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AZ CORP COMMISSION  
DOCKET CONTROL

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6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7 **COMMISSIONERS**

8 KRISTIN K. MAYES, CHAIRMAN

GARY PIERCE

9 PAUL NEWMAN

SANDRA D. KENNEDY

10 BOB STUMP

Arizona Corporation Commission

**DOCKETED**

NOV 30 2009

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11  
12 IN THE MATTER OF THE FORMAL  
13 COMPLAINT AGAINST MOHAVE  
14 ELECTRIC COOPERATIVE INC. FILED BY  
15 ROGER AND DARLENE CHANTEL.

Docket No. E-01750A-09-0149

**COMPLAINANTS' RESPONSE IN  
OPPOSITION TO RESPONDENT'S  
MOTION TO COMPEL INSPECTION OF  
PREMISES**

16 **INTRODUCTION**

17 Respondent Mohave County Electric Cooperative, Inc.'s ("Respondent" or "MEC")  
18 Motion to Compel Inspection of Premises ("Respondent's Motion") asks the Commission to  
19 compel an overly broad inspection of the Complainants Roger and Darlene Chantel's  
20 ("Complainants" or the "Chantels") artwork and premises. Respondent's Motion is overly  
21 broad because it requests that both it *and Mohave County*, a non-party to this Formal Complaint,  
22 be allowed to inspect the artwork and premises. In particular, MEC "desires to have a member  
23 of the Special Services Division of Mohave County (which handles building permit  
24 applications) participate in the inspection to determine whether the Chantels have violated any  
25  
26

1 building ordinances through the construction of the Structure without a permit.”<sup>1</sup> Respondent’s  
2 Motion is also overly broad because it desires to inspect the interior of the artwork, which is  
3 irrelevant to the Formal Complaint. The Chantels are willing, and have communicated as such,  
4 to allow MEC, and only MEC, to inspect the exterior of their artwork. The Chantels oppose  
5 Respondent’s Motion to the extent that it requests that MEC be allowed to bring Mohave  
6 County along on any inspection and to inspect the interior of their artwork.

7  
8 **FACTUAL BACKGROUND**

9 Since December 1999 to the present, the Chantels owned and resided at 10001 East  
10 Highway 66, Kingman, Arizona 86401 (the “Property”). At all time since the Chantels have  
11 owned the Property, an overhead power line has run across the southern portion of the Property  
12 (the “Old Line”), generally running in an east-west direction. The Old Line was owned and  
13 operated by MEC. Numerous wooden poles support the Old Line. The average distance  
14 between most of the wooden poles along the Old Line is approximately 300 feet. However, a  
15 distance of approximately 700 feet exists between two wooden poles that cross the Chantels’  
16 Property. Prior to September 16, 2008, MEC delivered electricity to the Chantels’ residence on  
17 the Property by running another overhead power line from the Old Line to the Chantels’  
18 residence.

19 In or around 2006, the Chantels noticed that the power lines connected to the Old Line  
20 were hanging dangerously low over the Property and that certain wooden poles from the Old  
21 Line were bending and cracking. Since 2006, the Chantels have repeatedly expressed their  
22 safety concerns regarding the Old Line to, among others, MEC and have requested that MEC  
23 repair the Old Line. MEC failed to repair the Old Line or otherwise take any action to correct  
24 the dangerous condition that it posed.

25  
26 <sup>1</sup> Respondent’s Motion, p. 3.

1 To protect themselves and their guests and invitees, the Chantels, during the summer of  
2 2008, began building a functional piece of artwork under the Old Line so that it would deflect  
3 any power lines or poles that might break. In response, MEC disconnected the Old Line –  
4 shutting off the Chantels’ electricity – and built a new overhead power line (the “New Line”)  
5 that ran parallel to the Old Line, but was located immediately south of the Property,  
6 approximately 75 feet from the Old Line.

7 After their electricity was shut off, the Chantels made numerous requests to have their  
8 power reinstated. MEC refused, and continues to refuse, to reinstate electricity to the Chantels’  
9 residence unless the Chantels pay approximately \$12,000 for the costs of building the New Line.

10 During the course of this Formal Complaint MEC requested that it and Mohave County  
11 be allowed to inspect both the interior and exterior of the Chantels’ artwork. The Chantels are  
12 willing to allow MEC, and not Mohave County, to inspect the exterior of their artwork only.

### 13 ARGUMENT

#### 14 I. THE LEGAL STANDARDS.

15 “In all cases in which procedure is set forth neither by law, nor by these rules, nor by  
16 regulations or orders of the Commission, the Rules of Civil Procedure for the Superior Court  
17 [sic] of Arizona as established by the Supreme Court of the state of Arizona shall govern.”<sup>2</sup>  
18 Undersigned counsel is unaware of any particular law or Commission rule, regulation, or order  
19 that sets forth procedures for the discovery at issue in Respondent’s Motion. Therefore,  
20 Complainants’ rely on the Rules of Civil Procedure for the Superior Courts of Arizona.

21 According the Rules of Civil Procedure, “*Parties* may obtain discovery regarding any  
22 matter, not privileged, which is relevant to the subject matter involved in the pending action.”<sup>3</sup>  
23 Additionally, “Any *party* may serve on any other party requests . . . to permit entry upon  
24 designated land or other property in the possession or control of the party upon whom the

25 <sup>2</sup> ACC R14-3-101(A).

26 <sup>3</sup> Ariz. R. Civ. P. 26(b)(1)(A) (emphasis added).

1 request is served for the purpose of inspection and measuring, surveying, photographing, testing,  
2 or sampling the property or any designated object or operation thereon, within the scope of Rule  
3 26(b).”<sup>4</sup>

4 **II. MOHAVE COUNTY IS NOT A PARTY TO THIS ACTION.**

5 Mohave County is not a “party” to this action and the Rules of Civil Procedure do not  
6 entitle nonparties such as Mohave County to inspect the Chantels’ artwork or premises. “Parties  
7 to any proceeding before the Commission shall consist of and shall be designated “Applicant”,  
8 “Complainant”, “Respondent”, “Intervenor”, or “Protestant”.”<sup>5</sup> Here, the Chantels are the  
9 Complainant, MEC is the Respondent, and Mohave County is none of the above.

10 An “Applicant” is “[a]ny person requesting a certificate, permit, other authority or any  
11 affirmative relief other than a complainant.”<sup>6</sup> MEC has not asserted any facts suggesting that  
12 Mohave County is requesting a certificate, permit, other authority or any affirmative relief” in  
13 this matter. As such, Mohave County is not an Applicant.

14 An “Intervenor” is “[a]ny person permitted to intervene in any proceeding.”<sup>7</sup> “Persons,  
15 other than the original parties to the proceedings, who are directly and substantially affected by  
16 the proceedings, shall secure an order from the Commission or presiding officer granting leave  
17 to intervene before being allowed to participate.”<sup>8</sup> Here, Mohave County has not applied for,  
18 nor been granted, “Intervenor” status.

19 A “Protestant” is “[a]ny person permitted to protest in any proceeding.”<sup>9</sup> “Unless  
20 otherwise provided by special order of the Commission, a person who may be adversely  
21 affected by an application shall have the right to file a written protest with the Commission or be

22 <sup>4</sup> Ariz. R. Civ. P. 34(a)(2) (emphasis added).

23 <sup>5</sup> ACC R14-3-103(A).

24 <sup>6</sup> ACC R14-3-103(B).

25 <sup>7</sup> ACC R14-3-103(E).

26 <sup>8</sup> ACC R14-3-105(A).

<sup>9</sup> ACC R14-3-103(F).

1 heard orally as a protestant at a public hearing.”<sup>10</sup> Here, no special order of the Commission  
2 exists at this time, nor has Mohave County filed a written protest, and therefore, Mohave County  
3 is not a “Protestant.”

4 Any discovery that requests or allows a non-party to participate in the discovery process  
5 is impermissible. MEC has not offered a legitimate reason to include Mohave County in the  
6 inspection of the Property and the inclusion of a non-party governmental authority is beyond the  
7 scope of discovery authorized by the Rules of Civil Procedure.<sup>11</sup> The Chantels are willing to  
8 allow MEC to inspect the artwork’s exterior and premises but believes it is inappropriate to  
9 include non-parties in the discovery process.

### 10 **III. THE ARTWORK’S INTERIOR IS IRRELEVANT.**

11 Despite the rule that relevancy at the discovery stage is more loosely construed than it is  
12 at trial, the information sought through discovery still needs to “be reasonably calculated to lead  
13 to discovery of admissible evidence.”<sup>12</sup> Nothing about the interior of the artwork could lead to  
14 relevant and admissible evidence. Respondent’s defense is that the artwork was built too close  
15 to the power line creating a dangerous condition. If true, the only relevant issue is the location  
16 of the artwork’s exterior in relation to the power line. This could be determined through a  
17 simple inspection of the artwork’s exterior. Information gathered from an inspection of the  
18 artwork’s interior would not be relevant to the issue at hand, nor would it be reasonably likely to  
19 lead to relevant admissible evidence.

20 <sup>10</sup> ACC R14-3-106(I).

21 <sup>11</sup> Additionally, compelling the Chantels to allow Mohave County to inspect their  
22 property would violate the Chantels’ Fourth Amendment right against unreasonable searches.  
23 *See Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528, 87  
24 S.Ct. 1727, 1730 (1967) (holding that a municipal building inspector was required to receive  
25 consent or get a warrant in order to search a person’s residential property). This is especially  
26 pertinent given MEC’s reason for including Mohave County in its inspection: “to determine  
whether the Chantels have violated any building ordinances through the construction of the  
Structure without a permit.” *Respondent’s Motion*, p. 3.

<sup>12</sup> *See Brown v. Superior Court In and For Maricopa County*, 137 Ariz. 327, 332, 670  
P.2d 725, 730 (1983).

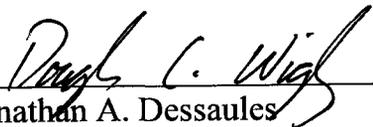
1 The Chantels are more than willing to allow MEC to inspect the exterior of their artwork.  
2 However, they object to Respondent's Motion desiring to inspect the artwork's interior.

3 **CONCLUSION**

4 For the foregoing reasons, Repondent's Motion should be denied to the extent that it  
5 compels the Chantels to allow Mohave County to participate in MEC's inspection and that MEC  
6 should be allowed to inspect the interior of the artwork.

7 DATED this 30<sup>th</sup> day of November 2009.

8 **DESSAULES LAW GROUP**

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