BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

POST-HEARING BRIEF OF AQUILA, INC.

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TABLE OF CONTENTS

STATEMENT OF THE ISSUE PRESENTED 1

INTRODUCTION 1

AQUILA'S PROPOSED FIXED BILL PILOT PROGRAM 2

A. Program Overview and Context 2

B. The Key Features of the New Program are Necessary and Appropriate 4

C. The Objections of Staff and Public Counsel are Unjustified 6

CONCLUSION 14

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STATEMENT OF THE ISSUE PRESENTED

Should Aquila's Fixed Bill Pilot Program (Tariff No. JE-2007-0739) comprised of three (3) tariff sheets be found to be just and reasonable, in the public interest and approved by the Commission?

Short answer: Yes, for the reasons set forth below.

INTRODUCTION

Aquila has proposed a fixed bill pilot program which, if approved by the Commission, would be a voluntary billing option that offers customers throughout its Missouri service territories the convenience of receiving a predictable, monthly bill for a one-year period, regardless of weather variations or changes in utility rates and without true-ups. This new billing option will provide stability and predictability at a premium that is necessary and appropriate to protect Aquila from the risks being assumed.

This type of billing option has been growing in popularity throughout the country. Similar programs have been offered by Georgia Power, Gulf Power, Duke Energy, Progress Energy, Oklahoma Gas and Electric and Alabama Power.[1] Aquila has successfully offered, on a limited basis in the City of St.

[1] Odell Exh. 1, p. 3, 1. 15-17.

Joseph, a fixed bill pilot program that has been well received by its customers there. The expanded program proposed by Aquila includes a number of new features that would be offered on a five-year pilot basis. As will be demonstrated herein, the evidence presented to the Commission demonstrates that the program is just and reasonable, in the public interest and should be approved by the Commission.

AQUILA'S PROPOSED FIXED BILL PILOT PROGRAM

A. Program Overview and Context

The Fixed Bill Pilot Program proposed in this case[2] is a voluntary billing option which offers customers the convenience of receiving a pre-determined, completely predictable, monthly bill for a one-year period, regardless of weather variations or changes in utility rates and without true-ups. The program includes a participation fee of 12%[3]. Aquila will calculate what a fixed bill customer would have paid under standard residential tariff each month for both the base rate component and for all applicable riders. The difference between what the fixed bill customers would have paid, and what they actually paid in a fixed bill amount will be accounted for below-the-line for regulatory purposes. This amount could be a loss or a profit in any given month for any given customer. In addition, any incremental expenses associated with the program are also accounted for below-the-line for regulatory purposes. (Odell Exh. 1, p. 9, l. 1-11). Unlike a budget

[2] *See*, Schedule DO-1 to Exh. 1.

[3] The program fee is comprised of two components; (1) a 6% risk premium to cover weather and pricing changes and administrative costs and (2) a 6% quantity factor to cover the difference between expected and actual power consumption. (Odell Exh. 1, p. 5-6).

billing or level payment option, there is no after-the-fact charge or true-up. (Odell Exh. 1, p. 2, l. 9-10).

This program is an evolution of an existing pilot program Aquila offers to its residential customers in St. Joseph, Missouri. That program was initiated to learn more about customer interest in this type of product as well as resulting customer behavior. (Odell Exh. 1, p. 2, l. 12-14; p. 3, l. 8 and 9). That limited offering has served its purpose in that Aquila has been able to determine that this is a product that has been successful and well received by customers. The participation rate in St. Joseph has been 7% (1,127 customers participating in Year 2 out of 16,000 offers made) with a renewal rate of 93% (475 renewals out of 507 customers participating in Year 1). Aquila's experience has been consistent with the results of other utilities that have offered similar programs. (Odell Exh. 1, p. 3, l. 9-13).

