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ILLINOIS COMMERCE COMMISSION

ORIGINAL

ICC Docket No. 11-0717

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

PRAIRIE FARMS DAIRY INC.,)

Complainant,)

Vs.)

Docket No. 11-0717

AMEREN ILLINOIS COMPANY)

Respondent.)

Complaint as to gas meter failed)

To function correctly for over)

12 months in Carbondale, Illinois)

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ILLINOIS COMMERCE
COMMISSION

BRIEF OF PRAIRIE FARMS DAIRY INC.

NOW COMES Complainant, Prairie Farms Dairy Inc. ("Prairie Farms"), and for its Brief hereby states as follows:

1. The issue before the Commission is whether Prairie Farms owes Ameren Illinois Company ("Ameren") \$34,387.75 in suspended gas delivery service charges (Ameren Illinois Exhibit 4.0, page 4 of 6, line 81). There is no dispute related to the amount of gas delivery service charges billed to Prairie Farms. The dispute arises because the suspended charges are related to service that took place at the Prairie Farms Dairy in Carbondale, Illinois during a 14 month period when the gas meter at that location failed to properly record usage.

2. The decision for the Commission relates to the application of 83 ILL ADMIN CODE, Section 500.240. Paragraph 3) of this section states:

“If the meter be found to underregister, the utility may render a bill to the customer for the estimated consumption not covered by bills previously rendered during the period of inaccuracy as defined above. Such action shall be taken, however, only in the event the bill for estimated inaccuracy amounts to 50 cents or more, and such bill shall be conditional upon the utility not being at fault for allowing the incorrect meter to remain in service. The utility shall in no case render a bill for underregistration where a meter has been found slow, unless the particular meter has been inspected and tested in conformity with Sections 500.190, 500.200, 500.210, 500.215 and 500.220.”

3. At issue between the parties is whether or not the failure that took place was a meter failure, and if so, whether Ameren was responsible for the failed device staying in that condition during the period of failure. These are the criteria that must be met in Section 500.240.
4. Prairie Farms witness Dan Long has established, in Prairie Farms Exhibit 1.0, page 2 that:
 - a. Two malfunctions of a gas meter owned by Ameren and in place at a Prairie Farms Dairy facility in Carbondale Illinois occurred,
 - b. That these two malfunctions spanned a period of 14 months before they were discovered and repaired,
 - c. That the pressure compensation device that was involved in the first malfunction is in fact part of the gas meter installation,
 - d. That the sheared pin that was involved in the second malfunction is in fact part of the gas meter installation,
 - e. That during the period these malfunctions existed, Ameren had information that should have been used to discover these malfunctions and repair them prior to the passing of 14 months,
 - f. And that Ameren’s own communications and data request responses support these conclusions
5. Prairie Farms Exhibit 4.0 is an e-mail from Ameren wherein Ameren itself validates Mr. Long’s contentions in items a. through d. above. Prairie Farms Exhibit 4.0 is an e-mail communication from Ameren to Prairie Farms that memorializes a phone call wherein Ameren informed Prairie Farms of the meter failure. In part, this e-mail states,

“this message is to provide you with a written explanation of what happened with the meter to cause it to mis-register the volumes metered over that period.....”.

This e-mail is the first written communication from Ameren related to the "problem" that spanned 14 months. It is clear that early in the process Ameren admitted, and has stated that it was a meter malfunction that caused incorrect volumes to be billed to Prairie Farms. It was only after Prairie Farms filed this complaint that Ameren decided that the malfunctions were not meter failures.

In fact, during this 14 month period, two mechanical meter failures occurred. One failure caused the meter to register less volume than was actually taken. The second failure caused the meter to fail to register any volumes. It was only after the second failure that Ameren noticed, and corrected both problems. These facts are also set forth by Ameren in the above referenced e-mail contained in Prairie Farms Exhibit 4.0. As a result, based on these facts alone, it is apparent that the equipment that constitutes the meter failed to accurately measure gas volumes, thereby falling within the constraints stated in Section 500.240.

6. Items e. and f. above contend that Ameren had in its possession, during the meter malfunction period, information it should have used to identify the meter problems and correct them long before the second failure took place. Prairie Farms Exhibit 5.0 is an e-mail from Ameren that responds to certain questions asked by Prairie Farms subsequent to being contacted by Ameren regarding the meter failure. Below is the complete text of one such question and the answer provided by Ameren.

"2) I was wondering if the Ameren billing system still has a trigger each month for high and low bills? Ameren does indeed have high and low bill "triggers" (reports) in each of the two systems through which gas transportation customers' bills pass each month, USMS (Unbundled Services Management System) and CSS (Customer Service System.) These reports generate large numbers of "hits" each month, the vast majority of which are due to changes in usage patterns caused by changes in the equipment a customer is operating over a period or the number of hours they operated in the period compared with other periods. Since Ameren does not staff at a level (nor do our customers pay us to staff at a level) to investigate each and every such out of parameter account, we rely mostly on the zero consumption report to find metering problems. It was your client's appearance on such a report that led to the investigation that uncovered not only the sheared pin that caused the zero consumption, but also the lack of a gas pressure signal to the pressure compensation device. We also hope that our customers are tracking consumption and billing in the context of their operations such that should they see a 75% reduction in consumption without a corresponding change in their operations, they contact us with questions. When this happens, Ameren invariably conducts the appropriate

investigation, which in this case could have limited this problem to just a few months.”

This excerpt establishes that Ameren had in its possession during the first 12 months of the 14 month meter failure information that the failure had occurred, and that should have been used to identify and correct the problem long before it was discovered. This information establishes that Ameren was at fault for allowing the malfunctioning meter to remain in place for 14 months, thereby meeting the criteria in Section 500.240. Ameren possessed a report issued by their billing system that highlighted reduced usage by Prairie Farms. That reduced usage was actually incorrect metered volumes due to the mechanical failures. Ameren ignored the report, and in doing so, became responsible for allowing the meter failure to continue. This falls within one of the criteria stated in Section 500.240, wherein Ameren was “at fault for allowing the incorrect meter to remain in service”.

7. In spite of the admissions by Ameren in the e-mails in Exhibits 4.0 and 5.0, Ameren has contended that the mechanical failures that took place were ancillary devices that were not part of the meter, thereby not falling under the requirements of Section 500.240. This contention was made by Ameren witness Tony Miller on page 2 of Ameren Illinois Exhibit 5.0. Mr. Miller provided as support references to the American Gas Association Gas Measurement Manual as support for his contention that “Electronic correctors are also specifically covered by the AGA Gas Measurement Manual Part 15.” Then, Mr. Miller states, “ Part 15 clearly identifies electronic correctors as auxiliary equipment, **not part of the meter.**” (emphasis added). In fact, Mr. Miller has misrepresented what that manual says. The manual does not state that correctors are “**not part of the meter.**” This portion of Mr. Miller’s statement is his opinion, but that portion of his opinion does not appear in the portion of the manual he references. Mr. Miller’s contention is without merit and value in this case, as nowhere in the relevant portion of the ILL ADMIN CODE does it refer to the American Gas Association Manual to determine what is, and what is not, part of the meter.

Despite this contention, Prairie Farms has established that correction devices of the type that failed are in fact part of the meter and are considered such in the ILL ADMIN CODE. Mr. Long, in Prairie Farms Exhibit 3.0, pages 3 and 4, includes a

reference to ILL ADMIN CODE Section 500.190, Customer Meter Accuracy Requirements. Paragraph b) of this section states;

“b) Temperature compensating meters shall be of such design as to meet the above accuracy requirements over a full range of temperature from zero degrees Fahrenheit to 100 degrees Fahrenheit. Routine testing of temperature compensating meters shall be performed at meter test room temperatures. In the event of complaint and indication that a temperature compensating meter is not registering correctly at high or low temperature, said meter shall be tested at zero degrees Fahrenheit, 60 degrees Fahrenheit, and 100 degrees Fahrenheit, to determine the accuracy of said meter.”

This portion of the ILL ADMIN CODE establishes that compensating devices are required to ensure accuracy of metered volumes. This portion of the code also establishes that compensating devices are part of what the code describes as “compensating meters”. Various portions of testimony submitted by Prairie Farms serve to substantiate that compensation is part of the meter because without compensation, accurate meter readings are not available.

8. In addition to the section of the code shown above, other portions of the code that are not yet part of the record in this case address compensation that is needed, in fact required, if a meter is installed outside where it would be exposed to temperature variations that would affect the accuracy of the readings. Prairie Farms asks the Commission to take administrative notice of the requirements of Section 500.170.

b) Meters shall not be installed in locations where the generally prevailing ambient temperature varies from 60 degrees Fahrenheit by more than 20 degrees Fahrenheit, except as hereinafter provided. In locations where generally prevailing ambient temperatures vary from 60 degrees Fahrenheit by more than 20 degrees Fahrenheit, meters incorporating a suitable compensating device shall be used. Where it is the present general policy and practice of a utility to install all of its residential and small commercial meters, where possible, out-of-doors without temperature compensation, said utility may continue to do so on the assumption that present rates are predicated on such metering practice.

This section substantiates the need for the continued use of a compensation device at the Carbondale facility since the rates in place do not make up for the lack of compensation when the device fails even partially. Ameren’s rates to Prairie Farms do not incorporate a factor for temperature or pressure variation, hence the need for compensation in order to obtain accurate meter readings. These requirements are at odds with statements made by Ameren witnesses that pressure compensation could

easily be replaced by some sort of billing constant. (Ameren Illinois Exhibit 5.0, page 5 and page 6)

9. In addition, misleading communications from Ameren appear to have been designed to substantiate their position that compensation equipment was in fact not considered part of the meter. Ameren stated that this Commission did not deny similar claims made by Ameren in other proceedings. In making such a claim Ameren attempted to dissuade Prairie Farms from pursuing relief. Prairie Farms Exhibit 5.0 is an e-mail from Ameren that includes, among other references, a statement regarding "recent cases...in front of the ICC". The relevant paragraph is shown below in its entirety.

"Several fairly recent cases, some involving billing adjustments much larger than your client's rebilling, have gone in front of the ICC, which did not deny Ameren's contention that this type of error is not a metering error, but a billing error. To have been a metering error would have required that the part of the meter that accumulates the registration of raw volumes of natural gas would have been doing so fast or slow (outside an allowed tolerance) or accumulating no usage. None of those conditions were met in this instance."

Mr. Long presented testimony in Prairie Farms Exhibit 1.0 that described his research into the cases alluded to in this e-mail. It was determined that all but one of the "cases" were informal complaints, for which no Commission Order is Issued. The remaining "case" was filed as a formal complaint and assigned Docket No. 10-0722. This formal complaint was settled by the parties and as a result, no Commission order was issued in that proceeding. As a result, contrary to Ameren's assertions, the Commission took no position in any of the "cases" mentioned.

10. Expert testimony by both parties has been submitted. These contain conflicting expert opinions about what does and does not constitute a meter. In some instances opinions of this type are helpful, possibly necessary in order for the Commission to render a decision. However, in this case, these opinions may not be necessary. Prairie Farms has shown, in documents from Ameren, that prior to filing this complaint, Ameren referred to the malfunction that occurred at Prairie Farms Carbondale Facility as a "metering problem" and a "metering malfunction". In addition, the ILL ADMIN CODE sections cited in Testimony by Mr. Long stand on their own merit. Section 500.190 describes and discusses meter compensation as a

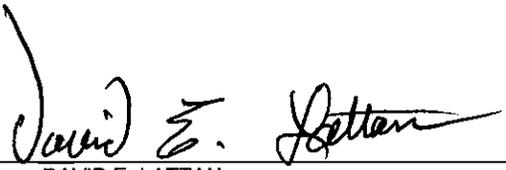
portion of its requirements for customer meter accuracy. This same section refers to “temperature compensating meters”, which means a basic meter and a compensation device incorporated together in order to provide accurate readings.

11. Prairie Farms would direct the Commission to Prairie Farms Exhibit 3.0, page 8, wherein a list of issues is presented by Prairie Farms’ witness Dan Long. Prairie Farms has shown that these issues stand un-refuted by Ameren. These issues provide the Commission with the guidance to agree with Prairie Farms complaint.
 - 1) Volumetric correction, whether pressure, temperature or both, is necessary to determine accurate gas volumes for billing,
 - 2) In the absence of correction during the period of malfunction, accurate billing volumes from the meter installation did not exist,
 - 3) Pressure correction is an integral part of the meter at facilities requiring pressure correction because of non-standard pressure that fluctuates constantly,
 - 4) Ameren had in its possession the information that would have allowed it to discover the meter error long before the meter failed completely,
 - 5) Ameren did not utilize the information because it had erroneously adopted a general rule that such information was likely created by factors other than meter failure,
 - 6) Ameren attempted to dissuade me and Prairie Farms from pursuing the issue by citing “cases” in which the ICC was on their side,
 - 7) When investigated, no such cases existed which demonstrated ICC support for the Ameren/Illinois position,
 - 8) While not implying either malice nor negligence, it is our position that it was the fault of Ameren/Illinois that the meter error went 12 months before a complete failure brought it to Ameren/Illinois’ attention,
 - 9) Ameren has indicated that one use of the compensation device was to facilitate remote interrogation. As such, Ameren has stated implicitly that under conditions prescribed by Ameren, the compensation device is required to “read” the meter,
 - 10) Relevant portions of the Public Utilities Act refer to compensating meters, thereby validating Prairie Farms contention that compensation devices are part of the meter,
 - 11) Relevant portions of the Public Utilities Act refer to compensating meters with respect to discussions of accuracy, testing and billing,
 - 12) Because the meter malfunction went undiscovered due to fault on the part of Ameren/Illinois, Prairie Farms is not liable for the rebilled “estimated” gas delivery charges.

(Prairie Farms Exhibit 3.0,page 8)

WHEREFORE, Complainant, PRAIRIE FARMS DAIRY INC. respectfully requests that the Illinois Commerce Commission find in the affirmative with respect to Prairie Farms’ complaint and grant the relief requested herein.

On Behalf of **PRAIRIE FARMS DAIRY INC., Complainant**

By: 
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