

Decision No. C04-0468

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 REMANDING CASE BACK TO
ADMINISTRATIVE LAW JUDGE
FOR THE LIMITED PURPOSE OF DETERMINING
SERVICE TERRITORY BOUNDARY**

Mailed Date: May 7, 2004
Adopted Date: April 28, 2004

I. BY THE COMMISSION

A. 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. By Decision No. C04-0290, the Commission directed Aquila 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. That decision also required that Aquila provide to San Isabel a copy of the above-referenced documents, and permitted San Isabel to file a pleading stating any objection to the admission of the documents. Lastly, the decision allowed San Isabel to inform the

Commission whether, after examination of the county records, it agrees or disagrees with the service territory boundary as drawn by Aquila in Exhibit 4.

2. On April 15, 2004, San Isabel filed its reply. San Isabel stated that it does not object to the track maps filed by Aquila, but believes they are incomplete. Specifically, San Isabel notes that Aquila only provided sheet two of two of Tract 367. With its reply, San Isabel includes sheet one of two of Tract 367. San Isabel contends that sheet one of two of Tract 367 supports its position that it is entitled to serve the eight residential customers in question and that further hearings are unnecessary. San Isabel, however, does object to the hand-written comments inserted on the legal description included in the Aquila documents and believes they should be stricken. Finally, San Isabel contends that, after reviewing the material provided by Aquila, it is clear that Aquila should have known since 1994 that San Isabel was serving the eight residential customers in question. As a result, Aquila is barred by the doctrines of waiver, laches, and estoppel from complaining about these residential customers.

3. On April 26, 2004, Aquila filed its reply to the San Isabel reply. Aquila disputes the allegations that Aquila intentionally omitted sheet one of two of Tract 367 and San Isabel's objection to the hand-written notes on the legal description included in the Aquila documents. Aquila states that it was following the Commission's order by providing "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." As such, it was appropriate not to include sheet one of two of Tract 367 since Mr. VanDerWalker did not rely upon it. In addition, Aquila states that the hand-written notes were made when Mr. VanDerwalker was preparing Exhibit 4. Finally, Aquila objects to

San Isabel's assertions of the legal defenses of waiver and laches, arguing that San Isabel has waived these arguments by waiting until this late date to make them.

II. FINDINGS

4. In reviewing the two replies it is obvious that each party still believes that evidence supports its own position. As a result, the Commission will remand this case back to the Administrative Law Judge (ALJ) for an additional hearing, for the limited purpose of determining the service territory boundary.

5. Within the replies, both parties have raised evidentiary matters relating to the supplemental maps and documents needed to determine the proper service territory boundary. The Commission will defer those evidentiary matters to the ALJ on remand. However, the Commission clarifies that no legal arguments (*e.g.*, waiver, laches, or estoppel) should be argued at the remand hearing. Instead, the purpose of the hearing is to determine the service territory boundary relating to Tract 367, the eight residential customers, and any other related properties, in light of the supplemental documents filed pursuant to Decision No. C04-0290 and any other admissible evidence relevant to the service territory boundary.

III. ORDER

A. The Commission Orders That:

1. The case is remanded to the Administrative Law Judge for additional hearing for the limited purpose discussed above.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 28, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners