

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 26th day
of January, 2006.

In the Matter of the Application of Aquila, Inc., d/b/a)	
Aquila Networks – MPS, and Osage Valley Electric)	
Cooperative for Approval of Addendum No. 2 to a)	<u>Case No. EO-2006-0244</u>
Written Territorial Agreement Designating the)	
Boundaries of Exclusive Service Areas within Cass)	
County, Missouri)	

**REPORT AND ORDER APPROVING ADDENDUM TO TERRITORIAL
AGREEMENT**

Issue Date: January 26, 2006

Effective Date: February 5, 2006

This decision approves Addendum No. 2 to the Territorial Agreement between Aquila, Inc., d/b/a Aquila Networks – MPS, and Osage Valley Electric Cooperative, which will allow Osage Valley to provide electric service to a new commercial industrial park located in Aquila’s service territory.

FINDINGS OF FACT

On December 6, 2005, Aquila and Osage Valley filed a joint application asking the Commission to approve an addendum to their written territorial agreement that designates boundaries of exclusive service areas in Cass County, Missouri.

Aquila is a public utility providing electric, natural gas, and industrial steam utility services to customers in its Missouri service areas. Osage Valley is a rural electric cooperative with its principal office located in Butler, Missouri. Both companies provide electric service in portions of Cass County.

In 2004, the Commission approved a territorial agreement between the companies that established three exclusive electric service areas within the community of Peculiar, which is located in Cass County. On July 19, 2005, the Commission approved Addendum No. 1 to that territorial agreement in Case No. EO-2005-0448, creating a fourth exclusive service area. The second proposed addendum to that territorial agreement would add a fifth exclusive service area. The new exclusive service area would allow Osage Valley to provide service to a new 11-acre commercial industrial park located within Aquila's service territory.

On December 8, the Commission issued an order directing that notice of the joint application be sent to interested parties and to the public. That order also established an intervention deadline of December 28. No applications to intervene were submitted.

On January 20, 2006, Staff filed a recommendation. Staff indicates that the addendum will allow Osage Valley to serve the new commercial industrial park using its existing electrical facilities that border the service area. Osage Valley already has a substation located near the area to be served. Aquila does not currently have facilities to serve the area. Staff recommends that the addendum be approved as being in the public interest.

Based on the information contained in the Joint Application and on the recommendation of Staff, the Commission finds that the proposed addendum is not detrimental to the public interest.

CONCLUSIONS OF LAW

Section 394.312, RSMo 2000, gives the Commission jurisdiction over territorial agreements concerning electric service, including any subsequent amendment to such

agreement. Under Section 394.312.4, the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest. As it found in its findings of fact, the addendum to the territorial agreement will not be detrimental to the public interest.

Article 7 of the existing territorial agreement establishes a procedure for the consideration of addendums to the territorial agreement to allow a new or existing structure to receive service from one company although the structure is located in the territory of the other company. That article provides that once the companies have reached an agreement, they are to file the agreed upon addendum with the Commission. Paragraph 7.4 provides that if the Commission's Staff or the Office of the Public Counsel does not file a pleading objecting to the addendum within 45 days, then "the addendum shall be deemed approved by the aforesaid parties." Even if Staff and Public Counsel have been deemed to approve, the submitted addendum is still subject to approval or rejection by the Commission.

Public Counsel did not file a recommendation or objection within 45 days of the filing of the addendum. By the terms of the territorial agreement, Public Counsel is deemed to have approved the addendum.

Although Section 394.312.4, RSMo 2000, provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The decision in State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri,¹ holds that the requirement for a hearing

¹ 776 S.W. 2d 494 (Mo. App. W.D. 1989).

is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. Therefore, no hearing is necessary.

DECISION

Based on its findings of fact and conclusions of law, the Commission determines that the submitted addendum to the existing territorial agreement between the parties is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That Addendum No. 2 to the Territorial Agreement between Aquila, Inc., d/b/a Aquila Networks – MPS, and Osage Valley Electric Cooperative is approved.
2. That this order shall become effective on February 5, 2006.
3. That this case may be closed on February 6, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge