



BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

JEFF HATCH-MILLER, CHAIRMAN

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2005 NOV -11 P 4: 54

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE COMPLAINT OF
BUREAU OF INDIAN AFFAIRS, UNITED
STATES OF AMERICA, AGAINST MOHAVE
ELECTRIC COOPERATIVE, INC. AS TO
SERVICES TO THE HAVASUPAI AND
HUALAPAI INDIAN RESERVATIONS.

DOCKET NO. E-01750A-05-0579

MOHAVE ELECTRIC COOPERATIVE
INC.'S REPLY TO BIA'S OPPOSITION
TO THE MOTION TO DISMISS

Mohave Electric Cooperative, Inc. ("Mohave" or "MEC") files its Reply to the Bureau of Indian Affairs' ("BIA") Opposition to Mohave's Electric's Motion to Dismiss. Mohave responds to the arguments raised in BIA's Opposition and reiterates its request that the Administrative Law Judge summarily dismiss the BIA Complaint for the reasons that the Commission lacks jurisdiction, BIA has failed to join necessary parties, BIA has selected an improper forum to hear this dispute and the Complaint fails to state a claim upon which relief can be granted.

ARGUMENT

I. THE COMMISSION HAS NO JURISDICTION

A. The Commission's Statutory Authorities Do Not Support BIA

BIA goes to great lengths in its Opposition to cite the general statutory authorities of the Commission (A.R.S. §§ 40-202¹, 40-321, 40-361(B), 40-285(B) and 30-

¹ A.R.S. §§ 40-201 and 40-202 were substantially amended in 1998 to accommodate electric competition (which has never materialized). The added and amended provisions (e.g., the definition of "service territory") cannot be used to interpret service obligations commenced pursuant to a 1982 contract.

1 806²), as well as definitional provisions contained in A.R.S. §40-201 and various Commission
2 regulations.

3 While a recital of these authorities is innocuous, it does nothing to bestow
4 jurisdiction on the Commission in this case beyond the limits defined by federal law and the
5 Arizona Constitution. Nor do these authorities identify a claim for which the Commission can
6 grant relief. Certainly, they do not expand the Commission's authority over activities on the
7 lands within the boundaries of two independent sovereign Indian Nations, they do not give the
8 Commission authority over the construction of contracts, nor do these authorities transform
9 BIA's expired contractual right to receive electric service into a duty to serve the general
10 public over a 700 square mile area lying beyond Mohave's certificated area.

11 BIA has not alleged that service has been interrupted or that any tribal member
12 has been injured by failing to receive electric power. BIA has not alleged that Mohave has
13 engaged in a deceptive, unfair or abusive business practice or that Mohave has failed to
14 comply with any of the Commission's orders. BIA has not alleged that the Commission has
15 determined that Mohave is supplying electric service to BIA and members of the Hualapai
16 and Havasupai Tribes in an unjust, unreasonable, unsafe, improper, inadequate or insufficient
17 manner. BIA has not alleged that Mohave is charging a rate that is higher than the rate
18 approved by the Commission or that service is being provided outside the time or conditions
19 prescribed by the Commission in its 1991 rate case decision. BIA further failed to allege that
20 Mohave is providing inadequate, inefficient or unreasonable service, equipment or facilities to
21 BIA or inadequate, inefficient or unreasonable service, equipment or facilities to members of
22 the Hualapai and Havasupai Tribes.

23 //

24
25 ² A.R.S. § 30-806 applies only to "public power entities" which, by definition, exclude "public service corporations" (A.R.S. §30-801.16) and like the rest of the BIA's misplaced citations, has no relevance here.

1 BIA cannot prove, as is its burden, that the line at issue in this case is necessary
2 and useful in Mohave's performance of its duties to the public. Indeed, BIA cannot make this
3 showing because the Commission has already decided the line at issue is not used or useful
4 and was not intended to be useful to Mohave's public. [Decision No. 53174, Respondent's
5 Exhibit B.] The Commission has never rescinded, altered or amended this Order in
6 accordance with A.R.S. § 40-252, nor has the Commission altered or amended Mohave's
7 CC&N (or that of APS or UNS) in accordance with A.R.S. § 40-252 or §40-281 to address
8 the Transmission Line after it was installed pursuant to the Contract. The Arizona Supreme
9 Court's holding in *Trico Electric Cooperative, Inc. v. Senner*³ and subsequent rulings⁴ make it
10 clear that the Commission cannot make such decisions unilaterally and that the Commission
11 is without power to order the transfer of a CC&N from one corporation to another without
12 due process. Since the Commission's prior decisions remain good law, an order from the
13 Commission authorizing Mohave to transfer or abandon the Line is therefore not required.⁵

14 BIA lastly attempts to reassign its burden as the electric supplier of last resort
15 within the Hualapai and Havasupai Reservations to Mohave, even though Mohave has no
16 CC&N or valid contract to act as such a supplier. BIA takes delivery of the power it receives
17 from Mohave for resale (or at least delivery) to other entities and end-users. The
18 Commission's own Decision No. 53174 also properly characterizes the 70-mile line as a
19 "transmission" line. Moreover, in March 1993, the Hualapai Tribes' own Contracting Officer
20 affirmed the Commission's characterization of the Transmission Line as a "transmission" line
21 in Paragraph 2 of His Findings of Fact regarding the imposition of a possessory tax on the
22 Transmission Line. [Respondent's Exhibit H.] All of these findings make it clear that

23 _____
24 ³ 92 Ariz. 373, 381, 377 P.2d 309, 315 (1962).

25 ⁴ *Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 409 P.2d 720 (1966) and *Tonto Creek Estates Homeowners' Assoc. v. Ariz. Corp. Comm.*, 177 Ariz 49, 864 P.2d 1081 (1993).

1 Mohave was providing wholesale, not retail, service on the Reservations. The Commission
2 and the Tribes recognize the line at issue is a transmission line. This is an important and
3 relevant distinction because it means BIA – as it should be – is the supplier of last resort – the
4 entity that has assumed the responsibility for providing retail electric service to retail
5 customers on the Reservations. It is BIA’s obligation, as the supplier of last resort, to provide
6 this retail service since Mohave is no longer willing to do so as BIA’s agent under the now
7 expired Contract. (The BIA continues to argue that the original Contract is still valid, despite
8 its unilateral attempt to modify the Contract to allocate more costs to Mohave.) BIA has
9 many options to provide such service to its wards. It can contract with the wholesale power
10 provider who is, in fact, certificated to serve the service territory (APS or UNS), it can
11 contract directly with WAPA, or the Tribes can establish their own electric utilities, like the
12 Tohonam O’odam, Navajo and Gila River and Aha McCav tribal utilities have. The federal
13 burden to provide this service, however, should not be placed on Mohave.⁶

14 B. The Commission Has No Jurisdiction Over Indian Lands

15 Federal court rulings and the Commission’s own ruling in the Papago Nation
16 case are clear. These authoritative holdings have found that the Commission has no
17 jurisdiction over wholesale power transactions within the external boundaries of Indian
18 reservations. The arguments in support of Mohave’s position are found at pp. 15-20 of its
19 Motion to Dismiss and will not be reiterated here.

20 However, Mohave finds BIA’s arguments in its Opposition brief schizophrenic.
21 On the one hand, BIA argues that the Hualapai and Havasupai Tribes are not indispensable
22 parties because it (BIA) can adequately present the Tribes’ rights and filed this suit on their
23

24 ⁵ A.R.S. § 40-281(B) is of no help to the BIA as it permits service only to areas actually touching Mohave’s certificated
25 area and does not include the extension into an area 70 miles away. See e.g., Electrical District No. 2 v. Ariz. Corp.
Comm., 155 Ariz. 252, 745 P.2d 1383 (1987).

⁶ The Commission must not forget that the BIA was responsible for and did provide electric service to these Reservations
long before Mohave agreed to provide limited contractual wholesale service in 1982.

1 behalf. On the other hand, BIA argues that it has no trust obligation on behalf of the Tribes,
2 because no specific fiduciary duty or statute requires it to fulfill the trust obligation BIA has
3 freely assumed. Consistency may be the hobgoblin of dull minds, but at law, BIA can't have
4 it both ways. Either BIA has a duty to its wards or BIA has no duty to its wards and they
5 should be joined to speak for themselves. That BIA could not grant the easements necessary
6 for Mohave to provide wholesale electric service to the Tribes means the Tribes, not BIA,
7 control the land within its external boundaries. Mohave's easements expire in 2012 and it is
8 the Tribes, not BIA, who must grant new easements in the future. Without these easements,
9 the Transmission Line would be trespassing across miles of tribal lands. Rather than granting
10 new easements, the Tribes could order Mohave to remove the Line. Because the Tribes'
11 permission is integral to providing electric service on tribal lands now and in the future, the
12 matter before the Commission cannot be decided without the Tribes' personal involvement.
13 The Tribes are therefore indispensable parties whose rights are affected by any potential
14 decision of the Commission and whose participation is necessary in order for full relief to be
15 effective. BIA representing some, but not all, of the Tribes rights is not enough – the Tribes
16 must submit themselves to Commission jurisdiction. Failure to join these sovereign nations is
17 another reason to deny the Commission's jurisdiction.⁷

18 C. The Expired Contract Language Does Not Confer Jurisdiction

19 BIA further argues that language of the now-expired Contract itself somehow
20 cures the Commission's jurisdictional defect. Contracts cannot grant a quasi-judicial body
21 powers it never had. "The parties cannot agree to invest this Court with subject matter
22 jurisdiction. Either subject matter jurisdiction exists or it does not exist, a matter independent
23

24
25 ⁷ The BIA has also failed to join the Boquillas Cattle Company [Exhibit C to Complainant's Exhibit 13], the entity whose license also allows a portion of the transmission line to cross its land. The license with Boquillas or its successor-in-interest expired on September 15, 2005. According to this license, Mohave is required to remove all poles, wires and equipment within 3 months of the termination of the license and to return the land to its original contours and condition..

1 of the parties' agreement."⁸ Indeed, the Arizona courts have found that even the Legislature
2 could not expand the role or duties granted to the Commission in the Arizona Constitution.⁹
3 Further, even if the parties by their agreement could cure a jurisdictional defect, the language
4 of the now-expired Contract does not contain any such agreement between the parties.
5 Rather, as BIA notes, some disputes will be submitted to a contracting officer, while others
6 shall be the subject of a Federal, state or other *appropriate* regulatory authority. [Emphasis
7 added.] The now-expired Contract's terms also provided, in at least 2 places that "this
8 contract shall be subject to the regulation *in the manner and to the extent prescribed* by any
9 federal, state or local regulatory commission *having jurisdiction. . . .*" [Emphasis added.]
10 Note this language did not affirmatively state that these reviewing bodies had jurisdiction,
11 rather it states that the contract will be enforced in the manner and to the extent such courts or
12 agencies independently already had jurisdiction.

13 D. The Commission Has No Jurisdiction Over Simple Contract Disputes

14 Although BIA tries its darnedest to convince this Commission that this is
15 primarily a regulatory case, the inescapable fact is this is a contract dispute – or more
16 correctly, a dispute about whether a contract exists. It is also a dispute over who should bear
17 the cost of an unfunded federal mandate – whether BIA can foist upon Mohave's 35,000
18 members the duty to serve 700 square miles outside its certificated area with electricity,
19 where the terms and conditions of such service was prescribed by wholesale contract, which
20 was allowed to lapse by the BIA. What is at issue here is whether the Commission has
21 jurisdiction to hear contract disputes when no other regulatory predicate (*i.e.*, charging a rate
22 above the ACC-approved rate or providing inadequate service, etc.) is implicated. The
23 Arizona courts in *Trico Electric Cooperative v. Ralston*¹⁰ and *General Cable Corp. v.*

24
25 ⁸ *Kolbe v. Trudel*, 945 F.Supp. 1268, 1270 (D. Ariz. 1996).

⁹ *See, e.g., Rural/Metro Corp. v. Ariz. Corp. Comm.*, 129 Ariz. 116, 629 P.2d 83 (1981).

¹⁰ 67 Ariz. 358, 196 P.2d 470 (1948).

1 *Citizens Utility Co.*¹¹ have resoundingly rejected the Commission's jurisdiction to address
2 such contract disputes.

3 BIA argues that the Commission has primary jurisdiction in this matter. Citing
4 an unpublished opinion related to religious rights, BIA suggests that the Commission should
5 handle this matter because it is "peculiarly within the agency's specialized field." However,
6 BIA fails to recognize that although the Commission may be the agency created to regulate
7 public service corporations in Arizona, the Commission has no particular expertise in, and
8 has no jurisdiction to hear, contract disputes or disputes regarding Indian lands. The doctrine
9 of primary administrative jurisdiction does not apply when the issue exceeds the agency's
10 jurisdiction or when the special expertise of the agency need not be used to decide a matter of
11 law. Injuries in tort or breaches of contracts, although committed by public utilities or public
12 service corporations, are therefore not decided by the Commission.¹² What should be at
13 issue, in forum other than the Commission, is whether the expired wholesale electric service
14 Contract was properly and timely renewed, whether it remains in effect, and whether BIA can
15 unilaterally change its terms. These contract disputes do not require the Commission's
16 particular expertise to be decided and, in fact, they are beyond the subject matter jurisdiction
17 of the Commission. Granting exclusive, primary jurisdiction to the Commission is therefore
18 inappropriate.

19
20 However, in the alternative, if the Commission finds it has such jurisdiction,
21 BIA's claims must be dismissed as a matter of law because the 1982 wholesale electricity
22 contract between Mohave and BIA no longer exists. No amount of semantics attempting to
23 distinguish between a "right to renew" versus an "option to renew" can change the fact that

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25 ¹¹ 27 Ariz. App. 381, 555 P.2d 350 (1976).

¹² *Campbell v. Mountain States Telephone & Telegraph Company*, 120 Ariz. 426, 432, 586 P.2d 987, 993 (Ariz. App. 1978). The *Campbell* holding was similarly applied in the case BIA cites for its support to apply primary jurisdiction to the matter before the Commission, *Qwest Corp. v. Kelly*, 204 Ariz. 25, 59 P.3d 789 (Ariz. App. 2003).

1 the Contract expired, by its own terms, on March 31, 1992. BIA simply did not affirmatively
2 and unambiguously invoke its right or option to have the Contract continue beyond that date.
3 BIA admits it. Instead, BIA claimed subsequently to exercise its non-existent renewal option
4 on the then- expired Contract in an April 19, 1993 letter, with the following language: that
5 “[p]rior to exercising our option, we need to re-negotiate and amend the existing contract.”
6 [Emphasis added. *See*, Complainant’s Exhibit 4.] BIA claimed to further renew, but
7 unilaterally amend, the Contract in August 2002 (Complainant’s Exhibits 18 and 19). It is
8 Black Letter Law that neither of these purported “renewals” or “exercises of the option” were
9 effective. They were merely offers to enter into new contracts.

10
11 BIA also attempts to “make hay” out of the fact that its first, ineffective attempt
12 to exercise its option to renew occurred only 13 months after the Contract expired. It claims a
13 13 month delay in exercising its option to renew was timely and reasonable. *Tempus fugit*
14 only for the BIA. This purported exercise of the option to renew was not timely or
15 reasonable, particularly in light of Mohave’s earlier warning that the time to exercise the
16 option was about to expire. [A copy of Mohave’s 1992 letter was obtained from BIA’s files
17 and is appended hereto as Respondent’s Exhibit P]. A second written, signed statement
18 exercising the BIA’s purported right to renew did not follow for some ten years. [*See*,
19 Complainant’s Exhibit 10.] This purported “renewal” was also defective. BIA sought to
20 renew the Contract, while unilaterally changing its terms. This, too, was indisputably a
21 counter-offer to enter into a new contract. In the intervening 10-year period, Mohave
22 continually made clear its position that the Contract had expired, but that it was willing to
23 negotiate a new one, despite contentious and baseless litigation in the Federal Court of Claims
24 spurred by BIA intransigence. [Respondent’s Exhibit J] Since 13 years have now passed
25 without a valid exercise of the option to renew the Contract, it cannot be said that BIA
exercised the option in a reasonable time.

1 BIA also throws in the red herring of whether early reimbursements of
2 construction costs caused the expired Contract to be extended. By agreement dated January
3 21, 2003, in Federal Court of Claims No. 99-242C (and attached hereto as Mohave's Exhibit
4 O), those matters have been settled and are not at issue here. No such language or intent to
5 address the cessation of construction costs or language allowing for a unilateral alteration of
6 the Contract can be found or inferred from the record. More likely, the parties contemplated
7 a mutually agreed upon change to the Contract would occur once all construction costs were
8 paid by BIA. Further, there is no language in the Contract or the record suggesting that the
9 costs of operation, maintenance or repairs of the line would shift to Mohave after the
10 occurrence of a specified event or time period. BIA's unilateral amendment of these terms
11 was unexpected, unplanned for and contrary to Mohave's expectations.

12
13 In a last argument on the expired Contract, BIA attempts to persuade the
14 Commission that the expired Contract remains in effect because Mohave improperly, and in
15 bad faith, refused to cooperate with BIA to renegotiate its terms for ones more favorable to
16 BIA. This contention strains credulity. While Mohave may have a duty not to breach the
17 contract or interfere with BIA's performance of its terms, Mohave has no duty to assist BIA
18 in exercising its option to renew. Mohave also has no duty to negotiate a new wholesale
19 electric service contract that works to its detriment. The implied duty of good faith "does not
20 obligate a party to a contract to accept a material change in the terms of the contract or to
21 assume obligations that vary or contradict the contract's express provisions."¹³ Indeed,
22 Mohave would be breaching its own duty of good faith to its members if it entered into a
23 contract it knew put it at a distinct economic disadvantage. Contract law does not require
24 Mohave to benefit BIA at its members' expense.

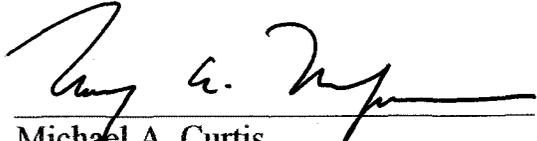
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¹³ *Dalan v. Paracelsus Healthcare Corp. of North Dakota, Inc.*, 640 N.W.2d 726, 731 (2002).

1 service is being provided to tribal members on Indian lands, the Commission has no authority
2 to order Mohave to provide such service. The transmission line at issue is not used or useful
3 to Mohave's members and therefore the Commission's prior approval to transfer or abandon
4 the line is not required. BIA has failed to state a claim for which the Commission can grant
5 relief. BIA's Complaint should accordingly be dismissed with prejudice.

6 DATED this 1st day of November, 2005.

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

9
10 By: 

11 Michael A. Curtis
12 William P. Sullivan
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14 Nancy A Mangone
15 2712 North 7th Street
16 Phoenix, Arizona 85006-1090
17 Attorneys for Mohave Electric Cooperative, Inc.

18 **Original and thirteen (13) copies of**
19 **the foregoing filed this 1st day of November, 2005 with:**

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

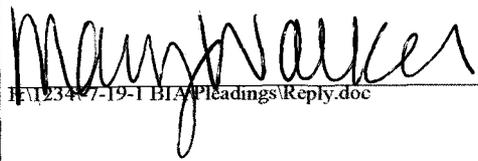
24 **Copies of the foregoing hand delivered/mailed**
25 **this 1st day of November, 2005 to:**

The Honorable Teena Wolfe
Administrative Law Judge, Hearing Division
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EXHIBIT O

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MOHAVE ELECTRIC COOPERATIVE, an)
Arizona Electric Cooperative, Nonprofit)
Membership Corporation,) NO. 99-242C
) (Judge Hodges)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant)

SETTLEMENT AGREEMENT

For the purpose of disposing of plaintiff's claims and defendant's counterclaim, without any further judicial proceedings and without there being any trial or adjudication of any issue of law or fact, and without constituting an admission of liability upon the part of either party, and for no other purpose, the parties stipulate and agree as follows:

1. Plaintiff, Mohave Electric Cooperative ("Mohave") stipulates to dismissal of its Complaint in Case No. 99-242C (Fed. Cl.) and Defendant, the United States, stipulates to dismissal of the counterclaim that it filed in Case No. 99-242C (Fed. Cl.), and each party stipulates it shall bear its own costs and fees incurred in connection with Case No. 99-242C (Fed. Cl.). Each of the respective dismissals is with prejudice.

2. Except as hereinafter provided in Paragraph 8, Mohave releases, waives, and abandons all monetary claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of or related to the following: (a) Case No. 99-242C (Fed. Cl.), (b) United States Department of the Interior, Office of Inspector General Audit Report 95-E-1045, (c) the Contracting Officer's May 4, 1998 decision or any supplement, (d) unpaid

1 invoices or other claims for payment pursuant to the provisions for "Facilities Charges" in
2 Contract No. GS-OO2-67021, regardless of whether included in the complaint in Case No. 99-
3 242C (Fed. Cl.), (e) costs, expenses, attorney fees, and for compensatory damages and
4 exemplary damages and (f) claims pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.
5

6 3. Except as hereinafter provided in Paragraph 8 and except for fraud and
7 overpayment of Arizona Corporation Commission approved tariffs for sales of electricity, the
8 United States waives and abandons all monetary claims actual and potential against Mohave, its
9 officers, agents, and employees, arising out of or related to the following: (a) Case No. 99-242C
10 (Fed. Cl.), (b) the United States Department of the Interior, Office of Inspector General Audit
11 Report 95-E-1045 or any issues therein, (c) the Contracting Officer's May 4, 1998 decision or
12 any supplement, including the claim for \$387,343.00 and other claims by the Contracting Officer
13 asserted in his May 4, 1998 Contracting Officer's Final Decision regarding monies owed prior to
14 1998, (d) payments to Mohave made for "Facilities Charges" regardless of whether included in
15 the complaint in Case No. 99-242C (Fed. Cl.), and (e) its costs, expenses, attorney fees. This
16 waiver does not apply to any claim relating to any payment made on or after January 15, 2003.
17

18 4. The United States agrees that the Bureau of Indian Affairs ("BIA")
19 possessed the authority to pay for services received by the BIA from Mohave from 1992
20 through 2002.
21

22 5. Except as hereinabove provided in paragraph 3 and for claims for
23 payments identified in the Office of Inspector General Audit Report 95-E-1045 and for any non-
24 tariff related issues therein and or claims by the Contracting Officer's Final Decision on May 4,
25

1 1998 and non-tariff related issues therein, and except for payments to Mohave for "Facilities
2 Charges", the United States and the BIA do not waive rights to claim and recover overpayments
3 of Arizona Corporation Commission approved tariffs for sales of electricity services received
4 from 1992 through 2002

5
6 6. This agreement is in no way related to or concerned with claims for income
7 taxes or other taxes for which Mohave is now liable or may become liable in the future as a result
8 of this agreement.

9
10 7. Mohave warrants and represents that no other action or suit with respect
11 to the monetary claims advanced in Case No. 99-242C (Fed. Cl.) is pending or will be filed in or
12 submitted to any other court, administrative agency, or legislative body. Mohave further
13 warrants and represents that it has made no assignment or transfer of all or any part of its
14 monetary rights arising out of or relating to its claims advanced in Case No. 99-242C (Fed. Cl.).

15
16 8. Except as hereinabove provided, this agreement does not preclude either
17 party from filing a complaint before and seeking relief from the Arizona Corporation Commission
18 regarding electric service subsequent to 1992 and this Agreement does not preclude either party
19 from asserting any position or argument before the Arizona Corporation Commission regarding
20 Contract No. GS-OOS-67021, or the computation of electric service charges pursuant to tariff.

21
22 9. Except as is necessary to effect the intent and terms of this agreement, in
23 any proceedings whether judicial or administrative in nature in which the parties or counsel for
24 the parties have or may acquire an interest, this agreement shall not be cited or otherwise referred
25 to or bind the parties.
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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MOHAVE ELECTRIC COOPERATIVE, an)
Arizona Electric Cooperative, Nonprofit)
Membership Corporation,) NO. 99-242C
) (Judge Hodges)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant)

STIPULATION OF VOLUNTARY DISMISSAL

The parties stipulate, pursuant to Rules 41(a)(1) and (c) of the Rules of United States Court of Federal Claims, to dismissal of this action, including the defendant's counterclaim with prejudice, with the parties to bear their own costs and fees.

Respectfully submitted,
ROBERT D. McCallum, JR.
Assistant Attorney General

DAVID M. COHEN
Director

ROBERT E. KIRSCHMAN, JR.
Assistant Director
Authorized Representative of
the Attorney General

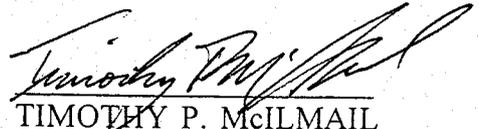
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Attorneys for Defendant

DATED: 1-21-03

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

1
2 MOHAVE ELECTRIC COOPERATIVE, an)
3 Arizona Electric Cooperative, Nonprofit)
4 Membership Corporation,) NO. 99-242C
5) (Judge Hodges)
6 Plaintiff,)
7 v.)
8 THE UNITED STATES,)
9 Defendant)

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13

14 Respectfully submitted,
15 ROBERT D. McCallum, JR.
16 Assistant Attorney General

17 DAVID M. COHEN
18 Director
19 
20 ROBERT E. KIRSCHMAN, JR.
21 Assistant Director
22 Authorized Representative of
23 the Attorney General

24 ...
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JAN 27 2003
MARTINEZ & CURTIS

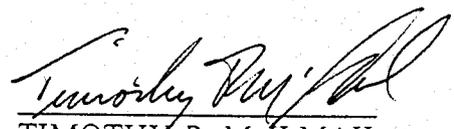
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2712 North Seventh Street
Phoenix, AZ 85006-1090
Telephone: (602) 248-0372
Facsimile: (602) 266-9290

Attorney for Plaintiff,

DATED: 01/17/03



TIMOTHY P. McILMAIL
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
1100 L Street, N.W.
Attn: Classification Unit
8th Floor
Washington, D.C. 20530
Telephone: (202) 307-1011
Facsimile: (202) 514-8624

Attorneys for Defendant

DATED: 1-21-03

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this
21th day of January 2003, I caused to be served by United
States mail (first class, postage prepaid) a copy of
"Stipulation Of Voluntary Dismissal" to:

MICHAEL A. CURTIS
Martinez & Curtis, P.C.
2712 North Seventh Street
Phoenix, Arizona 85006-1090

Andrea K. Bah

EXHIBIT P

MOHAVE

P.O. Box 1045, Bullhead City, Arizona 86430

electric cooperative

June 15, 1995

file copy

Area Director of Administration
Bureau of Indian Affairs, Phoenix Area Office
U. S. Department of the Interior
P. O. Box 10
Phoenix, Arizona 85001

PHOENIX AREA DIRECTOR

JUN 17 11 37 AM '96

BUREAU OF INDIAN AFFAIRS
RECEIVED

RE: Contract GS-OOS-67021

Dear Sir:

According to the terms of the above referenced contract, we sent a certified letter, dated June 7, 1995, to the address specified in the contract. That letter has been returned with an indication the forwarding order has expired.

The purpose of this letter is to request information regarding the expired contract above referenced. The contract, between Mohave Electric Cooperative, Inc. (Mohave), and the United States of America, Department of Interior, Bureau of Indian Affairs (BIA), provided for the supply of electric energy to the Hualapai and Havasupai Indian Reservations.

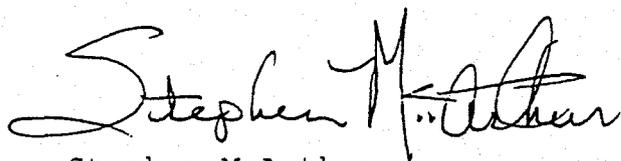
During the recent contract audit by the Office of the Inspector General, Department of the Interior, which was requested by the Phoenix office of the BIA, the audit team noted that the contract had not been renewed and was well past the renewal date of April 1, 1992. Mohave was subsequently reminded that a certified letter, as was required by the terms of the contract, was mailed to the BIA during March 1992. In that letter, Mohave requested the BIA to provide Mohave with the intentions of the BIA toward the renewal options of the contract. No response was received to that letter request. According to Mohave's records and Mohave's understanding of the contract, the contract expired on April 1, 1992. The BIA clearly declined to exercise the renewal option as was required by the agreement.

Mohave now requests the intentions of the BIA regarding the old contract and the existing service. Does the BIA now wish to discuss a new contract, since the old contract has obviously expired, or is the intent of the BIA for Mohave to cease to provide service, which was an aspect provided for in the old contract?

LETTER - Bureau of Indian Affairs
June 15, 1995
Page 2 of 2

Mohave needs to receive a written response prior to June 29, 1995. If you have questions or require any additional information, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Stephen McArthur". The signature is written in dark ink and is positioned above the typed name.

Stephen McArthur
Comptroller

pc file copy

March 17, 1992

Assistant Area Director of Administration
Bureau of Indian Affairs
U. S. Department of Interior
P. O. Box 7007
Phoenix, Arizona 85011

RE: Contract GS-OOS-67021

Dear Sir:

The purpose of this letter is to request information regarding the renewal of the contract above referenced. The contract, between Mohave Electric Cooperative, Inc., hereinafter called Mohave, and the United States of America, hereinafter called Government, provides for the supply of electric energy to the Hualapai and Havasupai Indian Reservations.

According to our records, the contract will expire on April 1, 1992. The contract provisions indicate that Mohave did consent to the Government's right and option to renew this contract for two additional ten year periods. We now respectfully request you to provide Mohave with your intentions toward the renewal options. We are currently reviewing the monthly Facility Charge portion of the charges provided for in the contract, in anticipation of contract renewal.

We also again reference you to the fact that Mohave implemented new rates, as approved by the Arizona Corporation Commission, in January of 1991. Although the Large Power Rate, which was identified in the contract, did experience an increase to the approved rate established by the Commission, Mohave was successful in negotiating a separate, lower large power rate for this specific contract. While higher than the previous rate, the contract rate is lower than it would have been had a separate rate not been established.

pc file copy

Assistant Area Director of Administration - continued

Due to the very limited time before the current contract expires, we would appreciate receiving a written response prior to March 31, 1992. If you have questions or require any additional information, please feel free to contact me.

Sincerely,

Stephen McArthur
Comptroller

cc: Mr. Robert Broz, General Manager
Mohave Electric Cooperative, Inc.