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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

MIKE GLEASON, CHAIRMAN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

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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-05-0579
BUREAU OF INDIAN AFFAIRS
OBJECTIONS TO TESTIMONY OF TOM
LONGTIN AND ROBERT MOELLER

Mohave Electric Cooperative, Inc. ("Mohave") submitted pre-filed testimony of three witnesses, Thomas Hine, Tom Longtin ("Longtin"), and Robert Moeller ("Moeller"). The Bureau of Indian Affairs ("BIA") moves to have parts of Longtin's testimony and all of Moeller's testimony excluded from consideration because they are not reliable, probative, relevant, or material.

I. Irrelevant and Unreliable Evidence Should Not be Considered

Although administrative hearings can be informal, competent evidence still must be presented. Evidence supporting an administrative decision must be reliable and probative and irrelevant and immaterial evidence should be excluded and ignored.

A.R.S. § 41-1062(A)(1). The majority of Longtin's testimony and all of Moeller's testimony fail to meet this evidentiary standard and therefore should be excluded.

II. Tom Longtin: Most of his Proposed Testimony Lacks Foundation as He has no Personal Knowledge

Longtin has worked for Mohave since 1991 as the manager of operations and engineering. Pre-Filed Direct Testimony of Tom Longtin, p. 2, Ins. 2-3. In large part, Longtin testifies about matters that occurred before he began working at Mohave and about matters beyond his knowledge.

1 Longtin repeatedly offers testimony about matters of which he has no personal
2 knowledge. His Statement is filled with dozens of "It was my understanding that ..."¹; "I
3 understand that..."²; "I was told that ..."3; "I have been led to understand that ..."⁴; "My
4 understanding is ..."5; "I am told ..."6; and "I understood that ..."7 Longtin does not
5 have personal knowledge about these purported facts. Nor does he lay a foundation for
6 how he obtained his purported knowledge. Longtin does not identify who he discussed
7 matters with; who was present; the date and time of the alleged communications; the
8 source of the information management gave to Longtin; which documents contained the
9 information Longtin relied on; or any other information substantiating Longtin's
10 allegations. Moreover, most of this proposed testimony appears to be based on nothing
11 more than hearsay that Longtin learned from undisclosed documents or people.

12 Similarly, although Longtin is not an attorney, he proposes to give legal opinions,
13 such as that Mohave was the BIA's agent with respect to the customers along the Line
14 (Id. at p. 10, lns. 3 – 8; p. 19, lns. 1-3)⁸; that the BIA breached a duty it supposedly owes
15 to the Tribes by removing diesel generators from Long Mesa (Id. at p. 12, ln. 24 – p. 13,
16 ln. 16); that Mohave had no authority to operate out of its right of way except as an
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19 ¹ E.g., "It was my understanding that the largest account on the Line ..." Id.
20 at p. 5, lns. 18-9; "It was my understanding the Havasupai and Hualapai
21 Tribes were upset about..." Id. at p. 6, lns. 21-4; "It was my understanding
22 that after the Line was paid off ..." Id. at p. 9, lns. 21-6; "It was my
understanding that around 1997 that Mohave ..." Id. at p. 10, lns. 20-3; "It
was my understanding that the management and membership of Mohave ..." Id. at
p. 15, lns. 6-9.

² E.g., "I understand that, over the years, a number of other accounts ..." Id.
23 at p. 5, lns. 22-5; "I understand that Commission records indicate ..." Id. at
p. 7, ln. 28 – p. 8, ln. 5.

³ E.g., "I was told that prior to 1992 the BIA ..." Id. at p. 14, lns. 25-7.

⁴ E.g., "I have been led to understand that the BIA could not get an
24 appropriation ..." Id. at p. 7, lns. 7-9.

⁵ E.g., "My understanding is by working with Mohave ..." Id. at p. 7, lns. 11-7.

⁶ E.g., "The financial calculations and rate calculations, I am told ..." Id. at
26 p. 7, lns. 26-8; "I am told, it is clear from the negotiating tactic of the
27 BIA ..." Id. at p. 20, lns. 16-20.

⁷ E.g., "I understood that BIA contact persons ..." Id. at p. 9, lns. 5-9.

⁸ Not only is Longtin not an attorney, but he simply concludes that Mohave was
28 the BIA's agent without any evidence to support that conclusion.

1 agent for the BIA (Id. at p. 14, Ins. 19-22); and that the Commission would be ignoring
2 the Tribes' sovereignty if it granted relief here (Id. at p. 28, In. 17 – p. 29, In. 14).

3 In reality, Longtin is qualified to testify only to matters (1) that occurred after he
4 began working at Mohave (1991) and (2) that deal with the operation and maintenance
5 of the Line. Everything else is not reliable or probative, and it therefore should be
6 excluded. A.R.S. § 41-1062(A)(1).

7 **III. Robert Moeller: Testimony Consists of Irrelevant Legal Opinions**

8 **A. Legal opinions should be excluded**

9 Robert Moeller is an attorney and Mohave proposes that he give a number of
10 expert legal opinions. For example, Mohave wishes to have Moeller provide “expert
11 opinions regarding the federal government’s recognition of the obligations the United
12 States owes to the Hualapai and Havasupai Indian Tribes in this case.” Pre-Filed Direct
13 Testimony of Robert Moeller (“Moeller Statement”), at p. 4. Mohave further proposes
14 that Moeller will “opine whether Federal policy, and specific federal policy concerning
15 Indian Tribes, supports the exercise of state regulatory jurisdiction, acting through the
16 Arizona Corporation Commission, over Mohave Electric with respect to this dispute.” Id.

17 Moeller offers another legal conclusion or opinion, that once the BIA undertakes
18 to provide a service to Native Americans and they rely on that service, a trust
19 responsibility requires the BIA to continue to provide that service. See id. at 7. On the
20 next page of his Statement, Moeller reaches yet another legal conclusion, that the BIA’s
21 purported attempt to abandon its responsibility over the Line constitutes a breach of a
22 trust obligation owing to the Havasupai and Hualapai Tribes. See id. at 8. As a final
23 example of Moeller’s legal opinions, he concludes that the BIA has a trust obligation to
24 maintain the Line Mohave abandoned to the BIA and the Tribes. See id. at 9.

25 Not all opinion testimony is admissible. In order to be admissible, opinion
26 testimony must meet Arizona Rules of Evidence, rule 702, standard of “scientific,
27 technical, or other specialized knowledge will assist the trier of fact to understand the
28 evidence or to determine a fact in issue” The Moeller Statement merely contains

1 his opinioned statements of how he thinks this case should be decided and what the law
2 is. As the Arizona Court of Appeal stated:

3 Undoubtedly, some highly opinionated statements by the witness amount to
4 nothing more than an expression of his general belief as to how the case should
5 be decided or the amount of damages which would be just. All courts exclude
6 such extreme, conclusory expressions. There is no necessity for this kind of
7 evidence; its receipt would suggest that the judge and jury may shift
8 responsibility for the decision to the witness. In any event, the opinion was
9 worthless to the trier of fact.

10 Webb v. Omni Block, 166 P.3d 140, 145 (Ariz. App. 2007). Moeller's proposed pre-filed
11 testimony should not be considered.

12 Legal opinions, like Moeller's, are not admissible. Weinstein's Federal Evidence
13 § 704.04[1] (2004) ("In general, testimony about a legal conclusion, or the legal
14 implications of evidence is inadmissible."); Police Retirement System of St. Louis v.
15 Midwest Inv. Advisory Service, Inc., 940 F.2d 351, 357 (8th Cir. 1991); Densberger v.
16 United Technologies Corp., 297 F.3d 66, 74 (2nd Cir. 2002) ("[E]xperts are not permitted
17 to present testimony in the form of legal conclusions."); U.S. Search, LLC v. U.S.
18 Search.com Inc., 300 F.3d 517, 522 n. 4 (4th Cir. 2002) (affirming exclusion of attorney's
19 testimony about his legal conclusions).

20 Mohave is ably represented by counsel who can argue Mohave's legal positions.
21 The Commission should exclude or disregard Moeller's Statement, which offers nothing
22 but legal opinions.

23 **B. Irrelevant and immaterial evidence should be excluded**

24 Moeller's testimony is irrelevant, immaterial, and not probative. First, the only
25 issue before the Commission is whether Mohave's actions complied with Arizona laws
26 and regulations governing utilities. Whether or not the BIA owes a trust obligation to the
27 Hualapai or Havasupai Tribes is a federal question that is irrelevant to this proceeding.
28 Second, and in the same vein, only the Tribes have standing to raise any issues related
to the BIA's responsibilities that may be owed to them or to tribal sovereignty. Because

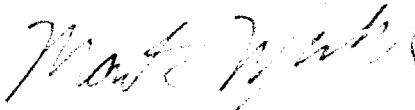
1 Mohave does not represent the Tribes, it lacks standing to assert any breach of duty
2 claim or defense or any tribal sovereignty argument.

3 **IV. Conclusion**

4 Only that portion of Longtin's testimony that concerns events that occurred after
5 he started working at Mohave (1991) and that deal with operations or repairs to the Line
6 should be admissible or considered by the Commission. The rest of his testimony is not
7 probative or reliable and should be excluded. Moeller's testimony, consisting of legal
8 conclusions and opinions, likewise should be excluded.

9 Respectfully submitted this 4 day of November, 2008.

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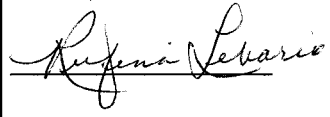
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