

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

In the Matter of the Application of Aquila, Inc., d/b/a)
Aquila Networks-MPS, and Platte-Clay Electric)
Cooperative, Inc. for Approval of a Written Territorial)
Agreement Designating the Boundaries of Exclusive)
Service Areas within Platte and Clay County,)
Missouri.)

Case No. EO-2007-0325

**STAFF RECOMMENDATION
TO APPROVE TERRITORIAL AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and for its recommendation that the Commission approve the Joint Application of Aquila, Inc. d/b/a Aquila Networks-MPS (Aquila) and Platte-Clay Electric Cooperative, Inc. (Platte-Clay), and approve their Territorial Agreement, states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends the Missouri Public Service Commission grant the Joint Application of Aquila and Platte-Clay, and approve their Territorial Agreement.

2. As stated in the Staff's memorandum, Aquila and Platte-Clay have entered into the Territorial Agreement to establish exclusive service areas as to Aquila and Platte-Clay within portions of Platte and Clay counties. Under the Territorial Agreement, Aquila would be the exclusive supplier in Platte and Clay counties as shown on Exhibits B and D, while the exclusive territory of Platte-Clay is identified in Exhibits A and C. The terms apply only to new structures in the designated territories; therefore, this agreement does not involve any change of suppliers to existing customers.

3. Section 394.312.4, RSMo 2000, establishes the standard of "not detrimental to the public interest" for Commission review of territorial agreements. The Staff found no Missouri

case law applying this standard in this context; however, based on how it has been interpreted in the context of changes in utility ownership as discussed following, this standard includes a consideration of the broad public interest, not merely affected utilities and their customers and their members. In a change of ownership case in the mid-1980's this Commission, applied the standard of "not detrimental to the public interest," and approved the sale of steam operations from a regulated utility to an unregulated subsidiary of the Bi-State Development Agency. The sale was part of a plan by the Bi-State Development Agency to ultimately use refuse to fuel the steam generation and included an immediate rate increase. In its opinion on review of the Commission's decision, the Missouri Supreme Court stated:

The Commission's decision and order shows that concern for the public interest was predominant in its deliberations. It considered not only the interest of its customers, but the interest of the St. Louis metropolitan area in solving its refuse problems. The thought of using refuse to produce worthwhile energy is certainly appealing. The Commission is justified in looking at the broad picture.¹

The Missouri Supreme Court, in *State ex rel. City of St. Louis v. Public Service Commission*,² includes a statement of the standard of "not detrimental to the public":

. . . The whole purpose of the act is to protect the public. The public served by the utility is interested in the service rendered by the utility and the price charged therefore; investing public is interested in the value and stability of the securities issued by the utility. *State ex rel. Union Electric Light & Power Co. v. Public Service Commission et al.* (Mo. Sup.) 62 S.W. (2d) 742. In fact the act itself declares this to be the purpose. Section 5251, R.S. 1929 Mo. Stat. Ann. Section 5251, p. 6674), in part reads: "The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and *substantial justice between patrons and public utilities.*" (Italics ours.)

The state of Maryland has an identical statute with ours, and the Supreme Court of that state in the case of *Electric Public Utilities Co. v. Public Service Commission*, 154 Md. 445, 140 A. 840, loc. cit. 844, said: "To prevent injury to the public good in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public

¹ *Love 1979 Partners, et al. v. Public Serv. Comm'n*, 715 S.W.2d 482, 490 (Mo.banc 1986).

² 73 S.W.2d 393, 399-400 (Mo.banc 1934).

Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'”

4. As stated in Appendix A, this territorial agreement will prevent the further duplication of facilities between these utilities in the exclusive service areas established by the territorial agreement. Such duplication reduces safety by exposing both workmen and the general public to more dangerous facilities than what efficient engineering design would require to serve demand for electricity. Both Aquila and Platte-Clay have sufficient distribution facilities to serve customers in the exclusive service areas established by the territorial agreement, and are making plans for expected future load growth. Establishing these exclusive service areas will assist the utilities in anticipating the electric needs of their customers, and will also assist emergency responders in identifying which electric service provider to notify, if any emergency event involves electric facilities. Furthermore, the establishment of exclusive service territories will aid Aquila and Platte-Clay in the long-term strategic development of electric facilities.

5. For all the foregoing reasons, the Staff believes that approval of the agreement is not detrimental to the public interest.

6. As required by §394.312.2, RSMo 2000, the Territorial Agreement specifically designates the boundaries of the service areas subject to the agreement.

7. Approval of the Territorial Agreement should also include a requirement for the filing of revised tariff sheets by Aquila to identify the areas subject to the agreement in Platte and Clay counties.

WHEREFORE, the Staff respectfully recommends to the Commission that it grant the joint application of Aquila, Inc. d/b/a Aquila Networks-MPS and Platte-Clay Electric Cooperative, Inc. for approval of their Territorial Agreement, and direct Aquila to file revised tariff sheets identifying the service areas in Platte and Clay counties.

/s/ Blane Baker

Blane Baker
Missouri Bar No. 58454

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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 12th day of April, 2007.

/s/ Blane Baker

Blane Baker

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2007-0325, In the Matter of the Application of Aquila, Inc.,
d/b/a Aquila Networks-MPS, and Platte-Clay Cooperative for Approval of
a Written Territorial Agreement Designating the Boundaries of Exclusive
Service Areas for Each Applicant within Platte and Clay County, Missouri

FROM: James L. Ketter, Energy Department – Engineering Analysis

<u>/s/ Lena M. Mantle 04/12/07</u> Energy Department / Date	<u>/s/ Blane Baker 04/12/07</u> General Counsel's Office / Date
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Subject: Staff Report and Recommendation

Date: April 12, 2007

OVERVIEW

On March 7, 2007, Aquila, Inc., d/b/a Aquila Networks-MPS (Aquila) and Platte-Clay Electric Cooperative (Platte-Clay) (collectively, Applicants) filed a Joint Application for approval of a Territorial Agreement (Agreement). This Agreement specifically designates boundaries, as between the Applicants, of exclusive service areas within portions of Platte and Clay Counties, Missouri for all new structures. Each Applicant will continue to have service responsibilities beyond the boundaries of the Agreement.

DISCUSSION

The Agreement proposes to establish exclusive service areas as to Aquila and Platte-Clay within portions of Platte and Clay Counties. Under terms of the Agreement, Aquila would be the exclusive supplier in Platte and Clay Counties, as identified in Exhibit B and Exhibit D of the Agreement. The exclusive territory of Platte-Clay is identified in Exhibit A and Exhibit C. The terms apply to new structures in the designated territories after the effective date of an order by the Commission approving this Agreement. No existing customers will be transferred as a result of the Agreement.

Duplication of facilities has occurred as Aquila and Platte-Clay sought new customers. The establishment of exclusive service territories will prevent future duplication and will allow electric service customers within these areas to know with certainty the supplier of their electric service. This will also assist emergency responders to identify which electric service provider to notify if accidents involve electric facilities. Duplication of electric facilities exposes workmen and the public to more facilities than is necessary as compared to areas where electric providers serve in exclusive territories.

Exclusive service territories will aid Aquila and Platte-Clay in the long range planning of electric facilities. Each supplier will be able to plan for the electric needs of geographic areas where it is the exclusive supplier of electric service. Economic benefits are apparent because the supplier will have all the new customers and the density of the load will be maximized because the other provider in the agreement is not authorized to serve in that exclusive service territory.

STAFF INVESTIGATION

Aquila and Platte-Clay have distribution facilities to serve customers in their exclusive territories as defined by the Agreement. The territories were outlined based upon the presence of existing facilities so that economic benefits could be maximized. Each utility has existing capacity to serve their exclusive service areas and are making plans for the load growth expected in the future. The establishment of exclusive service territories will help each electric utility in its ability to anticipate the electric needs of its customers.

Approval by the Commission of this territorial agreement should also include a requirement to file revised tariff sheets to identify the areas subject to territorial agreements in Platte and Clay Counties.

STAFF RECOMMENDATION

The Staff recommends that the Commission approve the Joint Application for the Territorial Agreement between Aquila and Platte-Clay, as being in the public interest. Staff further recommends that, if the Commission approves the Agreement, Aquila be directed to file revised tariff sheets identifying its exclusive territory pursuant to this territorial agreement.

With an approved agreement, each electric utility will be better able to plan for the future needs of its customers in each exclusive service territory. Duplication of electric facilities can be avoided which will reduce the public and worker exposure to additional overhead electric facilities.

Aquila states that it has no pending or final unsatisfied judgments or decisions against it from any state or federal agency which involve customer service or rates. Aquila has no overdue Commission annual reports or assessment fees. Platte-Clay is a rural electric cooperative and no annual reports or assessments are required from the Commission. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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Service Areas within Platte and Clay)
County, Missouri)

Case No. EO-2007-0325

AFFIDAVIT OF JAMES L. KETTER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James L. Ketter, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Report and Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Report and Investigation was given by him; that he has knowledge of the matters set forth in such Staff Report and Investigation; and that such matters are true to the best of his knowledge and belief.



James L. Ketter

Subscribed and sworn to before me this 12th day of April, 2007.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



Notary Public

My commission expires 9-21-10