Exhibit No.:	______________
Issue(s):	Aquila Fixed Bill Proposal
Witness/Type of Exhibit:	Kind/Rebuttal
Sponsoring Party:	Public Counsel
Case No.:	EO-2007-0395

REBUTTAL TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

AQUILA, INC. D/B/A AQUILA NETWORKS-MPS AND AQUILA NETWORKS-L&P

Case No. EO-2007-0395

October 2, 2007

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Aquila, Inc. d/b/a Aquila Networks-MPS and L&P for authority to file tariffs offering electric Customers a Fixed Bill Pilot Program in the Aquila Networks-MPS and L&P area.	))))	**Case No. EO-2007-0395**

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ryan Kind, of lawful age and being first duly sworn, deposes and states:

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

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached affidavit are true and correct to the best of my knowledge and belief.

Ryan Kind

Ryan Kind

Subscribed and sworn to me this 2nd day of October 2007.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

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

Jerene A. Buckman

Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

REBUTTAL TESTIMONY

OF

RYAN KIND

AQUILA, INC. D/B/A AQUILA NETWORKS – MPS AND AQUILA NETWORKS – L & P

CASE NO. EO-2007-0395

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. Ryan Kind, Chief Public Utility Economist, Office of the Public Counsel, P.O. Box 2230, Jefferson City, Missouri 65102.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

A. I have a B.S.B.A. in Economics and a M.A. in Economics from the University of Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as a Teaching Assistant with the Department of Economics, and taught classes in Introductory Economics, and Money and Banking, in which I served as a Lab Instructor for Discussion Sections.

My previous work experience includes three and one-half years of employment with the Missouri Division of Transportation as a Financial Analyst. My responsibilities at the Division of Transportation included preparing transportation rate proposals and testimony for rate cases involving various segments of the trucking industry. I have been employed as an economist at the Office of the Public Counsel (Public Counsel or OPC) since April 1991.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?

A. Yes, prior to this case I submitted written testimony in: numerous gas rate cases, several electric rate design cases and rate cases, as well as other miscellaneous gas, electric, and telephone cases.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of this testimony is to inform the Commission about the many regulatory policy and legal concerns that the Public Counsel has with Aquila's new fixed bill program proposal. The OPC concerns addressed in this testimony include the following issues associated with the request by Aquila, Inc. ("Aquila" or "Company") to make several substantial 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:

1) Aquila is proposing to offer the fixed bill program to almost all of its residential customers despite the very large load building impacts that this will create at the same time that it claims to be embarking on a series of energy conservation initiatives that will be funded by customers through the demand-side management (DSM) deferral account that was authorized recently in Case No. ER-2007-0004.

2) Aquila seeks to turn the existing fixed bill pilot into a source of non-regulated earnings by changing the program to a non-regulated "competitive" offer with proposed "below the line" accounting treatment. Not surprisingly, at the same time Aquila is proposing "below the line" accounting treatment, Aquila is proposing major increases in the program fees that customers will be charged for participating in the program.

3) While Aquila has proposed a means to provide shareholders with enhanced earnings, it has not addressed how it will protect the majority of ratepayers who will not choose to participate in the program from being harmed as it is expanded from serving about 1,000 customers to serving tens of thousands of additional customers.

4) By filing its proposal outside of a rate case, Aquila is attempting to change rates and its overall level of earnings on a "single issue" basis without consideration of all relevant factors.

5) Aquila's tariff effectively removes the Commission from being able to exercise its duty to ensure that all rates are just and reasonable since the Company would be empowered to exercise discretion in setting the level of rates that are charged to fixed bill participants depending on its assessment of the "expected energy price structure", the "expected annual energy consumption" and amount that it believes is appropriate to include in the "risk fee" percentage adder. As part of approving similar programs in Indiana, the Indiana Utility Regulatory Commission (Indiana Commission) made use of specific provisions in Indiana Statutes that authorized it to decline to exercise its jurisdiction based on a determination that doing so is in the public interest.

6) At least three Commission rules (the Affiliate Transactions rule (4 CSR 240-20.015), the Utility Promotional Practices rule (4 CSR 240-14), and the Electric Utility Resource Planning rule (4 CSR 240-22) are implicated by Aquila's proposal and the Company has failed to adequately address compliance with the relevant provisions of any of these rules.

7) There are also a number of issues related to specific tariff language and the manner in which Aquila intends to market this program to its customers.

Q. HOW DOES A FIXED BILL PROGRAM FOR A REGULATED ELECTRIC UTILITY TYPICALLY OPERATE?

A. The utility sends a fixed bill offer to its qualified customers. Utilities generally exclude customers with credit problems and those with erratic usage patterns of insufficient usage histories.

The first step in calculating the offer is to determine the individual customer's weather normalized kWh usage. This normalized amount is then increased by a consumer growth factor that is an estimate of the amount of growth in consumption is expected to occur when there is no explicit price signal associated with consuming each additional kWh and no true-up at the end of the year to adjust for higher levels of consumption. The normalized and growth adjusted consumption amount is then multiplied times the expected base rates and any riders that will be in effect for the coming year. The customer charges and a risk premium are also added to the annual bill amount. The risk premium is intended to protect the utility from differences between the normalized and growth adjusted consumption amount and the amount of consumption that actually occurs.

Q. DO FIXED BILL OFFERS GENERALLY RAISE THE RISK FOR A UTILITY THAT ITS ACTUAL RATE REVENUES WILL DIFFER SUBSTANTIALLY FROM ITS COMMISSION AUTHORIZED REVENUES?

A. No, Especially when risk is viewed from the perspective of the entire portfolio of rate designs that the utility is using to collect revenues. Viewed from this perspective, fixed bill programs (in combination with traditional volumetric rate designs) act as a natural hedge against revenue and earnings fluctuations that can result from weather variations. When weather is milder than normal, fixed bill revenues will provide a hedge against revenue and earnings erosion for the portion of customers with fixed bills. Conversely, when weather is more extreme than normal, then the increased revenues that the utility is receiving from customers who are not on fixed bills will more than offset any decline in revenues from fixed bill customers during the same time period.

This “natural hedge” phenomenon is illustrated graphically on page 13 of a February 27, 2007 PowerPoint presentation (See Attachment 1) given by Michael T. O’Sheasy (the Vice President of Christensen Associates and one of the foremost proponents of fixed bill programs) at a conference on “Electricity Pricing in Continuously Changing Environments) that was co-sponsored by Christensen Associates and Electric Utility Consultants, Inc. (EUCI). As page 13 of this presentation indicates, the extent to which seasonal profits vary with departures from normal heating degree days (HDD) or cooling degree days (CDD) is mitigated by having a pricing portfolio that includes both standard tariff rates and fixed bill pricing. Of course, this raises the questions of (1) why utilities should be adding a risk premium to fixed bill customer’s charges when those customers are actually benefiting the utility by providing a “natural hedge” and (2) why a fixed bill program proposal should be considered in isolation outside of a general rate case where all relevant factors such as changes in the risk profile of the utility can be taken into account in setting just and reasonable rates.

Q. WHAT LEVEL OF CUSTOMER PARTICIPATION OR “TAKE RATE” IS USUALLY EXPECTED IN A FIXED BILL PROGRAM?

A. Fixed bill programs appeal to a relatively small segment of customers and generally see customer participation rates in the range of 5 to 10%.

Q. LET'S TURN NOW TO THE LIST OF OPC CONCERNS THAT WERE LISTED EARLIER IN YOUR TESTIMONY. PLEASE EXPLAIN THE CONCERN ABOUT THE LOAD BUILDING IMPACTS OF THIS PROGRAM AT A TIME WHEN THERE IS INCREASED INTEREST AT BOTH THE NATIONAL AND THE STATE LEVEL TO FOCUS ON CONSERVING ENERGY.

