STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

David E. Lattan, for Prairie Farms Dairy	**:**	
-vs-	**:**	
Ameren Illinois Company d/b/a Ameren	**:**	
Illinois	**:**	**11-0717**
	:	
Complaint as to gas meter failed to	**:**	
function correctly for over 12 months in	**:**	
Carbondale, Illinois.	**:**	

ORDER

DATED: March 20, 2013

TABLE OF CONTENTS

I. NATURE OF COMPLAINT; BACKGROUND 1

II. COMMISSION CODE PARTS 3

III. PRAIRIE FARMS' POSITION 4

IV. AMEREN ILLINOIS POSITION 11

V. COMMISSION ANALYSIS AND CONCLUSIONS 18

VI. FINDINGS AND ORDERING PARAGRAPHS 23

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ORDER

By the Commission:

The original complaint in this docket was filed and signed on behalf of Prairie Farms Dairy ("Prairie Farms," "PF" or "Complainant") by Dan Long, who is a consultant. After Ameren Illinois Company ("Ameren Illinois," "Ameren" or "AIC") objected, an Amended Complaint, signed on behalf of Prairie Farms by David E. Lattan, Vice President, Engineering, was filed on March 12, 2012.

Status hearings and an evidentiary hearing were held before an Administrative Law Judge at the Commission's offices in Springfield, Illinois. Appearances were entered by Mr. Lattan for Prairie Farms, and by the attorney for Ameren Illinois.

Prairie Farms presented the testimony of one witness, Dan Long. Ameren Illinois presented the testimony four employees: Tony Miller, Supervising Engineer; Ted Rose, Gas Meter Foreman; Peter Millburg, Managing Supervisor of Regulatory Compliance; and Angie White, Supervisor Customer Accounts. The witnesses also sponsored various exhibits, including photographs and billing records.

At the conclusion of the hearings, the record was marked "Heard and Taken." Initial briefs ("IBs") and reply briefs ("RB") were filed by both Parties. A Proposed Order was served on the Parties. A brief on exceptions ("BOE") was filed by Prairie Farms. For the most part, the factual statements in Prairie Farms' BOE are not supported by citations to the record. A reply brief on exceptions ("RBOE") was filed by Ameren Illinois.

I. NATURE OF COMPLAINT; BACKGROUND

As explained below, the complaint arose after Ameren Illinois billed Complainant in the amount of $34,387.75 for unbilled natural gas delivery service provided by Ameren to Complainant's facility at 742 North Illinois Avenue, Carbondale, Illinois from April 2010 to early July 2011. Prairie Farms does not dispute either the amount of

unbilled gas service or the calculation of the charge. Prairie Farms contends that under Commission rules, particularly Ill. Adm. Code 500.240, it is not required to pay for the unbilled gas service.

In Section II of its initial brief, titled, "Undisputed Statement of Facts," Ameren Illinois states the following on pages 3-4:

In early July, 2011, a meter technician investigating zero consumption on the rotary gas meter at Complainant's Carbondale facility found a sheared pin on the meter index drive. (AIC Ex. 2.0 at 3)

The technician replaced the damaged unit with a new meter index drive. In the process of making this repair, the technician noticed a bent handle on the pressure sensing line valve to the auxiliary electronic corrector device utilized by Ameren Illinois to convert gas usage for its billing system. (*Id*.)

The bent handle and closed valve interfered with the proper operation of the auxiliary electronic corrector device which resulted in an inaccurate bill for gas service.

An electronic corrector is attached to a rotary type gas meter as auxiliary equipment by means of an "instrument drive." (*Id*. at 3-4)

The instrument drive attaches to the end of the meter index on a rotary meter and transfers data regarding uncorrected or raw volumes of gas usage measured by the gas meter to the corrector and provides a means of physically attaching the corrector to the meter.

A given volume of natural gas at a pressure higher than "standard" pressure for the meter contains more natural gas molecules/energy than the same volume of gas at a lower pressure. (*Id*.)

The auxiliary electronic corrector device accounts for this effect by tracking the continuously changing pressure and accounting for the corresponding changes in the amount of gas used.

The corrector utilizes mathematical algorithms based upon gas laws to calculate a "constant" or "factor" to adjust the volumes of gas measured by the meter for the purpose of billing the actual volumes of gas used by the customer. (*Id*.)

The malfunctioning valve at Complainant's Carbondale location was on the tube that transmits the pressure of natural gas going through the meter to the auxiliary electronic corrector device which multiplies the meter's registered volumes for gas pressure to facilitate accurate billing.

With the gas pressure to the auxiliary electronic corrector device at zero, the resulting metered volumes were totally uncorrected for pressure, but "raw" uncorrected readings still existed for the gas used. (*Id*. at 4-5)

In the absence of a functional electronic corrector device, the meter itself continued to accurately measure the raw, uncorrected volumes of gas flowing through the meter until the time at which the drive pin in the meter index sheared.

The sheared pin then resulted in the gas meter not registering any usage. Ameren Illinois inspected and replaced the defective drive in the meter five days following its zero consumption reading. (*Id*.)

