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BEFORE THE ARIZONA CORPORATION COMMISSION  
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**COMMISSIONERS**  
KRISTIN K. MAYES, CHAIRMAN  
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2009 MAY 22 P 2:12

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

**DOCKETED**

MAY 22 2009

DOCKETED BY	
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IN THE MATTER OF THE FORMAL  
COMPLAINT AGAINST MOHAVE  
ELECTRIC COOPERATIVE, INC.  
FILED BY ROGER AND DARLENE  
CHANTEL.

DOCKET NO. E-01750A-09-0149

RESPONSE TO COMPLAINANTS'  
SUPPLEMENT TO FORMAL COMPLAINT  
AND MOTION TO DISMISS SUPPLEMENT

Pursuant to Arizona Administrative Code ("AAC") R14-3-106 H., Mohave Electric Cooperative, Inc. ("Mohave") responds to the Complainants' supplemental filing (the "Supplement") to their Formal Complaint ("2009 Formal Complaint"). Mohave moves for the dismissal of said Supplement for the reason that rather than allege actionable facts, it simply alleges that the Complainants are entitled to a hearing of their Complaint under various Administrative Code provisions not relevant to this proceeding. Moreover, the Complainants' Supplement, as with their 2009 Formal Complaint, fails to state any grounds upon which relief can be granted or reasons for which a hearing should be convened. The 2009 Formal Complaint allegations were thoroughly investigated by Steven Olea of Staff and examined in an exhaustive report (See Exhibit A attached hereto - "Olea Report").

Briefly, the invoice Mohave sent to the Complainants (and of which Complainants complain) was not for "utility service" but was for: 1) the cost of compliance with Mohave County's instruction to Mohave to de-energize the distribution line over the

1 Complainants' unstable concrete structure; and 2) the cost of compliance with a public safety-  
2 required rerouting of Mohave's distribution line necessitated by the Complainants' unsafe  
3 6,240 square foot concrete structure (with inadequate clearance) in Mohave's prescriptive  
4 easement. Additionally, the Complainants constructed their unsafe concrete structure without  
5 first obtaining a permit from Mohave County.<sup>1</sup>  
6

7 **FACTS**

8 1. Mr. and Mrs. Chantel are no strangers to the ACC through prior complaints  
9 being filed over the years against Mohave which have been determined frivolous. In each  
10 instance, the ACC has absolved Mohave of any wrongdoing and has always found Mohave to  
11 be acting in compliance with its applicable rules and tariffs.  
12

13 2. In the summer of 2008, the Complainants, without required regulatory authority,  
14 started the construction of a concrete building on their property (the "Structure"). When  
15 asked by the Planning and Zoning Department Staff of Mohave County to apply for a building  
16 permit as a prerequisite to construction, Complainants stated that the building was "art work"  
17 and refused to submit the required building permit application. See, paragraph 2 of Exhibit A.  
18

19 3. With a regard for compliance with building code issues and other public health,  
20 safety and welfare concerns, the Mohave County Zoning Department (the "County") issued a  
21 letter to Mohave on or about September 12, 2008 as a regulatory authority with jurisdiction  
22 instructing Mohave to immediately de-energize the distribution electric line directly over the  
23 Complainants' Structure because of code violations. See Exhibit A.  
24

25 <sup>1</sup> Both the public and the law hold utility companies to high standards when dealing with public safety issues. Mohave was left with no alternative but to reroute the distribution line because failure to do so would have subjected the cooperative, owned by 30,000 plus members, to substantial liability.

1           4.       However, because the Mohave distribution power line also served a railroad  
2 signal for the Mohave railroad line customer, it was necessary for Mohave to re-route the line,  
3 all at a cost of approximately \$12,000. See Exhibit A.

4           5.       The Complainants filed an informal complaint against Mohave on or about  
5 September 30, 2008 (the "2008 Informal Complaint").  
6

7           6.       In response to the alleged wrongdoing by Mohave in the 2008 Informal  
8 Complaint, ACC Utility Division Representative Steven Olea prepared a report affirming the  
9 propriety of Mohave's actions (See Exhibit A). The Olea Report exhaustively addresses all of  
10 the Complainants' allegations in the 2008 Informal Complaint (which allegations continue  
11 and are repeated in the 2009 Formal Complaint and the Supplement).  
12

13           7.       In particular, the Olea Report indicates the Complainants had contact and  
14 conferences with both the County and Mohave and were properly advised but chose to ignore  
15 the reasonable request for the dismantling of the Structure (which was too close to the power  
16 lines and was also an obstruction in Mohave's easement beneath the power lines). See  
17 Exhibit A.  
18

19           8.       The Olea Report further indicates the real issue resulting in the de-energizing of  
20 the power line to the Petitioners' property was not a Mohave issue, but was an issue of code  
21 compliance and construction permitting between the Complainants and the Mohave County  
22 Planning and Zoning Department. The Olea Report also notes that Mohave County personnel  
23 advised the Complainants that if Complainants did not dismantle the structure on their  
24 property, electric service termination would be required for reasons the County articulated.  
25

See last paragraph of the Olea Report.

1           9.       Relying upon the Olea Report, ACC Staff dismissed the 2008 Informal  
2 Complaint and concluded Complainants had adequate notice of the de-energizing of the  
3 distribution line servicing their house based on Mohave County direction. The Olea Report  
4 further concluded Complainants could have prevented the loss of electric power to their  
5 property by obeying the instructions of the Mohave County Planning and Zoning Department.  
6 See Exhibit A.  
7

8           10.       Mohave constructed its “alternative extension line” around the Complainants’  
9 property in order to continue to serve a nearby railroad signal device customer to the side of  
10 the railroad tracks without the distribution line being subject to the risks created by  
11 Complainants.  
12

13           11.       On January 6, 2009, the Complainants filed a Judicial Petition for Writ of  
14 Mandamus<sup>2</sup> in Mohave County Superior Court, which Petition was dismissed by Judge  
15 Chavez through an order granting Mohave’s Motion to Dismiss. Judge Chavez assessed the  
16 Complainants \$5,000 as and for the costs of Mohave’s attorneys’ fees.  
17

18           12.       Mohave rerouted its distribution line around the Complainants’ obstructing “Art  
19 Building” for the primary purpose of continuing to serve a customer and protecting the public  
20 (including the Complainants) from the dangers caused by the Structure being outside of  
21 industry clearance standards under the distribution lines; and for the secondary purposes of  
22  
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25 <sup>2</sup> The Supplemental Complaint, 2008 Informal Complaint, the 2009 Formal Complaint and the Petition all are based on identical facts. However, the Complainants have managed to put a different spin on the facts for each document they have recently filed.

1 avoiding liability to Mohave and its cooperative members and avoiding further confrontation  
2 with the Complainants about their unauthorized obstruction in the prescriptive easement.

3 13. Under ACC approved tariffs and Mohave's established rules and practices,  
4 Mohave billed the Complainants \$12,135.09 for the cost to reroute the distribution line. Staff,  
5 in adopting the Olea Report, found no improper conduct by Mohave in this billing.  
6

7 14. Regarding Mr. Chantels' medical condition, he never alleged any impaired  
8 ability to pay his utility bills and never advised Mohave of his purported medical condition  
9 ("sleep apnea") until after the rerouting of the distribution line occurred. Since the  
10 Complainants have never denied financial wherewithal to pay Mohave the rerouting costs of  
11 the power line (required under R14-2-211) from their extensive real estate holdings, Mr.  
12 Chantel must continue to use a generator to run his medical equipment until the rerouting costs  
13 are paid.  
14

15 **MOTION TO DISMISS**

16 Case law requires that a motion to dismiss for failure to state a cause of action  
17 admits the factual allegations of the complaining party. Here, Mohave accepts (for this  
18 Motion to Dismiss) the apparent allegation that it forwarded to the Complainants an invoice  
19 for the costs it incurred for the de-energizing of the distribution power line over the  
20 Complainants' property and the cost to place new poles for the rerouted power line. Mohave  
21 further admits it terminated service to the Complainants' residence at the instruction of the  
22 County because the Complainants had failed to cooperate in the removal of the concrete  
23 building that violated County requirements and industry clearance standards, created a public  
24  
25

1 hazard and threatened to disrupt the delivery of electrical power going to the other Mohave  
2 train signal customer only a short distance away.

3 §14-2-212 CUSTOMER BILL DISPUTE

4  
5 Complainants' allegation of a right to a hearing under A.A.C. R14-2-212 is  
6 misplaced. In the first place, this Rule deals with complaints about monthly billing for electric  
7 services. The Complainants made a grievance filing in the 2008 Informal Complaint, where  
8 both Mohave and Staff addressed their billing issues. Even if the provisions of R14-2-212  
9 applied, the Complainants have already received their due process through Staff's  
10 investigation of Complainants' informal complaint, including billing issues, and the  
11 exhaustive report Staff prepared (attached as Exhibit A).

12  
13 §14-2-208 PROVISIONS OF SERVICE

14 This administrative rule makes each utility responsible for safe transmission.  
15 Mohave has an impeccable safety record and the Complainants have not alleged anything that  
16 would justify a hearing.

17  
18 §14-2-207 LINE EXTENSIONS

19 These provisions on line extensions are inapplicable. The Complainants are not  
20 applicants for a line extension.

21 COMPLAINANTS' FILINGS MUST STOP

22 The Complainants' unending filings with the ACC must stop. It is unfair to the  
23 cooperative members of Mohave that they shoulder the legal fees Mohave has been incurring  
24 over the Complainants' frivolous filings. The Complainants are not entitled to any further  
25 action. They received their opportunity to be heard on the 2008 Complaint and their

1 subsequent filings have been meritless.

2 As Mohave has suggested in its other responsive pleadings to the Complainants'  
3 complaints, Complainants have no evidence that will make their grievances rise to the level of  
4 being legitimate assertable claims. While the Complainants are entitled to their "day in court"  
5 when making assertable legitimate claims (and which opportunity Mohave believes  
6 Complainants have already had), they should only be able to have one hearing by alleging  
7 coherent, factually sound statements that can give rise to some form of relief. They have not  
8 done so and they have had their hearing and due process.  
9

## 10 **CONCLUSION**

11  
12 In this last round of Complainants' filings, they have alleged they are entitled to  
13 a hearing under irrelevant Administrative Rules (14-2-212B; 208 and 207).<sup>3</sup> The Supplement  
14 has no new allegations over what Complainants alleged in the 2009 Formal Complaint.  
15 Complainants still have not alleged anything on which the ACC can give relief. There is no  
16 basis to allow the Complainants a hearing. Complainants inappropriately and illegally  
17 constructed, in violation of code, an unstable concrete building under Mohave's distribution  
18 power line along Highway 66 east of Kingman, which power line provides electrical service to  
19 a Mohave customer's nearby railroad signal device. The Complainants' structure: 1) created a  
20 serious hazard relative to the overhead distribution power line that supplied power to a nearby  
21 train-crossing signal; 2) violated County codes and industry standards for clearance; and 3)  
22 was an impediment in Mohave's prescriptive easement. Mohave County instructed Mohave to  
23  
24

25 <sup>3</sup> §14-2-212 B addresses utility customer disputes over electric bills;  
§14-2-208 addresses provisions of service; and  
§14-2-207 addresses line extensions.

1 de-energize the distribution power line. Mohave complied. All of Mohave's actions have  
2 been appropriate.

3 Accordingly, Mohave respectfully requests that its Motion to Dismiss the  
4 Complainants' Supplement be granted and that the Complainants be instructed to not file any  
5 more complaints regarding these facts.  
6

7 DATED this 22<sup>nd</sup> day of May, 2009.

8 CURTIS, GOODWIN, SULLIVAN,  
9 UDALL & SCHWAB, P.L.C.

10 By:   
11 Michael A. Curtis  
12 Larry K. Udall  
13 501 East Thomas Road  
14 Phoenix, Arizona 85012-3205  
15 Attorneys for Mohave Electric  
16 Cooperative, Inc.

16 PROOF OF AND CERTIFICATE OF MAILING

17 I hereby certify that on this 22<sup>nd</sup> day of May, 2009, I caused the foregoing  
18 document to be served on the Arizona Corporation Commission by delivering the original and  
19 thirteen (13) copies of the above to:

20 Docket Control  
21 Arizona Corporation Commission  
22 1200 West Washington  
23 Phoenix, Arizona 85007

24 COPY of the foregoing hand delivered/  
25 mailed this 22<sup>nd</sup> ay of May, 2009 to:

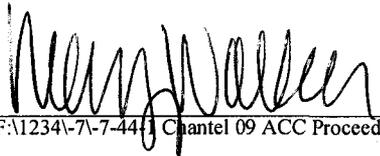
26 Lyn Farmer, Chief Hearing Officer  
27 Arizona Corporation Commission  
28 1200 West Washington  
29 Phoenix, Arizona 85007

1 Janice Alward, Legal Division  
2 Arizona Corporation Commission  
3 1200 West Washington  
4 Phoenix, Arizona 85007

4 Deborah Reagan, Utilities Division  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, Arizona 85007

7 Copy of the foregoing mailed  
8 this 22<sup>nd</sup> day of May, 2009 to:

8 Roger and Darlene Chantel  
9 10001 East Highway 66  
10 Kingman, Arizona 86401

11 

12 F:\1234\7\7-4441 Chantel 09 ACC Proceeding\Pleadings\RESPONSE TO 2nd COMPLAINT(rev).doc

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# EXHIBIT A

**COMMISSIONERS**  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K MAYES  
GARY PIERCE

BRIAN C. MCNEIL  
Executive Director

ARIZONA CORPORATION COMMISSION

November 5, 2008

Mr. Roger Chantel  
10001 E. Hwy. 66  
Kingman, AZ 86401

RE: Informal Complaint No 2008-71811

Dear Mr. Chantel:

The Arizona Corporation Commission ("Commission") has reviewed your informal complaint, filed September 30, 2008. After receiving your call, Staff of the Commission's Utilities Division ("Staff") contacted Mohave Electric Cooperative ("MEC" or "Company") to begin its investigation. Having heard from both sides in this dispute, Staff has arrived at the following operative facts:

At some time prior to September 12, 2008, you began the construction of some type of structure on your property. The structure was being erected in the area directly beneath the lines used by MEC to provide electrical service to your house. MEC states that the area occupied by the structure falls within MEC's utility easement, limiting MEC's access to the line. The construction came to the attention of Mohave County Planning and Zoning ("MCPZ"). Because the construction constituted a public safety hazard, MCPZ issued Stop Work Orders and advised you that your electric service could be disconnected if the structure were completed. You met with representatives of both MCPZ and MEC, and the issue was discussed. At some point thereafter, construction was completed.

On September 12, 2008, MCPZ issued a letter to MEC ordering the Company to immediately de-energize the line being used to provide service to your property. MEC contacted Staff, and Staff recommended that MEC make an effort to contact you personally prior to de-energizing the line. Because the line was also being used to serve a railroad signal, de-energizing it would result in cutting power to the signal, an obviously unacceptable situation. It was therefore necessary for MEC to re-route the line to avoid your property and continue to serve the signal. MEC did so, at a cost of approximately \$12,000.00. Construction was completed on the re-routed line on September 16, 2008. MEC then spoke with Mrs. Chantel at your residence, and the line serving your residence was then de-energized on that same day.

On October 21, 2008, MEC sent you a bill for the cost of re-routing service around your property. Although you have paid your monthly electric service bill, you have not paid MEC the re-routing charges, and MEC has refused to reinstate your service.

In your complaint, you have asked Staff to review several issues. Staff hereby provides its findings:

The primary relief you have requested is that the Commission order MEC to reinstate your electric service. Unfortunately, the Commission can not do that. The property that is the subject of this dispute is located within Mohave County. As a political subdivision of the State of Arizona, Mohave County has jurisdiction over public health and safety issues within the County. If an agency of Mohave County has interpreted Mohave County's own statutes and determined that the structure on your property constitutes a danger to the health and/or safety of the public within Mohave County, then the County has authority to take action to remedy such situations. Because MEC provides service within the County, MEC is subject to the authority of the County. MEC has no choice but to follow the lawful orders of MCPZ. Since the reason MCPZ ordered MEC to de-energize the power lines to your home resulted from the County's interpretation and enforcement of its own statutes, the Commission is without authority to order MEC to take any action contradictory to what MCPZ has directed them to do. Therefore, the Commission can not order MEC to reinstate your electric service under these conditions.

At some point, the structure at issue was labeled "art work", but frankly, the label does nothing to change the nature of the dispute. If Mohave County has found that the "art work" on your property compromises the safety of the Mohave County public, the County has the authority to take action in the public's interest.

Although A.A.C. R14-2-206(C)(2) provides additional authority for MEC to have disconnected your service in the instant circumstances, MEC did not rely on that rule in this matter. The instant dispute resulted entirely from the findings made by Mohave County. In any case, it appears that your dispute over the structure is between yourself and Mohave County. Only Mohave County has the authority to grant you the relief you have requested. The Commission is not the proper forum in which to resolve this dispute.

Also at issue in your complaint is the manner in which service was terminated. The Commission does have procedures in place governing the disconnection of service. Specifically, A.A.C. R14-2-211(C) authorizes a utility to terminate service subject to the notification requirements of R14-2-211(D).

Mohave County has stated that during the previously-mentioned meeting which took place between you, Mohave County, and MEC, you were advised that if you did not remove the structure from your property, your electric service could be terminated. Once the County ordered MEC to de-energize the line, the actual termination work took a period of four days to complete. During that time, you were aware of the nature of the

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activity. Mrs. Chantel was provided with formal notice of the disconnection on the final day of the project. Given that you were formally told disconnection would result from a failure to cease construction, it can not be argued that you did not have the notice called for in the rule.

Further, R14-2-211(B) allows termination *without* notice due to the existence of an obvious hazard to the public safety or health of the general public. Mohave County found such a safety hazard. Clearly the dispute in this matter results from Mohave County's findings and again, the Commission is not the proper forum in which to dispute those findings.

It is important to note that pursuant to A.A.C. R14-2-211(B)(2), once service has been terminated, the utility is not required to restore service until the conditions which resulted in disconnection have been corrected. As it applies to your dispute here, until Mohave County finds that the safety issue has been resolved, MEC is not required to restore your service. In addition, you have raised the issue as to whether or not MEC has the proper easements required to service your property. R14-2-206(C) provides that a failure of the customer to grant the easements necessary to provide service may constitute grounds for a utility's refusal to provide service. If it is your assertion that MEC does not have the proper easements, that issue should be resolved within any discussion of restoration of service.

You have raised the issue as to whether service might be restored to your residence using the newly-constructed line currently being used to circumvent your property and provide service to a railroad signal crossing. Unfortunately, such an arrangement is not possible. The line in question is being used merely as a backup line and has not been built according to the specification required for primary residential service. Providing service using the new line would in itself constitute a safety issue, and the utility is prohibited from doing so.

As an additional concern, you have raised the issue of medical treatment for sleep apnea. However, as R14-2-211 makes clear, the utility is only prevented from termination of service in cases where the customer has a medical need coupled with an inability to pay. The termination of service to your property did not result from an inability to pay. In your case, termination resulted from a refusal to abide by County ordinance and Commission rules. While the Commission is certainly sympathetic to your needs, MEC's decision to terminate your service appears to conform to Commission rules and procedures, and the Staff finds that no action is warranted.

Additionally, you have questioned the authority of the utility to charge you for construction costs associated with the re-routing of your service line. However, such charges are fully within MEC's authority. R14-2-206(C)(2), mentioned previously, mandates that any utility encountering the safety issues at issue here take the steps necessary to eliminate the safety issue and authorizes the utility to do so at the customer's expense. MEC is clearly acting within its authority.

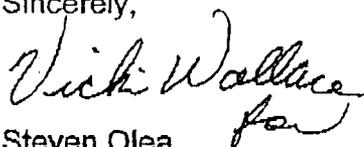
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Two final issues you have raised are the distance between utility poles and the resulting amount of line sag that results. MEC places its poles based upon issues of clearance from ground to wire and from pole to pole. These standards are dictated by professional code. According to MEC, the lines in question were built within code specifications in 1949 and remain within tolerances today. Based upon this limited inquiry, the Staff does not believe that MEC's lines are out of compliance with any of the Commission's mandates.

Based upon these facts and circumstances, Staff does not believe that MEC is in violation of Commission rules or procedures, and this informal complaint will be dismissed and closed.

If you have further questions regarding this matter, you may contact Vicki Wallace at 602-542-0818 or Connie Walczak at 602-542-0291.

Sincerely,

A handwritten signature in cursive script that reads "Vicki Wallace".

Steven Olea,  
Assistant Director  
Utilities Division

Cc: [rogerchantel@frontiernet.net](mailto:rogerchantel@frontiernet.net) (letter also sent via e-mail at customer request)