COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF THE UNION LIGHT, HEAT AND POWER COMPANY FOR APPROVAL OF FIXED BILL PROGRAM RIDERS APPLICABLE TO RESIDENTIAL CUSTOMERS	))))	Case No. 2004-00503

COMMENTS OF THE ATTORNEY GENERAL

ULH&P, like its sister companies in CG&E,[1] asks to be allowed to roll out the pilot *Your FixedBill* ("YFB") billing program designed to:

-- Increase utility profits for electric and gas service already provided to captive customers by creating a new billing practice and adding profit margins cover the added risks associated with the billing practice;

-- Insure growth by offering the billing practice which has been characterized by the utility as requiring the ability to plan for the "inevitable increased usage"[2] associated with the YFB;

-- Allow ULH&P to dictate its own level of profit, within certain parameters, over and above cost of service by offering tariffs allowing it to create adders up to certain levels at its unfettered discretion, despite the fact that Kentucky is a regulated state;

-- Create an added margin of profit for ULH&P using jurisdictional assets to provide the underlying electric and gas service;

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[1] The Indiana filing is styled *Verified Petition of PSI Energy, Inc. Requesting the Indiana Utility Regulatory Commission to Decline its Jurisdiction Over, or Otherwise Approve an Alternative Regulatory Plan for the Offering of a Fixed Bill Program Rider Applicable to Residential Customers Pursuant to Ind. Code 8-1-2.5-5 and 8-1-2.5-6*, Cause No. 42721 and the Ohio filing is a cluster of cases styled *In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of a Pilot Fixed Bill Program*, Case No. 05-230-EL-ATA and Case No. 05-231-GA-ATA; *In the Matter of the Application of the Cincinnati Gas & Electric Company for Authority to modify Current Accounting Procedures Related to Pilot Fixed Bill Program*, Case No. 05-2323-EL-AAM and Case No. 05-233-GA-AAM, and *In the Matter of The Application of the Cincinnati Gas & Electric Company for Authority to Adopt New Bill Format for Pilot Fixed Bill Consumers*, Case No. 05-234-EL-UNC and Case No. 05-235-GA-UNC.

[2] See, Response to AG-Supp-1-004, Document 1 of 2, PSI Energy, Inc. Reply to the OUCC Proposed Order, page 7.

-- Have the right to evict customers from YFB billing back into the standard jurisdictional cost of service billing if they use electricity or gas in a way that does not allow ULH&P the expected added margin of profit built into the YFB program;

-- Conceal from the customer the anticipated added cost over and above cost of service billing done either on a pay as you use basis or a budget bill basis

-- Make it more difficult for the customer to leave the program than it is to get into the program; and,

-- To offer customer the comfort, knowledge, and planning certainty of what he or she will be paying for gas and/or electric service - assuming he or she does nothing to require a recalculation of the amount to be paid or the termination of the right to be on the program. The offering has little to recommend it and much to require its disallowance.

1. The type of pricing offered by ULH&P with YFB is not authorized by KRS 278.030 or permitted by regulation.

ULH&P's sister companies are making no effort to present the YFB as a regulated rate in Ohio or Indiana. Unlike those states, Kentucky is a fully regulated state and its utilities are allowed only to charge rates that are fair, just and reasonable. KRS 278.030 No new service is being provided here. The targeted customers are simply residential customers receiving gas and/or electric service like any other residential customer. ULH&P has a rate it is allowed to charge for that service. ULH&P presents the YFB as a simple billing option, but the fact is that it creates risks and compensates the utility for the assumption of those risks in addition to paying for the underlying gas or electric service. Unless there is a finding that the 'peace of mind' represented by the YFB constitutes a new and different service from the provision of the underlying gas or electric service there is no grounds on which to allow a rate other than that

which has been determined to be fair, just and reasonable to be charged for that gas and/or electric service.

Under 807 KAR 5:006 Section 13(2)(a) budget billing plans are authorized, but there is a requirement that there be a true up of service paid for and service used. Though the payment is timed differently, there is no departure from the rate found to be fair, just, and reasonable with budget billing. That is not so here. This proposal seeks a rate not permitted in Kentucky.

2. YFB utilizes regulated services provided to customers with jurisdictional assets to subsidize non-jurisdictional profits/losses in violation of KRS 278.2201. YFB should be disallowed.

