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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

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3 JEFF HATCH-MILLER, CHAIRMAN  
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AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY

8 IN THE MATTER OF THE COMPLAINT OF )  
9 THE BUREAU OF INDIAN AFFAIRS, )  
10 UNITED STATES OF AMERICA, )  
11 AGAINST MOHAVE ELECTRIC )  
12 COOPERATIVE, INC. AS TO SERVICES )  
13 TO THE HAVASUPAI AND )  
14 HUALAPAI INDIAN RESERVATIONS )

DOCKET NO. E-01750A-0579  
BUREAU OF INDIAN AFFAIRS'  
RESPONSE TO MOHAVE ELECTRIC'S  
PROPOSED DISCOVERY PLAN

15 The Bureau of Indian Affairs ("BIA") responds to Mohave Electric Cooperative's ("MEC")  
16 proposed discovery plan. The plan is not only overly broad, but the suggested discovery premature.  
17 In the same vein, the BIA objects to the first set of discovery requests that MEC references in its  
18 proposed plan.<sup>1</sup>

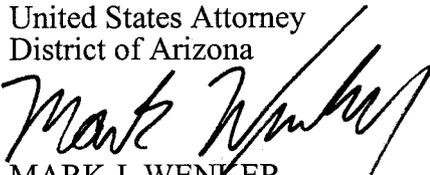
19 Discovery as suggested and as already propounded by MEC is premature. The issue in this  
20 case is straightforward - whether MEC violated ACC rules and regulations when it unilaterally  
21 transferred its 70 mile electric line to the BIA. At this point, no discovery is necessary as all  
22 pertinent facts are undisputed. The parties agree that the BIA and MEC entered into a contract, MEC  
23 built the electric line, and MEC subsequently transferred that line to the BIA. It is a matter of law  
24 whether or not the transfer complied with applicable law. The BIA intends to move for partial  
25 summary judgment by October 16, 2006. MEC also may move or countermove for summary  
26 judgment. If any issues remain after dispositive motions are decided, then the BIA agrees that  
27 discovery on those remaining issues may be necessary. But to conduct full-blown discovery  
28 beforehand would be a waste of time and expense for the parties. All material facts, the BIA firmly  
believes, are undisputed so discovery at this stage is premature.

<sup>1</sup> The BIA reserves its right to assert all objections to MEC's discovery requests when the BIA responds to them.

1 MEC's discovery, which MEC already has propounded and which it apparently intends to  
2 propound, is also overbroad. Attached are copies of MEC's first set of discovery requests and its  
3 associated September 13<sup>th</sup> letter that provides the instructions for the requests. Among other things,  
4 MEC requests information about every other arrangement dealing with electricity that the BIA has  
5 anywhere in the United States. An arrangement the BIA may have had in, say, North Dakota is  
6 completely irrelevant to this case. Similarly, MEC demands information about the BIA's activities  
7 dating back to 1975, years before MEC even constructed its electrical line that is the subject of this  
8 dispute. MEC's first set of discovery requests contains 39 requests, excluding dozens of sub-parts  
9 and MEC asserts a second is forthcoming. Even if there were some material facts in dispute, MEC's  
10 requests are unduly burdensome and overbroad. In its proposed discovery plan, MEC indicates it  
11 wants to depose unnamed individuals associated with the San Carlos Irrigation and Power Project.  
12 That too is overbroad and overreaching as the San Carlos Irrigation and Power Project has no  
13 pertinent connection to the present dispute between the BIA and MEC and the electrical line that is  
14 located in Northern Arizona.

15 The material facts are undisputed and no discovery is needed at this time. The BIA suggests  
16 that the Commission delay discovery until dispositive motions are filed and ruled upon. The BIA  
17 also requests a protective order that it need not respond to MEC's first set of discovery requests until  
18 the BIA's forthcoming motion for summary judgment is decided.

19 Respectfully submitted this 5 day of October, 2006.

20 PAUL K. CHARLTON  
21 United States Attorney  
22 District of Arizona  
23   
24 MARK J. WENKER  
25 Assistant U.S. Attorney  
26 Attorneys for the Bureau of Indian Affairs  
27  
28

- 1 Original and 13 copies filed  
this 5<sup>th</sup> day of October, 2006, to:
- 2 Docket Control Division  
Arizona Corporation Commission  
3 1200 West Washington Street  
Phoenix, Arizona 85007
- 4 Copies delivered this  
5<sup>th</sup> day of October, 2006, to:
- 5 Jeff Hatch-Miller, Chairman  
Arizona Corporation Commission  
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- 19 Ernest Johnson  
Director, Utilities Division  
Arizona Corporation Division  
20 1200 West Washington Street  
Phoenix, Arizona 85007
- 21 Copy mailed  
this 5<sup>th</sup> day of October, 2006, to:
- 22 Michael A. Curtis  
23 William P. Sullivan  
Larry K. Udall  
24 Curtis, Goodwin, Sullivan, Udall & Schwab  
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Phoenix, AZ 85006-1090
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REFER TO FILE NO. 1234-17-19-1

**VIA EMAIL AND FIRST CLASS MAIL**

September 13, 2006

Paul K. Charlton, Esq.  
Mark J. Wenker, Esq.  
U S ATTORNEY'S OFFICE  
40 N. Central, Suite 1200  
Phoenix, Arizona 85004-4408

Re: First Set of Data Requests to Bureau of Indian Affairs,  
the Havasupai and Hualapai Nations  
Docket No. E-01750A-05-0579

Dear Messers Charlton and Wenker:

Enclosed is Mohave Electric Cooperative Inc.'s ("MEC") First Set of Data Requests to Bureau of Indian Affairs, the Havasupai and Hualapai Nations, in the above referenced docket. Usual and customary practice before the Arizona Corporation Commission requires responses to be filed within ten (10) calendar days of receipt. We anticipate you will make every effort to provide responses within this standard time frame. However, as we noted prior to and during the procedural conference, we understand relevant documents are likely stored in multiple locations and that this case spans a long period of time. We are open to mutually agreeing to extend the time to respond for those data requests that additional time is shown to be necessary. In the event you intend to object to any data request, please contact us first to see if we can reach an agreement to resolve the objection prior to filing a formal objection with the Commission.

The following definitions should be considered applicable to the data request and throughout the duration of this matter.

**DEFINITIONS**

"Staff" refers to Arizona Corporation Commission Staff.

“Commission” refers to the Arizona Corporation Commission.

“BIA” refers to the United States of America acting through the Bureau of Indian Affairs, an agency thereof, its employees, agents and employees, as well as in its capacity as trustee and representative of the Havasupai and Hualapai Nations.

“Havasupai” refers to the Havasupai Indian Nation, its employees, agents and representatives.

“Hualapai” refers to the Hualapai Indian Nation, its employees, agents and representatives.

“Mohave” refers to the Mohave Electric Cooperative, Inc., its employees, agents and representatives.

“Complainant” or “Plaintiff” refers to the BIA in its capacity as an agency of the United States, as well as trustee and representative of the Havasupai and Hualapai Nations.

“Respondent” or “Defendant” refers to Mohave.

“Document” includes all written matter of every kind and description, whether draft or final, original or reproduction, including but not limited to, correspondence, memoranda, notes, transcripts, contracts, agreements, memoranda of telephone conversations or personal conversations, notices, reports, rules, regulations, facsimile messages, minutes of meetings, interoffice communications, reports, tapes for visual or audio reproduction, drawings, graphs, charts, electronic mail message, and other compilations from which information can be obtained. The term “document” includes all copies of the document which contain any additional writing, underlining, notes, deletions, or any other markings or notations, or otherwise not identical copies of the original. The term “document” refers to items known by the BIA, after reasonable inquiry and search, to exist whether or not in the BIA's possession, custody or control and which the BIA believes may be relevant to the subject matter of the Complaint, and those which appear reasonably calculated to lead to the discovery of admissible evidence

“Identify” when used in referring to a person, shall mean to state the following with regard to the person: (a) name; (b) last know address; (c) residence and business telephone numbers; (d) relationship to you; and (e) occupation at the date of these data requests.

“Identify” and “identity” with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and its present custodian. If any such document was in your possession or subject to your control, but is no longer, state what disposition was made of it and explain the

circumstances surrounding, and the authorization for, such disposition, and state the date or approximate date of such disposition.

“List”, “describe”, “explain”, “specify”, or “state” shall mean to set forth fully, in detail, and unambiguously, each and every fact of which you have knowledge which is relevant to the answer called for by the data request.

### **INSTRUCTIONS**

In responding to these Data Requests, please indicate the person or persons responsible for the compilation of the information provided in response to each request.

Included within this set of Data Requests may be Requests for Admission. A request will be deemed admitted unless BIA provides a specific denial thereof or a written objection and the reasons therefore, or a statement explaining why BIA can neither admit or deny. If BIA denies or fails to admit any of the attached Requests for Admission or any portion thereof, for each denial or failure to admit, BIA must:

- a. State each and every fact and reason that supports or tends to support the denial of the specific Request for Admission;
- b. State the name, address, and telephone number of each and every person who has personal knowledge of the facts alleged in BIA's answer to (a) above;
- c. Identify with sufficient particularity each and every document, memorandum or writing of any kind that substantiates or tends to substantiate the facts alleged in subpart (a) above;
- d. If BIA answers any Request for Admission by stating that it lacks information or knowledge as a reason for the failure to admit or deny, state specifically what “reasonable” inquiry was made to obtain sufficient information to enable BIA to admit or deny such request for admission;
- e. If BIA can admit a portion of said request for admission, please indicate the portion which BIA admits; and
- f. State the legal authority which supports said denial.

If any information is withheld under claim of privilege, confidentiality or proprietary trade secret, you are required to: (1) identify in writing such information with sufficient particularity as to permit the Commission to make a full determination as to whether the claim or privilege is valid; (2) identify the nature of the privilege(s) asserted; and (3) identify the factual basis of the claim of privilege.

Messers Charlton and Wenker  
September 13, 2006  
Page 4

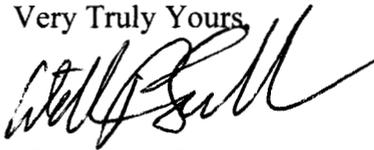
1. Michael A. Curtis and William P. Sullivan, Attorneys, Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C., 2712 N. 7th Street, Phoenix, Arizona 85006.
2. Stephen McArthur, Mohave Electric Cooperative, Inc., Post Office Box 1045, Bullhead City, Arizona 86430.

Commission Staff, through Janice M. Alward of its legal division has also requested a courtesy copy of all data requests and responses.

These data requests are continuing in nature. Accordingly, BIA is requested to supplement prior responses if it receives or generates additional information, reports or other data within the scope of any of the data requests between the time of the original response and the hearing to be held in connection with BIA's Complaint.

If you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Michael A. Curtis  
William P. Sullivan  
For the Firm

WPS

Enclosures: First Set of Data Requests to BIA

cc: Janice M. Alward, Esq.  
Mohave Electric Cooperative, Inc.

1234-17-19-1(BIA)\Documents\Discovery\MEC to BIA\Charlton-Wenker(transmittal 1<sup>st</sup> set of DR to BIA)

FIRST SET OF DATA REQUESTS  
FROM MOHAVE ELECTRIC COOPERATIVE, INC.  
TO BUREAU OF INDIAN AFFAIRS  
(Docket No. E-01750A-05-0579)

1.0 When did the BIA first commence providing electric power to or on:

- a. The Havasupai Reservation.
- b. The Hualapai Reservation.

1.1 Describe the electric system(s) used to provide electric service between 1975 and October 1, 1981 (i.e., prior to construction of the 70-mile transmission line pursuant to the October 1, 1981 contract between BIA and Mohave), including all major components of the system, including all sources of power:

- a. The Havasupai Reservation.
- b. The Hualapai Reservation.

1.2 Identify the owner(s) of the electric system(s) set forth in response to the preceding data request and their respective role in owning, operating, maintaining and repairing the electric system of:

- a. The Havasupai Reservation.
- b. The Hualapai Reservation.

1.3 Identify the general manner of operating (including, without limitation, operations, maintenance, planning, replacement, improvements, billing, administration) the electric system(s) utilized between 1975 and October 1, 1981 to serve:

- a. The Havasupai Reservation.
- b. The Hualapai Reservation.

1.4 Describe the operational problems, if any, incurred between 1975 and October 1, 1981 by the electric system(s) utilized to serve:

- a. The Havasupai Reservation.
- b. The Hualapai Reservation.

1.5 Identify all alternatives considered between 1975 and October 1, 1981 by the BIA, or any other department or agency of the United States, the Havasupai and/or the Hualapai for securing and providing electric power and service to and on:

- a. The Havasupai Reservation.
- b. The Hualapai Reservation.
- c. Provide copies of all documents discussing any of the alternatives so identified.
- d. Identify the person most knowledgeable regarding each alternative so identified.

1.6 Explain the reasons the United States, through the Administrator of General Services Administration on behalf of the BIA decided to enter into the October 1, 1981 contract with Mohave (the "1981 Contract").

1.7 For the period from January 1, 1975 to present, identify all electric systems, not identified in responses to the preceding data requests, owned or operated by the BIA.

1.8 After the 70-mile transmission line was constructed and operational and the electric system(s) on the Havasupai Reservation were interconnected therewith, identify:

- a. What additions and modifications were made to that existing electric system on the Reservation to accommodate the change in power supply.
- b. What changes were made in operations to that existing electric system on the Reservation to accommodate the change in power supply.
- c. What major improvements, replacements, additions and retirements have been made to the electric system(s) on the Reservation since 1981.
- d. What major changes have been made to the operations of the electric system(s) on the Reservation since 1981.

1.9 After the 70-mile transmission line was constructed and operational and the electric system(s) on the Hualapai Reservation were interconnected therewith, identify:

- a. What additions and modifications were made to that existing electric system on the Reservation to accommodate the change in power supply.
- b. What changes were made in operations to that existing electric system on the Reservation to accommodate the change in power supply.
- c. What major improvements, replacements, additions and retirements have been made to the electric system(s) on the Reservation since 1981.
- d. What major changes have been made to the operations of the electric system(s) on the Reservation since 1981.

1.10 For the period from January 1, 1975 to present, identify, by year (calendar or fiscal):

- a. The number of electric connections/customers served by the BIA on the Havasupai Reservation, including:
  - i. A breakdown by customer class,
  - ii. Whether the entity receiving electric service is Indian or Non-Indian,
  - iii. The number of connections/customers to whom the BIA renders a bill for electric service provided, and
  - iv. The number of connections/customers to whom a party other than the BIA renders a billing for electric service provided.
- b. The number of electric connections/customers served by the BIA on the Hualapai Reservation, including:
  - i. A breakdown by customer class,

- ii. Whether the entity receiving electric service is Indian or Non-Indian,
  - iii. The number of connections/customers to whom the BIA renders a bill for electric service provided, and
  - iv. The number of connections/customers to whom a party other than the BIA renders a billing for electric service provided.
- c. The number of electric connections/customers, not identified in (a) or (b) above, served by the BIA (identifying same by electric system), including,
- i. A breakdown by customer class, and
  - ii. Whether the entity receiving electric service is Indian or Non-Indian.

1.11 Identify all electric providers with whom the BIA has had arrangements to secure electric power during the period from January 1, 1975 to present, specifically identifying each such arrangement, whether written or oral:

- a. To provide electricity for resale.
- b. To provide electricity for the benefit of Indian nations.
- c. To provide for delivery to third parties other than identified in (a) or (b) above.

1.12 Admit that an objective of the BIA in pursuing this Complaint is to limit its electric service responsibility to the Havasupai and Hualapai Reservations.

- a. Provide all documents that support or contradict the BIA's response to this data request.

1.13 When did the BIA first develop its theory that Mohave was obligated to operate and maintain the 70-mile transmission line constructed pursuant to the 1981 Contract beyond obligations contained in the 1981 Contract?

- a. Provide all documents that support or contradict the BIA's response to this data request.

1.14 When and how did the BIA first communicate to Mohave that the BIA believed Mohave was obligated to operate and maintain the 70-mile transmission line constructed pursuant to the 1981 Contract beyond obligations contained in the 1981 Contract.

- a. Provide all documents that support or contradict the BIA's response to this data request.

1.15 Set forth all authorities, including, without limitation, statutes, executive orders, rules, regulations, internal directives, tribal resolutions, contracts, etc., authorizing the BIA and/or the Department of Interior to:

- a. Provide electric service generally.
- b. Provide electric service to Indians.
- c. Provide electric service on or to Indian nations.

- d. Provide electric service to or on the Havasupai Reservation.
- e. Provide electric service to or on the Hualapai Reservation.

1.16 Provide copies of all authorities cited in response to the preceding data request.

1.17 Set forth all authorities, including, without limitation, statutes, executive orders, rules, regulations, internal directives, tribal resolutions, contracts, etc., authorizing Mohave to:

- a. Provide electric service to Indians.
- b. Provide electric service on or to Indian nations.
- c. Provide electric service to or on the Havasupai Reservation.
- d. Provide electric service to or on the Hualapai Reservation.

1.18 Provide copies of all authorities cited in response to the preceding data request.

1.19 Identify and produce any authority that requires Mohave to deliver power outside of its CC&N.

1.20 Provide copies of all documents relating to the obligation of the BIA, the Department of Interior or any other department or agency of the United States to secure and/or provide electric power to:

- a. the Havasupai Reservation.
- b. the Hualapai Reservation

1.21 Provide copies of all documents relating to the obligation of Mohave to secure and/or provide electric power to:

- a. the Havasupai Reservation.
- b. the Hualapai Reservation

1.22 Identify and produce any documents where the notion of a policy, plan or project (etc.) to transfer costs and obligations of the BIA, the Department of Interior and/or the United States to provide electric service to the Hualapai or Havasupai Indians, reservations or nations is discussed.

1.23 Admit that the 1981 Contract contains no provision terminating the United States' obligation to pay the Facilities Charge specified in the 1981 Contract.

- a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
- b. Provide all documents that support or contradict the BIA's response to this data request.

