BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Tariff Revisions Filed by Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L& P Designed to Continue and Expand its Fixed Bill Pilot Program	))))	Case No.EO-2007-0395 Tariff No. JE-2007-0739

MOTION TO SUSPEND OR REJECT TARIFF

COMES NOW the Office of the Public Counsel and for its Motion to Suspend or Reject the proposed tariff sheets of Aquila, Inc. states as follows:

1. On April 13, 2007[1], Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L& P ("Aquila" or "Company") filed proposed tariff sheets to continue and expand a modified version of its Fixed Bill Pilot Program. The proposed tariff sheets were attached to the Direct Testimony of Dennis Odell and were assigned tariff file number JE-2007-0739. The tariffs contained an effective date of July 1.

2. On April 20 Aquila filed its "Motion to Extend Effective Date of Fixed Bill Pilot Program and Filing of Corrected Tariff Sheets." The corrected tariff sheets also contained an effective date of July 1.

3. On June 15, Aquila filed a letter requesting that the effective date of the proposed tariff sheets be changed to August 1. On June 19 Aquila filed another letter requesting that the effective date of the proposed tariff sheets be extended to September 1.

4. Public Counsel, as well as the Staff of the Commission, has had several discussions (in meetings and by email) with Aquila since the proposed tariffs were filed.

[1] All dates discussed herein are in calendar year 2007.

Although these discussions were helpful in terms of communicating Public Counsel's concerns to Aquila, they did not result in any agreement on how to resolve those concerns.

5. On July 25 the Commission issued an order directing its Staff to file a recommendation or status report in this case no later than August 24. Staff timely filed its recommendation, in which it recommended that the tariffs be suspended for 120 days. Staff raises several concerns about the proposed tariffs, including the excessive amounts that customers will be charged and the allocation of the costs of the program.

6. Public Counsel shares the concerns raised by the Staff. Public Counsel believes that these issues, and the additional ones raised in the attached affidavit of Public Counsel Chief Economist Ryan Kind must be resolved before the Commission can conclude that the fixed bill program is in the public interest. Public Counsel recommends that the Commission suspend or reject the proposed tariff for the reasons stated in the attached affidavit.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission suspend or reject Tariff Filing Number JE-2007-0739.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.
By:______________________________

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 27th day of August 2007:

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Tariff Revisions Filed by Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L& P Designed to Continue and Expand its Fixed Bill Pilot Program	))))	Case No.EO-2007-0395 Tariff No. JE-2007-0739

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Ryan Kind, being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am the Chief Economist for the Office of the Public Counsel.

2. I have examined Tariff No. JE-2007-0739, which is designed to expand and make substantial changes to the fixed bill program that Aquila, Inc. has offered to a very limited number of customers in St. Joseph for the last two years. The tariffs are to go into effect on September 1, 2007, unless suspended or rejected by the Commission.

3. In the proposed tariff sheets, Aquila seeks to make several significant changes to the manner in which the fixed bill program is offered and to expand the offering to cover all of its Missouri service territory. The proposed changes to the fixed bill program include: (1) proposed "below-the-line" accounting treatment, (2) a five year "pilot" period, (3) substantial increases in the program fees that are paid by participants, (4) increased penalties for early withdrawal, and (5) the inclusion of an "abuse clause" that would penalize customers with very large increases in usage.

4. Aquila, Public Counsel and the Commission Staff have been discussing the new fixed bill tariff filing off and on for several months and have not been able to reach agreement on the terms under which the modified and expanded fixed billing option should be offered to Aquila's residential customers. Public Counsel is asking the Commission to suspend the tariffs so that it can receive additional evidence and analysis of the legality and public interest implications of the expanded and modified version of the proposed fixed bill program, or reject the tariffs if the Commission believes that the issues raised in this affidavit warrant rejection. Public Counsel believes that Aquila's fixed bill filing would be detrimental to the public interest under the terms which Aquila proposes to offer this service.