II. COMMISSION CODE PARTS

In 83 Ill. Adm. Code 500, Standards of Service for Gas Utilities ("Part 500"), Section 500.240, "Adjustment of Bills for Meter Error," provides:

> a) Whenever any test of a customer meter made by a utility, or by the Commission when removed from service, shall show such meter to have an average error of more than four percent, the following provisions for the adjustment of bills shall be observed:
>
> 1) For the purpose of this Section, the error found shall be considered to have existed for the six months preceding the test or for the time the meter has been in service, if less than six months. In cases where it can be shown that the inaccuracy has existed for a longer period than six months, adjustment shall be made for the longer period. Furthermore, for the purpose of this Section, a bank or set of meters connected in parallel shall be considered as a meter. Any adjustment of bills for either overregistration or underregistration shall not extend back beyond
>
> A) the date of the commencement of service to the customer occupying the premises at the time of the test by which the inaccuracy is discovered, or
>
> B) the date of the installation of the meter, whichever is later.
>
> 2) If the meter be found to overregister, the utility shall refund to the customer any overcharge caused thereby during the period of inaccuracy of the meter as above defined. The actual error of the meter, and not the difference between the allowable error and the error as found, shall be used as the basis for calculating the refund.
>
> 3) 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.

4) In the case of a nonregistering meter which has been read during the period of nonregistration, the utility shall not render a bill for an estimated consumption extending over more than twice the regular interval between readings.

b) Whenever a utility or the Commission shall find a gas meter in its place of service to be registering gas on account of a leak in the meter or in the outlet connection of the meter, an estimate based upon a period of inaccuracy as defined above shall be made of the registration which has been produced by the leakage and a corresponding refund shall be made to the customer.

In Section 280.100, "Unbilled Service," cited by Ameren Illinois, Subsection (a) provides, in part, that a utility may render a bill for services or commodities provided to:

1) A residential customer only if such bill is presented within one year from the date the services or commodities were supplied, or

2) A non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied.

b) No customer shall be liable for unbilled or misbilled service after expiration of the applicable period except in those instances to which 83 Ill. Adm. Code 500.240(a), 83 Ill. Adm. Code 410.260(c), or the following subsections of this Section apply.

…

Prairie Farms also cites Section 500.170 and 500.190 of Part 500 as indicated below.

III. PRAIRIE FARMS' POSITION

Preliminarily, the Commission observes that the descriptions and summaries of parties' positions on the issues, wherever they may be contained in this order, are not intended to reflect the opinions of or determinations by the Commission unless otherwise noted.

According to Prairie Farms, the issue before the Commission is whether Prairie Farms owes Ameren Illinois $34,387.75 in suspended gas delivery service charges. 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." (PF IB at 1)

The decision for the Commission relates to the application of 83 Ill. Adm. 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.

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. (PF IB at 2; RB at 2)

According to Prairie Farms, its witness Mr. Long has established, in Prairie Farms Exhibit 1.0, page 2 that two malfunctions of a gas meter owned by Ameren and in place at a Prairie Farms Dairy facility in Carbondale Illinois occurred; these two malfunctions spanned a period of 14 months before they were discovered and repaired. The pressure compensation device that was involved in the first malfunction is in fact part of the gas meter installation; the sheared pin that was involved in the second malfunction is in fact part of the gas meter installation. 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; Ameren's own communications and data request responses support these conclusions. (PF IB at 2; RB at 2)

Prairie Farms Exhibit 4.0 is an e-mail from Ameren which "validates" Mr. Long's contentions in the items listed 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. Based on these facts alone, it is apparent to Prairie Farms that the equipment that constitutes the meter failed to accurately measure gas volumes, thereby falling within the constraints stated in Section 500.240. (PF IB at 3)

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 text of one such question and the answer provided by Ameren.

> …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.

In Prairie Farms' view, 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 its 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". (PF IB at 4; PF BOE at 3-4, 7-8)

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 ("AGA") 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." According to Prairie Farms, 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. In Prairie Farms' view, Mr. Miller's contention is without merit and value in this case, as nowhere in the relevant portion of the Ill. Adm. Code does it refer to the AGA Manual to determine what is, and what is not, part of the meter. (PF IB at 4)

Prairie Farms argues, "It is also unproven that none of these references [by Ameren to certain ANSI standards and the AGA Gas Measurement Manual] state definitively that a pressure compensation device either is or is not part of the meter. That assertion is an opinion of an Ameren witness and not contained in either the ANSI or AGA materials." (PF RB at 5)

Prairie Farms further argues, "Most importantly, it is undisputed that the Illinois Administrative Code contains no references to either the ANSI or AGA standards with respect to whether compensation devices are, or are not, part of the meter, and the Illinois Administrative Code is the standard upon which the Commission decision must be based." *(Id.*)

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. Adm. Code. Mr. Long, in Prairie Farms Exhibit 3.0, pages 3 and 4, includes a reference to Ill. Adm. 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. Adm. 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. (PF IB at 5; RB at 7)

In addition to the section of the code shown above, other portions of the code 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.

