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BONDI BUILDING CORP.,)

Complainant,)

v.)

AMEREN ILLINOIS COMPANY.)

d/b/a Ameren Illinois,)

Respondent.)

Complaint as to billing/charges)
in Galesburg, Illinois)

CHIEF CLERK'S OFFICE

Docket No. 13-0011

COMPLAINANT'S BRIEF AND ARGUMENT

NOW COMES Complainant, BONDI BUILDING CORP, by and through its counsel, ALCORN KARLIN LLC, and for its Brief and Argument states as follows:

I. Respondent's Adjusted Billing Is Without Legal Authority Where It Is Undisputed That The Meter Was At All Material Times Functioning Properly.

There is no dispute over the operative facts of this case. Respondent billed Complainant monthly for natural gas service from October 2011 through October 2012, and Complainant paid each such bill in full on a timely basis. Then, on or about October 26, 2012, Respondent sent Complainant an adjusted billing statement for the same period, seeking an additional \$12,814.85, for an alleged additional 16,570 therms of natural gas used by Complainant.

It is not disputed that the diaphragm type gas meter installed at Complainants building was at all material times functioning properly. It is not

disputed that the electronic gas pressure corrector installed on the meter at Complainant's building was in the "off" position for the subject time frame and that this was caused by one of Respondent's employees.

The primary dispute in this case is over the legal authority possessed by Respondent to send Complainant an adjusted billing statement under the circumstances of this case. Complainant takes the position that Respondent had no legal authority to submit the adjusted billing statement to Complainant.

Complainant is not aware of any provision of the Illinois Administrative Code that authorizes Respondent to provide Complainant with an adjusted billing statement under these circumstances where it is undisputed that the meter was functioning properly for the entire subject period.

II. There Is No Legal Basis For Submitting An Adjusted Bill For A Billing Error Rather Than A Meter Error.

The Illinois Administrative Code, 83 Ill. Adm. Code 280.100, governs "unbilled service," none of the provisions of which are applicable under the circumstances of this case – as the Respondent had submitted a bill for these services and is now attempting to recover on an adjusted or revised bill.

The Illinois Administrative Code, 83 Ill. Adm. Code 500.240, governs adjustments to bills resulting from meter error, none of which provisions apply in this case – as the Respondent takes the position that there was no error with the "meter."

Respondent is unaware of any provision of the Illinois Administrative Code or Customer Terms and Conditions which authorize Respondent to

submit an adjusted billing statement under these circumstances where it is undisputed that the meter was at all material times functioning properly. Nothing else of record supports the Respondent's right to send an adjusted billing under these circumstances.

III. No Record Basis Exists For Respondent's Use Of A Pressure Factor Of 1.928.

The second dispute in this case is whether Respondent was justified in applying a pressure factor of 1.928 to the raw volumes of gas measured by the meter. It is not clear from the record that the actual meter readings which served as the basis for Respondent's initial billing statements warranted the adjustment made.

Respondent takes the legal position that the pressure correction device is not part of the meter for purposes of this case. Respondent also takes the position that the meter readings were accurate. If that is the case, then why weren't the initial billing statements based on the meter readings an accurate reflection of the Complainant's gas usage?

The Direct Testimony of Tony Smith and Alex Ritterhoff touches on this issue but fails to specifically address the issue of how the particular pressure factor of 1.928 was selected.

On page 3, lines 45-46 of the Direct Testimony of Matthew Gates, he admits that he left the gas pressure corrector device in the "off" position on October 19, 2011. This error is clearly attributable to Respondent. However, according to Respondent's other witnesses, this error did not render the meter readings inaccurate. Neither did this error prevent Respondent from sending

monthly billing statements to Complainant. The initial billing statements were based on the meter readings.

At page 4, lines 60-68 of the Direct Testimony of Alex Ritterhoff, he explains how it was determined by Respondent that Complainant had been underbilled. It is clear that the process did not rely solely on the meter readings as required by the Customer Terms and Conditions. At lines 70-98 of Alex Ritterhoff's Direct Testimony, he explains that a pressure factor (14#pressure which is 1.928) is applied to the raw data generated by the gas meter. However, nowhere does Respondent justify or explain how this "pressure factor" was arrived at or selected. There is no support in the record for Respondent's use of this particular pressure factor to alter the raw data produced by the meter.

Without more, the use of 1.928 as a pressure factor is pure speculation. There was a reason Respondent chose to utilize an electronic gas pressure corrector device in this case. If it were as simple as merely multiplying the metered volumes by 1.928, in the absence of a functioning pressure corrector device, then why would Respondent spend the money necessary to buy, install, use, inspect and maintain this type of equipment?

IV. Conclusion.

Complainant prays that its formal complaint be granted and that Respondent be barred from enforcing the adjusted billing statement against Complainant.

Respectfully submitted,

BONDI BUILDING CORP.,

By: 
Daniel S. Alcorn, Its Attorney

Daniel S. Alcorn
ALCORN KARLIN LLC
313 E. Main Street
Galesburg, IL 61401
309-345-0000
309-345-0002 (fax)
dalcorn@alcornkarlin.com

PROOF OF SERVICE

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

Charles Y. Davis
Brown, Hay & Stephens, LLP
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705
cdavis@bhslaw.com

ALJ Janis VonQualen
jvonqual@icc.illinois.gov

via electronic transmission on this 5th day of March, 2014.


Daniel S. Alcorn