

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Aquila,	)	
Inc., d/b/a Aquila Networks-MPS, and	)	
Osage Valley Electric Cooperative for	)	
Approval of Addendum No. 1 to a Written	)	Case No. EO-2006-0244
Territorial Agreement Designating the	)	
Boundaries of Exclusive Service Areas	)	
Within Cass County, Missouri		

**MOTION**  
**for an ORDER CORRECTING SECOND AMENDED EXHIBIT A**  
**to ADDENDUM No. 2**  
**to TERRITORIAL AGREEMENT**

COME NOW Osage Valley Electric Cooperative Association ("Osage"), by and through its counsel, for its Motion for an Order Correcting Second Amended Exhibit A to Addendum No. 2 to the Territorial Agreement between Osage and Aquila, Inc., d/b/a Aquila Networks-MPS ("Aquila"), pursuant to 4 CSR 240-2.060, 4 CSR 240-3.130, 4 CSR 240-3.135, and §394.312 RSMo 2000, and respectfully states as follows:

1. Osage is a rural electric cooperative organized and existing under the laws of Missouri and has its principal office on at P.O. Box 151, Butler, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within certain Missouri Counties. Osage has no pending or final judgments or decisions against it from any state or federal agency or court which involve its customer service or rates within the three years immediately preceding the filing of this Joint Application. A copy of a Certificate of Good Standing from the Office of the Missouri Secretary of State for Osage was filed in Case No. EO-

2004- 0603 and said document is incorporated herein by reference in accordance with 4 CSR-2.060(1)(6).

2. **Correspondence and Communication** – Correspondence, communications, and orders in regard to this Motion should be directed to:

Paul A. Boudreau  
Brydon, Swearngen & England, P.C.  
312 E. Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
573-635-7166 (telephone)  
573-635-3847 (fax)  
[paulb@brydonlaw.com](mailto:paulb@brydonlaw.com)

Craig S. Johnson, Attorney  
1648A East Elm Street  
Jefferson City, MO 65102  
(573) 632-1900(telephone)  
(573) 634-6018 (fax)  
[craig@csjohnsonlaw.com](mailto:craig@csjohnsonlaw.com)

3. **The Territorial Agreement** – Aquila and Osage specifically designated the boundaries of three (3) exclusive electric service areas within the community of Peculiar, Cass County, Missouri which were described in the Agreement as Parcels A, B and C. The Commission in that case issued on September 30, 2004 a Report and Order approving The Agreement and providing, among other things, that “any future addendums to this Territorial Agreement must be approved or rejected by the Commission.” Paragraph Ordered: 3.

5. **Addendum No. 1 to the Territorial Agreement** – On May 15, 2005, Aquila and Osage entered into Addendum No. 1 to the Agreement, the specific purpose of which was to designate the boundaries of an additional exclusive electric service area within the community of Peculiar, Cass County, Missouri, by the addition of Parcel D to

the First Amended Exhibit A to Addendum No. 1 to the Agreement. Aquila and Osage sought approval of the Commission for Addendum No. 1 by virtue of the filing of a Joint Application on May 27, 2005, which was docket by the Commission's Case No. EO-2005-0448. The Commission in that case issued on July 19, 2005 a Report and Order Approving Addendum 1 to Territorial Agreement.

6. **Addendum No. 2 to the Territorial Agreement** – On December 6, 2005, Aquila and Osage filed a joint application asking the Commission to approve Addendum No. 2 with Second Amended Exhibit A adding Parcel E to the Territorial Agreement. By Report and Order of January 26, 2006 in Case No. EO-2006-0244, the Commission Approved Addendum No. 2.

7. The following legal description to Parcel C, as set forth in Second Amended Exhibit A to Addendum No. 2, was in error. This legal description was as follows:

**"Parcel C, Peculiar Industrial Park:**

The Northeast Quarter of the Northwest Quarter, the West 10 acres of the Northwest Quarter of the Northeast Quarter, that part of the Northwest Quarter of the Northwest Quarter, lying North and East of U.S. Highway No. 71, that part of the Southwest Quarter of the Northwest Quarter lying North and East of U.S. Highway No. 71 and that part of the Southeast Quarter of the Northwest Quarter, lying North and East of U.S. Highway No. 71, in Section 23, Township 45, Range 32, Cass County, Missouri, except there from a part of the Southeast Quarter of the Northwest Quarter described as beginning at the Southeast corner of said Quarter Quarter Section; thence West and parallel to the half Section line to U.S. Highway No. 71; thence Southeasterly along the Easterly line of said Highway to the half Section line; thence Southeasterly along the Easterly line of said Highway to the half Section line; thence East to the place of beginning, further except there from that part conveyed to Abigail J. Ferrari by warranty deed recorded in Book 1856, Page 63, that part conveyed to David D. Davenport by warranty deed recorded in Book 2084, Page 106, that part conveyed to the City of Peculiar, Missouri by warranty deed recorded in Book 2149, Page 17 and that part platted as PECULIAR HIGHLANDS, according the recorded plat thereof, recorded in Plat Book 16, Page 32.

8. In 2007 Osage learned that the above description for Parcel C was based on a mistake. It has since been learned that the correct legal description for Parcel C should have been as follows:

**"Parcel C, Peculiar Industrial Park:**

A part of the Southeast Quarter, and a part of the Northeast Quarter of the Southwest Quarter of Section 23, Township 45, Range 32, in Cass County, Missouri, described as follows: Beginning at the Northwest corner of the Southeast Quarter of said Section 23, running thence East along the Northerly line of said Quarter Section to the Northeast corner of the Northwest Quarter of the Southeast Quarter of said Section; thence South along the Easterly line of said Northwest Quarter of the Southeast Quarter, a distance of 760 feet; thence East, parallel to the North line of said Quarter Section, a distance of 560 feet; thence South parallel to the West line of the East half of said Quarter Section to the Northerly line of the South half of the Southeast Quarter of the Southeast Quarter of said Section; thence West along said North line of the South half of the Southeast Quarter of the Southeast quarter and extension of said line to the Northeasterly right-of-way line of U.S. Highway No. 71 as now located and established; thence Northwestwardly along said right-of-way line to its intersection with the North line of the Southwest quarter of said Section; thence East along said North line of said Quarter Section, to the point of beginning, excepting from the above, 4 acres, more or less, being that part of the Northwest Quarter of the Southeast Quarter, lying East of Creek, and further excepting a tract described as beginning at the Northwest corner of the South half of the Southeast Quarter of the Southeast Quarter of Section 23, Township 45, Range 32, run thence East 100 feet; thence North 300 feet; thence West 300 feet; thence North 45 degrees west 125 feet; thence West to the Northeasterly right-of-way line of U.S. Highway No. 71, as now located and established; thence Southeasterly along the Northeasterly right-of-way line of said U.S. Highway No. 71 to a point due West of the point of beginning; thence east to the point of beginning."

9. An affidavit verifying this mistake is attached hereto as Attachment 1.

10. It has also been discovered that the legal description for **Parcel B**, the Arnall property, also contained a typographical error indicating Range 12 instead of Range 32 in its legal description. The legal description set forth in Parcel B was:

"The North 35 Acres of the Northwest Quarter of the Northwest Quarter of Section 14, Township 45, Range 12, in Cass County, Missouri."

The corrected legal description is:

"The North 35 Acres of the Northwest Quarter of the Northwest Quarter of Section 14, Township 45, Range 32, in Cass County, Missouri."

11. Corrected Exhibit A the Territorial Agreement, as currently set forth in Addendum No. 2, which would correct the above mentioned mistakes in legal description, is attached hereto as Attachment No. 2.

12. There has been no electrical service planned or constructed to provide service to Parcel C as of the date of this Motion. The past mistake as to the legal description for Parcel C can be corrected without affecting any electrical service planned or constructed in reliance upon the mistaken description currently set forth in the First Amended Exhibit A to Addendum 2 to the Territorial Agreement presently in effect.

13. Correction of this mistake, and approval of the corrected Exhibit A to Addendum 2 to the Territorial Agreement contained in Attachment 2, is in the public interest. No transfer of facilities or customers will be required. No change of electrical suppliers will be required. Otherwise, approval of this Addendum is in the public interest for the same reasons found by the Commission in its Report and Order of January 26, 2006 in Case No. EO-2006-0244.

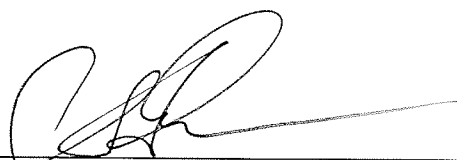
14. **Application Fee** – This Motion for Correction of Exhibit A to Addendum No. 2 to the previously approved to the Territorial Agreement is not believed to be

subject to the filing fee of \$500.00 to which initial applications are subject to in accordance with 4 CSR 240-3.125 (3), based upon the provisions of 4 CSR 240-3.125 (4). In the event a hearing is required in order to consider this Motion, Applicant Osage will be responsible for the payment of a fee which reflects necessary hearing time, including minimum hearing time charge and transcript costs, as set forth in 4 CSR 240-3.130 (4) and (5).

WHEREFORE, Applicant respectfully requests that the Commission issue its order:

(a) Approving the Corrected Exhibit A to Addendum No. 2 to the Territorial Agreement set forth in Attachment 2 hereto, thereby correcting the legal description for Parcel C therein, and also correcting the legal description for Parcel B therein.

Respectfully submitted,



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Craig S. Johnson                      MO #28179  
1648A East Elm Street  
Jefferson City, MO 65102  
(573) 632-1900 (telephone)

(573) 634-6018 (fax)

[craig@csjohnsonlaw.com](mailto:craig@csjohnsonlaw.com)

Attorney for Applicant Osage Valley Electric  
Cooperative

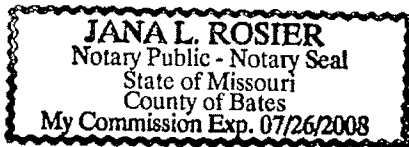
VERIFICATION

STATE OF MISSOURI     )  
                                      )ss  
COUNTY OF Bates )

Being first duly sworn, Brett Burns states as follows: that he has read the foregoing application and the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief and that he is authorized by Osage Valley Electric Cooperative to make this filing and represent it in this matter.

Wm/ Brett Burns  
Brett Burns

Subscribed and sworn to before me this 16<sup>th</sup> day of November, 2007.



Jana L. Rosier Notary Public



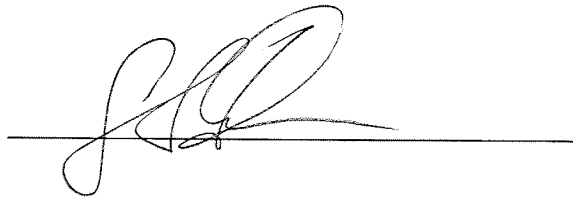
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by electronic mail this 16 day of November 2007 to the following:

General Counsel's Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102-0360

Office of the Public Counsel  
Governor Office Building  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102-2230

Paul A. Boudreau  
Brydon, Swearngen & England, P.C.  
312 E. Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to read 'P. A. Boudreau', is written over a horizontal line.

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Aquila, Inc.,	)	
d/b/a Aquila Networks-MPS, and Osage Valley	)	
Electric Cooperative for Approval of Addendum	)	
No. 1 to a Written Territorial Agreement	)	Case No. EO-2006-0244
Designating the Boundaries of Exclusive Service	)	
Areas Within Cass County, Missouri	)	

**AFFIDAVIT OF BRETT BURNS**

Brett Burns, of lawful age, being duly sworn, deposes and states as follows:

1. My name is Brett Burns. I am employed as Engineering Manager by Osage Valley Electric Cooperative Association.
2. On November 3, 2005 Osage Valley Electric Cooperative received a legal description for Parcel C to the Peculiar Industrial Park for inclusion in the territorial agreement between Osage Valley Electric and Aquila, Inc.
3. On or about July of 2007 it came to my attention that the legal description provided was incorrect. Upon review of the conveyance of this property to the City of Peculiar, the correct legal description for Parcel C is as follows:

**“Parcel C, Peculiar Industrial Park:**

A part of the Southeast Quarter, and a part of the Northeast Quarter of the Southwest Quarter of Section 23, Township 45, Range 32, in Cass County, Missouri, described as follows: Beginning at the Northwest corner of the Southeast Quarter of said Section 23, running thence East along the Northerly line of said Quarter Section to the Northeast corner of the Northwest Quarter of the Southeast Quarter of said Section; thence South along the Easterly line of said Northwest Quarter of the Southeast Quarter, a distance of 760 feet; thence East, parallel to the North line of said Quarter Section, a distance of 560 feet; thence South parallel to the West line of the East half of said Quarter Section to the Northerly line of the South half of the Southeast Quarter of the Southeast Quarter of said Section; thence West along said North line of the South half of the Southeast Quarter of the Southeast quarter and extension of said line to the Northeasterly right-of-way line of U.S. Highway No. 71 as now located and established; thence Northwestwardly along said right-of-way line to its intersection with the North line of the Southwest quarter of said Section; thence East along said North line of said Quarter Section, to the point of beginning,

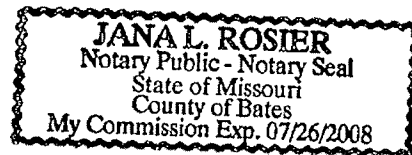
excepting from the above, 4 acres, more or less, being that part of the Northwest Quarter of the Southeast Quarter, lying East of Creek, and further excepting a tract described as beginning at the Northwest corner of the South half of the Southeast Quarter of the Southeast Quarter of Section 23, Township 45, Range 32, run thence East 100 feet; thence North 300 feet; thence West 300 feet; thence North 45 degrees west 125 feet; thence West to the Northeasterly right-of-way line of U.S. Highway No. 71, as now located and established; thence Southeasterly along the Northeasterly right-of-way line of said U.S. Highway No. 71 to a point due West of the point of beginning; thence east to the point of beginning."

4. This information is true and correct to the best of my knowledge.

Wm/ Brett Burns  
Brett Burns

Subscribed and sworn to before me this 16 th day of November 2007.

Jana L. Rosier Notary Public  
My Commission expires: 7/26/08



**CORRECTED SECOND AMENDED EXHIBIT A  
EXCLUSIVE SERVICE AREAS OF COOPERATIVE**

**Parcel A**, Harvest Hill, Peculiar, Missouri:

Part of a tract of land as described in Book 777, page 52 in the office of Recorder of Deeds, Cass County, Missouri, being a part of the northwest quarter of the northeast quarter of Section 10, Township 45, Range 32, Cass County, Missouri described as follows: From the Northeast corner of said Section 10, run thence South 89 degrees 42 minutes 29 seconds West, along the North line thereof, 1295.70 feet to the Northeast corner of the Northwest Quarter of the Northeast quarter of said Section 10, said point being the true point of beginning of the Tract to be described: Continuing thence South 89 degrees 42 minutes 29 seconds West, 632.46 feet; thence South 0 degrees 45 minutes 17 seconds east, 781.89 feet; thence South 89 degrees 14 minutes 43 seconds West, 100.30 feet; thence South 3 degrees 27 minutes 54 seconds West 318.73 feet; Thence North 89 degrees 49 minutes 17 seconds East, 764.66 feet to a point on the West line of Lot 87, "Resurvey of Y-Lane Acres" Lots 27 through 90, a subdivision of land in Section 10, Township 45, Range 32, Cass County, Missouri, as previously platted and recorded, thence North 1 degree 11 minutes 37 seconds West along the West line of said "Resurvey of Y-Lane Acres", 1101.48 feet to the true point of beginning. Subject to the right-of-way of 211<sup>th</sup> Street.

**Parcel B**, Arnall property, Peculiar, Missouri:

"The North 35 Acres of the Northwest Quarter of the Northwest Quarter of Section 14, Township 45, Range 32, in Cass County, Missouri."

**Parcel C**, Peculiar Industrial Park, Peculiar, Missouri:

A part of the Southeast Quarter, and a part of the Northeast Quarter of the Southwest Quarter of Section 23, Township 45, Range 32, in Cass County, Missouri, described as follows: Beginning at the Northwest corner of the Southeast Quarter of said Section 23, running thence East along the Northerly line of said Quarter Section to the Northeast corner of the Northwest Quarter of the Southeast Quarter of said Section; thence South along the Easterly line of said Northwest Quarter of the Southeast Quarter, a distance of 760 feet; thence East, parallel to the North line of said Quarter Section, a distance of 560 feet; thence South parallel to the West line of the East half of said Quarter Section to the Northerly line of the South half of the Southeast Quarter of the Southeast Quarter of said Section; thence West along said North line of the South half of the Southeast Quarter of the Southeast quarter and extension of said line to the Northeasterly right-of-way line of U.S. Highway No. 71 as now located and established; thence Northwestwardly along said right-of-way line to its intersection with the North line of the Southwest quarter of said Section; thence East along said North line of said Quarter Section, to the point of beginning, excepting from the above, 4 acres, more or less, being that part of the Northwest Quarter of the Southeast Quarter, lying East of Creek, and further excepting a tract described as beginning at the Northwest corner of the South half of the Southeast Quarter of the Southeast Quarter of Section 23, Township 45, Range 32,

run thence East 100 feet; thence North 300 feet; thence West 300 feet; thence North 45 degrees west 125 feet; thence West to the Northeasterly right-of-way line of U.S. Highway No. 71, as now located and established; thence Southeasterly along the Northeasterly right-of-way line of said U.S. Highway No. 71 to a point due West of the point of beginning; thence east to the point of beginning.”

**Parcel D, Sewer Lift Station, Peculiar, Missouri:**

Part of a tract of land described in Book 1336, Page 41, in the Office of the Recorder of Deeds in Cass County, Missouri, being part of the East half of the Southeast Quarter of Section 15, part of the Northeast Quarter of the Northeast Quarter of Section 22, and part of the Northwest Quarter of the Northwest Quarter of Section 23, all in Township 45, Range 32, Cass County, Missouri, described as follows: From the Southwest corner of the East half of the Southeast Quarter of Section 15, aforesaid; run thence North 1 degree 46 minutes 33 seconds East along the West line thereof, 72.92 feet to a point on the Easterly right-of-way line of Peculiar Drive, as now located; thence South 55 degrees 54 minutes 30 seconds East along said right-of-way line, 962.85 feet to the True Point of Beginning of the tract to be described; thence North 34 degrees 05 minutes 30 seconds East, 574.51 feet to a point on the Westerly right-of-way line of U.S. Highway No. 71, as now located; thence South 36 degrees 20 minutes 37 seconds East along said right-of-way line, 1682.17 feet; thence South 53 degrees 39 minutes 23 seconds West along said right-of-way line, 92.90 feet to a point on the Easterly right-of-way line of Peculiar Drive; thence along said right-of-way line on a curve to the left having a radius of 6105.93 feet, a chord bearing of North 51 degrees 03 minutes 17 seconds West and an ARC length of 903.08 feet; thence North 55 degrees 54 minutes 30 seconds West along said right-of-way line, 654.91 feet to the True Point of Beginning.

**Parcel E, City of Peculiar Industrial Park, Peculiar, Missouri:**

Part of a tract of land described in Book 1336 at Page 41 in the office of the Recorder of Deeds in Cass County, Missouri being in the SE  $\frac{1}{4}$  of Section 15, the NE  $\frac{1}{4}$  of Section 22, and the NW  $\frac{1}{4}$  of Section 23, in Peculiar, Cass County, Missouri more particularly described as follows: Commencing at the SW corner of the East  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of said Section 15; thence N 01°46'33" E along the West line of said East  $\frac{1}{2}$ , a distance of 72.92 feet to a point on the Northerly right of way line of "Peculiar Drive," as it now exists, thence S 55°52'38" E (S 55°54'30" E deed) along said right of way line, a distance of 962.85 feet to the POINT OF BEGINNING; thence N 34°09'56" E (N 34°05'30" E deed), a distance of 574.51 feet to a point on the Southerly right of way line of U.S. Highway 71, as it now exists; thence S 36°19'51" E (S 36°20'17" E deed), along said right of way line, a distance of 1682.17 feet; thence S 54°05'09" W (S 53°39'23" W deed), a distance of 92.90 feet to a point on the Northerly right of way line of said "Peculiar Drive"; thence along said Northerly right of way line along a curve to left having an initial tangent bearing of N 46°47'44" W and a radius of 6105.93 feet, an arc distance of 903.08 feet; thence continuing along said Northerly right of way line N 55°55'44"

W (N 55°54'30" deed), a distance of 654.91 feet to the POINT OF BEGINNING, containing 11.23 acres, more or less, all being subject to easements, restrictions, and rights of way.