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BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

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

2009 MAR -6 P 4: 15

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MAR - 6 2009

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'
MOTION TO STRIKE (1) MOHAVE'S
SUBMISSION OF SUPPLEMENTAL
AFFIDAVITS AND EXHIBITS and (2)
PORTIONS OF MOHAVE'S CLOSING

The evidentiary hearing was in November, 2008. It was undisputed that in 1997 respondent Mohave Electric Cooperative, Inc. ("Mohave") abandoned service to customers, including two who are within its CC&N. Apparently at the evidentiary hearing, Mohave finally realized, **eleven years after the fact**, that it should not have discontinued service to customers within its own CC&N. Mohave, therefore, recently attempted to once again begin servicing the two customers within its CC&N. On February 18, 2009, Mohave filed two supplemental affidavits of Thomas Longtin concerning events that occurred after the evidentiary hearing.

Complainant Bureau of Indian Affairs ("BIA") moves to strike the two supplemental affidavits and to strike any reference to them in Mohave's written closing. These two affidavits should be stricken from the record and any reference to them in Mohave's closing should be stricken for several reasons.

First, the affidavits are irrelevant. As Mohave states on the first page of its supplemental filing, "[t]hese affidavits reflect events that have occurred since the November, 2008 hearing in this matter." What transpired after the hearing is irrelevant. Also, the affidavit about what supposedly happened on the Fort Mohave Indian Reservation has no bearing or relevance to this case as the Line is not on the Fort Mohave Indian Reservation. And what the Fort Mohave Indian Tribe or its members

1 allegedly did cannot be used to affect or prejudice the BIA's rights. Finally, Mohave,
2 despite what it represents to the ACC, did not have an easement to construct a new
3 power line. In contrast, Mohave obtained easements to construct and maintain the
4 Line. The affidavits are irrelevant.

5 Second, permitting Mohave to file additional evidence after the close of evidence
6 would result in a never ending evidentiary hearing. If this additional evidence is allowed
7 or taken into consideration by the ACC, then Mohave will have the incentive to file even
8 more evidence one month from now, six months from now, or even a year from now.
9 Enough is enough. The hearing was held months ago, the parties had a full and fair
10 opportunity to present whatever evidence they wished, and there must be a conclusion
11 to the evidentiary portion of this case.

12 Third, allowing the affidavits to be filed and to be considered by the ACC would
13 prejudice the BIA. The BIA has not had, and will not have, an opportunity to cross-
14 examine the affiant, Thomas Longtin.¹ That is patently unfair and prejudicial.

15 Fourth, at the conclusion of the November, 2008 hearing, Administrative Law
16 Judge Teena Wolfe ordered or allowed the parties to file only the following pleadings:
17 (1) the supplemental testimony of Dan Neidlinger and Leonard Gold about a few
18 specific issues, and (2) written closing and sur-closing arguments. Judge Wolfe never
19 authorized the parties to file additional pleadings or submit additional evidence and
20 Mohave never sought leave to file the affidavits. These affidavits are not authorized or
21 permitted.

22 Finally, the affidavits are filled with inadmissible evidence.

23 In sum, both affidavits should be stricken from the record. Also, those portions of
24 Mohave's closing that refer to the affidavits (either with direct cites to the affidavits or by
25 reference to the content contained in them) should be stricken. The following portions
26 of Mohave's closing should be deleted or stricken from the record:

27
28 ¹ Information contained in Longtin's affidavits is seriously misleading in several respects.

- Footnote 2;
- Page 32, ln. 25 – p. 33, ln. 5;
- Page 33, lns. 21-26;
- Page 34, lns. 18-23;
- Page 38, lns. 10-18;
- Page 50, lns. 1-11; and
- Page 52, lns. 10-14.

Respectfully submitted this 6 day of March, 2009.

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