Illinois Public Utilities Act and Section 200.170 of the Rules of Practice	)	

RESPONDENT'S RESPONSE IN OPPOSITION TO THE COMPLAINANT'S MOTION FOR JUDGMENT AND IN SUPPORT OF CROSS-MOTION FOR JUDGMENT IN FAVOR OF THE RESPONDENT ON THE COMPLAINT

Respondent, the Commonwealth Edison Company respectfully submits this Response in Opposition to the Complainant's Motion for Judgment and also in Support of Respondent's Cross Motion for Judgment on the Complaint, being filed concurrently with this Response.

On January 11, 2011, Amcor Flexibles, Inc. ("Amcor or "the Complainant") filed a formal complaint with the Illinois Commerce Commission ("Commission") wherein it sought to challenge Commonwealth Edison Company's (the" Respondent" or "ComEd") back-billing for service.

The back-billing by ComEd grew out of its investigation into Meter No. 140384879, which was in service at Amcor's premises from August, 2005 through April, 2009. On December 22, 2011, Amcor and ComEd filed a "Stipulation of Facts and Undisputed Testimony." In this document, Meter No. 140384879, the meter in question, is often referred to as the Replacement or "Replaced Meter." It will be referred to here in the same way.

On August 22, 2012, Amcor filed a Motion For Judgment ("Amcor Motion") on the specific grounds that Section 410.200 (h)(1) of the Commission's rules prohibits billing adjustments "if all testing and accuracy requirements" of Part 410 have not been met. (Amcor Motion at 1). In its motion, Amcor alleges that ComEd did not conduct any *test* of the Replaced Meter after installation as required under Rule 410.155. Amcor further contends that ComEd's pre-installation *testing* of the Replaced meter was inadequate under Rule 410.160.

ComEd responds in these premises by demonstrating that Amcor misapprehends both the Commission's metering rules (the law on which it relies) and the facts of record. For these reasons, and the failure to substantiate its assertions, Amcor must be denied its request for judgment.

At the same time, the relevant facts and the law set out in this Response show that a judgment in favor of Respondent is clearly warranted. Thus, at close, the Respondent will be requesting the Commission to so decide and enter an order in favor of the Respondent.

I. INTRODUCTORY MATTERS

A. The Standards for Summary Judgment

Amcor claims that it meets the standard for summary judgment in its favor. (Amcor Motion at 6, fn 2). It does not, however, set out the standard in full fashion for the Commission.

A "motion for summary judgment" asks the court to decide that the available evidence, even when taken in the light most favorable to the non-moving party, supports a ruling in favor of the moving party. In order for such a judgment to be granted by the court, the party moving for summary judgment must satisfy a two-part standard: (i) no genuine issues of material fact are in dispute between the parties; and (ii) the moving party must be entitled to judgment as a matter of law. Dickson v. West Koke Mill Village Partners, 329 Ill. App. 3d 341 (4th Dist. 2002). This essentially means that the undisputed facts presented in the case entitle one side to prevail because of the existing law relevant to the issue at hand.

A motion for summary judgment, like a motion to dismiss, is dispositive. "To dispose" of a claim means to *decide* the claim in favor of one or another party. The Respondent will demonstrate below that the instant dispute cannot be decided in favor of Amcor as a matter of law.

B. Origins and Basis for the Instant Dispute

On December 8, 2009, ComEd sent a letter to Amcor informing that the Replaced Meter, installed at the customer's premises in 2005, was programmed with incorrect scaling factors such that Amcor's account had been under billed. (Stipulation at 17, Exhibit "B" at page 2). The installation of new meters in 2009, ComEd wrote, brought this situation to fruition. (Id.)

The Stipulation shows the following meter exchanges:

1. In April 2009, ComEd replaced meter number 140384879 (the "Replaced Meter") with meter number 141521021 (the "First New Meter"). (Stipulation at 3, para. 13)

2. Amcor did not operate the new extrusion line until after the 1200 amp current transformers and the Replaced Meter were replaced. (Stipulation at 3, para. 14)

3. On June 12, 2009, ComEd installed a recorder meter No. 141379885 to meter the power at the First New Meter transformer. The pre-installation test for the First New Meter was performed on February 11, 2008 and the meter tested accurate. (Stipulation at 4, para. 15).

4. In June 2009, ComEd replaced the First New Meter with meter 141379885 (the "Second New Meter"). (Stipulation at 4, para. 16).

While the initial meter exchange (involving the Replaced Meter) was owing to the Amcor's requested upgrade for additional load, the only record explanation for the subsequent meter exchange (the Second New Meter in place of the First New Meter) appears in ComEd's letter which shows that it was driven by the customer's, i.e., Amcor's, complaints of high billings after the Replaced Meter was removed. (Stipulation, Exhibit B at 1-2).

The basis for the December 8, 2009 correspondence from ComEd to Amcor, i.e., the discovery of incorrect scaling factor programmed into the meter, is found in the undisputed testimony of Tom Rumsey, System Meter Mechanic Special for ComEd. (Stipulation at 9, para. 36). On September 24, 2009, Mr. Rumsey tested Replaced Meter No. 140384879 and determined that one test pulse was sent to the optiport for every 1.2 watt-hours of power flowing through the Replaced Meter. (*Id.*) In other words, the meter was recording usage accurately. From a subsequent "long diagnostic" examination of the meter, however, Mr. Rumsey found that the scaling factor was incorrect for a transformer-rated meter like the one at hand. To be specific, Mr. Rumsey determined that ComEd had mistakenly programmed the Replaced Meter with a scaling factor of 6 (resulting in a CPR of 4), rather than the correct scaling factor of 2 (resulting in a CPR of 12). The diagnostic register reading that Mr. Rumsey performed uses the manufacturer's software to view the parameters programmed into a solid state meter and generates a record. His diagnostic examination results are attached as Exhibit I to the Stipulation and show that:

- the Replaced Meter was diagnostically read on September 24, 2009. (See Attachment I, page 1, under heading "Current Condition").

- the Replaced Meter was programmed on July 19, 2005. (See Attachment I, page 1, under heading "Security").

- the scaling factor programmed into the Replaced Meter was 6 (instead of 2). (See Attachment I, page 4, under heading "Load Profile Definition").

In ComEd's letter to Amcor on December 8, 2009, it explained that the back-bill was being tendered pursuant to Section 280.100 of the Commission's rules. 83 Ill. Adm. Code 280.100. The back-bill charges that ComEd calculated totaled $62,190.07.[1]

Arguably, and as will be later shown, had the meter been found to be running inaccurately, i.e., either slower or faster than allowable, ComEd would have invoked Section 410.200 of the Commission's rules.

C. The Record Sets Out the Factual Basis for the Back-Bill

Metering is a highly technical subject matter and often difficult to articulate. But, it is highly important to an understanding of the instant dispute and, most specifically, how the scaling factor that is programmed into the meter interacts with the billing software.

1. The Replaced Meter's Function, Testing and Programming

The Replaced Meter, that was found to have been programmed with a incorrect scaling factor, had been installed at Amcor's premises in 2005. (Stipulation at 6, para. 21). It was subsequently removed in April, 2009 in connection with Amcor's electric service upgrades. (Stipulation at 3, para.13).

The Replaced Meter was a transformer meter and not a self-contained meter. (Stip. at 2, para. 7). This is an important distinction to note. Further, as the parties' Stipulation explains, the Replaced Meter (i.e., No. 140384879) was a solid state meter. (Stipulation at 6, para. 23). A solid state meter does not have a mechanical disk that turns as current runs through the meter. It does, however, have a virtual disk that mimics the function of a mechanical disk. (*Id.*) This virtual disk is to revolve once for every 1.2 watt hours that flow through the Replaced Meter. (Stip at 7, para. 25)

Testing and Accuracy Findings on the Replaced Meter

Section 410.160 of the Rule requires that each meter be inspected and tested at the meter shop of the entity. 83 Ill. Adm.Code 410.160. (When being tested for accuracy, the meter sends out test pulses through the meter cover at what is termed the optiport and a probe or pulse pick-up device (set up to retrieve these pulses), sends them to the test equipment software.).

The Stipulation shows that ComEd performed a pre-installation test, i.e., the accuracy test, on the Replaced Meter on July 19, 2005. (Stip at 6, para. 21). As such, it tested the test pulses sent to the optiport. (Stip at 8, para. 34) This testing confirmed that, for every 1.2 watt-hours of power flowing into the Replaced Meter, the optiport received one test pulse. (Id.). In other words, the meter tested accurate.

---

[1] Amcor does not stipulate to the accuracy of ComEd's calculations but has not proposed any alternative calculations.

Notably, subsequent accuracy testing of the Replaced Meter on September 24, 2009[2] also determined that one test pulse was sent to the optiport for every 1.2 watt-hours of power flowing through the Replaced Meter. (Stipulation at 9, para. 36). This means that from the time of installation and up to its removal, the Replaced Meter accurately measured power usage.

Post-Test Programming of the Meter

The question arises that if the Replaced Meter was recording accurately, how could there be a billing error? The answer is found in events that occur after testing. After a solid state meter is tested for accuracy, the manufacturer's software is used to set the parameters required for each meter size and type, and this includes a "scaling factor." The scaling factor was created to compensate for the amount of available internal memory space used to store pulse data in 1/2 hour increments.

The scaling factor, however, does not in any way affect the test pulse. (Stipulation at 29). In a transformer meter, such as the Replaced Meter, the "meter engine" calculates the energy (measured in watt-hours) running through the meter by multiplying the voltage, the current and time (voltage x amps x hours = watt-hours). The meter engine sends this information to the "microcontroller." (Stipulation at 6, para. 24 and referencing slide 2 of Exhibit H).

Every 24 billing pulses (totaling 1.2 watt-hours) equates to one "revolution" of the virtual disk. (See slide 4 of Exhibit H). Thus, for every revolution of the virtual disk, the microcontroller sends one test pulse to the "optiport," an external port from which data can be extracted.