A. The upsurge in interest in utility sponsored energy efficiency programs that has occurred nationwide and in Missouri over the last couple years is truly impressive. Within the last three years, this Commission has approved energy efficiency programs and program cost recovery mechanisms for most of the regulated gas and electric utilities, including Aquila. In early September, the Missouri Legislature held a well attended joint hearing on energy efficiency and an energy efficiency community forum was held in Kansas City that attracted over 500 participants. AmerenUE has plans to hold energy efficiency forums in St. Louis, Cape Girardeau, and Jefferson City in mid-October. At the national and regional levels, the "National Action Plan For Energy Efficiency" was developed during 2006 and the Organization of MISO States (OMS) began its Midwest Demand Resources Initiative (MWDRI) to promote energy efficiency and demand response at about the same time.

Q. DOES AQUILA HAVE PLANS TO IMPLEMENT AN EXTENSIVE PORTFOLIO OF ENERGY EFFICIENCY PROGRAMS?

A. Yes. In its recent IRP filing in Case No. EO-2007-0298, Aquila has proposed a large portfolio of residential, commercial and industrial DSM programs. Aquila is just now starting to implement the first of these programs, the Residential Lighting Program, pursuant to a tariff that the Commission approved in Case No. EO-2008-0050 on September 13, 2007 in an order entitled "Order Granting Motion For Expedited Treatment And Approving Tariff Sheets." In the Program Description for the Residential Lighting Program (Lighting Program Description) that Aquila filed in Case No. EO-

2008-0050 on August 28, 2007, Aquila indicated that it expected the program to reduce its customer loads by 13,185,742 kWhs over a five year period (See Lighting Program Description, page 2) at a cost of $508,600 (See Attachment 2 for this calculation).

Unfortunately, Aquila estimates that the majority of the kWh savings that are achieved by its Residential Lighting Program over a five year period will be lost in just the **first** year of the Company's proposed fixed bill "pilot" program. Aquila's response to OPC DR No. 2052 (see Attachment 3) shows that the "first year impact" of "Increased Usage by Customers Selecting Fixed Bill" (shown in Line 10 on the second page of Attachment 3) is expected to be 9,416 MWhs (9,416,000 kWhs). Since 9,416,000 kWhs is 71.46% of 13,185,742 kWhs (See Attachment 2 for this calculation) Aquila is projecting that well over 2/3 of the savings achieved by the Residential Lighting Program during its first five years of operation will be wiped out by the load growth expected from just the first year of the expanded fixed bill program!

Public Counsel is frankly dumbfounded to find that Aquila would be seeking to promote a program that will undo the savings that it expects to achieve from its new energy efficiency programs. Why would consumers want to pay half a million dollars to support a utility's energy efficiency program when the same utility is promoting a load building program that will take back the conservation benefits in an effort to enhance its non-regulated earnings?

Q. Do you have any further comments regarding Aquila's response to OPC DR No. 2052?

A. Yes. First of all, at the bottom of the second page of this DR response, Aquila asserts that the load impacts are "largely off-peak" but they have not provided any quantitative analysis to support this assertion. Utility's that propose fixed bill type programs often try to minimize the load building impacts by asserting that the impacts are either completely or mostly off-peak. In today's environment, it's difficult to see why load growth of any type would be beneficial from a customer perspective especially for a utility like Aquila that is extremely short on the supply-side resources that will be needed to serve the growing needs of its customers over the next 10 years. Aquila's response to OPC DR No. 2048 (see Attachment 4) shows on the third page of the response that its shortfall of generating capacity ranges from a low of 244.9 MWs in 2010 (when Iatan 2 is expected to go on line) to a high of 799.5 MWs in 2017. Given Aquila's chronic shortage of intermediate and baseload generation resources in recent times, it can be assumed that Aquila will also have a significant shortage of reasonably priced energy to serve its customers needs over the next 10 years. Of course, as some type of carbon regulation becomes increasing likely, it will become more and more important to reduce off peak energy usage as well as peak demands in order to hold down the costs of serving electric customers since off-peak loads are generally served by carbon-intensive coal generating units.

On line 11 of the second page of Aquila's response to OPC DR No. 2052, Aquila shows that the fixed bill program is expected to increase its system-wide MWh usage by .18 per cent. This figure was calculated by dividing line 10 by line 1. A similar calculation can be performed to show the expected incremental load growth to the residential class by dividing line 10 by line 2. This calculation 9416 MWh/2,428,634s) shows that the fixed bill program is expected to increase load growth for the residential class by .386% in the first year of the program. This increased load growth for the residential class would occur on top of the already high load growth that Aquila is experiencing for residential customers. According to the load growth projections in Aquila's most recent IRP filing in Case No. EO-2007-0298, Aquila's load is expected to grow at an average rate of 2.5% over the next 20 years. When the expected growth for the residential class of .386%, the total load growth for the residential class would increase from about 2.5% to 2.86% when the full load growth impacts of the first year of implementation are taken into account.

This is an astounding amount of increase to an already high level of load growth for the residential class!

The many implications of this load growth, including the substantial potential detrimental impact on non-participants in the fixed bill program are address later in this testimony. Not surprisingly, Aquila attempts to minimize the impacts of this load growth as "minimal." Aquila's response to OPC DR No. 2053 (See Attachment 5) stated "as demonstrated in Aquila's response to OPC DR No. 2052, the projected usage impacts of this program are minimal and…".

Q. HAVE YOU HEARD ANY COMMENTS FROM MISSOURI COMMISSIONERS ABOUT HOW RATE DESIGN CAN HAVE ADVERSE IMPACTS ON THE LEVEL OF ENERGY CONSERVATION THAT TAKES PLACE IN MISSOURI?

A. Yes. The issue of declining block rates and the reduced price signal that this provides to consumers about using more energy has been raised from time to time. This issue was recently addressed by Chairman Davis in response to a question that he received after giving his prepared remarks to a joint hearing of the House Special Committee on Energy and Environment and the House Special Committee on Utilities on September 13, 2007. At this joint hearing, one of the committee members asked Chairman Davis why he believed the usage per customer in Missouri tended to be higher than it is in most other states. In his response, Chairman Davis cited the Wal-Mart and Sam's type of utility pricing where "the more you buy, the less you pay" has been one of the factors that has discouraged energy efficiency in Missouri.

Public Counsel believes that the Chairman's observation about past utility pricing practices has some merit and is somewhat surprised that any utility would now be proposing the broad application of "all you can eat" (fixed bill) pricing at the same time that heightened concerns about the increased costs of environmental regulations led the Missouri Legislature to pass SB 179 which provides for extraordinary ratemaking treatment of environmental costs incurred by utilities. I wish I could assume that Aquila's decision to try and expand "all you can eat" pricing to all of its residential customers meant that is was safe to assume that Aquila does not expect to have a need for the extraordinary ratemaking measures permitted by SB 179. However, its probably safer to assume that Aquila believes that such ratemaking procedures will allow the Company to shield itself from the adverse financial implications of its reckless pursuit of an expanded fixed bill program despite its detrimental load building impacts.

Q. Have other state commissions raised concerns about the adverse effects on energy conservation that arise from the price signal that fixed bill programs give about increasing consumption of electricity?

A. Yes. About two years ago, the Commonwealth of Kentucky Public Service Commission (KPSC or Kentucky Commission) denied two fixed bill program proposals largely based on the "potential impact a fixed bill program could have on energy consumption and demand." The KPSC's order stated in its May 4, 2005 order in Case No. 2004-00330 (See Attachment 6, page 7) that:

> **The issue of greatest concern to the Commission is the potential impact a fixed bill program could have on energy consumption and demand.** The limited results of the Gulf Power pilot program, contrary to the claims of the Joint Applicants, offer little comfort on this matter. An 8 percent increase in energy usage is much greater than what typically occurs due to normal growth. Particularly with East Kentucky's fuel costs increasing substantially in recent years, the merits of attempting to increase customer satisfaction by implementing a program that encourages customers to use more electricity, without sending proper pricing signals, are questionable. (Emphasis added)

In that same order the Kentucky Commission also addressed the questionable reasoning of initiating a fixed bill program for a utility that is facing substantial needs for additional generation resources where it stated on pages 7 and 8 of the order that:

> The Commission takes administrative notice that East Kentucky currently has two cases pending to construct a total of over 950 Mw of capacity at a cost in excess of $1.35 billion. This makes it highly questionable for East Kentucky to pursue a billing program that removes the link between the quantity of electricity that customers use and the cost of that electricity. With the impact of East Kentucky's recently approved environmental surcharge expected to increase customers' bills this summer, and with the forecast of a need for an additional rate increase later this decade to recover the cost of new capacity, East Kentucky's interest in pursuing a fixed bill program does not appear to be well founded.