5. Customer billing for residential electric customers, whether done in the traditional manner with a customer charge and usage based charge, done through a budget billing type of arrangement, or done through a fixed bill is an integral part of utility service from a monopoly provider and should be fully regulated by this Commission. The proposed tariff sheets seek to turn the monopoly billing function into a non-regulated profit center where the utility can earn returns above and beyond the level that is determined to be reasonable in a general rate proceeding. This is, of course, not consistent with the legal prohibition of "single issue ratemaking." If Aquila wishes to offer this program as a regulated service offering, then it should propose this program in a rate case where "all relevant factors" can be taken into account so rates will be set at a level that is just and reasonable when all relevant factors are taken into account in the ratemaking process. The relevant factors that must be taken into account would include any changes in risk, increases in normalized revenues, and expense reductions such as reduced bad debt expense associated with the fixed bill program. Slide 7 of a PowerPoint presentation given to Aquila's management (provided in response to OPC DR No. 2005, and attached to this

affidavit as Exhibit 1) shows that Aquila expects a fixed bill program to be a "Natural hedge against weather" and result in "Reduced deferral payments and bad debt expense" and "Manageable risk."

6. Alternatively, if Aquila is truly seeking to offer this program as a fully non-regulated service, and the Commission finds this to be acceptable, then the "proposed accounting treatment" (i.e., below-the-line treatment) should not be approved because it does not include a firm commitment to comply with the standards and requirements of the affiliate transaction rule (4 CSR 240-20.015(2)) which are intended to protect customers of regulated utilities from subsidizing non-regulated affiliated entities.

7. Several additional concerns arise from Aquila's proposal to offer fixed billing as a non-regulated service with below-the-line accounting treatment. With below-the-line treatment of earning from this program, Aquila will have an incentive to impose high program fees upon those that use the fixed billing option. Participants in the current fixed-bill pilot program with above-the-line accounting treatment have been charged no more than a six percent program fee but Aquila is seeking to charge program fees as high as twelve percent to customers in the expanded program. There are no protections to insure that customers will not be induced to sign up for the new program through marketing tactics that take advantage of the limited ability of some utility customers to fully understand the implications of the choice they are making. Aquila has not committed to clearly advising its customers in all of its marketing communications that this program is not regulated by the Missouri Commission as required by subsection (2)(F) of the Affiliate Transactions rule (4 CSR 240-20.015).

8. Aquila's decision to modify its fixed bill program and offer it as a non-regulated service with below-the-line accounting treatment brings with it the obligation for the Company

to comply with a number of requirements in the Affiliate Transactions rule (4 CSR 240-20.015) and the Utility Promotional Practices rule (4 CSR 240-14). In addition, the load building aspects of the fixed bill program raises issues of compliance with the Utility Promotional Practices rule (4 CSR 240-14) and the Electric Utility Resource Planning rule (4 CSR 240-22).

9. Because of the below-the-line accounting treatment proposed by Aquila, this program is subject to the provisions of the Affiliate Transactions rule, the purpose of which is "to prevent regulated utilities from subsidizing their non-regulated operations." In order for the purpose of this rule to be fulfilled with respect to the fixed bill program, Aquila clearly must comply with the relevant provisions of this rule, but it has completely failed to address compliance with this rule in the filings that it has made in this case. Aquila is seeking Commission approval in this case for the revenues generated by this program to be reflected below the line in future rate cases, but it has not identified all of the valuable services that would be provided by the regulated portion of Aquila to the "affiliated entity" (the non-regulated portion of Aquila that will retain the below-the-line revenues) in order to implement the service and stated how these costs will be determined or allocated between the regulated entity and affiliated entity. For example, the costs of customer bill preparation and delivery and of the customer billing information are that vital to the fixed bill offering will be provided by the regulated entity to the non-regulated entity. These costs must be priced at the higher of cost or market in order to comply with 4 CSR 240-20.015(2)(A)2. In his Direct Testimony in this case, Aquila witness Dennis Odell admits that the proposed fixed bill program is a "competitive billing option" (page 6) but there is no description of how the affiliate transactions needed to offer this "competitive billing option" will be carried out in a manner that protects customers of the regulated utility from subsidizing Aquila's non-regulated operations.

10. In addition, offering fixed bills that do not vary with usage greatly reduces the incentive for customers to conserve electricity and will tend to build loads at a time when the cost of new generating capacity has sharply increased in recent years and is expected to continue increasing over the next five to ten years as additional environmental regulations are imposed. Such concerns about load building and the upward pressure that it will place on rates are even greater for Aquila since it does not currently own enough generation facilities to meet its customer loads and has no firm plans in place to fill the increasingly large gap between its supply-side resources and loads that will occur over the next five years. Aquila's customers that do not choose to participate in the fixed bill program should not be forced to pay higher rates in the future because of the accelerated load growth that will result from this program.

11. The proposed structure for program fees of the fixed bill program reflects Aquila's expectation that customers that choose the fixed bill option will increase their usage above the level of usage that occurs under the traditional billing method. Proposed program fees include a "KWh Growth" factor which is intended to reflect up to 6% of "additional kWh added to the base WNkWh due to expected average consumption changes and other growth factors." (See proposed tariff, Revised Sheet No. 118.) Aquila's response to OPC DR No. 2024 (attached as Exhibit 2) acknowledges that one of the reasons for the "KWh Growth" factor is the "the additional consumption that constitutes changes in consumption patterns resulting from participation in fixed billing." In addition, Aquila's response to OPC DR No. 2005 (Exhibit 1) shows that Aquila expects a proposed fixed bill program to result in "Healthy growth mostly off peak" and "Small peak effects."

12. Two of the Commission's rules (Utility Promotional Practices rule - 4 CSR 240-14 and the Electric Utility Resource Planning rule - 4 CSR 240-22) contain provisions that are

intended to protect customers from any adverse impacts that may result from utility initiatives that have load building impacts. 4 CSR 240-22.060(5) contains specific requirements for the analysis of existing or planned new load building programs that require the utility to develop estimates of the peak and energy load impacts and to reflect these impacts in long-term integrated computer analysis to determine the impact on average rates over the planning horizon. The IRP filing that Aquila made on February 5, 2007 pursuant to 4 CSR 240-22 did not contain the required analysis of the load building impacts of the fixed bill program so there are no quantitative estimates of the magnitude of rate increases that will be associated with the proposed fixed bill program. Such estimates are necessary for the Commission to be able to determine whether the proposed tariff will have adverse rate impacts on Aquila's customers who do not participate in the program.

13. The other Commission rule that contains provisions that are intended to protect customers from any adverse impacts that may result from utility initiatives that have load building impacts is the Utility Promotional Practices rule (4 CSR 240-14). 4 CSR 240-14.020 contains a list of "Prohibited Promotional Practices" which cannot be offered "for the purpose of inducing any person to...use additional service of the utility." One of the ten prohibited promotional practices pertains directly to a fixed bill type of service offering. 4 CSR 240-14.020(1)(J) states as follows:

> (J) The guaranteeing of the maximum cost of electric or gas utility service, except the guaranteeing of the cost of space heating or cooling for a single season, when the cost is at or above the cost of providing service and when the guarantee is for the purpose of improving the utility's off-peak season load factor.

The proposed fixed bill program clearly has the effect of "guaranteeing of the maximum cost of electric or gas utility service" and is not limited to "a single season," but Aquila has not requested the waiver from 4 CSR 240-14 that is necessary to offer this type of program. Given the increasing costs of acquiring additional supply-side resources, Aquila must make a firm and enforceable commitment to hold non-participating customers harmless from any adverse load building impacts in order to show good cause for the granting of a waiver from 4 CSR 240-14.