Regardless of the scaling factor, one test pulse is generated for every revolution of the virtual disk (i.e., every 1.2 watt-hours of power flowing through the meter). (Id. at 29).

Scaling Factors and Effect on Billing

Recording meters, such as the Replaced Meter, were manufactured with a CPR of 24 whereas a CPR of 12 for transformer-rated meters and a CPR of 4 for self-contained meters became the standard. Thus, in the absence of a scaling factor, and *as manufactured,* the microcontroller would send 24 pulses to the Billing Memory for every "revolution" of the virtual disk, leading to a "counts per revolution," or "CPR," of 24. (*Stipulation at 7, para. 26 and referencing slide 4 of* Exhibit H). (This design led to the need for a scaling factor of 2 for transformer-rated meters (24/2 = 12) and a scaling

---

[2] Testing of the Replaced Meter occurred after ComEd installed a meter No. 14137988 (First New Meter) and after ComEd replaced the First New Meter with meter No. 141379885 (Second New Meter). (Stipulation at 4, para. 15, 16). The circumstances surrounding these events are not set out in the Stipulation *per se*, but, Exhibit B to the Stipulation does set out that a complaint by Amcor owing to higher billing upon removal of the Replaced Meter, caused ComEd to launch a full investigation into the situation.

factor of 6 for self-contained meters (24/6 = 4) in order to maintain the standard counts per revolution or CPRs (of 12 for transformer-rated meters, and 4 for self-contained meters).

Hence, ComEd either asks the manufacturer to program a scaling factor into the meter or ComEd itself will program meters with a scaling factor in its meter shop. (Stipulation at 7, para. 27). The scaling factor that the meter shop employee programs into the meter after testing will determine how many pulses per revolution are to be sent to the Billing Memory, or EEPROM, for billing purposes. (*Id.*)

Operations of scaling factors

A scaling factor of 6 (such as mistakenly programmed into the Replaced Meter) means that the microcontroller sends one pulse to the Billing Memory for every 6 "billing pulses" or every 0.3 watt-hours of power flowing through the meter (*i.e.*, 6 x .05 = 0.3). (Stipulation at 7, para. 27). As such, for every revolution of the virtual disk (*i.e.*, 1.2 watt-hours), the microcontroller is sending four pulses to the Billing Memory, *i.e.*, 24 billing pulses ÷ 6 = 4, or 1.2 watt-hours ÷ 0.3 = 4. (*Id.*). Stated another way, a scaling factor of 6 led to a CPR, or "counts per revolution," of 4. (Stipulation at 7, para. 27 referencing slide 5 of Exhibit H).

On the other hand, a scaling factor of 2 (that properly should have been programmed into the Replaced Meter) means that the microcontroller sends one pulse to the Billing Memory for every two billing pulses or every 0.1 watt-hours of power flowing through the meter (*i.e.*, 2 x .05 = 0.1). (Stipulation at 7, para. 28). In such an instance, and for every revolution of the virtual disk (*i.e.*, 1.2 watt-hours), the microcontroller will send 12 pulses to the Billing Memory, *i.e.*, 24 billing pulses ÷ 2 = 12, or 1.2 watt hours ÷ 0.1 = 12. (*Id.*). In other words, a scaling factor of 2 leads to a "counts per revolution" or CPR of 12. (Stipulation at 7, para. 28 *and referencing* slide 6 of Exhibit H).

From his long diagnostic examination on September 24, 2009, Mr. Rumsey determined that ComEd's programming of the Replaced Meter (performed after his standard testing showed the meter to be accurate) should have input a scaling factor of 2 and not 6. That is because the Replaced Meter was a transformer meter and not a self-contained meter.

A scaling factor of 2 (that would have resulted in counts per revolution, or CPR, of 12) was necessary in order for a transformer meter, such as is the Replaced Meter, to align itself with the billing program at counts per revolution or CPR of 12. ComEd however, mistakenly programmed the Replaced Meter with a scaling factor of 6 (this resulted in a counts per revolution, or CPR, of 4 instead of 12). (Stipulation at 9, para. 36)

Again, it is important to emphasize that the scaling factor *does not impact the amount of power* in a revolution of the virtual disk. (Stipulation at 7, para. 27). Thus,

there was no problem with the measure of usage - only with the billing of that usage owing to how the billing software operates as explained below.

Billing effect of an improper scaling factor

In the field, the meter reader will insert a probe on the meter's optiport to download the number of pulses that have been sent to the Billing Memory during the billing period. (Stipulation at 8, para. 30). At this stage, the meter reader is only extracting the number of pulses and not the value of the pulses. The meter reader then transmits this information to a computer that runs ComEd's billing software. (Stipulation at 8, para. 30 and referencing slide 7 of Exhibit H).

The ComEd billing software has a database with a list of different meter types and their corresponding counts per revolution, or CPRs. (Stipulation at 8, para. 31) This billing software will calculate the customer's electricity usage from the number of pulses in the Billing Memory, as adjusted according to the CPR (12 or 6) that is applicable to the customer's meter type, i.e., 12 for transformer meters or 6 for self-contained meters. (Stipulation at 8, para. 31 and *referencing* slide 8 of Exhibit H). In other words, the billing software is assigning a value to the pulses (extracted by the meter reader) and it knows that a transformer meter, such as the Replaced Meter, has a CPR of 12. Hence, it assigns a value of 0.1 watt hours to the number of pulses extracted by the meter reader.

At a 12 CPR, each pulse is worth 0.1 watt hours. When running accurately, it takes 1.2 watt hours to complete one revolution of the virtual disk. Inside the meter, and with a scaling factor of 6 (appropriate only for self-contained meters), however, the meter will assign a value of 0.3 watt hours to each pulse. Internally, the meter would be calculating the usage correctly because 0.3 x 4 = 1.2 watt hours. But, this has repercussions for billing on a transformer meter which requires a scaling factor of 12

Here, a correct scaling factor of 2 (had not been input) for the Replaced Meter being that it was a transformer meter. (Stipulation at 9, para. 36). Due to the scaling factor of 6 that had mistakenly been programmed into the Replaced Meter, the billing software assigned a value of point 0.1 watt hours instead of 0.3 watt hours to the customer's usage.

In short, owing to the incorrect scaling factor, the internal value of the pulses was 0.3 watt hours but the billing software interpreted the value as 0.1 watt hours. This is why the billing of Amcor's usage was wrong by two-thirds. Amcor was billed (delivery charges and franchise taxes) for only one-third of the power that it actually used.

D. The Record Sets out the Legal Basis for ComEd's Back-Bill

On December 8, 2009, ComEd sent a letter to Amcor, wherein it informed Complainant of the Replaced meter's programming error and further advised that Section 280.100 of the Commission's Rules allow the back-bill of a customer for

unbilled service. (Stipulation at 17 and Exhibit B).[3] The letter further advised that ComEd was exercising its rights under Section 280.100 of the Commission's rules and back-billing Amcor for $62,190.07 (delivery and franchise taxes) (Stipulation at 4, para. 18). At the same time, ComEd made clear that it would accommodate a request from Amcor to pay in installments over the next 16 months, interest free.[4]

Section 280.100 (a)(2) of the Commission's Rules provides, in relevant part, that:

> a) A utility may render a bill for services or commodities provided to:
>
> > 2) A non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied.

83 Ill. Adm. Code 280.100 (a)(2).[5]

Even as the programming error (that was the reason for the billing error) arose at the time of the Replaced Meter's installation in 2005, ComEd followed the specific language of the Section 280.100 and only back-billed Amcor for two (2) years of service. 83 Ill. Adm. Code 200.100 (a)(2). Thus, Amcor has already benefitted, and hugely, from the billing error.

It is to be noted at this juncture that ComEd never relied on or invoked the provisions of Section 410.200 of the Commission's rules in the notice of the back-bill to Amcor. (See Exhibit B attached to the Stipulation). That is because, as will be shown, Section 410.200 only applies to situations of meter inaccuracy found on testing.

While no meter inaccuracy is demonstrated on the record and while it was not the reason for the back-billing of Amcor, the Complainant erroneously advocates for judgment on this very basis (by relying on Section 410.200 of the Commission's rules) A review of the law on which Amcor relies, however, shows it to be inapplicable to the situation at hand. Thus, as a matter of law, Amcor is not entitled to judgment in its favor.

---

[3] Amcor stipulates that the December 8, 2009 was sent, but not that the statements in the letter were accurate. (Stip at para. 17). The Complainant does not however, set out with specificity which statements it disagrees with or deems inaccurate except as appears in paragraph 18, to wit:

> ComEd calculated the amount of the Back-Bill by subtracting the amount actually billed from the amount that ComEd claims should have been billed. Amcor stipulates that ComEd performed this mathematical calculation accurately, but does not stipulate that there was an unbilled service or that ComEd's calculations are the correct method of calculating the amount of any unbilled service. (Stipulation at 4, para. 18.)

[4] This is in accord with 83 Ill. Adm. Code 280.100(d)

[5] Subsection (b) of Rule 280.100 makes clear that this "back-bill" applies in situations of both *unbilled* and *misbilled* service. 83 Ill. Adm. Code 280.100 (b).

II. JUDGMENT IN FAVOR OF AMCOR IS NOT WARRANTED UNDER THE FACTS OR ON THE LAW.

Amcor's Motion requests judgment in its favor because, it claims, ComEd failed to perform certain tests of the meter that would have uncovered the programmed scaling error that resulted in the incorrect billing. (Amcor Motion at 7). Most prominently, Amcor asserts, Section 410.200 (h)(1) of the Commission's rules prohibits billing adjustments if all "testing and accuracy requirements" of Part 410 have not been met. (Judgment Motion at 1). Drawing on this particular language, Amcor contends that the requirements of Section 410.160 and Section 410.155 were not satisfied because the scaling factor error was not uncovered in any testing

By relying on Section 410.200, Amcor attempts, erroneously, to make this dispute about meter inaccuracy. But, meter inaccuracy is not at issue. Nor was it the reason for Respondent's back-billing of Amcor. Indeed, from the very beginning, ComEd explained that an incorrect scaling factor was programmed into the Replaced Meter after accuracy testing and, it is only the programming of an incorrect scaling factor (undiscoverable in meter accuracy testing) that resulted in the under billing to Amcor. (Exhibit B in the Stipulation). This is borne out by the undisputed testimony of Tom Rumsey who discovered the incorrect scaling factor, not by meter accuracy testing, but only through a diagnostic examination of the Replaced Meter. (Stipulation at 9, para. 36).

The Replaced Meter was determined accurate before installation and after removal. (Stipulation at 6, para 21; at 8, para. 34; at 9, para.36). Thus, as will be demonstrated here, and as a matter of law, Section 410.200 (which deals with inaccuracy findings in meters and specifies the data corrections therefore) is not applicable to the instant situation. Furthermore, as already shown above, ComEd's back-billing of Amcor did not invoke the provisions of Section 410.200 in its back-bill of Amcor.

A. Amcor's Reliance on Section 410.200 is in Error as a Matter of Law

Amcor's Motion relies heavily on Section 410.200 of the Commission's rules and most particularly subsection (h) of this rule. 83 Ill. Adm. Code 410.200 (h). But, Amcor provides no analysis of this rule or of its application in these premises. To properly assess the validity of Amcor's assertion of subsection (h), however, the entirely of Section 410.200 must be examined. Respondent will perform the necessary analysis here.

At the outset, Section 410.200 is titled "**Corrections and Adjustments for Meter Error.**" A review of subsections (a) through (g) shows that this Section 200 addresses situations where, upon meter accuracy testing, a measurement problem is uncovered, to wit:

- Subsection (a) refers to a meter test showing an average error of more than 2%, and subsection (b) outlines the methodology for meter data correction on this basis.

- Subsection (c) addresses the situation where a meter is found to be running faster than allowable and sets out what presumptions attach in determining a correction for this situation.

- Subsection (d) concerns the situation where a meter is found to be running slower than allowable and it also outlines the presumptions that attach to the inaccuracy in terms of making corrections.

- Subsection (e) speaks to the situation of a non-registering meter and the period allowed for data correction based on estimated consumption.

- Subsection (f) states that no corrections for meter error are permitted to extend beyond the in-service date of the meter discovered to be in error, nor shall any correction be required to extend beyond the date upon which the current customer first occupied the premises where the error is discovered.

- Subsection (g) concerns a service watt-hour meter that, while in service, is found to exhibit creep (a term defined in Section 410). In such an instance, an estimate of the registration caused by the creep is to made for the period specified in subsection (c) of this Section with a corresponding correction to the metering data.

- Subsection (h) is titled Billing Adjustments and is subdivided into two subparts: Nos. 1 and 2. Of relevance here, according to Amcor, is subsection (h)(1) which sets out the rule for billing adjustments by electric utilities and states that:

> h) Billing adjustments
>
> 1) For electric utilities. Any correction to metering data for *over-registration* shall be accompanied by an adjustment to customer billing by any electric utility that rendered service that is affected during the period of adjustment. Corrections made to metering data for *under-registration* may be accompanied by an adjustment to a customer's billing. However, if an electric utility is providing metering service, in no case shall an adjustment to a customer's billing be made for under-registration if all testing and accuracy requirements of this Part have not been met.
>
> 83 Illinois Adm. Code 410.200 (h)(1).

This language of Section 410.200 (h)(1) is inextricably tied to the subsections that precede it, i.e., (a)-(g). As seen from the above review of subsections (a) through (g), Section 410.200 speaks to all the meter accuracy issues that arise in testing performed by either an entity or the Commission itself. None of these provisions apply to the facts

in the instant situation. In other words, ComEd's back-billing of Amcor is not based on meter accuracy testing. The Replaced Meter tested accurate at all times.

Clear from its very terms (as highlighted above), Section 410.200 (h)(1) specifically addresses itself to situations where a meter has been found to be *over-registering* usage or *under-registering* usage. Neither of these meter accuracy situations, however, presented themselves in the testing of the Replaced Meter. The record shows that *no* meter accuracy error was found on testing of the Replaced Meter either in initial testing on June 19, 2005 or in testing after its removal from Amcor's premises on September 24, 2009. (Stipulation at 6, para 21; at 8, para. 34; at 9, para. 36). In other words, the meter did not over-register usage or under-register usage. To be sure, the back-bill of Amcor at issue here is <u>not</u> based on any meter accuracy or measure usage error or on data corrections thereof as Section 410.200 requires. It is solely the "billing" of Amcor's usage that was determined to be incorrect owing to a mistaken-programmed scaling factor. (Exhibit B at 2, attached to the Stipulation). Hence, Amcor's reliance on Section 410.200 of the Commission's rules is in error and, as a matter of law, will not support a grant of judgment in its favor.

1. ComEd's testing of the subject meter as per Rule 410.160 confirmed its accuracy but such testing would not have revealed the programming error.

