

**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) **Case No. EO-2007-0395**
Networks-L& P Designed to Continue and Expand) Tariff No. JE-2007-0739
its Fixed Bill Pilot Program)

PUBLIC COUNSEL’S STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel and for its Statement of Positions states as follows:

On October 23, 2007, Public Counsel filed its proposed list of issues. Pursuant to the Order Adopting Procedural Schedule issued on September 18, Public Counsel submits the following statements of positions on those issues:

1. 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?

The tariff sheets should not be found just and reasonable for all of the reasons identified in the issues that follow. Furthermore, they should not be found to be in the public interest. This type of “all you can eat” for one price rate design discourages energy conservation and is likely to cause adverse impacts on non-participants because of the load building effects. Mr. Kind addresses the potential for adverse load building impacts in his testimony on pages 6 through 15 of his testimony and also beginning at line 11 on page 18 and continuing through the end of page 19.

2. Should the proposed pilot program be made available to all eligible Aquila customers for a five year pilot time period?

No. Pilot programs should be more limited in scope and duration than Aquila’s proposal to make this program available to all of its qualifying residential customers for a five year period.

3. Is the proposed below-the-line accounting treatment appropriate for the proposed program?

No. Aquila witness Dennis Odell denies that Aquila is seeking to offer the fixed bill program as a non-regulated program (See Odell surrebuttal testimony at page 8 line 14 through page 9, line 4 and Kind rebuttal testimony at page 16, lines 1 - 9) and below the line accounting treatment is not appropriate for regulated retail services offered by utilities that are regulated by the Commission. In addition, below the line treatment is not appropriate for the reasons cited in the rebuttal testimony of witness Kind starting at line 15 on page 15 and continuing through line 10 on page 18.

4. Are the provisions of the affiliate transactions rule applicable to the proposed program?

Yes, as Mr. Kind states at line 24 on page 16 of his testimony, “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.”

5. Are the provisions of the promotional practices rule applicable to the proposed program?

Yes, as Mr. Kind states at line 8 on page 19 of his testimony, “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).” Mr. Kind states at line 10 on page 19 of his rebuttal testimony that “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’” and that “one of the ten prohibited promotional practices [4 CSR 240-14.020(1)(J)] pertains directly to a fixed bill type of service offering.

6. Would approval of the proposal outside of a rate case constitute single issue ratemaking?

Yes, Aquila’s proposal could have a substantial impact on its earnings and as Mr. Kind notes at line 7 on page 20 of his rebuttal testimony, Aquila “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.” Mr. Kind states at lines 11 through 17 on page 20 of his testimony that “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” and that “Slide 7 of a PowerPoint presentation given to Aquila’s management (provided in response to OPC DR No. 2005, and attached to this testimony as Attachment 12) 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.’”

7. Is the tariff language that permits Aquila to set fixed bills based on the “expected” level of rates lawful and in the public interest?

No. If the Commission approves a tariff that allows the regulated utility to set rates for fixed bill customers based on the utility’s “expected energy price structure” it will no longer be fulfilling its responsibility to ensure that the utility is charging just and reasonable rates.

8. If the Commission approves the proposed fixed bill program, what should the cap on program fees be?

The cap on program fees should not be raised from the 8% level that exists for the current pilot.

9. If the Commission approves the proposed fixed bill program, should the tariff include a “kWh growth factor”?

No. Witness Kind states at line 21 on page 21 of his rebuttal testimony that the Commission “should not permit Aquila to have a growth adjustment adder as part of its tariff because this adder insulates Aquila from the adverse financial impacts of the load growth of fixed bill customers, thereby removing any incentive for Aquila to take steps to minimize this load growth.”

10. Should the Commission consider Great Plains Energy’s proposed acquisition of Aquila in deciding whether to approve the tariffs?

Yes. It would not be fair to potential fixed bill program participants to make a program widely available to all of Aquila’s Missouri residential customers that radically alters the manner in

which they are billed for their utility service, given the substantial possibility that if Great Plains Energy's proposed acquisition of Aquila is approved, Great Plains may no longer have an interest in continuing the program.

WHEREFORE, Public Counsel respectfully submits the foregoing statement of positions.

Respectfully submitted,

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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 6th day of November 2007:

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