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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER, CHAIRMAN  
WILLIAM A. MUNDELL  
MIKE GLEASON  
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BARRY WONG

AZ CORP COMMISSION  
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IN THE MATTER OF THE COMPLAINT OF )  
THE 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-0579

BUREAU OF INDIAN AFFAIRS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT

The Bureau of Indian Affairs ("BIA") moves for partial summary judgment. This case concerns the propriety of respondent Mohave Electric Cooperative, Inc.'s ("MEC") transfer of a 70 mile electric line to the BIA and the Hualapai and Havasupai Tribes. The BIA is entitled to judgment, as a matter of law, as follows: (1) finding that the BIA and other customers along the electric line are MEC's retail electric customers; (2) finding that MEC's service territory includes the area served by the electric line; (3) voiding MEC's transfer of the electric line to the BIA and the Tribes; (4) declaring that MEC owns the line; (5) ordering MEC to operate and maintain the line; and (6) ordering that MEC relocate BIA's electric meter currently located at the beginning of the line to its original location at the end of the line. This motion is supported by the following memorandum of points and authorities and the associated statement of facts filed with this motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. FACTS**

The facts that are material to this motion and its resolution are undisputed. In 1981, the BIA and MEC entered into a contract in which MEC agreed to construct a 70 mile electric line across the Hualapai reservation to the rim of the Grand Canyon; MEC constructed the line and owned it; MEC supplied electricity to the BIA at the rim of the Canyon and to 13 customers along the 70 mile line;

Arizona Corporation Commission

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1 MEC treated the BIA and its other customers along the line as retail customers; and in July 2003,  
2 MEC, without ACC approval, quit claimed the line to the BIA and the two tribes and relocated  
3 BIA's meter that was at the end of the line to the beginning of the line.

4 **A. One of MEC's Statutory Purposes is to Supply Electricity to Rural Arizona. The**  
5 **BIA, Acting under its Statutory Authority, Contracted with MEC to Construct**  
6 **the Electric Line to Serve Rural Arizona**

7 MEC is an Arizona public service corporation regulated by the ACC. BIA's Statement of  
8 Facts ("SOF") ¶1. One of the statutory purposes of electrical cooperatives, like MEC, is to supply  
9 and extend the use of electricity to Arizona rural areas that do not otherwise have electricity. See  
10 A.R.S. § 10-2052. In its articles of conversion, MEC has stated that one of its purposes for existence  
11 is to extend the availability of electricity to rural Arizona. SOF ¶1.

12 The BIA is authorized to expend federal appropriated funds for, among other things, the  
13 general support of Indians. 25 U.S.C. § 13. On October 1, 1981, the BIA, seeking to provide a  
14 stable and permanent source of electricity for the Havasupai reservation, contracted with MEC (the  
15 "Contract"). SOF ¶2. One purpose of the Contract was to supply electricity to existing and future  
16 residential and commercial users in a rural area of Arizona, on the Havasupai and Hualapai  
17 reservations. Id.

18 **B. The Contract Terms**

19 **1. MEC constructs the Electric Line and owns the Line. MEC's point of**  
20 **delivery for the BIA is the Long Mesa transformer**

21 As the Havasupai Reservation is remote, perhaps the most important Contract provision was  
22 extending a power line to the rim of the Grand Canyon. MEC agreed to construct a 70 mile power  
23 line (the "Electric Line") from MEC's existing facilities, across the Hualapai Reservation, to a point  
24 of termination at the line side of the Long Mesa transformer. SOF ¶3.<sup>1</sup> MEC, and not the BIA,  
25 would own the Line as its sole property. Id. MEC also agreed that once it constructed the Electric  
26 Line, BIA's usage of electricity would be metered and billed at the end of the line at Long Mesa. Id.

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27 <sup>1</sup> The Long Mesa transformer is located at the top of the Grand Canyon. SOF ¶3. A line runs  
28 from that transformer to the bottom of the Canyon. Id. The line running to the bottom of the Canyon  
is the BIA's responsibility and is not part of the present dispute.

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**2. The BIA Paid for the Construction of the Electric Line**

To fund construction of the Electric Line, MEC sought and obtained a 2% loan from the Rural Electrification Administration. SOF ¶4. The BIA, in turn, reimbursed MEC for the cost of construction by paying MEC an annual "facility charge," one-twelfth due monthly. Id. According to MEC, the cost of constructing the Electric Line was \$1,028, 277.37. Id. Even before it was due under the Contract terms, the BIA paid MEC the full cost of construction. In March 1991, the BIA paid MEC the balance of the cost to construct the Electric Line that had not previously been paid under the facility charge. Id.

**3. MEC charged BIA a retail customer rate (schedule "L" or large power) and not a wholesale rate**

MEC has several large retail power customers, such as Chemstar and Cyprus Baghdad. SOF ¶5. MEC agreed to charge the BIA like these other large retail customers. MEC contractually agreed to charge BIA for its electricity at a retail customer rate, schedule "L" or "large power." Id.<sup>2</sup> The BIA paid other charges, such as the cost of construction, on top of this retail rate. Id.

**C. Beginning in Early 1982, MEC begins Supplying Electricity to the BIA at Long Mesa and Subsequently Agrees to Supply Electricity to 13 Retail Customers Along the Electric Line**

By early 1982, MEC had completed construction of the Electric Line and began delivering electricity along it. SOF ¶4.

**1. MEC delivers electricity to the BIA at Long Mesa. The BIA uses that electricity for its own purposes and for the general support of the Native Americans living at the bottom of the Grand Canyon**

As required by the Contract, MEC delivered electricity to the BIA at the end of the Electric Line located at Long Mesa. SOF ¶3. The BIA has used, and continues to use, the electricity MEC transmits over the Electric Line in Havasupai Village to operate a BIA school and related facilities; government quarters for BIA teachers and law enforcement officers; a BIA detention facility; and a BIA maintenance building. SOF ¶6. The BIA, thus, has used the electricity in the same manner as,

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<sup>2</sup> As noted below, MEC later changed the BIA's rate to a retail contract rate, but the BIA always, including today, has paid a retail power rate, not a wholesale rate.

1 for example, a BIA office in Phoenix would use the electricity it purchases from APS to light and air  
2 condition its offices or run its computers.

3 In addition to purchasing, electricity "for its own use," the BIA has used electricity in the  
4 normal course of business (i.e., the general support of Indians). Perhaps most importantly to the  
5 present situation, the Indian Health Services uses some of that electricity to operate a medical clinic  
6 at the bottom of the Grand Canyon. SOF ¶6. Members of the Havasupai Tribe living in Havasupai  
7 Village are consumers of electricity MEC delivers over the Electric Line. Id. Members of the  
8 Havasupai Tribe living in Havasupai Village use the electricity MEC delivers over the Electric Line  
9 to operate fans, evaporative coolers and refrigerators in their homes. Id. In the summer months, the  
10 temperatures in Havasupai Village sometimes exceed 100 degrees Fahrenheit. Id. While some  
11 members of the Havasupai Tribe have generators for temporary source of electricity, members  
12 residing in Havasupai Village have no other source of continuous electrical service other than the  
13 electricity MEC sends over the Electric Line. Id.

14 **2. MEC delivers electricity to 13 other retail customers**

15 In addition to the BIA, MEC began servicing other retail customers located along the Electric  
16 Line. MEC eventually installed meters and began servicing the following 13 retail customers located  
17 along the Electric Line and on the Hualapai reservation (the "Hualapai Retail Customers"):

18 Account # 63626-000  
19 Arizona Telephone Company  
20 500' South Havasupai Tribal Electrical Syste  
near 8<sup>th</sup> pole South of H-Frame  
21 Long Mesa Tower  
Allis Chalmers 15 Kva  
S/N# 3800523  
Meter # 87476817

Account # 44567-003  
Diamond A Ranch  
Camp 16 Suapi Line  
Ermco 15 Kva  
S/N# 59907005790  
Meter #. 96866745

22 Account # 29740-001  
23 Department of Interior  
24 Fire Tower - Supai Road  
Thornton Tower  
Westinghouse 15 Kva  
25 S/N# 83A440266  
26 Meter # 86549384

Account # 896-084  
Hualapai Tribal Council  
Hunters Building - Youth Camp  
15 Kva (Plate missing)  
Meter # 95245102

27 Account # 896-084  
Hualapai Tribal Council

Account # 896-060  
Hualapai Tribal Council

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Lake Circulation Pump  
Youth Camp Pond  
B & B 10 Kva  
S/N# 86NH104-026  
Meter # 88058929

Frazier Wells Pump  
Well #1  
Howard 15 Kva  
S/N# 92244-4484  
Westinghouse 15 Kva  
S/N# 81A271882  
Meter # 93703033

Account # 896-073  
Hualapai Tribal Council  
Frazier Wells Pump 2  
Well #2  
Ermco 15 Kva  
S/N# 3924931238  
Ermco 15 Kva  
S/N# 3924931223  
Ermco 15 Kva  
S/N# 3924931257  
Meter # 01365750

Account # 896-100  
Hualapai Tribal Council  
Water Well T28N R7W  
Fish Pond  
Transformers (see above)  
Meter # 01684104Er

Account # 28135-001  
Bravo, W C  
Supai Line near Frazier Wells  
RTE 10 Kva  
SN# 4303728  
Meter # 95528410

Mile Post 32  
Recloser 55-25

Account # 451-055  
TCIA - Department of Interior - BIA  
Long Mesa Radio Repeater Site  
Long Mesa End  
Cooper 5 Kva  
S/N# 9902093970  
Meter # 61718916

Account # 896-027  
Hualapai Tribal Council  
Pump at Tank Well  
Ermco 10 Kva  
S/N# 30107311444  
Meter # 97298158

Account # 44561-006  
Cabin on Nelson Road  
Ermco 10 Kva  
SN# 30107311428  
Meter # 57788387

SOF ¶7. MEC read the meters for these Hualapai Retail Customers and billed them directly. Id. For these Hualapai Retail Customers, MEC read their electrical meters, provided service calls, and billed these accounts. Id.

**D. The BIA Pays MEC \$838,615.80 for Depreciation of the Electric Line**

Not only did the BIA pay charges such as the cost to construct the Electric Line, sales taxes, property taxes, and an operation and maintenance fee, but MEC also charged a monthly fee of

1 \$4,582.60 per month for depreciation of the Electric Line. SOF ¶5. From January 1982 through  
2 March 1997, the BIA paid MEC \$838,615.80 for depreciation. Id.<sup>3</sup> Amazingly, although the BIA  
3 paid MEC almost the entire cost to replace Electric Line (and would have paid the entire cost had  
4 MEC not breached the Contract), MEC transferred the Electric Line to the BIA and “pocketed” the  
5 \$838,615.80 that should have been set aside to replace the Line.

6 **E. The BIA and the Hualapai Retail Customers Have Always Paid Retail Electric  
Rates**

7 As indicated above (§ B(3)), under the Contract MEC initially charged the BIA a retail rate,  
8 schedule “L” or large power. While the rate charged to the BIA changed over the years, MEC  
9 always charged a retail, not wholesale, rate.

10 **1. In MEC’s 1990 rate application and the ACC’s decision concerning it, the  
11 BIA was considered a retail customer and MEC had to deliver electricity  
to the BIA at the Long Mesa transformer**

12 In 1990, the ACC considered MEC’s application for a permanent rate increase. MEC’s  
13 application and the ACC’s decision (the “ACC 1990 Decision”) demonstrate that both MEC and the  
14 ACC have always considered the BIA to be one of MEC’s retail customers.

15 In its application for a rate increase, MEC included the Electric Line in its rate base. SOF  
16 ¶8. MEC’s Cost of Service Study shows that the Electric Line was included in MEC’s rate base to  
17 set the BIA rate; that over \$1.3 million was included in MEC’s gross plant in service; that MEC was  
18 depreciating the value of the Electric Line<sup>4</sup> as well as its metering capital on the Electric Line; that  
19 MEC allocated over \$90,000 as working capital attributable to its Electric Line; that MEC charged  
20 its transmission expenses on its Electric Line; that MEC allocated in excess of \$43,000 to its  
21 administrative expenses to its Electric Line; that MEC paid property taxes in excess of \$29,000 on its

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23 <sup>3</sup> Interestingly and as discussed below, while the BIA paid MEC for depreciation of the Electric  
24 Line, in MEC’s rate applications to the ACC, MEC included the same depreciation of the Line as an  
25 expense that was included in its rate base. Thus, not only did MEC recover its depreciation expense  
directly from the BIA, but it indirectly recovered the depreciation a second time as it was included in  
the rates charged to MEC’s other customers.

26 <sup>4</sup> As noted above, at the same time MEC was including depreciation of the Electric Line in its  
27 rate base, it also was charging and collecting depreciation from the BIA to the tune of \$838,615.80. So  
not only was the BIA paying for depreciation of the Line, so too were MEC’s other customers.

1 Electric Line; and that MEC paid other taxes in excess of \$4,000 on its Electric Line. Id. Moreover,  
2 MEC included its interest expense on its 2% construction loan in its application. Id. MEC, thus,  
3 lumped these and other expenses associated with the Electric Line into its rate base and MEC treated  
4 the Electric Line no differently than all its other lines, plant and equipment.

5 The ACC 1990 Decision shows that MEC was receiving substantial revenues from the BIA  
6 through the delivery of electricity over MEC's Electric Line. SOF ¶9. In 1990, the ACC changed  
7 the existing rate for the BIA from "Rate Schedule L (Large Power)" to "Contract Rate – Revised  
8 Exhibit '2'". Id. The ACC 1990 Decision also provided that "[a]ll service provisions are specified  
9 in the contract." Id. One of those service provisions was that MEC's delivery point was the line side  
10 of the Long Mesa transformer. Id.

11 **2. In 1997, MEC switches the BIA from a contract retail rate to large  
12 commercial rate**

13 In approximately March 1997, MEC unilaterally switched the BIA from a contract rate to  
14 another retail rate, large commercial and industrial. SOF ¶11.<sup>5</sup> To this day, MEC continues to bill  
15 the BIA at a retail large commercial rate, and not at a wholesale rate.

16 **3. In 1998, the ACC and MEC still considered the BIA to be a retail  
17 customer**

18 In 1998, the ACC issued a decision regarding MEC and unbundled service tariffs. SOF ¶10.  
19 Neither MEC nor the ACC differentiated the BIA from MEC's other retail customers. The BIA,  
20 once again, was treated just like MEC's other retail customers; the BIA was not treated as a  
21 wholesaler. See id.

22 **4. The BIA has never been characterized as a wholesale customer**

23 To the BIA's knowledge, in MEC's rate and other filings and in the ACC's decisions about  
24 them, neither MEC nor the ACC has ever classified the BIA as a wholesale customer or claimed the  
25 BIA was a wholesale customer. Moreover, to the BIA's knowledge MEC has never charged the BIA  
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27 <sup>5</sup> The BIA questions whether MEC had the authority to unilaterally change the rate it charged  
28 the BIA without first obtaining ACC approval.

1 a wholesale electric rate. MEC, and the ACC, have always considered the BIA to be a retail  
2 customer.

3 **F. MEC's has Admitted in its Filings with the ACC the Electric Line is Part of its  
4 Service Territory**

5 On May 30, 1986, MEC filed with the ACC MEC's amended articles of incorporation. SOF  
6 ¶12. In its amendment, MEC acknowledged its service area extended to Long Mesa (the end of the  
7 Electric Line). Id.

8 **G. MEC (1) Quit Claims the Electric Line to the BIA and the Tribes; (2) Moves the  
9 BIA's Meter from Long Mesa to the Beginning of the Electric Line; (3)  
10 Abandons the Hualapai Retail Customers; and (4) Stops Making Repairs on the  
11 Electric Line**

12 In July 2003, MEC attempted to unilaterally quit claim Electric Line to the BIA and the two  
13 tribes. SOF ¶13. MEC never obtained ACC approval for this purported transfer.

14 Even before July 2003, however, MEC moved the BIA's meter and abandoned service to the  
15 Hualapai Retail Customers. Somewhere around 1998, without the BIA's agreement, MEC moved  
16 the BIA's meter from the Long Mesa transformer to MEC's Nelson substation, located at the  
17 beginning of the Electric Line. SOF ¶14. And possibly as early as 1998 (but clearly by March 20,  
18 2002), MEC began metering and charging BIA at MEC's Nelson substation. Id. As of this time,  
19 therefore, MEC had stopped servicing the BIA at Long Mesa; had abandoned the Hualapai Retail  
20 Customers and stopped reading their meters; and had begun billing the BIA for the electricity used  
21 by the Hualapai Retail Customers.

22 In July 2003, MEC wrote to the Hualapai Retail Customers and told them that the retail  
23 electric service MEC had provided to them had been "transferred to the BIA." SOF ¶7.<sup>6</sup> Once MEC  
24 attempted to transfer the Electric Line, it also stopped performing routine maintenance on the Line.  
25 MEC has been less than enthusiastic to correct repeated outages on the Electric Line. And MEC has  
26 refused to repair the Electric Line unless the BIA promises to pay for such repairs. For instance, just  
27 since February 2006 the flow of electricity over the Electric Line was interrupted 19 times. SOF

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28 <sup>6</sup> The BIA questions whether MEC could unilaterally "transfer" its retail customers to someone  
else without the customers' consent and without approval by the ACC.

1 ¶15. All of these interruptions resulted from problems with the Electric Line at locations between  
2 the Nelson substation and the Long Mesa transformer. Id. For each outage, the BIA has had to pay  
3 for the repairs. Id. When an outage occurs along the Electric Line, the BIA informs MEC. Id.  
4 Sometimes, however, MEC has responded that no one from MEC was available to check the Electric  
5 Line. Id. Moreover, since at least March 2004, MEC has refused to perform routine maintenance  
6 on the Electric Line. Id. Given that some of the electricity supplied over the Electric Line is utilized  
7 by, for example, an Indian Health Services medical clinic, MEC's lackadaisical attitude and  
8 reluctance to fix these outages are troubling.<sup>7</sup>

9 **H. MEC Ignores the BIA's and the ACC's Requests That it Honor its Regulatory  
10 Obligations**

11 This dispute has dragged on for years as MEC has steadfastly refused to follow the  
12 regulations governing public service corporations. In the summer of 2004, ACC chairman Marc  
13 Spitzer attempted to broker a resolution. The BIA, MEC, and others, including ACC staff, sought to  
14 piece together a resolution, but those efforts unfortunately failed. In a "last ditch" attempt to resolve  
15 the dispute, ACC staff wrote MEC's counsel and informed MEC:

16 The first point on which Commission Staff holds a firm opinion relates to the  
17 jurisdictional nature of the Hualapai line. The evidence is clear that MEC constructed  
18 the line to serve the Havasupai Tribe. It is also clear that the line has been used to  
19 provide retail electric service to a number of customers over its length since it was  
20 built. Finally, it is clear that the line was included in rate base in MEC's most recent  
21 rate case and that rates were approved by the Commission and charged for service  
22 over the line. In Commission Staff's view, it is undeniable that this line is necessary  
23 and useful to MEC in the provision of electric service to its customers.

24 The second, and perhaps most important point to be made on behalf of Commission  
25 Staff relates to MEC's purported abandonment or quitclaim transfer of the line. Quite  
26 apart from the position stated by representatives of the United States that such  
27 abandonment cannot be effectively made, it is Commission Staff's opinion that any  
28 attempted transfer of the line without Commission approval would be void pursuant  
to A.R.S. § 40-285. Without regard to whether MEC received a Certificate of  
Convenience and Necessity to serve a particular geographic area, having commenced  
service, it cannot be abandoned without Commission approval.

