

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS

7 Hearing

8 November 16, 2007
9 Jefferson City, Missouri
Volume 2

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11 In the Matter of Tariff)
12 Revisions Filed by Aquila,)
13 Inc. d/b/a Aquila)
14 Networks-MPS and Aquila) Case No. EO-2007-0395
15 Networks-L&P Designed to)
16 Continue and Expand Its)
17 Fixed Bill Pilot Program)

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19 MORRIS WOODRUFF, Presiding,
20 DEPUTY CHIEF REGULATORY LAW JUDGE

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22 REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good morning, everyone.
3 Welcome to the hearing in Case No. EO-2007-0395 which
4 is -- concerns tariff revisions filed by Aquila. And
5 we'll begin today by taking entries of appearance
6 beginning with Aquila.

7 MR. BOUDREAU: Yes. Thank you. Let the
8 record reflect the appearance of Paul A. Boudreau
9 with the law firm of Brydon, Swearngen & England,
10 Post Office Box 456, 312 East Capitol Avenue,
11 Jefferson City, Missouri, appearing on behalf of
12 Aquila, Inc. Also appearing for Aquila is Renee
13 Parsons, 20 West Ninth Street, Kansas City, Missouri
14 64105.

15 JUDGE WOODRUFF: Thank you. For Staff?

16 MR. WILLIAMS: Nathan Williams, Deputy
17 General Counsel, P.O. Box 360, Jefferson City,
18 Missouri 65102.

19 JUDGE WOODRUFF: Okay. Public Counsel?

20 MR. MILLS: On behalf of the Public
21 Counsel's Office and the public, my name is Lewis
22 Mills. My address is Post Office Box 2230, Jefferson
23 City, Missouri 65102.

24 JUDGE WOODRUFF: Thank you. And I want
25 to remind you-all to turn off your cell phones and

1 BlackBerries. They cause interference with the
2 electronic system. In a moment we'll take a break
3 and premark exhibits. Any other preliminary matters
4 anyone needs to bring up before we get started?

5 MR. BOUDREAU: I don't think so.

6 JUDGE WOODRUFF: All right. I will tell
7 you, we'll need to take a break at 9:30 for agenda,
8 and I'll let you know when, as that's approaching.

9 Let's go off the record, then, for a
10 moment and we'll premark exhibits.

11 (DISCUSSION HELD OFF THE RECORD.)

12 (EXHIBIT NOS. 1 THROUGH 4 WERE MARKED
13 FOR IDENTIFICATION BY THE COURT REPORTER.)

14 JUDGE WOODRUFF: Let's go back on the
15 record with opening statements, and we'll begin with
16 Aquila.

17 MR. BOUDREAU: Thank you. May it please
18 the Commission. Aquila has proposed a Fixed Bill
19 Pilot Program which, if approved by the Commission,
20 would be a voluntary billing option that offers
21 customers throughout its Missouri service territories
22 the convenience of receiving a predetermined,
23 completely predictable monthly bill for a one-year
24 period regardless of weather variations or changes in
25 utility rates.

1 This billing option will provide
2 stability and predictability at a premium that is
3 necessary and appropriate to cover variations in
4 usage and program execution risk. This type of
5 billing option has been growing in popularity
6 throughout the country. Aquila, in fact, has
7 successfully offered on a limited basis in the City
8 of St. Joseph a Fixed Bill Pilot Program that has
9 been well received by its customers there.

10 If approved by the Commission, the
11 expanded program with a number of new features will
12 be offered on a five-year pilot basis. Those changes
13 are described in the testimony of company witness,
14 Dennis Odell, and I would encourage you to discuss
15 these topics with Mr. Odell.

16 It bears repeating that the program is
17 purely voluntary. This means that the
18 Commission's -- or excuse me, that the company's
19 customers can make an informed decision whether to
20 participate or not to participate. The company
21 believes that those who choose to use the service
22 will value this program, and it has been specifically
23 structured to ensure that those customers who do not
24 choose to participate will not be disadvantaged.

25 Both Staff and Public Counsel have

1 opposed the service for a variety of reasons, and I'm
2 not going to try to attempt to address all those
3 arguments at this time. But I do think that it's
4 important to point out that the fixed bill proposal
5 presents no affiliate transactions issues or
6 promotional practices implications. The fixed bill
7 service will be offered by the utility and not by an
8 unregulated affiliate. And I'd just like to point
9 out, were it otherwise, no tariffs would be filed.
10 So there's no affiliate implications because it's not
11 being offered by an affiliate.

12 As to the promotional practices
13 implications, there really are none. This is not a
14 program designed as a -- for a load-building
15 objective or to induce customers to switch fuels
16 from, for instance, natural gas to electricity. It
17 is simply proposed as another billing option for the
18 benefit of the company's customers.

19 Public Counsel has suggested that the
20 fixed bill service would constitute unlawful
21 single-issue ratemaking. Well, I would suggest to
22 you this argument is just plain silly. There's
23 nothing about the prohibition against single-issue
24 ratemaking that prohibits a utility from offering a
25 new service at a particular cost outside the context

1 of a rate case.

2 And as pointed out by company witness
3 Odell in his testimony, Aquila's current Fixed Bill
4 Pilot Program was submitted to and approved by the
5 Commission outside of the context of a rate case.

6 Both Staff and Public Counsel suggest
7 that the pending acquisition of Aquila by GPE or
8 Great Plains Energy is a reason for the Commission to
9 reject the tariffs, and I would suggest that this
10 argument too makes no sense. The value of this
11 service to Aquila's customers will not be impacted in
12 any way by the proposed merger.

13 It would be pointless to deny Aquila's
14 customers an innovative service on the assumption
15 that a transaction that both Staff and Public Counsel
16 are on record as opposing will occur. I suggest to
17 you that the pending acquisition by GPE is a nonissue
18 and is not -- certainly not a reason to reject the
19 tariffs.

20 I will conclude with this observation:
21 Aquila believes it has proposed an innovative service
22 that is fair to the customers that choose to use it,
23 fair to the customers who choose not to use it and
24 also fair to the company.

25 I also urge the Commission to keep in

1 mind that this is a pilot program and this means that
2 the parties and the Commission will have an
3 opportunity to review how the program has worked at
4 a -- a number of years down the line. Aquila
5 believes the fixed bill program is in the public
6 interest and the customers should have this service
7 available to them should they decide that it fits
8 their needs. Thank you.

9 JUDGE WOODRUFF: Thank you. For Staff?

10 MR. WILLIAMS: May it please the
11 Commission. Nathan Williams appearing on behalf of
12 the Staff. Mr. Boudreau has accurately described the
13 program that Aquila is proposing here. What he
14 hasn't pointed out is that -- or hasn't emphasized is
15 that Aquila already has had a pilot program that it
16 utilized in the St. Joseph area where it had a 6 -- a
17 4 percent growth factor and a 4 percent risk premium
18 that it utilized for the charges that it made in that
19 program.

20 In this program, it's not only expanding
21 the program to cover all of its service area, not
22 just that in St. Joseph, but it's asking to increase
23 that growth factor to 6 percent and the risk factor
24 to 6 percent. In doing so, it has not relied upon
25 any of the results from its experience in the pilot

1 program that it currently has in place which have
2 operated for a period of three years. Originally, it
3 was designed to be a two-year pilot and extend -- it
4 was extend -- extended for a third year.

5 The Commission should look askance at --
6 I mean, the whole purpose of the pilot program is to
7 get experience and see how it worked and evaluate and
8 see what changes, if any, should be made and whether
9 or not the program should be expanded to a larger
10 area if it was found to be a good program.

11 Again, Aquila has not relied upon that
12 program for a base -- as a basis for why it's wanting
13 to do this expansion that it's seeking here. The
14 Staff opposes the program as put forth. It would not
15 oppose a program that left the risk premium -- or the
16 risk factor and the growth factor at 4 percent even
17 if expanded. However, it's -- that's not the
18 proposal that's before the Commission here today.

19 Additionally, the Staff opposes Aquila's
20 proposal that the cost in revenues from this program
21 not be considered in ratemaking in the future.

22 JUDGE WOODRUFF: Public Counsel?

23 MR. MILLS: Good morning. May it please
24 the Commission. Aquila in this case asserts that the
25 single issue is whether or not the Fixed Bill Pilot

1 Program tariffs should be found just and reasonable
2 in the public interest and approved by the
3 Commission. Public Counsel doesn't dispute that
4 that's the ultimate issue, but that's sort of like,
5 you know, asking in a rate case is -- should those
6 tariffs be approved. It's always a lot more
7 complicated than that.

8 In this case in order to get to that
9 question, we have to answer a bunch of issues that
10 really lead you to that. And in this case you have
11 the somewhat unusual situation in which the parties
12 were not able to agree on a list of issues.

13 The list of issues that Public Counsel
14 submitted is much more broad and more focused on some
15 of the sub-issues that would lead the Commission to
16 the question of whether or not the tariffs are in the
17 public interest and should be approved -- should be
18 approved.

19 One of those issues which Mr. Boudreau
20 talked -- touched on is the question of single-issue
21 ratemaking. While Mr. Boudreau thinks this argument
22 is silly, it's not -- it wasn't silly when the UCCM
23 case was decided. The tariffs that Aquila has
24 proposed in this case will be a significant revenue
25 stream to Aquila outside of the context of a rate

1 case when all other relevant factors are not
2 considered. That's by definition single-issue
3 ratemaking.

4 Mr. Boudreau also touched on the
5 promotional practices rule and said that this program
6 is not intended to be a load-building program.
7 Perhaps it's not intended solely to be a load-
8 building program, but the evidence in the case today
9 will show you clearly that it is, in fact, a load-
10 building program, and as such, is -- is subject to
11 the promotional practices rule.

12 Now, with respect to the proposed
13 increase in the two caps, both -- both of them from
14 4 percent to 6 percent, while the evidence will show
15 that it's not entirely clear that either of those
16 items are, in fact, capped at 6 percent, Public
17 Counsel opposes the increase of those two items as
18 well.

19 Perhaps the most concerning aspect of
20 this entire program is the load-building aspect.
21 Aquila emphasizes that this program is voluntary and
22 so only the customers who choose to participate will
23 be affected, and that's simply not the case. The
24 customers who choose not to participate will also be
25 affected, and they will be affected because Aquila is

1 in a capacity-short position, has had a series of
2 rate cases over the years and very likely will have
3 additional rate cases because it needs to keep adding
4 capacity.

5 To the extent that this is a
6 load-building program, and the evidence will show
7 that it is, nonparticipating customers are affected
8 because they have to pay for that capacity whether or
9 not they sign up for the program or not, and that's
10 the biggest problem with this program. Thank you.

11 JUDGE WOODRUFF: Thank you, Mr. Mills.
12 And that's all the parties. We're ready to go to the
13 first witness which I believe is Mr. Odell.

14 (THE WITNESS WAS SWORN.)

15 DIRECT EXAMINATION BY MR. BOUDREAU:

16 Q. Would you state your name for the
17 record, please, sir.

18 A. Dennis Odell.

19 Q. By whom are you employed and in what
20 capacity?

21 A. I'm employed by Aquila as senior
22 director of business planning.

23 Q. Are you the same Dennis Odell that has
24 caused to be prefiled with the Commission prepared
25 direct and surrebuttal testimony marked for

1 identification respectively as Exhibits 1 and 2?

2 A. Yes, I am.

3 Q. Was that testimony prepared by you or
4 under your direct supervision?

5 A. Yes, it was.

6 Q. Do you have any corrections that you
7 would like to make to your testimony at this time?

8 A. Yes, I do. I have a couple of
9 corrections to my direct testimony.

10 Q. That would be Exhibit No. 1?

11 A. The first is on page 5, line 11. It
12 currently states, "each customer's contractual
13 usage." The word "contractual" should be changed to
14 "historical."

15 And the second correction is in the
16 schedules. It's actually the third schedule which is
17 titled Summary Chart. It says it's schedule D
18 zero -- "DO-1," it should actually be "DO-3."

19 Q. That would be the page immediately
20 preceding your affidavit?

21 A. That's correct.

22 Q. And that should read "DO-3," that was
23 your testimony?

24 A. Correct.

25 Q. Do you have any other corrections you'd

1 like to make to your duress -- direct testimony at
2 this time?

3 A. No.

4 Q. Do you have any corrections you'd like
5 to make to your surrebuttal testimony?

6 A. No.

7 Q. With those changes, Mr. Odell, if I were
8 to ask you the same questions as are contained in
9 those two pieces of testimony, prefiled prepared
10 testimony, would your answers today be substantially
11 the same?

12 A. Yes, they would.

13 Q. And would they be true and correct to
14 the best of your information, knowledge and belief?

15 A. Yes.

16 MR. BOUDREAU: With that, I would offer
17 Exhibit Nos. 1 and 2 into the record and tender
18 Mr. Odell for cross-examination.

19 JUDGE WOODRUFF: Exhibits 1 and 2 have
20 been offered. Any objection to their receipt?

21 (NO RESPONSE.)

22 JUDGE WOODRUFF: Hearing no objection,
23 they will be received.

24 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 MR. BOUDREAU: Thank you.

2 JUDGE WOODRUFF: And for cross-examination,
3 we begin with Staff.

4 MR. WILLIAMS: Thank you.

5 CROSS-EXAMINATION BY MR. WILLIAMS:

6 Q. Mr. Odell?

7 A. Yes.

8 Q. Do you have what's been marked as
9 Exhibit 1 in front of you which is your direct
10 testimony prefiled in this case?

11 A. Yes, I do.

12 Q. Would you turn to page 3? On line 10
13 you referred to a 7 percent renewal rate. What is
14 that 7 percent of?

15 A. That's 7 percent of the number of
16 customers that were offered the program in St. Joe.

17 Q. And renewal rate would be customers that
18 stayed with the program for a second year or a third
19 year?

20 A. Yes, yes, the renewal rate would be the
21 customers that -- that renewed after having signed up
22 in one year, renewed in the second year.

23 Q. In this program you proposed a risk of
24 12 percent or an adder of 12 percent based on risk
25 and anticipated increasing issues by a customer, have

1 you not?

2 A. That's correct.

3 Q. Has Aquila ever had a customer's -- had
4 that kind of an increase without a premium? I mean,
5 in other words, during a year has a customer's bill
6 increased by 12 percent due to usage?

7 A. We have had a few customers that have
8 seen increases that were much greater than that. I
9 think we had an example of a customer that -- that
10 tried to utilize this system improperly -- this
11 program improperly, and actually was feeding
12 electricity to others. So there have been a few
13 instances where we have seen much greater increases
14 than the 12 percent.

15 Q. I believe in your testimony you provided
16 three examples; two were people that installed heat
17 pumps and one where someone had run cords to
18 additional trailers, not just one location?

19 A. That's correct.

20 Q. Is that what you're referring to?

21 A. That's right.

22 Q. And under this program that you're
23 proposing here today, if someone were to install a
24 heat pump, how would that impact that customer on
25 this program?

1 A. Well, we have -- we have proposed the
2 addition of a couple of provisions. One of them is
3 an abuse clause that states that if a customer over a
4 three-month period exceed -- their usage exceeds what
5 we had forecasted their usage to be by more than
6 30 percent, then we would have the opportunity to
7 remove them from the program.

8 Q. And is that something that would be
9 disclosed to customers before they ever signed up?

10 A. That's correct. That's in the tariff.

11 Q. On page 6 of your direct testimony, you
12 described a fixed bill program you're proposing as a
13 competitive billing option; is that correct?

14 A. That's correct.

15 Q. And what do you mean by competitive?

16 A. Well, what we mean is that there --
17 there's nothing that would keep another party from
18 offering a similar type of provision. If somebody
19 wanted to come in and offer customers the opportunity
20 to lock in a bill and take that risk, they could do
21 that.

22 Q. Are you talking about some kind of
23 independent billing service?

24 A. It could be anyone, anyone that was
25 willing to take any kind of an entity that was

1 willing to take the risk of the fluctuation of the --
2 of the prices and the usage.

3 Q. But you're not talking about someone
4 that would be providing electric service, are you?

5 A. No, no. They -- we would -- Aquila
6 would continue to provide the electric service. They
7 would essentially be offering some kind of a billing
8 hedge type of program.

9 Q. Do you know if anyone is out there
10 offering that kind of a program?

11 A. I don't know a current time. I recall
12 back several years ago that there were a number of
13 third-party entities that had, you know, talked about
14 doing such things. I don't know if anyone ever
15 actually has brought anything to market or not.

16 Q. Has anyone proposed -- or offering such
17 a program in Aquila's service territory in Missouri?

18 A. Not that I'm aware of.

19 Q. And I am referring to electric service
20 in Missouri. Has Aquila experienced a loss in the
21 program it's offered for three years in the St. Joe
22 area?

23 A. Well, if you -- if you consider the
24 expenses that we've incurred to -- you know, to
25 initiate the program and promote the program, the

1 incremental revenue -- in other words, the revenue
2 that customers on the fixed bill program paid above
3 what they would have paid under the normal tariff,
4 that revenue has been less than the total expenses
5 that we've incurred in the first two years.

6 Q. Well, if you set aside your startup
7 costs in advertising the program and making customers
8 knowledgeable about it, is it a net benefit -- or
9 profit or loss to Aquila?

10 A. Well, I haven't actually set aside --
11 I've never done that analysis. I -- I can tell you
12 that the overall net revenue, I think, is a
13 relatively small number over the two years. I think
14 it's -- it's less than -- well, I don't want to
15 speculate, but it wasn't a large number.

16 So even if you take out the startup
17 costs, you know, there are still ongoing costs. We
18 have to mail out the flier with the offers, we have
19 to actually calculate the offers. And so there are a
20 number of mailing and calculating costs and whatnot
21 that go into providing the program.

22 So -- so those costs would continue with
23 the new program, and those costs would be probably in
24 the same ball park as the incremental revenues.

25 Q. So you're saying you anticipate it will

1 be a wash?

2 A. No. I'm saying that in the past two
3 years it's been roughly a wash.

4 Q. And if you increase the cost to -- or
5 the premium to 12 percent as opposed to 8 percent,
6 then you'll anticipate that it will no longer just be
7 a wash?

8 A. I would expect and certainly hope that
9 over the course of years, that we would end up with
10 more revenue than we would have cost, certainly. In
11 any given year, that certainly could vary.

12 We could have certainly years where the
13 revenue is actually negative, the incremental
14 revenue, where the amount we bill under the fixed
15 bill program would be less than what would have been
16 billed under the standard tariff. So that's the risk
17 that the company's taking -- or proposing to take
18 under the below-the-line treatment.

19 Q. Now, as I understand it, you're
20 proposing a cap of 12 percent. What is it that
21 Aquila's propose -- anticipating or planning to
22 charge the first year of the program?

23 A. In the -- for first-year customers, we
24 would anticipate using the full 12 percent. As we
25 move into future years, then that -- that growth

1 factor would decline, and that's the reason why we
2 want to have the flexibility to be able to reflect
3 that -- that declining risk in growth as we move
4 forward. So it would start with the 12 and it would
5 go down from there.

6 Q. The tariff you propose doesn't set out a
7 formula for how that premium will be calculated, does
8 it?

9 A. The -- the tariff sets out the formula
10 for how the bill will be calculated and not for how
11 the premium will be calculated.

12 Q. So whatever premium would be imposed,
13 would be at Aquila's discretion under this proposal?

14 A. Within the 12 percent.

15 MR. WILLIAMS: No further questions.

16 JUDGE WOODRUFF: Cross by Public
17 Counsel?

18 MR. MILLS: Yes, thank you.

19 CROSS-EXAMINATION BY MR. MILLS:

20 Q. Good morning, Mr. Odell.

21 A. Good morning.

22 Q. You were asked some questions by
23 Mr. Williams about the -- the revenues -- the revenue
24 stream that you anticipate to get from this program;
25 is that correct?

1 A. Yes. Well, I think he asked me
2 questions about the revenue stream that we had had in
3 the past.

4 MR. MILLS: Okay. Judge, I'd like to
5 get an exhibit marked.

6 JUDGE WOODRUFF: No. 5.

7 (EXHIBIT NO. 5 WAS MARKED FOR
8 IDENTIFICATION BY THE COURT REPORTER.)

9 BY MR. MILLS:

10 Q. Mr. Odell, I've just handed you and the
11 court reporter has marked as Exhibit 5 what appears
12 to be a copy of Public Counsel data request 2077 and
13 the company's response to that. Are you familiar
14 with this data request?

15 A. Yes, I am.

16 Q. And the response?

17 A. Yes.

18 Q. Who is Gail Allen?

19 A. Gail Allen is our director of product
20 and service development. She reports to me.

21 Q. Okay. And does this data request show
22 that the revenue projections for the next three years
23 are \$182,404 for 2008, \$474,996 for 2009 and \$699,996
24 for 2010?

25 A. That's what it shows.

1 Q. And are those numbers accurate?

2 A. Those numbers are the estimates that
3 we've put together, yes.

4 Q. Are those the best estimates you have?

5 A. Yes.

6 MR. MILLS: Judge, with that, I'd like
7 to offer Exhibit 5.

8 JUDGE WOODRUFF: Exhibit 5 has been
9 offered into evidence. Are there any objections to
10 its receipt?

11 MR. BOUDREAU: None.

12 JUDGE WOODRUFF: Hearing none, they
13 will -- it will be received into evidence.

14 (EXHIBIT NO. 5 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 MR. MILLS: Judge, I'd like to mark
17 another exhibit.

18 JUDGE WOODRUFF: This will be 6.

19 (EXHIBIT NO. 6 WAS MARKED FOR
20 IDENTIFICATION BY THE COURT REPORTER.)

21 BY MR. MILLS:

22 Q. Mr. Odell, I've just handed to you and
23 the court reporter has marked as Exhibit 6 what
24 appears to be Public Counsel data request 2078 and
25 the company's response to that. Are you familiar

1 with this data request?

2 A. Yes, I am.

3 Q. Okay. And this one was also answered by
4 Gail Allen; is that correct?

5 A. Yes.

6 Q. Does the response to this data request
7 show that for each of the three years we just
8 discussed, that's 2008, 2009 and 2010, that the
9 incremental cost of the fixed bill program will be
10 \$252,950?

11 A. That's correct.

12 Q. And are these numbers Aquila's best
13 estimates at this time?

14 A. Yes, they are.

15 MR. MILLS: Judge, with that, I'd like
16 to offer Exhibit 6.

17 JUDGE WOODRUFF: All right. Exhibit 6
18 has been offered into evidence. Any are there any
19 objections to its receipt?

20 (NO RESPONSE.)

21 JUDGE WOODRUFF: Hearing none, it will
22 be received.

23 (EXHIBIT NO. 6 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 BY MR. MILLS:

1 Q. Now, taking Exhibit 5 and Exhibit 6
2 together, does this show that Aquila anticipates for
3 the first year of the program a loss of somewhere in
4 the neighborhood of \$70,000, and then profits in the
5 succeeding years?

6 A. Yes, that's what it would show.

7 Q. Now, if I can get you to turn to your
8 direct testimony and the actual proposed tariff
9 sheets attached to it, are the tariffs that are
10 attached to your testimony the actual tariffs that
11 Aquila seeks to have approved in this case?

12 A. Yes, they are.

13 Q. Now, towards the bottom of the second
14 sheet of those tariffs, that would be sheet No. 118,
15 there's a provision for a program fee; is that
16 correct?

17 A. Yes.

18 Q. And the program fee during the period of
19 this program would be capped at 12 percent; is that
20 correct?

21 A. Yes.

22 Q. And what are the two components that
23 make up the -- the program fee?

24 A. The components are the kilowatt hour
25 growth factor and the risk fee.

1 Q. Okay. Is the kilowatt hour growth
2 factor the same as the quantity factor that you refer
3 to in your testimony?

4 A. Yes.

5 Q. Okay. Now, in your -- in your direct
6 testimony, and staying with your direct for now, at
7 the very top of page 6, line 1, you state that the
8 quantity factor is not to exceed 6 percent --

9 A. Correct.

10 Q. -- is that correct?

11 A. Yes.

12 Q. Can you show me in the tariff sheets
13 themselves where that factor is capped at 6 percent?

14 A. I believe the -- the intent is that the
15 combination of the risk fee and the growth factor
16 will not exceed the 12 percent. It's our intent that
17 we would keep each of those capped at 6 percent. I
18 don't know if the tariff sheet specifically says
19 that.

20 Q. Do you think it might?

21 A. I don't believe it does.

22 Q. And then similarly with the -- the risk
23 premium, page 20 of your testimony -- I'm sorry,
24 page 5 of your testimony, line 20, you state that the
25 risk premium is not to exceed 6 percent; is that

1 correct?

2 A. Yes.

3 Q. Is there anything in the tariffs
4 themselves that limit that factor to 6 percent?

5 A. It's the same situation.

6 Q. Okay. In other words, the situation is
7 that it's your intent to do that, but that doesn't --
8 doesn't even -- that isn't reflected in the tariffs
9 themselves?

10 A. The -- that's the combination of the two
11 program -- two fees would not exceed 12 percent.

12 Q. So according to the tariffs, at least,
13 one could be 11 percent and one could be 1 percent
14 and still fit within the tariffs; is that correct?

15 A. That's correct. As stated in the
16 testimony, that's not our intent.

17 Q. Now, talking about the kilowatt hour
18 growth factor, why is this factor part of the total
19 program fee that would be part -- that would be
20 charged to the customers participating in the
21 program?

22 A. The -- the purpose of the growth factor
23 is to recognize the potential for customers' usage to
24 be different than what would normally be anticipated.
25 It could be greater or less than any particular month

1 or any particular year. So the growth factor is --
2 is there intended to address that risk.

3 Q. I believe you stated earlier that Aquila
4 anticipates that most of the growth will occur in the
5 first year of participation; is that correct?

6 A. That's -- that's correct.

7 Q. Now, if that's correct, why does not the
8 tariff specify that the growth factor will be
9 calculated to be something less than -- than 6
10 percent in the succeeding years?

11 A. Well, there's a -- there's a few
12 reasons. One is that we don't know what the growth
13 factor will be in the subsequent years. I think
14 that's -- that's part of the purpose of -- of
15 continuing to operate as a pilot so that we can
16 continue to learn what the -- you know, what the
17 impacts of -- of -- on the load are going to be over
18 the course of time, and understand that and make
19 those kinds of changes so that we can ensure that the
20 customers' bills are being reflected accurately. So
21 that's -- that's probably the primary reason.

22 It's -- it's very difficult for us to
23 put any kind of a firm number in at this point
24 without having some additional experience. And --
25 and even with the additional experience, there's

1 no -- there's no guarantee that that's going to be
2 accurate going forward. So that's why we want to
3 have the cap set and the flexibility to go below that
4 cap.

5 Q. Okay. So in other words, you think it's
6 entirely possible that customers' load will grow
7 6 percent each year?

8 A. We think it's possible that it will
9 grow -- well, it is possible it could grow 6 percent
10 in any year. That's not historically what has been
11 seen in other -- by other utilities that have offered
12 the program, but -- but there's no guarantee.

13 Q. If, in fact, customers' growth does not
14 change significant -- I mean customers' usage does
15 not grow significantly in the -- after the first year
16 of participation and Aquila continues to charge the
17 6 percent growth factor, will that lead to an
18 increase in Aquila's revenues from the program?

19 A. Well, not necessarily, because what we
20 have to keep in mind throughout this program is
21 because it's voluntary, customers will make a
22 decision as to whether -- whether to participate in
23 the program based on whether they feel that the
24 pricing that we've offered is -- is fair to them.

25 And if we continue to bill at levels

1 that are above what customers consider fair, they're
2 not gonna participate, and our profit's obviously not
3 going to be impacted. So we have that balance there
4 that -- that's very important to keep in mind.

5 Q. For the customers that do participate,
6 if their usage does not grow in the latter years of
7 their participation, and you yet continue to charge
8 them the 6 percent growth factor, will Aquila's
9 revenues and earnings from those customers increase?

10 A. In the event that customers would
11 continue to stay on the program in that scenario,
12 which I don't consider to be likely, then -- then,
13 yes, that's the way the math would work.

14 Q. Now, for a customer who signed up for
15 the first year, how do they -- how do they opt out?
16 Is there a negative check-off? Do they have to
17 affirmatively sign up for succeeding years, or do
18 they have to affirmatively opt out?

19 A. They would need to opt out. They would
20 be presumed to stay on the program in the second
21 year. They would receive a new -- a new bill offer
22 which they would have an opportunity to review, and
23 if they -- if they choose not to participate in the
24 program, they would send us a card in telling us
25 that.

1 Q. But if they do nothing, they're
2 automatically reenrolled --

3 A. That's correct.

4 Q. -- regardless of what the premium is or
5 the growth is?

6 A. That's correct.

7 Q. Now, with respect to the -- the -- the
8 schedule that I believe you corrected when
9 Mr. Boudreau was questioning you, which was
10 originally marked as schedule DO-1 and has been
11 corrected to read as DO-3, could you please turn to
12 that?

13 A. Yes.

14 Q. Did you prepare the schedule yourself?

15 A. It was actually prepared by somebody
16 that works for me.

17 Q. Okay. Did you review it?

18 A. Yes.

19 Q. And was it prepared under your
20 supervision?

21 A. Yes.

22 Q. Okay. Have you yourself reviewed the
23 source documents such as the tariffs and Commission
24 orders from which this -- this data was obtained?

25 A. No, I have not.

1 Q. If you haven't reviewed that
2 information, how can you testify that this
3 information is accurate as reflected on this
4 statement?

5 A. I have no reason to believe it's not
6 accurate.

7 Q. Have you made any efforts to check to
8 see if this information was still accurate since you
9 submitted your testimony in April?

10 A. No, I haven't.

11 Q. Now, in this schedule, you indicate that
12 Duke Power in the Carolinas has below-the-line
13 accounting treatment; is that correct?

14 A. That's correct.

15 MR. MILLS: Your Honor, I'd like to have
16 another exhibit marked.

17 JUDGE WOODRUFF: All right. That would
18 be No. 7.

19 (EXHIBIT NO. 7 WAS MARKED FOR
20 IDENTIFICATION BY THE COURT REPORTER.)
21 BY MR. MILLS:

22 Q. Mr. Odell, I've just handed you what
23 appears to be a copy of Public Counsel data request
24 2018 and the company's response to that which the
25 court reporter has marked as Exhibit 7. Can you

1 identify that as Public Counsel's DR 2018 and the
2 company's response?

3 A. Yes.

4 Q. And again, this response was prepared by
5 Gail Allen; is that correct?

6 A. Yes.

7 Q. Does the response not indicate that Duke
8 Power and North and South Carolina have
9 above-the-line accounting?

10 A. That's what the response indicates, yes.

11 Q. And what is the date given on that
12 response?

13 A. June 6th, 2007.

14 Q. Does that differ from the line on your
15 schedule DO-3 that shows that Duke Power Carolinas
16 has below-the-line accounting treatment?

17 A. Yes, it does.

18 MR. MILLS: Your Honor, I'd like to
19 offer Exhibit 7.

20 JUDGE WOODRUFF: Exhibit 7 has been
21 offered into evidence. Are there any objections to
22 its receipt?

23 (NO RESPONSE.)

24 JUDGE WOODRUFF: Hearing none, it will
25 be received.

1 (EXHIBIT NO. 7 WAS RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 MR. MILLS: And I'd like to have another
4 exhibit marked.

5 JUDGE WOODRUFF: All right. It will be
6 No. 8.

7 (EXHIBIT NO. 8 WAS MARKED FOR
8 IDENTIFICATION BY THE COURT REPORTER.)

9 BY MR. MILLS:

10 Q. Mr. Odell, I've just handed you what is
11 marked as a tariff sheet from Duke Energy Carolinas,
12 LLC, sheet No. 322. Can you look at the second
13 paragraph of this tariff entitled Program Provisions?

14 A. Okay.

15 Q. Does that -- does the program for --

16 MR. BOUDREAU: Well, I think I'm gonna
17 object to any questions being put to this witness
18 about the tariff sheet. I don't think there's been
19 adequate foundation for the questions.

20 MR. MILLS: Okay. I would be perfectly
21 happy to ask some more questions of the --

22 JUDGE WOODRUFF: Go right ahead.

23 BY MR. MILLS:

24 Q. Mr. Odell, you submitted schedule DO-3
25 to your testimony, did you not?

1 A. Yes.

2 Q. Along with an affidavit that all the
3 information contained in there was correct?

4 A. Correct.

5 Q. And is that still your testimony today?

6 A. To the best of my knowledge, yes.

7 Q. Okay. Did you review the Duke Power
8 Carolinas' tariff sheets that led to the information
9 contained on schedule DO-3?

10 A. I did not personally, no.

11 Q. Okay. Have you ever seen a Duke Energy
12 Carolinas, LLC tariff sheet that talks about a Fixed
13 Payment Program?

14 A. I may have looked at it at one point. I
15 don't recall specifically.

16 Q. Okay. Well, take a look at it now and
17 see if you're familiar with it.

18 A. (Witness complied.) And as I said,
19 I'm -- I don't recall specifically whether I've
20 looked at this or not.

21 MR. MILLS: Well, Judge, we seem to have
22 kind of a problem here. We've got information in the
23 witness's testimony that appears to be inaccurate,
24 and when I try to go to the source documents, I get
25 objections from the company. If the company doesn't

1 want to have the source documents admitted that --
2 that show whether or not schedule DO-3 is accurate,
3 then I would move to strike -- strike schedule DO-3.

4 JUDGE WOODRUFF: Of course I haven't
5 ruled on the objection yet. What is the company's
6 position on this?

7 MR. BOUDREAU: Well, the company's
8 position is, this isn't a question of -- I mean, that
9 seems to go more to the weight of his testimony than
10 its admissibility. This is an evidentiary objection
11 to the foundation for asking him about a tariff sheet
12 that he may or may not have seen.

13 And all I -- all I was looking for is if
14 they're gonna base questions to him about a tariff
15 sheet that they're gonna represent to him is
16 something, I think that he needs to be in a position
17 to say that he's familiar with the document;
18 otherwise, he can't authenticate it. It's just an --
19 it's just an evidentiary objection.

20 MR. MILLS: And then I have the same
21 evidentiary objection to schedule DO-3. We've
22 already -- he's already showed that one of the DRs
23 that the company provided indicates that some of the
24 information on this tariff sheet is not accurate.
25 The DR 2018, which was Exhibit 7 and has already been

1 admitted, flatly contradicts this.

2 JUDGE WOODRUFF: I assume the objection
3 is to the foundation for assuming that this, in fact,
4 is Duke Energy's tariff; is that ...

5 MR. BOUDREAU: I -- excuse me. Yes,
6 that would be my objection. I mean, I don't -- I
7 don't know if it is, and I don't know if the witness
8 knows that it is, so that's my objection.

9 JUDGE WOODRUFF: Do you have a response
10 to that, Mr. Mills?

11 MR. MILLS: Well, as I said, it puts me
12 in a box because the witness has provided sworn
13 testimony about information that should have come
14 from things exactly like this tariff sheet. He said
15 that he hasn't looked at any of the information that
16 backs up what he's put in his testimony.

17 We know that some of it's inaccurate
18 based on the -- on the one responsive data request,
19 and I'm sort of stymied on being able to show that
20 some of the rest of it is inaccurate because the
21 company is objecting to -- to me using the source
22 information that was provided to me from the company
23 that should have gone into the preparation of DO-3.

24 JUDGE WOODRUFF: Okay. Your last
25 statement there is, I think, important. You

1 indicated that this document was provided to you by
2 the company?

3 MR. MILLS: I -- hang on one second.
4 Let me -- let me check on that.

5 JUDGE WOODRUFF: Okay.

6 MR. MILLS: I'm sorry, your Honor. I
7 misspoke. We did get a bunch of information
8 including some tariff sheets from the company. This
9 is not one of them. This came from the Duke Carolina
10 web site. And obviously, if this witness hasn't seen
11 it, I can't authenticate it with him.

12 And so depending on your ruling on the
13 admissibility of this exhibit, I will -- if you allow
14 it in, then I -- then great; if not, I would ask to
15 strike Exhibit DO-3.

16 JUDGE WOODRUFF: And I assume this can
17 be authenticated through your witness as to where it
18 was obtained?

19 MR. MILLS: It can.

20 JUDGE WOODRUFF: All right.

21 MR. BOUDREAU: Well, I understand that
22 point, but if -- if the point were to challenge the
23 accuracy of Mr. Odell's direct testimony, this might
24 have shown up a little bit sooner, perhaps, in
25 Mr. Kind's rebuttal testimony. And to complain now

1 provisions, the first paragraph under Program
2 Provisions on what has been marked as Exhibit 8, does
3 that not indicate that the risk fee is 2.2 percent?

4 A. These programs that are -- you know,
5 without reviewing this in its entirety and -- and
6 perhaps even asking some questions of -- of the folks
7 at Duke, I mean, certainly, there's a -- there's a --
8 there are the words "2.2 percent risk fee." Whether
9 that's as simple as it is or not, I -- I would
10 hesitate to say.

11 Q. But yet you didn't hesitate to say on
12 schedule DO-3 that the risk fee is not to exceed
13 10 percent in year one and 9 percent in year two.
14 What was the basis for that statement?

15 A. Well, again, this was a -- this was
16 prepared by -- by someone that works for me that had
17 reviewed tariff sheets or publicly available
18 information. I don't know if this is the tariff
19 sheet that that person reviewed or not. I would -- I
20 would guess not based on the dates.

21 But again, my -- my direct testimony was
22 filed in April, and the date on this tariff sheet
23 appears to be June 27th of 2007. So -- so perhaps
24 there were other tariff sheets that were reviewed.

25 Q. So you're guessing that maybe that DO-3

1 was -- was accurate when it was filed but is no
2 longer accurate?

3 A. I don't know whether it's no longer
4 accurate or not beyond the -- the one point that has
5 already been made, but it was certainly accurate to
6 the best of my knowledge at the time it was filed.

7 MR. MILLS: Judge, at this point I'm
8 gonna move to strike schedule DO-3. It's clear that
9 the witness did not review any of the source material
10 that went into it. The person who apparently did
11 prepare this schedule has not been presented as a
12 witness, and I can't cross-examine him or her, and
13 this witness doesn't know enough about it to testify
14 to its accuracy.

15 JUDGE WOODRUFF: I don't have that
16 schedule in front of me. Can you just give me a copy
17 or describe it for me?

18 MR. MILLS: It's either the last or the
19 very last attachment to Mr. Odell's direct testimony.

20 JUDGE WOODRUFF: Okay. And it's a
21 summary chart of similar programs at other electric
22 utilities?

23 MR. MILLS: It is. And from the
24 information that I've gotten in the record so far, we
25 know that at least some of the information is not

1 accurate based on Exhibit 7. I'm unable to
2 cross-examine this witness effectively on whether or
3 not any of the other information is accurate.

4 JUDGE WOODRUFF: Your response from the
5 company?

6 MR. BOUDREAU: Well, I guess the obvious
7 observation is that the testimony's been marked,
8 offered and received into the record. The -- the
9 foundation for it was, was it prepared by him
10 personally or under his direct supervision. He
11 testified that it was for the foundational questions.

12 Subsequently he's testified it was -- it
13 was assembled by somebody under his supervision but
14 not by him personally. I think the basis for the
15 admission was laid in the foundation to begin with.
16 If there was an objection to that, it should have
17 been made at the time.

18 I would also point out that if there
19 were some question about the accuracy of these --
20 these exhibits, some additional discovery on the part
21 of Public Counsel might have been indicated,
22 including talking to or deposing the person who, in
23 fact, assembled the exhibit, so ...

24 JUDGE WOODRUFF: Anything else,
25 Mr. Mills?

1 MR. MILLS: Well, a couple of things.
2 One, you know, the Commission's practice is to have
3 the exhibits offered after a very few -- very brief
4 preliminary questions in direct examination. And
5 typically, one doesn't expect to find under
6 cross-examination that the witness has not, in fact,
7 prepared his testimony. I was, frankly, somewhat
8 surprised by that.

9 And, you know, perhaps a better practice
10 would be to wait and admit exhibits after
11 cross-examination so that things like this are
12 discovered before an exhibit is -- is admitted on the
13 basis of, you know, half a dozen or less direct
14 questions.

15 Had I known that -- that Mr. Odell had
16 not prepared this -- this schedule, did not
17 understand that the foundational documents -- or was
18 not familiar with the foundational documents that
19 went into its preparation, I certainly would have
20 objected, but I had no reason to think that was the
21 case until I got into cross-examination.

22 MR. BOUDREAU: It is -- it is routine
23 practice in these proceedings for witnesses to have
24 subordinates prepare documents, exhibits, schedules
25 to support the preparation of their testimony. To

1 say that this -- or to suggest this is something new
2 or novel is -- is -- is, frankly, surprising to me.

3 And as far as revisiting the whole
4 practice about how exhibits are prepared, offered and
5 when they're tendered, that seems to me to be kind of
6 a rule, you know, more generic sort of aspect rather
7 than trying to revisit the whole practice here with
8 respect to one particular exhibit in one particular
9 case.

10 I'd also point out there's a number
11 of -- number of other items that are contained in the
12 schedule that don't relate to the Duke Power. So
13 to -- to strike the entire exhibit seems to me to be
14 inappropriate.

15 JUDGE WOODRUFF: All right. I'm gonna
16 go -- I'm gonna overrule the objection to strike the
17 document, because I believe it goes more to the
18 weight that the Commission should be accorded to the
19 document, and that that's what Public Counsel has
20 shown here, that through cross-examination, that the
21 document may not be completely reliable. But I'll
22 allow the document to remain in evidence.

23 MR. MILLS: All right. Well, let's move
24 on, then. Before we do, I would like to offer
25 Exhibit 8.

1 JUDGE WOODRUFF: All right. Exhibit 8
2 has been offered into evidence. Are there any
3 objections to its receipt?

4 MR. BOUDREAU: Yes, I'll renew -- I'll
5 renew the objection I made earlier. I don't know if
6 you want me to do it at length --

7 JUDGE WOODRUFF: Go ahead.

8 MR. BOUDREAU: -- but the objection is
9 that there hasn't been an adequate foundation laid
10 for its admission.

11 JUDGE WOODRUFF: All right. And I'll
12 overrule the objection and Exhibit 8 will be received
13 into evidence.

14 (EXHIBIT NO. 8 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 JUDGE WOODRUFF: And Mr. Mills, it's
17 almost 9:30 so it's almost time for agenda. Let's go
18 ahead and take a break now and we'll come back at,
19 let's say, 10:15.

20 (A RECESS WAS TAKEN.)

21 JUDGE WOODRUFF: All right. Let's come
22 back to order, please. Before we took our break,
23 Mr. Odell was on the stand, and he's retaken his
24 position, and Mr. Mills, you were crossing.

25 BY MR. MILLS:

1 Q. Now, Mr. Odell, turning to a different
2 topic, on page 5 of your direct testimony, you made a
3 change in the beginning of the hearing on line 11 to
4 change the word "contractual" to "historical"; is
5 that correct?

6 A. That's right.

7 Q. And tell me why it's important that
8 historical usage is used.

9 A. We use historical usage to ensure that
10 we are accurately forecasting as much as is possible
11 what -- what we would expect customers' usage to be
12 in the future.

13 Q. So in order to properly run this
14 program, it's important to know a customer's
15 historical usage; is that correct?

16 A. Right.

17 Q. Okay. Now, turning to page 6 of your
18 direct testimony, and I believe Mr. -- Mr. Williams
19 asked you some questions about this. You say that
20 you do consider fixed bill a competitive billing
21 option; is that correct?

22 A. That's right.

23 Q. If a competitor were to provide a
24 competing product, would Aquila offer a customer's
25 historical billing data to that competitor?

1 A. I've never even contemplated that. I
2 don't know.

3 Q. Can you think --

4 A. I don't know what all the ramifications
5 of doing that might be.

6 Q. Can you think of other situations in
7 which Aquila has offered competitive billing data to
8 other competitors?

9 A. Well, that's not an area of my
10 responsibility, so I -- I'm not aware of any, but I
11 wouldn't necessarily be either.

12 Q. Do you know whether or not you would
13 need a release from each customer to release that
14 information to a competitor?

15 A. No, I don't know the answer to that.

16 Q. Do you have an opinion as you sit there
17 today on the stand under oath as to how likely it is
18 that a competitor will come in and offer a competing
19 service to this fixed bill option?

20 A. I only know that to the best of my
21 knowledge, anyway, it has not happened to date.

22 Q. Now, turning -- I'm gonna ask you a few
23 questions about your surrebuttal testimony. On
24 page 10 at line 6, you state that the -- the purpose
25 of the -- and I'm sort of paraphrasing here. The

1 purpose of the program fee caps is to allow for the
2 efficient lowering of the program fees in future
3 years; is that correct?

4 A. Yes, it says this is true and the
5 purpose of the caps is to allow for the efficient
6 lowering of the program fees in future years.

7 Q. Under the existing fixed bill program,
8 has Aquila used its flexibility to lower the program
9 fees for fixed bill participants below the level of
10 the fee that was charged during the first year?

11 A. Actually, yes, we have. There's --
12 there's two -- two elements here. First of all, we
13 were actually allowed to bill 8 percent; 4 percent
14 for the risk fee and 4 percent for the growth. And
15 we actually have never billed that. We've actually
16 billed 6 percent.

17 But in the most recent renewal, the one
18 that -- the one that was for only those customers --
19 let me back up. We started this program and it was
20 actually supposed to end on May 31st of this year,
21 2007, and we had a number of customers, roughly
22 1,000, I believe, that were on the program, and --
23 and we didn't want them to have to get off the
24 program while we went through this -- through this
25 process.

1 So what we did was, we offered just
2 those customers the opportunity to continue on the
3 program. And for those customers, we did lower the
4 growth factor down to 2 percent from the 3 percent it
5 previously had been.

6 Q. And how about the risk factor?

7 A. The risk factor stayed at the 3.

8 Q. So the overall premium, I -- I guess you
9 would call it, went from 6 percent to 5 percent?

10 A. That's correct.

11 Q. Now, Aquila has had several rate
12 increase cases over the last several years; is that
13 correct?

14 A. I believe that's right.

15 Q. Do you know what -- what have -- have
16 been the driving factors behind those rate cases?

17 A. I believe there have been a number of
18 factors: Increasing expenses, increasing capacity,
19 increasing fuel costs, among others.

20 Q. Has increasing capacity been a
21 significant driving factor behind those rate cases?

22 A. It's been a factor. I -- I'm not
23 prepared to say if it's been significant or
24 insignificant.

25 Q. Can you think of any other factors that

1 have been more significant?

2 A. I -- I can't rank them in terms of which
3 ones were most or least significant.

4 MR. MILLS: Judge, I'd like to have an
5 exhibit marked.

6 JUDGE WOODRUFF: All right. That will
7 be No. 9.

8 (EXHIBIT NO. 9 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)
10 BY MR. MILLS:

11 Q. Mr. Odell, I've handed you what appears
12 to be a press release concerning Aquila's most recent
13 rate case, and the press release deals with Case
14 No. ER-2007-0004. Are you familiar with that rate
15 case?

16 A. I have a general -- general familiarity
17 with it, yes.

18 Q. Okay. Do you recall that it was filed
19 in early July of 2006?

20 A. That sounds right.

21 Q. And if I can get you to look about
22 halfway down the page, there -- there are a couple of
23 bulleted sections. Does that indicate that for the
24 MPS region, that 46.8 million of the requested increase
25 was for new capacity to serve increased demand?

1 A. That's what it says, yes.

2 Q. And a little bit lower down, does it
3 indicate that 14.4 million -- I'm sorry -- 6.7
4 million for the St. Joe region was for electric
5 system -- electric system investments?

6 A. That's also what it says, yes.

7 Q. With respect to -- and does that -- does
8 that square with your general understanding of the
9 drivers behind that rate case?

10 A. I have no reason to dispute it.

11 Q. With respect to the MPS region, does it
12 appear that the 46.8 million for new capacity is the
13 most significant driver indicated on this press
14 release?

15 A. It's certainly the biggest number.

16 MR. MILLS: Okay. Judge, with that, I'd
17 like to offer Exhibit 9.

18 JUDGE WOODRUFF: Exhibit 9 has been
19 offered into evidence. Any objection to its admission?

20 (NO RESPONSE.)

21 JUDGE WOODRUFF: Hearing none, it will
22 be received.

23 (EXHIBIT NO. 9 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 BY MR. MILLS:

1 Q. Now, returning to your surrebuttal
2 testimony at page 8 [sic], line 12, do you state
3 that, "... little, if any, additional capacity will
4 be required in order to meet any additional load from
5 this program"? Is that correct?

6 A. Yes.

7 Q. Assume with me, if you will, for the
8 purpose of this question, that some amount of
9 additional capacity will be required. Does Aquila
10 have a proposal for holding customers that don't
11 choose the fixed bill option harmless from the cost
12 impacts of -- of obtaining any additional capacity
13 and energy due to the fixed bill program?

14 A. The program is offered in such a way
15 that we believe we've -- we've adequately protected
16 customers from the potential for non -- for
17 nonparticipating customers to be impacted by the
18 program.

19 Could there be any other possible ways
20 that impacts could occur? You know, it's -- it's
21 rare to have a program that has no -- no other
22 consequences, but I believe that we've -- we've
23 captured the main ones.

24 Q. What specifically is contained within
25 the program that would -- would insulate

1 nonparticipating customers from Aquila's need to
2 increase capacity?

3 A. The need to increase capacity is -- is
4 very insignificant, in our opinion. So we haven't
5 proposed any particular provisions that would do
6 that.

7 MR. MILLS: Judge, I'd like to have
8 another exhibit marked, please.

9 JUDGE WOODRUFF: We're up to 10.

10 (EXHIBIT NO. 10 WAS MARKED FOR
11 IDENTIFICATION BY THE COURT REPORTER.)

12 BY MR. MILLS:

13 Q. Mr. Odell, I've just handed you what's
14 been marked as Exhibit 10 which appears to be data
15 request No. 2053 from Public Counsel to Aquila and
16 the response thereto. Do you recognize this
17 document?

18 A. Yes, I do.

19 Q. And, in fact, you yourself prepared the
20 response to this data request; is that correct?

21 A. That is correct.

22 Q. And the question asks, "Is Aquila
23 willing to make a firm commitment to hold ratepayers
24 harmless from any possible adverse rate impacts that
25 may result from the proposed fixed bill program if

1 the program has load-building impacts that create
2 upward pressure on Aquila's costs and rates? If not,
3 please fully explain why."

4 And the answer doesn't say yes or no,
5 but I -- is it fair to paraphrase that the answer is
6 no, Aquila is not willing to make a firm commitment?

7 A. We believe that the program, as it's
8 been proposed, adequately protects all customers,
9 participating or nonparticipating.

10 Q. But that wasn't my question. My
11 question was, is Aquila willing to make a firm
12 commitment to hold ratepayers harmless from any of
13 the load-building effects?

14 A. We have not proposed any -- any
15 commitments along those lines, no.

16 Q. And again, that's not my question. Are
17 you willing to?

18 A. Not knowing what kind of commitments
19 that would require, I'm not in a position to -- to
20 say that we would at this point.

21 MR. MILLS: Judge, I'd like to mark
22 another exhibit.

23 JUDGE WOODRUFF: That would be 11.

24 (EXHIBIT NO. 11 WAS MARKED FOR
25 IDENTIFICATION BY THE COURT REPORTER.)

1 BY MR. MILLS:

2 Q. Now, Mr. Odell, I have had marked as
3 Exhibit 11 data request 2063 from Public Counsel to
4 Aquila and the response thereto. Are you familiar
5 with this document?

6 A. Yes, I am.

7 Q. And you provided the response yourself
8 to this document; is that correct?

9 A. Correct.

10 Q. Now, the question asks for "A copy of
11 all analysis that has been performed by or for Aquila
12 that quantifies the actual or projected load impacts
13 associated with the fixed bill programs." And the
14 analysis simply refers to the attachment to
15 Mr. Kind's rebuttal testimony in this case; is that
16 correct?

17 A. That's correct.

18 Q. So from that response, is it accurate to
19 say that the only analysis that Aquila has done is
20 included as attachment 3 to Mr. Kind's testimony?

21 A. That's right.

22 Q. Now, with respect to the -- the quantity
23 factor or kilowatt hour growth factor that appears in
24 the tariff, I believe it was your testimony earlier
25 that that is needed because of expected increases in

1 consumption for fixed bill participants; is that
2 correct?

3 A. That's right.

4 Q. Is it Aquila's position now that the
5 system load impacts that will result from the program
6 should not be a major issue?

7 A. It should not be a major issue in -- I'm
8 not sure I understand your question.

9 Q. Do you believe that the system load
10 impacts from this program will be a major issue for
11 Aquila?

12 A. No, I don't believe they'll be a major
13 issue for Aquila. I -- as -- as that document -- as
14 that analysis describes, we believe that the -- that
15 even if customers do grow their load at the point of
16 6 percent, which is the maximum that we've
17 anticipated, then what would occur is approximately a
18 .18 of 1 percent increase in overall energy usage,
19 and we don't consider that to be material.

20 MR. MILLS: Okay. Judge, just so I
21 don't lose track, I'd like to offer Exhibits 10 and
22 11.

23 JUDGE WOODRUFF: All right. 10 and 11
24 have been offered. Any objection to their receipt?

25 (NO RESPONSE.)

1 JUDGE WOODRUFF: Hearing none, they will
2 be received.

3 (EXHIBIT NOS. 10 AND 11 WERE RECEIVED
4 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

5 MR. MILLS: And I'd like to mark another
6 exhibit.

7 JUDGE WOODRUFF: And that will be 12.

8 (EXHIBIT NO. 12 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)
10 BY MR. MILLS:

11 Q. Now, Mr. Odell, what's been marked as
12 Exhibit 12 -- and I believe you have a copy; is that
13 correct?

14 A. Yes, you just gave me one.

15 Q. Appears to be Public Counsel data
16 request 2005 and the response thereto. It appears
17 that this DR was answered by Charles Gray. Can you
18 tell me who he is?

19 A. Charles Gray works in our regulatory
20 department.

21 Q. And does he work for you?

22 A. No, he does not.

23 Q. Was he involved with you in the
24 development of the fixed bill program?

25 A. Yes. Mr. Gray has had involvement in --

1 in both the pilot program that existed over the last
2 two years as well as in developing the existing
3 proposal.

4 Q. Do you believe that the -- that the
5 answer given by Mr. Gray to Public Counsel data
6 request 2005 is true and accurate?

7 A. Can I have a moment to look at this,
8 please?

9 Q. Certainly.

10 A. I have no reason to believe it's not
11 accurate.

12 Q. Okay. And just so the record is clear,
13 part of the response was a -- was a Power Point
14 presentation that extends for -- it's a fairly
15 significant Power Point presentation. Are you
16 familiar with that one?

17 A. I believe I've seen it in the past, yes.

18 Q. And what's reproduced for the purpose of
19 Exhibit 12 is simply that the cover sheet -- to show
20 who gave it and the title of it, and then one
21 particular sheet, 27, of the presentation.

22 And if I can get you to turn to page 27
23 of the presentation. Well, first, let's -- let's --
24 let's go back to the response itself. Is it correct
25 that the response is -- the question was, "Please

1 provide a copy of all presentation reports, memos,
2 et cetera that have been provided to one or more
3 members of Aquila's management regarding the Aquila
4 Fixed Bill Pilot Program."

5 And then the response is, "See the
6 attached Power Point presentation given by Maurice
7 Arnall to Aquila Leadership Team on November 9th,
8 2004. In addition, Aquila management has been
9 provided with the same reports that Aquila has filed
10 with the PSC regarding the results of the existing
11 program."

12 Is that a fair summary of the question
13 and response?

14 A. Yes, it is.

15 Q. Now, what is the Aquila Leadership Team?

16 A. Well, the Aquila Leadership Team has
17 changed from time to time. I don't know exactly what
18 it would have been -- who it would have been
19 comprised of at this particular time, but it's
20 generally speaking Rick Green, the CEO of the company
21 and the folks that directly report to him.

22 Q. Okay. So generally speaking, it's the
23 CEO and direct reports to the CEO?

24 A. Generally speaking, yes.

25 Q. Okay. Now, if I can get you to turn to

1 page 27 of the Power Point, do you see that it's a
2 series of bullets?

3 A. Yes, I see that.

4 Q. And what is the heading of this
5 particular slide in the Power Point?

6 A. Major Fixed Bill Issues.

7 Q. And can you tell me what the second
8 bullet under Major Fixed Bill Issues is?

9 A. System Load Impacts.

10 MR. MILLS: Now -- your Honor, I'd like
11 to offer Exhibit 12.

12 JUDGE WOODRUFF: All right. 12 has been
13 offered into evidence. Are there any objections to
14 its receipt?

15 MR. BOUDREAU: Give me a moment, please.

16 JUDGE WOODRUFF: All right.

17 MR. BOUDREAU: I don't know that I have
18 an objection. I think my -- I just want to observe
19 that this appears to be not a complete copy of the
20 response to that DR. This is one page out of a
21 multipage doc -- or a couple of pages out of a
22 multipage document.

23 I don't think I have an objection to the
24 admission of the exhibit. I just want it noted for
25 the record that the actual response included

1 additional paginations.

2 MR. MILLS: And that's -- and that's
3 certainly true. It's a 30-odd-page Power Point
4 presentation, and you can see from the -- the
5 reproduction is printed out very dark, and to save
6 the expense of copying and toner and to save all the
7 bulk in the record, I simply copied the cover page to
8 identify the presentation and the one particular
9 slide that I was interested in.

10 JUDGE WOODRUFF: I appreciate that.

11 MR. MILLS: I'm perfectly willing to
12 provide a copy to Aquila that shows the whole
13 response.

14 MR. BOUDREAU: No, and that's -- and
15 that's not necessary. I just wanted to note for the
16 record that -- that to the extent that that
17 implicates that that was the complete company
18 response, that's not the case. But other than that,
19 I have no objection.

20 JUDGE WOODRUFF: All right. Hearing no
21 objection, then, and as clarified, Exhibit 12 is
22 admitted into evidence.

23 (EXHIBIT NO. 12 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)
25 BY MR. MILLS:

1 Q. Now, Mr. Odell, does Aquila believe that
2 the fixed bill program could have the effect of
3 improving Aquila's load factor?

4 A. Well, I think the answer to that would
5 be -- would be yes. I don't know that it would be a
6 material improvement, but we do believe that the --
7 that there would be very little, if any, peak impact
8 on -- on our existing load. So to the extent that
9 there was some load growth and it occurred off-peak,
10 that would by definition improve the load factor.

11 Q. And do you believe that that improvement
12 in load factor would be a good thing for Aquila?

13 A. I believe it would be good for Aquila
14 and its customers both.

15 Q. Now, line 1 on page 4 of your
16 surrebuttal testimony, you say, "The load-building
17 impacts of this program have been exaggerated"; is
18 that correct?

19 A. Can you give me that --

20 Q. I'm sorry. Page -- page 4, line 1.

21 A. Yes, I say that.

22 Q. Can you please identify for me where in
23 Mr. Kind's testimony that you believe that Mr. Kind
24 has exaggerated the load-building impacts?

25 A. Yes, I can. That was actually a data

1 request that Mr. Kind asked, and if you can give me
2 just a minute, I can find my answer to that.

3 Q. It's 2061, if that helps.

4 A. That does help. Okay. I pointed out --
5 it looks like I pointed out three different places.
6 One was on page 2 of line 13 of -- this is all
7 referring to Mr. Kind's rebuttal testimony. Mr. Kind
8 uses the phrase "very large load-building impacts."

9 On page 9, lines 1 and 2, Mr. Kind
10 states, "This is an astounding amount of increase."
11 And on page 9, lines 3 and 4, Mr. Kind uses the
12 phrase, "The substantial potential detrimental impact
13 on nonparticipants."

14 So in my view, those -- those words
15 create the impression that -- that he believes this
16 is a much larger load-building impact than what it
17 really is.

18 Q. Are there any other instances in which
19 you think Mr. Kind has exaggerated the impacts?

20 A. I -- I'm not aware of any others.

21 Q. So your criticism is of the adjectives
22 that he used to describe the impacts; is that
23 correct?

24 A. The words that he used, that's correct.

25 Q. Do you have any criticism of his

1 quantitative analysis of the impacts?

2 A. Well, my recollection is that Mr. Kind
3 did a -- did a couple of different comparisons
4 that -- that I don't necessarily believe were valid.
5 One was a comparison of load growth -- already
6 anticipated load growth -- growth with -- with what
7 this program might add, and then he also did a
8 comparison of some energy efficiency programs
9 compared to this load growth. And I don't
10 necessarily agree that those were valid comparisons,
11 but I guess that's it.

12 Q. Do you believe that his -- so what
13 you're saying is you don't think he should have
14 compared the impacts of this program to, for example,
15 the residential DSM program having to do with compact
16 fluorescent light bulbs; is that your testimony?

17 A. I believe it creates a misimpression.

18 Q. Okay. Do you think he miscalculated the
19 expected results of the Compact Fluorescent Light
20 Program?

21 A. I -- I have no reason to believe his
22 calculations were wrong.

23 Q. Do you believe that he miscalculated the
24 load impacts of -- the potential load impacts of the
25 fixed bill program?

1 A. Again, I don't have any reason to
2 believe that his calculations were wrong.

3 Q. And with respect to his comparison of
4 the load impacts of the fixed bill program compared
5 to the already projected load growth, notwithstanding
6 the fixed bill program, do you have any reason to
7 believe that his calculation of either of those
8 factors was incorrect?

9 A. No, I don't.

10 Q. Okay. Now, for the customers that do
11 participate in the program, will Aquila be
12 guaranteeing the maximum cost of electric service for
13 those that participate?

14 A. For the one-year period we will be
15 guaranteeing that their bill will be exactly what we
16 advertised it to be and what they signed up for.

17 Q. And would that be the same for each
18 program year in which they participate?

19 A. Yes.

20 Q. Okay. It could change from year to year
21 but it won't change within a year?

22 A. That's right.

23 Q. So for each particular year, they will
24 receive a completely fixed reconciliation-free bill;
25 is that correct?

1 A. That is correct.

2 Q. Now, at page -- page 8, line 21 of your
3 surrebuttal testimony, you state that, "Aquila is
4 proposing to offer this program under tariff and the
5 full authority of the MPSC." And that, I assume, is
6 the Missouri Public Service Commission?

7 A. That's right.

8 Q. If the Commission approves the proposed
9 program, will the Commission have the authority to
10 reflect the cost in revenues associated with the
11 program in Aquila's above-the-line revenue
12 requirements if it chooses to do so in Aquila's next
13 rate case?

14 A. What the Commission will have -- have
15 approved is -- is that we would not reflect those
16 costs in the next rate case.

17 Q. And is it your opinion that the
18 Commission can't -- that because if it -- if it
19 approves it that way, that the Commission cannot look
20 at those costs and revenues above the line in the
21 next rate case?

22 A. I'm not sure I'm understanding your
23 question.

24 Q. If the Commission approves the program
25 below the line, as you've proposed, does that bind

1 the Commission in the next rate case to that
2 particular treatment?

3 A. I believe that would be correct, yes.

4 Q. Now, in your surrebuttal testimony,
5 particularly at page 11, you're responding to one of
6 the concerns that Mr. Kind raised in his testimony,
7 that being that this proposal was filed outside of
8 the context of a rate case; is that correct?
9 Starting at the very top of page 11 of your
10 surrebuttal testimony.

11 A. Yes, that's correct.

12 Q. Now, do you believe that the proposed
13 program will provide an opportunity for Aquila to
14 increase its earnings?

15 A. Yes, I do believe it will provide an
16 opportunity. Certainly no guarantee, but an
17 opportunity.

18 MR. MILLS: Your Honor, I'd like to have
19 another exhibit marked.

20 JUDGE WOODRUFF: All right. We're up to
21 13.

22 (EXHIBIT NO. 13 WAS MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)
24 BY MR. MILLS:

25 Q. Now, Mr. Odell, I've handed you what's

1 been marked as Exhibit 13 which appears to be Public
2 Counsel data request 2087 to the company and the
3 response thereto. Does this data request response
4 indicate that it was answered by Gail Allen?

5 A. Yes, it does.

6 Q. And I believe we've already established
7 that Gail Allen works for and reports to you --

8 A. We have.

9 Q. -- is that correct? Now, as part of the
10 response to -- to data request 2087, which -- which
11 essentially asks for an update to some earlier
12 questions about documentation; is that generally the
13 tenor of the -- the data request?

14 A. Yes, it is.

15 Q. What was provided was a white paper
16 entitled Fixed Bill Program; is that correct?

17 A. That is correct.

18 Q. Now, if I can get you to please turn to
19 the last page of that white paper. Does the very
20 last sentence of the conclusion of the white paper
21 state that, "Customer satisfaction will increase and
22 Aquila will have an opportunity to increase
23 earnings"?

24 A. Yes, that's what it says.

25 MR. MILLS: Judge, I'd like to offer

1 Exhibit 13.

2 JUDGE WOODRUFF: 13's been offered. Any
3 objection to its receipt?

4 (NO RESPONSE.)

5 JUDGE WOODRUFF: Hearing none, it will
6 be received.

7 (EXHIBIT NO. 13 WAS RECEIVED INTO
8 EVIDENCE AND MADE A PART OF THE RECORD.)

9 BY MR. MILLS:

10 Q. Now, in your testimony -- and turning
11 back to page 11 of your surrebuttal, you're talking
12 about -- again, you're talking about Mr. Kind's
13 concern that this proposal was filed outside of the
14 context of a rate case; is that correct?

15 A. That's right.

16 Q. And on page 5 -- I'm sorry. Line 5 on
17 page 11, you state that, "This proposal was timed in
18 accordance with the expiration of the existing fixed
19 bill pilot which expired May 31st, 2007"; is that
20 correct?

21 A. That is right.

22 Q. Did Aquila ever consider filing the --
23 the expanded fixed bill pilot as part of its most
24 recent rate case?

25 A. Not to the best of my knowledge.

1 MR. MILLS: Judge, I'd like to have
2 another exhibit marked.

3 JUDGE WOODRUFF: Up to 14.

4 (EXHIBIT NO. 14 WAS MARKED FOR
5 IDENTIFICATION BY THE COURT REPORTER.)
6 BY MR. MILLS:

7 Q. Mr. Odell, I've handed you a copy of
8 what's been marked as Exhibit 14 which is Public
9 Counsel data request 2006 submitted to the company
10 and the response thereto.

11 And as part of the response, there is
12 a -- there's another Power Point presentation; is
13 that correct?

14 A. Yes, it looks like there are a few.

15 Q. And there's one titled Fixed Bill
16 Decisions, January 2007; is that correct?

17 A. Yes.

18 Q. And is that a Power Point that was
19 presented by you or to you?

20 A. Just a moment, please. Yes, I believe
21 that's correct.

22 Q. And which was it, was it prepared by you
23 or -- or given by you -- I'm sorry. Was it presented
24 to you or presented by you?

25 A. I -- I don't recall. I believe that

1 we -- a number of us worked collaboratively to -- you
2 know, to make decisions and -- and move forward with
3 the fixed bill program. I don't remember whether
4 this was specifically presented to me or whether I
5 was engaged in the actual preparation of it.

6 Q. Is it your -- is the information
7 contained in this Power Point accurate?

8 A. Well, I certainly believe it was
9 accurate at the time it was prepared. I would have
10 to go through it page by page to determine whether I
11 think anything's different now. But -- but at the
12 time we prepared it, I'm sure we believed it to be
13 accurate.

14 MR. MILLS: Judge with that, I'd like to
15 offer Exhibit 14.

16 JUDGE WOODRUFF: All right. Exhibit
17 14's been offered. Any objection to its receipt?

18 (NO RESPONSE.)

19 JUDGE WOODRUFF: Hearing none, it will
20 be received.

21 (EXHIBIT NO. 14 WAS RECEIVED INTO
22 EVIDENCE AND MADE A PART OF THE RECORD.)

23 BY MR. MILLS:

24 Q. And if I can get you to turn to page 3
25 of the Power Point, is that slide titled Project

1 Decisions 2006?

2 A. Yes, it is.

3 Q. And does that slide list three options
4 in terms of filing or extending the pilot for
5 Missouri service territory?

6 A. Yes, it does.

7 Q. And does option 3 say, "File permanent
8 before rate case"?

9 A. That's what it says, yes.

10 Q. Now, further on in this same document,
11 the Power Point presentation, if I can get you to
12 turn to page 11, does that indicate some data about
13 the Q factor and the risk premium and total program
14 fees, both for the -- well, for the L&P pilot, for
15 the 2007 Missouri pilot and for the industry average?

16 A. Yes.

17 Q. And that slide indicates that the
18 industry average for total program fees is
19 10 percent; is that correct?

20 A. Well, what it shows is an industry
21 average Q factor of 5 to 7 percent and a risk premium
22 of 5 percent which would total 10 to 12 percent.

23 Q. But the document itself indicates a
24 total program fee industry average of 10 percent; is
25 that correct?

1 A. It used the -- yes, it used the low end
2 of the range for the Q factor.

3 Q. Okay. And the -- the -- the very bottom
4 of this slide, can you identify for me who or what
5 firm the initials CA represents?

6 A. CA would refer to Christianson &
7 Associates which is the consultant that we have used
8 to help develop the pilot.

9 Q. Okay. And the note at the bottom of the
10 page indicates that, "Christianson & Associates
11 suggests that Aquila can utilize lower industry
12 averages due to customer historical usage"; is that
13 correct?

14 A. That's what it says.

15 Q. Now, on the next page, page 12 of the
16 Power Point, at the -- at the bottom of the page
17 there appears to be some data having to do with the
18 Q factor; is that correct?

19 A. That's right.

20 Q. And does that data indicate that the
21 observed value for L&P was 2.37 percent?

22 A. That's what it says, yes.

23 Q. Is that accurate to the best of your
24 knowledge?

25 A. To the best of my knowledge, yes.

1 Q. Now, on page 14 of this Power Point
2 under item 3, Pilot Program, are there two bullets
3 under there that indicate, "Initial startup costs are
4 tracked above the line," and "Risk of pilot programs
5 are held by Mo customers"?

6 A. That's what it says, yes.

7 Q. And do you agree with that?

8 A. Well, I'm going to have to take a couple
9 of minutes to get reoriented with what this document
10 is because I believe it was actually done back in
11 January of 2007. So when we refer to rate cases, I'm
12 not entirely sure which rate cases we're referring
13 to.

14 The recent rate case that concluded
15 earlier this year was already well underway at that
16 point, so we were -- so we would have been in a
17 position of talking about future rate cases, I'm
18 sure.

19 Q. And are you referring to the questions I
20 had earlier about rate cases?

21 A. I'm referring just in general to this
22 document.

23 Q. If I can draw your attention to the
24 first series of questions I asked you that had to do
25 with slide No. 3 --

1 A. That's right.

2 Q. -- which talks about Project Decisions
3 2006. So is it your understanding that if this
4 document was prepared in January of 2007, that would
5 have been sort of a historical look at options that
6 were considered back in 2006?

7 A. Probably towards the tail end of 2006.
8 Keep -- keep in mind that this was prepared -- the
9 beginnings of the development of what we were going
10 to propose going forward for this program didn't
11 start until after our 2006 rate case had been filed.

12 I came on board in my position in April
13 of 2006. I hired Gail Allen and -- and another
14 product development person that I believe they
15 started in October or November of 2006, and that's
16 when we really started considering what the future of
17 this program would be. So -- so any -- any documents
18 that we're looking at here would have necess --
19 necessarily have been produced sometime after October
20 of 2006.

21 Q. Okay. And with that in mind, if I can
22 get you to turn to page 7 of this Power Point. This
23 is similar to slide No. 3 which was Project Decisions
24 2006, except that page 7 is Project Decisions 2007;
25 is that correct?

1 A. That's what it says.

2 Q. And the -- the bottom right-hand box on
3 that table shows, "Deliberately choose path outside
4 our current rate case cycle for permanent tariff"; is
5 that correct?

6 A. That's what it says.

7 Q. And that's, in fact, the option that you
8 chose, is it not?

9 A. That is the option that we chose, that's
10 right. Now, this -- this also --

11 Q. That's all right. I don't have a
12 question pending. Now, Mr. Odell, are you aware of
13 any examples where a regulated Missouri utility
14 offers a service for which the Missouri PSC has
15 explicitly permitted it to use below the
16 accounting -- below-the-line accounting treatment?

17 A. Can you repeat the question, please?

18 Q. Are you aware of any examples where a
19 regulated Missouri utility offers a service for which
20 the Missouri PSC has explicitly permitted it to use
21 below-the-line accounting treatment?

22 A. I am not aware of any.

23 Q. And do you recall getting a data request
24 that asked that same question?

25 A. I don't specifically recall that, no.

1 MR. MILLS: Judge, may I approach? I
2 don't think I need to mark this as an exhibit. I
3 just want to show him a copy.

4 JUDGE WOODRUFF: Go right ahead.

5 BY MR. MILLS:

6 Q. Mr. Odell, I've handed you data request
7 2055 which was submitted on September 12th and
8 answered on September 19th. Did you answer that data
9 request?

10 A. Yes, I did.

11 Q. And the -- the question asked was
12 essentially the question I just asked you on the
13 stand; is that correct?

14 A. Yes, I believe that's right.

15 Q. And back in September, you stated that
16 you were unaware of any such examples in the state of
17 Missouri; is that correct?

18 A. That's what I said, yes.

19 Q. And as you sit there today, you're still
20 not aware of any examples; is that correct?

21 A. That's correct.

22 MR. MILLS: No further questions.

23 JUDGE WOODRUFF: All right.

24 MR. MILLS: Oh, Judge, did I -- did I
25 offer Exhibit 13?

1 JUDGE WOODRUFF: Yes, all your exhibits
2 have been offered and received. I have no questions
3 for Mr. Odell from the bench, so there's no need for
4 recross. Any redirect?

5 MR. BOUDREAU: Yes, please.

6 REDIRECT EXAMINATION BY MR. BOUDREAU:

7 Q. I just have a few questions, and I
8 believe these all relate to various aspects --
9 aspects of inquiry by Mr. Mills.

10 I believe that you received a question
11 from Mr. Mills about whether or not the company was
12 proposing in this -- with this -- with this service
13 or whether it would present the company with an
14 opportunity to increase earnings outside the context
15 of a rate case. Do you recall that?

16 A. I do.

17 Q. And -- but the company is proposing that
18 it would be below-the-line accounting treatment;
19 isn't that correct?

20 A. That's correct.

21 Q. So even if this issue did come up in the
22 context of a rate case, if the Commission approved
23 the accounting treatment, it still wouldn't have any
24 particular impact on the outcome of a rate case; is
25 that correct?

1 A. That's correct.

2 Q. Mr. Mills also asked you about the
3 competitive billing option aspect of this. Do you
4 recall that testimony?

5 A. Yes, I do.

6 Q. The topic, at any rate?

7 A. I do.

8 Q. And he asked you, I think, as a -- with
9 respect to that topic whether the company would be in
10 a position to give competing providers billing
11 information about particular customers. And I
12 believe your response was you didn't know whether or
13 not there would be any particular obstacles to doing
14 that; is that correct?

15 A. Yes, I don't know whether that would be
16 something that we would do or not.

17 Q. Okay. Would it be fair to assume,
18 though, the customers would have their own billing
19 information available to them?

20 A. Certainly.

21 Q. And there would be no obstacle that
22 you're aware of that would permit them to provide
23 that information to a competitive provider?

24 A. I don't know why they couldn't.

25 Q. I believe you got a question from

1 Mr. Mills about the opt-out aspect of this, and that
2 being, as I understand it, that in order for a
3 customer for a -- for a subsequent plan year to not
4 participate, he would have to affirmatively say, I
5 don't want to have anything to do with this program
6 on an ongoing basis. Do you recall that?

7 A. Yes, I do.

8 Q. What is the -- how is this handled now
9 for the -- for the existing pilot program for the
10 City of St. Joseph?

11 A. That's exactly the way it's been handled
12 for the two-year pilot program. We've had now two
13 renewal periods, and we've -- we've utilized the
14 opt-out provision, that customers have received their
15 offers in the second and third years and they -- they
16 can accept the offer simply by doing nothing, they
17 would reject the offer by sending the card back in.

18 So it's our belief that this -- that
19 this is a customer service function. There's really
20 no reason why a customer needs to take affirmative
21 action once they've already chosen to be on the
22 program in order to stay on the program.

23 Q. Has that created any problems to your
24 knowledge about customers that have complained about
25 being opted -- you know, having to opt out of the

1 program? Has there been any -- to your knowledge,
2 any problems associated with that?

3 A. I'm not aware of any.

4 Q. Mr. Mills also asked you, I think, early
5 on in his line of questioning about the 12 percent
6 program fee cap, and in particular, the two elements
7 of that 12 percent program fee cap, that being the
8 growth element and the program -- or the execution
9 risk elements. Do you recall that?

10 A. I do.

11 Q. And specifically, he asked you whether
12 there was any language in the tariff that identified
13 those two elements. Do you recall that?

14 A. I do recall that.

15 Q. And I believe your testimony was that
16 there was no express language in the tariff that
17 split it up that way, but that your testimony is that
18 that's the way the company plans to apply it; is that
19 correct?

20 A. That's exactly right.

21 Q. How is that handled now in the existing
22 pilot program in St. Joseph?

23 A. Well, the existing pilot program has
24 basically the same tariff language. The numbers are
25 different. In the case of the existing pilot, it's 8

1 percent and 4 percent for each of the two fees.

2 Again, those words -- there's nothing
3 specific in the existing pilot program tariff that
4 says that it will be 4 percent risk and 4 percent
5 quantity, but that's the way we've always treated it
6 in terms of dividing up that program fee. So that's
7 exactly the way we intended to do it moving forward.

8 Q. And if that were to become a concern of
9 the Commission's, would you have any problem with
10 adding language to the tariff to clarify that or to
11 specify that if it -- if thought necessary?

12 A. No, no problem at all.

13 Q. I believe that you got some questions,
14 and I'd like to direct your attention to Exhibit 7,
15 and I believe that's a copy of the company's response
16 to Public Counsel data request 2018. If I could ask
17 you to turn to that document.

18 A. Yes.

19 Q. Excuse me a second. And the questions,
20 I believe, related back to your Exhibit DO-3 to your
21 direct testimony, and I wanted to ask you if -- let
22 me -- let me put it this way: That data request
23 response talks about the accounting treatment applied
24 by Duke Power North and South Carolina; isn't that
25 correct?

1 A. That's -- yes, that's one of them.

2 Q. It also relates to -- or there's a
3 second one-sentence paragraph that also talks about
4 the below-the-line accounting for Duke Power Indiana,
5 do you see that?

6 A. I do.

7 Q. Why did not Duke Power Indiana
8 accounting treatment show up on the schedule DO-3?

9 A. Well, in -- in checking back, what --
10 what should have happened is the information that's
11 provided on DO-3 actually does refer to Duke Power
12 Indiana. The numbers, the treatment, the entire --
13 the line item, if you will, is actually Duke Power
14 Indiana and not Duke Power Carolinas.

15 Q. Okay. So the reference to Carolinas in
16 Duke -- in your schedule DO-3 is in error, is that
17 your testimony?

18 A. That's correct. That should say
19 Indiana.

20 MR. BOUDREAU: Okay. Thank you.

21 MR. MILLS: Judge, can I inquire
22 briefly about that? Because that's -- that's really
23 contrary to what he told me when he was on the
24 stand.

25 RE-CROSS-EXAMINATION BY MR. MILLS:

1 Q. Has there been some discussion since --

2 JUDGE WOODRUFF: You can certainly
3 inquire. Go ahead.

4 BY MR. MILLS:

5 Q. Have you had some discussion about the
6 accuracy of this -- of this exhibit since you were --
7 since I asked you about it with someone?

8 A. Yes, yes.

9 Q. And with whom?

10 A. I called back to the office to the folks
11 that -- that actually put this together and asked
12 them to verify the information, and their response
13 was that that actually should have been Indiana.

14 Q. Did you ask them to verify the
15 information on all of the schedule or simply the Duke
16 Power?

17 A. On all of the schedule.

18 MR. MILLS: No further questions.

19 JUDGE WOODRUFF: All right.

20 MR. BOUDREAU: I don't believe I have
21 any further questions. Thank you.

22 JUDGE WOODRUFF: All right. Thank you.
23 And Mr. Odell, you can step down. Next witness is
24 Mr. Busch.

25 (THE WITNESS WAS SWORN.)

1 JUDGE WOODRUFF: You may be seated. You
2 may inquire.

3 DIRECT EXAMINATION BY MR. WILLIAMS:

4 Q. Please state your name.

5 A. James A. Busch, B-u-s-c-h.

6 Q. By whom are you employed and in what
7 capacity?

8 A. I'm employed by the Missouri Public
9 Service Commission as a regulatory economist III.

10 Q. Did you prepare what you identified as
11 rebuttal testimony of James A. Busch that was
12 prefiled in this case and has been marked for
13 identification as Exhibit No. 3?

14 A. Yes.

15 Q. Do you have any changes to that exhibit?

16 A. No.

17 Q. And is that exhibit your testimony thus
18 far today in this hearing?

19 A. Yes, it is.

20 MR. WILLIAMS: I offer Exhibit No. 3.

21 JUDGE WOODRUFF: Exhibit 3 has been
22 offered into evidence. Are there any objections to
23 its receipt?

24 (NO RESPONSE.)

25 JUDGE WOODRUFF: Hearing none, it will

1 be received.

2 (EXHIBIT NO. 3 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 MR. WILLIAMS: Tender the witness.

5 JUDGE WOODRUFF: All right. For
6 cross-examination we begin with Public Counsel.

7 MR. MILLS: I have no questions for this
8 witness.

9 JUDGE WOODRUFF: All right. For Aquila?

10 MR. BOUDREAU: Yes, I have a few.

11 Excuse me.

12 CROSS-EXAMINATION BY MR. BOUDREAU:

13 Q. Good morning, Mr. Busch.

14 A. Good morning, sir.

15 Q. I want to direct you first to page 8 of
16 your rebuttal testimony. Do you have that handy?

17 A. Yes.

18 Q. And specifically lines 18 and 19 where
19 you -- where you offered the observation that -- or
20 you questioned how to determine how the proposed
21 program premium cap of 12 percent will affect the
22 acceptance rate of the fixed bill service; is that
23 correct?

24 A. That is correct.

25 Q. Would you agree with me that the

1 company's proposal is for a five-year pilot program?

2 A. The company has proposed this -- this
3 program for five years.

4 Q. And as part of that proposal,
5 specifically in the tariff sheets that the company
6 has proposed, and even more specifically on page 119,
7 the company includes some language under the heading
8 Pilot Program Evaluation and Reporting?

9 A. Sheet 119?

10 Q. I believe that's correct.

11 A. They have a segment of that sheet that
12 does say Pilot Program Evaluation.

13 Q. And without reading that word for word,
14 would you agree with me that the general -- the
15 general idea behind that is that the company will
16 accumulate information about the pilot program,
17 participation rates and otherwise, and working with
18 other parties, including the Staff and Public
19 Counsel, evaluate the program?

20 A. I believe that's the intent of that
21 language.

22 Q. Okay. And would you agree with me that
23 that process that's laid out there might address your
24 concern about not being able to discern how the --
25 the program fee cap affects participation?

1 A. I would agree that if this program is
2 continued with a 12 percent program fee, that if we
3 evaluate it, we will know the acceptance levels
4 during those subsequent years.

5 Q. Okay. Thank you. And I think you also
6 understand that the 12 -- in fact, I think you
7 testify in your prepared testimony that the
8 12 percent program fee is a cap; isn't that correct?

9 A. I believe that's -- I think that's --
10 it's supposed to be capped at 12 percent.

11 Q. And it can be adjusted downwards by the
12 company; is that correct?

13 A. Theoretically, yes.

14 Q. Okay. I want to direct you now to
15 page 9 of your rebuttal testimony concerning the --
16 in particular, Staff's preference that the service be
17 accounted for above the line; is that correct?

18 A. Yes.

19 Q. And I believe you state there that you
20 recommend this accounting treatment because -- and I
21 think the rationale you explain is that you don't
22 want the customers that accept the service to be
23 subsidized by the balance of Aquila customers,
24 presumably, who don't take the service?

25 A. That is correct.

1 Q. Would you agree with me that if Aquila
2 experiences a loss in a particular program year on
3 this service offer, that if above-the-line accounting
4 is utilized or applied by the Commission, that that
5 loss would be taken into account in establishing
6 regulated revenue requirement?

7 A. If in your question they received a
8 loss, that would -- that would be looked at.

9 Q. Okay. On the other hand, if this is
10 accounted for below the line as proposed by the
11 company, that loss would not be taken into account in
12 establishing regulated revenue requirement, would it?

13 A. I -- supposedly it would be below the
14 line which would mean it would be on the
15 shareholders, but in the course of a rate case, what
16 ultimately gets looked at by the accountants, I'm not
17 for sure on that. But I under -- the intent would be
18 by the company that it would not be looked at in the
19 rate case.

20 Q. Okay. Now, this may belabor the
21 obvious, but you agree that this is a voluntary
22 program that the company is proposing; is that
23 correct?

24 A. Yes, it's a voluntary program.

25 Q. And that would mean that Aquila's

1 customers really are under no compulsion to accept
2 the -- or to register for the program?

3 A. That is correct. It's -- it's at the --
4 it's at the customer's option.

5 Q. Okay. Would you agree with me that
6 Aquila's customers are capable of determining whether
7 the program premium is worth it to them?

8 A. I believe they're capable of that
9 determination. I don't necessarily know that looking
10 at all the information if they will quite understand
11 it.

12 Q. So you think that the tariff language is
13 ambiguous, is that -- is that what you're suggesting?

14 A. No, I'm getting at the point of when --
15 when the -- the bill or the flier is sent out to the
16 consumers, that all the consumers will necessarily
17 read all that information and will necessarily
18 completely understand what it is that they are
19 signing up for.

20 Do they have the ability to do that? I
21 do believe they have the ability to do that. I don't
22 necessarily know if they will take the time because
23 it's coming from the regulated entity.

24 Q. But that would be true of any service
25 that's out there tariffed by the company; there's

1 always the possibility that -- that consumers either
2 won't be aware of them or if they read them --

3 A. Yes, that is true.

4 Q. -- they may not fully grasp what's going
5 on?

6 A. I -- yes.

7 MR. BOUDREAU: Okay. That's all the
8 questions I have for this witness. Thank you.

9 JUDGE WOODRUFF: All right. And I have
10 no questions from the bench so there's no need for
11 recross. Any redirect?

12 MR. WILLIAMS: (Shook head.)

13 JUDGE WOODRUFF: Mr. Busch, you may step
14 down. And the next witness is Mr. Kind.

15 (THE WITNESS WAS SWORN.)

16 JUDGE WOODRUFF: Thank you. Be seated.

17 DIRECT EXAMINATION BY MR. MILLS:

18 Q. Can you please state your name for the
19 record.

20 A. My name is Ryan Kind.

21 Q. And by whom are you employed and in what
22 capacity?

23 A. I am employed by the Missouri Office of
24 the Public Counsel as the chief energy economist.

25 Q. And did you prepare and cause to be

1 filed in this case rebuttal testimony which has been
2 marked as Exhibit 4?

3 A. Yes, I did.

4 Q. Do you have any corrections to that
5 testimony?

6 A. Yes, I have several corrections.

7 Q. Could you please go through them and
8 tell us page and lines as you go through them?

9 A. Yes. The first correction is on page 4
10 at line 4. The third word from the end of the line
11 is "of," and that's a typo. It should be "or," o-r
12 instead o- of -- excuse me, o-f.

13 There is another correction just a few
14 lines down on line 8. And the fourth word before the
15 end of the line, the word that appears there is "is,"
16 i-s, and that word should be deleted.

17 The next correction I have is on page 8
18 at line 20. Midway through that line there's a
19 sentence that starts with the words "This
20 calculation," and after the word "calculation," there
21 should be a beginning parentheses. The parentheses
22 is closed after -- at the end of a fraction that
23 appears there, but there was no opening parentheses.

24 Q. And Mr. Kind, that's page 8, line 18; is
25 that correct?

6 The next correction that I have is on
7 page 10 at line 16. And the -- there's a sentence
8 that begins in that line that says, "The KPSC's order
9 stated ..." and the word "order" should be deleted
10 there.

17 Next correction is on page 19 at
18 line 23. There's a sentence that begins in that
19 line, and it says, "Aquila's response to OPC DR
20 No. confirmed." And the data request number there
21 is -- is missing, and it should be "DR No. 2049." So
22 it's a rather significant omission. And then I
23 advised the company just a couple days after filing
24 testimony.

1 line 13, and it says, "While Mr. Odell's testimony
2 states that the consumption adder and the risk adder
3 at 6 percent ..." and there should be an insertion
4 prior to the "at 6 percent". The words "are capped
5 at" should be inserted there.

6 Q. Are those all the corrections you have?

7 A. Yes, they are.

8 Q. With those corrections, are your answers
9 that -- that you give in your testimony true and
10 correct to the best of your knowledge and belief?

11 A. Yes, they are.

12 Q. And if you were asked those same
13 questions under oath today, would your answers be the
14 same?

15 A. Yes, they would.

16 MR. MILLS: With that, I'll offer
17 Exhibit 4 and tender the witness for
18 cross-examination.

19 JUDGE WOODRUFF: Exhibit 4 has been
20 offered into evidence. Any objection to its receipt?

21 MR. BOUDREAU: Yes, I do, as a matter of
22 fact. I'd like to object, not to the exhibit in its
23 entirety, but to testimony appearing on page 10,
24 lines 3 through 9, where Mr. Kind purports to testify
25 about what Aquila expects and what Aquila believes.

1 I think that's speculation about my
2 client's frame of mind, and I think it's
3 inappropriate testimony and should be stricken or --
4 like I said, I'm not objecting to the entire
5 document, but I suppose it's in the nature of a
6 motion to strike.

7 JUDGE WOODRUFF: This was on page 10,
8 you said, line 3 through 9?

9 MR. BOUDREAU: Lines 3 through 9. It's
10 the sentence that begins about midway through line 3,
11 so it's not the entire line 3.

12 JUDGE WOODRUFF: "I wish I could
13 assume"?

14 MR. BOUDREAU: Yes, "I wish I could
15 assume" to the end of that paragraph.

16 JUDGE WOODRUFF: Mr. Mills, do you have
17 any response?

18 MR. MILLS: Well, I do. I mean, this
19 is -- this is expert testimony, and certainly in that
20 Mr. Boudreau didn't object to the overall testimony,
21 I assume that he's conceding that this -- this
22 witness is an expert on utility matters and the type
23 of topics that are raised in this case.

24 And while it is couched as -- as
25 speculation, I think if you read through the

1 following testimony, he goes on to point out that --
2 exactly what he's talking about in the second
3 sentence. And the section that Mr. Boudreau wants to
4 strike is exactly what other state commissions have
5 considered as possible impacts.

6 So I think this is really setting up
7 that these are -- although Mr. Kind is speculating
8 about Aquila's motives, he's -- he's setting up that
9 these are legitimate concerns that this Commission
10 should investigate and that other commissions have
11 investigated them as well, and he sets out what some
12 of those other -- other commissions have found when
13 they looked at those questions.

14 So I -- I -- I don't think it's really
15 speculation. It's saying that this is a possible
16 motive and it's an important one to look at and it
17 has possible implications that other commissions have
18 looked at. So for that reason, I think it should be
19 allowed to stand.

20 JUDGE WOODRUFF: Anything further?

21 MR. BOUDREAU: Nothing much more than
22 what I've already said, is that I just don't think
23 it's appropriate testimony to speculate about what
24 another party or individual thinks. It's a pretty
25 standard objection, but it's just speculation as

1 to -- as to his state of mind.

2 As to the general topics to be
3 addressed, I'm not saying that they couldn't be
4 addressed in some appropriate fashion, I'm just
5 saying that to speculate about what my client
6 believes or expects is inappropriate testimony.

7 JUDGE WOODRUFF: Well, to the extent --
8 extent that it is, in fact, speculating about
9 Aquila's intention, it is objectionable; however,
10 I -- I agree with Mr. Mills' assessment that although
11 it's poorly couched in terms of -- that it's using,
12 and a little bit inflammatory language as well, I
13 would say the issues that are raised are not
14 objectionable. I'm gonna overrule the objection.

15 MR. BOUDREAU: I have no further
16 objections.

17 JUDGE WOODRUFF: All right. The exhibit
18 will be received into evidence.

19 (EXHIBIT NO. 4 WAS RECEIVED INTO
20 EVIDENCE AND MADE A PART OF THE RECORD.)

21 JUDGE WOODRUFF: For cross-examination,
22 then, we begin with Staff.

23 MR. WILLIAMS: No questions.

24 JUDGE WOODRUFF: For Aquila?

25 MR. BOUDREAU: Yes, thank you, I have a

1 few.

2 CROSS-EXAMINATION BY MR. BOUDREAU:

3 Q. It's still morning. Good morning,
4 Mr. Kind.

5 A. Good morning, Mr. Boudreau.

6 Q. Have you ever worked in private
7 industry? I was looking at your credentials, and I
8 think you have worked in government service since
9 graduating?

10 A. For the most part. I'm not sure if your
11 question is in private industry with respect to the
12 utility industry or private industry at all.

13 Q. Well, actually, now that you bring it
14 up, private industry at all.

15 A. Yes, I certainly have.

16 Q. Okay. In what context?

17 A. Mostly -- most of the work was, I've
18 been involved in -- in running a restaurant business,
19 and I've also been involved in the building trades
20 industry for the most part renovating houses, but
21 also doing some new construction work as well.

22 Q. Okay. Well, let's take the more limited
23 approach. Have you ever worked in -- for a -- for a
24 utility company?

25 A. No, I have not.

1 Q. Okay. And so I guess it would be safe
2 to say that you haven't done any generation planning
3 for an electric utility?

4 A. I have --

5 Q. I mean in a consulting capacity or --

6 A. Have I done it on behalf of the -- an
7 electric utility?

8 Q. Yes. Yes, that -- that is the question.

9 A. I've never been hired by an electric
10 utility.

11 Q. Okay. As for -- far as your course work
12 for your degree in economics and your master's in
13 economics, did you have any special training or take
14 any course work concerning generation planning or
15 resource planning?

16 A. You're referring to my university
17 studies?

18 Q. Yes.

19 A. Not as part of the university studies,
20 no.

21 Q. I want to direct you to page 7 of
22 your -- I guess I don't have to specify your prepared
23 testimony. It's rebuttal. And at the bottom of that
24 page and at the top of the following page, you state
25 that, "In today's environment, it's difficult to see

1 why load growth of any type would be beneficial from
2 a customer perspective"; is that correct?

3 A. That's correct.

4 Q. On page 8, lines 21 through 22, you
5 acknowledge that Aquila's experiencing load growth
6 for residential customers; is that correct? You see
7 it at lines 21 and 22?

8 A. I refer to the high rate of load growth
9 for Aquila's residential customers there, yes.

10 Q. And by that, is it fair of me -- for me
11 to assume that you mean new residential customers
12 being added to their -- to their system, is that the
13 context of the comment?

14 A. No, it's not. Load growth for electric
15 utilities is -- it's different from gas utilities,
16 and it -- it arises, really, from two factors. And
17 one is increase in the level of usage per customer.
18 You know, as we all get more appliances, more
19 electronic devices and such, and as people, you know,
20 build additions onto their houses and things like
21 that, and it's also the other factor that you
22 mentioned, growth in the number of customers.

23 Q. Okay. Thank you for that. Now, if
24 that's -- if that's the case, and given that load
25 growth of any type would not be beneficial to

1 customers, that's your testimony, should Aquila or
2 the Commission find ways to discourage people from
3 moving into or building homes in or adding appliances
4 to existing homes in Aquila service territory?

5 A. Well, there -- Aquila is starting to get
6 engaged in discouraging people from adding appliances
7 that are not at a high efficiency level, and
8 ratepayers are funding some of those types of
9 programs. That includes programs for, you know,
10 increased efficiency for air conditioners, and also
11 the program to encourage customers to install more
12 efficient lighting in their homes which I discuss in
13 my testimony.

14 With respect to whether the Commission
15 should get involved in discouraging customers from
16 moving into Aquila's service territory, I think that
17 the -- you know, the purpose of regulation, really,
18 is to make sure that the monopolies that serve
19 certain geographic areas are providing safe and
20 adequate service and just -- at just and reasonable
21 rates. And so part of that basic purpose there, you
22 know, would -- would not include trying to discourage
23 people from moving into a service territory.

24 Q. So when you say "load growth of any
25 type," you're meaning then in some different context?

1 I mean, what's the context of that comment?

2 A. Which comment are you referring to?

3 Q. That -- on the bottom of page 7 and the
4 top of page 8 --

5 A. Uh-huh.

6 Q. -- you state that, "In today's
7 environment, it's difficult to see why load growth of
8 any type would be beneficial from a customer
9 perspective."

10 A. Well, when I say it's difficult to see
11 why it would be beneficial from a customer
12 perspective, what I'm referring to there is the
13 situation that we're in at this time, where in
14 general, utilities are not able to provide additional
15 generation capacity that's as low as the embedded
16 cost of their existing capacity.

17 And so for that reason, from a
18 customer's perspective, the -- the reason it's not
19 beneficial is because there will be upward pressure
20 on their rates as load growth occurs.

21 Q. So it's not beneficial for them to build
22 an addition to their home and increase the square
23 footage of heated or cooled space? I'm just trying
24 to get --

25 A. I don't think I'm --

1 Q. I'm trying to get my --

2 A. I'm really not --

3 Q. -- arms around what you're --

4 A. Okay. And I think I can help clarify
5 that. I'm not speaking so much here from the
6 perspective of an individual customer, but, you know,
7 I work -- in working as a consumer advocate, we tend
8 to work and just represent the interest of customers
9 as a whole, all of the -- all the entire customer
10 group.

11 And so from the perspective of -- of the
12 entire group of customers, load growth is generally
13 putting upward pressure on their rates. An example
14 of that is the -- the Aquila press release that --
15 that Mr. Mills submitted as an exhibit earlier where
16 Aquila had indicated that the main driver for the
17 recent rate case was -- was needing to add new
18 generation capacity, and the reason why that was
19 causing a need for an increased level of rates is --
20 is the factor that I just mentioned which is that new
21 generation capacity, the cost of it, is generally
22 higher than the embedded cost of existing generation
23 capacity that's already reflected in customers'
24 rates.

25 Q. Would you agree with me that load growth

1 is just kind of a natural phenomenon of a growing
2 economy; as businesses grow, as population grows,
3 more people get added to the system when there's load
4 growth, a new plant has to be invested in? Isn't
5 that just a kind of a natural course of events?

6 A. Yeah, it is and it isn't. We could get
7 into a detailed discussion of the role that utilities
8 have in demand side management and -- and how they
9 can have an impact on decreasing the level of load
10 growth.

11 And often, the reason they -- they get
12 involved is because of what economists refer to as
13 market imperfections. And one of those market
14 imperfections is often on the customer's part a lack
15 of information about opportunities where they can
16 actually control their load growth and control their
17 bills.

18 So to say it's natural, I would say it's
19 natural that -- that there is this growth that's
20 occurring, but it's also natural that, you know,
21 humans are intelligent and -- in that they can
22 respond to that -- to that and do smart things to try
23 and control load growth.

24 Q. Let me -- let me come at this from a
25 different angle: Would you agree with me that

1 customer growth can be considered a good thing in
2 that it has a tendency to spread fixed costs over a
3 greater overall customer base, and therefore lower
4 any individual customer's particular bill?

5 A. No, I -- I -- I couldn't generally agree
6 with that because, as I mentioned earlier, some of
7 the major fixed costs, of course, would be the -- the
8 cost of investments in generation capacity. And when
9 you need to add generation capacity to your existing
10 fleet of generation, generally, that new generation
11 is gonna be added at a cost that's higher than the
12 existing generation.

13 And so even if you will spread the cost
14 of that generation over more customers or more -- a
15 greater level of usage, it can still have adverse
16 impacts on customer rates.

17 Q. Fair enough. Are you familiar with the
18 term "economic development rider"?

19 A. Yes, I am.

20 Q. What's your understanding of what an
21 economic development rider is?

22 A. An economic development rider, I think,
23 is to -- it's -- they're -- they're seen as being
24 useful in order to -- commissions usually approve
25 them because they think it's -- it's in the public

1 interest to encourage economic growth because that
2 will have some impact on the -- the people in the
3 service territory by providing additional jobs and an
4 additional tax base in the long run, things like
5 that.

6 Q. Well, you seem kind of skeptical about
7 the idea. Do you think that economic development
8 riders are a bad thing?

9 MR. MILLS: Judge, I'm gonna object to the
10 relevance of this. We're not talking about an economic
11 development rider, we're talking about a fixed bill
12 program, and it really doesn't have any relevance to
13 what an economic development rider may or may not do
14 because that's not what we're talking about here.

15 JUDGE WOODRUFF: Your response,
16 Mr. Boudreau?

17 MR. BOUDREAU: Just exploring his
18 testimony about the idea that load growth of any type
19 is -- is adverse to customer interests. Economic
20 development riders deal with load growth, and then
21 we're talking about policy here. So let's talk about
22 what's in the customers' good or bad interests.

23 JUDGE WOODRUFF: I'll overrule the
24 objection and you can proceed. You can answer the
25 question.

1 THE WITNESS: It's really important that
2 economic development riders be structured properly, I
3 think, in order for them to be in the public interest
4 from my perspective. For example, it's important that
5 you don't give rate discounts to large customers for
6 them to move in a -- into a service territory when
7 they would have moved into the service territory
8 absent the existence of the economic development
9 rider. That's -- that's referred to as the -- as the
10 free rider issue, and you've got to have some
11 provisions in economic development riders that would
12 address that.

13 You know, there's -- there's other --
14 certain types of economic development riders are not
15 really geared towards increasing load but more geared
16 towards just retaining load to keep people from
17 moving away from a service territory. They're not
18 always geared towards load growth in that --

19 BY MR. BOUDREAU:

20 Q. Why -- why would it be a bad thing to
21 move out of the territory?

22 A. Well, I -- I -- again, I think that at
23 least our Commission, from their perspective, they've
24 looked at, you know, public interest issues like
25 the -- the amount of jobs that are association --

1 associated with having a thriving business
2 environment and having businesses that employ people.

3 But I really hadn't finished answering
4 my -- my other ques -- the other question that you'd
5 already addressed in terms of my own personal views
6 of the role that they can play.

7 Q. Okay.

8 A. So I -- and I was going to discuss that
9 one of the -- the new type of economic development
10 riders that people have been -- been looking at is to
11 have a rider that's only available in a certain
12 geographic area like a downtown area and a lighted
13 area.

14 And so there -- you know, there's --
15 there's the issues of -- of their -- they might
16 promote some load growth to attract businesses to
17 those areas, but there's -- there's other public
18 interest considerations involved like, you know,
19 trying to maintain vital downtown areas and all the
20 benefits that would go along with that.

21 Q. So load growth in and of itself isn't
22 necessarily a bad thing; that's your testimony?

23 A. It depends on, you know -- the type of
24 load growth certainly makes a difference, and it
25 depends on what your -- your measurement is of

1 whether it's a good or a bad thing. If you're
2 looking at it purely from the perspective of the
3 impact it has on -- on rates, it's often -- it's
4 something that you want to give close scrutiny to.

5 And you really would -- it's important
6 to probably do some of the type of analysis that
7 Aquila has not done and -- and see exactly what sort
8 of impacts, what sort of upward pressure on rates
9 you'd expect to occur from load growth so that you
10 can balance all the various public interest
11 considerations and determine, you know, exactly what
12 the trade-offs are.

13 Q. Now, you talked about -- in the context
14 of the discussion that we just had about economic
15 development riders, about how the Commission has --
16 has approved certain of these, and I think you
17 suggested that it was their belief that it may
18 enhance certain aspects of either job growth or tax
19 base; is that correct?

20 A. Correct.

21 Q. Let's talk about in terms of its
22 position in state government. Would you agree with
23 me that the Missouri Public Service Commission is
24 within the Department of Economic Development?

25 A. Yes, it is.

1 Q. Okay. Do you think, then, given that
2 placement in the state governance, that it's a good
3 policy for this Commission to take steps that would
4 discourage customer growth or business development?

5 A. Well, let's take those on one at a time.
6 Discourage business development? I'm not sure, you
7 know, how that's relevant here, but I don't -- I
8 don't see that that's something that the Missouri
9 Commission would want to do.

10 When you refer to customer growth, I'm
11 not sure if you're referring to growth in usage per
12 customer which is the issue that's raised by this
13 proposal, or whether you're referring to growth in
14 the number of customers.

15 Q. Well, let's -- let's move on. With
16 respect to the topic at hand which is the proposed
17 Fixed Bill Pilot Program that my client has -- has
18 submitted, would you agree with me that any increased
19 usage that a subscriber may evidence is
20 self-correcting in the sense that that customer's use
21 increase or usage increase will be taken into account
22 in the following program year for setting the fee?

23 A. I'm not sure what you mean by the term
24 "self-correcting" there.

25 Q. Well, I guess I -- let me -- let me ask

1 it this way: Would you agree that this is -- this is
2 a program that's being offered on a year-to-year
3 basis?

4 A. Yes.

5 Q. And at the end of any particular year,
6 the company will look at the customer's usage from
7 the prior year to determine what its offer will be
8 for the forthcoming year?

9 A. It's my understanding that that's one of
10 the considerations that would go into the offer.

11 Q. Okay. So that if the customer uses more
12 in any particular year, he is likely to see the offer
13 increase the following year?

14 A. They -- they may see the offer increase
15 in the -- in the following year. Aquila has a very
16 large amount of discretion in -- in how they would
17 actually apply the proposed tariff.

18 Q. Fair enough. But if there were a
19 substantial amount of usage, would it be your
20 expectation that that would be reflected by the
21 company in subsequent offers to its customers?

22 A. I think that's the -- the purpose of --
23 of the growth factor, is -- is to reflect, you know,
24 the expected -- both the expected level of growth in
25 usage as well as to respond to things that occur

1 historically while a customer is on the program.

2 Q. I'm gonna direct you to page 11 of your
3 testimony. You -- there you talk about a Kentucky
4 Public Service Commission decision, I believe. And
5 as part of that -- and I think it's on -- looking
6 directly at lines 18 through 26, you talk about -- or
7 you quote that part, presumably, of the Kentucky
8 Public Utility Commission's order that has like a
9 two-part test. Is that a fair characterization?

10 A. Well, is it fair that I presumably
11 quoted? I think I've got --

12 Q. No, is --

13 A. The entire order in the -- is an
14 attachment to my testimony, so we don't need to
15 presume, we could refer to it.

16 Q. I'll -- I'll -- I'll accept that you
17 quoted from the order.

18 A. Oh, okay.

19 Q. Okay. And I take it that they've --
20 they've proposed a two-part analysis?

21 Let me -- let me be a little bit more
22 clear. Is one of the things that they're proposing
23 be looked at, or one of the elements is a clear
24 evidence of demand for the program?

25 A. That's No. 1 --

1 Q. Yes.

2 A. -- that appears in line 20, yes.

3 Q. Okay. Do you agree that Aquila's
4 St. Joseph pilot program enjoys about a 7 percent
5 participation rate?

6 A. No, I do not.

7 Q. What do you disagree with?

8 A. Well, the -- the percentage of customers
9 who chose to participate is significantly less than
10 7 percent. That -- that data is reflected in
11 Aquila's response to OPC DR No. 37 which indicates
12 that in the first year of the program, 3.38 percent
13 customers chose to participate, and that in the
14 second year of the program, 4.2 percent of customers
15 chose to participate in the program.

16 Q. Which -- what -- excuse me. What data
17 request response was that?

18 A. It's Aquila response to OPC DR No. 2037,
19 and I was referring to the percentage accepted,
20 percentages that appear on pages 2 and 3 of a
21 document that's entitled Aquila, Incorporated Fixed
22 Bill Program, July 2006 Evaluation Report Supplied to
23 Missouri Public Service Commission and Office of the
24 Public Counsel.

25 Q. So what's your understanding of the

1 participation rate? I mean, if -- if -- what is your
2 view of it?

3 A. Well, like I said, for the first year,
4 the participation -- the customers who chose to
5 participate in the program, that 3.38 percent
6 responded. In other words, the company sent out
7 16,000 offers to customers in the St. Joe service
8 territory. 541 customers out of 16,000 chose to
9 accept the offer, and that's 3.38 percent.

10 And then in the following year of the
11 program, this would be the second year, the company
12 sent out 15,500 offers, and 652 customers accepted
13 the offer and chose to participate, and that equates
14 to a 4.2 percentage acceptance rate.

15 Q. So that offer for the second year, was
16 that an offer to existing customers or an offer to
17 customers that hadn't already participated?

18 A. That was an offer to an additional group
19 of customers that were -- didn't receive the offer in
20 the first year.

21 But I guess to get back to your original
22 question, is there a -- you know, is there a
23 significant number of Aquila's customers that are
24 interested in the program? To me, when it's less
25 than 5 percent, it's getting marginal.

1 Q. Okay. And your testimony is that those
2 two numbers, the 3.38 percent of the first, and added
3 to the 4.2 in the second offer, is less than
4 5 percent?

5 A. No, you wouldn't add them, you would --
6 you'd take an average of those two numbers to get the
7 average acceptance rate for the first two years. You
8 would -- essentially what you would do is, you would
9 take the number 16,000 from the first year and 15,500
10 from the second year, you would sum those two
11 numbers.

12 And then you would take the numbers 541
13 in the first year, 652 from the second year, and you
14 would sum those two numbers, and you would put the
15 sum of those two numbers over the sum of the other
16 two numbers.

17 Q. Okay. So your testimony is that
18 anything less than 5 percent of interest is not a
19 significant level of interest, is that what you just
20 testified?

21 A. I haven't stated that, I don't think.

22 Q. I thought -- I thought that was your
23 testimony. What -- what --

24 A. I used the term "marginal". I think
25 that it's --

1 Q. Okay. Marginal?

2 A. I mean, it's -- obviously, it's just
3 not -- it's not a large percentage of their customers
4 that are interested in this program. It's nothing
5 like the majority of the customers being interested.

6 Q. Well, let me ask you this: Is there any
7 evidence that you're aware of that the pilot program
8 in St. Joseph has increased the company's costs?

9 A. It's my understanding that it, you
10 know -- and there's two ways to look at that, is just
11 look at it in terms of just, have costs increased as
12 it being an above-the-line program? In other words,
13 did the -- did the direct costs and the direct
14 expenses associated with the program, were -- was
15 there -- were there direct costs in excess of direct
16 expenses? And it's my understanding that there were
17 not.

18 Now, if you look at the indirect costs,
19 if -- if we're talking about just -- you know, about
20 1,000 participants out of a system that's as large as
21 Aquila's is in Missouri, that's such a small number
22 of customers participating that, you know, you
23 wouldn't really expect to have to -- any significant
24 impacts, the type of load growth impacts on
25 nonparticipants that we've just been discussing,

1 because that -- that issue of, you know, the impact
2 on nonparticipants from load growth, that really
3 becomes a significant factor when you offer it to all
4 customers in the service territory of both the
5 St. Joe division and the MPS division as being -- as
6 being proposed in this case.

7 Q. Page 18 of your testimony, lines 7
8 through 9, you have a statement that, "Missouri
9 customers have come to assume that the rates being
10 charged by the utilities are reasonable since they
11 have been reviewed by the Commission"; isn't that
12 correct?

13 A. Yes, the regulated rates that are being
14 charged to customers.

15 Q. Would you agree with me that fees
16 charged in connection with the fixed bill service, if
17 allowed to go in effect as proposed by the company,
18 would have been approved by the Commission?

19 A. No, I would not agree. The offers that
20 the company will be sending to customers will have
21 been just -- they're offers that will reflect a
22 certain set of parameters that have been approved by
23 the Commission, but the -- the actual rates that are
24 reflected in those offers would not have been
25 approved by the Commission.

1 Q. But they will be within the parameters
2 if the Commission is approved; isn't that correct?

3 A. If -- as long as Aquila complies with
4 its tariff --

5 Q. Okay.

6 A. -- that's correct. I mean, we discussed
7 things earlier about whether or not the tariff
8 actually contains parameters for, you know, the --
9 the growth factor and the risk premium, and Mr. Odell
10 could not point to any such parameters in the tariff.

11 Q. Now, is it your testimony or is it your
12 belief that Aquila's customers are not sophisticated
13 enough or intelligent enough to be able to decide for
14 themselves whether the programs being proposed is
15 reasonable given the assurance of a predictable truly
16 fixed bill?

17 A. It's -- it's not that they're not
18 intelligent enough. I think that the way the program
19 is being offered is, it's kind of a misrepresentation
20 that the customers won't be advised when -- when they
21 receive the offer that these rates are not set by the
22 Missouri Commission. They won't understand that, and
23 they won't understand that this is a program that
24 Aquila considers to be, you know, a below-the-line
25 program and -- which, to me, means it's a

1 nonregulated program. And the Commission --

2 MR. BOUDREAU: Well, I understand that.

3 The -- we're just -- I'm gonna ask the witness -- I'm
4 gonna ask that the witness be directed to answer the
5 question that's being put to him.

6 JUDGE WOODRUFF: Certainly, yes.

7 BY MR. BOUDREAU:

8 Q. The question is -- or I may have a
9 follow-up question to that. This will be if the
10 tariffs are approved by the Commission, the option
11 will be offered to the customers pursuant to the
12 terms in the tariff; isn't that correct?

13 A. I believe that's correct, yes.

14 Q. Okay. And presumably, they're -- the
15 customers are smart enough to figure out whether this
16 makes sense for them or not?

17 A. Well, it depends on how the offer
18 materials are actually put together in -- in --

19 Q. Okay.

20 A. -- in my mind.

21 Q. But you haven't testified that the offer
22 materials aren't gonna be sufficient. I didn't see
23 that anywhere in your testimony.

24 A. I think I have. I think I have noted
25 that Commission -- that the company has stated that

1 they will not notify customers that they're offering
2 a nonregulated program, and that because of that,
3 customers will be assuming that the offers they
4 receive are -- are actually rates that have been set
5 by this Commission.

6 And I think that's really an important
7 distinction because customers count on this
8 Commission and have confidence that this -- that
9 when -- the rates that they're paying, there will be
10 some reasonable oversight of them. And I don't
11 believe that it would be occurring in this type of
12 program.

13 Q. So you don't think that the tariffs
14 sufficiently identified the type of service or the
15 type of fee that the company's gonna -- going to be
16 proposing?

17 A. That's correct.

18 Q. Okay. So is it your testimony, then,
19 that the fact that the customer that decides to take
20 the service may increase his electric usage by some
21 incremental amount is a basis for the Commission to
22 reject the tariff?

23 A. It is since the company hasn't provided
24 any quantitative analysis of potential adverse
25 effects on rates that could be borne by

1 nonparticipants.

2 Q. Well, I believe your -- I think your
3 testimony talks about -- again, going back to the
4 load growth implications, you say that a load
5 growth -- I mean, this is gonna have a load growth
6 impact and that would be a bad thing?

7 A. Because of the -- those thus far
8 unquantified impacts that nonparticipants could be
9 exposed to, that load growth could be a bad thing,
10 yes.

11 Q. I thought your testimony was that it was
12 a bad thing because this company -- in your view in
13 looking at page 8, has what you characterize as a
14 "chronic shortage of intermediate and base load
15 generation resources."

16 A. Yes, and that's related to the need to
17 quantify the impacts --

18 Q. Okay.

19 A. -- that this would have on
20 nonparticipants.

21 Q. Okay. All right.

22 A. If they already have adequate generation
23 capacity, you wouldn't expect there would be any
24 immediate impacts.

25 Q. Okay. Well, what about if a customer

1 just wants to buy and install a new television set?

2 A. Was there a question there?

3 Q. Yeah, yeah. Would that add to customer
4 usage? Presumably you add a television set to your
5 household, you're gonna be using a little bit more
6 electricity.

7 A. Was it a -- was it a replacement of an
8 existing television set or I -- I don't know.

9 Q. I said add a new television set.

10 A. Add a new television set, okay. And
11 again, why -- could you please state the question?

12 Q. The question is, would that be a bad
13 thing? I mean, you're saying that -- that this --
14 this service may encourage customers to use more
15 power than they otherwise would, that's a bad thing
16 because of the circumstances this company is in with
17 respect to the generation. What about the addition
18 of a new television set?

19 A. That is to me just -- just part of
20 the -- the normal type of thing that -- that
21 individuals do and that utilities are expected as
22 monopoly providers, they've got an obligation to
23 provide service, and hopefully they take reasonable
24 steps in order to do that.

25 So I'm -- I guess I'm not really

1 understanding your question, but do I -- do I think
2 it's bad for a utility -- an Aquila customer to get
3 a new television set? I guess the short answer is
4 no.

5 Q. Okay. Feel the same way about an
6 addition to a house?

7 A. I would probably say, you know, good for
8 them, especially if they're living in cramped
9 quarters before they get the addition.

10 Q. How about a new chest freezer?

11 A. A new chest freezer?

12 Q. Or an additional freezer?

13 A. It's -- it's deer season, you know, and
14 they might have a need for it.

15 Q. There you go. So these aren't
16 necessarily bad things because that they -- because
17 they add to electric usage, are they?

18 A. I -- no. I mean, it's something that --
19 it just happens in the normal course of human
20 activity. And I think what we're talking about here
21 is a -- is a proposal that would be an intervention
22 in the normal course of -- of providing utility
23 service to customers.

24 MR. BOUDREAU: I have no further
25 questions for this witness. Thank you.

1 JUDGE WOODRUFF: Thank you. And I have
2 no questions from the bench, so there's no need for
3 recross. Any redirect?

4 MR. MILLS: Just a very few.

5 REDIRECT EXAMINATION BY MR. MILLS:

6 Q. Mr. Kind, Mr. Boudreau asked you whether
7 or not you had ever been hired by a utility to
8 consult in terms of electric utility generation
9 planning. Do you recall that question?

10 A. Yes, I do.

11 Q. Have you ever been involved in electric
12 utility generation planning?

13 A. Yes, I've been extensively involved in
14 electric utility generation planning. Traveled to
15 Joplin, Missouri earlier this week in order to
16 participate in a review of Empire District Electric's
17 generation planning.

18 Q. And is that the only example of your
19 involvement?

20 A. No, it's more just an example of a
21 typical week for me.

22 Q. Can you please describe your history of
23 involvement in electric utility generation planning?

24 A. Yes. As I began my work at the Office
25 of Public Counsel in the early 1990's, the subject of

1 generation planning was sort of thrust upon me as --
2 because at that time a lot of state commissions were
3 beginning to develop resource planning rules, and
4 that's something that occurred within the first
5 couple of years of my employment at the Missouri
6 Office of Public Counsel.

7 And I was designated to be the -- the
8 primary technical person from our office who was
9 involved in that rulemaking which, you know, involved
10 a long series of meetings where resource planning
11 issues were discussed in workshops. And eventually
12 there was a more formal stage of that process, and --
13 where I was involved as well.

14 Subsequent to that, well, once the rule
15 went into effect, we began reviewing all the resource
16 plans of the electric utilities in Missouri, and we
17 had a schedule for reviewing essentially a different
18 utility every seven months.

19 There were five utilities at that time.
20 And I was involved in -- in all the reviews of
21 electric utility resource plans that occurred then
22 during the mid 1990's.

23 In the late 1990's the resource planning
24 rule was suspended because a lot of people thought we
25 were gonna restructure the electric industry in

1 Missouri. And at that point my involvement in
2 resource planning was less structured, I would say,
3 and, you know, not as tightly scheduled as it was
4 while the rule was in place. However, there were
5 still a lot of resource planning issues that just
6 came up in rate cases and things like that.

7 In December of 2005, we received our
8 first resource planning filing from a utility after
9 the rule went back into effect, and we received
10 several filings since then. And I -- I've been
11 extensively involved in reviewing all those filings
12 and writing reports regarding those filings on behalf
13 of our office.

14 And, of course, there's a lot of other
15 resource planning issues that have come up just
16 because of certain proposals by utilities. For
17 instance, Ameren proposed the -- what's been referred
18 to as the Metro East Transfer where they were gonna
19 transfer part of their Illinois service territory,
20 and there were a lot of generation planning issues
21 involved in that as an example of cases outside of
22 resource planning cases for generation issues that
23 come up.

24 Q. And in terms of resource planning cases,
25 are you involved only after a plan is filed?

1 A. No. I mean, for example, right now
2 we're -- we've had an ongoing stakeholder process
3 with Ameren to develop -- to provide input into their
4 next resource planning filing which will occur in
5 February '08.

6 I've attended probably at least 15 or 20
7 meetings as part of that process, and I would -- I
8 would say that over half of those meetings concern
9 generation planning.

10 Q. Now, you were asked some questions about
11 the understanding that the -- the extent to which an
12 Aquila customer would understand the fixed bill
13 program. Do you recall that?

14 A. Yes.

15 Q. Do you believe that an average Aquila
16 customer would understand the load-building effects
17 of this program and the potential adverse impacts of
18 that load-building?

19 A. No. I think it's more likely what they
20 would under -- they would see is just, okay, they're
21 giving me this offer that gives me a fixed price that
22 I'll be paying every month. And they would -- they
23 would think, well, fixed price, what I'm paying every
24 month, boy, I guess I don't have to watch what I use
25 as closely.

1 And -- and -- where the company has sort
2 of made an argument that, oh, well, that eventually
3 is gonna catch up with the customer in that they will
4 possibly receive a higher bill the following year
5 because of increased consumption.

6 I don't think that's the -- the main
7 thing that the -- that the customers will focus on.
8 I think it's more likely they'll -- they'll be
9 sitting at home on a summer day thinking it's --
10 well, it's hot, I think I'll go ahead and crank the
11 thermostat down a little bit; I'm not gonna have to
12 pay any more.

13 Q. Do you believe that Aquila should -- you
14 were asked some questions about whether or not it's a
15 good or bad thing for customers to buy TVs or build
16 additions or buy freezers. Do you believe Aquila
17 should encourage its customers to buy new TVs?

18 A. I don't think that would be an
19 appropriate role for an electric utility, no.

20 Q. Should -- should it encourage its
21 customers to build additions on their houses or buy
22 new freezers?

23 A. No, I don't think so.

24 MR. MILLS: Those are all the questions
25 I have. Thank you.

1 JUDGE WOODRUFF: Thank you. Mr. Kind,
2 you can step down. And I believe that's all the
3 testimony for today, which brings up the next matter,
4 then, of post-hearing briefs. And it's my
5 understanding that the tariff in this case has been
6 suspended until December 30th, so we'll -- we need to
7 do this fairly quickly.

8 I'll ask the court reporter to expedite
9 the trans -- transcript so that we have it by --
10 well, we've got the holiday weekend coming up, so
11 let's say the 26th of November. And then I would
12 think getting post-hearing briefs, let's say
13 December 11th.

14 MR. BOUDREAU: Bear with me for a
15 second. I've got a note on my calendar that we had
16 agreed to a briefing date, or was that just wishful
17 thinking on my part? Let me -- let me check. There
18 may be an order out on it.

19 JUDGE WOODRUFF: I can check on my file
20 too. Of course, I took over this case so there may
21 be something other than that.

22 MR. BOUDREAU: You know, I guess I'm
23 wrong. It probably was wishful thinking on my part.
24 I think we had talked about a date but we decided
25 not to -- not to propose one. But I apparently

1 marked it in on my calendar. I apologize for the
2 confusion.

3 JUDGE WOODRUFF: Well, if your wishes
4 were granted, what were your wish -- what would
5 your wishes be? Does that sound okay with everyone?

6 MR. BOUDREAU: I'm not sure that I'm
7 lobbying for the particular day, but I just wanted
8 some clarity for the record. You had suggested the
9 11th?

10 JUDGE WOODRUFF: December 11th for a --
11 you know, a post-hearing brief.

12 MR. MILLS: And you anticipate the
13 transcript being available when?

14 JUDGE WOODRUFF: The 26th of November, I
15 believe I said. Yeah, that would be a week from
16 Monday.

17 MR. MILLS: That's fine with me.

18 JUDGE WOODRUFF: Okay.

19 MR. BOUDREAU: And I apologize for that.

20 JUDGE WOODRUFF: That's -- that's quite
21 all right.

22 Any other matters anyone wants to bring
23 up while we're still on the record?

24 (NO RESPONSE.)

25 JUDGE WOODRUFF: All right. With that,

1 then, we're adjourned.

2 (WHEREUPON, the hearing in this case was
3 concluded.)

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