The program in St. Joseph was offered to enhance customer satisfaction by broadening the portfolio of billing options available to Aquila's customers. It is notable that a Missouri Energy Task Force Report urged the Commission to consider innovative rate designs.[4] (Odell Exh. 1, p. 2). That report, among other things, specifically asked the Commission to consider the use of fixed bill programs designed to promote conservation and affordability. Additionally, a survey done for Aquila has indicated a significant interest in a product of this nature. (Odell Exh. 1, pp. 2 and 3; Sch. DO-2).

[4] *The Missouri Energy Task Force Report: A Comprehensive Look at Fossil Fuels & a Plan for Missouri's Future*.

The program being offered in this case differs in a number of respects from the pilot program in St. Joseph. First, the program fee is proposed to be increased from the current 8% to 12%. Second, Aquila proposes a continuation and expansion of the program. Specifically, Aquila proposes that the pilot would continue for five (5) years during which time it would adhere to the original terms that require annual pilot program evaluation and reporting. Additionally, the program would be offered to all eligible Missouri residential customers of Aquila; not just those in St. Joseph. Third, Aquila is proposing revisions to terms governing early voluntary withdrawal by customers who initially sign up for the program. Fourth, the program as proposed includes an abuse clause to discourage those who might otherwise try to "game" the offering. Finally, Aquila has proposed below-the-line accounting as a way to protect those customers who choose not to participate. (Odell Exh. 1, p. 4, l. 18-19).

B. The Key Features of the New Program are Necessary and Appropriate

There are several reasons for increasing the program fee. The current pilot program in St. Joseph is much smaller than the expanded program that the Company is now proposing so the potential for a loss under the new program is inherently greater. Also, unlike the current program which is accounted for above-the-line for ratemaking purposes, the proposed expanded program will be treated below-the-line which places any potential losses on shareholders; not other customers. Significantly, circumstances have changed since the current pilot program was initiated. Since that time, Aquila has been authorized to use a fuel adjustment clause so the risk of changes to fuel and purchase power costs that otherwise are recoverable from ratepayers is shifted such that Aquila would be incurring that risk for customers that choose to participate in the program. (Odell Exh. 2, p. 4, l. 17-22; p. 5, l. 1-5). Finally, the program terms that Aquila is proposing are consistent with the terms of similar programs being operated successfully in other states. Those range from a low of 10% to a high of 15%, placing Aquila's proposal near the mid-point. (Odell Exh. 1, p. 6, l. 6-8; Sch. DO-3) In summary, the 8% program fee is no longer adequate to compensate for the nature of the risk assumed by the Company. (Odell Exh. 2, pp. 4 and 5).

As to the topic of terms for withdrawal from the program, the proposed tariffs contain language that would charge a fee should a customer choose to terminate the contract during a program year and continue service on a standard tariff at the same location. There would be no refund for any positive difference between the amount collected under the fixed bill contract and actual usage bill on the regular residential service tariff. This is intended to discourage customers from signing up when the program bill amount is low and then voluntarily withdrawing when the standard residential tariff is lower. This language is included to insure that both Aquila and the customer commit to the fixed bill program service agreement for a 12 month period. (Odell Exh. 1, p. 7, l. 6-16).

An abuse clause has been included to allow Aquila to return the customer to traditional tariff for the remainder of a program year in the event actual usage exceeds expected usage by more than 30%. This feature is designed to prevent customers from taking advantage of the program by adding significant new load and would reserve to the company the right to require the customer to pay any positive difference between actual usage and the amount collected under the fixed bill. (Odell Exh. 1, p. 9, l. 18-23; p. 10, l. 1-2) Other fixed bill programs have similar features. Absent such a clause, the program premium would need to be higher to protect the company. (Odell Exh. 1, p. 10, l. 3-7)

Aquila also proposes to account for this program below-the-line. This means that the profits and losses associated with offering the program will not be accounted for in regulated cost of service. This accounting treatment is being requested to ensure that the customers who are not eligible or do not choose to participate in the program do not subsidize those customers who do choose to participate in the program. The cost of providing the product is included in the program premium which means that all risks associated with providing the product are borne by the utility and its shareholders. (Odell Exh. 1, p. 8, l. 15-23).

