

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

May 23, 2007
Jefferson City, Missouri
Volume 1

In the Matter of the)
Application of Aquila, Inc.,)
d/b/a Aquila Networks-MPS,)
and Platte-Clay Electric)
Cooperative, Inc. for Approval)Case No. EO-2007-0325
of a Written Territorial)
Agreement Designating the)
Boundaries of Exclusive)
Service Areas within Platte)
and Clay County, Missouri)

BENJAMIN LANE, Presiding,
REGULATORY LAW JUDGE

REPORTED BY:

PAMELA FICK, RMR, RPR, CCR #447, CSR

1 A P P E A R A N C E S

2

3 ROBERT HESS, Attorney at Law
4 Husch & Eppenberger
5 235 East High Street
6 Jefferson City, Missouri 65101
7 (573) 635-9118

8 FOR: Platte-Clay Electric
9 Cooperative.

10

11

12 RENEE PARSONS, Attorney at Law
13 20 West Ninth Street
14 Kansas City, Missouri 64105
15 (816) 421-6600

16

17 PAUL BOUDREAU, Attorney at Law
18 Brydon, Swearngen & England
19 312 East Capitol Avenue
20 P.O. Box 456
21 Jefferson City, Missouri 65102
22 (573) 635-7166

23 FOR: Aquila.

24

25

BLANE BAKER, Litigation Attorney
P.O. Box 360
200 Madison Street
Jefferson City, MO 65102
(573) 751-3234

26

27 FOR: Staff of the Missouri Public
28 Service Commission.

29

30

31

32

| | | |
|----|---|----|
| 1 | I N D E X | |
| 2 | Opening Statement by Ms. Parsons | 10 |
| | Opening Statement by Mr. Hess | 11 |
| 3 | Opening Statement by Mr. Baker | 12 |
| 4 | | |
| | Closing Statement by Ms. Parsons | 46 |
| 5 | Closing Statement by Mr. Hess | 46 |
| | Closing Statement by Mr. Baker | 46 |
| 6 | | |
| 7 | | |
| 8 | AQUILA'S EVIDENCE | |
| 9 | DENNIS ODELL | |
| | Direct Examination by Ms. Parsons | 15 |
| 10 | Questions by Commissioner Appling | 24 |
| 11 | | |
| 12 | | |
| 13 | PLATTE-CLAY ELECTRIC COOPERATIVE, INC.'S EVIDENCE | |
| 14 | MIKE TORRES | |
| | Direct Examination by Mr. Hess | 27 |
| 15 | Questions by Commissioner Appling | 36 |
| | Questions by Judge Lane | 37 |
| 16 | | |
| 17 | | |
| 18 | STAFF'S EVIDENCE | |
| 19 | JAMES KETTER | |
| | Direct Examination by Mr. Baker | 38 |
| 20 | Questions by Commissioner Appling | 43 |
| | Questions by Judge Lane | 44 |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

| | EXHIBITS INDEX | | |
|----|-----------------------|--------|-------|
| | | MARKED | REC'D |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | Exhibit No. 1 | | |
| 5 | Territorial agreement | | |
| 6 | with the supporting | | |
| 7 | exhibits | 5 | 27 |
| 8 | | | |
| 9 | Exhibit No. 2 | | |
| 10 | Staff's memorandum | 5 | 42 |
| 11 | | | |
| 12 | | | |
| 13 | | | |
| 14 | | | |
| 15 | | | |
| 16 | | | |
| 17 | | | |
| 18 | | | |
| 19 | | | |
| 20 | | | |
| 21 | | | |
| 22 | | | |
| 23 | | | |
| 24 | | | |
| 25 | | | |

1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 AND 2 WERE MARKED FOR
3 IDENTIFICATION BY THE COURT REPORTER.)

4 JUDGE LANE: Let's go ahead and go on
5 the record. We'll bring the hearing to order. My
6 name is Benjamin Lane. I'm the regulatory law judge
7 presiding over this hearing.

8 I want to welcome Commissioner Appling
9 to the bench here who is going to be here with us
10 today. It's Wednesday, May 23rd, 2007, and it's
11 about 10:10, which is the scheduled time for our
12 hearing.

13 This is an evidentiary hearing in Case
14 No. EO-2007-0325 which is captioned In the Matter of
15 the Application of Aquila, Inc. d/b/a Aquila
16 Networks-MPS and Platte-Clay Electric Cooperative,
17 Inc. for Approval of a Written Territorial Agreement
18 Designating the Boundaries of the Exclusive Areas
19 Within Platte and Clay County, Missouri.

20 Our court reporter this morning is Pam
21 Fick. Thank you, Pam. And I know you have
22 entered -- made written entries of appearance, but if
23 we can go ahead and do oral entries as well because I
24 see a few faces out there that I am seeing for the
25 first time. And if we could go ahead with oral

1 entries of appearance beginning with, let's say,
2 Staff.

3 MR. BAKER: Blane Baker, appearing on
4 behalf of Staff of the Missouri Public Service
5 Commission, P.O. Box 360, Jefferson City, Missouri
6 65102.

7 JUDGE LANE: Thank you, Mr. Baker.
8 Office of Public Counsel?

9 (NO RESPONSE.)

10 JUDGE LANE: No appearance for Office of
11 Public Counsel. Aquila?

12 MS. PARSONS: Yes, your Honor. Renee
13 Parsons with Aquila, 20 West Ninth Street, Kansas
14 City, Missouri 64105, and Paul Boudreau with Brydon,
15 Swearngen and England, 312 East Capitol Avenue, P.O.
16 Box 456, Jefferson City, Missouri 65102.

17 JUDGE LANE: Thank you, Ms. Parsons and
18 Mr. Boudreau. Platte-Clay Electric Cooperative?

19 MR. HESS: Robert Hess of Husch &
20 Eppenberger for Platte-Clay Electric Cooperative, 235
21 East High Street, Jefferson City, Missouri 65101.

22 JUDGE LANE: Is that Hess, H-e-s-s?

23 MR. HESS: H-e-s-s.

24 JUDGE LANE: Thank you very much,
25 Mr. Hess. Does that complete all the entries of

1 appearance? Anybody here appearing on behalf of any
2 of the parties that I -- that have not already
3 entered your appearance?

4 (NO RESPONSE.)

5 JUDGE LANE: Very well. Let me just
6 start out with just a few initial remarks. First of
7 all, I want to advise everyone in the audience and
8 counsel and all witnesses to please turn off all of
9 your cell phones or BlackBerry devices, and I mean
10 actually power them off, not just mute them. The
11 electronic signals they emit can affect our video
12 streaming system and cause issues, and it has
13 happened in the past. So if you'd please turn off
14 those devices, I would appreciate it very much.

15 Nearly all the procedural matters have
16 been addressed in previous orders and filings by the
17 parties. All the parties are in agreement that
18 pursuant to Section 394.312.4, the sole issue to be
19 determined by the Commission in this matter is
20 whether or not the proposed territorial agreement
21 between Aquila and Platte-Clay Electric is not
22 detrimental to the public interest.

23 In fact, all the parties concur that the
24 agreement meets the statutory test leading OPC to
25 actually argue that because there are no contested

1 issues, this hearing is unnecessary. Nevertheless, a
2 hearing was requested and a hearing was granted, so
3 we're going to go ahead with the hearing.

4 As far as premarking exhibits, we've
5 already taken care of that. I like to leave it up to
6 the parties whether we want to premark or mark as we
7 go along. Before we went on the record we did -- the
8 parties did premark their exhibits. There are only
9 two.

10 And so those have been premarked and we
11 will address any issues regarding those exhibits when
12 we get to the point where those are going to be
13 admitted into evidence.

14 The scheduling order issued by the
15 Commission on April 18th indicated -- or asked the
16 parties to designate various matters including the
17 order of opening statements and so forth.

18 Pursuant to those filings, we're going
19 to start the hearing with the opening statements in
20 the following order: Aquila will begin, Platte-Clay
21 Electric Co-op will follow them, then Staff, then
22 OPC, but OPC is not present so we'll just have three
23 opening statements here.

24 The witnesses have also been identified
25 for this hearing. Aquila has indicated they intend

1 to call Mr. Dennis Odell; Platte-Clay, Mr. Mike
2 Torres; Staff, Mr. James Ketter. And OPC had no
3 witnesses.

4 And finally, as indicated in the
5 Commission's scheduling order of April 18th, we will
6 have closing statements in lieu of post hearing
7 briefs. We're dispensing of post hearing briefs in
8 this matter. The order of the closing statements
9 will be the same as the opening statements.

10 So are there any other preliminary
11 matters that need to be resolved before we go ahead
12 and start the hearing proper?

13 (NO RESPONSE.)

14 JUDGE LANE: No? Very well. Normally
15 we take a short recess while the commissioners join
16 us. Commissioner Appling is already here. It's my
17 understanding that the other commissioners, I think,
18 having been pretty exhausted the last couple of weeks
19 with the Aquila and the various rate cases they've
20 been dealing with, I think Commissioner Appling will
21 be the only commissioner with us here today for this
22 hearing, for portions of the hearing.

23 So we might as well let's go ahead,
24 then, and start with opening statements. Aquila,
25 Ms. Parsons?

1 MS. PARSONS: May it please the
2 Commission. Aquila, Inc. and Platte-Clay Electric
3 Co-op, the applicants in this case, executed a
4 territorial agreement on February 28th, 2007
5 designating boundaries in four areas -- service areas
6 in Platte and Clay Counties.

7 Aquila was given a Certificate of
8 Convenience and -- a Certificate of Convenience and
9 Necessity which is ordered by the Commission in Case
10 No. 8638 authorizing it to provide service in various
11 areas within Clay and Platte Counties.

12 The applicants filed an application for
13 approval of the territorial agreement on March 7,
14 2007. No parties intervened, and on April 12th, the
15 Staff filed a recommendation that the Commission
16 approve the territorial agreement because it was not
17 detrimental to the public interest.

18 Aquila filed a motion requesting a
19 hearing. No one objected and a hearing was granted,
20 and that's what brings us here today.

21 The evidence that will be presented
22 today will show that the territorial agreement is not
23 detrimental to the public interest for several
24 reasons, including that it prevents future
25 duplication of services for customers within those

1 service areas, and it established -- establishes with
2 certainty which electric service provider will be
3 providing service to certain customers within those
4 designated areas.

5 And it establishes exclusive service
6 territories for new structures in that Aquila would
7 ask the Commission to approve the territorial
8 agreement because it is not detrimental to the public
9 service -- or excuse me, to the public interest.
10 Thank you.

11 JUDGE LANE: Thank you, Ms. Parsons.
12 The next opening statement, Platte-Clay Electric
13 Cooperative. Mr. Hess?

14 MR. HESS: May it please the Commission.
15 Platte-Clay Electric -- Platte-Clay Electric
16 Cooperative requests that this Commission approve its
17 territorial agreement with Aquila pursuant to Section
18 394.312 RSMO. The agreement is fair and promotes the
19 public interest by eliminating the need for
20 duplicatation of facilities, promoting orderly
21 development of retail electric service in the
22 affected areas and minimizing risk and uncertainty
23 for emergency service workers.

24 The agreement does not require any
25 existing customer to change suppliers and generally

1 promotes the public interest. No party has
2 intervened to oppose approval. Platte-Clay Electric
3 Cooperative, Aquila, the Commission's Staff and the
4 Public Counsel all -- all agree it should be
5 approved, and therefore we request the Commission
6 approve the territorial agreement.

7 JUDGE LANE: Thank you, Mr. Hess.
8 Staff, Blane -- Mr. Baker?

9 MR. BAKER: May it please the
10 Commission. Aquila, Inc. and Platte-Clay Electric
11 Cooperative are here today seeking approval of the
12 territorial agreement. This agreement between Aquila
13 and Platte-Clay specifically designates boundaries of
14 exclusive service areas within parts of Platte and
15 Clay Counties.

16 Some benefits which may result from the
17 establishment of the exclusive service -- service
18 territories include preventing any future duplication
19 of electric facilities, assisting emergency
20 responders and identifying which electric service
21 provider to notify if an accident may occur, and
22 aiding Aquila and Platte-Clay in the long-range
23 planning of electric facilities.

