

Decision No. C04-0290

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03F-282E

AQUILA, INC., DOING BUSINESS AS AQUILA NETWORKS- WPC,

COMPLAINANT,

v.

SAN ISABEL ELECTRIC ASSOCIATION, INC.,

RESPONDENT.

**ORDER REOPENING RECORD AND REQUIRING
FILING OF SUPPLEMENTAL INFORMATION**

Mailed Date: March 22, 2004

Adopted Date: March 17, 2004

I. STATEMENT

1. This case concerns a complaint by Aquila, Inc. (Aquila), against Respondent San Isabel Electric Association, Inc. (San Isabel). Aquila alleges that San Isabel improperly invaded its service territory by providing electric service to various premises within Aquila's certificated territory. After hearing on the complaint, on February 5, 2004, an Administrative Law Judge (ALJ) for the Commission issued his recommended decision in this matter. In that decision, he recommended dismissal of Aquila's complaint in its entirety.

2. On February 25, 2004, Aquila filed its exceptions to the recommended decision. Those exceptions assert, in part, that the ALJ erred in holding that Aquila failed to provide adequate evidence that eight residential customers in the area at issue are located within Aquila's service territory.

3. On March 9, 2004, San Isabel filed its response to the exceptions. In its response, San Isabel disagrees with the arguments raised by Aquila in its exceptions.

II. FINDINGS

4. In reviewing the recommended decision, the pleadings, the exhibits, and the transcript to the case, the Commission has determined that a critical piece of information was not filed in the record. The missing information centers on the proper interpretation of Appendix A to the Commission's Decision No. 76421 (Mailed Date of December 9, 1970). Appendix A describes the service territory boundary of San Isabel in a metes and bounds convention. According to the present record, the problem in determining whether the eight residential customers are located in San Isabel's territory is due to the use of the terms "Future Tract 374" and "Future Tract 367" on page three of Appendix A.

5. Beginning on page 228 of the transcript, Aquila witness Vanderwalker stated that he went to the county offices to compare the tract map with the plat map as set forth in the Commission's 1970 decision to resolve the proper service territory boundary. He stated that, based on that information, he was able to establish the service territory boundary line as drawn by Aquila on Exhibit 4. However, no copies of the county records were entered into evidence in this case regarding Aquila's interpretation of the location of Future Tracts 374 and 367. We believe that copies of the county records relied upon by Aquila witness Vanderwalker would enable the Commission to readily and objectively determine the service territory boundary with respect to the eight residential customers in this complaint.

6. We agree with San Isabel that ordinarily parties in a complaint case (*e.g.*, Aquila in this proceeding) should not be given "two bites at the apple." However, we conclude that

good grounds exist to reopen the record here. We note that the present record, such as the Vanderwalker testimony, already suggests that Aquila's description of the service territory boundaries is the correct one based upon county records. However, without a definitive ruling here regarding the correct boundary lines, there may be future disputes between Aquila and San Isabel as to which utility is entitled to serve other premises in the immediate area where the eight residential properties are located. Moreover, it appears that the precise boundaries of the San Isabel and Aquila certificated territories in the disputed area can be easily and objectively determined with the county records. Finally, we note that San Isabel's Answer to the Complaint can be reasonably interpreted as not disputing the actual boundaries of the parties' service territories in the now disputed area. This may explain why Aquila did not provide copies of the county records that may easily resolve this dispute. For these reasons, it is appropriate to reopen the record as indicated in this order.

7. We direct Aquila within 14 days of the effective date of this order to file a copy of the county tract maps, plat maps, and any other documents relied upon by Mr. Vanderwalker to determine the service territory boundary, as drawn by Aquila in Exhibit 4, relating to the eight residential customers.

8. Aquila shall provide to San Isabel, on the same day as the filing with the Commission, a copy of the above-referenced documents. Within 14 days of Aquila's filing, San Isabel shall file a pleading stating any objection to the admission of the above-referenced documents into the evidentiary record. That pleading shall also inform the Commission whether, after examination of the county records, San Isabel agrees or disagrees with the service territory boundary as drawn by Aquila in Exhibit 4.

9. If San Isabel disagrees with Aquila's position, the Commission will remand this case to the ALJ for additional hearing for the limited purpose of determining the service territory boundary relating to the eight residential customers based on the above-referenced documents. Following the issuance of the ALJ's recommended decision on remand on the limited issue of the service territory boundary for the eight residential customers, the Commission will take up all remaining issues in the case at a future Commissioners' Weekly Meeting.

III. ORDER

A. The Commission Orders That:

1. Within 14 days of the effective date of this Order, Aquila, Inc., shall file a copy of the county tract maps, plat maps, and any other documents relied upon by Mr. Vanderwalker to determine the service territory boundary, as drawn by Aquila, Inc., in Exhibit 4, relating to the eight residential customers. Aquila, Inc., shall serve these documents on San Isabel Electric Association, Inc., on the same date as the filing with the Commission

2. Within 14 days of Aquila, Inc.'s filing, San Isabel Electric Association, Inc., shall file a pleading stating any objection to the admission of the above-referenced documents into the evidentiary record. That pleading shall also inform the Commission whether, after examination of the county records, San Isabel Electric Association, Inc., agrees or disagrees with the service territory boundary as drawn by Aquila, Inc., in Exhibit 4.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 17, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners