BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF'S POSTHEARING BRIEF

Nathan Williams
Deputy General Counsel
Missouri Bar No. 35512

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)
nathan.williams@psc.mo.gov

December 10, 2007

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF'S POSTHEARING BRIEF

Introduction

On April 13, 2007 Aquila, Inc. filed tariffs sheets bearing an effective date of July 1, 2007 designed to expand the availability of and otherwise modify an existing Aquila fixed-bill pilot program that was available only to customers Aquila serves under the name Aquila Networks—L&P, customers located in its service area in and about St. Joseph, Missouri. After Aquila voluntarily extended the effective date of those tariff sheets to September 1, 2007 and it became apparent the parties in this case would not reach a consensus regarding Aquila's proposed new fixed-bill program, on August 24, 2007 Staff of the Public Service Commission filed a motion requesting the Commission to suspend the effective date of the tariff sheets and on August 27, 2007 Public Counsel also filed a similar motion. In response to those motions, on August 29, 2007 the Commission suspended the effective date of the tariff sheets for 120 days to December 30, 2007.

As ordered by the Commission the parties prefiled testimony and filed position statements. Although ordered to file a list of issues, they did not agree on a list of issues and so, instead, each party filed its own listing of the issues to be decided by the Commission. The Commission heard evidence on the issues on November 16, 2007. The Commission ordered the parties to file their posthearing briefs by December 11, 2007.

As it did with its position statements filed with the Commission before the hearing November 16, 2007, Staff has organized this brief based on the list of issues it filed with the Commission.

Aquila's existing fixed-bill pilot program is available only to residential customers Aquila serves under the name Aquila Networks—L&P, and was initiated through tariff sheets the Commission approved on March 23, 2005. It was a two-year pilot program designed to gauge residential customer interest in having certainty in the amount of their monthly electric utility bill, without any reconciliation between what that customer actually paid and what the customer would have paid on an annual basis under rates based on applicable customer and usage charges. Program participation was voluntarily. The two-year pilot program was extended for customers who had already elected to participate in the program for a period of one year beginning May 14, 2007 so that it would continue to be available to those customers while the Commission considers Aquila's request to expand the availability of the program to the customers it serves as Aquila Networks—MPS and to make changes to the terms of the program.

Aquila's existing fixed-bill pilot program is a voluntary program that was offered only to Aquila's residential customers Aquila serves as Aquila Networks—L&P (Ex. 3, Busch Rebuttal, page 3, line 13). Under this program customers pay a fixed monthly amount for electric service, regardless of how much electricity the customer uses on an annual basis. Unlike some other programs designed to minimize seasonal differences in monthly utility bills, with this program there is no reconciliation between what that customer would have paid on an annual basis under rates based on applicable customer and usage charges with the amount the customer actually paid. To arrive at the amount of the monthly customer bill under this program the customer's annual weather-normalized historical usage is multiplied by a growth factor, then multiplied by a risk factor and divided by 12. The total "program fee" (the growth factor and risk factor) is limited to no more than eight percent (8%). The stated bases for the growth and risk factors were to account for an expected increase in usage by the customers who accepted the fixed-bill offer and to cover unexpected usage due to abnormal weather conditions (Ex. 3, Busch Rebuttal, page 3, lines 21-23).

Through this proceeding, Aquila is proposing significant changes to the existing fixed-bill program. One significant change is to expand the availability of the program to include Aquila's residential customers in and about Kansas City, Missouri that Aquila serves as Aquila Networks—MPS. Aquila requests the new, expanded program be available for a period of five years. It requests the "program fee" it can charge be increased from no more than eight percent (8%) to no more than twelve percent (12%), the terms for withdrawing from the program be changed, an abuse provision be added, and the accounting treatment be changed from above-the-line (may be included in Aquila's cost of service) to below-the line (not included in Aquila's cost of service). The Staff urges the Commission to reject Aquila's proposed changes.

Standard of Review

Charges for electric utility service are to be just and reasonable and nondiscriminatory. Section 393.130, RSMo. Supp. 2006.

Issues

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

Position Statement: No. Staff does not believe that this is the appropriate time for Aquila to expand this program.

Under the Public Service Commission Act, the Commission is charged with setting rates that are just and reasonable and that are not unduly discriminatory. Because customers are not required to participate in the proposed program, the program is not unduly discriminatory. However, the program is not cost-based and is not just and reasonable. The evidence created by Aquila unabashedly shows that Aquila anticipates it will make a healthy profit from this program in a very short time. (Tr. 23, line 19 to Tr. 25, line 18; Tr. 30, lines 1-6; Ex. 5 & Ex. 6). If the Commission allows for the program to be treated below-the-line (flow only to shareholders), Aquila's customers will obtain no benefit from that profit.

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

Position Statement: The Commission should keep the program fees at the current tariff level of no more than 8% mark-up of what the customer would pay annually, if not on the fixed-bill program. Staff does not believe the proposed increase is cost justified. Moreover, the proposed 50% increase to the four percentage point program fee will not make the program more attractive to potential consumers. Currently, less than 5% of customers offered this program chose to accept the fixed bill offer. In other words, over 95% of potential customers rejected the opportunity to fix their bill, which included a premium of up to 8% for that service.

The fixed-bill "program fee" is made up of two components, a growth factor and a risk premium. In the existing program, the "program fee" cannot exceed eight percent (8%). (Ex. 3, Busch Rebuttal, page 3, lines 20-21). Since the inception of the original fixed-bill pilot program, Aquila has never charged the maximum "program fee" of eight percent (8%). (Tr. 53, lines 14-15). Instead, Aquila used a "program fee" of six percent (6%). (Tr. 53, lines 15-16). With these tariff sheets the maximum "program fee" would be twelve percent (12%). (Ex. 3, Busch Rebuttal, page 5, lines 8 – 10). During the hearing Aquila's witness Dennis Odell testified that Aquila plans to charge the full "program fee" of 12% immediately upon approval of the tariff sheets, if the Commission approves them. (Tr. 25, lines 19-24). Aquila witness Dennis Odell testified the “program fee” of 12% is intended to be comprised of a 6% growth factor and a 6% risk premium (Tr. 31, lines 16 – 18). However, according to the tariff sheets filed by Aquila that are the subject of this proceeding, the growth factor and risk premium components of the “program fee” are limited only in that when combined they cannot exceed 12%. (Tr. 32, lines 12 – 16).

Aquila, neither for the fixed-bill program it advocates in this case, nor for its existing fixed-bill pilot program, has provided any cost justification for the “program fee” limits. (Ex. 3, Busch Rebuttal, page 6, lines 6-8). Aquila’s actual experience with its existing fixed-bill pilot program demonstrates that even a four percent (4%) growth factor is too high. In the first year of Aquila’s existing fixed-bill pilot program, customers who participated in the program only increased their electricity usage due to behavioral changes—the impact the growth factor is supposed to capture—by 2.37%. (Ex. 3, Busch Rebuttal, page 6, lines 9-14; Tr. 78, lines 20-25). Christianson and Associates, Aquila’s third-party consultant for Aquila’s fixed bill program, recommended to Aquila that Aquila use a lower industry average of five percent (5%) for the growth factor. (Tr. 77-78; Ex. 14, p. 11). Furthermore, industry experience is that the increase in customer usage of electricity that the growth factor is to account for usually peaks in the first year the customer participates in the fixed-bill program. After that first year, usage levels off. (Ex. 3, Busch Rebuttal, page 9, lines 1 – 3). Each year, the customer’s monthly bills are based on the customer’s historical electricity usage, which includes the prior year’s usage (Tr. 51, lines 9 – 12). Thus, increasing the customer growth factor component of the “program fee” does nothing but, without cost justification, increase Aquila’s profits.

The other component of the “program fee” is the risk premium. Like its proposed increase to the growth factor, Aquila provides neither cost justification nor justification based on results of its existing fixed-bill pilot program for increasing the risk premium component of its "program fee." (Ex. 3, Busch Rebuttal, page 6, lines 6-8).

b. If the Commission approves the proposed fixed bill program, should the tariff include a "kWh growth factor"?

Position Statement: Staff believes the fixed bill program fees should be no more than 8% (on an annual basis) of what the customer would pay if not on the program—the current program fees. This fee includes a "kWh growth factor" of up to 4%.

As set out in detail in the Staff's argument under subpart 1.a. immediately preceding this sub-issue, increasing the growth factor component of Aquila's fixed-bill program to six percent (6%) is not supported by (a) Aquila's experience with its existing fixed-bill pilot program (2.37% growth), (b) with the recommendation of its consultant (5%), nor (c) with industry experience (growth typically only occurs in first year). The Commission should reject any growth factor in excess of the overly generous four percent (4%) currently in place.

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

Position Statement: Yes. Great Plains Energy, Inc. (GPE), the parent company of Kansas City Power & Light Company (KCPL), is in the process of acquiring Aquila. As that acquisition is currently proposed, KCPL will administer Aquila's tariffs after the acquisition. At this time, Staff has been unable to get Aquila to provide GPE's and KCPL's opinions of fixed bill programs. If the Commission approves this tariff for more of Aquila's service area and Great Plains Energy acquires Aquila, then Staff believes that Aquila's fixed bill program should continue to be available after the acquisition.

The Staff has no argument to add to its position statement on this issue.

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

Position Statement: No.

Aquila is proposing this new fixed-bill program be a five-year "pilot program." Aquila states this new program should be a pilot program so that Aquila can learn from it. Aquila already had a fixed-bill pilot program for two years that was available to residential customers in its Aquila Networks—L&P service area. Aquila has provided no justification for another "pilot" program. In fact, Aquila bases none of the changes to its existing fixed-bill pilot program to the experiences it has had with that program. For instance, as noted above, Aquila experienced actual growth in customer usage of 2.37% for those customers who elected to avail themselves of Aquila's fixed-bill pilot program. Despite that experience, Aquila proposes a maximum "program fee" of twelve percent (12%), which it proposes to charge immediately, based on a growth factor of six percent (6%). Based on experience, Aquila should be using a growth factor of 2-3%, not 6%. The apparent goal of Aquila's fixed-bill program proposed with these tariff sheets is to increase earnings. (Ex. 3, Busch Rebuttal, page 9, lines 10 – 16). While the Staff does not recommend it do so, if the Commission is inclined to approve the terms of a fixed-bill program in this proceeding, it should do no more than allow all of Aquila's Missouri residential electric utility customers to participate in a fixed-bill program having maximum program fees of no more than those of the current pilot program—eight percent (8%).

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

Position Statement: No. Staff recommends that the accounting treatment be done above-the-line. Customers who participate in the fixed bill program should not be subsidized by customers who do not participate in the fixed-bill program. Such subsidization could take place if the accounting treatment of the program is below-the-line and all costs associated with the program are not also treated below-the-line. There are many costs associated with this program that cannot easily be identified and assigned to the fixed-bill program. For example, the amount of time that Aquila's employees spend on this program instead of their regular duties cannot easily be determined. All other factors, beyond the easily identifiable costs, would need to be accounted for in a below-the-line treatment, and Staff has yet to see Aquila's plan for dealing with determining those costs.

In Aquila's currently effective fixed-bill pilot program, costs and revenues are accounted for above-the-line, which means they may be recovered from or benefit Aquila's customers. In Aquila's proposal for this expanded program, Aquila wants below-the-line accounting treatment. With this treatment Aquila's customers would receive no benefit from the program if the Commission allows these tariff sheets to become effective. (Ex. 3, Busch Rebuttal, page 5, lines 12-13). This means that the additional earnings that Aquila makes due to the higher fees charged to the fixed bill customers will go directly to Aquila's shareholders and provide no benefit to Aquila's customers. Staff believes that these additional costs and revenues should be treated above-the-line, *i.e.*, included in Aquila's cost-of-service in a rate case. (Ex. 3, Busch Rebuttal, page 9, lines 18 – 21). All parties agree that non-participants should not subsidize participating customers. However, if the costs and revenues of this program are accounted below-the-line, Staff does not believe all of the costs will be accounted for, and Aquila has not provided a detailed plan for how to account for the costs of this program. (Ex. 3, Busch Rebuttal, page 10, lines 5-6). The costs of this program would include employees' time, payroll, etc. (Ex. 3, Busch Rebuttal, page 10, lines 2-4). Also, as pointed out by Public Counsel expert Ryan Kind, this expanded program may have significant load building characteristics that could cause costs to non-participants if Aquila has to add more capacity to supply the demands of its customers for electricity. (Ex. 4, Kind Rebuttal, page 18, lines 11 – 25, and page 19, lines 1 – 27). Thus, Staff believes there are serious potential detriments to non-participating customer of Aquila if the revenues from this program are given below-the-line accounting treatment.

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

Position Statement: Staff has no position on this issue.

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

Position Statement: Staff has no position on this issue.

WHEREFORE, the Staff respectfully submits the foregoing for its posthearing brief in this case.

Respectfully submitted,

/s/ Nathan Williams____________________

Nathan Williams
Deputy General Counsel
Missouri Bar No. 35512

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)
nathan.williams @psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of December 2007.

/s/ Nathan Williams____________________