

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

BONDI BUILDING CORP.,)	
)	
Complainant,)	
)	
v.)	Docket No. 13-0011
)	
AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois,)	
)	
Respondent.)	
)	
Complaint as to billing/charges)	
in Galesburg, Illinois.)	

INITIAL BRIEF OF AMEREN ILLINOIS COMPANY

BROWN, HAY & STEPHENS, LLP
Charles Y. Davis
Registration No. 6286010
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705
(217) 544-8491
Fax: (217) 544-9609
cdavis@bhslaw.com

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NOW COMES Respondent, AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois (“Ameren Illinois”), by and through its attorneys, Brown, Hay & Stephens, LLP, and as and for its Initial Brief pursuant to 83 ILL. ADMIN. CODE 200.800, hereby states as follows:

I. Introduction

Bondi Building Corp. (“Complainant”) filed a Formal Complaint against Ameren Illinois on January 3, 2013. The dispute arose from unbilled natural gas service provided by Ameren Illinois to Complainant’s facility at 311 E. Main St., Galesburg, Illinois from October 20, 2011 through October 19, 2012. The original billed amount of \$15,559.00 was canceled by Ameren Illinois and the account was billed for the current charges, plus the corrected charges based on the corrected usage. *See* Direct Testimony of Alex J. Ritterhoff at 5. The rebilling resulted in additional natural gas service charges of \$12,814.85 for the additional 16,990 therms of natural gas. *Id.* The foregoing dollar amount and period of unbilled service are undisputed in the evidence. There are no remaining disputes of fact in the record. The only issue before the

Commission is whether Ameren Illinois has the legal authority to rebill Complainant for gas service pursuant to 83 ILL. ADM. CODE 280.100(a)(2) (Unbilled Service) given the facts at hand.

II. Undisputed Statement of Facts

On October 19, 2012, Ameren Illinois Gas Regulator Repairman Matthew Gates arrived on site at Bondi Building Corp. to exchange Complainant's electronic corrector as part of an Ameren Illinois program to upgrade its pressure correcting equipment. *See* Direct Testimony of Peter Millburg at 4. His visit was timed to coincide with the annual cycle of inspections that Ameren Illinois makes to all of its correcting equipment, and it was during this visit that Mr. Gates found the pressure valve to the corrector in the "off" or closed position. *Id.*

An electronic corrector ("corrector") is attached to Complainant's meter, a LV diaphragm type gas meter, as auxiliary equipment replacing the standard vertical index of the meter. *See* Direct Testimony of Tony Miller at 4. On Complainant's service equipment, the meter hand hold cover and output drive provide both the input of uncorrected or raw volumes of gas usage measured by the gas meter to the corrector, and also provide a means of physically mounting the corrector. *Id.* Correctors are also attached to other types of gas meters as auxiliary equipment specific to those gas meters. *Id.* 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 corrector accounts for this effect by tracking the continuously changing pressure and accounting for the corresponding changes in the amount of gas used. *Id.* The corrector utilizes mathematical algorithms based upon gas laws to calculate a "factor" to adjust the volumes of gas measured by the meter for billing of the actual volumes of gas used by the customer. *Id.* at 3-4.

The gas meter installed at Complainant's premises is designed to measure gas volumes based upon a gas pressure of 7" water column ("WC") and 60 degrees. *Id.* at 5. The electronic

corrector attached to the gas meter as auxiliary equipment adjusts the accurately metered gas volumes for billing. *Id.* The electronic corrector uses mathematical algorithms to adjust the metered volumes based upon the actual gas pressure inside the gas meter. *Id.* The metering pressure is sensed by the electronic corrector through a sensing line, which includes a valve. *Id.* The valve allows for maintenance of the electronic corrector without taking the meter out of service. *Id.*

With the valve in the "off" or closed position at Complainant's premises, the electronic corrector was not capable of monitoring the gas pressure. *Id.* Therefore, as a result of the valve being closed, the electronic corrector was then not capable of making the appropriate adjustments to the actual volume of gas passing through the gas meter for billing. *Id.* In turn, Complainant's monthly bills for natural gas service were lower than they should have been. To clarify the above, the gas meter in question accurately measured the raw volume of gas passing through the meter during the time period at issue, even with the sensing line valve to the electronic corrector being in the closed position. *Id.* The valve being in the closed position caused the billed volume of gas used by the customer to be inaccurate. *Id.* Thus, the rebilling that is the subject of this docket was required.

III. Argument

A. Standard

Under the Illinois Public Utilities Act, Complainant bears the burden of proving the allegations in its Formal Complaint. 220 ILCS 5/9-244(d). The rules of evidence which apply in civil cases before the circuit courts of the State of Illinois apply to proceedings before the Commission. 83 ILL. ADM. CODE 200.610. Therefore, standard Illinois rules of evidence regarding the burden of proof apply. The term "burden of proof" encompasses both the burden of persuasion and the burden of producing evidence. *Consolidated Communication Consultant*

Serv., Inc. v. Illinois Bell Tel. Co., Docket 99-0429, 2001 WL 34676516 (Ill.C.C.) (June 14, 2001). The burden of persuasion pertains to the ultimate burden of persuading the tribunal that the necessary elements of a claim have been proven. *Id.*

Complainant must make out a prima facie case in support of all allegations in its Formal Complaint. Complainant can only establish a prima facie case by proffering at least “some evidence on every element essential to [the plaintiff’s underlying] cause of action.” *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275, 786 N.E.2d 139, 148 (2003). If plaintiff has failed to meet this burden, the Commission should enter judgment in the defendant’s favor. *Id.* “Complainant bears the burden of proof in a complaint case, and in substantiating its allegations the complainant must prove its case by a preponderance of the evidence.” *PlastoFilm Industries, Inc. v. Commonwealth Edison Company*, Docket 94-0119, 1999 WL 33915076 (Ill.C.C) (July 8, 1999).

B. Ameren Illinois may lawfully rebill Complainant pursuant to 83 Ill. Adm. Code 280.100(a)(2)

The unbilled amounts arising from Ameren Illinois’ supply of natural gas service during the subject time period can be attributed to the corrector’s failure to operate and report correct readings for billing – a billing error. As such, Ameren Illinois is entitled to payment for all gas services rendered within 2 years pursuant to Section 280.100(a)(2) (Unbilled Service) (“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”).

Although Ameren Illinois regrets its role in creating this billing error and its impact on Bondi Building Corp., the Illinois Administrative Code allows for the issuance of adjusted bills to address billing errors without regard to the source of the error. *See* Direct Testimony of Peter

Millburg at 5. Part 280.100(a)(2) allows utilities to render bills for service provided so long as the bill is issued within 2 years of the provision of that service. Other than the maximum timeframe, there is no qualification or restriction of a utility's ability to render bills in this situation. *Id.* No qualification exists mitigating this responsibility if the failure to record data for billings is caused by a utility. As a practical matter, placing such a qualification on 280.100(a)(2) would have the effect of allowing no adjustments once a bill is issued, since only utilities develop and issue bills for service. *Id.* Clearly, the Commission would not have issued this rule if it intended that fault be determinative of a utility's ability to render bills in this situation. *Id.*

By providing the explanation of the physical makeup of the gas meter and auxiliary components above, it becomes clear how and why Ameren Illinois was (1) able to produce an accurate rebilled dollar amount, and (2) able to rebill for service pursuant to 83 ILL. ADMIN. CODE Part 280.100(a)(2) for this incident where the meter operated properly but the correcting device failed to adjust those readings correctly for billing purposes. Because the meter itself was functioning properly between October 2011 and October 2012, Ameren Illinois was able to use actual reading components from the meter and manually calculate the usage (as the corrector does when it is on and operational). *See* Direct Testimony of Alex J. Ritterhoff at 4. Specifically, the adjusted usage was calculated by using the original Mechanical Index usages for each normal billing period from October 20, 2011 through October 19, 2012, and multiplying that usage by the pressure factor for 14#pressure which is 1.928. *Id.*

It is undisputed that this docket involves a billing error and that Ameren Illinois rendered a bill to Complainant for the subject gas service within two years from the date the services or commodities were supplied. It is also clear that Complainant has provided no evidence or law negating Ameren Illinois' right to rebill Complainant pursuant to 83 ILL. ADM. CODE

280.100(a)(2). Complainant has not met its burden of proof. Accordingly, Ameren Illinois is entitled to recover the undisputed additional amount claimed (\$12,814.85) pursuant to 83 ILL. ADM. CODE 280.100(a)(2), and Complainant's Formal Complaint should be denied.

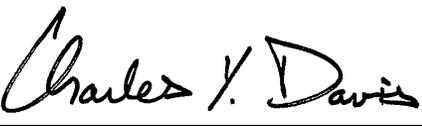
IV. Conclusion

Based upon the law and argument set forth above, Ameren Illinois is entitled to recover the subject amount for gas services supplied to Complainant pursuant to 83 ILL. ADM. CODE 280.100(a)(2).

WHEREFORE, Respondent, AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, respectfully requests that the Commission enter an Order denying Complainant's Formal Complaint with prejudice.

Respectfully submitted,

**AMEREN ILLINOIS COMPANY, d/b/a
Ameren Illinois, Respondent**

By: 
One of Its Attorneys

BROWN, HAY & STEPHENS, LLP
Charles Y. Davis
Registration No. 6286010
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705
(217) 544-8491
Fax: (217) 544-9609
cdavis@bhslaw.com

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon:

Daniel S. Alcorn
Alcorn Karlin LLC
313 E. Main St.
Galesburg, IL 61401
dalcorn@alcornkarlin.com

Edward C. Fitzhenry
Ameren Services Company
1901 Chouteau Ave.
P.O. Box 66149 (M/C 1310)
St. Louis, MO 63166-6149
efitzhenry@ameren.com

Amanda Tesdall, Paralegal Legal Dept.
Ameren Services Company
1901 Chouteau Ave.
P.O. Box 66149
St. Louis, MO 63166-6149
atesdall@ameren.com

Janis Von Qualen, Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
jvonqual@icc.illinois.gov

Eric E. Dearmont
Ameren Services Company
1901 Chouteau Ave.
P.O. Box 66149 (M/C 1310)
St. Louis, MO 63166-6149
edearmont@ameren.com

Jackie K. Voiles
Ameren Illinois Company
d/b/a Ameren Illinois
200 W. Washington St.
Springfield, IL 62701-1117
jvoiles@ameren.com

via electronic transmission on this 7th day of March, 2014,

