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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCUMENT CONTROL

COMMISSIONERS
JEFF HATCH-MILLER, CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ROGER CHANTEL,)	DOCKET NO. E-01750A-04-0929
)	
Complainant,)	RESPONDENT'S RESPONSE TO
)	COMPLAINANT'S MOTION TO
vs.)	REMOVE ALJ
)	
MOHAVE ELECTRIC COOPERATIVE,)	
INC.)	
)	
Respondent.)	
_____)	

Mohave Electric Cooperative, Inc., by and through its counsel Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C., responds to the Complainant's Motion to Remove Administrative Law Judge. Complainant does not cite the legal basis or authority for his request. Moreover, there are no specific provisions in Title 14, Chapter 3 of the Arizona Administrative Code dealing with such a motion. However, R14-3-101 provides:

"In all cases in which procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior Court of Arizona as established by the Supreme Court of the state of Arizona shall govern."

The Arizona Rules of Civil Procedure (Rule 42) provide two grounds for moving for change of judge: 1) change as a matter of right; and 2) cause. Both of these bases will be examined.

CHANGE AS A MATTER OF RIGHT

Requesting the change of a judge (or ALJ) as a matter of right is based on Rule

1 42(f) of the Arizona Rules of Civil Procedure:

2 "In any action pending in superior court, except an action pending in the
3 Arizona Tax Court, each side is entitled as a matter of right to a change of one
4 judge and one court commissioner."

5 Under paragraph C of said Rule, "[a] notice is timely if filed sixty (60) or more days before
6 the date set for trial." Here, a hearing is already scheduled for August 30, 2005 and
7 Complainant's Motion, filed on July 18, 2004, is untimely by being well within the sixty day
8 period before hearing when such motions are not permitted. Accordingly, Complainant
9 cannot avail himself of any change as a matter of right.

10 **CAUSE**

11 Under paragraph C of Rule 42(f):

12 "An affidavit [presenting grounds for change of judge for cause] shall be
13 timely if filed and served within twenty days after discovery that grounds exist
14 for change of judge. No event occurring before such discovery shall constitute
15 waiver of rights to change of judge based on cause."

16 Complainant has been dilatory in his duty to timely file an affidavit for cause for change of the
17 administrative law judge. It is unreasonable for Complainant to do so in the twenty third hour
18 only approximately five weeks before a hearing.

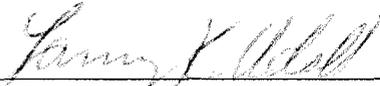
19 **CONCLUSION**

20 It is simply too late for Complainant to request a change of the ALJ only five
21 weeks before a hearing. Moreover, Mohave believes that the ALJ has been extraordinarily
22 fair and impartial in her handling of prior matters between these parties and therefore requests
23 that Complainant's Motion be denied.
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RESPECTFULLY SUBMITTED, this 8th day of August, 2005.

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.



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**Original and fifteen (15) copies of
the foregoing filed this 8th day of August, 2005 with:**

Docket Control Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

**Copies of the foregoing hand-delivered and/or mailed
this 8th day of August, 2005 to:**

Lyn Farmer, Administrative Law Judge
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