

Exhibit No.:

Issues: Joint Application of
Aquila Networks-MPS
and Osage Valley Electric
Cooperative

Witness: Alan Bax

Sponsoring Party: MO PSC Staff

Type of Exhibit: Rebuttal Testimony

Case No.: EO-2004-0603

Date Testimony Prepared: August 13, 2004

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

ALAN BAX

**AQUILA, INC., D/B/A AQUILA NETWORKS-MPS
AND OSAGE VALLEY ELECTRIC COOPERATIVE**

CASE NO. EO-2004-0603

**Jefferson City, Missouri
August 2004**

FILED

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Missouri Public
Service Commission

Staff Exhibit No. 4
Case No(s). EO-2004-0603
Date 9-10-04 Rptr JE

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

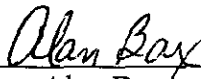
In the Matter of the Application of Aquila,)
Inc., d/b/a Aquila Networks-MPS, and)
Osage Valley Electric Cooperative for)
Approval of a Written Territorial)
Agreement Designating the Boundaries of)
Exclusive Service Areas Within Cass)
County, Missouri)

Case No. EO-2004-0603

AFFIDAVIT OF ALAN BAX

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Alan Bax, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 6 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



Alan Bax

Subscribed and sworn to before me this 12th day of August, 2004.



Notary Public

DAWN L. HAKE
Notary Public - State of Missouri
County of Cole
My Commission Expires Jan 9, 2005

My commission expires _____

Rebuttal Testimony of
Alan Bax

1 Q. What is the purpose of your testimony?

2 A. The purpose of this testimony is to discuss the proposed territorial
3 agreement filed between Aquila Networks – MPS (Aquila) and Osage Valley Electric
4 Cooperative (Osage), referred to together as the Applicants. The Applicants are asking
5 that three parcels of land, located inside the city limits of Peculiar, Missouri, a city within
6 a portion of Cass County, Missouri, be designated as areas within the exclusive electric
7 service territory of Osage.

8 Q. Have Osage and Aquila filed testimony in this proceeding?

9 A. Yes. Mr. Jon McClure, General Manager of Osage and Mr. Steve Yates,
10 Operations Manager-West District of Aquila have filed Direct Testimony.

11 Q. Why is a territorial agreement necessary?

12 A. A territorial agreement is necessary because electric cooperatives may not
13 provide new services within a city, town, or village upon its population reaching 1500,
14 except for reasons provided in sections 394.080 and 394.312, RSMo. 2000. Since Osage
15 was not the predominant supplier of retail electric energy in Peculiar at the time the
16 official U.S. Census Bureau “decennial census report” declared the population of Peculiar
17 to be in excess of 1500 inhabitants, a territorial agreement is necessary. The City of
18 Peculiar has signed a franchise agreement with Aquila, which stipulates Aquila as
19 owning the rights of providing electric service within the city limits of Peculiar. In
20 addition, Mr. McClure noted in his Direct Testimony that Osage does not need to obtain a
21 franchise agreement with Peculiar as Osage has an existing franchise agreement and has
22 been serving customers within Peculiar for years. Nonetheless, in order to allow an
23 alternate electric service provider in this situation, approval from the Commission is
24 necessary.

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1 Q. Does Osage provide electrical service to any other customers currently
2 within the city limits of Peculiar?

3 A. Yes. The City of Peculiar has grown in size through annexation, and
4 customers who historically received electric service from Osage maintained this
5 relationship upon being annexed into the city limits. Osage presently provides electric
6 service to approximately 100 customers within the city limits of Peculiar.

7 Q. Are there any electric service providers in this case other than Osage and
8 Aquila?

9 A. No.

10 Q. Did Staff conduct a visit to the area in question?

11 A. Yes. Rick Campbell of the Staff and I made a visit to the area on
12 August 9, 2004.

13 Q. Please describe the three parcels of land sought to be designated as within
14 the exclusive service territory of Osage?

15 A. A metes and bounds description of the three parcels is offered in Exhibit A
16 of the Territorial Agreement attached to the joint filing of the Applicants. All properties
17 are within the city limits of Peculiar. I will summarize these descriptions below:

18 Parcel A: Harvest Hill Subdivision – a proposed subdivision located on the
19 South side of 211th Street.

20 Parcel B: Arnall Property - located on the East side of Old Town Road.

21 Parcel C: Peculiar Industrial Park - Property owned by the City of Peculiar
22 located on the East Outer Road of Hwy 71.

