

Decision No. C04-0723

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 DENYING MOTION
TO MODIFY DECISION NO. C04-0468**

Mailed Date: June 30, 2004

Adopted Date: June 2, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Motion to Modify Decision No. C04-0468 by San Isabel Electric Association, Inc. (San Isabel), the Complainant in this case. Aquila, Inc., doing business as Aquila-Networks-WPC (Aquila), filed its Response opposing the Motion. Now being duly advised, we deny the Motion to Modify.

2. This case concerns a dispute as to service area boundaries of Aquila and San Isabel. We first considered this case on Exceptions under § 40-6-109(1), C.R.S., and, in Decision No. C04-0290, ordered Aquila to supplement the record by filing copies of the county tract maps, plat maps, and certain other documents Aquila used to determine the disputed service area boundary. Aquila filed those documents and San Isabel filed its response. Those filings indicated that the parties still disagreed regarding the precise boundary of their service territories.

In Decision No. C04-0468 we remanded this case to the Administrative Law Judge (ALJ) for an additional, limited evidentiary hearing. The Decision (paragraph 5) specifically directed:

[T]he 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 other admissible evidence relevant to the service territory boundary.

3. The Motion to Modify objects to the directive that no legal arguments, such as waiver, laches, or estoppel, may be presented at the hearing on remand. San Isabel argues that this limitation will unduly impair the ability of the parties to present their cases on remand. Furthermore, San Isabel contends that it should not be precluded from asserting any such legal arguments because it has timely asserted these defenses in its Answer to the Complaint here.

4. Aquila disagrees with these contentions. First, Aquila points out that the purpose of the remand is limited: to resolve the factual dispute over the precise boundary line relating to eight residential customers.¹ Second, Aquila objects to San Isabel asserting legal defenses (*e.g.*, waiver, laches, or estoppel) relating to the service territory for the "eight residential customers" at this time. Aquila argues that such defenses are new and untimely given the procedural status of the case. Allowing San Isabel to assert new legal defenses on remand would be unfairly prejudicial to Aquila.

¹ In fact, Decision No. C04-0468 (paragraph 5) specifies that the hearing on remand concerns "Tract 367, the eight residential customers, and any other related properties."

5. We deny the Motion to Modify. Aquila correctly points out that the purpose of the remand was limited. The parties have had sufficient opportunity to present evidence and argument regarding the issues in this case. Decision No. C04-0290 remanded this case to the ALJ for the limited purpose of considering the supplemental information ordered by the Commission on its own motion and related matters, not to give the parties additional opportunity to present additional unrelated (to the remand) arguments, or to present new arguments that could have been raised at the initial hearings. The Motion to Modify improperly seeks to expand the purpose of the remand and should be denied.

II. ORDER

A. The Commission Orders That:

1. The Motion to Modify Decision No. C04-0468 by San Isabel Electric Association, Inc., is denied.
2. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 2, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners