

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
July, 2005.

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)	<u>Case No. EO-2005-0448</u>
Written Territorial Agreement Designating the)	
Boundaries of Exclusive Service Areas within)	
Cass County, Missouri)	

**REPORT AND ORDER APPROVING ADDENDUM TO TERRITORIAL
AGREEMENT**

Issue Date: July 19, 2005

Effective Date: July 29, 2005

This decision approves Addendum No. 1 to the Territorial Agreement between Aquila, Inc. d/b/a Aquila Networks – MPS and Osage Valley Electric Cooperative, which will allow Osage Valley to provide electric service to a sewer lift station located in Aquila's service territory.

FINDINGS OF FACT

On May 27, 2005, Aquila, Inc. d/b/a Aquila Networks – MPS and Osage Valley Electric Cooperative filed a joint application asking the Commission to approve an addendum to their written territorial agreement that designates boundaries of exclusive service areas in Cass County, Missouri.

Aquila is a public utility providing electric, natural gas, and industrial steam utility services to customers in its Missouri service areas. Osage Valley is a rural electric

cooperative with its principal office located in Butler, Missouri. Both companies provide electric service in portions of Cass County.

In 2004, the Commission approved a territorial agreement between the companies that established three exclusive electric service areas within the community of Peculiar, which is located in Cass County. The proposed addendum to that territorial agreement would add a fourth exclusive service area. The new exclusive service area would allow Osage Valley to provide service to a sewer lift station located within Aquila's service territory.

On May 31, the Commission issued an order directing that notice of the joint application be sent to interested parties and to the public. That order also established an intervention deadline of June 20. No applications to intervene were submitted.

On July 6, Staff filed a recommendation. Staff indicates that the addendum will allow Osage Valley to serve a new sewer lift station owned by the City of Peculiar. This lift station can be easily served by an existing Osage Valley power line that is directly adjacent to the planned lift station. Aquila does not now have a line capable of serving the lift station. Construction of a new line to serve the lift station would be expensive, and would duplicate the existing Osage Valley line. Staff recommends that the addendum be approved as being in the public interest.

Based on the information contained in the Joint Application and on the recommendation of Staff, the Commission finds that the proposed addendum is not detrimental to the public interest.

CONCLUSIONS OF LAW

Section 394.312, RSMo 2000, gives the Commission jurisdiction over territorial agreements concerning electric service, including any subsequent amendment to such agreement. Under Section 394.312.4, the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest. As it found in its findings of fact, the addendum to the territorial agreement will not be detrimental to the public interest.

Article 7 of the existing territorial agreement establishes a procedure for the consideration of addendums to the territorial agreement to allow a new or existing structure to receive service from one company although the structure is located in the territory of the other company. That article provides that once the companies have reached an agreement, they are to file the agreed upon addendum with the Commission. Paragraph 7.4 provides that if the Commission's Staff or the Office of the Public Counsel does not file a pleading objecting to the addendum within 45 days, then "the addendum shall be deemed approved by the aforesaid parties." Even if Staff and Public Counsel have been deemed to approve, the submitted addendum is still subject to approval or rejection by the Commission.

Public Counsel did not file a recommendation or objection within 45 days of the filing of the addendum. By the terms of the territorial agreement, Public Counsel is deemed to have approved the addendum.

Although Section 394.312.4, RSMo 2000, provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The decision in State ex rel. Deffenderfer Enterprises, Inc. v.

Public Service Comm'n of the State of Missouri,¹ holds that the requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. Therefore, no hearing is necessary.

DECISION

Based on its findings of fact and conclusions of law, the Commission determines that the submitted addendum to the existing territorial agreement between the parties is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That Addendum No. 1 to the Territorial Agreement between Aquila, Inc. d/b/a Aquila Networks – MPS and Osage Valley Electric Cooperative is approved.
2. That this order shall become effective on July 29, 2005.
3. That this case may be closed on July 30, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur
Woodruff, Senior Regulatory Law Judge

¹ 776 S.W. 2d 494 (Mo. App. W.D. 1989).