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2009 MAR 20 P 3: 54

AZ CORP COMMISSION  
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Arizona Corporation Commission

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MAR 20 2009

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE COMPLAINT OF  
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

MOHAVE ELECTRIC  
COOPERATIVE, INC.'S RESPONSE  
TO THE BUREAU OF INDIAN  
AFFAIRS' MOTION TO STRIKE

BRYAN CAVE LLP  
TWO NORTH CENTRAL AVENUE, SUITE 2200  
PHOENIX, ARIZONA 85004-4406  
(602) 364-7000

Respondent Mohave Electric Cooperative, Inc. ("Mohave") hereby responds in opposition to the Bureau of Indian Affairs' ("BIA's") March 6, 2009 Motion to Strike (1) Mohave's Submission of Supplemental Affidavits and Exhibits and (2) Portions of Mohave's Closing. BIA's motion should be denied for the following reasons.

Mohave's submission properly supplemented the record in this proceeding by adding sworn testimony concerning events that occurred following the November, 2008 hearing in this matter. By affidavit of Tom Longtin with attached exhibits, Mohave provided the Commission with additional facts regarding its efforts to serve customers within its CCN area. This evidence is relevant, and it did not exist as of the date of the hearing and Mr. Longtin's live testimony in this matter. It was entirely appropriate and consistent with Commission practice for Mohave to submit the supplemental affidavits and exhibits, and to address those new additional facts in its closing briefing.

Moreover, Mohave disputes several of the factual assertions made in the BIA's Motion to Strike. First, the evidence is clear that Mohave did not cease providing electric service to its customers within its CCN. As set forth in Mr. Longtin's supplemental affidavits, based on testimony and questions at the hearing, Mohave was trying to make

1 plans to build a physically separate line to the two accounts that had been served by the 70-  
2 mile line, to remove any argument whatsoever that it was either not serving customers  
3 within its CCN area, or that the 70-mile transmission line was being used for the provision  
4 of power to Mohave customers.

5 The remaining issues addressed in the Motion to Strike were discussed before  
6 Administrative Law Judge Teena Wolfe at the March 12, 2009 telephonic procedural  
7 conference addressing these issues. The supplemental materials are appropriate and should  
8 not be stricken, and the BIA has already been granted leave to respond with affidavits of its  
9 own should it wish to rebut Mr. Longtin's affidavits or exhibits. Any remaining objections  
10 or issues concerning the supplemental material can and should be addressed in the final  
11 response briefs the parties have yet to file in this proceeding. The additional materials  
12 underscore the need for the Commission to address the very real practical and legal  
13 problems utilities such as Mohave face when trying to provide service on reservation lands,  
14 especially in the face of demands that they continue to do so under the circumstances in this  
15 case, and where the tribes themselves to not appear to recognize the authority of the  
16 Commission or the rights granted in a CCN, and place the utilities' employees in physical  
17 danger while attempting to provide such service.

18  
19 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of March, 2009.

20 BRYAN CAVE LLP

21  
22 By 

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1 ORIGINAL and 13 COPIES of the  
2 foregoing were hand-delivered for  
3 filing this 20<sup>th</sup> day of March, 2009 to:

4 Docket Control  
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8 COPY of the foregoing hand-delivered  
9 this 20<sup>th</sup> day of March, 2009, to:

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24 COPY of the foregoing mailed this  
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