In the next paragraph of the Cause No. 2004-00330 order, the Kentucky Commission outlined some of the important issues that must be addressed in determining whether a proposed fixed bill program should be approved where it stated:

> Although the Joint Applicants point to the small size of the proposed pilot, it is the Commission's sense that **a fixed bill program should not be pursued, regardless of its size, unless**: (1) there is clear evidence of a demand for the program that cannot otherwise be addressed; and **(2) meaningful results of other programs are available which demonstrate that the likely outcome will not adversely impact customers, in the short-run or the long-run, by creating a need for additional capacity or by increasing the utility's costs or reducing its revenues.** (Emphasis added)

OPC agrees with the KPSC about the burden of proof that a utility must satisfy in order to demonstrate that a fixed bill program should be given the green light to proceed by a regulatory commission. Aquila has not performed the resource planning analysis that would be required (and is required by section 4 CSR 240-22.060(5) of the Missouri Electric Utility Resource Planning rule) to determine that its proposal is not likely to adversely impact customers. Regarding the first item referenced in the quote above, the KPSC made the insightful finding on page 6 of its order that:

> Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Joint Applicants' fixed bill proposal appears to be an extraordinary response to a concern expressed by a limited number of their customers.

Q. YOU STATED THAT THE KENTUCKY COMMISSION DENIED TWO FIXED BILL APPLICATIONS. WAS THE KPSC'S REASONING FOR DENIAL OF THE SECOND APPLICATION SIMILAR TO THE REASONS THAT IT CITED IN THE FIRST DENIAL?

A. Yes, the reasons cited for denial in the two applications were quite similar although the first application involved and a joint application of electric cooperatives and the second application for fixed bill program approval came from an investor-owned utility, the Union Light, Heat and Power Company (ULH&P). The Kentucky Commission issued its order regarding the second application in Case No.2004-00503 on October 26, 2005 (See. Attachment 7). While the KPSC's reasoning in this second order repeated many of the same concerns addressed in the order in Case No. 2004-00330, many of the statements are worth repeating here. On page 9 of its order the Kentucky Commission stated:

> An issue of great significance, in the Commission's view, is the potential impact a fixed bill program could have on energy consumption and demand. **The limited results of the Gulf Power pilot program offer little comfort on this issue. An 8 percent increase in energy usage is much greater than what occurs due to typical consumption growth.** (Emphasis added)

The above findings regarding the level of load growth associated with the Gulf Power (a Florida utility) program also appear on page 2 of an order issued by the Florida Public Service Commission (Florida PSC or Florida Commission) on September 27, 2004 in Docket No. 040442-EI where the Florida Commission approved a fixed bill proposal for Gulf Power after the utility agreed to change its proposed ratemaking treatment from below the line treatment to above the line treatment. The Kentucky Commission's order in Case No. 2004-00503 also contained the following strong reasons on page 9 for denying the fixed bill application of ULH&P.

> Particularly with ULH&P's electric rate freeze scheduled to expire at the end of 2006 and with natural gas costs at record levels, **hoping to increase customer satisfaction by implementing a program that could encourage customers to use greater amounts of electricity or natural gas appears to be misguided.** (Emphasis added)
>
> …
>
> It is questionable for ULH&P to pursue a program that removes the customer's direct link between the amount of electricity and natural gas used and the cost of that usage.

Q. HAVE ANY OTHER STATE COMMISSIONS RAISED CONCERNS RECENTLY ABOUT THE LOAD BUILDING IMPACTS THAT FIXED BILL PROGRAMS TYPICALLY HAVE?

