

**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. 2 to a )  
Written Territorial Agreement Designating the )  
Boundaries of Exclusive Service Areas Within Cass )  
County, Missouri. )

Case No. EO-2006-0244

**STAFF RECOMMENDATION**

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the Joint Application of Aquila, Inc., d/b/a Aquila Networks-MPS (Aquila) and Osage Valley Electric Cooperative (Osage) seeking approval of the Addendum No. 2 to the Territorial Agreement, approved by the Commission in Case No. EO-2004-0603, for service by Osage to an additional exclusive electric service area, designated as Parcel E, within the community of Peculiar. Parcel E is a commercial industrial park of approximately eleven (11) acres located within the Aquila service territory.

The City of Peculiar is not a “rural area” as defined by Section 394.020(3) RSMo 2000. Osage’s proposed service to the site in question does not fall within the exception provided by Section 394.080.2(1) if a cooperative is the predominant supplier in a non-rural area. Nonetheless, on July 30, 2004, in Case No. EO-2004-0603, Osage filed the direct testimony of its General Manager, Jon McClure, in which he stated at page 7 that Osage has a franchise agreement with the City of Peculiar. *See* Section 394.080.2(2).

The Staff has reviewed the Joint Application and visited the site in question. The Staff recommends in the following Staff Recommendation (Appendix A) that the Commission approve the proposed Addendum No. 2 to the Territorial Agreement between Aquila and Osage

as being not detrimental to the public interest, pursuant to and consistent with Section 394.312, Section 386.800, 4 CSR 240-2.060, 4 CSR 240-3.130 and 4 CSR 240-3.135. The proposed Addendum No. 2 to the Territorial Agreement will prevent an otherwise necessary duplication of facilities and, as a consequence, Addendum No. 2 will enhance public safety.

Wherefore the Staff recommends that the Commission issue an Order granting the Joint Application of Aquila, Inc., d/b/a Aquila Networks-MPS and Osage Valley Electric Cooperative for approval of their proposed Addendum No. 2 to the Territorial Agreement between these two utilities.

Respectfully submitted,

**/s/Steven Dottheim**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 20th day of January 2006.

/s/ Steven Dottheim

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

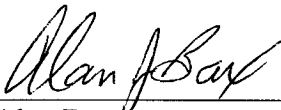
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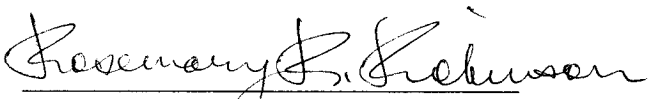
**AFFIDAVIT OF ALAN BAX**

**STATE OF MISSOURI**     )  
  ) ss  
**COUNTY OF COLE**     )

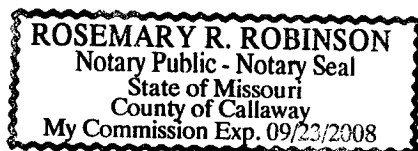
Alan Bax, of lawful age, on oath states: that he has participated in the preparation of the foregoing written Memorandum And Recommendation, consisting of four pages to be presented in the above case, that the information in the attached written Memorandum And Recommendation was given by him; that he has knowledge of the matters set forth in such Memorandum And Recommendation; and that such matters are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Alan Bax

Subscribed and sworn to before me this <sup>th</sup>20 day of January 2006.

  
\_\_\_\_\_  
Notary Public

My commission expires 9-23-2008



**ROSEMARY R. ROBINSON**  
Notary Public - State of Missouri  
County of Callaway  
My Commission Expires Sep. 23, 2008

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2006-0244, Joint Application of Aquila Inc., d/b/a Aquila Networks – MPS and Osage Valley Electric Cooperative for Approval of Addendum No. 2 to the Territorial Agreement Designating the Boundaries of Exclusive Service Areas Within the City of Peculiar in Cass County, MO

FROM: Alan J. Bax, Energy Department – Engineering Analysis

<u>/s/ Lena Mantle      01/20/06</u> Energy Department / Date	<u>/s/ Steven Dottheim      01/20/06</u> General Counsel's Office / Date
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SUBJECT: Staff Recommendation

DATE: January 18, 2006

## **BACKGROUND**

On December 6, 2005, Aquila Inc., d/b/a Aquila Networks – MPS (Aquila) and Osage Valley Electric Cooperative (Osage or Cooperative), referred to collectively as the “Applicants”, filed a Joint Application with the Missouri Public Service Commission (Commission) seeking approval of Addendum No. 2 to the Territorial Agreement, which would allow Osage to provide electric service to an additional specific area of land located within the City of Peculiar in Cass County, MO, (approximately 11.2 acres) described as a commercial industrial park. This Joint Application was filed per the terms included in Article 7 of the Territorial Agreement, originally filed by the Applicants in June 2004 (Case No. EO-2004-0603), and approved by a Commission Order issued in September 2004. Subsequently, the Applicants sought approval of Addendum No. 1 to the aforementioned Territorial Agreement in May 2005 (Case No. EO-2005-0448), which was granted by a Commission Order issued in July 2005.

On December 8, 2005, the Commission issued an Order in Case No. EO-2006-0244 affirming its statutory authority to approve applications for territorial agreements and subsequent amendments if it is determined that the application is not detrimental to the public interest. In addition, the Order set an intervention period until December 28, 2005. No entity has sought intervention in this case.

Article 7.4 of the Territorial Agreement contains language indicating that the Staff of the Missouri Public Service Commission (Staff) and/or the Office of the Public Council (OPC) need to submit a pleading in response to an Addendum within forty-five days of the date of filing stating their objections, if any; otherwise, the Addendum shall be deemed approved by the Staff and OPC. The Territorial Agreement, as approved by the Commission in September 2004, does not contain any provisions requiring the filing of a Staff Recommendation pertaining to subsequent Addendums requested.

The Cooperative is organized under Chapter 394 RSMo 2000 to provide electric service to its members located in parts of seven Missouri counties including Cass County, in which lies the area of land that is the subject of this case. Rural electric cooperatives, such as Osage, are subject to the jurisdiction of the Commission as specified in Chapter 394 and Section 386.800 RSMo 2000. For the purpose of this case, the Cooperative is subject to the jurisdiction of the Commission under Section 394.312.3 and 394.312.4 RSMo 2000<sup>1</sup>.

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<sup>1</sup> Section 394.312.3 states, in relevant part, that "...all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement shall receive the approval of the public service commission by report and order..."

Aquila is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2000. Aquila is authorized to provide electricity in and around the area that is the subject of this Joint Application.

### **DISCUSSION**

The Joint Application and its Attachment, Addendum No. 2 to the Territorial Agreement, requests that Osage be allowed to serve an additional parcel of land located within the City of Peculiar, referred to as a commercial industrial park. This parcel of land, more specifically defined in the Joint Application, has been subdivided in 11 tracts (Tracts 1 – 9, A and B). These approximately 11 acres of land are situated alongside a sewer lift station, a facility that was the subject of Addendum No. 1 to this Territorial Agreement. Since the adjacent land, just like the sewer lift station, is located within the City of Peculiar, and further, that Aquila is the predominant supplier in the City of Peculiar, it is necessary to seek Commission approval to allow Osage to provide electrical service to this industrial park. In addition to the parcel of land, Parcel E, addressed by Addendum No. 2, the Applicants included corrections to the descriptions of Parcels B and C, which, along with Parcel A, were the subject of the original Territorial Agreement.

The Joint Application states that the current request is in the public interest for several reasons including enhancement of public safety and preventing an otherwise necessary duplication of facilities should Aquila provide electric service. Osage has two circuits that border the property on the Northwest side. Osage has tapped these circuits to provide three phase service to an existing nearby cabinet shop. Osage has a substation within .75 miles of this parcel of land near this anticipated load; conversely, Aquila's substation is on the North side of the City of Peculiar.

### **STAFF RECOMMENDATION**

The Staff recommends that the Applicants' request to add an additional parcel of land, Addendum No. 2 to the Territorial Agreement, a commercial industrial park as described in the Joint Application, be approved by the Commission as not being detrimental to the public interest, per Section 394.312, RSMo 2000. With Osage as the electric service provider, an otherwise necessary duplication of facilities is avoided and public safety is enhanced.

Osage Valley Electric Cooperative is not required to file annual reports or pay assessment fees with the Commission. Further, it does not have pending or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of this filing.

Aquila is current on its required annual report filings and assessment fees. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing; however, the following electric cases involving Aquila are open:

1. EA-2005-0248 – Specific Confirmation or Certificate of Convenience and Necessity (CCN) for South Harper Units and Related Transmission
2. ER-2005-0436 – General Rate Case
3. HR-2005-0450 – General Rate Case
4. EO-2002-0384 – Class Cost of Service and Rate Design Case
5. EC-2006-0171 – Underfunding of the OPEB
6. EO-2005-0156 – Chapter 100 Financing of the South Harper Units