According to Prairie Farms, 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. (PF IB at 5-6; RB at 9) These requirements are at odds with statements made by Ameren witnesses that pressure compensation could easily be replaced by some sort of billing constant. (PF IB at 5-6)

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 states, "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 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. (PF IB at 6; PF BOE at 8)

According to Prairie Farms, 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 Part 500 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. (PF IB at 6-7)

In its reply brief, Prairie Farms responds to arguments in Ameren Illinois' brief that Prairie Farms "must establish three independent elements…" to meet its burden of proof. In Prairie Farms' view, it has established each of these elements as being met. (PF RB at 3)

With respect to a "test" establishing that the meter was in error by more than 4 percent, Prairie Farms states that the meter in question is fitted with a device that allows remote "reading" or "interrogation" by Ameren Illinois in order to obtain meter readings for billing without a meter reader actually being on site to read the meter. For 12 months of the period in question, Ameren Illinois' billing system was alerting them to a problem with usage. This problem related to a meter that was providing readings that were in error by over 25%. Prairie Farms suggests this internal report is an internal request by Ameren Illinois to test or check the meter for accurate operation. Prairie

Farms contends this report is an existing and ongoing "test" of each meter that provides Ameren Illinois with notice and information as to whether further testing or investigation is warranted. Prairie Farms disputes Ameren Illinois' assertion that "it is undisputed that no test of any kind was conducted on the Complainant's meter during the period at issue herein." (*Id*. at 3-4; PF BOE at 7)

According to Prairie Farms, It must also be "assumed" that when the Ameren Illinois meter repair was finally accomplished, the repair included a test in order to determine if inaccuracy existed in addition to the complete failure of the meter. It might also be assumed that the report itself is an ongoing test of reasonableness and accuracy of the readings provided by the meter. (*Id*.)

The Commission observes that some of the assertions and assumptions noted in the prior two paragraphs appear to have been made for the first time in Prairie Farms' reply brief.

Prairie Farms also disputes Ameren Illinois' position that it was not "at fault" within the meaning of Section 500.240(a)(3). Prairie Farms states that during the first 12 months of the period at issue, the meter registered and provided to Ameren Illinois, readings used in billing Prairie Farms that were in error by over 25%, and that for two additional months the readings were non-existent, or zero. These erroneous readings were provided to, and available to, Ameren Illinois the entire time the meter operated with these inaccuracies. Ameren Illinois was made aware through these reports that the inaccuracy existed and chose to ignore the problem. In doing so, Ameren Illinois ignored its obligation to investigate the error and test the faulty meter. (*Id*. at 4-5) As such, Ameren Illinois had repeated notice "referred to in [the] Peoples [Gas]" cases discussed below. (PF BOE at 3-4, 7-8)

In Paragraph 9 of its reply brief, Prairie Farms responds to Ameren Illinois' "assault" on the testimony and expertise of Prairie Farms' witness, Dan Long. (PF RB at 6)

According to Prairie Farms, it is undisputed that Mr. Long has over 30 years of continuous experience in the field of electric utility rates and regulation in Illinois. Mr. Long has appeared before the Commission many times as an expert witness in a host of issues related to Illinois utility rates and regulation, including the interpretation and application of the Illinois Administrative Code.

Prairie Farms has established, even without expert opinion of an operational nature, that correction devices of the type that failed are in fact part of the meter and are considered such in the Ill. Adm. Code. (PF RB at 7; PF BOE at 8)

IV. AMEREN ILLINOIS POSITION

As observed above, the descriptions and summaries of parties' positions on the issues, wherever they may be contained in this order, are not intended to reflect the opinions of or determinations by the Commission unless otherwise noted.

The dispute arose from unbilled natural gas delivery service provided by Ameren to Complainant's facility at 742 North Illinois Avenue, Carbondale, Illinois from April 2010 through July 2011. Ameren Illinois billed Complainant in the amount of $34,387.75 for the subject unbilled gas delivery service. (AIC IB at 1) The Complainant does not dispute the correctness or reasonableness of the calculation. (Tr. at 95)

The remaining issues are (1) whether Ameren Illinois' authority to bill Complainant for gas service is controlled by 83 Ill. Adm. Code 500.240(a)(3) (Adjustment of Bills for Meter Error) or 83 Ill. Adm. Code 280.100(a)(2) (Unbilled Service) and; (2) whether the Prairie Farms' witness' testimony in respect to whether the pressure corrector constitutes a part of the "meter" should be afforded any weight given the witness' lack of qualifications and relevant experience regarding the mechanical components of a gas meter and auxiliary attachments such as an electronic corrector device. (AIC IB at 1-2)

Complainant contends that Section 500.240(a)(3) applies and Ameren Illinois is barred from recovery of the previously unbilled amounts.

According to Ameren Illinois, in order to prevail, the Complainant must establish three independent elements as follows: (1) that a "test of [Complainant's] meter…show[ed] such meter to have an average error of more than four percent…"; and (2-3) that Ameren Illinois is "at fault for allowing [an] incorrect meter to remain in service." 83 Ill. Adm. Code 500.240(a)(3). Complainant cannot establish any of the foregoing elements necessary to meet its burden of proof. (AIC IB at 2, 4)

In Section IV.A of its initial brief, Ameren Illinois argues, "83 Ill. Adm. Code 500.240 has no application to the current matter." Complainant "erroneously" contends that Section 500.240(a)(3) prohibits recovery of the subject amount for previously unbilled gas service. Section 500.240(a)(3) states, in relevant part, as follows:

> a) Whenever any test of a customer meter made by a utility, or by the Commission when removed from service, shall show such meter to have an average error of more than four percent, the following provisions for the adjustment of bills shall be observed:
>
> …
>
> 3) 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.

In the view of Ameren Illinois, "Section 500.240(a)(3) is inapplicable and does not bar recovery of the amount claimed by Ameren Illinois for three independent reasons."

First, it is "undisputed that no test of any kind was conducted on the Complainant's meter" during the period at issue herein, much less a "test [which]…show[ed] such meter to have an average error of more than four percent…" as required to satisfy the threshold element for application of Section 500.240. This fact alone is dispositive of Complainant's argument. (AIC IB at 5)

Second, Complainant cannot establish that Ameren Illinois was "at fault" for allowing the broken electronic corrector to remain "in service" under Section 500.240(a)(3). Complainant contends that Ameren Illinois is "at fault" because "Ameren possessed, within its organization, information that would have indicated there was a problem." (AIC IB at 5-6) Complainant's attempt to characterize Ameren Illinois' internal reports as a *de facto* meter test for the purposes of Section 500.240 has no basis in fact or law. (AIC RBOE at 6)

Complainant's attempt to characterize the "at fault" element as subject to a common law negligence standard is contrary to Illinois law. Specifically, the Illinois Appellate Court has "rejected a negligence definition of 'at fault,' and defined 'fault' as the failure of the utility to perform the tests required by the Commission." *Peoples Gas, Light and Coke Co. v. Illinois Commerce Com'n ("Peoples Gas")*, 175 Ill.App.3d 39, 50, 124 Ill. Dec. 690, 698 (1st Dist. 1988) (citing *Illinois Power v. Champaign Asphalt Co*, 19 Ill.App.3d 74 (4th Dist. 1974)). Complainant has not alleged that Ameren Illinois failed to perform any "test[] required by the Commission." Accordingly, Ameren Illinois cannot be deemed "at fault" under Section 500.240(a)(3) even if the electronic corrector device is deemed to be part of the meter itself. (AIC IB at 6; AIC RBOE at 8)

Notwithstanding the above authority, Ameren Illinois immediately identifies any issues associated with its meters and auxiliary equipment following receipt of reasonable notification and repairs such issues as promptly as possible. Ameren Illinois does not have a legal obligation to alert customers of any gas usage fluctuation on a commercial account. In the current matter, as explained above, the sheared pin on the meter index drive resulted in the gas meter not registering any usage and yielded a zero consumption reading. Ameren Illinois promptly inspected and replaced the defective drive in the subject meter five days following its zero consumption reading. (AIC IB at 6)

Third, "Complainant cannot establish that the electronic corrector device constitutes a part of the gas meter itself rather than a separate auxiliary attachment utilized to facilitate billing for gas services." (*Id*.)

According to Ameren Illinois, a rotary meter, with an auxiliary electronic corrector mounted on top of the instrument drive on the meter, is installed at Complainant's Carbondale, Illinois facility. Virtually all integral components to the meter are installed inside the meter body. ANSI B109.3 is the design manual for rotary type displacement meters like the one in place at the subject facility. This design manual not only specifies the design and performance requirements for rotary meters, but also includes a section which identifies auxiliary equipment, including electronic correctors. (AIC Ex. 5.1) Electronic correctors are also specifically covered by the American Gas Association Gas Measurement Manual Part 15. Part 15 clearly identifies electronic correctors as auxiliary equipment, not part of a gas meter. (AIC IB at 7; AIC Ex. 5.2)

ANSI B109.3 states, in part:

> 6.8.5 Automatic Integrating Devices for Pressure and Temperature
>
> 6.8.5.1 Definition. An automatic integrating device for pressure and temperature is an auxiliary device designed to automatically correct a volume-related input to some predetermined base pressure and base temperature condition in accordance with Boyle's Law and Charles' Law.
>
> 6.8.5.2 Identification. All automatic integrating devices shall have permanent identification for pressure and temperature ranges, multipliers for counters, atmospheric pressure, contract base pressure, base temperatures, rotational information and volume per revolution of instrument drive, in addition to the requirements of 6.1.4. Where the automatic integrator is supplied with a recorder, additional identification is required in conformance with the applicable portion of 6.7.
> (AIC Ex. 5.1)

Part 15 of the AGA Gas Measurement Manual addresses Electronic Correctors as follows:

> This manual presents information on electronic correctors (ECs) for the purpose of evaluation, selection, installation, operation, calibration and maintenance of ECs. This is not a standard for electronic corrector (EC) design. The information is intended to cover only those instruments that can be considered as an auxiliary device mounted on the gas meter or receiving a direct pulse from a linear flow meter. It does not include electronic flow-measurement systems or integral temperature- and pressure- correcting devices incorporated as part of a meter.
> (AIC Ex. 5.2 at 6)

Part 15 of the AGA Manual also states that an electronic corrector "may be mounted directly on the gas meter, pole-mounted or wall-mounted." (*Id*. at 11) These explanations from the American Gas Association support Ameren Illinois' position that the electronic corrector is a piece of auxiliary equipment and not part of a gas meter itself. (AIC IB at 8)

The electronic corrector device is attached to the meter, and converts the metered usage from the meter itself into data usable by the billing system. The usage is counted on both the meter and in the corrector device, but the corrector is not essential to operation of the meter and merely reports the usage to Ameren Illinois' billing system. (*Id*.)

The electronic corrector installed as auxiliary equipment on the rotary gas meter provides the source of the pressure correction factors utilizing mathematical algorithms to calculate the billed volumes of gas. Ameren Illinois could have selected pressure factor billing for Complainant's gas measurement, but chose to install an electronic corrector due to other design considerations. Ameren Illinois utilizes both pressure factor metering and electronic correctors based upon several considerations specific to each individual installation. (AIC Ex. 5.0 at 5-6) The Prairie Farms facility in Peoria, Illinois, which has the same size rotary meter installed, does not have an attached electronic corrector device, but receives an elevated gas delivery pressure and the actual billed volumes are adjusted by means of applying a pressure factor to the raw volumes of gas measured by the meter in Ameren's billing system. (*Id*.) In Ameren Illinois' view, this fact alone establishes that the electronic corrector device is a non-essential auxiliary attachment rather than a part of the gas meter itself. (AIC IB at 9)

In its reply brief, Ameren Illinois responds to arguments by Prairie Farms that documents from Ameren show that prior to the filing the complaint, Ameren representatives referred to the malfunction that occurred at Prairie Farms Carbondale Facility as a "metering problem" and a "metering malfunction." (PF IB at Par. 5, 10; AIC RB at 2)

According to Ameren Illinois, Complainant erroneously contends that e-mail correspondence from a member of Ameren Illinois' customer relations staff regarding the facts underlying this matter constitutes an admission by Ameren Illinois that the electronic corrector device is part of the meter itself. (AIC RB at 2)

A statement by an employee or agent "after an event has passed does not bind the principal and cannot be proved as an admission." *Fakhoury v. Vapor Corp*., 218 Ill.App.3d 20, 24 (1st Dist. 1991). "In order to introduce a statement or act by an agent or employee as an admission it must first be shown (1) that he was such an agent or employee; (2) that such statement or act was made or done in and about a matter over which he had actual or apparent authority, and (3) that he spoke or acted under or by virtue of his authority as such agent or employee." *Roberts v. Norfolk and Western Ry. Co.*, 229 Ill. App. 3d 706, 713-14 (4th Dist. 1992). (AIC RB at 3)

According to Ameren Illinois, the author of the subject e-mails neither possessed authority to render an opinion on behalf of Ameren Illinois in respect to the technical relationship between an electronic corrector device and the meter itself nor is he qualified to render such expert opinion under Illinois law. There is no testimony or other evidence to support Complainant's argument that the e-mails contain any "admission" binding upon Ameren Illinois as a matter of law or to qualify the author of the e-mails as an expert on any disputed issue. Accordingly, Ameren Illinois concludes, the e-mails have no relevance to determination of this case. (*Id*.)

Moreover, in addition to the language cited by Complainant, the referenced e-mails also contain statements which are not consistent with an admission that the electronic corrector device constitutes part of the meter. Prairie Farms Exhibits 4.0 and 5.0 (referring to billing errors arising from a malfunction in the valve "on the tube that transmits the pressure of the natural gas going through the meter to the device that corrects the meter's registered volumes for the gas pressure."); (characterizing the issue as relating to "pressure to the pressure compensating device" and stating that the issue "is not a metering error, but a billing error."). This "unambiguous statement" characterizing the matter as a "billing error" rather than a "metering error" on August 15, 2011 occurred well before the filing of the Formal Complaint. (*Id*. at 3-4)

In Section IV.B of its initial brief, Ameren Illinois argues, "The testimony of Dan Long should be afforded no weight." (AIC IB at 9-14)

Mr. Long, who was the only witness for Prairie Farms, has been tendered by Complainant as an expert witness on the issues of (1) whether 83 Ill. Adm. Code 500.240(a)(3) applies to bar recovery by Ameren Illinois; and, more specifically, (2) whether the electronic corrector device is part of the gas meter such that the subject amounts can be attributed to a "meter error" under Section 500.240(a)(3).

According to Ameren Illinois, Mr. Long's "expert" opinion should be afforded no weight because he does not possess sufficient knowledge, experience and training in the design, operation and maintenance of gas meters to render a qualified opinion as to whether the subject electronic corrector device constitutes part of the gas meter itself. (*Id*. at 9)

"Although the weight to be accorded expert testimony is for the Commission to determine, a conclusion by an expert witness 'must rest on something more than...naked speculation' before it can support a finding of the Commission." *Commonwealth Edison Company Proposed General Increase in Electric Rates*, 1989 WL 1647085, Docket Nos. 83-0537, 84-0555 (Ill.C.C.) (September 5, 1989). In Ameren Illinois' view, Mr. Long does not possess sufficient experience and expertise in the technical field of design, operation and maintenance of gas meters to render an expert opinion regarding whether the electronic corrector device constitutes part of a gas meter in support of Complainant's position that the unbilled services arose from a "meter error" under 83 Ill. Adm. Code 500.240(a)(3).

Mr. Long's only "hands on" experience in respect to the composition, operation and maintenance of gas meters is confined to a period of five months in 1993 under the direct supervision of a veteran gas operations supervisor because of a labor dispute during Long's tenure with Central Illinois Public Service Company. (Tr. at 77-79) Mr. Long also assisted Mt. Carmel Public Utility Company with "storm damage type outages with physical work" limited to "[p]ossibly read[ing] a meter" on no more than six occasions between 1993 and 2008. (*Id*. at 80-86) Mr. Long has never installed or programmed a corrector on a gas meter. He has never assisted with research and selection of gas meter hardware or software and has not tested a gas meter before or since the five-month period in 1993 referenced above. According to Ameren Illinois, Mr. Long has no recent or significant experience in any area that would assist the trier of fact and possesses no certificates, degrees or other formal education specific to gas meters, gas correctors or any other subject matter relevant to determination of whether the electronic corrector device constitutes a part of the gas meter under Illinois law. (AIC IB at 10-11)

In contrast to Long's lack of relevant expertise and experience in the gas measurement industry, Ameren Illinois has submitted the testimony of Tony Miller (Supervising Engineer) and Peter Millburg (Managing Supervisor of Regulatory Compliance) who possess extensive and directly applicable expertise in gas measurement and regulatory compliance matters. (AIC IB at 13) The specific nature and breadth of expertise possessed by Miller and Millburg in the gas utility industry are extensive and directly applicable. The testimony of Miller and Millburg should be afforded great weight in determination of the issues raised in this matter. Conversely, Mr. Long's lack of directly applicable expertise and experience requires that his testimony be afforded little, if any, weight. (*Id*. at 13-14)

In Section B of its reply brief, Ameren Illinois argues, "Neither Section 500.170 nor 500.190 supports Complainant's position." (AIC RB at 4)

83 Ill. Adm. Code 500.170 does not establish that compensating devices are required as Mr. Long contends but, instead, expressly states as follows:

Section 500.170(b) (Location of Service Meters)

> 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 temperature 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.

Section 500.170 does not require use of a corrector device on all outdoor meter installations, but expressly permits meter installations without such auxiliary equipment in certain circumstances. (AIC RB at 4)

Ameren Illinois argues, "If anything, Section 500.170 weighs heavily in favor of Ameren Illinois' position that an auxiliary corrector device is not part of the meter itself because the provision contemplates outdoor meter installations that are not required to utilize a corrector device where it is the policy of a utility not to install such devices on all outdoor meters." Moreover, there is no evidence that the "generally prevailing ambient temperatures vary from 60 degrees Fahrenheit by more than 20 degrees Fahrenheit" outside Complainant's Carbondale facility such that Section 500.170(b) applies to the current matter. (*Id*. at 4-5)

Contrary to Complainant's argument, Section 500.170 clearly states that compensation devices are not required for all outdoor meters. (*Id*.)

Complainant also contends that Section 500.190 "establishes that compensating devices are required…." (PF IB at par. 7)

According to Ameren Illinois, Section 500.190 does not require compensation devices for all outdoor meters, but merely prescribes "accuracy requirements" where "temperature compensating meters" are used. (AIC RB at 5, citing 83 Ill. Adm. Code 500.190(b))

Ameren Illinois cites caselaw for the proposition, "The interpretation of an administrative rule or regulation is a question of law to which the principles of statutory interpretation apply." *People v. Morris*, 394 Ill.App.3d 678, 680 (2nd Dist. 2009). Well-settled principles of statutory interpretation mandate that "words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." *Alternate Fuels, Inc. v. Director of Illinois E.P.A.*, 215 Ill.2d 219, 238 (2004). (AIC RB at 5)

In Ameren Illinois' view, adoption of Complainant's interpretation of Section 500.190 would not only insert a requirement where none exists, but directly contradict the language of Section 500.170 which states that compensating devices are not required in all circumstances. As a consequence of the foregoing, neither Section 500.170 nor 500.190 supports Complainant's argument that a compensation device is required on all outdoor meters and, therefore, must be deemed part of the meter itself. (AIC RB at 5-6)

In Section IV.C of its initial brief, Ameren Illinois argues, "83 Ill. Adm. Code 280.100(a)(2) controls this matter."

The unbilled amounts arising from Ameren Illinois' supply of gas services during the subject time period cannot be attributed to a "meter error" such that Section

500.240(a)(3) bars recovery. Rather, Ameren Illinois is entitled to payment for all gas services rendered within two years pursuant to Section 280.100(a)(2) (Unbilled Service), which states:

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

It is undisputed that Ameren Illinois rendered a bill to Complainant for the subject gas services within two years from the date the services or commodities were supplied. Accordingly, Ameren Illinois is entitled to recover the undisputed amount claimed ($34,387.75) pursuant to 83 Ill. Adm. Code 280.100(a)(2). (AIC IB at 14)

In its reply brief on exceptions, in response to Prairie Farms' arguments regarding Ameren Illinois' internal reports identifying reduced usage by Complainant during the subject time period, Ameren Illinois cites the testimony of its witness Peter Millburg that significant fluctuations in gas or electric usage by large customers are not uncommon, and are caused by numerous factors such as temporary or permanent workforce reductions and adoption of new processes by the customer. Because of these external factors, significantly reduced usage by non-residential customers does not in and of itself indicate a malfunctioning meter or auxiliary equipment on the part of the utility. Customers such as Prairie Farms can experience significant fluctuations in levels of operations, as Prairie Farms itself notes, which can significantly affect the amount of natural gas used as compared to historic usage levels. (AIC RBOE at 5, citing AIC Ex. 3.0 at 6 and AIC Ex. 3.1) Accepting Complainant's premise would require a utility provider to assume a meter is incorrectly registering gas and that the meter is unreliable each time a customer's consumption drops, for any reason, which Ameren Illinois' views as "absurd and not required by Illinois law." (AIC RBOE at 6)

V. COMMISSION ANALYSIS AND CONCLUSIONS

As explained above, the complaint arose after Ameren Illinois billed Complainant in the amount of $34,387.75 for unbilled natural gas delivery service provided by Ameren to Complainant's facility at 742 North Illinois Avenue, Carbondale, Illinois from April 2010 to early July 2011. This amount is attributed to malfunctions in the pressure compensation equipment attached to the rotary gas meter.

Prairie Farms does not dispute either the amount of unbilled gas received by it or the calculation of the charge. Prairie Farms contends that under Commission rules, particularly Ill. Adm. Code 500.240, it is not required to pay for the unbilled gas service.