1.24 Admit that the 1981 Contract provides: "If the Government does not exercise its renewal option or terminates this Contract, the Government shall pay, in U.S. currency, in a single payment, an amount equal to Mohave's undepreciated value plus facility removal costs, less salvage value of the facilities that Mohave constructs because of this contract."

- a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
- b. Provide all documents that support or contradict the BIA's response to this data request.

1.25 Admit that the provision of the 1981 Contract quoted in the preceding data request anticipates the removal of the 70-mile transmission line at the expense of the U.S. upon termination of the Contract through non-renewal or termination by the U.S.

- a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
- b. Provide all documents that support or contradict the BIA's response to this data request.

1.26 Admit that in Decision No. 53174, the Arizona Corporation Commission, in discussing the 70-mile transmission line and interest expense associated with the financing of the line, found that the plant "is not used and useful, will not be used and useful, and was never intended to be used and useful in the provision of electric service to [Mohave's] ratepayers."

- a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
- b. Provide all documents that support or contradict the BIA's response to this data request.

1.27 Admit that the BIA is aware that the following entities are willing to provide operation and maintenance on the 70-mile transmission line, provided BIA pays for such service:

- a. The Western Power Authority
- b. UNS Electric
- c. Arizona Public Service Company
- d. In the event any of these requests is not admitted, please explain, in detail the basis for such failure to admit.
- e. Provide all documents that support or contradict the BIA's response to this data request.

1.28 Admit the BIA has no authority from any federal law or the Code of Federal Regulations to impose any of the costs of the delivery of power to any tribal lands administered by the BIA to non-tribal utility companies.

- a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.

- b. Provide all documents that support or contradict the BIA's response to this data request.

1.29 Identify all facts and produce any documents and authorities associated with the approximately 13-mile line constructed and interconnected to the 70-mile transmission line after April 17, 2003 for the benefit of the Indian Health Service.

1.30 Identify all facts and produce any documents and authorities you believe support the contention that the 70-mile transmission line is used and useful in the provision of electric service to Mohave's ratepayers.

1.31 Identify all facts and produce any documents and authorities you believe support the contention that the BIA properly exercised either of its renewal options under the 1981 Contract.

1.32 Identify all facts and produce any documents and authorities you believe support the contention that 1981 Contract is still in full force and effect.

1.33 Identify all facts and produce any documents and authorities you believe support the contention that the United States could unilaterally alter the terms and conditions of the 1981 Contract.

1.34 Identify all facts and produce any documents and authorities you believe support the contention that Mohave did not properly operate and maintain the 70-mile transmission line prior to April 17, 2003, when the Mohave Board of Directors declared the line not necessary or useful to the Cooperative in the performance of its duties to the public.

1.35 Identify all facts and produce any documents and authorities you believe support the contention that Mohave has not timely responded to outages or other problems on the 70-mile transmission line, provided the BIA had acknowledged its responsibility to pay the cost of such response.

1.36 Identify all facts and produce any documents and authorities that reflect how electric service and/or the manner of rendering service to the Havasupai and/or Hualapai Reservations changed after the 70-mile transmission line was constructed under the 1981 Contract.

1.37 Identify all facts and produce any documents and authorities that reflect how electric service and/or the manner of rendering service to the Havasupai and/or Hualapai Reservations changed after April 17, 2003, when the Mohave Board of Directors declared the line not necessary or useful to the Cooperative in the performance of its duties to the public.

1.38 Identify and provide a copy of any and all studies undertaken by the BIA or any other department or agency of the United States regarding the potential savings for the BIA and/or the United States from shifting any portion of the obligation to deliver electric power to tribal lands (including without limitation the Havasupai and Hualapai Reservations) on non-tribal utility companies (including without limitation Mohave).

1.39 Consistent with Rule 26.1 of the Arizona Rules of Civil Procedure, to the extent not provided in response to the preceding data requests, identify:

- a. The factual basis of each claim or defense of the BIA.
- b. The legal theory upon which each claim or defense is based, including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.
- c. The names, addresses, and telephone numbers of any witnesses whom the BIA expects to call at hearing with a fair description of the substance of each witness' expected testimony.
- d. The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.
- e. The name and address of each person whom the BIA expects to call as an expert witness at hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert.
- f. The existence, location, custodian, and general description of any tangible evidence or relevant documents that the BIA plans to use at hearing.
- g. A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by the BIA to exist whether or not in the BIA's possession, custody or control and which the BIA believes may be relevant to the subject matter of the Complaint, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause exists and is set forth in the BIA's response for not doing so, provide a copy of each document listed with the response. If production is not made, provide the name and address of the custodian of the document.