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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF:

DOCKET NO. E-01750A-04-0929

ROGER CHANTEL

Complainant,

vs.

MOHAVE ELECTRIC COOPERATIVE,

Respondent.

PROCEDURAL ORDER

BY THE COMMISSION:

On December 27, 2004, a letter from Roger Chantel ("Complainant") was filed with the Arizona Corporation Commission ("Commission") as a formal complaint against Mohave Electric Cooperative ("Complaint"). The Complaint alleges that Mohave Electric Cooperative ("Mohave" or "Respondent") is denying Complainant electric service in association with a line extension request.

On January 24, 2005, Mohave filed a response to the Complaint, requesting that the Commission deny the Complaint.

Accordingly, by Procedural Order issued February 8, 2005, a pre-hearing conference was set for February 22, 2005 for the purpose of discussing the procedures that will govern this matter.

The Pre-Hearing Conference was held as scheduled. At the conclusion of the Pre-Hearing Conference, the parties were ordered to file a status report by March 22, 2005 outlining the parties' progress on the line extension request.

Both Complainant and Respondent docketed various filings following the Pre-Hearing Conference.

On June 6, 2005, Mr. Chantel docketed a letter to the Commission dated May 31, 2005. The letter requested a hearing.

1 By Procedural Order issued June 10, 2005, a hearing was set on the Complaint. The  
2 Procedural Order also directed Mr. Chantel and Mohave to continue to work toward a reasonable  
3 solution to the dispute. The June 10, 2005 Procedural Order directed Complainant and Respondent to  
4 file Pre-Hearing Briefs on the legal effect of Decision No. 67089<sup>1</sup> on this proceeding, and ordered  
5 that the Pre-Hearing Briefs include legal arguments in support of the positions taken in the Pre-  
6 Hearing Brief. A schedule was also set for the filing of Response Briefs.

7 On July 6, 2005, Mohave filed a copy of its notes from a June 23, 2005 meeting with Mr.  
8 Chantel.

9 On July 7, 2005, Mohave filed a Notice of Appearance by Legal Counsel.

10 On July 19, 2005, Mr. Chantel filed a Motion to Remove the Presiding Administrative Judge  
11 and Pre-Hearing Brief.

12 On July 22, 2005, Mohave filed a Pre-Hearing Brief Regarding Legal Effect of Decision No.  
13 67089 and Request for Leave to File Motion for Summary Judgment and to Vacate Hearing.

14 On July 27, 2005, Mohave filed a letter response to a letter inquiry from Mr. Chantel.

15 On August 8, 2005, Mohave filed a Response to Complainant's Motion to Remove ALJ.

16 On August 10, 2005, Complainant filed a Response to Respondent's Pre-Hearing Brief.

17 On August 11, 2005, Mohave filed Respondent's Response to Complainant's Pre-Hearing  
18 Brief.

19 On August 15, 2005, a Procedural Order was issued in this matter denying Complainant's  
20 Motion to Remove the Presiding Administrative Law Judge.

21 Respondent's Request for Leave to File Motion for Summary Judgment and to Vacate Hearing

22 Respondent's July 22, 2005, Pre-Hearing Brief Regarding Legal Effect of Decision No. 67089  
23 included a Request for Leave to File Motion for Summary Judgment and to Vacate Hearing. Mohave  
24 asserts that Complainant is collaterally estopped from raising the same issues raised in the proceeding  
25 that led to Decision No. 67089, and moves for leave to file a motion for summary judgment to stop  
26 this proceeding from going forward under Rule 56 of the Arizona Rules of Civil Procedure. Mohave  
27

28 <sup>1</sup> On June 29, 2004, the Commission issued Decision No. 67089 on a complaint filed against Mohave by Roger and Darlene Chantel, also regarding a line extension agreement dispute.

1 also moved to vacate the hearing on this matter currently scheduled for August 30, 2005.

2 In Complainant's August 10, 2005 Response to Respondent's Pre-Hearing Brief Request for  
3 Leave to File Motion for Summary Judgment and to Vacate Hearing, Complainant asserts that  
4 Complainant has not had a full and fair opportunity to litigate the issues in this case. Complainant  
5 requests that the Commission deny Respondent's "Motion to Estoppel this Complaint" (sic).  
6 Complainant further requests that the hearing proceed on August 30, 2005, and "that the laws be  
7 addressed as they have been written and approved by elected officials."

8 The Commission's procedural rules do not address summary judgment. However, A.A.C.  
9 R14-3-101.A provides that in cases in which procedure is not set forth by law or by rules or  
10 regulations of the Commission, the Rules of Civil Procedure for the Superior Court of Arizona shall  
11 govern. Rule 56(b) of the Arizona Rules of Civil Procedure provides that a party against whom a  
12 claim, counterclaim, or cross-claim is asserted may, at any time, move with or without supporting  
13 affidavits for a summary judgment in the party's favor as to all or any part thereof. Mr. Chantel's  
14 Complaint asserts that Mohave is denying him electrical service and requests that this Commission  
15 address the issue. It is therefore reasonable to grant Respondent's request for leave to file a motion  
16 for summary judgment. Granting Respondent's request necessitates a continuance of the hearing in  
17 order to allow sufficient time for Respondent to prepare and file the motion and for Complainant to  
18 prepare and file a response.

19 IT IS THEREFORE ORDERED that Respondent's request for leave to file a motion for  
20 summary judgment pursuant to Rule 56 of the Arizona Rules of Civil Procedure is hereby granted.

21 IT IS FURTHER ORDERED that in order to accommodate the procedural schedule set forth  
22 below, the **hearing** in this matter currently scheduled for **August 30, 2005 at 10:00 a.m.**, hereby  
23 **continued** pending resolution of the motion.

24 IT IS FURTHER ORDERED that Respondent shall file its motion for summary judgment  
25 pursuant to Rule 56 of the Arizona Rules of Civil Procedure by September 9, 2005.

26 IT IS FURTHER ORDERED that Complainant shall have until September 30, 2005 to make  
27 the appropriate filings pursuant to Rule 56 of the Arizona Rules of Civil Procedure in opposition to  
28 Respondent's motion for summary judgment.

1 IT IS FURTHER ORDERED that Respondent's and Complainant's filings shall otherwise  
2 conform to the requirements of Rule 56 of the Arizona Rules of Civil Procedure.

3 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive  
4 any portion of this Procedural Order by subsequent Procedural Order or by ruling at hearing.

5 DATED this 17<sup>th</sup> day of August, 2005

6  
7  
8   
9 TEENA WOLFE  
ADMINISTRATIVE LAW JUDGE

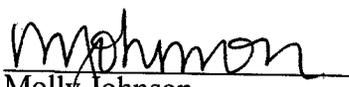
10 Copies of the foregoing were mailed  
11 this 17 day of August, 2005, to:

12 Roger Chantel  
13 10001 East Hwy. 66  
14 Kingman, AZ 86401  
15 **VIA CERTIFIED MAIL**  
16 **RETURN RECEIPT REQUESTED**

17 Michael A. Curtis  
18 Larry K. Udall  
19 CURTIS, GOODWIN, SULLIVAN, UDALL  
20 & SCHWAB, P.L.C.  
21 2712 North 7<sup>th</sup> Street  
22 Phoenix, AZ 85006-1090  
23 **VIA CERTIFIED MAIL**  
24 **RETURN RECEIPT REQUESTED**

25 Stephen McArthur, Comptroller  
26 Mohave Electric Cooperative  
27 P.O. Box 1045  
28 Bullhead City, AZ 86430  
29 **VIA CERTIFIED MAIL**  
30 **RETURN RECEIPT REQUESTED**

31 ARIZONA REPORTING SERVICE, INC.  
32 2627 N. Third Street, Ste. Three  
33 Phoenix, AZ 85004-1003

34 By:   
35 Molly Johnson  
36 Secretary to Teena Wolfe