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7 The BIA submits that MEC's lackluster effort to keep the Electric Line in working order  
violated its duty to "make reasonable efforts to supply a satisfactory and continuous level of service."  
See AAC R14-2-208©.

1 [I]t is crystal clear to Staff that MEC undertook an obligation to provide service as a  
2 public service corporation, obtained Commission approval of rates to charge, and  
3 included assets in rate base for recovery in rates. Under these circumstances, MEC  
4 cannot escape the obligation it has undertaken without first seeking Commission  
5 approval. (Emphasis added.)

6 SOF ¶16. Despite this strong warning from ACC staff and despite BIA's repeated requests  
7 that MEC honor its obligations, MEC has continued to flaunt the rules and regulations  
8 governing public service corporations.

9 **II. MEC REPEATEDLY IGNORED OR VIOLATED REGULATIONS AND**  
10 **STATUTES. THE BIA IS ENTITLED TO JUDGMENT AS A MATTER OF LAW**

11 **A. The BIA and the Hualapai Retail Customers are MEC's Retail Electric**  
12 **Customers**

13 As discussed, the service provided to the BIA is not a wholesale arrangement. MEC included  
14 the costs of servicing the BIA in its retail rate filings with the ACC. The ACC fully examined those  
15 costs and approved those retail rates for service to the BIA. MEC has never characterized its service  
16 to the BIA as wholesale. MEC cannot now claim that the BIA is anything but a retail customer.

17 Not only has MEC and the ACC acknowledged that the BIA is a retail customer in MEC's  
18 rate filings and in the ACC's rate decisions upon them, but the BIA and the Hualapai Retail  
19 Customers fall under the definition of a "retail electric customer." A "retail electric customer" is "a  
20 person who purchases electricity for that person's own use, including use in that person's trade or  
21 business, and not for resale, redistribution or retransmission." A.R.S. § 40-201(21). The Hualapai  
22 Retail Customers purchased electricity directly from MEC for their own use and MEC has admitted  
23 they were retail electric customers.

24 The BIA also is a retail electric customer as defined by the statute. The BIA uses some of the  
25 electricity that MEC delivers over the Electric Line for its "own use" in the Havasupai Village, such  
26 as to operate a BIA school and related facilities; to operate government quarters for BIA teachers and  
27 law enforcement officers; to operate a BIA detention facility; and to operate a BIA maintenance  
28 building. Additionally, the BIA's "trade or business" is to expend federal appropriated funds for,  
among other things, the general support of Indians. 25 U.S.C. § 13. To accomplish this goal in the

1 instant case, the BIA contracted with MEC to have the Electric Line constructed so that electricity  
2 could be made available in the Havasupai Village. As the BIA purchased electricity in the course of  
3 its trade or business, it is a retail electric customer. A.R.S. § 40-201(21). The Court should find as a  
4 matter of law that the Hualapai Retail Customers and the BIA are MEC's retail customers.

5 **B. MEC's Service Territory Includes the Area Served by the Electric Line**

6 As mentioned, an electricity cooperative like MEC has a statutory obligation to provide  
7 electrical service to rural areas in Arizona that do not otherwise have electrical service. A public  
8 service corporation's "service territory" includes those areas where it has contractually agreed to  
9 extend electric distribution facilities. A.R.S. § 40-201(22). The Electric Line is part of MEC's  
10 "electric distribution facilities." See A.R.S. § 40-201(6) ("electric distribution facilities" include "all  
11 property used in connection with the distribution of electricity from an electric generating plant to  
12 retail electric customers except electric transmission facilities.")

13 No one, not the United State, not the ACC, nor anyone else, forced MEC to enter into the  
14 Contract. MEC voluntarily entered into the Contract and, under the terms of it, MEC extended its  
15 electric lines from its Nelson substation to Long Mesa. As a matter of law, the Court should find  
16 that MEC's service territory now includes the area served by the Electric Line. See A.R.S. § 40-  
17 201(22).

18 **C. MEC's Transfer of the Electric Line is Void. MEC therefore Owns the Line and  
19 Must Immediately Operate and Maintain It**

20 A public service corporation may not dispose any part of its "line, plant, or system necessary  
21 or useful in the performance of its duties to the public" without first obtaining ACC approval.  
22 A.R.S. § 40-285; Babe Invs. v. Arizona Corp. Comm'n, 189 Ariz. 147, 939 P.2d 425 (Ct. App.  
23 1997). Any disposition without ACC approval is void. Id. The Electric Line was necessary or  
24 useful to MEC's duties to the public (i.e., the BIA, the Hualapai Retail Customers, and others in the  
25 area that may want electric service in the future), MEC never obtained ACC approval to quit claim  
26 the Line to the BIA and the Tribes, and therefore the transfer is void.

27 The availability of a substitute service for the public is the predominate factor in determining  
28 whether a utility's line, plant or system is necessary or useful. For instance, a railroad could abandon

1 a rail line under A.R.S. § 40-285 where the company provided a substitute bus service for passengers  
2 and there were trucking facilities available for businesses to ship goods. Safford Chamber of  
3 Commerce v. Corp. Comm'n, 303 P.2d 713 (Ariz. 1956); see also Arizona Corp. Comm'n v.  
4 Southern Pac. Co., 350 P.2d 765, 770 (Ariz. 1960) (allowing discontinuation of agent station where  
5 other transportation facilities are available).

6 In this case, the Electric Line was necessary and useful to the public. The Electric Line is in a  
7 remote area with no other viable alternative source of electricity other than the Line. Prior to  
8 entering into the Contract, the BIA was unable to find any other electric utility willing to serve the  
9 area where the Electric Line runs. Because MEC never obtained ACC approval, the Court should  
10 order that MEC's transfer of the Electric Line to the BIA is void and that MEC owns the Line.  
11 A.R.S. § 40-285.

12  
13 **D. MEC Must Relocate the BIA's Meter Back to Its Original Location at the Long**  
14 **Mesa Transformer**

15 The BIA paid to have the Electric Line run to the rim of the Grand Canyon. Under the terms  
16 of the Contract and according to the law, MEC owns the Electric Line. MEC, therefore, must  
17 relocate the BIA's meter back to Long Mesa transformer. This needs to occur for at least three  
18 reasons. First, with the meter currently located at the beginning of the Electric Line, the BIA is  
19 forced to pay for the electricity used by the Hualapai Retail Customers and for the electricity of other  
20 retail customers who in the future may seek electric service. Second, by refusing to read each of the  
21 Hualapai Retail Customers' meters, MEC is violating the regulations regarding meter reading. See  
22 AAC R14-2-209 (meters must be read for each customer). This can only be cured by moving the  
23 BIA's meter back to Long Mesa. Third, the ACC has already determined that MEC must read the  
24 BIA's meter at Long Mesa. The ACC 1990 Decision stated that the Contract governed MEC's  
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1 service to the BIA. One service provision in the Contract was that MEC's delivery point would be at  
2 Long Mesa.

3 **III. CONCLUSION**

4  
5 For years, MEC has ignored the statutes and regulations governing public service  
6 corporations. As a retail customer, MEC must treat the BIA in a non-discriminatory manner. The  
7 BIA merely wants MEC to honor its regulatory obligations. The BIA is entitled to partial summary  
8 judgment as follows: (1) finding that the Hualapai Retail Customers and the BIA are MEC's retail  
9 electric customers; (2) finding that MEC's service territory includes the area served by the Electric  
10 Line; (3) voiding MEC's transfer of the Electric Line to the BIA; (4) declaring that MEC owns the  
11 Line; (5) ordering MEC to operate and maintain the Line; and (6) ordering that MEC relocate BIA's  
12 electric meter currently located at the beginning of the Line to its original location at the end of the  
13 line.  
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15 Respectfully submitted this 16 day of September, 2006.

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25 Docket Control Division  
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