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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,)
)
Complainant,)
)
vs.)
)
MOHAVE ELECTRIC COOPERATIVE, INC.)
)
Respondent.)
_____)

DOCKET NO. E-01750A-
04-0929

RESPONDENT'S REPLY
TO COMPLAINANT'S
RESPONSE TO
RESPONDENT'S MOTION
FOR SUMMARY
JUDGMENT

Respondent Mohave Electric Cooperative, Inc. (hereafter "Mohave"), by and through counsel undersigned, replies to Complainant's Response to Respondent Mohave's Motion for Summary Judgment on Complainant's Complaint. Complainant has not produced any demonstrable evidence to corroborate his original claim he has been unreasonably denied a line extension. Accordingly, Mohave reurges the granting of its Motion for Summary Judgment because: 1) Complainant has not borne his burden to establish any genuine issues of material fact or to provide any reasonable grounds for the administrative law judge to not render summary judgment in favor of Mohave; and 2) Complainant has not objected to Mohave's allegations that he is precluded, at least for a reasonable period of time (by the legal principles of claim and issue preclusion), from contending again that Mohave wrongfully denied him a line extension to one of his investment properties. Moreover, Complainant has only marginally complied with the

1 requirements of Rule 56, A.R.C.P. and has not identified which, if any, of Mohave's allegations
2 in Mohave's Statement of Facts he disputes.

3 In any event, Mohave addresses what appear to be the principal allegations in
4 Complainant's Statement of Facts hereafter.

5
6 COMPLAINANT'S STATEMENT OF FACTS

7 Complainant alleged in his first statement that Mohave has not demonstrated it
8 was willing to provide service in the area where Complainant has requested service. To the
9 contrary, utility lines are found in the immediate area where Complainant seeks to have his line
10 extension, as reflected on the plat map Mohave supplied as an attachment to its Agreement for
11 Constructing Electric Facilities – Exhibit N to Mohave's Statement of Facts.

12
13 For paragraph two, Complainant misstates the facts. The form the Commission
14 requested Mohave to modify was in Docket E-1750A-03-0373. Mohave amended the line
15 extension form it sent to Complainant on or about July 15, 2004 (see Mohave's Exhibit C
16 attached to its Statement of Facts). If that were not the case, one would have expected the
17 Complainant to have brought the alleged "non-compliance" to the attention of this Commission
18 in the summer of 2004. He did not because he knew that Mohave had given notice to the
19 Commission of its compliance. Complainant never alleged that Mohave had not forwarded the
20 amended line extension agreement because he had received it and, for some unknown reason, he
21 must have lost the prospective buyer who wanted the line extension for the property. Once
22 Complainant lost his sale and buyer, he had no interest in pursuing the improvements to his raw
23 land. That underscores the fact that Complainant attempts to use the resources of a cooperative
24
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1 utility to finance the improvements for his real estate investments at no expense to him. The
2 electric service requests for which Complainant brings his current complaint are unrelated to the
3 service he requested in E-01750A-03-0373.

4
5 For Complainant's statement #3, he errs in contending that Mohave has created
6 special conditions for Complainant's new electric service requests. The "special conditions" are
7 not special and are found in Section 106 of Mohave's Service Rules and Regulations. The
8 applicable provisions are as follows:

9 Rule 106A-2-c): When the Cooperative requires an applicant to advance funds
10 for a line extension, the Cooperative will furnish the applicant with a copy of the
11 line extension agreement.

12 Rule 106 A-2-e): Line extension provisions under this Section apply only to those
13 applicants who in the Cooperative's judgment will be permanent Consumers.

14 Rule 106 G: Extensions for temporary service or for operations of a speculative
15 character or questionable permanency will be made in accordance with the
16 provisions pertaining to temporary service set forth in Subsection 102-F.

17 The foregoing provisions are part of Mohave's Service Rules and Regulations of March 1982
18 and they reflect that legitimate grounds existed for Mohave to request the advance of funds for
19 the line extension.

20 In his statement #4, Complainant argues that the parties in E-01750A-03-0373 and
21 E-01750A-04-0929 are different. However, the Commission's Decision No. 67089 reflects in
22 the caption the names of the complainants – ROGER AND DARLENE CHANTEL. Similarly,
23 Complainant's own Statement of Facts and Response to Mohave's Motion for Summary
24 Judgment reflect that he is the "Complainant." The fact that his wife's name is omitted from the
25 caption does not obviate the fact that Roger Chantel has been a complainant in both proceedings
26

1 – leaving him subject to the applicable doctrines of issue and claim preclusion. Issue and claim
2 preclusion (*res judicata* and collateral estoppel) are appropriate in this situation to prevent a
3 litigious person from bullying an electric cooperative into free services through years of
4 litigation.
5

6 Finally, statement #5 is not a statement of fact but an allegation concerning
7 jurisdictional limitations on administrative law judges within the Arizona Corporation
8 Commission. It has no relevance in this proceeding.

9 COMPLAINANT’S RESPONSE TO MOHAVE’S MOTION

10 For years, the Complainant has sought to persuade the Commission to unwittingly
11 assist him in extorting thousands of dollars in free services from Mohave that every other
12 customer in similar circumstances pays for. Complainant has alleged, in both his present
13 Complaint and an earlier complaint that Mohave refuses to provide him electric service. This is
14 false. Mohave simply requests the Complainant to submit the necessary information and comply
15 with Mohave’s Commission-approved Rules and Procedures. Those Rules and Procedures were
16 addressed in Mohave’s Motion for Summary Judgment but not addressed by Complainant.
17 Complainant rambles in his Response without presenting any concrete evidence to support his
18 allegation that Mohave “goes to extremes to deny customers the right to have electric service in
19 their eastern certified territory.” To bring some focus to the analysis of Complainant’s
20 Complaint, Mohave presents again Complainant’s *verbatim* allegations:
21
22

23 “I filed for a line extension under the ACC R14-2-207 and MEC’s line extension
24 rules, which grants the customer 625 feet of free footage. I have enclosed a copy
25 of the letter that was sent back to me denying James Rodgers and myself electric
26 service, along with the documents that I supplied to MEC requesting line

1 extension. You will find a number of areas in this letter that directly and indirectly
2 point out that we are being denied electrical service.

3 1. The letter states that they are returning all of the documents I sent in our
4 line extension request. If you will note, they sent the originals back to me. This
5 indicates to Mr. Rodgers and me that they have no intention of proceeding with
6 this line extension.

7 2. This letter claims that the forms authorized by Mr. Rodgers and myself are
8 unacceptable. This is a direct indication that MEC does not intend to supply
9 electrical power to this area under ACC R14-2-207.

10 3. If they had intentions of supplying power, they would have outlined point
11 by point what was not acceptable in the forms that were supplied to them.

12 4. Another indication that they do not intend to supply power is that they
13 voided the check that was enclosed for payment on extra wire needed to make this
14 line extension safe for the general public.

15 5. The proper procedure for line extension was established at the Arizona
16 Corporation Commission hearing inside of case 2002-21038

17 6. In general, MEC's costumers have one address to communicate with
18 representatives and that includes the Board of Directors of MEC. MEC's inner
19 staff distributes the mail to the departments. Mr. Rodgers and I are both
20 customers of MEC and all of the information is on file in their computers. If
21 MEC intended to supply power, they would have referred this request to their
22 Customer Service for any additional information needed to apply for a separate
23 meter or separate billing."

24 Complainant's Complaint has a limited and narrowly-focused claim he was denied electric
25 service. Mohave compellingly refutes those allegations in its Motion for Summary Judgment.
26 However, in his Response, Complainant is misfocused and rambles without direction. One
illustration of this is found on page two of his Response where he asserts that Mohave has not
demonstrated a "plan to supply the area with electric service." That was never part of his original
claim. Moreover, the area has electric service. The only legitimate question is – will

1 Complainant comply with simple procedural rules that all others comply with for receiving
2 service?

3 This Commission found in Decision No. 67089 that Mohave's Service Rules and
4 Regulations has been approved by the Commission. Mohave has applied its Rules to the
5 Complainant and determined that Complainant's request for electric service through a line
6 extension appears to be for temporary service or for operations of a speculative character or
7 questionable permanency. Accordingly, Mohave has requested the Complainant to pay for the
8 line extension as explained in many letters to him. Furthermore, Complainant may recover his
9 advance for his line extension if he follows the rules. The Complainant does not want to follow
10 the rules.
11

12 **CONCLUSION**
13

14 As evidenced by the correspondence attached to Mohave's Statement of Facts in
15 support of its Motion for Summary Judgment, Mohave has now demonstrated on two occasions
16 that its conduct has been exemplary in its dealings with Complainant - a belligerent customer
17 bent on falsely alleging misconduct with the hope of getting free electric service to his real estate
18 investments without paying for the line extensions. Mr. Chantel has a well-documented pattern
19 (for years) of misconduct, false representations, and failure to follow the reasonable requests of
20 Mohave as to procedural steps. This is illustrated with the numerous letters Mohave sent Mr.
21 Chantel (and which are attached as exhibits to Mohave's Statement of Facts.
22

23 Based on the foregoing, Mohave urges the Administrative Law Judge to grant
24 summary judgment in favor of Mohave and against Mr. Chantel relative to Mr. Chantel's latest
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1 Complaint because: 1) he has failed to demonstrate any wrongdoing; and 2) issue and claim
2 preclusion doctrines preclude his effort to relitigate the same issue in such a relatively short
3 period of time since he lost on his first Complaint. Mohave has demonstrated that it has acted
4 appropriately and its Motion for Summary Judgment should also be granted under the *Orme*
5 *School* test. There are no material issues of fact because the communication between the parties
6 (what little occurred before Mr. Chantel his second Complaint and what subsequently followed)
7 reflects no misconduct by Mohave.
8

9 RESPECTFULLY SUBMITTED this 14th day of October, 2005.

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

12
13 By 
14 Michael A. Curtis
15 Larry K. Udall
16 2712 North 7th Street
17 Phoenix, Arizona 85006-1090
18 Attorneys for the Respondent Mohave

19 **Original and thirteen (13) copies of**
20 **the foregoing filed this 14th day of October, 2005 with:**

21 Docket Control Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, Arizona 85007
25
26

1 **Copies of the foregoing hand-delivered and/or mailed**
2 **this 14th day of October, 2005 to:**

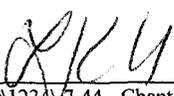
3 Teena Wolfe, Administrative Law Judge
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26 _____
27 \\Srv01\Company\1234\7-44 - Chantel\Pleadings\MSJ-REPLY.doc