KRS 278.2201 provides that a utility shall not subsidize non-regulated activity provided by an affiliate or by the utility itself. ULH&P wants to treat both profits and losses from the program "below the line" for regulatory purposes.[3] Accordingly, the revenues and expenses of this program are being isolated from the utility, and will neither increase nor decrease its revenue requirements. Were it not for the certified service territory and the use of jurisdictional assets to accomplish the underlying sales of electricity and/or gas to jurisdictional customers at cost of service rates, this billing program and its non-jurisdictional revenues could not exist. Because the YFB billing service could not exist without the provision of the underlying regulated services, the regulated services directly subsidize the YFB offering in violation of KRS 278.2201 and should be disallowed.

The shareholders are offering no added benefit to ULH&P in return for the right to make an added profit from its customers though the YFB program. Instead, they are free-riding on its coattails to make an added profit through a program that could not otherwise be offered. This is

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[3] See, Direct Testimony, Michael Goldenberg (Goldenberg Direct), pp. 14-15; Pipher Direct, pp. 4-5, each of which describe why below the line treatment of YFB revenues and expenses is proper, and the Response to PSC-DR-02-001 which indicates that the profits will be removed from jurisdictional residential revenues (FERC account 440) and put into non-jurisdictional revenues (FERC account 415).

not like the gas supply clause or other instances where the utility is arguably receiving added compensation through PBRs or off-system sales trackers or other such devices for its added effort of engaging in non-core business that will arguably reduce the consumers' overall costs.

Instead, in the YFB program, the consumers' overall costs for the gas and electric service received will remain precisely the same, but the shareholders will gain any added profits to be had by the added billing option. While this violates KRS 278.2201 directly and, therefore, requires that the program be disallowed, should the program be allowed, the jurisdictional operations of ULH&P should receive a benefit for providing the ready-made customer base of jurisdictional sales. Just as customer lists are valuable commodities that are often sold; a ready-made customer base of jurisdictional sales is a valuable commodity. If the YFB is permitted, the jurisdictional operations should benefit by being paid for the right of access to that customer base by the non-jurisdictional operations. This would be a fee that would alleviate the subsidization. It would be an added expense to the non-jurisdictional operation, not a sharing of the revenues and expenses that are to be recorded below-the-line.

3. The YFB is contrary to the express policy for demand side management expressed KRS 278.285. It should be disallowed.

In the first year of operation of the YFB, continued encouragement of conservation would certainly enhance the utility earnings as the first year calculation includes the assumption of increased usage. Despite encouragement to conserve, it is clear that one of the primary draws for the YFB customer is that it diminishes the need to practice careful conservation. Though wildly excessive usage is discouraged by the ability to bump a customer from the rate, the rate clearly assumes that the flat bill customer will not be as conservative as the standard rate customer. Increased usage is expected in the first year, is planned for in the rate, and is touted as one of the benefits of the rate in that the load factor is improved.

The flat bill is touted as improving load factor by increasing shoulder and off-peak usage among flat bill customers.[4] It is a running joke among consumer advocates that one of the best ways to improve the residential load factor is for residential customers to leave all their lights and TVs on all the time. This may be exactly what is happening with the flat bill customer. ULH&P has not been able to provide sufficient detail as to the type of usage change that is expected to occur to allay concerns that wasteful consumption is what gives rise to the expected load improving increase in consumption by flat bill customers. It is entirely contradictory and inconsistent to encourage wasteful usage of gas and electricity through a flat bill tariff in a state that so values demand side management that it has enacted a statute to require the benefiting class to pay for the cost of demand side management programs.

Moreover, PSI has made the concession that it would be appropriate to reward conservation under the YFB in circumstances where usage is 20% below the expected usage during the cumulative 12-month YFB period.[5] While this does not constitute a reason to permit the use of YFB in Kentucky when the program is being proposed as an alternative unregulated program in Indiana, if the program is implemented on a pilot basis, Kentucky consumers should receive treatment that is at least a favorable as that granted Indiana customers.

4. Like the Choice program at Columbia Gas, the YFB represents a substantial departure from simple receipt of service at a cost of service based rate. If it is approved, clear data allowing cost-benefit comparisons by the consumer should be required, annual reenlistment should be required, and the penalty provisions should be made prominent.

Like the Columbia CHOICE program, YFB is something different from what customers have previously experienced. Unlike the CHOICE program, however, YFB adds little value for the consumer located in the regulated ULH&P service territory though it clearly increases

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[4] See, Response to AG-Supp-01-009 and -011.
[5] See, Response to AG-Supp-01-004, Document 1 of 2, page 10.

ULH&P's opportunity to grow and to find a means to increase non-jurisdictional revenue in a certified service territory. Unlike the Columbia CHOICE program, while it is probable that ULH&P will benefit from the YFB program, it is not clear that its customers will do so.

If YFB is approved, a clear basis for comparing the opportunity represented by YFB with the opportunities presented by standard billing and by budget billing should be required in lieu of the currently proposed notification of the customer that YFB may not be the lowest cost option and the provision of the highest and lowest bills paid under the standard tariff for the preceding 12 months. In Indiana PSI has agreed to a format which shows, in the first year at least, the YFB monthly and annual amount, the standard tariff monthly average, the highest, lowest and annual amounts from the previous 12 months under the standard tariff, and the budget billing monthly amount for the upcoming 11 months, with a clear representation that there is a true up in the twelfth month.[6] The added information, while not an apples-to-apples comparison, gives more information to assure a more informed choice than does that offered in the Kentucky proposal by ULH&P. Should this program be allowed, Kentucky customers should have the most information available and should be receive, at a minimum, the full range of information consumers in Indiana will get. Furthermore, given that the modeling for the development of the YFB will be based on the reasonable predictability of the next 12 month period for the purpose of calculating the YFB, there is no reason why that same 12 month reasonably predicted use could not constitute the basis for the prediction of budget billing for the same period to allow a comparison of probable actual costs.

If the YFB program is allowed, annual reenlistment by participants should be required. In the CHOICE program customers must sign up annually with alternate suppliers. Here, ULH&P proposes to continue the participants on the YFB program unless they opt out within a certain

[6] Response to AG-Supp-01-004, Document 1 of 2, page 9.

time frame at the end of each 12 month term. Thereafter, ULH&P will have the right to assess the substantial $50 penalty for early departure from the program should the customer choose to leave before the expiration of the next 12 month term regardless of whether the continuation of participation in the new term is deliberate or inadvertent. Given that penalty, it is more appropriate to require customers to actively seek reentry/reenlistment annually than to allow a situation to be created in which the customer may inadvertently placed in the position of being subjected to the penalty. All else being equal, that penalty makes the routine continuation on the program more onerous for the ratepayer than reenlistment.

If the YFB is allowed, the potential penalty and limiting provisions should be made as prominent in the solicitation, contract, and all educational materials as the potential benefit. Currently all of the negative aspects of the program are buried in second page boilerplate, without highlight or remark, while the worry-free twelve month rate (a mischaracterization in light of the possibility of termination or an increase in the rates) is presented in bold and on the front pages. This presentation alone is misleading and should be remedied to make the potential downside as prominent as the potential upside. Given that ULH&P is a monopoly provider, the appearance of a contract of adhesion should be avoided as assiduously as the fact of a contract of adhesion.

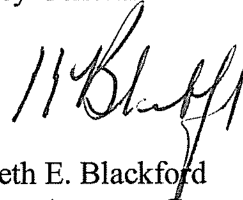
Conclusion

For the foregoing reasons, ULH&P's application for *Your FixedBill* should be denied. If the program is allowed as a pilot, it should: require the inclusion of the information set out in section three of this comment; require equally prominent display of the negative features of the program with the positive features of the program on page one of education, contracting, and solicitation material; require a refund in the event of conservation; require the non-jurisdictional

operations of ULH&P to pay a fee to the jurisdictional operations of ULH&P to compensate the jurisdictional operations for access to its customer base; and, should require annual reenlistment in the program rather than automatic continuation. Moreover, rather than establishing a sliding scale of fees to be charged within a 10% maximum limit, a single fee should be set.

Respectfully submitted,

GREGORY D. STUMBO
Attorney General



Elizabeth E. Blackford
Assistant Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204
(502) 696-5453

NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 14th day of April, 2005 and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

JOHN J FINNIGAN JR ESQ
SENIOR COUNSEL
CINERGY CORP
P O BOX 960
CINCINNATI OH 45201-0960