14. Other problematic aspects of the fixed bill proposal that merit further investigation and review by the Commission include: the excessively long five year "pilot" period for the expanded fixed bill program, the overly broad expansion of the existing small pilot to a new pilot with substantial changes that would be available to all eligible residential Aquila customers in Missouri, the increase on the cap for program fees from an eight percent cap to a twelve percent cap, insufficient details on how the incremental expenses associated with the pilot will be tracked, insufficient details on how the new modified aspects of the pilot would be evaluated, and the lack of a commitment for a full comprehensive evaluation near the end of the pilot period.

15. As described above, Aquila's proposed tariff filing does not comply with a number of provisions in the Commission's Affiliate Transactions rule, Utility Promotional Practices rule and Electric Utility Resource Planning rule. Since the filing is not in compliance with these rules and Aquila has not applied for any waivers from the relevant provisions of these rules, the proposed tariff should be rejected or suspended. In addition to the legal deficiencies of the proposed fixed bill tariff filing, the filing raises important public interest and public policy issues which cannot be adequately addressed unless the tariff is suspended so that the Commission can consider additional evidence and analysis prior to determining whether the proposed fixed bill program is consistent with the public interest.

FURTHER AFFIANT SAYETH NOT.

Ryan Kind

Subscribed and sworn to me this 27th day of August 2007.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 10, 2009
Cole County
Commission #05754036

Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

AQUILA INC.
AQUILA NETWORKS-MISSOURI (ELECTRIC)
CASE NO. EO-2007-0395
OFFICE OF PUBLIC COUNSEL
DATA REQUEST NO. OPC-2005

DATE OF REQUEST: May 25, 2007

DATE RECEIVED: May 25, 2007

DATE DUE: June 11, 2007

REQUESTOR: Ryan Kind

REQUEST:

Please provide a copy of all presentations, reports, memos, etc. that have been provided to one or more members of Aquila's management regarding the existing Aquila Fixed Bill Pilot Program.

RESPONSE:

See attached PowerPoint presentation given by Maurice Arnall to Aquila Leadership Team on Nov. 9, 2004 in preparation for the original program filing. In addition, Aquila management has been provided with the same reports that Aquila has filed with the PSC regarding the results of the existing program.

ATTACHMENTS:

OPC-2005 Fixed Bill Mgt Presentation.ppt

ANSWERED BY: Charles Gray

DATE COMPLETED: June 6, 2007

Aquila

Missouri Fixed Bill Pilot

Maurice Arnall
Director
Regulatory Services

Exhibit 1
2 of 3

What Should Aquila expect from Fixed Bill?

- **Healthy growth mostly off-peak**
  - Small peak effects
- **High customer satisfaction and renewal**
- **Reduced deferral payments and bad debt**
- **Good penetration rates with attractive premiums**
- **Strong interest from budget bill customers**
- **Manageable risks**
  - Natural hedge against the weather

Exhibit 1
3 of 3

AQUILA INC.
AQUILA NETWORKS-MISSOURI (ELECTRIC)
CASE NO. EO-2007-0395
OFFICE OF PUBLIC COUNSEL
DATA REQUEST NO. OPC-2024

DATE OF REQUEST: May 25, 2007

DATE RECEIVED: May 25, 2007

DATE DUE: June 11, 2007

REQUESTOR: Ryan Kind

REQUEST:

The Bill Determination section of Aquila's proposed tariff states "The annual weather normalized kWh (WNkWh) will be increased by additional kWh (kWhG) to reflect expected consumption changes and other growth factors." Please identify and fully explain the "other growth factors" that are referenced in this quote.

RESPONSE:

The additional kWh (kWhG) reflects factors that can cause contractual consumption to differ from normal-weather consumption for reasons other than weather effects. These factors include 1) normal growth by the average customer from one year to the next; 2) additional consumption that constitutes changes in consumption patterns resulting from participation in fixed billing; 3) self-selection by customers who know more about their plans for the coming year than does the provider at the time a forecast is generated.

ATTACHMENTS: None

ANSWERED BY: Gail Allen

DATE COMPLETED: June 8, 2007

Exhibit 2