

McMillin, Kenya

From: Rowe, Crystal G. <crowe@k-glaw.com>
Sent: Thursday, November 03, 2016 5:03 PM
To: Roads, Beth Krogel
Cc: McMillin, Kenya
Subject: RE: Director Review for complaint 117140, Lindle Gates
Attachments: IU Regulatory Commission.pdf

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Ms. Roads:

Attached please find an appeal of the Director's decision denying my parents' claims. Please let me know if you need anything further. I assume you have the record and, thus, I have not attached anything to this email. But if you need something, just let me know.

Thank you,
Crystal Rowe

Crystal G. Rowe
Partner



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From: McMillin, Kenya [mailto:KMcMillin@urc.IN.gov]
Sent: Monday, October 17, 2016 10:05 AM
To: Rowe, Crystal G.
Subject: Director Review for complaint 117140

Hello Ms. Rowe,

I have reviewed your appeal and have attached my Director Review. A copy of the review will be mailed to you for your records. Duke energy will be provided a copy of the Director Review as well.

Thanks,

Kenya McMillin

Director, Consumer Affairs
Indiana Utility Regulatory Commission
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Indianapolis, IN 46204
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November 3, 2016

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Via Email Only

Indiana Utility Regulatory Commission
C/O Beth Krogel Roads

BKRoads@urc.in.gov

**RE: Appeal of Director Kenya McMillin's Denial of a Claim
Involving Duke Energy's Account with Lindle Gates (Account
Number 0620-2941-01-8)**

Dear Commission:

Please accept this correspondence as **an appeal** on behalf of my parents, Lindle and Judy Gates (for whom I hold the Powers of Attorney),¹ of the October 17, 2016 denial of their claim against Duke Energy for excessive rates and charges (or tariffs). In the October 17, 2016 denial, Ms. McMillin—as Director of the Commission's Consumer Affairs Department—finds that the facts alleged fail to state a violation of any statute, administrative rule, or Commission Order governing the utility services in the State of Indiana. She also determined that the electric charges billed to, and paid by, my parents complied with Standard Contact Rider No. 20 for the "Fixed Bill" program.

We respectfully disagree with these findings and, therefore, file this appeal.

Attached to the denial were copies of my parents' electric bills from February 19, 2014 through July 15, 2016. The bills from May, 2015 through April, 2016 (comprising one fixed-bill year) show that Duke Energy charged my parents a fixed bill amount of \$182.22 per month, regardless of the amount of energy (measured in kWh) used.

¹ My father, Lindle Gates, has been medically diagnosed with "advanced dementia," "arteriosclerotic heart disease," "Atrial fibrillation," and diabetes and, as a result, is unable to prepare this appeal. My mother, Judy Gates, is also in poor health (suffering from, among other things, high blood pressure and degenerative disk disease with vertebrae fracture) and is equally unable to prepare this appeal.

The following table shows the relevant breakdown of charges:

Month	Amount of Electricity Consumed	Amount Charged
May, 2015	933 kWh	\$182.22, plus tax
June, 2015	930 kWh	\$182.22, plus tax
July, 2015	1195 kWh	\$182.22, plus tax
August, 2015	1358 kWh	\$182.22, plus tax
September, 2015	1370 kWh	\$182.22, plus tax
October, 2015	1347 kWh	\$182.22, plus tax
November, 2015	725 kWh	\$182.22, plus tax
December, 2015	1078 kWh	\$182.22, plus tax
January, 2016	1560 kWh	\$182.22, plus tax
February, 2016	1823 kWh	\$182.22, plus tax
March, 2016	1326 kWh	\$182.22, plus tax
April, 2016	984 kWh	\$182.22, plus tax

Each month, to arrive at the \$182.22 charge, Duke Energy added an **undefined** and **unexplained** "fixed bill adjustment" to the amount my parents owed for their energy usage. That "fixed bill adjustment" ranged from \$4.70 to as high as \$95.35, per month. Below is a table of the actual "fixed bill adjustments" charged to my parents:

Month	Variable "Fixed Bill Adjustment"
May, 2015	\$72.60
June, 2015	\$72.87
July, 2015	\$49.55
August, 2015	\$38.36
September, 2015	\$35.89
October, 2015	\$37.83
November, 2015	\$95.35
December, 2015	\$64.07
January, 2016	\$24.99
February, 2016	\$4.70
March, 2016	\$43.13
April, 2016	\$70.47

We are uncertain whether this FixedBill adjustment constituted the program fee, or was derived from something else. As I indicated to Ms. McMillin, I am extremely concerned about the exorbitant and unreasonable charges and fees Duke Energy has charged my parents from May 2015 through April, 2016.

How this overcharge problem came to light: Due to their health problems, I took over my elderly parents' finances in February or March of 2016. In the process of making a monthly budget for my parents (who receive only Social Security benefits and a very small pension, such that there are on Medicaid because they make so little in income), I saw that their electric bill was almost \$200.00. I was immediately surprised by this amount because their house is relatively small and they use little electricity (they are always trying to conserve electricity in an effort to reduce their electric bill). On March 29, 2016, I received my parents' mail, including a renewal notice dated March 18, 2016 from Duke Energy for the FixedBill program. In relevant part, the Notice provides:

For the past year—as a participant in Duke Energy's Your FixedBill payment plan—you've had the peace of mind of knowing what your monthly electric cost will be. Last winter's unusually cold weather put a strain on so many heating budgets. With Your FixedBill, high seasonal bills are a thing of the past because you pay the same amount each month for the 12-month period. And, unlike Duke Energy's Budget Billing plan, you pay no year-end settle-up.^[2]

The notice also advised that the FixedBill payment plan is optional, voluntary, and not intended to provide the lowest annual price of energy or save you money (i.e., language consistent with customary budget-billing programs where the consumer pays for what he or she uses over the course of the year, such that it is not a cost-

²This latter sentence implies that the FixedBill plan is preferable to straight budget-billing program because the consumer will not have to pay any year-end settle-up costs on FixedBill. The sentence does not, however, advise the consumer that he or she might be exorbitantly overcharged and yet have no right to recoup the overages. If Duke Energy wants to take the risk that its consumers will underpay for their electric services, that is the company's choice. If, by contrast, the consumer is at risk for being overcharged, this letter should have so advised (in explicit terms).

saving measure).³ The notice further indicated that Duke Energy charges a program fee “not to exceed 9 percent above your expected usage adjusted for normal weather.” This fee purportedly “provides for the convenience and predictability of your monthly electric bill and assurance against weather extremes.”

At the bottom of this notice was a box that compared “Prices for Previous 12 Months,” as follows:

Your FixedBill	\$182.20
Regular Electric Rate	\$145.60
Budget Bill	\$158.80

From my calculus, my parents had overpaid by approximately \$439.20 (comparing the Regular Electric Rate to the FixedBill rate). Even that statement was untrue, as my parents had actually overpaid the utility \$609.81 (excluding taxes) during the FixedBill year.

On the back of the notice are the following pertinent provisions:

ELIGIBILITY REQUIREMENTS

Applicable to a limited number of residential customers who have lived in their current residence for at least the previous 12 months, have 12 months of actual meter reads ..., have a load profile that can be modeled with reasonable predictability, and are current on their Duke Energy Indiana electric service bill. ...

TERMS AND CONDITIONS

1. The customer shall enter into a Service Agreement with the Company that shall specify the monthly Fixed Bill amount that the customer will be required to pay.
2. The term of the Service Agreement will be for twelve (12) months. Each year, before the 12-month Fixed Bill period is over, a new

³ On budget billing, for example, the consumer might pay \$200.00 per month (representing the average amount of electricity used annually), even though in November, the customer only uses \$100.00 worth of electricity and in February, the consumer uses \$300.00 in electricity. Therefore, an analysis of the individual months is improper for a budget-type billing program.

Fixed Bill amount for the following year will be calculated and the customer will be notified of the new contractual amount. After the customer has completed the first year in the program, Service Agreements will automatically renew at the new Fixed Bill amount for the following year, unless the customer notifies the Company otherwise.

3. Removal from the program:

* * * * *

C. Increased Actual Usage Over Expected Usage. If customer has actual usage for any month that is 15 percent greater than expected usage, then Company has the right to re-price the Fixed Bill amount for the customer based on the updated usage information. If the customer does not accept the new Fixed Bill amount then customer will be removed from the Fixed Bill program, and Applicable Removal Charges will apply.

When I first saw this notice, I called Duke Energy (at the number provided) and discovered that my parents had been charged too much for their electric services. After giving me several different figures, I was eventually told by the Duke Energy representative that my parents paid \$762.93 too much for their electric services. Later, they received another FixedBill, for services from February 23 to March 23, 2016. So my parents were, yet again, forced to make another excessive payment to Duke Energy (increasing their amount of overpayment to in excess of \$800). All of these amounts are coming from Duke Energy.

When I inquired about the program fee, Duke Energy advised that it was not part of the FixedBill amount but, instead, was part of the taxes added at the end. Later, in a different call, Duke Energy told me the program fee was included in the FixedBill amount. To this date, I do not know how much my parents were charged as a program fee (i.e., 9% or some lower amount) or when it was charged—I cannot find this information anywhere on their bill.

When I complained on my parents' behalf, I was told by Duke Energy that my parents had signed a contract with the utility in March of 2009 and, thus, they were not entitled to any refund. When I asked for a copy of the contract, Duke Energy admitted that no contract was likely ever signed. Rather, the utility noted that my parents *probably* called in (after receiving an advertisement for the FixedBill program) and in a recorded call agreed to be placed in the program. When I asked

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for that recording (assuming one ever existed), I was told that all such records (the recording and the advertisement sent to my parents) would have been purged two years after they were made). I was, then, directed to the Indiana Utility Regulatory Commission.

As part of my claim, I sent the Commission an advertisement issued by Duke on December 30, 2015 regarding the FixedBill program (although I am not certain if it is the same or substantially similar to the one my parents allegedly received in 2009). Of note, this advertisement gives the following calculation for the FixedBill amount:

$$[(\text{Expected Monthly kWh} \times \text{Residential Energy Charges and Riders})] \times \\ (1 + \text{Program Fee \%}) + \text{Connection Charge.}]$$

According to this Advertisement, the riders, program fee, and connection charge should all be included in the Duke imposed Fixed Bill amount (as demonstrated below, that does not seem to be the case).

A review of the FixedBill for April 18, 2016 reveals that my parents were charged \$194.98 for using 984 KWh of electricity. Under the rates approved for Duke Energy, however, they should have only been billed:

Connection fee:	\$ 9.40
First 300 kWh	\$27.88
Next 684 kWh	+ <u>\$37.06</u>
	\$74.34

Instead of charging this "reasonable" rate, Duke Energy added a bunch of "Rider" charges or credits (totaling \$3.87) and a "Fixed Bill Adjustment" of \$70.47. My parents, therefore, paid an average of \$.1852 per kWh of electricity—well over the agreed-upon tariff—in contravention of Indiana Code Section 8-1-2-44. By my calculations—for that month alone and considering only the "Fixed Bill Adjustment" amount of \$70.47—Duke Energy overcharged my parents by 63%.

Interestingly, the FixedBill amount on this bill did not include the riders and connection fee, as they are delineated separate from the "Fixed Bill Adjustment." Again, the program fee is never disclosed.

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This overcharge is unjust, unreasonable, and in violation of Indiana Code 8-1-2. The Indiana Regulatory Commission has authority to correct this injustice under Indiana Code Section 8-1-2-68. Indeed, that is the Commission's charge—to balance the interests of all parties and ensure the utilities provide adequate and reliable service at *reasonable* prices.

Indiana utility consumers should be able to know what they are being charged for their electricity, without any hidden fees. A clever campaign by the utility to dupe its customers (especially vulnerable ones like the elderly) into paying more than the imposed-tariff amounts should be strictly disallowed.

The FixedBill program fee is hidden to the consumer and, frankly, seems to be illusory and without a purpose. I was told by Duke Energy that the fee is for reading the customers' meters and estimating weather and energy costs. I would assume, however, that the budget-billing program does the same tasks and, yet, there is no fee attached to such program.

If you have any other questions, please let me know. Thank you in advance for your prompt attention to this matter.

Very truly yours,

Crystal G. Rowe

Crystal Gates Rowe