

TERRITORIAL AGREEMENT

Between

OSAGE VALLEY ELECTRIC COOPERATIVE

and

AQUILA, INC.

TERRITORIAL AGREEMENT

This Agreement is made and entered into as of the 1st day of June, 2004, by and between AQUILA, INC., (hereinafter "Company") and OSAGE VALLEY ELECTRIC COOPERATIVE (hereinafter "Cooperative").

RECITALS

- A. Company is authorized by law to provide electric service within the State of Missouri, including portions of Cass County.
- B. Cooperative is authorized by law to provide electric service within the State of Missouri, including portions of Cass County.
- C. The Missouri General Assembly by Section 394.312 RSMo. (2000) has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements.
- D. Company and Cooperative desire to promote the orderly development of the retail electric service within Cass County, Missouri.
- E. Company and Cooperative desire to reduce the wasteful duplication of facilities providing electric service to Customers.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1.

DEFINITIONS

In addition to terms defined elsewhere herein, when used herein, the following terms shall have the definitions set forth below. Words importing persons include corporations or other entities, as applicable, and words importing on the singular include the plural and vice versa when the context requires.

- 1.1 **Agreement** shall mean this document including any appendices or exhibits hereto.
- 1.2 **Customer** shall mean any person, partnership, corporation, limited liability company, political subdivision, or any agency, board, department or bureau of any city, county, state or federal government, or any other legal entity that has requested or is receiving electric service. Any Customer who has requested or is receiving electric service at one Structure shall be a new and different Customer at each Structure at which electric service has been requested.
- 1.3 **Effective Date** of this Agreement shall be the effective date of the order issued by the Missouri Public Service Commission (the "Commission") pursuant to Section 394.312 RSMo. (2000) approving this Agreement.
- 1.4 **Electric Power Provider** shall mean any other electric corporation and/or rural electric cooperative.
- 1.5 **Existing Structure** shall mean any structure that receives electric energy from either party prior to or on the Effective Date of this Agreement. "Existing Structure" shall also mean:
 - A. Any replacement of an Existing Structure ("Replacement Structure"), provided said Replacement Structure is (1) located completely within the boundary of the

property on which the Existing Structure is located, (2) used for the same purpose as the Existing Structure it is replacing, and (3) that the Existing Structure is totally removed from the property within six months of completion of the Replacement Structure.

B. Any maintenance, repair, remodeling, or partial replacement of an Existing Structure.

1.6 **New Outbuilding** shall mean, if the Existing Structure's purpose is residential, a New Structure that is a detached garage, detached storage building, gazebo, detached porch, or similar structure that is not attached to the Existing Structure in question and is not a residence. If the Existing Structure's purpose is agricultural, a "New Outbuilding" is a New Structure that is a detached garage, barn, well, silo, grain bin, or similar structure that is not attached to an Existing Structure in question and is not a residence.

1.7 **New Structure** shall mean (i) any Structure that did not receive electric energy from either party prior to or on the effective date of this Agreement and (ii) the replacement of an existing structure with a Structure that does not satisfy the definition of Existing Structure set forth herein.

1.8 **Structure** shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus, including an original structure and any contiguous addition or expansion thereto. Structure shall not include a metering device or customer-owned meter wiring.

1.9 **Laws and Regulations** shall mean all applicable statutes, regulations, codes, laws, licenses, decisions, interpretations, policy statements, regulatory guides, rules, criteria, all license requirements enforced or issued by any government, federal, state, or local, or any governmental agency, authority, or body, and industry-recognized guidelines and professional standards.

ARTICLE 2.

EXCLUSIVE RIGHT TO SERVE

- 2.1 Pursuant to Section 394.312 RSMo (2000), this Agreement designates the boundaries of exclusive electric service areas of Company and Cooperative only for purposes of this Agreement. In this Agreement, Company agrees not to serve New Structures in an area described in Article 3, hereinafter referred to as the "Exclusive Service Area of Cooperative". Likewise, Cooperative agrees not to serve New Structures in an area described in Article 4, hereinafter referred to as the "Exclusive Service Area of the Company". The parties recognize and agree that this Agreement shall not apply to any service area not designated as an Exclusive Service Area in Article 3 or Article 4.
- 2.2 After the Effective Date, as between the parties, each party shall have the exclusive right to furnish electric service to all New Structures located within its respective Exclusive Service Area described in Articles 3 and 4 of this Agreement, regardless of the size of the load or the characteristics of the customer's requirements. Except as provided expressly herein, neither party may furnish, make available, render, or extend electric service to New Structures or for use within the exclusive service area of the other party, either directly or indirectly, including through a parent, affiliate, or subsidiary of Company or Cooperative, whether said parent, affiliate, or subsidiary be a corporation, limited liability company, partnership, or cooperative corporation.
- 2.3 Both Parties retain the right to furnish electric service to all Existing Structures that they are serving by either permanent or temporary electric service on the Effective Date of this Agreement, regardless of their location.
- 2.4 During the time period between the filing date of this Agreement with the Commission and the Effective Date of the Agreement, the parties shall not be bound by the territorial division provisions of this Agreement and may provide service to any customer seeking service if the supplier can lawfully provide such service to the particular location. Pending issuance of a decision by the Commission either granting or denying approval of this Agreement, however, neither party shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement,

