

FILE

15

RECEIVED-BOOKING DIV  
2005 APR 18 AM 11:20  
PUCO

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )	
The Cincinnati Gas & Electric )	
Company for Approval of a Pilot )	Case No. 05-230-EL-ATA
Fixed Bill Program )	Case No. 05-231-GA-ATA
In the Matter of the Application of )	
The Cincinnati Gas & Electric )	
Company for Authority to Modify )	Case No. 05-232-EL-AAM
Current Accounting Procedures )	Case No. 05-233-GA-AAM
Related to Pilot Fixed Bill Program )	
In the Matter of the Application of )	
The Cincinnati Gas & Electric )	
Company for Authority to Adopt )	Case No. 05-234-EL-UNC
New Bill Format for Pilot Fixed Bill )	Case No. 05-235-GA-UNC
Consumers )	

**THE CINCINNATI GAS & ELECTRIC COMPANY'S MEMORANDUM  
CONTRA TO THE OHIO CONSUMERS' COUNSEL MOTION TO  
INTERVENE, MOTION TO DISMISS OR IN THE ALTERNATIVE,  
MOTION FOR HEARING**

**INTRODUCTION:**

On February 17, 2005, The Cincinnati Gas & Electric Company filed an application with the Public Utilities Commission of Ohio to offer consumers a new billing option.<sup>1</sup> The billing option CG&E seeks to offer permits residential consumers to choose to receive a fixed price monthly gas and/or electric bill.<sup>2</sup> The option is voluntary on the part of the

<sup>1</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (Application) (February 17, 2005).

<sup>2</sup> *Id.*

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
Technician 70 Date Processed 4-18-05

consumer.<sup>3</sup> CG&E's proposed offering is not a novel idea. In fact, fixed bill options are available to consumers from utilities throughout the country and are gaining popularity.

In service territories where fixed bill is offered, consumers overwhelmingly remain on the program year after year despite the opportunity to return to more traditional utility billing options. CG&E's contact with its consumers indicates that they too wish to have such an option available. The purpose of CG&E's application is to offer residential consumers a service that they want and is otherwise unavailable to them. Certified competitive gas and electric providers are not precluded from offering a fixed bill service to their customers. Moreover, if a competitive supplier chooses to offer a fixed bill service, CG&E will provide consolidated billing as it does for a competitive supplier's other billed services. In the end, this application is about customer service, nothing more and nothing less.

**ARGUMENT:**

**I. The Ohio Consumers' Counsel Motion to Intervene is premature.<sup>4</sup>**

With respect to a request for intervention at this stage of an application for tariff amendment case the Commission has held:

Pursuant to a lawful exercise of the discretion vested in it by Section 4909.18, Revised Code, this Commission determined that the instant

---

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *In re Arcadia*, Case No. 85-1812-TP-ATA (Opinion and Order at 3) (February 19, 1996).

application *was not for an increase in any rate, joint rate, toll, classification, charge, or rental,* and further found the application to be just and reasonable. That being the case, *this matter did not proceed to an appropriate procedural posture where a request for intervention would even be considered.* OCC's motion to intervene shall, therefore, be denied.<sup>5</sup>

In this case, just as in *Arcadia*, CG&E has filed an application for tariff amendment that is not a request for an increase in rates and is just and reasonable because it provides consumers with a new billing service, a fixed bill option. However, the Commission has not yet determined whether this matter is just and reasonable. Therefore, this case has not proceeded "to an appropriate procedural posture where...[OCC's] request for intervention would even be considered."<sup>6</sup> On the basis of *Arcadia*, the Commission should deny OCC's motion to intervene in this case.

CG&E asserts that *Arcadia* is dispositive relative to OCC's motion to intervene. The application before the Commission in this case is not an application for an increase in rates, and OCC does not assert that it is. The application simply permits CG&E to charge consumers a ten percent program fee for the costs and risks associated with providing a fixed bill without a true up such as CG&E charges for a budget bill.<sup>7</sup> Fixed Bill is a new service never before offered by CG&E. As a new service, the Commission must determine whether the new service may be

---

<sup>5</sup> *In re Arcadia*, Case No. 85-1812-TP-ATA (Opinion and Order at 3) (February 19, 1996) (emphasis added).

<sup>6</sup> *Id.*

<sup>7</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (Application at 6) (February 17, 2005).

unjust or unreasonable.<sup>8</sup> If the Commission determines that the application is just and reasonable, CG&E may implement the new service.<sup>9</sup> If the Commission determines that the new service may be unjust or unreasonable, the Commission must set the matter for hearing where CG&E bears the burden of proof as to its reasonableness.<sup>10</sup> Only if the Commission sets this matter for hearing is a motion for intervention ripe.<sup>11</sup> Pursuant to its decision in *Arcadia* the Commission should deny OCC's motion to intervene as premature.

**II. OCC's motion to dismiss is improper. If the Commission determines that CG&E's application to offer the new fixed bill service may be unjust or unreasonable, the statutory remedy is a hearing, not dismissal.<sup>12</sup>**

There is no statutory remedy for a new service application that may be unjust or unreasonable other than to set the matter for hearing. Dismissal is not a statutory option. Revised Code Section 4909.18 sets forth the remedy as follows: "If it appears to the Commission that the proposals in the application may be unjust or unreasonable, the Commission *shall set the matter for hearing...*"<sup>13</sup> There is no statutory basis for OCC's motion, and thus, it should be denied.

The OCC raises five substantive reasons for dismissal. It alleges the application is: (1) discriminatory; (2) anticompetitive; (3) unjust and

---

<sup>8</sup> Ohio Rev. Code Ann. § 4909.18 (Baldwin 2005).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *In re Arcadia*, Case No. 85-1812-TP-ATA (Opinion and Order at 3) (February 19, 1996).

<sup>12</sup> Ohio Rev. Code Ann. § 4909.18 (Baldwin 2005).

<sup>13</sup> *Id.* (emphasis added).

unreasonable because the amount and application of the program charge are unclear; (4) misleading, confusing and inconsistent with respect to consumer information; and (5) the application violates the state policy set forth in R. C. 4928.02.<sup>14</sup> CG&E will address each of OCC's substantive allegations.

**A. The application is not discriminatory.**

The fixed bill program is not discriminatory because all similarly situated consumers have the same opportunity to receive the service as all other similarly situated consumers. The Commission affirmed and approved this standard in CG&E's transition plan case, case number 99-1658-EL-ATA, and its rate stabilization plan case, case number 03-93-EL-ATA.<sup>15</sup> In this case, similarly situated residential consumers are those taking service for at least twelve consecutive months at one location and who have made timely payments of their bill. All such similarly situated consumers have an equal opportunity to participate in the fixed bill service.

Nor does it matter that CG&E is proposing the service as a five year pilot program initially limited to 1000 consumers. If limiting the number of consumers able to enroll in a program were discriminatory, then the Commission could not permit any pilot program for any new

---

<sup>14</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (OCC's Motion at 4-20) (April 4, 2005).

<sup>15</sup> *In re CG&E's Transition Plan*, Case No. 99-1658-EL-ATA (Opinion and Order at 41) (August 31, 2000); *In re CG&E's MBSSO*, Case No. 03-93-EL-ATA (Entry on Rehearing at 18) (November 23, 2004).

service. The fixed bill service is not discriminatory, and the Commission should therefore deny OCC's motion to dismiss.

**B. The application is not anticompetitive.**

The OCC argues that the fixed bill program is anticompetitive because of the \$ 50 penalty assessed if the consumer leaves the program early and because it allegedly "discourages participation in energy choice in general and specifically is incompatible with governmental aggregation programs."<sup>16</sup> Charging a \$ 50 penalty to a consumer that leaves the fixed bill program prematurely is not anticompetitive. Indeed, the Commission has approved many similar requirements such as the standard late charge and the minimum stay requirements.

All residential consumers that fail to pay their bill in a timely manner are assessed a late charge.<sup>17</sup> Further, the failure of a consumer to pay the late charge, if the unpaid arrears are late by thirty-days or more or in excess of \$ 50, results in the consumer not being able to participate in the customer choice program.<sup>18</sup> The \$ 50 dollar charge at issue in this case is meant to encourage consumers that sign up for the fixed bill program to maintain their twelve month commitment to the program just as the late fee is meant to encourage timely payment. Similarly, the effect on a consumer's ability to switch is no different than any other arrearage owed by a consumer.

---

<sup>16</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (OCC's Motion at 5-6) (April 4, 2005).

<sup>17</sup> CG&E's Tariffs, P.U.C.O. Electric No. 19, Sheet No. 30.6 at page 3 of 3.

<sup>18</sup> CG&E's Tariffs, P.U.C.O. Electric No. 19, Sheet No. 22.4 at page 3 of 8.

Furthermore, the \$ 50 dollar charge is not the first time the Commission has approved a charge if a consumer fails to stay with a service for the minimum period required. Although not currently effective to residential consumers due to Commission order, the Commission approved minimum stay provisions for customers that return to standard service, so that CG&E could recover the costs of obtaining supply for such consumers.<sup>19</sup> The twelve month term of fixed bill and the \$ 50 dollar charge if the term is shortened are necessary components to ensure CG&E's ability to recover the embedded costs associated with the fixed bill service.

The OCC also argues that the fixed bill program is anticompetitive because it is incompatible with governmental aggregation programs. As a general proposition, the fixed bill program encourages competition by providing an additional billing option to the competitive market at an increased price (i.e., the 10% program charge) giving competitors additional headroom to offer their products and services. Any competitive provider may provide a fixed bill service at a lower cost and CG&E will, at the provider's option, bill the service for the provider. Contrary to OCC's position, this service encourages the competitive market. Further, nothing in the application indicates that the fixed bill service is incompatible with governmental aggregation. Although there

---

<sup>19</sup> CG&E's Tariffs, P.U.C.O. Electric No. 20, Sheet No. 36.3 at pages 5-7 of 9.

are various charges, nothing prevents a consumer from switching to a governmental aggregator at any time.

**C. The application sets forth a precise program charge.**

The OCC alleges that the fixed bill program is unjust and unreasonable because the amount of the program charge is unclear. This is simply incorrect. The program charge is set forth throughout the application but is precisely set forth in the proposed tariffs attached as Exhibit 6 to the application. The program charge is 10% of the tarified charges and riders.<sup>20</sup> Under no circumstance may CG&E raise the program cost above 10% of tarified charges. The OCC complains because CG&E seeks the ability to *lower* the program charge based on its actual experience with program costs and risks over time.<sup>21</sup> Lowering the program cost can only benefit consumers who will pay a lower price for the fixed bill service.

The OCC ultimately argues that the program charges mean that CG&E is not assuming risk for the fixed bill program.<sup>22</sup> The OCC is correct to the extent that the purpose of the program fee, the adjustment for expected usage, and the \$ 50 charge for leaving the program during twelve month period, is to limit CG&E's risk. This is a regulated cost-based program that CG&E is offering just like any other regulated

---

<sup>20</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (Application at Exhibit 6) (February 17, 2005).

<sup>21</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (OCC's Motion at 9) (April 4, 2005).

<sup>22</sup> *Id.* at 11.



---

service. CG&E believes that the measurement of cost basis for the rate is the GCR price for gas, the price to compare component of the market-based standard service offer for electric service, and weather risk. Therefore, CG&E proposes to hold GCR and standard service offer consumers harmless to those prices.

Because the fixed bill program offers consumers a weather normalized price for electric and gas service, it is impossible to know the precise cost of the program in any given year. Weather patterns are inconsistent. Holding standard service offer consumers harmless is the most reasonable way to manage the weather risk. Because the program fee can never exceed 10%, this process can only work to the ratepayer's benefit.