Section 500.240, "Adjustment of Bills for Meter Error," provides, in part:

> (a) Whenever any test of a customer meter made by a utility, or by the Commission when removed from service, shall show such meter to have

> an average error of more than four percent, the following provisions for the adjustment of bills shall be observed:
>
> …
>
> 3) 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. …[S]uch 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. (emphasis added)

According to Ameren Illinois, the Complainant must establish three independent elements in order to prevail under Section 500.240, but has not established any of the three, in that "no test of any kind was conducted on the Complainant's meter" during the period at issue; Ameren Illinois was not "at fault" for allowing the broken electronic corrector to remain "in service" under Section 500.240(a)(3); and Complainant cannot establish that the electronic corrector device constitutes a part of the gas "meter" itself rather than a separate auxiliary attachment utilized to facilitate billing for gas services.

In considering whether Ameren Illinois was "at fault," the Commission believes it would be useful to compare the circumstances in the instant complaint to those in the Commission's two *Peoples* orders analyzed by the Appellate Court in its *Peoples Gas* decision cited above. 124 Ill. Dec. 690, 175 Ill. App. 3d 39.

Those two *Peoples* orders involved complaints against Peoples by the customer, Alpha Baking ("Alpha"), in Commission Docket No. 85-0411. As explained by the Appellate Court in its decision affirming the Commission's Order on Rehearing, the meter which was the subject of this dispute in the Peoples proceedings was a rotary meter used for high-volume commercial and industrial customers. Because the volume of gas consumed varies directly in proportion to the change in the gas temperature, accuracy requires an adjustment to the volume measurement to compensate for changes in gas temperature. To assure correct measurement of Alpha's consumption of gas, a temperature compensating instrument was mounted on the top of the meter to adjust for the variations in temperature.

In February 1985, an internal Peoples' computer report indicated that Alpha's counter was registering an irregular consumption. No action was taken by Peoples at that time.

In May 1985, Peoples conducted its annual inspection of Alpha's gas meter and found that the temperature compensating device was stuck at 100 degrees Fahrenheit. At that time, Peoples neither replaced the temperature compensating instrument nor performed any tests to determine which device or mechanism in the instrument was

malfunctioning. Rather, it replaced the follower wheel, an integral part of the temperature compensating device. Peoples then sent Alpha a bill based on an estimate of Alpha's consumption for the period between March and May 1985. The estimate was derived from a reading of the veeder counter which registers the gas flow without compensating for changes in temperature.

In September 1985, Alpha filed a formal complaint with the Commission. Alpha alleged that with respect to the under-registration for March to May 1985, Peoples was "at fault" with respect to the meter's malfunction. Alpha requested that the Commission order Peoples to credit Alpha for the difference between the registered consumption and the estimated consumption used to back-bill Alpha for the under-registration. The Commission denied Alpha's complaint. This denial order was referred to as the Commission's "Original Order."

In April 1986, Peoples made a special inspection of the meter. Once again, the meter's temperature compensating device rested at 100 degrees. Peoples claimed the device had functioned properly for five months after its replacement of the follower wheel in May 1985, but rested at full scale again in September 1985 and remained at full scale registration until the April 1986 inspection. Peoples sent Alpha a bill based upon the gas company's estimate of the instrument's under-registration of consumption from September 1985 until April 1986. On the basis of this second billing, Alpha applied to the Commission for a rehearing raising the issue of Peoples' compliance with the Commission's testing requirements.

In its Order on Rehearing, the Commission determined that at the commencement of the second period of under-registration, Peoples "had the benefit of complaint and indication that the temperature compensating instrument did not register correctly." In support of its finding of complaint and indication, the Commission noted Peoples' internal computer checks which indicated an irregularity in registration in February 1985, as well as Peoples' annual testing of its meter in May 1985, which revealed that the temperature compensating device was stuck at 100 degrees. The Commission also relied on the fact that Alpha filed a complaint on September 20, 1985, five days before the second malfunction was uncovered, alleging that the meter was not registering properly at the time of the first malfunction. On these findings, the Commission concluded that Peoples "has been on notice since the filing of the original complaint on September 20, 1985, and before that through its own internal checks, that the meter on [Alpha's] premises was not registering correctly." As a result of these factual findings, the Commission concluded that Peoples was at fault for neither testing the meter nor removing it from service, as prescribed in the 83 Ill. Adm. Code 500.190(b).

The Commission concluded that the under-registration of gas was "due to the arm of the temperature compensating instrument having come to rest at the 100 degree Fahrenheit point, causing the gas to be measured as if it had expanded, resulting in [under-registration] of the amount of gas used." The Commission found that in May 1985, Peoples discovered the temperature compensating instrument resting at full scale

or 100 degrees. Thus, in May 1985, Peoples had the benefit of an indication that the meter was not properly registering at high or low temperatures.

On appeal, Peoples complained that the Commission's Order on Rehearing, in which the Commission found the gas company at fault, was inconsistent with its Original Order in which the Commission found Peoples was not at fault.

According to the Commission's Order on Rehearing, the two orders may be distinguished because after the finding of no fault in the Original Order, Peoples knew that the instrument registered incorrectly at high or low temperatures. The original complaint was denied because the record showed no reason for Peoples to anticipate incorrect registration. At that time, Peoples did not have the repeated notice of the instrument's unreliability that it had relative to the billing periods at issue in the second complaint. The additional notice preceding the second complaint included a complaint by the customer, a test of the meter and knowledge that the instrument registered incorrectly at high or low temperatures.

As such, Peoples was put on notice of the instrument's unreliability after the under-registration in May 1985. That notice, the Commission held, compelled Peoples to perform the prescribed testing or remove the instrument from the premises in order to be in compliance with the Code.

Although both the first and second under-registrations stemmed from the same defective device, Peoples was not obligated to perform the three-temperature test until it discovered that the device was registering improperly in May 1985.

The Appellate Court agreed with the Commission, stating, "We conclude the Order on Rehearing finding the gas company at fault with regard to the second under-registration is consistent with its Original Order finding no fault with respect to the first under-registration." *Peoples Gas*, 124 Ill. Dec. 690, 698.

In the instant case, Prairie Farms' primary argument – that Ameren Illinois is "at fault" under Section 500.240(a)(3) because it failed to follow up on a report issued by its billing system reflecting reduced usage by Prairie Farms – is very similar to circumstances preceding Alpha's original complaint against Peoples which was denied by the Commission. There, an internal Peoples' computer report in February 1985 indicated that Alpha's counter was registering an irregular consumption, and Peoples took no action in response to that report. Nevertheless, the Commission denied the complaint. The Commission found that Peoples was not at fault for under-registration between March and May, 1985 because the record showed no reason for Peoples to anticipate incorrect registration and Peoples did not have sufficient notice of the instrument's unreliability to be found at fault under Section 500.240.

By contrast, Peoples was put on notice of the instrument's unreliability after the under-registration in May 1985. That notice, the Commission held, compelled Peoples to perform the prescribed testing or remove the instrument from the premises in order to

be in compliance with the Code. Having been put on notice, Peoples could also have reviewed its internal computer checks indicating an irregularity in registration. Although both the first and second under-registrations stem from the same defective device, Peoples was not obligated to perform the three-temperature test until it discovered that the device was registering improperly in May 1985. Peoples neither performed the prescribed testing nor removed the instrument from the premises; therefore, in the second, i.e. rehearing, complaint, Peoples was found at fault and was not allowed to back-bill for under-registration occurring between September 1985 and September 1986.

As indicated above, the circumstances relied upon by Prairie Farms in support of its argument that Ameren Illinois was at fault are similar to those occurring prior to the first complaint against Peoples, which was denied. On the other hand, the circumstances and multiple types of notice which distinguished the second complaint against Peoples from the first one are clearly not present in the instant case against Ameren Illinois. All the under-registration for which back-billing by Peoples was denied in the second complaint occurred after the meter test by Peoples in May 1985 and after the customer's original complaint in September 1985. Unlike the Peoples' situation, Ameren Illinois corrected the problem at the time it made its inspection – which was before any complaints, or inquiries, were made by Prairie Farms – and none of the back-billing at issue in the instant case is for service provided after the inspection.

To find Ameren Illinois at fault under Section 500.240(a) based almost entirely on information in its discretionary internal billing reports relating to irregular usage, which is information that Prairie Farms also possessed but chose not to inquire about during the period in question, would be contrary to the record in this case and to the findings in the two Commission orders and the Appellate Court decision in the Peoples cases. As Ameren Illinois explains, fluctuating gas usage on the part of a commercial customer can result from a number of operational factors experienced by the customer, which Prairie Farms itself acknowledged in attributing its lower billed usage in part to a "significant reduction in operations."

Accordingly, the Commission determines that Ameren Illinois was not at fault within the meaning of Section 500.240(a). This determination is supported by the record in this proceeding, and is consistent with the two orders of the Commission and the findings of the Appellate Court in the Peoples cases.

As also observed above, neither the amount of unbilled gas received by Prairie Farms nor the calculation of the charge are in dispute. Further, no portion of the bill for unbilled service is barred by Ill. Adm. Code 280.100 which provides that such billing must be presented within two years for non-residential customers. In conclusion, the Commission finds that the complaint should be denied.

As noted above, Ameren Illinois also argues that the pressure compensating device which malfunctioned is not part of the "meter" within the meaning of Section 500.240. Given the finding above that Ameren Illinois was not at fault, the Commission

need not and will not make a determination on the question of whether the pressure compensating device is part of the meter.

The Commission will, however, make a limited number of observations on the issue.

Ameren Illinois contends that the pressure compensating device is “auxiliary” equipment, not part of the rotary meter itself. In support of its position, Ameren Illinois cites the ANSI design manual and AGA gas measurement manual. Ameren Illinois also asserts that the device is not even required because Ameren Illinois has the option to use pressure factor billing instead of an electronic corrector device.

While Ameren Illinois’ arguments warrant close consideration, the Commission notes that the Commission and Appellate Court in the above-referenced Peoples cases appeared to refer to the temperature compensating device as part of the gas meter. The instant case, however, involves pressure compensation, not temperature compensation, equipment. Whether differences between the two call for different treatment in terms of what should be considered part of the meter is an issue that is relatively unexplored in the evidentiary record and the Commission will not reach any conclusions with respect thereto.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the record herein, finds that:

(1) Ameren Illinois provides natural gas delivery service in Illinois, and is a public utility within the meaning of the Public Utilities Act, 220 ILCS 5/1-101 et seq.;

(2) the Commission has jurisdiction over the parties and subject matter in this proceeding;

(3) the determinations made and conclusions reached in the prefatory portion of this Order hereinabove are hereby adopted as findings of this Order;

(4) the complaint should be denied as hereinafter set forth.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by Prairie Farms against Ameren Illinois is denied.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 20th day of March, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman