

ORIGINAL



0000035055

BEFORE THE ARIZONA CORPORATION COMMISSION

25P

COMMISSIONERS

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

2005 NOV -9 A 9:55
AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

NOV 09 2005

DOCKETED BY	CAR
DOCKET NO. E-01750A-04-0929	

IN THE MATTER OF:

ROGER CHANTEL

Complainant,

vs.

MOHAVE ELECTRIC COOPERATIVE,

Respondent.

DOCKET NO. E-01750A-04-0929

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. 67089¹ 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 Pre-Hearing Brief and Motion to Remove the Presiding
11 Administrative Judge.

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 by the Hearing Division's Assistant Chief
20 Administrative Law Judge denying Complainant's Motion to Remove the Presiding Administrative
21 Law Judge.

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 ¹ 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 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 asserted that
4 Complainant has not had a full and fair opportunity to litigate the issues in this case. Complainant
5 requested that the Commission deny Respondent's "Motion to Estoppel this Complaint" (sic).
6 Complainant further requested 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 A Procedural Order was issued in this matter on August 17, 2005. The Procedural Order
9 stated that while the Commission's procedural rules do not address summary judgment, A.A.C. R14-
10 3-101.A provides that in cases in which procedure is not set forth by law or by rules or regulations of
11 the Commission, the Rules of Civil Procedure for the Superior Court of Arizona shall govern. The
12 Procedural Order granted Respondent's request for leave to file a motion for summary judgment
13 pursuant to Rule 56 of the Arizona Rules of Civil Procedure because Mr. Chantel's Complaint asserts
14 that Mohave is denying him electrical service and requests that this Commission address the issue,
15 and Rule 56(b) of the Arizona Rules of Civil Procedure provides that a party against whom a claim,
16 counterclaim, or cross-claim is asserted may, at any time, move with or without supporting affidavits
17 for a summary judgment in the party's favor as to all or any part thereof. The August 17, 2005
18 Procedural Order required Respondent to file any motion for summary judgment pursuant to Rule 56
19 of the Arizona Rules of Civil Procedure by September 9, 2005. The Procedural Order required
20 Respondent's and Complainant's filings to conform to the requirements of Rule 56 of the Arizona
21 Rules of Civil Procedure, except that it gave Complainant until September 30, 2005 to make the
22 appropriate filings pursuant to Rule 56 of the Arizona Rules of Civil Procedure in opposition to
23 Respondent's motion for summary judgment. The Procedural Order also continued the hearing
24 pending resolution of any motion for summary judgment, in order to accommodate the procedural
25 schedule.

26 On September 9, 2005, Respondent filed its Motion for Summary Judgment.

27 On September 30, 2005, Complainant filed a Statement of Facts and Complainant's Response
28 to Respondent's Request for Summary Judgment.

1 On October 14, 2005, Respondent filed a Reply to Complainant's Response to Respondent's
2 Motion for Summary Judgment.

3 Accordingly, a Pre-Hearing Conference should be scheduled for the purpose of taking oral
4 argument on the legal issues raised in Respondent's Motion for Summary Judgment, Complainant's
5 Response, and Respondent's Reply.

6 Pleadings filed in this and other dockets can now be found via the Commission website
7 (www.azcc.gov) using the edocket function.

8 IT IS THEREFORE ORDERED that a **Pre-Hearing Conference** for the purpose of taking
9 oral argument on the legal issues raised in Respondent's Motion for Summary Judgment,
10 Complainant's Response, and Respondent's Reply shall commence on **December 1, 2005, at 2:00**
11 **p.m.**, or as soon as practical thereafter, at the Commission's offices, 1200 W. Washington, Phoenix,
12 Arizona.

13 IT IS FURTHER ORDERED that the **Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized**
14 **Communications)** applies to this proceeding as the matter is now set for public hearing.

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

17 DATED this 9th day of November, 2005

18
19
20 
21 TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

22 Copies of the foregoing were mailed
23 this 9 day of November, 2005, to:

24 Roger Chantel
10001 East Hwy. 66
Kingman, AZ 86401
25 **VIA CERTIFIED MAIL**
26 **RETURN RECEIPT REQUESTED**

Michael A. Curtis
Larry K. Udall
CURTIS, GOODWIN, SULLIVAN, UDALL
& SCHWAB, P.L.C.
27 2712 North 7th Street
Phoenix, AZ 85006-1090
28 **VIA CERTIFIED MAIL**
RETURN RECEIPT REQUESTED

1 Stephen McArthur, Comptroller
Mohave Electric Cooperative
2 P.O. Box 1045
Bullhead City, AZ 86430
3 **VIA CERTIFIED MAIL**
RETURN RECEIPT REQUESTED

4 ARIZONA REPORTING SERVICE, INC.
2627 N. Third Street, Ste. Three
5 Phoenix, AZ 85004-1003

6
7 By: 
8 Molly Johnson
Secretary to Teena Wolfe

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28