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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

4

Hearing

5

September 10, 2004  
Jefferson City, Missouri  
Volume 2

6

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In the Matter of the Application of )  
9 Aquila, Inc. d/b/a Aquila Networks - )  
MPS and Osage Valley Electric )  
10 Cooperative for Approval of a ) Case No.  
Written Territorial Agreement ) EO-2004-0603  
11 Designating the Boundaries of )  
Exclusive Service Areas within Cass )  
12 County, Missouri. )

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VICKY RUTH, presiding,  
Senior Regulatory Law Judge,  
15 STEVE GAW, Chairman,  
CONNIE MURRAY,  
16 ROBERT M. CLAYTON, III,  
JEFF DAVIS,  
17 LINWARD "LIN" APPLING,  
Commissioners.

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REPORTED BY:

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Jennifer L. Leibach, RPR, CCR(T)  
MIDWEST LITIGATION SERVICES

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PROCEEDINGS

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JUDGE RUTH: Good morning, my name is Vicki Ruth, and I will be conducting today's proceeding. We are here for a hearing in EO-2004-0603 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.

Today's date is September 10th, 2004, and it is 10:00 a.m. I would like to start with entries of appearance. And Aquila, we'll begin with you.

MR. BOUDREAU: Thank you. Let the record reflect the appearance of Paul A. Boudreau with the law firm of Brydon Swearngen and England, 312 East Capital Avenue, Post Office Box 456, appearing on behalf of co-applicant Aquila, Inc.

JUDGE RUTH: Thank you. And Osage.

MR. JOHNSON: Thank you, Judge Ruth. The -- Craig Johnson and Jason Paulsmeyer, both of the Andereck, Evans, Milne, Peace and Johnson firm, 700 East Capital, Jefferson City, Missouri, 65102. We're here today representing the co-applicant, Osage Valley Electric Cooperative Association.

JUDGE RUTH: Thank you. Public Counsel.

MR. COFFMAN: John B. Coffman appearing on

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1   behalf of the Office of the Public Counsel, PO Box 2230,  
2   Jefferson City, Missouri, 65102.

3                 JUDGE RUTH:  And Staff.

4                 MR. DOTTHEIM:  Steven Dottheim, Post Office  
5   Box 360, Jefferson City, Missouri, 65102, appearing on behalf  
6   of the Staff of the Missouri Public Service Commission.

7                 JUDGE RUTH:  Okay.  Thank you.  Okay.  The  
8   parties have filed a notice indicating they did not believe  
9   there were any issues remaining, however since we are here  
10  and on the record, I'm going to give the parties an  
11  opportunity to make brief opening statements, if you wish.

12                And then for the order of witnesses, because I  
13  understand there will be the pre-filed testimony will be  
14  offered, the parties had not suggested any particular order,  
15  so I suggest we go through Aquila, Osage Valley, and then  
16  Staff's exhibits in that order.

17                And then after the hearing, we'll discuss  
18  whether the parties feel that there is any need for some type  
19  of post-hearing briefing schedule, so we'll decide that at  
20  the end.  Are there any questions or other preliminary  
21  matters that need to be addressed at this time?  Okay.  
22  Seeing none, we'll move on to opening statements.  I don't  
23  know between the applicants which one of you might want to go  
24  first.

25                MR. JOHNSON:  I'll go first.

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1 JUDGE RUTH: Okay. We'll let Osage Valley,  
2 and you might make sure that microphone over here is on.

3 MR. JOHNSON: May it please the Commission,  
4 Craig Johnson here today on behalf of the co-applicant, Osage  
5 Valley Electric Cooperative Association. This is a joint  
6 application to approve a small territorial agreement between  
7 Osage Valley, and I'll call them Osage Valley, and Aquila.

8 And there was some misunderstanding as a  
9 result of the direct and rebuttal testimony in this case. I  
10 think the surrebuttal testimony that we filed has cleared up  
11 that misunderstanding, and I think it's safe to say that all  
12 the parties here today do support approval of the agreement.  
13 The prior misunderstanding, let me explain this to you up  
14 front, because I think it's something that you might be  
15 interested in, Judge Ruth.

16 It had to do with the direct testimony of Jon  
17 McClure, who was describing the process of the territorial  
18 agreement as it pertained to the possibility in the future  
19 the parties might agree to add additional parcels of agreed  
20 territory to this master agreement that we're asking you to  
21 approve today.

22 And I would like to apologize for the  
23 misunderstanding, because it was probably my fault as much as  
24 anybody's in not catching some of the nuances of the  
25 testimony. In the testimony, Jon McClure said that if the --

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1 if Aquila and Osage Valley get together and agree to a new  
2 agreement, it will be reduced to an addendum and filed. And  
3 under the agreement, both Public Counsel and Staff have a  
4 finite period of time in which to object to that. I'm not  
5 sure if it's 30 days or 45.

6 The agreement says that if the parties don't  
7 object, it is deemed approved quote by the parties, but I  
8 think Mr. McClure's direct testimony could have been  
9 construed, and in fact, was construed by the Staff witness as  
10 meaning that it would constitute approval by the Commission.  
11 We straightened that up after Staff's rebuttal testimony and  
12 filed clarification testimony saying that, no, that's not  
13 what we meant to say, and we still think it would be  
14 appropriate for there to be an affirmative order of the  
15 Commission approving the addendum, that way no one will be  
16 coming in here saying that it was the parties, without the  
17 Commission's approval, had approved this addendum.

18 And in that line, I would recommend or ask you  
19 that in your order approving this territorial agreement, if  
20 you decide to -- if the Commission decides to approve it,  
21 that you do include an affirmative statement in that order  
22 that says any future addendums will have to be approved by  
23 the Commission. That should take care of this, because the  
24 order approving it is in intricate part of the agreement  
25 itself, and I don't think it's necessary at all to go back

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1 and amend or redo the agreement itself. Okay?

2 JUDGE RUTH: That's one of our questions.

3 MR. JOHNSON: I thought it might be. Getting  
4 back to the territorial agreement itself, Osage Valley and  
5 Aquila have been competitors in what I consider to be an area  
6 east of Kansas City and south of Kansas City, Bates County  
7 and Cass County.

8 Since Osage Valley is a rural electric  
9 cooperative, when an area becomes part of a municipality that  
10 is above 1500, by law it cannot -- it cannot continue to  
11 serve new services in that area. So any time a small village  
12 grows either by normal growth or by annexation and the  
13 population exceeds 1500, Osage Valley cannot continue to  
14 offer new services. It can continue to serve its existing  
15 customers in those areas, but can't offer new ones. Aquila  
16 is not subject to that limitation.

17 In this situation -- and in the past, Aquila  
18 and Osage Valley have attempted or begun to attempt more  
19 comprehensive territorial agreement negotiations, but they  
20 never were approved. This agreement is much more minor in  
21 scope. The structure of it basically recognizes that Aquila  
22 is entitled to serve in the entire area of Bates -- I'm  
23 sorry, Cass County, and in these municipal towns. Once they  
24 grow above 1500, that Osage Valley is then precluded from  
25 serving new services in those municipalities, unless there's

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1 a territorial agreement approving that.

2 The structure of this territorial agreement  
3 says just for the city of Peculiar, which is above 1500,  
4 there are three parcels of land that we have agreed and  
5 Aquila has agreed that are going to be deemed Osage Valley's  
6 exclusive service areas for purposes of this agreement. If  
7 the agreement is approved, it would then give Osage Valley  
8 authority to serve those three parcels of land in the city of  
9 Peculiar.

10 These three parcels, one of them is called  
11 Harvest Hill, it's a subdivision. One of them is called the  
12 Arnell property, where I think Osage Valley already serves  
13 one structure on the tract of land and the customer wants an  
14 additional structure built and served. And the third one is  
15 an industrial park that I think belongs to the city of  
16 Peculiar. And I think it's correct to say that in all three  
17 of these parcels of property, Osage Valley's existing  
18 facilities are closer than Aquila's.

19 So once Aquila and Osage Valley ascertained  
20 that the customer was immuneable to it, we've decided to ask  
21 the Commission to approve that those three pieces of property  
22 be deemed Osage Valley's exclusive service territories.

23 As I mentioned earlier, the agreement also  
24 addresses the possibility that in the future, when they get  
25 similar requests or have similar situations in Cass County,



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1 that they might add an -- by addendum, other parcels to this  
2 property or to this territorial agreement.

