

ORIGINAL



0000092453

BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

RECEIVED

DOCKETED

KRISTIN K. MAYES, CHAIRPERSON  
GARY PIERCE  
SANDRA KENNEDY  
PAUL NEWMAN  
BOB STUMP

2009 JAN 16 P 1:40

JAN 16 2009

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

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  
SUPPLEMENTAL TESTIMONY OF  
LEONARD GOLD IN RESPONSE TO  
SUPPLEMENTAL TESTIMONY OF DAN  
NEIDLINGER

The Bureau of Indian Affairs ("BIA") submits the following supplemental  
testimony of Leonard Gold:

**I. Introduction**

Q: What is the purpose of your testimony?

A: During the hearing, Administrative Law Judge Wolfe ("ALJ Wolfe")  
directed specific questions to Mohave Electric Cooperative, Inc. ("Mohave").<sup>1</sup> ALJ Wolfe  
asked that Mohave answer the following questions:

Administrative Law Judge Wolfe's questions:

- Is Mohave required to make any filings with FERC? (Transcript, p. 365)
- Does Mohave have a FERC transmission tariff? (Transcript, p. 365)
- Is Mohave collecting any transmission rates for the Line? (Transcript, pp. 365-66)
- Is MEC authorized to collect rates that are based upon the "rate basing" of the Line? (Transcript, p. 370)

<sup>1</sup> Commissioner Mayes also requested that Mohave answer ALJ Wolfe's questions. (Transcript, p. 372)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- Do the rates that MEC is now charging include depreciation and taxes for the Line? (Transcript, p. 371)
  - What rate is Mohave authorized to charge at this time pursuant to Mohave's last rate case? (Transcript, p. 374)
  - What is the rate base status of the Line? (Transcript, p. 375)
  - What is the fair value rate base that currently is being used to authorize the rates that Mohave charges? (Transcript, p. 375)
  - What is the current status of collecting depreciation, O&M, and taxes for the Line? (Transcript, p. 375)
  - Is the Line in rate base? (Transcript, pp. 375, 484)
  - Whether or not MEC is "FERC exempt"? (Transcript, p. 375)

13 In response to ALJ Wolfe's questions, Mohave filed supplemental testimony of  
14 Dan L. Neidlinger (the "Neidlinger Statement"). Mr. Neidlinger addressed the following  
15 questions:

16 Neidlinger Statement questions:

- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- Was the 70-mile Line constructed by MEC from the Nelson Substation to the Long Mesa transformer ("BIA Line") included in rate base in the 1989 rate case?
  - Why were BIA revenues, related cost of service and book value of the BIA Line shown in the 1989 COSS as separate customer class?
  - Was the indicated BIA percentage return on rate base under rates in effect at that time excessive in relationship to the system average return or indicated returns of other customer classes?
  - Did billing the BIA a contract Facilities Charge plus MEC's standard Larger Commercial & Industrial Rate ("LC&I Rate) during the 1989 test year result in an over-collection of depreciation, property tax and other operating and maintenance expenses?

- Are any of the costs of the BIA Line currently being recovered through MEC's standard tariffs?
- Is the BIA currently subsidizing other classes of customers served by MEC?

The purpose of my testimony is to respond to the Neidlinger Statement.

Moreover, I will address those questions that ALJ Wolfe posed to Mohave, but Mohave failed to discuss in the Neidlinger Statement.

## **II. ALJ Wolfe's Questions Regarding FERC**

Q: Did Mr. Neidlinger respond to ALJ Wolfe's questions about FERC?

A: No.

Q: During the hearing ALJ Wolfe asked whether Mohave had obtained a FERC approved transmission tariff for the Line. Are you aware of Mohave having a FERC transmission tariff for the Line?

A: It is my understanding that Mohave has not sought and does not have a FERC approved transmission tariff for the Line.

Q: ALJ Wolfe asked if Mohave was collecting any transmission rates for the Line. Are you aware of Mohave collecting any transmission rates for the Line?

A: No, I am not aware of Mohave collecting a transmission tariff for the Line. A review of Mohave's existing rates, which are the same rates approved in the 1990 Rate Decision, Decision No. 57172, does not show any transmission rate for the Line.

Q: ALJ Wolfe asked whether or not Mohave is "FERC exempt." Do you have any knowledge regarding this question?

A: My understanding is that a RUS borrower is generally not regulated by FERC.

## **III. The Line Is Included in Mohave Rate Base as a Distribution Line**

Q: ALJ Wolfe asked whether Mohave was authorized by the ACC to collect rates that are based upon the "rate basing" of the Line and whether the Line is in rate

1 base. Did Mr. Neidlinger's response confirm what you had stated in your prior  
2 testimony that the Line was included in rate base in the 1989 rate case as a distribution  
3 line?

4 A: Somewhat. Although on page 4 of his testimony Mr. Neidlinger correctly  
5 stated that the Line is included in Mohave's rate base, he does not acknowledge that  
6 the Line was included in rate base as a distribution line.

7 Q: Mr. Neidlinger states on page 4 that "the original rate base assigned to the  
8 BIA in the 1989 case was \$1,074,241. This amount was included in MEC's total rate  
9 base of \$26,742,431 as found by the Commission in Decision No. 57172 on November  
10 29, 1990." Is the \$1,074,241 the same value found in the table on page 4 of your sur-  
11 rebuttal testimony?

12 A: Yes it is. I have restated the table below.

MEC Rate Base For BIA From Cost of Service Summary		
Category	Amount	Page
Intangible Plant	\$ 21	21
Transmission Plant	\$ 60,545	24
Distribution Plant	\$ 1,170,449	27
General Plant	\$ 121,372	30
Customer Accounts	\$ 5,064	5
<b>Gross Plant In Service</b>	<b>\$ 1,357,451</b>	
Accumulated Depreciation		30
Production Plant	\$ -	30
Transmission Plant	\$ 24,420	30
Distribution Plant	\$ 261,247	30
General Plant	\$ 54,650	30
Customer Accounts	\$ 2,280	
<b>Total Accumulated Depreciation</b>	<b>\$ 342,597</b>	<b>30</b>
<b>Total Working Capital</b>	<b>\$ 59,387</b>	<b>33</b>
<b>Total BIA Rate Base</b>	<b>\$ 1,074,241</b>	

1 Q: What is included in the \$1,074,241 BIA rate base?

2 A: As the table shows, the largest component of Mohave's rate base for  
3 "Gross Plant In Service" was distribution plant. Further, the largest component of  
4 Mohave's rate base for "Total Accumulated Depreciation" was distribution plant. Mr.  
5 Neidlinger confirms that the Line is in rate base and by looking at the details it is clear  
6 that the Line was in rate base as distribution plant.

7 **IV. Did the Rate Approved By The ACC In The 1990 Rate Decision Include**  
8 **Depreciation, Taxes and O&M For The Line?**

9 Q: During the hearing ALJ Wolfe asked what was included in Mohave's  
10 approved rates. What was included?

11 A: The 1990 Rate Decision approved Electric Rate Schedules effective  
12 January 1, 1991. Rate Schedule "Contract," described as the "Contract Rate for the  
13 B.I.A.," is part of the approved Electric Rate Schedules and is attached as Exhibit 1. As  
14 stated in the rate sheet, this rate was available "only to the U. S. Bureau of Indian  
15 Affairs pursuant to agreement for electric service dated April 1, 1982". There are two  
16 charges that the BIA would pay – those in the electric service agreement and those in  
17 the rate schedule ("Monthly Service Charge", "Demand Charge", "Energy Charge", "Tax  
18 Adjustments" and "Purchased Power Cost Adjustment"). The electric service  
19 agreement charges included recovery of debt service to repay the RUS loan obtained  
20 by Mohave to build the Line, all state and local property taxes, O&M expenses  
21 (including depreciation), cost of replacements less original book value of replaced  
22 facilities and cost of system improvements as a result of the electric service agreement.

23 Q: So between the terms of the electric service agreement and the approved  
24 rate schedule, did the BIA pay all costs associated with the Line including depreciation  
25 and taxes.  
26

27 A: Yes.  
28

1 Q: ALJ Wolfe also asked about the current status of collecting depreciation,  
2 O&M and taxes for the Line. What is the current status?

3  
4 A: When Mohave billed the BIA the charges specified in the electric service  
5 agreement under "Facilities Charges," the BIA paid them. As James Williams testified,  
6 in approximately April, 1997, Mohave stopped billing the Facilities Charges. However,  
7 because Mohave abandoned the Line and moved the primary meter back to Nelson  
8 Substation, Mohave has not been incurring, nor should it incur, costs associated with  
9 the Line. So, once Mohave decided to abandon the Line, they also decided to stop  
10 collecting the depreciation, O&M and taxes for the Line.  
11

12 Q: Is Mohave collecting any depreciation, O&M and taxes under the rate  
13 schedule for the sale of energy to the BIA?  
14

15 A: Mohave is collecting whatever portion of depreciation, O&M and taxes that  
16 had been assigned to the BIA rate schedule as part of the 1990 Decision. The recovery  
17 of these components through the rate schedule would not have been for the Line, but  
18 rather for Mohave's overall system costs.  
19

20 **V. How Was The BIA Treated In The 1989 Cost of Service Study ("COSS")?**  
21

22 Q: Mr. Neidlinger discusses that the BIA was shown as a separate customer  
23 class in the 1989 COSS. Do you agree with Mr. Neidlinger's statement regarding "direct  
24 assignment" of utility assets?

25 A: I agree that direct assignment is used when revenues and expenses are  
26 identified as being attributable to a particular customer class or individual customer. In  
27 the 1989 COSS, not only were utility assets assigned directly to the BIA, but also there  
28

1 were utility assets assigned directly to Chemstar, Cyprus Bagdad and Lighting  
2 customers. Directly assigning revenues and expenses ensures that these customers  
3 don't subsidize other customer classes, and that other customer classes don't subsidize  
4 these customers.  
5

6 Q: Mr. Neidlinger states that percentage return for the BIA in the 1989 COSS  
7 was 6.98% and that this return was not excessive when compared to the overall system  
8 average return. Do you have any comments regarding Mr. Neidlinger's observations  
9 about how the percentage return on rate base of 6.98% compares to the overall system  
10 percentage return?  
11

12 A: Yes. First of all I am not sure why Mr. Neidlinger brings up the subject of  
13 whether the BIA's indicated percentage return is "excessive" compared to the system  
14 average return. The percentage return on rate base for each customer class will either  
15 be above or below the system average return. This is a normal condition found in a  
16 COSS.  
17

18 Second, Mr. Neidlinger inserted a footnote regarding some correction that he  
19 suggests should have been made today to the 1989 COSS. In my view Mr. Neidlinger  
20 is attempting to make an adjustment to his own 1989 COSS without any basis or  
21 foundation in an attempt to imply that the BIA was not providing a reasonable return to  
22 Mohave. Making an adjustment to a COSS 19 years after the fact seems inappropriate.  
23 If Mr. Neidlinger or Mohave felt that there was some error or that the BIA was not paying  
24 its fair share of cost, then Mohave should have filed for an adjustment in rates through a  
25 formal rate case and let the ACC make a decision. Mr. Neidlinger is trying to make an  
26 adjustment to an approved rate filing after the fact with no hearing or ACC oversight.  
27  
28

1 Q: What was Mr. Neidlinger's opinion of the BIA return in his testimony in the  
2 1989 Rate Application?

3 A: In his 1989 testimony Mr. Neidlinger addressed the BIA's 6.98% return.  
4 He stated, "Over 94% of the \$1,074,241 rate base assigned to the BIA was financed  
5 with 2% REA loans: embedded borrowing costs for the remained of the system are  
6 approximately 5.9%. The return index at proposed rates of 0.57 is therefore misleading.  
7 The 6.98% return of the BIA at present rates is equivalent to or greater than the  
8 requested total system return of 12.35%." (Page 16 – 17) As neither Mr. Neidlinger nor  
9 Mohave had an issue with the BIA return in 1989, they shouldn't have any issue with  
10 the 1989 return in 2008. Again, if Mohave felt that the BIA return (or for that matter any  
11 other customer class return) was insufficient, then Mohave could have remedied that  
12 situation by filing a rate application with the ACC.  
13  
14

15 **VI. Were There Recovery Of Cost Issues With The ACC Approved BIA Rate?**  
16

17 Q: Was the BIA charged the LC&I rate, as indicated by Mr. Neidlinger, before  
18 Mohave moved the meter to the Nelson Substation?

19 A: No. Before Mohave moved the meter, it charged the BIA the rate  
20 approved by the ACC's 1990 Rate Decision Rate as contained in the approved Electric  
21 Rate Schedules effective January 1, 1991. The BIA was charged the Rate Schedule  
22 "Contract," described as the "Contract Rate for the B.I.A." (BIA Rate) as part of the  
23 approved Electric Rate Schedules. After Mohave moved the meter, it charged BIA the  
24 LC&I Rate (Rate Schedule "L" – Large Commercial & Industrial). Below is a table  
25 showing the components of the BIA Rate and the LC&I Rate.  
26  
27  
28

	<b>BIA Rate</b>	<b>LC&amp;I Rate</b>
Availability	Available only to the U.S. Bureau of Indian Affairs pursuant to agreement for electric service dated April 1, 1982.	Available to commercial and industrial consumers with average monthly demands exceeding 100 KW within the utility's service area.
Character of Service	All service provisions are specified in the contract.	<ol style="list-style-type: none"> <li>1. Alternating current, single phase or three phase, 60 Hertz, at available secondary or primary voltages.</li> <li>2. This rate is not applicable to standby, supplemental or resale service.</li> </ol>
Rate Per Month		
Monthly Service Charge	\$70.00	\$70.00
Demand Charge – Per KW	9.00	9.75
Energy Charge – Per KWH	0.04579	.04558
Billing Demand	Same	Same
Tax Adjustments	Same	Same
Purchased Power Cost	Same	Same
Adjustment	Same	Same
Conditions of Service	Same	Same
Effective Date	Same	Same

As indicated by the table above, the BIA Rate is only available to the BIA and includes the contract provisions - the Facilities Charge. The LC&I rate is for commercial and industrial consumers and does not include the contract nor the provision for the Facilities Charge.

1 Q: Taking into account that the BIA paid a large commercial electric rate and  
2 also paid other contractual charges, did Mohave recover its costs?

3 A: Yes, because the COSS directly assigned the contract related charges  
4 and allocated the rate schedule charges to recover the costs. Clearly the contract  
5 charges were intended to allow Mohave to fully recover those costs and for the BIA to  
6 pay its fair share. However, it is up to Mohave to let the BIA or any of its customers  
7 know if Mohave was not recovering costs. Further Mohave has an obligation to all its  
8 customers to petition the ACC for rate relief to rectify a situation in which one customer  
9 class is subsidizing another customer class. Additionally, in the original Mohave-BIA  
10 contract on Page 00013 under Facilities Charges, it indicates that the BIA would pay all  
11 taxes, O&M expense, cost of replacement less original book value of replaced facilities  
12 and cost of system improvements. Then on Page 00015 under Monthly Facility  
13 Charges and Rates, it states, "Billing pertaining to both the Facility Charge and Exhibit 2  
14 may be increased by an amount equal to the sum of applicable taxes, fees,  
15 assessments or other charges not provided for in either the Facility Charge or Exhibit 2."  
16 Mohave had the authority to adjust the Facility Charge as needed to recover the  
17 appropriate costs.  
18  
19  
20  
21

22 Finally, the 1989 COSS developed rates for the BIA that recovered all the costs  
23 associated with the Line. So Mr. Neidlinger's hypothetical example about the impact "if"  
24 the BIA did not pay the Facilities Charge, is just that, a hypothetical example that  
25 ignores what actually happened. The BIA did, and always has been willing to, pay the  
26 Facilities Charge. Mr. Neidlinger was the one that developed the COSS. During the  
27 1989 rate case there would have been ample opportunity for Mr. Neidlinger or Mohave  
28

1 to present other options. Neither Mr. Neidlinger nor Mohave did that. I don't think the  
2 ACC would have approved the rates for the BIA in 1989 if the ACC had not believed the  
3 rates would have adequately recovered Mohave's costs. So as long as Mohave  
4 charged the rates approved by the ACC that included the Facilities Charges Mohave  
5 would be recovering costs. The fact is that the COSS did include the Facilities Charge  
6 and the ACC approved rates that included the Facilities Charge.  
7

8 Q: What about Mr. Neidlinger's discussion of current conditions?  
9

10 A: Mr. Neidlinger concludes his testimony with a discussion of current  
11 conditions. However, the BIA rate for energy purchases is the one approved by the  
12 ACC in 1990. If Mohave is concerned that the BIA rate or any rate is not recovering  
13 costs, then Mohave should file for a rate adjustment with the ACC. My understanding is  
14 that the BIA always has been willing to pay its fair share of costs and that so long as  
15 Mohave billed the BIA for Facilities Charges the BIA paid them. Mohave chose to stop  
16 billing the BIA the Facilities Charges. The contract contemplated Mohave making  
17 adjustments to the Facility Charge and Mohave has the option of filing with the ACC for  
18 rate relief associated with energy sales.  
19

20 Q: Regarding the over recovery of costs, have those Mohave customers  
21 located along the Line been treated fairly?  
22

23 A: Not really. Mohave charged the other customers along the Line retail  
24 rates, either Mohave's residential or small commercial rates. For instance, Mohave  
25 charged Clay Bravo Mohave's residential rate and Mohave charged the Hualapai Tribe  
26 its small commercial rate. These rates are based upon all Mohave system costs not  
27 directly assigned to other customer classes. So the customers along the Line were  
28

1 paying the Mohave distribution system costs allocated to the residential and small  
2 commercial classes, but they don't use a majority of Mohave's system. It might have  
3 been more appropriate for the BIA to receive some type of credit because the BIA paid  
4 the full cost of the Line that serviced these other customers along the Line.  
5

6 Q: Do you have any final comments?

7 A: Yes. Mohave confirmed the Line was rate based in the 1990 Rate  
8 Decision. Based on the COSS, it is clear the Line was rate based as a distribution  
9 plant. As long as the contract charges were billed and paid by the BIA as part of the  
10 BIA rate, the BIA was paying its fair share, and not being subsidized by other customer  
11 classes. On the other hand, Mohave's customers along the Line were paying residential  
12 or small commercial rates, which include the cost of Mohave's costs not associated with  
13 the Line. Finally, Mohave has the ability and the responsibility to apply to the ACC for  
14 rate relief as it deems necessary.  
15  
16

17 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

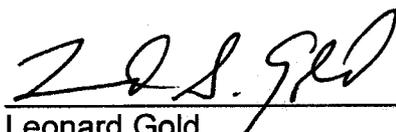
Q: Does this conclude your supplemental testimony?

A: Yes.

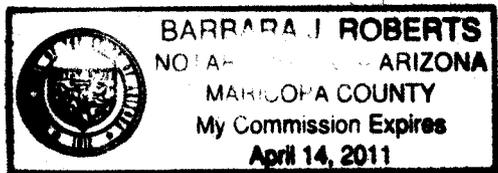
STATE OF ARIZONA        )  
  )        ss.  
County of Maricopa        )

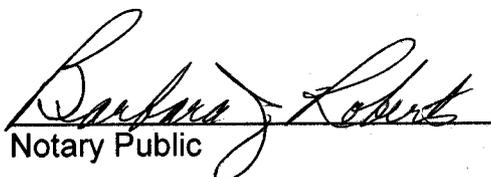
LEONARD GOLD, being first duly sworn, deposes and says:

That I prepared the above testimony and know the contents therefore, and that my responses to the questions are true and correct to the best of my knowledge and reflect my sworn testimony in this matter.

  
\_\_\_\_\_  
Leonard Gold

SUBSCRIBED AND SWORN TO before me this 16th day of January, 2009, by Leonard Gold.



  
\_\_\_\_\_  
Notary Public

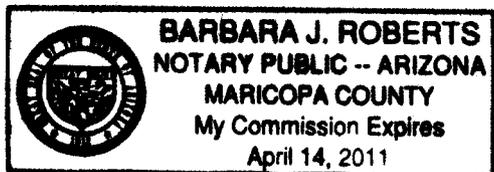
Original and 13 copies filed this 16th day of January, 2009, with:

Docket Control Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Copies delivered this 16th day of January, 2009, to:

Teena Wolfe  
Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Janice Alward  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Ernest Johnson  
Director, Utilities Division  
Arizona Corporation Division  
1200 West Washington Street  
Phoenix, Arizona 85007

Steven A. Hirsch  
Rodney Ott  
Bryan Cave  
Two N. Central Ave., Suite 2200  
Phoenix, AZ 85004-4406

Copy mailed this  
~~16<sup>th</sup>~~ day of January, 2009, to:

Michael A. Curtis  
William P. Sullivan  
Curtis, Goodwin, Sullivan, Udall & Schwab  
501 East Thomas Road  
Phoenix, AZ 85012

  
\_\_\_\_\_

# **EXHIBIT 1**

MOHAVE ELECTRIC COOPERATIVE, INC.

CONTRACT RATE - REVISED EXHIBIT "2"

ORIGINAL

for the

U.S. Bureau of Indian Affairs

Availability:

1. Available only to the U.S. Bureau of Indian Affairs pursuant to agreement for electric service dated April 1, 1982.

Character of Service:

1. All service provisions are specified in the contract.

Net Rate Per Month:

Monthly Service Charge	\$70.00
Demand Charge - Per KW	9.00
Energy Charge - Per KWH	0.04579

Billing Demand:

1. The billing demand shall be the maximum kilowatt demand established for any fifteen (15) minute period during the billing month.

Tax Adjustments:

1. Total monthly sales for electric service are subject to adjustment for all federal, state and local governmental taxes or levies on such sales and any assessments that are or may be imposed by federal or state regulatory agencies on electric utility gross revenues.

Purchased Power Cost Adjustment:

1. The utility may, if the cost of purchased power is increased or decreased above or below the base purchased power cost of \$0.065798 per KWH sold, flow through to the consumer such increases or decreases.

Conditions of Service:

1. The terms and conditions for the provision of service to the consumer under this rate schedule are subject to the Rules and Regulations of the utility, as approved and modified from time to time by the Arizona Corporation Commission.

Effective Date:

1. This rate schedule is effective January 1, 1991.

APPROVED FOR FILING  
IN COMPLIANCE WITH  
DECISION #: 57172