23 Q. Briefly describe the electric facilities near each of these parcels.

24 A. Parcel A – Harvest Hills Subdivision:

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Osage has a single-phase line on the North side of 211th Street as well as a line running behind the homes on the South side of 211th Street. A tap off of these facilities will be sufficient to serve the anticipated load in the proposed subdivision. Aquila's nearest facilities to this parcel are greater than a half-mile away. Building a new extension in order to serve this parcel would require such items as new right-of-way acquisitions, and conducting necessary tree trimming in addition to the greater cost of an Aquila line extension as compared to utilizing Osage's facilities.

Parcel B – Arnall Property:

Osage has an existing three-phase line located directly in front of this property, running along the East side of Old Town Road. Aquila's nearest facilities are approximately 1500 feet away and the necessary extension to serve any load on this property would require crossing Osage's facilities and necessitate tree trimming as well.

Parcel C – The Peculiar Industrial Park:

Osage has an existing three phase line that runs in front of this property along the outer road on the East side of Highway 71. Aquila's nearest facilities are over a mile away, an extension of which would require crossing Highway 71 and necessarily result in a significantly greater cost to provide electric service to this site compared to service from Osage's facilities.

Q. Are all parties in favor of allowing Osage to be the exclusive electric service provider to these defined areas?

A. Yes. Not only the Applicants, but also the landowners, including the City of Peculiar, support Osage being the electric service provider.

Q. Have the parties considered how to handle any exceptions to this Territorial Agreement, such as a change in electric service providers, other than by

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1 amendment of the Territorial Agreement, should the Territorial Agreement receive
2 approval?

3 A. Yes. Article 7 of the Territorial Agreement contains a procedure to
4 handle, by addendum to the Territorial Agreement rather than by amendment, any
5 exceptions, should they arise, on a case-by-case basis. It is significant that Article 7 of
6 this proposed Territorial Agreement states, in part, as follows: "If the Commission Staff
7 or the Office of the Public Council does not submit a pleading objecting to the
8 Addendum within forty-five (45) days of the filing thereof, the Addendum shall be
9 deemed approved by the aforesaid parties". It is very important that this sentence be
10 limited to the Staff and Office of the Public Council. The Commission itself is not
11 named in this sentence and Staff cannot agree to a procedure where approval by the
12 Commission is assumed. The Commission should specifically approve the addendum by
13 the issuance of an Order approving the addendum. The burden in the case should not be
14 shifted to the Commission, as Mr. McClure's Direct Testimony seems to indicate should
15 occur.

16 Q. Does Mr. McClure read Article 7 in the Territorial Agreement differently
17 than the Staff?

18 A. Yes. Mr. McClure states as follows at page 8, lines 13-16 of his Direct
19 Testimony: "The Agreement provides that if neither the Commission, Staff, nor Public
20 Counsel opposes that addendum within forty-five (45) days, it will be deemed effective.
21 If there is opposition, the Commission will determine whether to approve or reject that
22 addendum under its normal proceedings." Again, the Staff takes the position that
23 approval by the Commission must not be assumed and the burden in the case must not be

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1 shifted to the Commission. Therefore, Osage's and Aquila's Joint Application should be
2 denied by the Commission, given Mr. McClure's Direct Testimony.

3 Q. What is your recommendation in this case?

4 A. I recommend that the Commission not approve this Territorial Agreement
5 based upon Mr. McClure's Direct Testimony. As required by section 394.312.4
6 RSMo 2000, this Territorial Agreement must be not detrimental to the public interest.
7 (The Staff would note that 4 CSR 240-3.130(1)(c) states that an application for
8 Commission approval of a territorial agreement should include an explanation as to why
9 the territorial agreement is in the public interest.) Given proper application, this
10 Territorial Agreement would prevent the otherwise necessary duplication of facilities in
11 this area. In addition, this Territorial Agreement would limit tree-trimming that
12 otherwise would be necessary if Aquila were to extend its facilities to serve the
13 anticipated new load in the three parcels of land covered by the Territorial Agreement.
14 The cost of the extensions would be unnecessarily burdensome to the customers absent
15 this agreement to allow Osage to be the exclusive electric service provider to these three
16 specific areas.

17 Q. Will Osage's nearby facilities be adequate to serve the additional load?

18 A. Yes.

19 Q. Does this conclude your prepared Rebuttal Testimony?

20 A. Yes, it does.