3 And I think I've already described basically  
4 the procedure that would be used to submit that addendum to  
5 the Commission. There is no customers being exchanged or  
6 swapped, and there are no facilities being exchanged or  
7 swapped. So basically, we are asking you to approve the  
8 territorial agreements for the reasons that the two competing  
9 utilities agree to it.

10 There is no municipal utility in Peculiar, so  
11 there's no municipal utility that might have grounds to  
12 complain about this, and by the way, Osage Valley already has  
13 a franchise agreement with the city of Peculiar, so it won't  
14 need to get one in order to serve. Neither staff nor Public  
15 Counsel oppose this. The three customers concerned are  
16 immuneable to it. It will void the unnecessary duplication  
17 of facilities. And as Osage Valley is closer to these three  
18 parcels, it will be more efficient in terms of engineering,  
19 facility deployment, right-of-way acquisition and  
20 construction, expenditures. And we think it's correct to  
21 say, although we're not exactly sure, that it also should  
22 save the customers any contribution in aide of the  
23 construction of facilities that the utilities would render.  
24 Because it's closer, whatever those contributions would be,  
25 it should be cheaper, because it is closer.

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1                   So again, we're going to ask you to approve it  
2 for all those reasons, which we think means this is in the  
3 public interest, recognizing the standard that you're going  
4 to use is that the agreement is not detrimental to the public  
5 interest. Thank you. Questions?

6                   JUDGE RUTH: Okay. Aquila.

7                   MR. BOUDREAU: Good morning, may it please the  
8 Commission. My name is Paul Boudreau. I'm here as counsel  
9 for co-applicant Aquila, Inc. in connection with the  
10 evidentiary hearing in this case today. I'll keep my  
11 comments very brief, indeed, because I think Mr. Johnson has  
12 done a very nice job of giving some background and context of  
13 the case in the application that's before the Commission  
14 today, and I don't think I could -- I could add too much to  
15 it.

16                   We're here to -- for the Commission to  
17 consider and hopefully approve a joint application between  
18 Aquila and Osage Valley Electric Cooperative of a territorial  
19 agreement that will, at the outset at any rate, effect three  
20 parcels of property located in the city of Peculiar in Cass  
21 County, Missouri. And we've submitted this territorial  
22 agreement for the Commission's approval pursuant to Section  
23 394.312 RSMo.

24                   Aquila will submit today the testimony of  
25 Steve Yates, who will explain the circumstances that gave

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1 rise to the territorial agreement, and also the unique  
2 circumstances presented by the three affected parcels of  
3 property that caused Aquila to conclude that the public  
4 interest will be served by permitting the landowners there to  
5 be served exclusively by Osage Valley.

6 Aquila, Osage Valley, and Staff and Public  
7 Counsel, I believe, are in agreement that the circumstances  
8 justify approval of the territorial agreement by the  
9 Commission for reasons other than rate differential.

10 We agree that -- I'll agree with Mr. Johnson's  
11 statement that Mr. McClure's surrebuttal testimony has  
12 clarified any ambiguity that may have existed about the  
13 effect of the agreement as it relates to addendums, and we  
14 also agree with the suggestion of both the Staff and Osage  
15 Valley that an order of the Commission approving a  
16 territorial agreement in this case include the statement or  
17 the requirement that any addendum be expressly approved by  
18 the Commission in the future.

19 We submit that the territorial agreement is  
20 not detrimental to the public interest, and the evidence will  
21 demonstrate to the Commission that it should be approved.  
22 And that's all I have. Thank you.

23 JUDGE RUTH: Thank you. Staff.

24 MR. DOTTHEIM: Good morning, on behalf of the  
25 Staff, my name is Steven Dottheim, and my comments will be

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1 very brief. Mr. Johnson and Mr. Boudreau, I think, have very  
2 nicely set out the course of the joint application and where  
3 we stand today.

4 Mr. Bax, who in his rebuttal testimony,  
5 recommended to the Commission that it not approve the  
6 proposed territorial agreement on the basis of the  
7 surrebuttal testimony of Mr. McClure. The Staff's concerns  
8 have been addressed, and as indicated in the Staff's notice,  
9 that it filed on behalf of itself and the other parties, the  
10 Staff no longer has objection to the Commission approving the  
11 territorial agreement.

12 As Mr. Johnson, Mr. Boudreau have noted, and  
13 as the Staff noted in the notice to the Commission, the Staff  
14 recommends that the Commission include in any order approving  
15 the territorial agreement between Osage Valley and Aquila,  
16 language that any addendum must be approved by the  
17 Commission, whether opposed or not opposed in order for the  
18 addendum to be valid or effective.

19 Thank you.

20 JUDGE RUTH: Thank you. Public Counsel.

21 MR. COFFMAN: Thank you. On behalf of the  
22 Public Counsel, I want to join in Mr. Dottheim's comments.  
23 We also believe that this -- approving this agreement would  
24 be in the public interest, and that we are glad that this  
25 provision has been clarified regarding approval of addendums,

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1 and that's specifically Paragraph 7.4 from the proposed  
2 agreement.

3 And because of the clarification made in the  
4 pleading filed on September 1, I think by Mr. Dottheim, and I  
5 guess by -- it's now agreeable to all the parties, I think  
6 it's good that we clarify here on the record what everyone's  
7 understanding of this is, that any addendum would require the  
8 Commission's approval, and I think that is important.

9 The Paragraph 7.4 merely says that if the  
10 Staff or the Public Counsel's office does not raise some  
11 objection opposing the addendum within 45 days of when the  
12 addendum is filed, then it will be deemed that those  
13 aforesaid parties; that is, Public Counsel and Staff, have  
14 agreed to it, and I think it's a reasonable time period.

15 I think 45 days should be enough time in most  
16 instances for me or the Staff and Commission, I mean, I just  
17 speak for my office, for the Office of the Public Counsel to  
18 determine whether or not that is something that raises an  
19 issue and should be opposed. And if it's not enough time, I  
20 suppose our office could simply object until we determine it  
21 is -- there isn't a problem.

22 And the unofficial policy of my office has  
23 been to really only object or raise concerns in these cases  
24 where there are -- where there is the instance of, you know,  
25 involuntary customer switching. That is, when customers

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1 might be proposed to switch to a provider that they don't  
2 want to go to or that would raise their rates in some way,  
3 and that's a concern. So that's primarily our interested.

4 I think the provision in the agreement is  
5 fine, provided that it is clear that no addendum would become  
6 effective without Commission review and would not become  
7 effective unless the Commission did agree and approve it.

8 Thank you.

9 JUDGE RUTH: I had pre-marked my exhibits, and  
10 I marked Aquila's Steve Yates as the first one, so if you  
11 don't object, let's go ahead and move to Aquila's first  
12 witness, Mr. Yates; is that correct?

13 THE WITNESS: Right.

14 MR. BOUDREAU: Just as a matter of order, do I  
15 need to provide the Court Reporter with a copy of Mr. Yates'  
16 testimony or has that already been taken care of?

17 (AQUILA EXHIBIT NO. 1 WAS MARKED FOR  
18 IDENTIFICATION BY JUDGE RUTH REPORTER.)

19 JUDGE RUTH: You need to. Before we get  
20 started, I need to swear you in.

21 (THE WITNESS WAS SWORN.)

22 STEVE YATES testified as follows:

23 DIRECT EXAMINATION BY MR. BOUDREAU:

24 Q. Would you state your name for the record,  
25 please, sir?

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1 A. Steve Yates.

2 Q. By whom are you employed and in what capacity?

3 A. I'm employed by Aquila, Inc. as Operation

4 Manager of the west district in Missouri.

5 Q. Are you the same Steve Yates that caused to be  
6 prepared and pre-filed direct testimony in question and  
7 answer form?

8 A. Yes, I am.

9 Q. Was that testimony prepared by you or under  
10 your direct supervision?

11 A. Yes, it was.

12 Q. Were the -- are the answers that you've given  
13 true and correct to the best of your information, knowledge,  
14 and belief?

15 A. Yes, it is.

16 Q. Do you have any corrections or changes you'd  
17 like to make to your testimony at this time?

18 A. No.

19 Q. If I were to ask you the same questions today,  
20 would your answers given in your prepared testimony be  
21 substantially the same?

22 A. Yes, they would.

23 MR. BOUDREAU: With that, I will offer Exhibit  
24 No. 1, Mr. Yates' direct testimony into the record, and  
25 tender him for cross-examination.

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1 JUDGE RUTH: Okay. Are there any objections  
2 to Exhibit 1, Mr. Yates' direct testimony? Osage?  
3 MR. JOHNSON: No, your Honor.  
4 JUDGE RUTH: Public Counsel?  
5 MR. COFFMAN: No, your Honor.  
6 JUDGE RUTH: Staff?  
7 MR. DOTTHEIM: No.  
8 JUDGE RUTH: Okay. Then exhibit one is  
9 received into the record.  
10 (AQUILA EXHIBIT NO. 1 WAS RECEIVED INTO  
11 EVIDENCE BY THE HEARING OFFICER.)  
12 JUDGE RUTH: Okay. Cross-examination. Do the  
13 parties -- I'll start with Public Counsel, do you wish  
14 cross-examination?  
15 MR. COFFMAN: No questions, your Honor.  
16 JUDGE RUTH: Staff?  
17 MR. DOTTHEIM: No questions.  
18 JUDGE RUTH: Osage Valley?  
19 MR. JOHNSON: No questions.  
20 JUDGE RUTH: Okay. There are no questions  
21 from the bench. You may step down. And Aquila, it's my  
22 understanding that was your only witness, correct?  
23 MR. BOUDREAU: That is correct, thank you.  
24 JUDGE RUTH: Osage Valley, would you like to  
25 call your witness?



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1 MR. JOHNSON: Jon McClure.

2 JUDGE RUTH: I have pre-marked my copy of Mr.  
3 McClure's direct testimony as Exhibit No. 2 and I marked his  
4 surrebuttal testimony as Exhibit 3.

5 (OSAGE VALLEY EXHIBIT NOS. 2 AND 3 WERE MARKED  
6 FOR IDENTIFICATION BY JUDGE RUTH REPORTER.)

7 JUDGE RUTH: Could I get you to raise your  
8 right hand, please, sir?

9 (THE WITNESS WAS SWORN.)

10 JON McCLURE testified as follows:

11 DIRECT EXAMINATION BY MR. JOHNSON:

12 Q. Mr. McClure, would you state your name and  
13 give us your capacity with Osage Valley?

14 A. Jon McClure, I'm the General Manager at Osage  
15 Valley Electric Cooperative.

16 Q. Are you the same Jon McClure who's caused to  
17 be pre-filed in this case direct testimony, which I believe  
18 has been marked as Exhibit No. 2, and surrebuttal testimony,  
19 which has been marked as Exhibit No. 3?

20 A. Yes, I am.

21 Q. And are the answers to those questions  
22 contained in those two pre-filed exhibits true and correct to  
23 the best of your knowledge, information, and belief?

24 A. Yes, they are.

25 Q. If I were to ask you the same questions as are

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1 contained on those exhibits today, would your answers be  
2 substantially the same as are written on those exhibits?

3 A. Yes, they would.

4 MR. JOHNSON: And I would point out for the  
5 record, your Honor, that the territorial agreement itself is  
6 Exhibit 1 to what you've now marked as Exhibit 2.

7 I would offer Exhibits 2 and 3 into the  
8 record, your Honor.

9 JUDGE RUTH: Okay. Exhibits 2 and 3 have been  
10 offered. Does anyone object to the admission of Exhibit 2,  
11 the direct testimony of Mr. McClure or Exhibit 3, the  
12 surrebuttal testimony of Mr. McClure? I'll start with Staff.

13 MR. DOTTHEIM: No objection.

14 JUDGE RUTH: Aquila?

15 MR. BOUDREAU: No objection, thank you.

16 JUDGE RUTH: Public Counsel.

17 MR. COFFMAN: No objection.

18 JUDGE RUTH: Okay. Then Exhibits 2 and 3 are  
19 received into the record.

20 (OSAGE VALLEY EXHIBIT NOS. 2 AND 3 WERE  
21 RECEIVED INTO EVIDENCE BY THE HEARING OFFICER.)

22 MR. JOHNSON: That's all the question I have.

23 JUDGE RUTH: Then I will give the parties an  
24 opportunity for cross-examination. Staff, do you have cross?

25 MR. DOTTHEIM: No questions.

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1 JUDGE RUTH: Public Counsel?  
2 MR. COFFMAN: No questions.  
3 JUDGE RUTH: Aquila?  
4 MR. BOUDREAU: I have no questions for  
5 Mr. McClure, thank you.  
6 JUDGE RUTH: Okay. There are no questions  
7 from the bench. You may step down.  
8 THE WITNESS: Thank you.  
9 JUDGE RUTH: Okay. And Staff, I believe you  
10 have a witness, Mr. Bax.  
11 MR. DOTTHEIM: Yes, Staff would call as its  
12 witness Mr. Alan Bax.  
13 JUDGE RUTH: Okay. I have marked my copy of  
14 Mr. Bax's rebuttal testimony as Exhibit 4.  
15 (STAFF EXHIBIT NO. 4 WAS MARKED FOR  
16 IDENTIFICATION BY JUDGE RUTH REPORTER.)  
17 (THE WITNESS WAS SWORN.)  
18 ALAN BAX testified as follows:  
19 DIRECT EXAMINATION BY MR. DOTTHEIM:  
20 MR. DOTTHEIM: I've handed to the Court  
21 Reporter a copy of Mr. Bax's rebuttal testimony that's been  
22 marked as Exhibit 4.  
23 Q. (By Mr. Dottheim) Would you please state your  
24 name for the record?  
25 A. Alan J. Bax.

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1 Q. And the nature of your employment?

2 A. I'm employed as a Utility Engineering  
3 Specialist III at the Missouri Public Service Commission.

4 Q. Okay. And would you identify your business  
5 address?

6 A. PO Box 360, Jefferson City, Missouri, 65102.

7 Q. Mr. Bax, do you have a copy of your rebuttal  
8 testimony, which has been marked as Exhibit No. 4?

9 A. Yes.

10 Q. Mr. Bax, have you had an opportunity to read  
11 Mr. McClure's surrebuttal testimony?

12 A. Yes.

13 Q. And on the basis of your reading of  
14 Mr. McClure's surrebuttal testimony, has that caused you to  
15 change any recommendation that you have made that is in  
16 Exhibit No. 4, your rebuttal testimony?

17 A. Yes, the -- my concerns that I had layed out  
18 in my rebuttal testimony have been alleviated by the  
19 surrebuttal testimony of Mr. Jon McClure, and I now would  
20 recommend that the territorial agreement be approved.

21 Q. Mr. Bax, if I would ask you today the  
22 questions that appear in your rebuttal testimony, would your  
23 answers, as modified, faltered by you just now on the stand,  
24 would those answers be substantially the same?

25 A. Yes, they would.

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1 Q. Okay. Do you adopt as your rebuttal testimony  
2 in this proceeding Exhibit No. 4 as modified just a few  
3 moments ago by you?

4 A. Yes.

5 MR. DOTTHEIM: At this time, I would like to  
6 offer into evidence Exhibit No. 4, Mr. Bax's rebuttal  
7 testimony and tender him for cross-examination.

8 JUDGE RUTH: Okay. Exhibit No. 4, Mr. Bax's  
9 rebuttal testimony has been offered. Public Counsel, do you  
10 have any objection to it being received?

11 MR. COFFMAN: No objection.

12 JUDGE RUTH: Okay. And Osage Valley?

13 MR. JOHNSON: No objections.

14 JUDGE RUTH: Aquila?

15 MR. BOUDREAU: No objection, thank you.

16 JUDGE RUTH: Okay. Exhibit 4 is received into  
17 the record.

18 (STAFF EXHIBIT NO. 4 WAS RECEIVED INTO  
19 EVIDENCE BY THE HEARING OFFICER.)

20 JUDGE RUTH: Parties have the opportunity,  
21 again, for cross-examination of this witness. Public  
22 Counsel, do you have cross?

23 MR. COFFMAN: No questions.

24 JUDGE RUTH: Aquila?

25 MR. BOUDREAU: I have no questions, thank you.

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1 JUDGE RUTH: Osage Valley?

2 MR. JOHNSON: No questions.

3 JUDGE RUTH: I have one question.

4 QUESTIONS BY JUDGE RUTH:

5 Q. There's been some discussion of this, but I  
6 want to clarify on the record whether or not you believe it's  
7 necessary to actually amend the territorial agreement to  
8 clarify the need for the Commission to approve or disapprove  
9 any future addendum. In other words, do you think this issue  
10 has been satisfactorily resolved without amending the  
11 agreement?

12 A. In Section 7.4?

13 Q. Yes, sorry, 7.4. It's been stated that -- oh,  
14 it's about -- it's the third line down where it says the  
15 agreement shall be deemed approved by the aforesaid parties.  
16 I believe it's been stated that aforesaid parties means  
17 Commission Staff or the Office of Public Counsel, and thus  
18 would not mean that it is approved by the Commission itself.  
19 Is this your understanding now of Paragraph 7.4?

20 A. Yes.

21 Q. So that means that you believe the matter has  
22 been adequately addressed and the agreement does not need to  
23 be amended?

24 A. That is correct.

25 Q. Okay. Thank you. Based on that question from

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1 the bench, Public Counsel, do you have recross?  
2 MR. COFFMAN: No, your Honor.  
3 JUDGE RUTH: Aquila?  
4 MR. BOUDREAU: I have none, thank you.  
5 JUDGE RUTH: And Osage Valley?  
6 MR. JOHNSON: No, your Honor.  
7 JUDGE RUTH: Any redirect?  
8 MR. DOTTHEIM: No redirect from the Staff.  
9 JUDGE RUTH: Thank you. You may step down.  
10 Public Counsel, it's my understanding you do not have any  
11 pre-filed testimony or witness; is that correct?  
12 MR. COFFMAN: That's correct.  
13 JUDGE RUTH: Okay. I'm going to give the  
14 parties an opportunity to make a brief closing statement or  
15 argument, if you wish. And at the end of the arguments, I'm  
16 going to ask the parties if you wish to waive your right to  
17 briefs or if you wish to offer briefs, so you can be  
18 expecting that question in just a few minutes. Public  
19 Counsel, do you have a closing statement?  
20 MR. COFFMAN: No, your Honor.  
21 JUDGE RUTH: Staff?  
22 MR. DOTTHEIM: No, no closing statement.  
23 JUDGE RUTH: And Osage Valley?  
24 MR. JOHNSON: No, your Honor.  
25 JUDGE RUTH: Aquila?

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1 MR. BOUDREAU: No, thank you.

2 JUDGE RUTH: Okay. Okay. I'll note for the  
3 record that we do have Exhibits 1, 2, 3, and 4 admitted into  
4 the record. Those are the direct testimony of Steve Yates,  
5 direct testimony of Jon McClure, surrebuttal of Mr. McClure,  
6 and rebuttal of Mr. Bax.

7 The briefs -- I'm sorry, the transcript has  
8 been directed to be filed with the Commission on September  
9 16th. The Commission needs to make or issue its report and  
10 order in this matter no later than October 8th, 2004, and  
11 I'll ask the parties now if you wish to set a briefing  
12 schedule or if you waive your right to briefs. I'll start  
13 with Staff.

14 MR. DOTTHEIM: The Staff waives its right to  
15 brief.

16 JUDGE RUTH: And Public Counsel.

17 MR. COFFMAN: I would also waive my right to  
18 brief.

19 JUDGE RUTH: Osage?

20 MR. JOHNSON: We would waive our right to a  
21 brief as well, your Honor.

22 JUDGE RUTH: And Aquila?

23 MR. BOUDREAU: Aquila waives its right to file  
24 a post-hearing brief. Thank you.

25 JUDGE RUTH: Okay. Are there any other



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1 matters that need to be addressed before we adjourn? Okay.  
2 Then the only thing -- I'm sorry, did you start to say  
3 something?

4 MR. BOUDREAU: No, I was going to say I don't  
5 believe there are any remaining issues. Thank you.

6 JUDGE RUTH: I'll just remind the parties that  
7 if you want an electronic copy of today's hearing, then you  
8 need to talk to the Court Reporter before you leave today.  
9 And with that said, we will adjourn the hearing and we're off  
10 the record now. Thank you.

11 WHEREUPON, the recorded portion of the hearing  
12 was concluded.

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