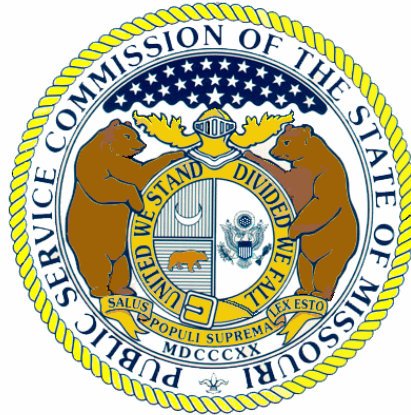


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Aquila, Inc.,)
d/b/a Aquila Networks-MPS, and 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

REPORT AND ORDER

Issue Date: July 3, 2007

Effective Date: July 5, 2007

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APPEARANCES

Paul Boudreau, Brydon, Swearingen & England, 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for Aquila, Inc., d/b/a Aquila Networks-MPS.

Renee Parsons, 20 West Ninth Street, Kansas City, Missouri, 64105, for Aquila, Inc., d/b/a Aquila Networks-MPS.

Robert Hess, Husch & Eppenberger, LLC, 235 East High Street, Jefferson City, Missouri 65101, for Platte-Clay Electric Cooperative, Inc.

Blane Baker, General Counsel's Office, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102-0360, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Benjamin H. Lane, Judge.

REPORT AND ORDER

Syllabus: This Report and Order approves an uncontested joint application for approval of a territorial agreement.

Procedural History

On March 7, 2007,¹ Aquila, Inc., d/b/a Aquila Networks-MPS (“Aquila”) and Platte-Clay Electric Cooperative, Inc., (“PCEC”) (collectively “Applicants”) filed a verified Joint Application (“Application”) requesting that the Commission determine that their proposed Territorial Agreement, which designates the service territory of each of the Applicants and was initially executed on February 28, is not detrimental to the public interest. On March 12, the Commission issued an order directing that notice of the application be given to the general public and to other potentially interested parties. That order also set an intervention deadline of April 2. There were no requests to intervene.

On April 12, the Commission’s Staff filed its recommendation and verified memorandum in support of approving the Application. No party filed an objection to Staff’s recommendation and memorandum within the deadline established by the Commission. On April 18, Aquila nevertheless requested an evidentiary hearing out of an abundance of caution,² and the Commission granted that request the same day. The evidentiary hearing,

¹ All dates throughout this order refer to the year 2007, unless otherwise noted.

² A single public comment was made by a consumer via the Commission’s website, to the effect that although PCEC’s electric service was a little more expensive than Aquila’s, PCEC “provides a much better product” than Aquila.

during which witnesses for Applicants and Staff all presented entirely uncontroverted testimony in favor of granting the Application,³ was held on May 23.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Applicants

Aquila is a Delaware corporation with its principal place of business located at 20 West Ninth Street, Kansas City, Missouri 64105. Aquila is engaged in the business of providing electrical and steam utility services in portions of Missouri. Aquila is an “electrical corporation,” a “heating company” and a “public utility” as defined in Section 386.020, and; consequently, is subject to the jurisdiction and supervision of the Commission for purposes of certificate authority or for rate regulation.⁴

PCEC is a rural electric cooperative organized and existing under Chapter 394 of the laws of Missouri. PCEC is engaged in the distribution of electric energy and service to its members within certain Missouri counties. Its principal place of business is located at 1000 West 92 Highway, Kearney, Missouri 64060. The Missouri Public Service Commission has limited jurisdiction over rural cooperatives pursuant to Section 394.160. As a rural electric cooperative, PCEC is not subject to the jurisdiction and supervision of the

³ Dennis Odell, who is one of Aquila’s senior directors for business planning, testified on behalf of Aquila, while Mike Torres testified for PCEC in his capacity as PCEC’s CEO and general manager. James Ketter, a temporary engineer in the engineering analysis section of the Commission’s utility operations division, testified for Staff. Although the Office of the Public Counsel (“OPC”) filed a position statement on May 10 indicating that it concurred with the other parties that the Application was not detrimental to the public interest and should be granted, OPC did not call any witnesses and did not participate in the evidentiary hearing.

⁴ See Sections 386.020(15) and (42), RSMo 2000. All statutory references are to RSMo 2000 unless otherwise noted.

Commission for purposes of certificate authority or for rate regulation.⁵ However, Section 394.312 gives the Commission jurisdiction over the approval of territorial agreements concerning the sale and distribution of electricity, even if the parties are not normally subject to the jurisdiction of the Commission with regard to other matters.

The Proposed Territorial Agreement

In their Joint Application, the Applicants submitted a Territorial Agreement (“Agreement”) for the Commission’s approval. Concurrent with the filing of the Joint Application, the Applicants submitted the fee required by Section 394.312.7 and delineated in Commission Rule 4 CSR 240-3.130(3).

The Agreement specifically establishes exclusive service territories for Aquila and PCEC in four tracts of land within Clay and Platte Counties, Missouri, and only applies to new structures in the designated territories. The Agreement does not require transfer of any facilities or customers between the Applicants, and does not involve any change of suppliers to existing customers or members. The Agreement allows for more orderly future planning and development of electric service to the public, preventing duplication of facilities and services and benefiting customers, electrical workers and emergency responders alike. Aquila and PCEC will continue to have service responsibilities beyond the boundaries of the Agreement which are unaffected by the terms of the agreement.

A copy of the Agreement, which was admitted into evidence at the hearing as Exhibit 1, was included with the Applicants’ application as Appendix B. Legal descriptions of the four exclusive service areas and maps depicting the service areas are included as a part of the Agreement, as required by 4 CSR 240-3.130(1)(A), and were submitted with the Agreement and attached as Exhibits A through D. Pursuant to the terms of the Agreement,

⁵ See Section 394.160.1.

Aquila would be the exclusive supplier in Platte and Clay Counties as shown on Exhibits B and D, while PCEC's exclusive territory is identified in Exhibits A and C. Staff's verified memorandum in support of approving the Application was also admitted into evidence as Exhibit 2.

The parties and their witnesses are all in agreement that the Joint Application and the Agreement meet the requirements of all applicable statutes and Commission Rules.⁶ They further agree that the Agreement should be approved since it is not detrimental to the public interest.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Territorial Agreement

Section 394.312 gives the Commission jurisdiction over territorial agreements concerning the sale and distribution of electricity. Under Section 394.312.4, the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest. Based on a thorough examination of the verified Joint Application and accompanying appendices, Staff's recommendation and verified memorandum, and the unchallenged testimony of witnesses Dennis Odell, Mike Torres and James Ketter, the Commission finds that the territorial agreement will not be detrimental to the public interest.

Decision

Having considered all of the competent and substantial evidence on the record before it, including the Applicants' verified Joint Application and Staff's recommendation

⁶ Sections 394.312 and 416.041.3; 4 CSR 240-2.060 and 4 CSR 240-3.130.

and verified memorandum in support of approval, as well as the unchallenged and entirely consistent testimony of all the witnesses who testified at the evidentiary hearing, the Commission concludes that the Territorial Agreement executed by Aquila, Inc., d/b/a Aquila Networks-MPS and Platte-Clay Electric Cooperative, Inc. on February 28, 2007, is in the public interest and shall be approved.

IT IS ORDERED THAT:

1. The February 28, 2007 Territorial Agreement between Aquila, Inc., d/b/a Aquila Networks-MPS and Platte-Clay Electric Cooperative, Inc., is approved.

2. Any modifications in, or amendments to, the Territorial Agreement between Aquila, Inc., d/b/a Aquila Networks-MPS and Platte-Clay Electric Cooperative, Inc., must be reviewed and approved by the Commission.

3. No later than 30 days after effective date of this order, Aquila, Inc., d/b/a Aquila Networks-MPS shall file with the Missouri Public Service Commission revised tariff sheets identifying the maps and legal descriptions of the exclusive territories it obtains from the Territorial Agreement between Aquila, Inc., d/b/a Aquila Networks-MPS and Platte-Clay Electric Cooperative, Inc. The revised tariff sheets shall be filed as a non-case filing.

4. This order shall become effective on July 5, 2007.
5. This case may be closed on July 6, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur and certify
compliance with the provisions of
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 3rd day of July, 2007.