24 As defined in the agreement, Aquila and
25 Platte-Clay have distribution facilities to serve

1 customers in their exclusive territories. The
2 territories were outlined based upon the presence of
3 existing facilities so that economic benefits could
4 be maximized for both Aquila and Platte-Clay.

5 Staff recommends the Commission approve
6 the joint application for territorial agreement
7 between Aquila and Platte-Clay as being in the public
8 interest.

9 Staff further recommends that if the
10 agreement is approved by the Commission, Aquila be
11 directed to file revised tariff sheets identifying
12 its exclusive territory pursuant to this territorial
13 agreement.

14 JUDGE LANE: Thank you, Mr. Baker. That
15 concludes the opening statements. Ms. Parsons, you
16 may call your first witness.

17 MS. PARSONS: Aquila calls Dennis Odell.

18 JUDGE LANE: Mr. Odell, would you please
19 raise your right hand?

20 (THE WITNESS WAS SWORN.)

21 JUDGE LANE: Thank you, sir. You may
22 inquire.

23 MS. PARSONS: Just as a couple
24 preliminary matters, I'd on the record like to
25 indicate that the parties have stipulated to two

1 exhibits. Exhibit 1 is the territorial agreement
2 with the supporting exhibits, and then Exhibit 2 is
3 Staff's memorandum.

4 And also as a preliminary matter, the
5 territorial agreement that was marked as Exhibit 1
6 was Aquila's exhibit, and the copies that I brought
7 today were missing a couple of pages in the exhibit
8 section. And so Mr. Hess brought additional copies,
9 so I supplied those to the parties, but the exhibit
10 that is marked is -- contains all the pages.

11 JUDGE LANE: All right. So the copy --
12 the original copy that was marked as Exhibit 1 is the
13 correct and complete copy for record purposes?

14 MS. PARSONS: Correct.

15 JUDGE LANE: And the one that may be
16 offered into evidence later?

17 MS. PARSONS: Correct. That's been
18 stipulated into evidence.

19 JUDGE LANE: Yes. Would you please
20 provide -- just so that we're all on the same page,
21 would it be possible for you to provide sometime
22 after the hearing additional copies of that perfected
23 version?

24 MS. PARSONS: Yes.

25 JUDGE LANE: So that we're not -- you

1 know, just to make sure ...

2 MS. PARSONS: Absolutely. Yes, your
3 Honor.

4 JUDGE LANE: All right. Thank you very
5 much.

6 DIRECT EXAMINATION BY MS. PARSONS:

7 Q. Mr. Odell, would you state and spell
8 your name for the record and tell us what capacity
9 you're employed and your business address?

10 A. My name is Dennis Odell, D-e-n-n-i-s,
11 O-d-e-l-l. I am employed by Aquila, Inc. at 10700
12 East 350 Highway, Kansas City, Missouri, and my job
13 title is senior director of business planning.

14 Q. And what are your job responsibilities?

15 A. My responsibilities are the development
16 and implementation of Aquila's Missouri electric
17 business strategy for its distribution transmission
18 and machine businesses.

19 Q. And can you provide a brief
20 background -- or brief description of your background
21 and educational -- your work experience and your
22 educational background?

23 A. I can. I have been employed by Aquila
24 for about 14 years now in a variety of roles
25 including -- including some time in regulatory as

1 well as in gas supply services. I've been in my
2 current position now for a little bit over a year. I
3 also -- as far as education goes, I have a bachelor's
4 degree and a master's of business administration from
5 the University of Nebraska, Omaha.

6 Q. Thank you. And can you please describe
7 the nature of the operations for Aquila Networks-MPS?

8 A. Yes, Aquila -- Aquila MPS serves a
9 couple of hundred thousand retail customers,
10 distribution and transmission in the western Missouri
11 area.

12 Q. And are Platte and Clay Counties located
13 within the MPS public service territory?

14 A. They are.

15 Q. And does Aquila Networks-MPS provide
16 regulated electric service to customers located in
17 Platte City, Missouri?

18 A. Yes, it does.

19 Q. Does Aquila Networks-MPS provide
20 regulated electric service within the corporate
21 boundaries of -- excuse me, within Platte and Clay
22 Counties?

23 A. Yes, it does.

24 Q. And does the territorial agreement give
25 Platte-Clay Electric Cooperative the authority to

1 serve any town, city or municipality that exceeds
2 1,500 inhabitants besides Platte City?

3 A. No.

4 Q. And are there any other electric service
5 providers within Platte City, Missouri?

6 A. Aquila and Platte-Clay Electric
7 Cooperative are the only two.

8 Q. And can you explain to me why
9 Platte-Clay Electric Cooperative would be providing
10 service in Platte City, Missouri currently?

11 A. This was an existing and actually is an
12 existing territorial agreement between Aquila and
13 Platte-Clay Electric that dates back to, I believe,
14 1991 that set out certain territorial boundaries, and
15 over time Platte City has expanded into those areas.

16 Q. And is Aquila proposing any revisions to
17 its tariffs or rate schedules as part of this case?

18 A. No, it's not.

19 Q. And are you familiar with the
20 territorial agreement that's the subject of this
21 hearing today?

22 A. I am.

23 Q. And can you briefly describe the
24 provisions within that agreement?

25 A. The territorial agreement basically sets

1 out four separate areas, two that would be exclusive
2 service territories of Aquila, and two that would be
3 exclusive to Platte-Clay Electric Cooperative.

4 Generally speaking, the two that are
5 exclusive to Aquila would be the areas roughly around
6 Platte City to the northeast and west, and also the
7 areas around Smithville. The areas that would be
8 exclusive to Platte-Clay Electric would be the area
9 south of Platte City and then an area that's between
10 Platte City and Smithville.

11 Q. Okay. And as part of the territorial
12 agreement, were there any surveys done of the area
13 that's gonna be designated to Platte-Clay Electric
14 Cooperative's exclusive service area?

15 A. There was a survey done that's --
16 basically laid out the meets and bounds of the -- of
17 the various areas.

18 Q. And were those meets and bounds
19 descriptions contained as part of the territorial
20 agreement?

21 A. Yes, they are.

22 Q. And what relief are the applicants,
23 Aquila and Platte-Clay Electric Cooperative, asking
24 from the Commission today?

25 A. We're seeking the Commission's approval

1 of our application to -- to basically effectuate this
2 agreement between the parties.

3 Q. And are there currently any existing --
4 well, you've indicated there is an existing
5 territorial agreement between the parties. And is it
6 set to expire upon the approval of this agreement?

7 A. This agreement would supersede any
8 previous agreements, including that one.

9 Q. And can you give a brief review or
10 history of the circumstances that gave rise to the
11 development of this territorial agreement?

12 A. The parties -- the parties began
13 negotiations in earnest probably around July of last
14 year and throughout several months of exchanging
15 various -- various proposals and trying to reach some
16 resolution of those issues, which areas each party
17 should serve.

18 We eventually were able to come to the
19 agreement that is listed here today. We probably
20 met, I would be estimating, I'd say maybe eight times
21 or so and exchanged maps of various different
22 alternatives a number of times. Eventually we -- we
23 came to an agreement on this -- on this for our own
24 individual reasons.

25 Q. And did you have an opportunity to speak

1 with any of the city administrator or the mayor or
2 anybody from the city council of Platte City with
3 respect to this agreement?

4 A. Yes. The administration of the city
5 was -- was kept aware of the progress of our
6 negotiation throughout the entire process, and we
7 have subsequently made available to Mayor -- Mayor
8 David Brooks as well as the city administrator, Keith
9 Moody in Platte City the ultimate agreement and
10 they're very well aware of it, yes.

11 Q. And to your knowledge do they support
12 the agreement?

13 A. Yes, they do.

14 Q. And can you briefly just describe the
15 exclusive service areas that are designated to the
16 Platte-Clay Electric Co-op as outlined in Exhibits A
17 and C to the territorial agreement? Do you need to
18 see a copy of the exhibit?

19 A. No, I have it. I could just read the
20 meets and bounds, if you'd like.

21 JUDGE LANE: Please, no.

22 THE WITNESS: Find the first map here.
23 In Exhibit A, Exhibit A contains the areas that would
24 be exclusive. One of the areas that would be
25 exclusive to Platte-Clay Electric, and as I described

1 earlier, basically is the areas primarily to the
2 south of Platte City bounded by the river on the --
3 on the west and running over basically to about the
4 eastern boundary of where Platte City would be. Oh,
5 you asked me about the other one as well.

6 BY MS. PARSONS:

7 Q. Yeah, Exhibit C.

8 A. Exhibit C. This is the area, again,
9 that's exclusive to Platte-Clay. And it's roughly, I
10 guess, 18 square miles of territory that's primarily
11 between -- or east of Platte City and west of
12 Smithville.

13 Q. Okay. And can you describe for us the
14 exclusive service area that's designated to Aquila as
15 outlined in Exhibits B and D?

16 A. Certainly. In B this is the areas
17 around Platte City that are exclusive to Aquila, and
18 as you see, it more or less surrounds the northeast
19 and west portions of Platte City.

20 And then in D, this is the area that
21 surrounds Smithville. This area basically runs from
22 the southern part of Smithville north along the
23 western -- western edge of Smithville and then wraps
24 around to the northern part of the -- north area of
25 Smithville as well. There are a couple of small

1 areas on the -- on the east side of Smithville as
2 well.

3 Q. And what were the specific
4 considerations that went in to determining what areas
5 would be designated exclusive service areas for
6 Platte-Clay Electric Cooperative?

7 A. Well, we -- we spent a great deal of
8 time in comparing maps of facilities and looking at
9 where Platte-Clay's electric facilities already
10 existed as well as where Aquila's existed, as well as
11 considering what future growth patterns were in areas
12 where -- where both parties, where either party
13 intended to continue to put new facilities in and new
14 substations and whatnot.

15 So as we looked at those maps, we looked
16 at a lot of different iterations, some that were very
17 large in scope, others that were very small in scope,
18 and ultimately concluded, mutually I believe, that
19 the areas south of Platte City were being
20 predominantly served by Platte-Clay Electric
21 Cooperative already. And it seemed to make some
22 sense to make that exclusive to them.

23 And a similar situation existed in the
24 areas around Smithville with Aquila being the primary
25 provider. So those were two areas that were agreed

1 upon. And then -- and then there was some other
2 exchange of territories in order to ensure an
3 equitable overall split.

4 Q. And what public interest benefits are
5 advanced by this agreement?

6 A. Well, the reason -- you know, one of the
7 main reasons why we were interested in doing an
8 agreement like this with Platte-Clay was that -- was
9 that it becomes difficult when you're both providing
10 service in a given area. The duplication of
11 facilities is not generally economically viable, and
12 also it creates safety issues in terms of which
13 electric provider is in an area.

14 It provides -- it eliminates the
15 confusion that developers would otherwise have, not
16 sure which -- which provider would -- would be best
17 able to provide them service. So there are a number
18 of benefits along those lines that we were able to
19 achieve through this agreement.

20 Q. And do you believe the terms and
21 provisions of the territorial agreement are in the
22 public interest?

23 A. I do.

24 Q. And will any customers of -- current
25 customers of Platte-Clay Electric Cooperative or

1 Aquila have to transfer services under this
2 agreement?

3 A. No. One of the provisions of the
4 agreement specifically states that we will not
5 exchange any existing customers. This is -- this is
6 strictly about future development.

7 Q. Does it assign any customers any
8 specific service provider?

9 A. It does not.

10 Q. And then, have any parties intervened to
11 your knowledge?

12 A. Not to my knowledge.

13 Q. And does this conclude your testimony?

14 A. It does.

15 MS. PARSONS: And I have no further
16 questions of this witness and at this time would like
17 to tender the witness for cross-examination.

18 JUDGE LANE: Thank you very much.

19 Cross-examination, Platte-Clay?

20 MR. HESS: No questions, your Honor.

21 JUDGE LANE: Staff?

22 MR. BAKER: No questions.

23 JUDGE LANE: Commissioner Appling?

24 QUESTIONS BY COMMISSIONER APPLING:

25 Q. All right. My first question is, why

1 are we here this morning? No, I was just joking with
2 you there.

3 Mr. Odell, is it my understanding that
4 Aquila -- is Platte-Clay Electric what we're talking
5 about?

6 A. That's right.

7 Q. That you-all have come to an agreement
8 on what you want to do on this?

9 A. That is correct.

10 Q. And so it's just a matter of this
11 formality here this morning to get this straight and
12 get this on the record so that we can proceed with
13 what it is that you're asking for?

14 A. That's correct. Our agreement would not
15 be effective until we have Public Service Commission
16 approval.

17 Q. Okay. Do you have anything else that I
18 need to hear here to hold this up for another six
19 months?

20 A. No, sir. I believe this is a -- this is
21 a deal that was the result of vigorous negotiations
22 between the two parties, and I believe that it's in
23 the best interest of the public as well as Aquila.

24 Q. And you-all do agree that this is the
25 right thing to do?

1 A. I do.

2 Q. And this is not detrimental to the
3 people up there in your location?

4 A. No. In fact, quite the contrary, sir.

5 COMMISSIONER APPLING: Okay. Thank you
6 very much, sir.

7 JUDGE LANE: I have no questions. Any
8 recross based on Commissioner Appling's questions
9 from the bench?

10 Platte-Clay?

11 MR. HESS: No questions.

12 JUDGE LANE: Staff?

13 MR. BAKER: No questions.

14 JUDGE LANE: Any redirect?

15 MS. PARSONS: No redirect.

16 JUDGE LANE: Thank you very much for
17 your testimony. You may step down and you are
18 finally excused. I do not think the commissioners
19 will have any additional questions for you later.

20 Ms. Parsons, do you have any other
21 additional witnesses?

22 MS. PARSONS: No, your Honor.

23 JUDGE LANE: All right. In that case,
24 Mr. Hess?

25 MR. HESS: Platte-Clay Electric

1 Cooperative would like to call Mike Torres to the
2 stand.

3 JUDGE LANE: Welcome, Mr. Torres. Would
4 you please raise your right hand?

5 (THE WITNESS WAS SWORN.)

6 JUDGE LANE: Thank you very much.
7 Mr. Hess, you may inquire.

8 MR. HESS: As a preliminary matter,
9 Ms. Parsons indicated that the parties have
10 stipulated to the admissibility of Exhibit 1. I'd
11 just like to formally offer that into evidence.

12 JUDGE LANE: Exhibit 1 has been offered
13 into evidence by Platte-Clay. Are there -- do I hear
14 any objections?

15 MR. BAKER: No objection.

16 JUDGE LANE: Hearing none, it is
17 admitted.

18 (EXHIBIT NO. 1 WAS RECEIVED INTO
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 DIRECT EXAMINATION BY MR. HESS:

21 Q. Mr. Torres, can you state your name,
22 capacity and business address?

23 A. My name is Michael R. Torres. The
24 address is 1000 West Highway 92, Kearney, Missouri
25 64060, and I am CEO and general manager of

1 Platte-Clay Electric.

2 Q. And do you reside in Clay County?

3 A. I do.

4 Q. All right. And what are your job
5 responsibilities as the chief executive officer
6 and general manager of Platte-Clay Electric
7 Cooperative?

8 A. The overall management and day-to-day
9 operations of electric systems and electric co-ops.

10 Q. All right. And can you provide a brief
11 description of your educational background and
12 professional designations and business expertise?

13 A. I have a bachelor of business
14 administration from the University of New Mexico with
15 a concentration in economic and finance, and I have
16 completed substantially all of my academic
17 requirements for a master's degree from the
18 University of California.

19 Q. Do you have previous professional
20 experience in this industry?

21 A. I've been employed in the rural electric
22 cooperative industry for about 34 years with a short
23 intermission while I was employed in the refined
24 fuels industry.

25 Q. Are you familiar with the territorial

1 agreement and application for approval which is the
2 subject of this case?

3 A. Yes, I am.

4 MR. HESS: May I approach the witness?

5 JUDGE LANE: Of course.

6 BY MR. HESS:

7 Q. I've handed you a document that the
8 parties have marked as Exhibit 1. Can you tell me
9 what that document is?

10 A. This is the territorial agreement
11 between Platte-Clay Electric Cooperative and Aquila,
12 Inc.

13 Q. All right. Thank you. And in this
14 proceeding, what relief are the applicants requesting
15 from the Commission?

16 A. We're asking the Commission to find that
17 this territorial agreement is not detrimental to the
18 public interest, and we're asking the Commission to
19 approve it.

20 Q. All right. Are there any other
21 currently existing territorial agreements between
22 Platte-Clay Electric Cooperative and Aquila?

23 A. Yes, there is. There is an existing
24 territorial agreement that we're operating under at
25 the present time with Aquila.

1 Q. All right. And will that agreement be
2 superseded by the agreement in Exhibit 1?

3 A. That will be superseded in its entirety
4 and replaced with this agreement.

5 Q. Could you give a brief review of the
6 history and circumstances that gave rise to this
7 territorial agreement that we're discussing in this
8 case?

9 A. Approximately middle of the summer of
10 2006, both utility companies were contacted by the
11 City of Platte City and asked to consider discussions
12 regarding new territorial agreement as the city was
13 contemplating an annexation at the time.

14 We contacted Aquila or they contacted
15 us, I forget which one made the initial contact. We
16 sat down and began discussions in earnest and
17 negotiations that culminated in this territorial
18 agreement.

19 Q. And why were the discussions between
20 Aquila and Platte-Clay Electric Cooperative
21 successful in reaching an agreement?

22 A. I believe that both parties, Aquila and
23 Platte-Clay Electric, were interested in operating
24 their electric system in the most efficient manner
25 possible for the interest of the general public.

1 And what that also means is primarily
2 the elimination of duplicate facilities and redundant
3 equipment which lowers the capital investment cost
4 and allows you to operate your electric system more
5 economically. It provides for a more pleasing
6 community, and it also enhances safety for emergency
7 providers.

8 Q. All right. And to summarize the terms
9 of the territorial agreement, the territorial
10 agreement establishes an exclusive area where
11 Platte-Clay Electric Cooperative will operate,
12 correct?

13 A. That's correct.

14 Q. And it also operates exclusive areas
15 where Aquila will operate; is that correct?

16 A. That's correct.

17 Q. And looking at the agreement that's been
18 marked as Exhibit 1, are the exclusive areas of
19 Platte-Clay Electric Cooperative outlined in
20 Exhibits A and C to this territorial agreement?

21 A. That's correct, they are.

22 Q. And are the exclusive areas for Aquila
23 outlined in Exhibits B and D of the agreement?

24 A. That's correct also.

25 Q. All right. And then Exhibit E to the

1 agreement is a composite map showing where each --
2 each company will be exclusively operating; is that
3 correct?

4 A. Yes, that's correct.

5 Q. And then Exhibit F lists several
6 additions. Could you tell us what those additions
7 are that are listed on Exhibit F?

8 A. Exhibit F is a list of nine additions,
9 an addition being a small subdivision. And those
10 particular subdivisions reside within exclusive
11 service territory of Aquila as provided for in this
12 territorial agreement.

13 And we both believed it was in the
14 public interest for Platte-Clay to be able to
15 continue serving in those additions because we
16 already had facilities in those subdivisions or in
17 those additions. And to do otherwise would have
18 provided for additional duplication of facilities,
19 and we thought it would be less disturbance to the
20 general public to proceed with Platte-Clay serving
21 it.

22 Q. All right. So the subdivisions in
23 Exhibit F are subdivisions that Platte-Clay currently
24 provides power to, and under this agreement you will
25 continue to provide power to them even though they're

1 within the exclusive territory of Aquila?

2 A. That's correct, and to finish serving in
3 the addition if there's another lot that needs
4 electric service.

5 Q. Very good. What were the specific
6 considerations that went into determining what would
7 be the exclusive areas of Platte-Clay Electric
8 Cooperative?

9 A. The primary consideration that was given
10 in negotiation and discussion of this territorial
11 agreement was duplication of electric facilities.
12 And we believe that it's in the public's best
13 interest to eliminate duplication of facilities as
14 much as possible.

15 As I stated earlier, this allows for
16 less capital investment to provide service to a
17 general area which is in the public's best interest
18 to keep rates as low as possible. It provides better
19 economics on a day-to-day operating basis when it
20 comes to dispatching line crews.

21 It provides a more aesthetic community
22 when you do not have duplicate electric facilities on
23 either side of a highway or in the community, and it
24 does provide for a safer environment for emergency
25 responders when they need to do their job.

1 Q. Will Platte-Clay Electric Cooperative
2 need to obtain any franchise agreement with Platte
3 City, Missouri to serve the territory as set out in
4 the territorial agreement?

5 A. Yes, we will.

6 Q. All right. And is that process
7 proceeding?

8 A. We have begun that process and have a
9 preliminary application on file with the City of
10 Platte City.

11 Q. To your knowledge, are there any legal
12 limitations on the authority of Platte-Clay Electric
13 Cooperative to serve the customers located within the
14 exclusive territories assigned to Platte-Clay
15 Electric Cooperative under the territorial agreement?

16 A. No, there are not.

17 Q. All right. What resources does
18 Platte-Clay Electric Cooperative have that will
19 permit it to properly and effectively serve the
20 territory that's been set aside to it under the
21 agreement?

22 A. Platte-Clay Electric has an operating
23 electric utility system in the immediate area
24 comprised of transmission and distribution facilities
25 including transmission lines, transmission

1 substation, primary distribution lines, secondary
2 equipment necessary to provide service.

3 Q. Will any customers of Platte-Clay
4 Electric Cooperative or Aquila have to be transferred
5 or assigned under the terms of the proposed
6 agreement?

7 A. No, they will not.

8 Q. All right. Are there any provisions in
9 the territorial agreement to handle additions to
10 exclusive service areas allotted?

11 A. Yes, there is.

12 Q. And are those handled in Article 6 and
13 Section 11.4 of the territorial agreement? And you
14 can refer to Exhibit 1 if you need to.

15 A. Yes, that's correct.

16 Q. Do you believe the terms and provisions
17 of the territorial agreement are in the public
18 interest?

19 A. I do.

20 Q. Are you aware of any party that's
21 opposed the approval of the territorial agreement or
22 intervened in this case?

23 A. No, I am not.

24 Q. And just to sum up, what is it you're
25 asking the Commission to do today?

1 A. We're asking the Commission to find that
2 this territorial agreement is not detrimental to the
3 public interest and asking them to approve it.

4 Q. All right. Do you have any further --
5 anything further to add?

6 A. I do not.

7 MR. HESS: All right. I have no further
8 questions of this witness. I'd tender him to the
9 Commission and yourself for questions.

10 JUDGE LANE: Cross-examination, Aquila?

11 MS. PARSONS: No questions.

12 JUDGE LANE: Staff?

13 MR. BAKER: No questions.

14 JUDGE LANE: Commissioner Appling?

15 QUESTIONS BY COMMISSIONER APPLING:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. How you doing?

19 A. I'm fine, thank you. And yourself?

20 Q. Good. Do you have anything else you
21 need to add or say to me or say to the Commission
22 this morning other than what you've already said as
23 far as you-all agree on moving forward on this?

24 A. I do not. We appreciate the time and
25 the attention that the Commission is granting to this

1 application.

2 COMMISSIONER APPLING: Okay. Thank you
3 very much for your time and appreciation. Hurry back
4 to Jefferson City to spend some of your money here,
5 okay? Thank you.

6 THE WITNESS: Thank you, sir.

7 QUESTIONS BY JUDGE LANE:

8 Q. I have a quick question. You mentioned
9 emergency responders in your direct testimony. I was
10 just curious, do the police and fire officials in
11 this region, are they, you know, roughly aware of
12 what the territorial boundaries are in case there is
13 some kind of, you know, emergency situation where the
14 power would need to be shut off so they know who to
15 call?

16 A. Yes, they're generally aware of it, and
17 for the last few years particularly, with everything
18 that's going on in the world, United States and the
19 region with regard to the need to secure facilities,
20 particularly electric facilities, we've been meeting
21 with emergency responders in their area and in the
22 region talking about what we can do to support their
23 efforts in the event of an emergency, whether it be a
24 fire, an accident or an act of terrorism. So they're
25 becoming particularly more aware of what -- who the

1 provider is in that area.

2 JUDGE LANE: Thank you very much. Any
3 recross based on questions from the bench? Aquila?

4 MS. PARSONS: No questions.

5 JUDGE LANE: Staff?

6 MR. BAKER: No questions.

7 JUDGE LANE: Any redirect, Mr. Hess?

8 MR. HESS: No questions.

9 JUDGE LANE: Thank you for your
10 testimony, Mr. Torres. You may step down and are
11 finally excused in this case.

12 THE WITNESS: Thank you.

13 JUDGE LANE: Mr. Baker?

14 MR. BAKER: Staff would like to call
15 James Ketter.

16 JUDGE LANE: Mr. Ketter, please have a
17 seat. Raise your right hand.

18 (THE WITNESS WAS SWORN.)

19 JUDGE LANE: Thank you very much. You
20 may inquire.

21 DIRECT EXAMINATION BY MR. BAKER:

22 Q. Would you please state your name for the
23 record?

24 A. James Ketter.

25 Q. Where do you work, Mr. Ketter?

1 A. I work for the Staff of the Public
2 Service Commission in the engineering analysis area
3 of utility operations.

4 Q. How long have you worked for the
5 Commission?

6 A. Previously I worked for the Commission
7 for 28 years. I retired in July of '04. Since
8 September of '06 I've been back part-time in the
9 engineering analysis section.

10 Q. Okay. And what is your current job
11 title?

12 A. Temporary engineer.

13 Q. What duties do you perform in your job?

14 A. I respond to technical inquiries about
15 quality of service or extension questions and also
16 territorial agreements and many of the issues
17 involving the cooperative system.

18 Q. What did you do before coming to work
19 for the Commission?

20 A. I served in the U.S. Navy.

21 Q. And what is your educational background?

22 A. I received a B.S. degree in electrical
23 engineering in University of Missouri at Columbia,
24 and also a master's of business administration. 1970
25 was the B.S. and 1977 for the MBA.

1 Q. Okay. You prepared a memorandum or a
2 recommendation in this case?

3 A. Yes, I did.

4 Q. And that has been premarked as
5 Exhibit 2. Do you have a copy of that?

6 A. Yes, I do.

7 Q. And you've prepared memorandum
8 recommendations before for the Commission, correct?

9 A. Yes, I have.

10 Q. Could you estimate how many?

11 A. Oh, probably a hundred, plus or minus.

12 Q. And the memorandum expresses your
13 opinion of this case?

14 A. Yes, it does.

15 Q. What did you look at and consider when
16 preparing this memorandum?

17 A. Well, I reviewed the application that
18 was filed in the territorial agreement that was with
19 that. Also talked with the companies about their
20 existing facilities. And also the existing tariff
21 shows the reference to territorial agreements that
22 have been previously approved. They are shown in
23 Aquila's filed tariff. And also I'm familiar with
24 that area from previous work in the Platte City area.

25 Q. Okay. Anything -- anything else you

1 looked at, just ...

2 A. Not -- not that I remember.

3 Q. Is it your opinion that the territorial
4 agreement between Aquila and Platte-Clay is in the
5 public interest?

6 A. Yes, I do.

7 Q. Could you briefly explain why?

8 A. Well, as has been expressed earlier, the
9 opportunity to reduce duplication of facilities as
10 the utilities expand, the less exposure that reducing
11 duplication will reduce exposure of the public or
12 workers to those lines.

13 And it helps the utilities to better
14 plan if they have a geographic area that they know
15 they are gonna be required to meet the needs of the
16 customers, they can plan their electric facilities
17 better.

18 Q. Okay. And what is your overall
19 recommendation for this case?

20 A. That the Commission approve the
21 applications filed.

22 Q. Okay. I think there was another
23 recommendation you made in your recommendation about
24 tariff sheets?

25 A. Yes. As -- if the Commission approves

1 the application, my recommendation is that Aquila
2 be required to update their tariff to reflect
3 this territorial agreement. The tariff identifies
4 those territorial agreements that have been approved
5 so that if there's a question about which area is
6 served or exclusive territory, it's reflected there.

7 And also Aquila's tariff does outline
8 their service territory in general for all the
9 companies. So I felt it was appropriate that they
10 update the tariff.

11 Q. Is that generally -- is that a general
12 practice through -- with the electric companies with
13 the Commission?

14 A. Yes, it is.

15 MR. BAKER: That's all the questions I
16 have. I would like to submit Exhibit 2 into evidence
17 at this time, and I tender the witness for cross.

18 JUDGE LANE: Exhibit 2 has been offered
19 into evidence. Do I hear any objections to its
20 admission?

21 (NO RESPONSE.)

22 JUDGE LANE: Hearing no, it is --
23 hearing none, it is so admitted.

24 (EXHIBIT NO. 2 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 JUDGE LANE: Cross-examination, Aquila?

2 MS. PARSONS: No questions.

3 JUDGE LANE: Platte-Clay?

4 MR. HESS: No questions, your Honor.

5 JUDGE LANE: Commissioner Appling?

6 QUESTIONS BY COMMISSIONER APPLING:

7 Q. How you doing?

8 A. If I didn't have this cold between my
9 ears, I'd be just fine. Thank you, sir.

10 Q. Oh, well. We'll bring you back to the
11 Commission and get rid of that right quick. But
12 anyway, do you have anything else you need to add?

13 A. I don't believe so. As I -- as I
14 expressed earlier, the same issues that the companies
15 have expressed as not being detrimental to the public
16 interest, but having observed duplication that's
17 rampant, I believe the public would prefer to have
18 utility service along one side of the road instead of
19 two and keeping those facilities from having to cross
20 over and under other utilities that have been an
21 issue of safety over the years.

22 So I think this is -- provides an
23 outline for prudent growth and safe -- and safe
24 facilities and also opportunity for the utilities to
25 provide reliable service to the customers.

1 COMMISSIONER APPLING: Thank you very
2 much, sir. Thank you for coming in. Good to see you
3 again and have a good weekend, okay?

4 THE WITNESS: Thank you, sir.

5 QUESTIONS BY JUDGE LANE:

6 Q. I have one quick question and that is
7 the modifications to the tariff that you recommended
8 that the Commission order, are those modifications
9 extensive?

10 A. No. They would require, you know,
11 information that was required in the -- in the
12 application as far as the -- the designated areas and
13 reference to the territorial agreement that approve
14 those changes.

15 Q. Are you aware of any objections by
16 Aquila to modifying those tariffs?

17 A. I'm not aware of any.

18 JUDGE LANE: Thank you. Any recross
19 based on questions from the bench, Aquila?

20 MS. PARSONS: No questions.

21 JUDGE LANE: Platte-Clay?

22 MR. HESS: No questions.

23 JUDGE LANE: Redirect?

24 MR. BAKER: No, your Honor.

25 JUDGE LANE: Thank you very much for

1 your testimony, Mr. Ketter. You may step down and
2 are finally excused in this case.

3 I do believe that concludes -- that
4 concludes the presentation of evidence. We are
5 now prepared for closing statements. Unless I hear
6 otherwise from any of the parties, we will begin.

7 MS. PARSON: I --

8 JUDGE LANE: Aquila? Oh, yes.

9 MS. PARSONS: Excuse me, your Honor.
10 Yeah, I just have one housekeeping matter. I would
11 like the Commission to take judicial notice of Case
12 No. 8638, the report and order. It's the Certificate
13 of Convenience and Necessity giving Aquila the
14 authority to provide service within Clay and Platte
15 Counties.

16 JUDGE LANE: Thank you very much. That
17 is a proper notice -- or that is a proper subject of
18 administrative notice, and the Commission will take
19 notice of that particular matter. Any further
20 matters before we go to closing statements?

21 (NO RESPONSE.)

22 JUDGE LANE: All right. Aquila?

23 MS. PARSONS: May it please the
24 Commission.

25 JUDGE LANE: Is that mic on?

1 MS. PARSONS: I think so.

2 JUDGE LANE: Okay.

3 MS. PARSONS: We have presented evidence
4 here today indicating that the territorial agreement
5 that's the subject of this hearing has met all the
6 standards required under Chapter 394 as well as the
7 relevant Commission rules.

8 And there has been evidence presented
9 that establishes that the territorial agreement is
10 not detrimental to the public interest and is, in
11 fact, beneficial to the customers in these service
12 territories. Therefore, we would ask that the
13 Commission approve the territorial agreement. Thank
14 you.

15 JUDGE LANE: Thank you, Ms. Parsons.
16 Platte-Clay?

17 MR. HESS: All of the evidence we have
18 heard this afternoon supported that this agreement is
19 in the public interest. Nobody has raised any
20 objections, and we would just renew our request that
21 the Commission approve the territorial agreement that
22 the parties have entered and identified as Exhibit 1
23 in this matter. Thank you.

24 JUDGE LANE: Mr. Hess, thank you and
25 your witnesses for coming today. Finally, Staff.

1 MR. BAKER: May it please the
2 Commission. Staff, again, recommends -- also
3 recommends approval of the territorial agreement
4 filed in this case, and also that Aquila file revised
5 tariff sheets identifying its exclusive territories.

6 All -- as it has been said, the evidence
7 presented here today has shown that the public
8 interest pursuant to Section 394.312 or that this --
9 this agreement is in the public interest pursuant to
10 Section 394.312.

11 Evidence has shown that -- that benefits
12 will arise from this agreement, and because it is in
13 the public interest, Staff again recommends approval.
14 Thank you.

15 JUDGE LANE: Thank you very much. Just
16 a few matters before we adjourn the hearing. As far
17 as late-filed exhibits, Ms. Parsons, I think you
18 agreed to file after the hearing some copies --
19 additional copies of what was marked and admitted
20 into evidence as far as an Exhibit 1. Would you
21 please do that by no later than Wednesday, May 30th?

22 MS. PARSONS: Yes, your Honor.

23 JUDGE LANE: Thank you very much. Can
24 we waive any requirement that she provide an
25 additional copy to the other parties since I think

1 we're all pretty much on the same page and we're just
2 doing this for the sake of completeness for the
3 record?

4 MR. HESS: That's acceptable with
5 Platte-Clay.

6 JUDGE LANE: Is that okay with Staff?

7 MR. BAKER: Yes.

8 JUDGE LANE: All right. Very well. I
9 presume there will be no objections to this
10 procedure. If there were objections, those should be
11 filed no later than June 1st.

12 The transcript, as mentioned in the
13 Commission's order of April the 18th, will be
14 expedited. These cases are 120-day time line. That
15 expires in early July. So I would anticipate -- I'm
16 going to ask that the transcript be prepared in five
17 business days, and that will be used to prepare the
18 report and order and you'll have access to that as
19 well.

20 As I mentioned before, there will be no
21 post hearing briefs, so I will ask the parties one
22 final time before we adjourn, are there any other
23 matters that need to be addressed before we do
24 adjourn?

25 (NO RESPONSE.)

1 JUDGE LANE: In that case, the
2 evidentiary hearing in Case No. EO-2007-0325 is
3 hereby adjourned. Thank you very much and we're off
4 the record.

5 (WHEREUPON, the hearing in this case was
6 concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5
6 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,
7 within and for the State of Missouri, do hereby
8 certify that the foregoing proceedings were taken by
9 me to the best of my ability and thereafter reduced
10 to typewriting under my direction; that I am neither
11 counsel for, related to, nor employed by any of the
12 parties to the action to which this hearing was
13 conducted, and further that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties thereto, nor financially or otherwise
16 interested in the outcome of the action.

17
18
19
20
21 _____
PAMELA FICK, RMR, RPR, CSR, CCR #447
22
23
24
25