A. Yes. The North Carolina Utilities Commission (NCUC or NC Commission) has approved fixed bill programs for two of its regulated electric utilities, Duke Energy Carolinas (Duke) and Progress Energy Carolinas (Progress). On August 21, 2007, the NCUC issued an order in Docket Nos. E-7, Sub 710 and E-2, Sub 847 (see Attachment 8) where it ordered both Duke and Progress to "file comments and any studies on the impact of these programs on energy conservation and peak demand not later than September 21, 2007." This Order mentions several factors that prompted the Commission to initiate this inquiry. First, the Order notes that in the NCUC's Order Approving Duke's Fixed Bill Program it had required:

> That the Public Staff shall monitor, on an ongoing basis, the impact, if any, that the FPP may have on energy conservation and Duke's system peak demand and shall make such reports to the Commission as it deems appropriate.

This Order also noted that:

> On June 8, 2007, Duke filed a request to revise it FPP. In the Public Staff's agenda item which presented this revision to the Commission for its consideration, the Public Staff stated that "FPP reports have indicated that, on average, customers who have enrolled in this Program during the first couple of years have increased their energy usage and their contributions to the peak demand at higher levels than a typical residential customer."

Duke filed its response (see Attachment 9) to the NCUC's "Order Requesting Further Information" in Docket No. E-7, Sub 710 on September 20, 2007 in which it sought to provide the information requested by the North Carolina Commission. Duke's response indicated that 110,653 North Carolina customers currently participate in its Fixed Bill Program, representing 7.5% of residential customers. On page 4 of its response Duke indicated that for customers that are in their first year of program participation their usage grows by an average of 9.3%. On page 5 of its response Duke stated that it had "gathered data related to the impact of FPP [Fixed Payment Plan] on peak demand." Duke also stated that "the Company has found that the impact the FPP sample population indicates a higher usage at time of peak than the control group." Specifically, Duke stated that "in 2004, the FPP sample population showed 31% higher usage than the control group, which would affect the system peak by .3%" and that "in 2006 the FPP sample population showed 11% higher usage which would affect the system peak by .2%." Duke's translation of increases in residential usage to impacts on total system peak demand failed to reveal the much larger impact that these increases in residential usage are having on the peak demands of the residential class.

Progress also filed its response (see Attachment 10) to the NCUC's "Order Requesting Further Information" in Docket No. E-2, Sub 847 on September 20, 2007 in which it sought to provide the information requested by the North Carolina Commission. Progress had not put the same level of effort into estimating the changes in usage and peak demand that Duke had. Consequently, the Progress response had very little information except for the conclusion that the 76,213 customers who were enrolled in the program for the first year of participation saw an average increase in weather normalized usage of 6.94% above and beyond the adjustments that were made due to the usage adder.

Q. DO YOU HAVE ANY ADDITIONAL COMMENTS ABOUT THE LOAD BUILDING ASPECT OF AQUILA'S PROPOSED EXPANSION OF ITS FIXED BILL PROGRAM?

A. 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 (See attachment 11) 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 (See attachment 12) shows that Aquila expects a proposed fixed bill program to result in "Healthy growth mostly off peak" and "Small peak effects."

Q. LET'S RETURN NOW TO THE LIST OF OPC CONCERNS THAT WERE LISTED EARLIER IN YOUR TESTIMONY. PLEASE EXPLAIN THE SECOND CONCERN ABOUT AQUILA'S PROPOSAL FOR THE COMMISSION TO APPROVE BELOW THE LINE ACCOUNTING TREATMENT FOR THIS PROGRAM.

A. 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). For example, subsection (2)(F) of the Affiliate Transactions rule (4 CSR 240-20.015) requires a utility to clearly advise its customers in all of its marketing communications that this program is not regulated by the Missouri Commission. OPC asked Aquila whether it intended to do this in OPC DR No. 2047 and Aquila's response stated that:

> Aquila views this program as a regulated offering. The tariff under which this program would be offered would be approved by the Missouri Public Service Commission, and the charges would be based on currently effective tariff rates. There are no unregulated business operations involved in the offering of this program. Because of this we do not intend to change our marketing collateral to indicate this is a non-regulated offering.