Amcor alleges that ComEd's back-billing claim is unlawful on account that its pre-installation testing of the Replaced Meter was "inadequate." (Amcor Motion at 6). This is so, Amcor points out, because ComEd did not "test" whether the meter was sending the proper number of pulses to the billing memory, or whether the meter was measuring the correct amount of electricity usage in the billing memory. (Id. at 7). Amcor asks for something that the law does not require.

Other than identifying Rule 410.160 as requiring a initial test, Amcor does not discuss or elaborate on the language of this section. Nor does it include the entirety of the language in this provision.

Section 410.160 (Initial Tests) provides, in full, that:

> Initial tests are tests made before installation, regardless of whether the meter and associated devices have previously been in service. Each meter and associated devices (unless included in the sample testing plan in Section 410.180) shall be inspected and tested in the meter shop of the entity or other location that meets the requirements of this Part before being placed in service, and *the accuracy of the meter shall be within the tolerances permitted by this Part.* If a meter is removed from a customer's premises, except for field testing, it shall be tested and inspected as described above before it is placed in service again. *If creep or inaccuracy is discovered in a*

meter removed from service, the entity shall correct the metering data as detailed in Section 410.200.

As highlighted above, Section 410.160 is specific in defining how the accuracy of a meter is determined - by testing results that fall within the tolerances set out in Subpart B (sections 410.110 through 410.195). In this instance, the initial testing of the Replaced Meter, performed on June 25, 2005 (prior to installation at Amcor's premises on or about August 1, 2005) showed it to be running accurately with 1.2 watt-hours flowing into the optiport receiving one pulse (Stipulation at 6, para. 21, Stipulation at 8, para. 34). Further, the meter's accuracy is wholly unaffected by the scaling factor. (Stipulation at 8, para. 29). Contrary to Amcor's assertions or belief, the accuracy test for these meters required under Subpart B of Rule 410 will not reveal a scaling factor error due to there being a single pulse being sent to the optiport for either a CPR of 4 or 12. [6]

Amcor ignores the language of Section 410.160 to claim that "if a meter gives any wrong information to a meter reader, it is not accurate." (Amcor Motion at 7).. That is certainly a layman's view. But, that is not the "accuracy" to which the Rule addresses itself and for good reason. An accuracy test for these particular types of meters is both different from, and completed before, the programming of the scaling factors. The meter is programmed after accuracy testing is completed because, in addition to adding parameters, such programming also resets all recorded usage value to zero. This means that, at the meter shop, any usage recorded on the meter as a result of the accuracy testing is wiped out such that, upon installation, customer usage on the meter is at zero.

Moreover, contrary to what Amcor claims, the meter is not giving wrong information to the meter reader in terms of usage. (Amcor Motion at 5, and misinterpreting paragraph 33 of the Stipulation). The meter reader is extracting the number of pulses recorded in the billing memory based on the scaling factor programmed into the meter. But, as the record plainly shows, the scaling factor does not in any way effect the amount of power in a revolution of the virtual disk. (Stipulation at 7, para. 27). In other words, usage was measured correctly in the Replaced Meter, but the scaling factor of 6 (correct for a self-contained meter) did not align itself with the values that the billing software assigns to a transformer meter. (Stipulation at 8, para. 31).

In this situation, where the Replaced Meter was found to be running accurately, one pulse was generated for every revolution of the disk = 1.2 watt-hours of power flowing through the meter. (Stipulation at 8, para. 29). With the scaling factor of 6 that had been programmed in the Replaced Meter, the meter reader extracted pulses scaled at 0.3 watt hours in the meter's billing memory (4 X 0.3 = 1.2 watt-hours). This scaling, however, did nothing to alter the usage at 1.2 watt-hours. But, owing to the Replaced Meter being a transformer meter, the billing software valued each pulse at 0.1 watt

[6] This is corroborated in that it is only after Mr. Rumsey found the Replaced Meter to be accurate on testing did he go further and perform a diagnostic on the Replaced meter.

hours (12 X 0.1 = 1.2). Hence, it was not "usage" - but the proper billing for that usage - that was compromised when the Replaced Meter was mis-programmed with a scaling factor of 6 instead of 2. Thus, and contrary to what Amcor argues, the meter was not reporting less electricity use than it should have. (Amcor Motion at 5).

Nowhere in Part B is there a provision for performing diagnostic examinations of a meter after testing and programming and Amcor does not show otherwise. (Indeed, this is somewhat illogical since the programming of a meter is done after the meter shop employee confirms that a meter has passed testing). Yet, it is only through such a diagnostic examination (performed subsequent to the meter accuracy testing on September 24, 2009, that Mr. Rumsey uncovered the scaling factor error. (Stipulation at 9, para. 36)

ComEd further draws the Commission's attention to the last sentence of Rule 410.160 which states that:

> *If creep or inaccuracy is discovered in a meter removed from service, the entity **shall** correct the metering data as detailed in Section 410.200.*

This is language that Amcor fails to acknowledge, but it is key to the matter at hand. Had meter inaccuracy been found in the testing of the Replaced Meter that Mr. Rumsey performed on September 24, 2009, ComEd would have invoked the provisions of 410.200 and proceeded with calculations consistent therewith. It did not do so. All of the calculations performed for Amcor's back-bill reflect Mr. Rumsey's findings of a programming billing error and not a meter recording error.