The fixed bill program is pro-competition because it provides new services in the market and creates additional opportunities for marketers. CG&E asserts that the fixed bill program is just and reasonable, and OCC's motion must be denied.

**D. The fixed bill customer information is not misleading or confusing.**

The OCC alleges that the fixed bill filing is confusing primarily because it offers consumers a fixed bill but states certain conditions under which consumers may need an adjustment to their fixed bill rate or must return to CG&E's standard service offer.<sup>23</sup> The conditions specified by CG&E are clearly set forth in a number of communications that CG&E will send to consumers, including solicitation letters and the terms and conditions of service.<sup>24</sup>

The information that CG&E will provide to the consumer clearly states that if, for reasons other than weather, the consumer's energy consumption increases by 20% in any two months, the company may re-price the fixed bill or remove the consumer from the program. Application Exhibits two, three, and four represent letters to consumers whose usage increased by 20%, 40%, or 100% in any month to inform them of their options in the event that the increased usage continues. The letters are clear and nothing in the letters is confusing or misleading.

CG&E asserts that its consumers are capable of understanding the terms of the service that they voluntarily agree to accept. There is no indication that consumers will not understand. Fixed bill is a voluntary

---

<sup>23</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (OCC's Motion at 14-19) (April 4, 2005).

<sup>24</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (Application at Exhibits 2, 3, 4, 5,) (February 17, 2005).

program that no consumer need take until or unless they understand the service they are accepting. CG&E is committed to answering any question the consumer may have and will work with consumers to meet their informational needs as the program is developed.

**E. The fixed bill program is consistent with R. C. 4928.02 and 4929.02.**

Finally, the OCC argues that the fixed bill program is inconsistent with state policy favoring competition and conservation.<sup>25</sup> Generally, R. C. 4928.02 and R. C. 4929.02 set forth a state policy that encourages the availability of: a reliable energy supply; price, terms, and conditions of service; new diverse and innovative service options, encourage retail customer choice; avoid anticompetitive subsidies; and protect consumers from unreasonable sales practices, market deficiencies, and market power.<sup>26</sup> The proposed fixed bill program is entirely consistent with the statutory state policy.

Fixed bill provides consumers with a new billing option not presently available. It encourages competition by providing additional headroom, the 10% program charge, to competitors to market their products against. Fixed bill offers an innovative product with the price, terms, and conditions of service clearly presented to consumers. It is a non-discriminatory offering that is available to all consumers, those on standard service offer through CG&E, and those taking commodity

---

<sup>25</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (OCC's Motion at 19-20) (April 4, 2005).

<sup>26</sup> Ohio Rev. Code Ann. §§ 4928.02, 4929.02 (Baldwin 2005).

services from an alternative provider through their provider. In all cases, CG&E will bill fixed bill, or any other price, offered by a competitive supplier at the competitive supplier's options subject only to the billing constraints of CG&E's system and CG&E's tariffs.

The OCC also alleges that the fixed bill program is contrary to R. C. 4905.70 because it encourages additional energy usage.<sup>27</sup> Nothing in that section however, requires the Commission to ignore the desire of consumers for billing options that may result in additional energy usage. Revised Code Section 4905.70 simply requires the Commission to initiate programs to encourage conservation. The Commission has done so and CG&E continues to work with the Commission, Staff, OCC, and others to introduce such programs. Recently, the Commission approved Rider DSMR to recover costs associated with energy conservation programs.<sup>28</sup> CG&E is working diligently with the Cinergy Community Energy Partnership Board, which includes representatives from Staff, OCC, and other community organizations in CG&E's certified territory, to develop such programs.

CG&E is happy to work with Staff and OCC to develop programs for consumers that choose fixed bill to counsel them regarding energy conservation. Nothing in R. C. 4905.70, however, precludes a fixed bill program. If it did, it would also prohibit budget bill programs that result

---

<sup>27</sup> *In re CG&E's Fixed Bill*: Case No. 05-230-EL-ATA (OCC's Motion at 20) (April 4, 2005).

<sup>28</sup> *In re CG&E's MBSSO*, Case No. 03-93-EL-ATA (Application on Rehearing at 21) (November 23, 2004).

in increased usage. Fixed bill is consistent with state policy, and the Commission should approve it as just and reasonable.

**III. No hearing is required because the fixed bill program is just and reasonable.**

The Commission has discretion whether to hold a hearing in this case.<sup>29</sup> If the Commission determines that the fixed bill service is just and reasonable, it may permit the implementation of the service.<sup>30</sup> If the Commission determines that fixed bill may be unjust or unreasonable, then it must set the matter for hearing.<sup>31</sup>

---

<sup>29</sup> Ohio Rev. Code Ann. § 4909.18 (Baldwin 2005).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

CG&E simply asserts that the service is just and reasonable and that no hearing is required. The fixed bill service is just and reasonable because it is permissible by statute. Billing is a regulated utility function.<sup>32</sup> CG&E may enter into alternative arrangements with its consumers for regulated services, even bundled with competitive commodity services.<sup>33</sup> The fixed bill program is voluntary. The terms and conditions are clear and will be communicated to the consumer. It enhances competition, and it is available to all consumers through CG&E or competitive providers to the extent that such providers choose to offer a fixed bill product. Under these circumstances, the fixed bill program is just and reasonable and the Commission should deny the OCC's Motion to Dismiss.

Respectfully submitted,




Paul A. Colbert (0058582)  
Trial Attorney  
John J. Finnigan, Jr. (0018689)  
THE CINCINNATI GAS & ELECTRIC  
COMPANY  
25<sup>th</sup> Floor Atrium II Building  
139 East Fourth Street  
P. O. Box 960  
Cincinnati, Ohio 45201-0960  
(513) 287-3015

<sup>32</sup> Ohio Rev. Code Ann. § 4928.04 (Baldwin 2005).

<sup>33</sup> Ohio Rev. Code Ann. §§ 4905.31, 4928.07 (Baldwin 2005).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Contra of The Cincinnati Gas & Electric Company was served by hand delivery or U. S. mail on the following parties this 18th day of April 2005.

  
Paul A. Colbert

DOMINION RETAIL, INC.  
GARY A. JEFFRIES, SENIOR  
COUNSEL  
1201 PITT STREET  
PITTSBURGH, PA 15221  
Phone: (412) 473-4129

SANDERS, JUDITH  
BELL, ROYER & SANDERS CO.,  
L.P.A.  
33 SOUTH GRANT AVENUE  
COLUMBUS, OH 43215-3927  
Phone: (614) 228-0704

FIRSTENERGY SOLUTIONS CORP.  
IRENE PREZELJ, MARKETING  
CONSULTANT  
395 GHANT ROAD  
GHE-408  
AKRON, OH 44333  
Phone: (330) 315-6851

KOLICH, KATHY ATTORNEY AT  
LAW  
FIRSTENERGY CORP  
76 SOUTH MAIN STREET  
AKRON, OH 44308  
Phone: 330-384-5861  
Fax: 330-384-3875

INTERSTATE GAS SUPPLY, INC.  
VINCENT PARISI  
5020 BRADENTON AVENUE  
DUBLIN, OH 43017  
Phone: (614) 923-1234  
EMail: [bsingh@cwslaw.com](mailto:bsingh@cwslaw.com)

SINGH, BOBBY  
CHESTER, WILLCOX & SAXBE  
LLP  
65 E. STATE STREET  
SUITE 1000  
COLUMBUS, OH 43215  
Phone: (614) 334-6122  
EMail: [bsingh@cwslaw.com](mailto:bsingh@cwslaw.com)

BOJKO, KIMBERLY ESQ.  
OHIO CONSUMERS COUNSEL  
10 W. BROAD STREET, SUITE  
1800  
COLUMBUS, OH 43215