C. The Objections of Staff and Public Counsel are Unjustified

Both the Commission's staff ("Staff") and the Office of the Public Counsel ("Public Counsel") have opposed the new service for a variety of reasons.[5] Staff suggests that there should be no modifications to the current pilot program unless Kansas City Power & Light Company ("KCPL"), the operating subsidiary of GPE by whom Aquila proposes to be acquired,[6] agrees to maintain the

[5] In January of 2003, the Commission held an electric and natural gas roundtable session on fixed bill programs in Jefferson City. The roundtable featured some notable speakers from around the country and representatives of several Missouri utilities. It is, consequently, odd that Staff has opposed Aquila's proposal in this case to make available to customers throughout its territory with a useful tool for managing their energy bills.

[6] Case No. EM-2007-0374.

program. This makes no sense. It is inappropriate to deprive Aquila's customers of the opportunity to utilize valuable services based on the speculative prospect that KCPL might choose to discontinue the program at some point. Even if KCPL did terminate the program, it would merely return many of Aquila customers to the state in which they currently find themselves, that is, with no fixed bill option. Ultimately, there is no reason to believe that KCPL would seek to terminate this program if it were approved and operating in Aquila's current service territory.

Staff also opposes the increase in the program fee as not being justified. Where this topic is concerned, Staff's arguments seem to be internally conflicted. On the one hand, Staff opposes an increase to the program fee on the grounds that it is being positioned as a profit center. (Busch Exh. 3, p. 9, l. 10-12)[7] On the other hand, Staff seems alarmed that an increased fee will stifle customer participation. (Busch Exh. 3, p. 8, l. 16-19).

The fact that the program fee in the current pilot program is lower than proposed by Aquila in this case is not a self-proving proposition. Aquila's experience with that program, as well as the changed regulatory environment in which it finds itself (as noted above), is ample justification for the Company's proposed pricing. Of course, Aquila hopes that its revenues will exceed associated costs over time[8], but the real objective and ultimate measure of success of the program will be whether it provides customer satisfaction. If the

[7] Staff's argument assumes that participation rates will be unaffected by the amount of the fee, that is, that roughly the same number of customers will elect to take the service at a 12% fee as with an 8% fee. This is, however, an unknown.

[8] Odell Tr. p. 25, l. 8-11.

Company prices the product too high the business consequence may be that there is insufficient subscribership to make the program successful. (Odell Exh. 1, p. 6, l. 13-15). Where that topic is concerned, the 12% program fee is not a fixed charge but, rather, a cap that can be adjusted downward if circumstances such as customer participation rates dictate. (Busch Tr. p. 93, l. 5-13). Aquila wants the program to be successful but these dynamics can only be assessed at or near the end of the proposed 5-year pilot period.

Staff also opposes the Company's proposed below-the-line accounting treatment. Staff's testimony is that it prefers that the service fee be accounted for above-the-line. The stated rationale is that Staff does not want the customers that take the fixed bill service to be subsidized by Aquila customers who do not take the service (Busch Exh. 3, p. 9, l. 18-21). Staff's objection simply misses the point. Paradoxically, it is the company's proposed below-the-line accounting treatment that is the ultimate ratepayer protection. In fact, Staff witness Busch admitted that if the Company were to experience a loss offering the proposed service in utilizing above-the-line accounting treatment that that loss would be taken into account in establishing regulated revenue requirement. (Busch Tr. p. 94, l.1-8). He further acknowledged that below-the-line accounting treatment would mean that any loss likely would be borne by the shareholders. (Busch Tr. p. 94, l. 9-19).

Public Counsel has provided the Commission with a laundry list of objections[9] that, when taken together, represent an alarmist's scenario. Public

[9] Kind Exh. 4, pp, 2-3.

Counsel suggests that the fixed bill option is inconsistent with the Commission's Affiliate Transactions and Promotional Practices rules but these are just red herring arguments. The Affiliate Transactions rule is not applicable because the service is not being offered to or by an affiliate of Aquila. To the contrary, the service will be offered by the utility through its Aquila Networks-MPS and Aquila Networks-L&P operating divisions as is plainly reflected in the proposed tariff sheets. Similarly, Public Counsel's argument that the proposed service violates the Promotional Practices rule lacks merit. This proposed new service is simply an additional billing option. It is <u>not</u> a service being offered to induce customers to switch fuel types or with the objective of building electric load. Consequently, it does not fit in any of the categories traditionally recognized as a promotional practice. (Odell Exh. 2, p. 9).

Public Counsel has lodged the claim that the proposed service is inconsistent with the electric utility resource planning ("IRP") rule (4 CSR 240-22) in that its load characteristics were not included in Aquila's most recent IRP filing[10] but that criticism ignores the fact that that filing *preceded* the company's filing in this case. In any event, Aquila has agreed to include this analysis in future IRP filings. (Odell Exh. 2, p. 10, l. 1-2).

Public Counsel also argues that by proposing this new service outside the context of a rate case that the Company is engaging in single-issue ratemaking. This is silliness presented as a legal theory. The Commission has clear, express authority to authorize a new rate or charge, or any new form of contract or

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[10] Case No. EO-2007-0298.

agreement, or any new rule, regulation or practice relating to any rate, charge or service under § 393.140 (11), RSMo 2000. The proposed service would constitute a one-year agreement with the customers which squarely falls under the authority the Commission has been granted under the law. Also, the argument offered by Public Counsel stands for the proposition that no new service offering can be proposed outside of a general rate case. Beyond the observation that this contention represents a counterproductive public policy, it ignores the fact that the existing pilot program in St. Joseph was proposed and approved outside the context of a rate case. (Odell Exh. 2, p. 11, l. 5-8)

Public Counsel argues that the new service may have a load-building impact, but <u>any</u> new service may have a load-building impact. That should not be a basis for deciding that the Commission should not offer a new service. As noted by Aquila witness Dennis Odell, adding new customers to the system has a much larger impact on existing customers than would a fixed bill service, but no one would suggest that Aquila should discourage customers from being added. (Exh. 2, p. 4, l. 1-5).

Public Counsel protests that the load-building impact of the service cannot be reconciled with energy conservation initiatives that have been at the forefront of many energy cases as of late, but Public Counsel's claims about the load-building impact are vastly exaggerated[11] and, in any event, an unreasonably

[11] Aquila anticipates an overall increase in usage to be less than 0.2%; a drop in the bucket compared to total load growth of 2.5% annually. Additionally, the incremental program load is anticipated to be primarily "off-peak" so it should have a negligible impact on the need for additional generation resources. (Odell Exh. 2, p. 8, 1. 4-12).

narrow way of viewing sound public policy.[12] While Aquila is supportive of energy conservation policies (in fact it has initiated a number of its own energy efficiency programs)[13], it does not believe that that should be the exclusive objective of every new service offering. To the contrary, Aquila believes it has the obligation to offer a broad array of products and services to meet the differing needs of its customers. Simply put, some customers will engage in energy efficiency programs while others will not and *vice versa*. It is the company's expectation that many customers will opt for <u>both</u> because the two concepts are not at odds with one another. In fact, the two objectives are complimentary to a large degree. The fixed bill offer is calculated by utilizing the customer's actual past usage history. Consequently, a fixed bill offer will be lower if the customer uses energy more efficiently. The steps that a customer takes to reduce usage will actually be a benefit under the fixed bill program as well as under the traditional program. It is worth noting that Aquila includes a list of energy-saving tips whenever it enrolls a new fixed bill customer. (Odell Exh. 2, pp. 6 and 7).

Ultimately, Aquila has a significantly different view than that of Public Counsel where this topic is concerned. Aquila believes that energy efficiency is a means of reducing demand requirements without reducing customer benefits. Aquila wants its customers to use energy to meet their needs, whatever they may be, and the company will endeavor to offer them ways the do that. Simply refusing to offer new services that may have a load-building impact is

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[12] Many utilities, including Aquila, have economic development riders and seasonally adjusted rates that may serve to increase load. Such programs serve different but legitimate public policy objectives.

[13] Odell Exh. 2, p. 5, l. 18-22; p.6, l. 1-2.

counterproductive. Aquila believes it is important that it does not ignore customer needs and desires in the monocular pursuit of energy efficiency practices.

Public Counsel characterizes the Fixed Bill Pilot Program as a “source of non-regulated earnings”. (Kind Exh. 4, p. 2, l. 17-18). There is nothing at all unregulated about the offering. The Company has proposed tariffs that describe the service and the parameters of the service as it does for any other regulated offering. The simple fact of the matter is the only reason this case is even before the Commission is because Aquila is proposing a regulated service for its utility operations. If it were unregulated, we would not be having this discussion. It is also worth noting that it is a competitive service in the sense that alternative offerings by other providers can be made available to Aquila’s customers as well.

Public Counsel also has been critical of the fact that the 12% program fee, which addresses a combination of business risk and usage risk elements, is not expressly broken out in that fashion in the proposed tariff. (Tr. p. 30-32). This is a bogus argument. As noted at the time of the hearing, what the company is proposing in this case is no different than how the existing program in St. Joseph is currently structured. The 8% program fee in that program is comprised of two elements; that is, a growth factor of 4% and a risk premium of 4%, yet there is nothing specific in the tariff language addressing that breakout. (Odell Tr. p. 86, l. 15-25; p. 87, l. 1-7). In the case of the new program, Aquila would set the growth factor at 6% and the risk premium at 6%. (Odell Tr. pp. 30-32) Ultimately, if the Commission were to be of the view that it would be advantageous to have a breakout of the two specific elements of the program fee, the Company is willing to do so. (Odell Tr. p. 87, l. 8-12).

At the hearing, Public Counsel also raised a concern about that aspect of the administration of the program whereby the Company renews a subscriber for an additional year unless the customer affirmatively "opts out" of the program. (Tr. pp. 35-36.) This is a case where the existing pilot in St. Joseph provides good guidance in that this is the same manner in which the topic is currently handled in the context of the existing pilot. Mr. Odell explained.

> A: That is exactly the way it has been handled for the two-year pilot program. We've had it now two renewal periods, and we've-we've utilized the opt out provision, that customers have received their offers in the second and third years and they-they can accept the offer simply by doing nothing, they would reject the offer by sending the card back in. So it's our belief that this - that this is a customer service function. There's really no reason why a customer needs to take affirmative action once they have already chosen to be on the program in order to stay on the program.
>
> Q: Has that created any problems to your knowledge about customers that have complained about being opted – you know having to opt out of the program? Has there been any – to your knowledge – any problems associated with that?
>
> A: I am not aware of any.

(Tr. p. 85, l. 8-25; p. 86, l. 1-3).

CONCLUSION

Aquila believes that it has proposed an innovative new service that is fair to the customers that choose to use it, is fair to the customers who choose not to use it and is fair to the company. This is a voluntary program that gives customers the information necessary to make an informed choice about what is in their best interests and is structured in a way that properly compensates the company for the risk it assumes in offering the program and, importantly, protects those customers who choose not to subscribe to the service from any adverse financial consequences that may result. While the program will likely have an impact on load, the impact will be very small and is not a reason to deny customers the opportunity to utilize such a service. Importantly, Aquila proposes to offer it as a pilot program. This means that the parties and the Commission will have an opportunity to review how the program has worked several years down the line. Aquila believes the Fixed Bill Program is in the public interest and its customers should have the service available to them should they decide that it fits their needs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 11th day of December, 2007, to the following:

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