unless, (1) ordered to do so by the Commission or a court of competent jurisdiction or (2) as a necessary part of the provision of service to its customers in other areas; provided, however, that any such construction is within a previously established easement obtained for the purpose of providing service in other areas. During the period prior to the Effective Date, if a Customer requests new electric service from one party requiring construction of a New Structure located in the Exclusive Service Area of the other party, the parties agree to submit the matter to the Commission for determination in the case docketed for approval of this Agreement. The parties agree to propose to the Commission in such case that the party which will have the exclusive right to serve the Customer if this Agreement is approved by the Commission should have the exclusive right and obligation to serve the Customer prior to the Effective Date.

2.5 The parties recognize and agree that this Agreement places limits on the party's abilities to distribute retail electric energy. In the event that retail wheeling of unbundled electric energy becomes available in the territory affected by this Agreement, (e.g., retail customers are permitted to choose their suppliers of electric energy), nothing in this Agreement shall be construed to limit in any way the ability of either party to furnish electric energy to Existing Structures located in the Exclusive Service Area of the other party; provided, however, that the electric energy shall be delivered to said Structures by means of the electric distribution facilities of the party in whose Exclusive Service Area the Structures are located. Further, in the event changes in this Agreement are required due to retail wheeling of unbundled electric energy becoming available in the territory affected by this Agreement, both parties agree to negotiate in good faith changes to this Agreement with the intention of maintaining the benefits of their previous bargain to the extent practicable. The parties further agree to cooperate in obtaining the Commission's approval of any such modified agreement, if necessary, by making a joint application requesting Commission such approval and any other required filings related thereto.

2.6 This Agreement does not purport to affect the rights of any Electric Power Provider.

ARTICLE 3.

EXCLUSIVE SERVICE AREA OF COOPERATIVE

The Exclusive Service Area of Cooperative, as between the parties under this Agreement shall be those parcels of property located within certain cities, towns, and villages within Cass County, Missouri, as set forth by metes and bounds description in **Exhibit A** attached hereto. Exhibit A referred to in this Article, as may be amended from time to time as provided in Section 12.3, is incorporated herein by reference and made a part of this Agreement, as if fully set forth verbatim.

ARTICLE 4.

EXCLUSIVE SERVICE AREA OF COMPANY

The Exclusive Service Area of Company, as between the parties under this Agreement, shall be those parcels of property within Cass County, Missouri, as set forth in **Exhibit B** to this Agreement by metes and bounds description and attached hereto. Exhibit B referred to in this Article, as may be amended from time to time as provided in Section 12.3, is incorporated herein by reference and made a part of this Agreement, as if fully set out verbatim.

ARTICLE 5.

LOCATION OF A STRUCTURE

- 5.1 The location of a Structure for purposes of this Agreement shall be the geographical location at which electric energy is used, regardless of the metering point or point of delivery.
- 5.2 The first owner of a New Structure who requests and receives electric service at said Structure which is located on or crossed by any mutual boundary line, as described in Articles 3 and 4 defining the Exclusive Service Areas of the parties shall be permitted to choose either party for permanent electric service; provided that the Customer's meter is installed within that party's Exclusive Service Area. Thereafter, that party shall exclusively serve that Structure.

- 5.3 A party may provide electric service to a New Outbuilding located in the Exclusive Service Area of the other party, so long as (i) the New Outbuilding is located within the contiguous tract of land on which that party's customer's Structure is located and the New Outbuilding shall not be used for commercial or industrial purposes or (ii) the other party consents in writing. This section shall not apply to a customer who receives electric service from both Company and Cooperative on the same tract of land, and requests additional electric service. The New Outbuildings for these customers shall be served by the designated exclusive service provider, unless the customer, Company, and Cooperative agree otherwise and follow the procedures set out in Article 7.

ARTICLE 6

RIGHT TO CONSTRUCT FACILITIES

This Agreement shall in no way impair or affect either party's right to construct such electric generation, distribution and transmission facilities within the designated Exclusive Service Area of the other as that party deems necessary, appropriate or convenient to provide electric service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by Laws and Regulations.

ARTICLE 7

CASE-BY-CASE EXCEPTION PROCEDURE

- 7.1 The parties may agree on a case-by-case basis, by Addendum hereto, to allow a New or Existing Structure to receive service from one party although the Structure is located in the Exclusive Service Area of the other party.
- 7.2 Such Addendum shall be filed with the Executive Secretary of the Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel. There will be no filing fee for these addenda.
- 7.3 Each Addendum shall consist of a statement identifying the Structure, the party to serve the Structure, the justification for the Addendum, and indicating that the parties support the Addendum.

- 7.4 If the Commission Staff or Office of the Public Counsel does not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Commission's staff or the Office of the Public Counsel have forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.
- 7.5 Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 394.312 RSMo. (2000), until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an agreement until the effective date of an order of the Commission or a court regarding the removal of same.

ARTICLE 8

TERM AND CONDITIONS OF PERFORMANCE

- 8.1 **Term of Agreement.** The term of this Agreement shall have a term of twenty-five (25) years from the Effective Date unless terminated by the parties in accordance with Article 9, Termination.
- 8.2 **Conditions of Performance.** Performance of the parties is contingent upon all of the following having occurred, unless such condition is waived, extended or modified by agreement, in writing, signed by an officer of each party hereto:
- A. All required approvals of Company and Cooperative;
 - B. Approval of this Territorial Agreement by the Commission, which shall, as a minimum, consist of an order (i) approving this Agreement and (ii) a finding that this Agreement does not impair Company's certificates of convenience and necessity, except as specifically limited by the Agreement;
- 8.3 Company and Cooperative agree to undertake all actions reasonably necessary to implement this Agreement. Company and Cooperative will cooperate in presenting a joint application to the Commission showing this Agreement, in total, not to be

detrimental to the public interest. Company and Cooperative will share equally in the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

ARTICLE 9.

TERMINATION

- 9.1 **Termination Events.** Except as otherwise provided in section 8.1, this Agreement may be terminated by (1) mutual consent of Company and Cooperative or (2) upon sixty (60) days prior notice by either party in the event of a transaction resulting in the disposition by sale or merger, or by the reorganization, of either party, resulting in a material change in the terminating party's business of providing electric service.
- 9.2 **Effective Date of Termination.** The termination of this Agreement shall be effective on the date the Commission receives a notice signed by both Company and Cooperative of their decision to terminate this Agreement.
- 9.3 **Effect of Termination.** If this Agreement is terminated as provided herein, each party shall pay the costs and expenses incurred by it in connection with such termination, and no party (or any of its officers, directors, employees, agents, attorneys, representatives, or shareholders) shall be liable to any other party for any costs, expenses, or damages; except as provided herein, neither party shall have any liability or further obligation to the other party to this Agreement.

ARTICLE 10.

NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by fax, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

For Company

Manager
Aquila, Inc.
215 Locust Hill Road
Belton, MO 64012

For Cooperative

General Manager
Osage Valley Electric
Cooperative
P.O. Box 151
Butler, MO 64730

or to such other address as such party may have given to the other by notice pursuant to this Section. Notice shall be deemed given on the date of delivery, in the case of personal delivery or fax, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail.

ARTICLE 11

ASSIGNMENT

- 11.1 This Agreement shall be binding on the successors and assigns of both Company and Cooperative. Subject to the terms of Section 11.2, neither party shall make any assignment of any of its rights or interests under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld, and approval of the Commission.
- 11.2 Notwithstanding the foregoing, in the event of a merger, corporate reorganization, or corporate restructuring of a party, said party may assign this Agreement to the corporate entity responsible for providing distribution level electric service in the area covered by this Agreement or an affiliate of such entity, and the consent of the other party shall be deemed to be given. The consenting party or party whose consent is deemed to be given shall cooperate in obtaining approval of the assignment, including by (a) participating in the joint application requesting Commission approval of the assignment and (b) providing an affidavit, stating that it consents to the Assignment, for inclusion in such application.

ARTICLE 12.

MISCELLANEOUS

- 12.1 **Other Products and Services Not Affected.** This Agreement is limited to the distribution of electricity and shall in no way affect either party's right to offer other products and services, including but not limited to, the sale of distributed generation equipment, natural gas service, propane service, fiber optic communication service, satellite television service and other communication services, to customers located in the Exclusive Service Area of the other party. Neither shall this Agreement limit, in any way, a party's right to construct such non-electric distribution facilities within the designated Electric Service Area of the other as that party deems necessary, appropriate or convenient to provide other non-electric distribution service to its customers.
- 12.2 **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with, and its validity shall be determined under, the laws of the State of Missouri.
- 12.3 **Amendments.** No modification, amendment, deletion, or other change in this Agreement or the boundaries described in the Agreement shall be effective for any purpose unless specifically set forth in writing and signed by both parties and approved by the Commission.
- 12.4 **Headings.** Headings and titles contained in this Agreement are included for convenience only and shall not be considered for purposes of interpretation of this Agreement.
- 12.5 **Impact of Commission or Court Orders.** The filing fee for this application pursuant to 4 CSR 240-21.010 shall be split between the parties. If the Commission does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

- 12.6 **Survival.** Obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.
- 12.7 **No Waiver.** If a party has waived a right under this Agreement on any one or more occasions, such action shall not operate as a waiver of any right under this Agreement on any other occasion. Likewise, if a party has failed to require strict performance of an obligation under this Agreement, such action shall not release the other Party from any other obligation under this Agreement or the same obligation on any other occasion.
- 12.8 **Further Assurances.** The parties shall execute such other documents and perform such other acts as may reasonably be necessary in order to give full effect to this Agreement.
- 12.9 **Expenses.** Except as otherwise expressly provided herein, all expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the closing of the transactions contemplated hereby, including, without limitation, the fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred same.
- 12.10 **Entire Agreement.** This contract constitutes the entire agreement between the parties relating to the allocation of service rights in the territory described herein. If the Commission does not approve this Agreement or fails to approve or rejects any portion of this Agreement, then the entire Agreement shall be nullified and of no legal effect. Further, if any part of this Agreement is declared invalid or void by a Court or other agency with competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

The parties have entered into this Agreement as evidenced below by the signature of their duly authorized representatives as of the date set forth on the first page hereof.

AQUILA, INC.

By: Glenn P. Keefe

Name: Glenn P. Keefe

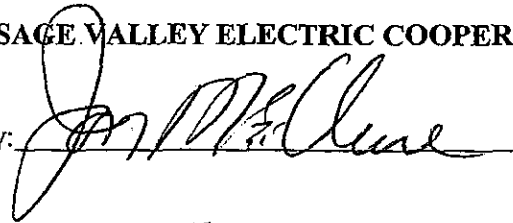
Title: Operating VP

Attest:

By: Alexa Nunnery

Title: Administrative Assistant

OSAGE VALLEY ELECTRIC COOPERATIVE

By: 

Name: Jon McClure

Title: General Manager

Attest:

By: _____

Title: _____

EXHIBIT A

EXCLUSIVE SERVICE AREAS OF COOPERATIVE

Parcel A (Approx. 15.2 acres), 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 211th 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:

The Southwest Quarter, and the Northwest Quarter of the Southwest Quarter of Section 23, Township 45, Range 32, Cass County, Missouri, subject to easements and restrictions of record

and

The North Half of the Northwest Quarter, and all that part of the North Half of the Northeast Quarter lying West of the center of U.S. Highway 71 in Section 26, and that part of the Southwest Quarter of Section 23, lying West of the center of U.S. Highway 71, and that part of the Southeast Quarter of Section 23 lying West of the centerline of U.S. Highway 71; all in Township 45, Range 32, Cass County, Missouri, subject to easements and restrictions of record Except 3.09 acres described as follows:

Part of a tract of land described in Book 1439, page 76 in the office of the Recorder of Deeds in Cass County, Missouri, being part of the Northwest Quarter of the Northwest Quarter of Section 26, and part of the Southwest Quarter of the Southwest Quarter of Section 23, all in

Township 45, Range 32, Cass County, Missouri described as follows: Beginning at the Southwest corner of the Southwest Quarter of Section 23, aforesaid, run thence North 00 degrees, 26 minutes, 10 seconds West along the West line thereof, 65.00 feet; thence North 89 degrees, 56 minutes, 54 seconds East, parallel with the South line of the Southwest Quarter of said Section 23, 358.22 feet; thence South 00 degrees 44 minutes, 54 seconds West, 380.02 feet; thence South 89 degrees, 56 minutes, 54 seconds West, parallel with the North line of the Northwest Quarter of Section 26, aforesaid, 349.00 feet to the West line of said Northwest Quarter; thence North 00 degrees, 41 minutes, 00 seconds West along said West line, 315.00 feet to the true point of beginning, contains 3.09 acres, more or less, subject to the right-of-way of Cowger Road and any existing easements.

EXHIBIT B

EXCLUSIVE SERVICE AREAS OF COMPANY

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