For all these reasons, no judgment in favor of Amcor is warranted.

2. Amcor misapprehends the nature of the Rule 410.155 installation inspection which does not involve or require another meter test and would not reveal the programming error.

Amcor points to paragraph 21 of the Stipulation to assert that ComEd "did not test" the Replaced Meter within 90 days of installing it. (Amcor Motion at 6). For this reason, Amcor argues, ComEd failed to meet the testing and accuracy requirements of Section 410.155 of the Commission's rules and accordingly, cannot back-bill Amcor in this situation. (Id.). Amcor is wrong on the facts and the law.

With respect to its claim of a Rule 410.155 violation, Amcor fails to describe what meter test is required under its provision. ComEd submits that no stand-alone accuracy test of the meter - nor, as relevant to the instant dispute, any diagnostic of the scaling factor as Amcor seems to have wanted - is involved at this stage. Nor is it required under the Rule.

Section 410.155 provides, in full, that:

Section 410.155 Installation Inspections
Within 90 days after installation or exchange of any meter with associated instrument transformers and/or phase-shifting transformers, a post-installation inspection shall be made under load to determine if the meter is accurately measuring customer energy consumption. At a new or re-wired metering location, where the installation includes potential transformers, the inspection shall be performed by someone other than the original installer.

83 Ill. Adm. Code 410.155.

Clear from the language above, the installation inspection is only for the purpose of determining "meter accuracy in measuring customer energy consumption." 83 Ill. Adm. Code 410.155. But again, meter accuracy is *not* the issue here. Likewise, measuring energy consumption is altogether different from the billing for that consumption. As the record shows the scaling factor for billing has no effect on the meter test pulse. (Stipulation at 8, para.29). It also does not impact the amount of power in the revolution of the disk. (Stipulation at 7, para.27). Thus an installation inspection, being functionally the same or less than the pre-installation testing of the meter, would not discover the mis-programming of a scaling factor.

Amcor is flatly incorrect in asserting that "ComEd did not test the Replaced Meter *within* 90 days of installing it." (Amcor Motion at 6)(emphasis added). The Stipulation shows that the Replaced Meter was tested for accuracy on July 19, 2005 and installed on August 25, 2005. (Stipulation at 6. para. 21). As such, and contrary to Amcor's assertions, it was tested *within* 90 days of installation.

To the extent Amcor alleges that ComEd did not perform any "test" of the Replaced Meter *after* its installation at Amcor's premises, this shows its misunderstanding of what is at hand with the installation inspection. (Amcor Motion at 1). In short, there is no "test" of the meter as is done in the meter shop during the pre-installation test (and as was performed on June 19, 2005 with respect to the Replaced Meter). Hence, the Stipulation, at paragraph 21 is correct in setting out that "ComEd did not perform additional testing on the Replaced Meter prior to the Replaced Meter's removal from service for Amcor's account in April 2009." (Stipulation at 6, para. 21). But, this does not, as Amor claims, amount to an admission that ComEd did not perform an installation inspection under Section 410.155. (Amcor Motion at 3) There is nothing in the Stipulation that speaks to an "installation inspection" or describes the tasks and verifications that occur during such an inspection, leaving Amcor's claim unsupported.

Even at that, whatever an installation inspection involves, it does not involve a diagnostic examination. This is not an accuracy test. Nor is required under Section 410.155. Amcor has not, and cannot, show otherwise. At the same time, however, and as the record shows, it is only a diagnostic read (and not any accuracy testing of a meter) that will uncover the scaling factors programmed into a meter.

In terms of "accuracy," Amcor flatly ignores that the Replaced Meter was tested on September 24, 2009 (after its removal from Amcor's premises and after the installation inspection) and shown to be accurate. (Stipulation at 9, para. 36). It is for this reason that Mr. Rumsey went further in his investigation and performed a diagnostic examination on the Replaced Meter. (Id.) Indeed, it is only by performing this diagnostic and reviewing the diagnostic record that the incorrect scaling factor for billing purposes was discovered. (*Id.*). (See further, Exhibit I to the Stipulation). No accuracy testing of the meter under Section 410.160 and no installation inspection under 410.155 would have uncovered this scaling factor.

For all the reasons set out above, Amcor's Motion for Judgment should be denied.

B. Summary of the Parties' Positions

The instant dispute centers on competing views of what is actually at hand:

Meter accuracy v. Billing error.

For its part, Amcor wants this case to be about meter "accuracy" under Section 410. 200 and not billing error under Section 280.100 of the Commission's rules. As shown above, however, the law on which Amcor relies, i.e., 83 Ill. Adm. Code 410.200, defines meter inaccuracy and a mis-programmed scaling factor is not among its many detailed provisions. Likewise, the Rules 410.155 and 160 do not require diagnostic reads of a meter as would disclose a mis-programmed scaling factor. Yet, the record shows that this is the only way that the error in Amcor's billing situation came to light. (Stipulation at 9, para. 36)

It is to be observed that the lack of testing that Amcor complains of (presumably the lack of a diagnostic examination) is not within accuracy testing that either Rule 410.160 or Rule 410.155 and for good reasons. 83 Ill. Adm. Code 410.160, 410.155. As a practical matter, that is because meter testing under Section 410.160 is completed (to ensure accuracy) before a meter is further programmed. So too, the Section 410.155 requirement of determining if the meter is accurately measuring energy consumption would not uncover a scaling factor error because the scaling factor does not affect the test pulse. (Stipulation at 8, para. 29). In short, no meter accuracy testing would show a scaling factor to be incorrect for the Replaced Meter. This is because meter accuracy and billing functions are two very different things.

Nor, is Amcor correct in asserting that the Replaced Meter was reporting less electricity usage that it should have. (Amcor Motion at 5). It was not. As explained above, scaling factors do not bear on usage data extracted by the meter reader being that the scaling factor has no impact on the amount of power in a revolution of the disk. (Stipulation at 7, para. 27). The billing software, however, values the pulses extracted by

the meter reader according to the meter type and, in expecting a transformer meter such as the Replaced Meter to have a CPR of 12 will assign a value of 0.1 watt hours to the number of pulses extracted by the meter reader whereas the improperly programmed scaling factor carries a value of 0.3 watt hours. This then resulted in incorrect billing.

As ComEd has amply shown, the standard accuracy tests were followed but, by their very nature, did not and would not lead to the discovery of the improper scaling factor programmed into the Replaced Meter. So too, and from the very start, ComEd explained to Amcor that it was a scaling factor programmed into an otherwise accurate meter caused an error in billing. (Stipulation. Exhibit B) That is, indeed, what the record shows. (Stipulation at 9, para. 36 and Exhibit I). Both Amcor's December 8, 2009 letter to Amcor (Exhibit B) and Mr. Rumsey's undisputed testimony (Stipulation at 9, para. 36 and Exhibit I) undisputedly show that it was strictly a programming error for billing and not any type of meter inaccuracy that was, and always has been, the reason for the back-bill of Amcor. This is why ComEd back-billed Amcor under Section 280.100 (a)(2) of the Commission's rules and within the limits prescribed by this rule. 83 Ill. Adm. Code 200.100 (a)(2). All of ComEd's actions meet with this law, which is the only law relevant and governing in this dispute. In other words, and as all the above shows, ComEd's back-bill is based on a billing error (83 Ill. Adm.Code 280.100) and not on meter inaccuracy (83 Ill. Adm. Code 410.200)

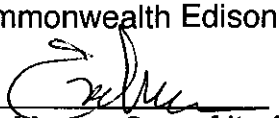
In summary, Amcor's attempts to implicate Sections 410.200, 410.160 and 410.155 of the Commission's rules by asserting claims of meter inaccuracy in this situation, is without merit and will not support a judgment in its favor. On the other hand, the facts and the law, establish judgment in favor of Respondent to be fair, just and reasonable.

III. CONCLUSION

For all the reasons and the law set out above, Respondent, Commonwealth Edison Company respectfully requests the Illinois Commerce Commission to grant its Cross-Motion for Judgment and deny the Complaint's Motion for Judgment.

Respectfully submitted,

Commonwealth Edison Company



Eve Moran, One of Its Attorneys

Eve Moran
Attorney for Respondent
128 S. Halsted Street
Chicago, IL 60601
(312)720-5803
Of Counsel and for
Mark L. Goldstein
Law Offices of Mark L. Goldstein
3019 Province Circle
Mundelein, IL 60060

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Amcor Flexibles, Inc.	)	
-vs-	)	**11-0033**
Commonwealth Edison Company	)	
	)	
Complaint pursuant to Section 9-250 and 10-108	)	
of the Illinois Public Utilities Act and Section	)	
200.170 of the Rules of Practice	)	

NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on October 16, 2012, I filed with the Chief Clerk of the Illinois Commerce Commission, *The Respondent's Response in Opposition to the Complainant's Motion for Judgment and In Support of Respondent's Cross-Motion for Judgment On the Complaint* and a copy is attached hereto, and hereby served upon you.

Eve Moran
128 S. Halsted Street
Chicago, IL 60601
Of Counsel and for
Mark L. Goldstein
Law Offices of Mark L. Goldstein
3019 Province Circle
Mundelein, IL 60060

Attorney for Respondent

CERTIFICATE OF SERVICE

I, Eve Moran, hereby certify that on October 16, 2012, I served a copy of the attached *The Respondent's Response in Opposition to the Complainant's Motion for Judgment and in Support of Respondent's Cross-Motion for Judgment On the Complaint* in the above-captioned docket, by causing a copy thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties below:

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Paul G.Neilan, Esq.
Law Offices of Paul G. Neilan, P.C.
33 North LaSalle Street
Suite 3400
Chicago, IL 60602-2667

Bradley Block, Esq.
401 Huehl Rd., Suite 2B
Northbrook, IL 60062

Ms. Sonya Teague
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601