Q. IS IT TRUE THAT "THE CHARGES WOULD BE BASED ON CURRENTLY EFFECTIVE TARIFF RATES"?

A. No. First of all, the proposed tariff only contains caps on the "program fee" and a formula for calculating monthly bills. There are no rates specified on the fixed bill program tariff. In addition, the annual fixed bill formula in the tariff includes the item "energy price" which is defined as the "expected energy price structure…" Given the definition of this item, Aquila has latitude to calculated bills based not on currently tariffed rates but on its expectations of future tariffed rates over the year that the annual bill would cover. In other words, Aquila can make its own assessment of the level of any general rate increase that it expects to receive in the upcoming year and the level of FAC charges that will be in effort for the upcoming year and incorporate its expectations into the annual bill calculation.

Q. WHAT OTHER CONCERNS DO YOU HAVE ABOUT THE BELOW THE LINE ACCOUNTING TREATMENT THAT AQUILA HAS PROPOSED?

A. 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 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. However, 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 of the customer billing information that are 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 to protect customers of the regulated utility from subsidizing Aquila's non-regulated operations.

If Aquila acknowledges that it is truly seeking to offer this program as a fully non-regulated service, and if 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)) designed to protect customers of regulated utilities from subsidizing non-regulated affiliated entities.

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. Missouri customers have come to assume that the rates being charged by their utilities are reasonable since they have been reviewed by the Commission. The latitude that Aquila has for setting its own charges under the proposed tariff means that this would not be the case.

Q. LET'S RETURN AGAIN TO THE LIST OF OPC CONCERNS THAT WERE LISTED EARLIER IN YOUR TESTIMONY. PLEASE EXPLAIN THE THIRD CONCERN ABOUT NON-PARTICIPANTS NOT BEING PROTECTED FROM ANY ADVERSE EFFECTS THAT MAY RESULT FROM THIS PROGRAM.

A. 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. For example, without this analysis there is no way to estimate the harm to non-participants from the reduced level of off-system sales margins that will be present to offset production costs as the loads increase for fixed bill customers and there is no way to estimate the cost of dispatching more costly generation resources to serve the increased loads.

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. Aquila's response to OPC DR No. confirmed that it is making this type of commitment to its fixed bill customers. 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.

Q. LET'S RETURN AGAIN TO THE LIST OF OPC CONCERNS THAT WERE LISTED EARLIER IN YOUR TESTIMONY. PLEASE EXPLAIN THE FOURTH CONCERN ABOUT "SINGLE ISSUE RATEMAKING."

A. 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 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."

Public Counsel has the additional concern that Aquila is seeking to have a single issue addressed in this case by putting a tariff in effect that will provide a large enhancement to its non-regulated revenues at the same time that the rates resulting from Aquila's most recent rate case reflect some of the costs of providing what Aquila now seeks to have classified as a below the line program. Furthermore, there are equity issues involved with charging regulated customers for the program development costs of a program that Aquila is now seeking to turn into a non-regulated profit center. Aquila has not offered to repay any of these program development costs to customers as part of its proposal to make this a below the line program.

Q. LET'S RETURN AGAIN TO THE LIST OF OPC CONCERNS THAT WERE LISTED EARLIER IN YOUR TESTIMONY. PLEASE EXPLAIN THE SEVENTH CONCERN ABOUT VARIOUS ISSUES RELATED TO THE TARIFF.

A. 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.

While Mr. Odell's testimony states that the consumption adder and the risk adder at 6% each, no such cap is present in the tariff. Lastly, the idea that a program can be offered to all eligible Aquila residential customers in Missouri for a five year period and still be considered a "pilot" renders the term "pilot" virtually meaningless.

Q. DO YOU HAVE ANY CONCLUDING REMARKS?

A. Yes. Based on OPC's analysis of Aquila's proposed expansion and modification of the fixed bill program we believe the proposal should be rejected by the Commission because it is counter to good regulatory policy and fails to comply with a number of relevant rules and laws. If, contrary to the recommendation of OPC, the Commission decides to approve this proposal, it 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.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.