

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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DATE: NOVEMBER 9, 2010 NOV - 9 2010

DOCKET NOS.: E-01750A-05-0579

DOCKETED BY

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Jibillian. The recommendation has been filed in the form of an Opinion and Order on:

BUREAU OF INDIAN AFFAIRS, UNITED STATES OF AMERICA
v. MOHAVE ELECTRIC COOPERATIVE, INC.
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 18, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

NOVEMBER 22, 2010 AND NOVEMBER 23, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

DECISION NO. _____

OPINION AND ORDER

DATE OF PROCEDURAL
CONFERENCES:

September 14, November 17, and December 13, 2005;
September 7 and November 1, 2006; July 18, August 18,
November 5, and December 19, 2008; April 3, 2009

DATE OF HEARING:

November 18, 19, and 20, 2008

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

APPEARANCES:

Mssrs. Michael A. Curtis, William P. Sullivan, Larry K.
Udall, and Ms. Nancy A. Mangone, Udall, Goodwin,
Sullivan, Udall & Schwab, PLC, and Mssrs. Steven A.
Hirsch, Rodney W. Ott, and Landon W. Loveland,
Bryan Cave LLP, on behalf of Mohave Electric
Cooperative, Inc.;

Mr. Mark J. Wenker and Ms. Wonsook Sprague, U.S.
Attorney's Office, and Mr. Daniel L. Jackson, Office of
the Field Solicitor, Department of the Interior, on behalf
of the Bureau of Indian Affairs, United States of
America; and

Mssrs. Keith A. Layton and Kevin Torrey, Staff
Attorneys, and Ms. Janice A. Alward, Assistant Chief
Counsel, Legal Division, on behalf of the Utilities
Division of the Arizona Corporation Commission.

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INTRODUCTION _____ **3**
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1 **BY THE COMMISSION:**

2 **INTRODUCTION**

3 On August 10, 2005, the Bureau of Indian Affairs, United States of America ("BIA" or
4 "Complainant") filed the above-captioned formal complaint ("Complaint") with the Arizona
5 Corporation Commission ("Commission") against Mohave Electric Cooperative, Inc. ("Mohave" or
6 "Respondent").

7 Among other issues, the Complaint concerns an electric power line that starts at Mohave's
8 Nelson Substation and runs approximately 70 miles north, northeast, to the Long Mesa Transformer,
9 located at the rim of the Grand Canyon, Arizona ("Line"); a contract entered into on October 1, 1981,
10 by the BIA and Mohave ("Contract"); and Mohave's assertion that it transferred Mohave's interest in
11 the Line to the BIA, the Havasupai Tribe and the Hualapai Tribe by means of a quit claim deed
12 ("Quit Claim").¹

13 Mohave contends that the Contract ended on or about April, 1992, that it was thereafter not
14 extended, that the Contract has no relevance to the current obligations of Mohave, if any, and that the
15 BIA has accepted Mohave's Quit Claim. BIA contends that for the relief it is seeking from the
16 Commission, the pertinent facts are that Mohave and BIA entered into the Contract and that Mohave
17 built the Line pursuant to the Contract. BIA contends that it is immaterial to the relief sought
18
19

20 ¹ BIA's Complaint requested that the Commission enter an Order declaring:

- 21 1. Mohave shall not transfer or abandon the Line or the easement for the right of way;
- 22 2. The Line is part of Mohave's service territory;
- 23 3. The BIA is a retail customer of Mohave for receipt of electricity and electrical distribution service over the Line;
- 24 4. Mohave's point of delivery of electricity and electrical distribution service to the BIA is the line side of the Long
25 Mesa Transformer;
- 26 5. Mohave shall forthwith place a meter on the Line on the line side of the Long Mesa Transformer for the
27 determination of the electricity used by the BIA;
- 28 6. Mohave shall cease charging the BIA for electricity and electrical distribution service of that portion of the Line
costs attributable to Mohave's approximately fourteen customers rather than attributable to the BIA;
7. Mohave shall continue to provide electricity and electrical distribution service at Long Mesa to the BIA under
the Contract;
8. Mohave shall continue to operate, maintain, repair and replace the Line as needed;
9. Mohave's attempted quitclaim of the Line, and Mohave's easement for the right-of-way to the BIA and the
Tribes is in violation of Arizona Revised Statutes ("A.R.S.") § 40-285;
10. Mohave shall provide restitution for past BIA expenditures concerning the maintenance and upkeep of the Line
as well as past BIA payments for electricity and electrical distribution service for the approximately fourteen
non-BIA customers utilizing the Line; and
11. [G]ranteeing the BIA such additional and further relief as is appropriate under the circumstances.
(BIA Complaint ¶ 40.).

1 whether the Contract is currently in effect. BIA disagrees with Mohave's contention that the
2 Contract terminated and therefore the Quit Claim and abandonment of the Line was legally permitted.

3 Following a lengthy procedural history, as set forth in the Findings of Fact below, an
4 evidentiary hearing was set. Prior to the hearing, on September 5, 2008, BIA and Mohave jointly
5 filed a Stipulated Statement of Facts and Issues in Dispute ("Stipulated Facts").

6 A hearing was held on the Complaint commencing on November 18, 2008, and concluding on
7 November 20, 2008. Both Mohave and BIA made post hearing filings.

8 On May 4, 2009, BIA and Mohave filed reply closing briefs, and the matter was taken under
9 advisement.

10 In its reply closing brief, BIA requests that the Commission:

- 11 1. Find that the BIA and the other customers along the line are Mohave's retail
12 customers;
- 13 2. Find that Mohave's service territory includes the area served by the Line;
- 14 3. Void Mohave's transfer of the Line;
- 15 4. Declare that Mohave owns the Line;
- 16 5. Order Mohave to operate and maintain the Line;
- 17 6. Order Mohave to relocate the BIA's meter to its original location at the end of the
18 Line;
- 19 7. Order Mohave to reimburse the BIA \$125,851.33, plus interest, for the repair and
20 maintenance costs on the Line that the BIA has had to pay since Mohave
21 wrongfully abandoned the Line;
- 22 8. Order Mohave to reimburse the BIA for the electricity that has been consumed by
23 Mohave's customers along the Line but was paid by the BIA (\$19,140 plus
24 \$348/month beginning with May, 2009, plus interest); and
- 25 9. Take whatever other action the Commission deems appropriate.²

26 In its reply closing brief, Mohave requests that the Commission reject the arguments of the
27 BIA, deny the relief requested by the BIA, find that Mohave properly abandoned the 70-mile Line
28 between Mohave's Nelson substation and Long Mesa, hold that Mohave is not longer responsible for

² BIA Reply Closing Argument at 46-47.

1 the costs associated with the abandoned Line, including operation and maintenance costs,³ and
2 dismiss the Complaint.⁴

3 * * * * *

4 Having considered the entire record herein and being fully advised in the premises, the
5 Commission finds, concludes, and orders that:

6 **FINDINGS OF FACT**

7 **Procedural History**

8 1. On August 10, 2005, the BIA filed a Complaint with the Commission against Mohave.

9 2. On August 12, 2005, the Commission’s Docket Control forwarded a copy of the
10 Complaint to Mohave via Certified U.S. Mail and requested a response within 20 days.

11 3. On August 29, 2005, Mohave filed a Motion to Extend Filing Deadline, indicating that
12 counsel for BIA had consented to an extension until September 15, 2005 for Mohave to file an
13 Answer.

14 4. On August 30, 2005, a procedural order was issued extending the deadline for the
15 filing of an Answer to September 19, 2005.

16 5. On September 13, 2005, Mohave filed a Motion to Extend Answer Deadline and
17 Motion to Expedite Ruling. Therein, Mohave stated that “[b]ecause of Labor Day vacations and the
18 difficulty Mohave’s legal counsel has had in communicating with members of Mohave’s
19 management and staff for preparation of an answer” it was requesting an extension of the September
20 19, 2005, deadline for filing an answer until ten days after a ruling on a motion to dismiss, which
21 Mohave expected to file by September 19, 2005. Mohave requested “clarification on whether any
22 responsive pleading will suffice as a filing on September 19, 2005.”

23 6. On September 14, 2005, a procedural order was issued setting a procedural conference
24 to be held for the purpose of discussing the issues raised in Respondent’s September 13, 2005
25 Motion.

26 ...

27 ³ Mohave Post-Hearing Response Brief at 1.
28 ⁴ *Id.* at 30.

1 7. On September 14, 2005, the procedural conference was convened as scheduled.
2 Counsel for Complainant and Respondent appeared. Counsel for Respondent stated that Respondent
3 had "found it somewhat difficult to marshal the facts that will deal with the Commission's
4 jurisdiction in this matter" and requested that it be allowed to file a motion to dismiss pursuant to
5 Rule 12(b)(6) of the Arizona Rules of Civil Procedure ("ARCP") prior to filing an Answer to the
6 Complaint as required by the Commission's rules, and that Mohave be required to file an Answer
7 only if a ruling on the motion to dismiss was made in favor of the BIA. Counsel for BIA correctly
8 stated that the Commission's rule requires a consolidated answer,⁵ but that the BIA was willing to
9 accommodate Mohave's need for more time to prepare its Answer. At the procedural conference,
10 the Administrative Law Judge ("ALJ") ruled that no exception to A.A.C. R12-106(H) would be
11 granted, because facts necessary for an Answer would likely be necessary to support a Commission
12 ruling on any motion filed under ARCP Rule 12(b)(6). The deadline for Mohave to file its Answer
13 and any accompanying pleadings was extended to October 5, 2005.

14 8. On October 6, 2005, Mohave filed its Answer and Motion to Dismiss.

15 9. On October 21, 2005, BIA filed its Opposition to the Motion to Dismiss.

16 10. On October 24, 2005, a procedural order was issued setting a pre-hearing conference
17 for November 17, 2005, for the purpose of taking oral argument on the legal issues raised in
18 Respondent's Motion to Dismiss and Complainant's Opposition to the Motion to Dismiss.

19 11. On November 1, 2005, Mohave filed a Reply to BIA's Opposition to Motion to
20 Dismiss.

21 12. On November 10, 2005, Mohave filed a Motion to Continue the Pre-Hearing
22 Conference Date for Oral Argument on Mohave's Motion to Dismiss. Mohave stated that its lead
23 counsel had a schedule conflict on that date, and that counsel for BIA and Staff consented to a
24 continuance.

25 ⁵ The Commission's rule governing the filing of answers to complaints is embodied in A.A.C. R14-3-106(H), which
26 provides as follows:

27 Answers to complaints are required and must be filed within 20 days after the date on which the
28 complaint is served by the Commission, unless otherwise ordered by the Commission. All answers
 shall be full and complete and shall admit or deny specifically and in detail each allegation of the
 complaint to which such answer is directed. The answer shall include a motion to dismiss if a party
 desires to challenge the sufficiency of the complaint.

1 13. On November 14, 2005, a procedural order was issued granting Mohave's requested
2 continuance and changing the November 17, 2005 pre-hearing conference to a procedural conference
3 to be held for the purpose of re-scheduling oral argument on the legal issues raised in Respondent's
4 Motion to Dismiss and Complainant's Opposition to the Motion to Dismiss.

5 14. On November 17, 2005, the procedural conference convened as scheduled. Counsel
6 for BIA, Mohave, and the Commission's Utilities Division ("Staff") appeared and discussed available
7 dates for oral argument.

8 15. On November 17, 2005, a procedural order was issued setting a pre-hearing
9 conference to commence on December 13, 2005, at 10:00 a.m., for the purpose of taking oral
10 argument on the legal issues raised in Respondent's Motion to Dismiss, Complainant's Opposition to
11 the Motion to Dismiss, and Respondent's Reply to Complainant's Opposition to Motion to Dismiss.

12 16. On December 9, 2005, Mohave made a filing in Arizona Superior Court for Maricopa
13 County seeking a declaratory ruling on the validity of a 1982 contract between BIA and Mohave
14 regarding the provision of electric service to the Hualapai and Havasupai Indian reservations.

15 17. On December 12, 2005, Mohave filed a Motion to Continue and Hold Proceedings in
16 Abeyance Pending Ruling by Arizona State Court. Mohave requested in the Motion that the
17 Commission refrain from making any ruling on the Complaint prior to a final declaratory ruling on
18 Mohave's December 9, 2005 state court filing. In the Motion, Mohave stated that it would
19 voluntarily continue to provide service at its Nelson Substation to the BIA at the Commission-
20 approved rate in the interim period, and that in the event of an emergency posing an imminent and
21 substantial endangerment to the public health, safety and welfare, Mohave agreed to respond to such
22 emergency, provided the BIA pays the cost of such response.

23 18. On December 13, 2005, the Pre-Hearing Conference for taking oral argument on the
24 Motion, Opposition and Reply convened as scheduled. Appearances were entered by counsel for
25 Complainant, Respondent and Staff. During the Pre-Hearing Conference, oral argument was taken
26 from the parties on the issues raised in the Motion to Dismiss, Opposition to the Motion to Dismiss,
27 and Reply to the Opposition to the Motion to Dismiss, with the exception of the issue regarding the
28 1982 contract, because that issue was pending in Superior Court on that date. Complainant and

1 Respondent argued in support of their positions. Staff did not take a position on the merits of the
2 Complaint.

3 19. On January 6, 2006, Mohave docketed a copy of the transcript of the December 13,
4 2005 proceeding.

5 20. On February 10, 2006, Mohave filed with the Commission a Notice of Removal of
6 State Declaratory Judgment Action to the U.S. District Court. In the Notice, Mohave renewed its
7 request that the Commission refrain from making any ruling on the Complaint.

8 21. On May 10, 2006, the BIA filed with the Commission a Notice of Dismissal of
9 Mohave Electric's Declaratory Judgment Complaint. In the Notice, the BIA stated that the United
10 States District Court for the District of Arizona had granted the BIA's motion to dismiss Mohave's
11 declaratory judgment action for lack of subject matter jurisdiction, finding the BIA's claim of
12 sovereign immunity applicable. The BIA stated that the underlying basis for Mohave's request to
13 stay this administrative action pending resolution of a separate state declaratory judgment action no
14 longer existed and asked that Mohave's request be denied.

15 22. On August 4, 2006, a procedural order was issued. Based on a review of the BIA's
16 Complaint, Mohave's Answer and Motion to Dismiss the Complaint, Mohave's Reply to the BIA's
17 Opposition to the Motion to Dismiss, and the oral arguments presented by the parties, the procedural
18 order denied Mohave's October 6, 2005 request for summary dismissal of the Complaint pursuant to
19 Arizona Administrative Code ("A.A.C.") R14-3-101(A), A.A.C. R14-3-106(H), and ARCP 12(B)(6)
20 for lack of jurisdiction, failure to join indispensable parties, improper forum, and failure to state a
21 claim upon which relief can be granted. The procedural order set a pre-hearing conference to be held
22 on September 7, 2006, at 2:00 p.m.

23 23. On August 15, 2006, BIA filed a request for a telephonic status conference.

24 24. On August 28, 2006, a letter dated August 22, 2006, from Governor Janet Napolitano
25 to Mohave and the BIA was filed in this docket. The letter expressed concern in regard to recurring
26 electrical power outages at the Supai Village, and urged Mohave and the BIA to resolve the issue of
27 responsibility "for the repair and maintenance of the electrical line that serves the Supai Village."
28

1 25. On September 5, 2006, a letter dated August 30, 2006, from Mohave to Governor
2 Janet Napolitano was filed in this docket.

3 26. On September 7, 2006, Mohave docketed copies of (1) the letter dated August 22,
4 2006, from Governor Janet Napolitano to Mohave and the BIA; and (2) the letter dated August 30,
5 2006, from Mohave to Governor Janet Napolitano.

6 27. On September 7, 2006, a letter dated September 6, 2006, from Mohave to Governor
7 Janet Napolitano was filed in this docket.

8 28. On September 7, 2006, a pre-hearing conference was held as scheduled. Mohave, BIA
9 and Staff appeared through counsel. During the pre-hearing conference, Mohave agreed to meet with
10 Arizona Public Service Company ("APS") and UNS Electric ("UNS") and Coconino County and to
11 file, by October 9, 2006, a community response plan to deal with outages, as discussed during the
12 pre-hearing conference. The BIA and Mohave were informed that a settlement judge had been
13 assigned to this case, that a settlement conference would be held commencing September 26, 2006,
14 that representatives of the parties with settlement authority would be required to attend, and that a
15 pre-settlement conference filing would be due on September 21, 2006. Issues related to discovery
16 were also raised and discussed.

17 29. On September 11, 2006, a Settlement Conference Procedural Order was issued
18 scheduling a settlement conference before a settlement judge, to commence on September 26, 2006,
19 for the purpose of providing an opportunity for the parties to reach a resolution without litigation.
20 The procedural order informed the parties of specific procedural requirements related to the
21 settlement conference.

22 30. The September 11, 2006 procedural order directed Respondent to file, by September
23 21, 2006, a discovery schedule proposal, and directed Complainant to file any objections to
24 Respondent's September 21, 2006 discovery schedule proposal by October 5, 2006.

25 31. The September 11, 2006 procedural order directed Mohave to file, by October 9, 2006,
26 an outage response plan as discussed during the prehearing conference.

27 32. On September 18, 2006, Mohave filed a Statement of Intent Regarding Filing a Joint
28 Assistance Plan.

1 33. On September 18, 2006, Respondent filed a Notice of Unavailability and Request to
2 Reset Settlement Conference.

3 34. On September 20, 2006, a procedural order was issued rescheduling the Settlement
4 Conference to October 17, 2006.

5 35. On September 21, 2006, Mohave filed a Discovery Plan.

6 36. On October 5, 2006, BIA filed its Response to Mohave's Discovery Plan.

7 37. On October 10, 2006, Mohave filed a Reply to BIA's Response to Mohave's
8 Discovery Plan.

9 38. On October 10, 2006, Mohave filed a Notice of Filing Outage Response Plan.

10 39. On October 10, 2006, a letter dated October 4, 2006 from Pinnacle West Capital
11 Corporation to Governor Janet Napolitano was filed in this docket.

12 40. On October 16, 2006, BIA filed a Motion for Partial Summary Judgment and
13 Statement of Facts in Support of its Motion for Partial Summary Judgment.

14 41. On October 18, 2006, a Procedural Entry was filed by the Settlement Judge assigned
15 to this case. The Procedural Entry stated that on October 17, 2006, the BIA and Mohave appeared at
16 the settlement conference and were unable to resolve the issues raised by the Complaint.

17 42. On October 23, 2006, BIA filed a Motion for a Protective Order.

18 43. On October 24, 2006, a procedural order was issued scheduling a procedural
19 conference November 1, 2006, for the purpose of allowing discussion of issues raised in Mohave's
20 September 21, 2006 Proposed Discovery Plan, the BIA's October 5, 2006, Response to Mohave
21 Electric's Proposed Discovery Plan, Mohave's October 10, 2006 Reply to BIA's Response to
22 Mohave's Proposed Discovery Plan, and the BIA's October 23, 2006 Motion for Protective Order.

23 44. On October 30, 2006, Mohave filed a Response to BIA's Request for Protective
24 Order; a Motion to Compel Discovery; a Motion to Establish a Discovery Schedule; and a Motion to
25 Suspend Time for Filing Response to BIA's Motion for Partial Summary Judgment.

26 45. On November 1, 2006, the procedural conference set by the October 24, 2006
27 procedural order convened as scheduled. Mohave and BIA appeared through counsel and discussed
28 issues raised in Mohave's September 21, 2006 Proposed Discovery Plan, the BIA's October 5, 2006,

1 Response to Mohave Electric's Proposed Discovery Plan, Mohave's October 10, 2006 Response to
2 Mohave's Proposed Discovery Plan, the BIA's October 23, 2006 Motion for Protective Order,
3 Mohave's Response to the BIA's Motion for Protective Order, Mohave's Motion to Compel
4 Discovery, Mohave's Motion to Establish a Discovery Schedule, and Mohave's Motion to Suspend
5 Time for Filing Response to the BIA's Motion for Partial Summary Judgment. At the conclusion of
6 the procedural conference, the BIA's Motion for Protective Order was granted in part and denied in
7 part, Mohave's Motion to Compel was granted in part and denied in part, and Mohave's Motion to
8 Establish a Discovery Schedule was partially granted. Based on the discovery schedule established at
9 the November 1, 2006 Procedural Conference, the time for Mohave to file a response to the BIA's
10 Motion for Partial Summary Judgment was extended to March 26, 2007.

11 46. On February 5, 2007, Mohave filed an affidavit discussing Mohave's response to the
12 BIA report of an October 6-7, 2006 outage, and a copy of a November 14, 2006 letter to the Secretary
13 of the U.S. Department of the Interior.

14 47. On February 20, 2007, the BIA filed copies of responses to the November 14, 2006
15 letter.

16 48. On March 27, 2007, Mohave filed its Response to the BIA's Motion for Partial
17 Summary Judgment.

18 49. On April 4, 2007, Mohave filed a copy of an April 4, 2007 letter to Arizona Public
19 Service Company and Unisource Energy Corporation, which included as an enclosure a Draft
20 Community Emergency Response Plan.

21 50. On April 12, 2007, Mohave filed a Notice of Late Filing Exhibits.

22 51. On April 16, 2007, the BIA filed its Reply in Support of Motion for Partial Summary
23 Judgment, its Reply Statement of Facts in Support of its Motion for Partial Summary Judgment and
24 in Response to Mohave's Statement of Disputed Facts and Additional Facts in Response to BIA's
25 Motion for Partial Summary Judgment, and its Response to Mohave Electric's Notice of Late Filing
26 of Exhibits.

27 52. On May 29, 2007, the BIA filed a Request for Oral Argument on its Motion for Partial
28 Summary Judgment. The BIA stated in its Request that its Motion has been fully briefed.

1 53. On June 7, 2007, a procedural order was issued setting a procedural conference to
2 commence on July 18, 2007, for the purpose of taking oral argument on the Motion for Partial
3 Summary Judgment filed by Complainant on October 16, 2006, and the Response to the Motion for
4 Partial Summary Judgment filed by Mohave Electric Cooperative, Inc. on March 27, 2007.

5 54. On July 9, 2007, Mohave docketed a Notice of Filing, to which was attached a
6 portion of the transcript of a March 29, 2007, Appropriations Committee Hearing; a list of written
7 questions; a copy of an email exchange between counsel for Mohave and Jan Bennett, Vice President,
8 Customer Service, Arizona Public Service Company; and a copy of a permit allowing Asplundh Tree
9 Experts, as Mohave's assignee contractor, to come on to the Hualapai reservation to survey, inspect
10 and prepare cost estimates and scope of work for right-of-way tree maintenance from Mile Markers
11 7-30.

12 55. On July 18, 2007, a procedural conference was held as scheduled for the purpose of
13 taking oral argument on the Motion for Partial Summary Judgment filed by Complainant on October
14 16, 2006, and the Response to the Motion for Partial Summary Judgment filed by Mohave Electric
15 Cooperative, Inc. on March 27, 2007. Complainant, Respondent and Staff appeared through counsel.
16 Complainant and Respondent made their arguments and responses, and Staff provided its position on
17 the issues of whether the line is necessary and useful to Mohave in the provision of electric service to
18 its customers, and whether Mohave requires Commission approval to abandon the line.

19 56. On August 29, 2007, Bryan Cave LLP filed a Notice of Association of Counsel,
20 indicating that it had associated with existing counsel of record for Mohave in this proceeding.

21 57. On April 2, 2008, Mohave filed a Notice of Docketing and Request to Supplement the
22 Record. The April 2, 2008, Notice stated that Mohave, UNS Electric, Inc., and Arizona Public
23 Service Company entered into an Operations Protocol Agreement on or about November 13, 2007. A
24 copy of the Operations Protocol Agreement was attached to the April 2, 2008, Notice.

25 58. On June 23, 2008, a Procedural Order was issued denying BIA's Motion for Partial
26 Summary Judgment; setting the Complaint for hearing to commence on September 3, 2008; requiring
27 BIA to make a filing in this docket amending its Complaint to reflect its position regarding the
28 effectiveness of the contract referenced in its Complaint, which was entered into on October 1, 1981,

1 by the BIA and Mohave; and requiring both parties to file a list of witnesses specifying which issues
2 in the Complaint that each witness will be available to address at the hearing.

3 59. On July 17, 2008, BIA docketed a Notice amending its Complaint to reflect its
4 position regarding the effectiveness of the contract referenced in its Complaint. BIA stated its belief
5 that the contract is still in effect, but that whether or not the contract is currently effective is
6 immaterial to the relief sought by the BIA. The filing stated that BIA "amends its prayer for relief,
7 paragraph (G), to read: 'Mohave shall continue to provide electricity and electrical distribution
8 service at Long Mesa to the BIA as required by state laws and regulations.'"

9 60. On August 1, 2008, Mohave filed a Motion for Accelerated Procedural Conference to
10 Address Pretrial Matters. Mohave's Motion requested the following: (1) that BIA clarify its position
11 on the effectiveness of the Contract; (2) that BIA answer Mohave's remaining, trial-related data
12 requests; (3) that the Commission direct the parties to meet and confer and then to stipulate as to
13 uncontested material facts; and (4) that the Commission direct the parties to submit pre-filed direct
14 and rebuttal testimony. Mohave's Motion stated that counsel for BIA joined Mohave's request for an
15 accelerated procedural conference, and further stated that BIA does not yet have a position on
16 Mohave's requests.

17 61. On August 4, 2008, BIA and Mohave filed their Witness Lists.

18 62. On August 7, 2008, a procedural order was issued scheduling a procedural conference
19 for August 18, 2008, for the purpose of addressing the requests in Mohave's August 1, 2008, Motion
20 for Accelerated Procedural Conference to Address Pretrial Matters.

21 63. On August 18, 2008, Mohave docketed a copy of an e-mail sent by counsel for
22 Mohave to the Commissioners, indicating that despite recent flooding in the vicinity of the Supai
23 Village, as of August 17, 2008, there were no reported interruptions in the electric supply to BIA
24 along the 70-mile transmission line at issue in the Complaint.

25 64. A procedural conference convened on August 18, 2008. BIA and Mohave appeared
26 through counsel and discussed procedural issues related to a hearing on the Complaint, including a
27 continuation of the September 3, 2008 hearing date.

28 ...

1 65. On August 20, 2008, a procedural order was issued continuing the hearing to
2 commence on November 17, 2008, and setting associated procedural deadlines.

3 66. On August 25, 2008, Staff filed a Notice of Filing Staff's Position Regarding
4 Participation at Hearing. Staff stated its position that there was no need for Staff to participate in the
5 presentation of evidence in this matter, but that if at some point the Commissioners or the Hearing
6 Division believe that Staff's involvement is necessary, Staff is willing to become involved and assist
7 in the resolution of this matter in whatever way the Commissioners or the Hearing Division find
8 necessary.

9 67. On August 26, 2008, Mohave filed a Notice of Filing E-Mail, to which was attached a
10 copy of an e-mail sent to Commissioners regarding a temporary outage of service to the Hualapai
11 and Havasupai tribal areas due to blasting by a mining operation near a Mohave substation.

12 68. On September 5, 2008, BIA and Mohave jointly filed a Stipulated Statement of Facts
13 and Issues in Dispute ("Stipulated Facts"). The 44 facts to which BIA and Mohave stipulated are
14 reproduced here:

- 15 1. Mohave is an Arizona non-profit public service corporation regulated by the
16 Arizona Corporation Commission.
- 17 2. BIA is an executive agency of the United States of America. Under 25 U.S.C.
18 § 13, the BIA is authorized to provide support for the general welfare and
civilization of Indians. The Havasupai and the Hualapai tribes are federally
recognized Indian tribes for whom the BIA provides federal assistance.
- 19 3. BIA began providing electrical power to governmental facilities at the
20 Havasupai Village at the bottom of the Grand Canyon, which is within the
State of Arizona, by 1965 using gas powered generators. By 1971, BIA
21 supplied electric energy to Havasupai Village by means of diesel generators
and electric lines owned and operated by the BIA.
- 22 4. BIA owns and operates two electrical utilities providing retail electrical service
23 on Indian reservations in Arizona (the San Carlos Irrigation Project Power
Division and the Colorado River Irrigation Project Power Division), as well as
24 the Flathead Irrigation Project Power Division in Montana.
- 25 5. There are no roads connecting Havasupai Village with other parts of Arizona.
- 26 6. By 1975, the Havasupai Tribe had become increasingly dependent on
27 electricity. In January, 1975, the Havasupai Tribe passed resolution no. 4-75.
Also in January, 1975, the Havasupai Tribal Chairman wrote a letter to
Mohave.
- 28 7. In March, 1975, the Hualapai Tribe passed resolution no. 13-75.

- 1 8. By 1976, at least two electrical generators existed on the Hualapai reservation
2 in the Frazier Wells area, and a third generator existed at the end of Indian
Route 18.
- 3 9. From approximately 1968 to 1981, BIA studied and evaluated alternatives for
4 securing electricity for the Havasupai and Hualapai reservations. The
5 alternatives studied by BIA included (i) expanding the existing generators and
(ii) installing a 70-mile electric line. BIA eventually chose the second option.
- 6 10. In June 1976, BIA issued a Request for Quotation ("RFQ") to "provide electric
7 energy to the Hualapai and Havasupai reservation, Arizona in accordance with
the attached specifications, terms and conditions."
- 8 11. Mohave, Arizona Public Service Company and Citizens Utilities Company
9 responded to the RFQ.
- 10 12. Prior to 1981, no commercial or cooperative electrical power provider
11 constructed or maintained electrical distribution or transmission facilities
12 through which electricity was provided to Long Mesa.
- 13 13. On approximately October 1, 1981, Mohave entered into Negotiated Electrical
14 Utility Contract GS-OOS-67021 (the "Contract") with the United States of
15 America acting through the Administrator of the General Services
16 Administration and on behalf of BIA to construct a power line (the "Line")
17 approximately 70 miles long from Mohave's existing facilities at the Nelson
18 Substation to Long Mesa and to supply electrical energy up to 1500 KW for
19 the operation of its facilities on the Hualapai and Havasupai reservations.
- 20 14. Mohave applied for, and received, a \$1,600,000 loan from the Rural
21 Electrification Administration ("REA") for construction of the Line.
- 22 15. The BIA granted an easement for right-of-way across Hualapai and Havasupai
23 reservations "to be used to construct, install, operate and maintain an electrical
24 distribution line, along with the right to ingress thereto and egress therefrom."
25 The Hualapai and Havasupai Tribes each consented to this grant of easement
26 for right-of-way to Mohave.
- 27 16. Mohave completed construction of the Line in November 1981 and by the
28 spring of 1982 was delivering electricity through the Line.
17. As a REA (now known as Rural Utilities Service) borrower, every year
Mohave must file with the REA its financial and statistical data.
18. The Line is a 24.9 KV electric line.
19. Mohave supplied electricity through the Line to be used by the BIA for its
facilities on the Hualapai and Havasupai reservations, by the Indian Health
Services for a medical clinic, by the Hualapai Tribe and its members, and by
members of the Havasupai Tribe. The BIA uses electricity supplied by the
Line in Havasupai Village for a BIA school, living quarters for BIA teachers
and law enforcement personnel, a BIA detention facility, and a BIA
maintenance building.
20. In Decision No. 51491 (October 22, 1980), the ACC referred to the Line as "an
electric line extension from [Mohave's] certified area across a portion of the

1 Hualapai and Havasupai Indian reservation” The ACC concluded: “1. It
2 is in the best interest of the consumers of Mohave Electric Cooperative, Inc.,
3 that the applicant be allowed to finance and expend the amounts proposed. 2.
4 We find that such borrowings are lawful and in the public interest and that the
5 loan will not impair Mohave’s ability to perform as a public utility.”

- 6 21. On January 7, 1982, before the Line became fully operational, Mohave filed a
7 rate application, In Decision No. 53174 (August 11, 1982) the ACC stated
8 “MEC has included \$32,000 in interest associated with a transmission line
9 dedicated to serving the Hualapai Indian reservation, a line which presently
10 produces no income. Staff has likewise included this interest in its calculations
11 of TIER. The Commission believes that both parties erred in effectively
12 asking MEC’s ratepayers to pay for plant which is not used and useful, will not
13 be used and useful, and was never intended to be used and useful in the
14 provision of electric service to such ratepayers. . . . Therefore, the Commission
15 will eliminate the \$32,000 interest expense from the calculation of TIER and
16 rate of return.” Decision No. 53174 at 8-9 (emphasis in original).
- 17 22. In 1990, Mohave filed another rate application.⁶ As part of its application,
18 Mohave submitted to the ACC a cost of service study for the twelve months
19 ending July 31, 1989. In addition to the cost of service study, Mohave
20 submitted to the ACC its REA Form 7 for the year ending December 31, 1988.
- 21 23. Mohave billed BIA monthly. Included on Mohave’s monthly invoices was a
22 Facility Charge, which ranged from approximately \$11,000 to approximately
23 \$15,000 per month. Mohave billed BIA for a Facility Charge every month
24 beginning in April, 1982 through and including February, 1997.
- 25 24. The total project cost for the Line was \$1,145,651,55. BIA paid Mohave the
26 balance of the total project cost related to the Line, \$923,243.92, by
27 approximately March, 1991.
- 28 25. On or about April 19, 1993, BIA wrote Mohave, stating that “The Government
hereby notifies Mohave Electric of its intent to exercise” the renewal option.
In the same letter, BIA stated that there was a “need to re-negotiate and amend
the existing contract” because “the Government reimbursed Mohave all cost
associated with the construction.”
- 26 26. In an internal memorandum dated December 14, 1994, BIA stated that “We are
approaching a fourth year without a contract for the services [provided by
Mohave] as defined in the contract documents” and discussed a “request to
negotiate a new contract.”
- 27 27. On or about June 15, 1995, Mohave informed BIA that Mohave believed the
Contract had expired in 1992, and requested information about BIA’s
intentions.
- 28 28. On or about June 6, 1996, Mohave informed BIA that Mohave believed that
continuing the service was not in the best interests of Mohave’s individual
cooperative members, and that Mohave sought to transfer the Line to BIA and
move the metering equipment from Long Mesa to Mohave’s Nelson
Substation.

⁶ The 1990 rate application was filed in Commission Docket No. U-1750-89-231, and resulted in Commission issuing Decision No. 57172 (November 29, 1990).

- 1 29. On or about March 24, 1997, Mohave moved its metering equipment from the
2 Long Mesa Transformer to the Nelson Substation and began metering
3 electricity supplied through the Line at Mohave's Nelson substation rather than
4 at Long Mesa.
- 5 30. Beginning in July 1998, and through September 2003, Mohave credited BIA
6 for the electricity used by certain other accounts along the Line based on
7 Mohave's meter reading. After Mohave stopped giving BIA credit for the
8 electricity used by other accounts, BIA paid Mohave under protest.
- 9 31. On or about July 31, 2001, Mohave's counsel wrote to the Western Area
10 Power Administration ("WAPA") and offered to transfer the Line to WAPA.
11 To date, WAPA has not accepted Mohave's offer.
- 12 32. On or about March 6, 2002, BIA wrote Mohave stating that "In accordance
13 with the Contract, the Government exercises its option to extend the contract
14 for a ten year period from April 1, 2002 through March 31, 2012." BIA stated
15 that some provisions of the Contract had been amended and/or deleted.
- 16 33. On or about March 20, 2002, Mohave's counsel wrote BIA and stated that the
17 Contract "expired of its own terms in 1992 when the Bureau of Indian Affairs
18 did not seek an extension of the Contract. It no longer exists. Therefore, that
19 Contract (no longer being in existence) is not in effect, and cannot be extended
20 as requested." Mohave contended that, since 1992, it had been serving the
21 BIA electrical service at Mohave's Nelson Substation under a month-to-month
22 contract.
- 23 34. As of July 2003, Mohave provided electricity to twelve accounts along the
24 Line, including six Hualapai Tribal Council accounts, two other Department of
25 Interior accounts, an Arizona Telephone transmitting tower, a ranch, and a
26 cabin. Mohave billed these twelve accounts. Two of those accounts, the
27 Hualapai Pump at Tank Well and a cabin on Nelson Road, are within
28 Mohave's certificated area, as is approximately the first couple of miles of the
Line.
35. On or about July 22, 2003, Mohave executed a Notice of Quit Claim,
Conveyance and Assignment of Interest and Abandonment of Property (the
"Quit Claim") which stated that Mohave quitclaimed, conveyed and
abandoned the Line, meters, and service drops to the United States Department
of Interior, Bureau of Indian Affairs, the Hualapai Indian Tribe and the
Havasupai Indian Tribe as the respective interests may be established or
reflected. In the Quit Claim, Mohave also stated it assigned and transferred its
rights and interests in a pole license agreement that Mohave had entered into
with Boquillas Cattle Company.
36. On or about July 23, 2003, Mohave's counsel wrote BIA, the Hualapai Nation
and the Havasupai Nation stating that the Contract had terminated in 1992, that
Mohave had no authority to serve outside its Certificate of Convenience and
Necessity ("CC&N") or tribal lands, that the Line was not necessary or useful
for Mohave, and that Mohave had abandoned and quitclaimed the Line to BIA,
the Hualapai Nation and the Havasupai Nation. Mohave stated that it was
willing "to continu[e] to provide wholesale electrical service at its Nelson
substation" to BIA, the Hualapai Nation and the Havasupai Nation "under its
ACC approved Large Commercial Rate which is its lowest tariff."

1 37. On or about August 7, 2003, Mohave's counsel wrote BIA, the Hualapai
 2 Nation and the Havasupai Nation. Mohave enclosed a copy of the Quit Claim
 3 and listed the "accounts and facilities that are now owned by your entities, as
 4 your interests may be established." Mohave included the following list of
 5 twelve accounts that were receiving electrical service from Mohave along the
 6 Line:

- 7 A. Account # 63626-000
 8 Arizona Telephone Company
 9 500' South Havasupai Tribal Electric System
 10 Near 8th pole South of H-Frame
 11 Long Mesa Tower
- 12 B. Account # 44567-003
 13 Diamond A Ranch
 14 Camp 16 Supai Line
- 15 C. Account # 29740-001
 16 Department of Interior
 17 Fire Tower – Supai Road
 18 Thornton Tower
- 19 D. Account # 896-083 [letter indicated #896-084]
 20 Hualapai Tribal Council
 21 Hunters Building – Youth Camp
- 22 E. Account # 896-084
 23 Hualapai Tribal Council
 24 Lake Circulation Pump
 25 Youth Camp Pond
- 26 F. Account # 896-060
 27 Hualapai Tribal Council
 28 Frazier Wells Pump
 Well #1
- G. Account # 896-073
 Hualapai Tribal Council
 Frazier Wells Pump 2
 Well #2
- H. Account # 896-100
 Hualapai Tribal Council
 Water Well T28N R7w
 Fish Pond
- I. Account # 28135-001
 Bravo, W C
 Supai Line near Frazier Wells
- J. Account # 451-055
 TCIA – Department of Interior – BIA
 Long Mesa Radio Repeater Site
 Long Mesa End
- K. Account # 896-027
 Hualapai Tribal Council

Pump at Tank Well
Well site Nelson Road

L. Account # 44561-006
Cabin on Nelson Road

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38. On or about September 2, 2003, BIA wrote to Mohave, stating the quitclaim is not valid until accepted by the grantee, that BIA had not decided whether it would accept Mohave's quitclaim, that Mohave could not dispose of the Line without authorization by the ACC pursuant to A.R.S. § 40-285(A), and that "Mohave Electric remains the owner of all its interests in the Nelson-Long Mesa Line at the present time."
39. On or about September 12, 2003, BIA wrote Mohave stating that BIA did not accept quitclaim of the Line, that the quitclaim was void and of no effect, that BIA received power at Long Mesa rather than the Nelson substation, and that Mohave was responsible for ongoing operation and maintenance of the Line.
40. In approximately October, 2003, construction was commenced on a 13.6 mile long spur from the Line to the Bar Four area of the Havasupai reservation.
41. In the summer of 2004, ACC Chairman Marc Spitzer attempted to broker a resolution. The BIA, Mohave, and others, including ACC Staff, were unable to settle the matter. Christopher Kempley, ACC Chief Counsel, then wrote Mohave a letter on September 8, 2004.
42. Between September 2004, and June 2008, BIA paid Mohave for repairs and maintenance to the Line.
43. On or about August 10, 2005, BIA filed its Complaint against Mohave with the ACC.
44. On or about November 13, 2007, Mohave, UNS Electric, Inc. and Arizona Public Service Company entered into an Operations Protocol Agreement related to maintenance and repairs for the Line.
69. On September 19, 2008, BIA filed the prepared direct testimony of James Williams, Leonard Gold, James C. Walker, and Philip Entz.
70. On October 17, 2008, Mohave filed direct testimony and exhibits of Robert Moeller and Thomas A. Hine.
71. On October 20, 2008, Mohave filed direct testimony and exhibits of Tom Longtin.
72. On November 3, 2008, BIA filed the surrebuttal testimony of Leonard Gold.
73. On November 4, BIA filed its Objections to Testimony of Tom Longtin and Robert Moeller.
74. On November 5, 2008, a prehearing conference was held as scheduled. Counsel for BIA and Mohave appeared through counsel. BIA's objections to prefiled testimony were heard, and

1 the hearing was continued to commence on November 18, 2008 in order to accommodate the
2 schedule of Mohave's counsel.

3 75. On November 14, 2008, BIA filed summaries of its witness' testimony.

4 76. An evidentiary hearing was held on the Complaint commencing on November 18,
5 2008 and concluding on November 20, 2008. Complainant and Respondent appeared through
6 counsel, made opening statements, presented witnesses and evidentiary testimony, and cross-
7 examined witnesses. At the close of the hearing, a procedural conference was set for December 19,
8 2008, for the purpose of allowing the parties to discuss the manner and timing of the BIA's response
9 to a post-hearing filing Mohave was directed to make during the hearing.

10 77. On December 15, 2008, Mohave made its post-hearing filing in the form of
11 supplemental sworn testimony of Dan L. Neidlinger, and requested its admission.

12 78. A procedural conference was held as scheduled on December 19, 2008. BIA stated
13 that it had no objection to Mohave's post-hearing filing, and would be providing a written response in
14 the form of an affidavit. BIA and Mohave agreed to a procedural schedule for BIA to respond to
15 Mohave's supplemental testimony, and to a procedural schedule for filing closing briefs and reply
16 briefs.

17 79. On January 16, 2009, BIA filed supplemental sworn testimony of Leonard Gold in
18 response to the supplemental testimony of Dan Neidlinger.

19 80. On February 18, 2009, Mohave filed a Submission of Supplemental Affidavits and
20 Exhibits of Thomas Longtin.

21 81. On February 20, 2009, BIA and Mohave filed their initial closing briefs.

22 82. On March 6, 2009, BIA filed a Motion to Strike (1) Mohave's Submission of
23 Supplemental Affidavits and Exhibits and (2) Portions of Mohave's Closing Brief.

24 83. At BIA's request, a telephonic procedural conference was held on March 12, 2009.
25 Mohave, BIA and Staff appeared through counsel and discussed various procedural alternatives for
26 addressing BIA's Motion. The parties agreed to continue the March 16, 2009 deadline for filing
27 reply briefs to allow time for Mohave to file a Response to the Motion, and for BIA to file its Reply
28 to Mohave's Response, and to have oral argument on the Motion.

1 84. On March 13, 2009, a procedural order was issued setting a procedural conference for
2 April 3, 2009, for the taking of oral argument on BIA's Motion to Strike (1) Mohave's Submission of
3 Supplemental Affidavits and Exhibits and (2) Portions of Mohave's Closing. The procedural order
4 directed Mohave to file, by March 20, 2009, a Response to BIA's Motion to Strike (1) Mohave's
5 Submission of Supplemental Affidavits and Exhibits and (2) Portions of Mohave's Closing.

6 85. On April 3, 2009, the procedural conference convened as scheduled. BIA and
7 Mohave appeared through counsel and presented their arguments. The Motion to Strike was denied.
8 However, it was noted that Mohave chose to make allegations regarding one incident that it stated
9 occurred during the time the hearing was taking place, and one incident that it stated occurred after
10 the conclusion of the hearing, on February 5, 2009, by means of submitting affidavits by a witness
11 who testified at hearing, three months after the alleged events, rather than to request that the hearing
12 be continued or reopened so that Mr. Longtin, the witness who submitted the affidavit, would be
13 available for cross-examination on the allegations appearing in the affidavit. BIA did not request that
14 the hearing be reopened in order to have Mr. Longtin appear and be cross-examined. BIA stated that
15 some of the witnesses who could respond to Mr. Longtin's allegations are not BIA employees, such
16 that BIA has no authority to have them appear and testify. Because the Motion to Strike was denied,
17 BIA stated that it would respond to the affidavits via submission of its own affidavits, which it agreed
18 to file by April 17, 2009, prior to the filing of reply closing briefs.

19 86. On April 17, 2009, BIA filed a Notice of Filing Affidavits of: (1) Jack Ehrhardt,
20 Hualapai Tribe Director of Planning and Economic Development; (2) Don E. Watahomigie, Tribal
21 Chairman of the Havasupai Tribe; and (3) James Williams, BIA Superintendent, Truxton Canyon
22 Agency.

23 87. On May 4, 2009, BIA and Mohave filed reply closing briefs, and the matter was taken
24 under advisement.

25 **Determinations**

26 88. In June 1976, BIA issued a Request for Quotation ("RFQ") for the provision of
27 electric energy to the Hualapai and Havasupai Indian reservations located north of Route 66 on and
28

1 adjacent to the Supai Road, Coconino County, Arizona.⁷ The RFQ stated that the requirements
2 “consist of installation of transmission and/or distribution electrical facilities to serve residential and
3 commercial installations located on each of the reservations.”⁸

4 89. Mohave, Arizona Public Service Company, and Citizens Utilities Company responded
5 to the RFQ.⁹

6 90. On January 18, 1980, Mohave signed an REA “Cost Estimates and Loan Budget for
7 Electric Borrowers” REA Form 740c.¹⁰

8 91. October 22, 1980, the Commission issued Decision No. 51491, authorizing Mohave to
9 borrow \$1,600,000 from the REA to be “used for construction purposes of an electric line extension
10 from applicant’s certified area across a portion of the Hualapai and Havasupai Indian reservation
11 located north of Route 66 on and adjacent to the Supai Road, Coconino County, Arizona” to “supply
12 electric energy to serve existing and future residential and commercial installations on the Hualapai
13 and Havasupai Indian reservations.”

14 92. Mohave received a \$1,600,000 loan from the REA for construction of the Line.¹¹

15 93. On approximately October 1, 1981, Mohave entered into Negotiated Electrical Utility
16 Contract GS-OOS-67021, (the “Contract”) with the United States of America acting through the
17 Administrator of the General Services Administration and on behalf of BIA to construct the Line,
18 approximately 70 miles long from Mohave’s existing facilities at the Nelson Substation to Long
19 Mesa and to supply electrical energy up to 1500 KW for the operation of its facilities on the Hualapai
20 and Havasupai reservations.¹²

21 94. The Boquillas Ranch property lies between the Hualapai and Havasupai reservations.
22 The easement Mohave received across the Boquillas Ranch property for the Line expired in
23 September 2005.¹³

24 95. Mohave did not seek an extension of its CC&N related to the Line.¹⁴

25 ⁷ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 2.

26 ⁸ *Id.*

26 ⁹ Stipulated Facts at ¶ 11.

27 ¹⁰ Direct Testimony of BIA witness Leonard Gold (Exh. C-1) at 5 and Exhibit 2.

27 ¹¹ Stipulated Facts at ¶ 14.

27 ¹² *Id.* at ¶ 13.

28 ¹³ Exhibit attached to Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 16.

28 ¹⁴ Mohave Br. at 11.

1 96. Mohave completed construction of the Line in November 1981 and by the spring of
2 1982 was delivering electricity through the Line.¹⁵

3 97. When Mohave commenced the provision of service to the BIA pursuant to the
4 Contract, it placed a meter at the end of the Line at Long Mesa at the rim of the Grand Canyon, on
5 the Havasupai reservation.¹⁶

6 98. From Long Mesa, an overhead electric line drops down in the Grand Canyon, and is
7 extended out to provide electricity to Havasupai Village.¹⁷ The BIA uses electricity supplied by the
8 Line in Havasupai Village for a BIA school, living quarters for BIA teachers and law enforcement
9 personnel, a BIA detention facility, and a BIA maintenance building.¹⁸

10 99. About 200 residents in Havasupai Village use the electricity supplied by the Line in
11 their homes.¹⁹ The BIA collects fees from the users of electricity in Havasupai Village based on their
12 monthly electric power usage indicated by individual meters.²⁰ BIA hired a tribal member who lives
13 in Havasupai Village to read the meters once a month.²¹ BIA puts money collected from Havasupai
14 Village in an account and uses it to pay Mohave for the electricity.²² If something goes wrong from
15 Long Mesa down to Havasupai Village or within Havasupai Village, BIA also calls in repair and
16 maintenance requests as needed, to Zeus Electric, UNS Electric, or Sturgeon Electric to repair the
17 outage.²³

18 100. On approximately April 8, 1982, Mohave sent the BIA its first invoice for the Long
19 Mesa Power Transformer account.²⁴ As agreed to by Mohave and the BIA, the invoice included a
20 "facility charge," which consisted of the cost of construction, taxes, operation and maintenance, and
21 depreciation.²⁵

22 . . .

23

24 ¹⁵ Stipulated Facts at ¶ 16.

¹⁶ Direct Testimony of BIA witness James Williams (Exh. C-4) at 3-4.

25 ¹⁷ *Id.* at 3.

¹⁸ Stipulated Facts at 19.

26 ¹⁹ Direct Testimony of BIA witness James C. Walker (Exh. C-3) at 3.

²⁰ *Id.* at 3-4.

²¹ *Id.* at 4.

27 ²² *Id.*

²³ *Id.* at 4-5.

28 ²⁴ Mohave Br. at 11; Direct Testimony of BIA witness James Williams (Exh. C-4) at Exhibit 4.

²⁵ Direct Testimony of BIA witness James Williams (Exh. C-4) at 6 and Exhibit 4.

1 101. On August 11, 1982, the Commission issued Decision No. 53174, which set new rates
 2 for Mohave. Decision No. 53174 was based on a 1982 test year.²⁶ Decision No. 53174 noted that
 3 Mohave did not include the Line in rate base, and that Mohave proposed segregating all expenses and
 4 revenues associated with the Line.²⁷ Decision No. 53174 also eliminated \$32,000 in interest expense
 5 from the calculation of Mohave's times interest earned ratio ("TIER") as rate of return.²⁸ In the
 6 discussion regarding exclusion of this interest expense, Decision No. 53174 referred to the Line as "a
 7 transmission line dedicated to serving the Hualapai Indian reservation, a line which presently
 8 produces no revenue."²⁹ The discussion in Decision No. 53174 included a discussion of the fact that
 9 Mohave had included interest expense associated with the Line in its rate of return request, and that
 10 Staff had included the interest in its TIER analysis. The discussion in Decision No. 53174 stated that
 11 by including the interest associated with the Line in the rate of return and TIER in their rate
 12 proposals, Mohave and Staff were "effectively asking MEC's ratepayers to pay for plant which is not
 13 used and useful, will not be used and useful, and was never intended to be used and useful in the
 14 provision of electric service to such ratepayers."³⁰ Decision No. 53174 made no reference to the
 15 existence of retail customers served by the Line.

16 102. The Contract provided that "Mohave may elect to serve the Hualapai Indian
 17 reservation upon its own arrangements from the utility plant proposed to be constructed provided that
 18 contemplated system capacities are not unreasonably exceeded."³¹

19 103. The BIA granted an easement for right-of-way across Hualapai and Havasupai
 20 reservations "to be used to construct, install, operate and maintain an electrical distribution line, along
 21 with the right to ingress thereto and egress therefrom." The Hualapai and Havasupai Tribes each
 22 consented to this grant of easement for right-of-way to Mohave.³²

23 104. On January 18, 1982, the BIA granted Mohave a 50-foot wide easement across the
 24 Hualapai reservation for the Line for a term of 30 years, expiring in January, 2012.³³

25 ²⁶ Decision No. 53174 at 4.

26 ²⁷ *Id.* at 8.

27 ²⁸ *Id.* at 9.

28 ²⁹ *Id.* at 8.

³⁰ *Id.* at 8 (emphasis in original).

³¹ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 4, 00016.

³² Stipulated Facts at ¶ 15.

³³ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 4.

1 105. On December 14, 1984, the BIA granted Mohave a 50-foot wide easement across the
2 Hualapai reservation for the Line for a term of 30 years, expiring in December, 2014.³⁴

3 106. After completing construction of the Line, Mohave independently and voluntarily
4 extended service to twelve retail customers using the Line. Until July 2003, Mohave individually
5 billed those twelve accounts.³⁵

6 107. Mohave did not request authority from the Commission to serve the twelve individual
7 retail customers served by the Line.³⁶

8 108. Two of the twelve accounts, the Hualapai Pump at Tank Well, and an account in the
9 name of Cesspooch for a cabin on Nelson Road on the Hualapai reservation, are located within
10 Mohave's CC&N territory.

11 109. The twelve retail accounts served by the Line include the BIA's Thornton Fire Tower
12 on the Hualapai reservation,³⁷ a BIA radio repeater tower on the Hualapai reservation,³⁸ six Hualapai
13 Tribal Council accounts, including pumps, wells and a youth camp (one of the wells, the Hualapai
14 Pump at Tank Well, is located in Mohave's CC&N territory),³⁹ an Arizona Telephone transmitting
15 tower near the rim of the Grand Canyon on the Havasupai reservation,⁴⁰ an account at the Boquillas
16 Ranch between the Hualapai and Havasupai reservations,⁴¹ an account in the name of W.C. Bravo on
17 the Hualapai reservation,⁴² and an account in the name of Cesspooch for a cabin on Nelson Road on
18 the Hualapai reservation in Mohave's CC&N territory.⁴³ These accounts are depicted on a color map
19 attached to the Direct Testimony of BIA witness James Williams (Exh. C-4) at Exhibit 1, which is
20 attached hereto and incorporated herein as Exhibit 1, in a black and white version without the heading
21 that appears in the Exh. C-4, Exhibit 1.

22 ...

23 _____
24 ³⁴ *Id.*

³⁵ Stipulated Facts at ¶ 34; Mohave Br. at 14.

³⁶ Mohave Br. at 13.

³⁷ Direct Testimony of BIA witness James Williams (Exh. C-4) at 3 and Exhibit 1 (map of Line).

³⁸ *Id.*

³⁹ Stipulated Facts at ¶ 34, Mohave Br. at 13, Direct Testimony of BIA witness James Williams (Exh. C-4) at Exhibit 1 (map of Line).

⁴⁰ Stipulated Facts at ¶ 34, Mohave Br. at 13.

⁴¹ *Id.*

⁴² Mohave Br. at 14.

⁴³ Stipulated Facts at ¶ 34, Mohave Br. at 13.

1 110. Mohave's witness stated that to his understanding and knowledge the twelve service
 2 drops were "extended and made as a BIA agent and as a courtesy to the BIA under the 1982
 3 contract."⁴⁴ The witness testified that "the continued delivery of electric service during negotiations
 4 was a good-faith effort by Mohave to enter into a new contract relationship with the BIA. Continued
 5 service was not done in order to extend the Mohave certificated area or its service area."⁴⁵

6 111. From April, 1982 through March, 1991, the BIA made about \$450,000 in monthly
 7 construction cost payments, and in March, 1991, made a lump sum payment of \$923,243.92, which
 8 paid off the remaining balance of the construction cost of the Line the BIA owed to Mohave.⁴⁶

9 112. Mohave included as an exhibit to the Direct Testimony of Tom Longtin (Exh. R-2), at
 10 Tab 4, an unsigned document dated March 17, 1992, addressed to "Assistant Area Director of
 11 Administration, Bureau of Indian Affairs."⁴⁷ The document has a handwritten notation "pc file
 12 copy" at the top of the first of its two pages.⁴⁸ The document states that its purpose is to request
 13 information regarding the renewal of the Contract.⁴⁹ On brief, Mohave asserts that "[T]he BIA failed
 14 to respond to this letter in any way, and in fact said nothing to Mohave at that time about exercising
 15 its renewal option."⁵⁰ The BIA did not stipulate to the existence of, or its receipt of, a March 17,
 16 1992 letter.

17 113. On or about April 19, 1993, BIA wrote Mohave, stating that "[t]he term of [GSA
 18 Contract No. GS-00S-67021] was for ten years and has since expired. Under the Contract. [sic] the
 19 Government has the right of renewal for two additional ten year periods. The Government hereby
 20 notifies Mohave Electric of its intent to exercise this option." In the same letter, BIA stated that
 21 "[p]rior to exercising our option, we need to re-negotiate and amend the existing contract. The
 22 contract makes reference to construction of overhead transmission and/or distribution facilities.
 23 Construction was completed and the Government reimbursed Mohave all cost associated with the
 24 construction. Therefore, some of this language needs to be deleted." In addition, BIA stated that
 25

26 ⁴⁴ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at 14.

⁴⁵ *Id.* at 14-15.

⁴⁶ Direct Testimony of BIA witness James Williams (Exh. C-4) at 6; Stipulated Facts at ¶ 24.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Mohave Br. at 17-18.

1 “[T]he Government hereby notifies Mohave Electric of its intention to exercise its right under the
2 contract to verify and audit all construction cost and monthly facility charges. This audit will be
3 coordinated through the U.S. Department of Interior, Office of Inspector General. Mohave Electric
4 will receive proper notification of any audit arrangements. When the Government has obtained the
5 audit results, the government will propose a negotiation meeting with Mohave Electric for continued
6 electrical services under the contract.”⁵¹

7 114. In an internal memorandum dated December 14, 1994, BIA stated that “We are
8 approaching a fourth year without a contract for the services [provided by Mohave] as defined in the
9 contract documents” and discussed a “request to negotiate a new contract.”⁵²

10 115. On or about June 15, 1995, Mohave informed BIA that Mohave believed the Contract
11 had expired in 1992, and requested information about BIA’s intentions.⁵³

12 116. On or about June 6, 1996, Mohave informed BIA that Mohave believed that
13 continuing the service was not in the best interests of Mohave’s individual cooperative members, and
14 that Mohave sought to transfer the Line to BIA and move the metering equipment from Long Mesa to
15 Mohave’s Nelson Substation.⁵⁴

16 117. On or about March 24, 1997, Mohave moved its metering equipment from the Long
17 Mesa Transformer to the Nelson Substation and began metering electricity supplied through the Line
18 at Mohave’s Nelson substation rather than at Long Mesa.⁵⁵

19 118. In about March, 1997, Mohave stopped billing the BIA for facilities charges.⁵⁶

20 119. Prior to 1997, Mohave sent individual bills to its retail accounts along the Line.⁵⁷

21 120. Beginning in July, 1998 and through October, 2003, Mohave’s bills to the BIA
22 included a credit for “usage billed to other meters.”⁵⁸ Mohave credited BIA for the electricity used
23 by certain other accounts along the Line based on Mohave’s meter reading.⁵⁹ According to the BIA’s
24

25 ⁵¹ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 10; Stipulated Facts at ¶ 25.

26 ⁵² Stipulated Facts at ¶ 26.

27 ⁵³ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 11; Stipulated Facts at ¶ 27.

28 ⁵⁴ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 12; Stipulated Facts at ¶ 28.

⁵⁵ Stipulated Facts at ¶ 29.

⁵⁶ Direct Testimony of BIA witness James Williams (Exh. C-4) at 7; Stipulated Facts at ¶ 23.

⁵⁷ Tr. at 357.

⁵⁸ Direct Testimony of BIA witness James Williams (Exh. C-4) at 7-8 and Exhibit 6.

⁵⁹ Stipulated Facts at ¶ 30.

1 witness, after Mohave moved its meter to the Nelson Substation, it billed the BIA for all electricity
2 used along the Line, including the electricity used by the various customers along the Line, but
3 credited the BIA for electricity used by the Hualapai Tribe and residents being served along the
4 Line.⁶⁰ The BIA's witness believes that Mohave read all the meters, added up their usage, and then
5 calculated the credit given to the BIA.⁶¹

6 121. After Mohave stopped giving BIA credit for the electricity used by other accounts,
7 BIA paid Mohave under protest.⁶²

8 122. On or about March 6, 2002, BIA wrote Mohave stating that "In accordance with the
9 Contract, the Government exercises its option to extend the contract for a ten year period from April
10 1, 2002 through March 31, 2012." BIA stated that some provisions of the Contract had been
11 amended and/or deleted.⁶³

12 123. On or about March 20, 2002, Mohave's counsel wrote BIA and stated that the
13 Contract "expired of its own terms in 1992 when the Bureau of Indian Affairs did not seek an
14 extension of the Contract. It no longer exists. Therefore, that Contract (no longer being in existence)
15 is not in effect, and cannot be extended as requested." Mohave contended that, since 1992, it had
16 been serving the BIA electrical service at Mohave's Nelson Substation under a month-to-month
17 contract.⁶⁴

18 124. On June 26, 2003, Mohave's Board of Directors approved an April 17, 2003
19 resolution to abandon the Line and quitclaim it to the BIA and the Tribes.⁶⁵ The April 17, 2003
20 resolution includes the following: "FURTHER RESOLVED, that as to any existing retail customer
21 served on said line that the same be transferred to the BIA which is authorized to operate on Indian
22 nation lands and that notice of said transfer be given to the less than twelve customers."⁶⁶ A copy of
23 the Executive Minutes from the June 26, 2003 Board of Directors Meeting, with the April 17, 2003
24 resolution attached is attached hereto and incorporated herein as Exhibit 2.

25 _____
26 ⁶⁰ Direct Testimony of BIA witness James Williams (Exh. C-4) at 7-8.

⁶¹ *Id.* at 8.

⁶² Stipulated Facts at ¶ 30.

⁶³ *Id.* at ¶ 32.

⁶⁴ *Id.* at ¶ 33.

⁶⁵ Mohave Br. at 24, referring to Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 15.

⁶⁶ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 15.

1 125. On or about July 22, 2003, Mohave executed a Notice of Quit Claim, Conveyance and
2 Assignment of Interest and Abandonment of Property ("Quit Claim") which stated that Mohave
3 quitclaimed, conveyed and abandoned the Line, meters, and service drops to the United States
4 Department of Interior, Bureau of Indian Affairs, the Hualapai Indian Tribe and the Havasupai Indian
5 Tribe as the respective interests may be established or reflected. In the Quit Claim, Mohave also
6 stated it assigned and transferred its rights and interests in a pole license agreement that Mohave had
7 entered into with Boquillas Cattle Company.⁶⁷

8 126. In letters dated July 23, 2003, Mohave informed the BIA that its retail electric service
9 to the BIA's Thornton Fire Tower on the Hualapai reservation, and to the BIA radio repeater tower
10 on the Hualapai reservation "has been transferred to the BIA as the only entity authorized to deliver
11 retail electric service to you on tribal lands."⁶⁸

12 127. On or about July 23, 2003, Mohave's counsel wrote BIA, the Hualapai Nation and the
13 Havasupai Nation stating that the Contract had terminated in 1992, that Mohave had no authority to
14 serve outside its CC&N or tribal lands, that the Line was not necessary or useful for Mohave, and that
15 Mohave had abandoned and quitclaimed the Line to BIA, the Hualapai Nation and the Havasupai
16 Nation. Mohave stated that it was willing "to continu[e] to provide wholesale electrical service at its
17
18

19 ⁶⁷ Stipulated Facts at ¶ 35.

20 ⁶⁸ Direct Testimony of BIA witness James Williams (Exh. C-4) at 11 and Exhibits 9 and 10; direct Testimony of Mohave
21 witness Tom Longtin (Exh. R-2) at Tab 17. Both letters stated as follows:

22 Dear Sir:

23 Currently, all your electricity flows over lines transferred, together with meters, to the Bureau of Indian
24 Affairs ("BIA"), the Hualapai and Havasupai Tribes. Your retail electric service has been transferred to
25 the BIA as the only entity authorized to deliver retail electric service to you on tribal lands. To assist in
26 the transition, Mohave Electric will credit your account and the BIA with sixty (60) days of electric
27 service based on your usage. The BIA will be responsible to read the meters and bill you on your future
28 bills for electric service. You will not receive any additional bills from Mohave Electric. Also, as
noted, you will be credited with the amount of your usage for the next sixty (60) days. Subsequently,
the BIA will be responsible for your electric service and will invoice you for future service. There will
be no service interruption. Currently, all the meters and facilities necessary to continue service
uninterrupted have been transferred to the ownership and control of the BIA and the Hualapai and
Havasupai tribes. The only change you will notice is that Mohave Electric will no longer read the
meters, and service calls will be directed to the BIA, Truxton Canyon Agency, Valentine Arizona
(phone 928/769-2286) which is experienced and already operates an existing retail electric utility
service on Tribal land. In addition, you may also contact me directly with any questions you have
regarding this change (phone 928/763-4115).

Sincerely,

Mohave Electric Cooperative

By _____

Stephen McArthur, Comptroller

1 Nelson substation” to BIA, the Hualapai Nation and the Havasupai Nation “under its ACC approved
2 Large Commercial Rate which is its lowest tariff.”⁶⁹

3 128. On or about August 7, 2003, Mohave’s counsel wrote BIA, the Hualapai Nation and
4 the Havasupai Nation. Mohave enclosed a copy of the Quit Claim and listed the “accounts and
5 facilities that are now owned by your entities, as your interests may be established.”⁷⁰

6 129. In a letter dated September 2, 2003, the BIA responded to Mr. Curtis’ letter dated
7 August 7, 2003 and the “Notice of Quit Claim, Conveyance and Assignment of Interest” dated July
8 22, 2003 and enclosed with the August 7, 2003 letter.⁷¹ The letter stated that the quitclaim is not
9 valid until accepted by the grantee, that BIA had not decided whether it would accept Mohave’s
10 quitclaim, that Mohave could not dispose of the Line without authorization by the ACC pursuant to
11 A.R.S. § 40-285(A), and that “Mohave Electric remains the owner of all its interests in the Nelson-
12 Long Mesa Line at the present time.”⁷²

13 130. In a letter dated September 12, 2003, the BIA gave further response to Mr. Curtis’
14 letter dated August 7, 2003 and the “Notice of Quit Claim, Conveyance and Assignment of Interest”
15 dated July 22, 2003 and enclosed with the August 7, 2003 letter.⁷³ The letter stated that BIA did not
16 accept quitclaim of the Line, that the Quit Claim was void and of no effect, that BIA received power
17 at Long Mesa rather than the Nelson substation, and that Mohave was responsible for ongoing
18 operation and maintenance of the Line.⁷⁴

19 131. Following its notification to BIA of the Quit Claim, Mohave stopped reading meters
20 for the twelve retail customers served by the Line and stopped issuing the BIA credits for usage by
21 those meters.⁷⁵

22 132. Mohave never sought Commission approval to discontinue service to its twelve retail
23 customers served by the Line.

24 ...

25 _____
26 ⁶⁹ Stipulated Facts at ¶ 36.

⁷⁰ *Id.* at ¶ 37.

⁷¹ Direct Testimony of BIA witness James Williams (Exh. C-4) at 11 and Exhibit 7.

⁷² Stipulated Facts at ¶ 38.

⁷³ Direct Testimony of BIA witness James Williams (Exh. C-4) at 11 and Exhibit 8.

⁷⁴ Stipulated Facts at ¶ 39.

⁷⁵ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at 10.

1 133. From October, 2003 through the present, Mohave has billed the BIA, and the BIA has
 2 paid for, all electricity used by all customers along the Line.⁷⁶ The BIA's witness testified that the
 3 BIA has not billed those customers for their usage, because the BIA is not their electricity supplier
 4 and has no signed agreements to provide them with electricity.⁷⁷

5 134. Mohave asserts on brief that because neither the BIA nor Mohave has read the meters
 6 for the twelve retail accounts served by the Line since 2003, it is impossible to reconstruct the
 7 amount of electricity they used.⁷⁸ However, by totaling the billing records in evidence in this matter,
 8 Mohave estimates that it issued the BIA credits totaling \$27,178, for an average monthly credit of
 9 \$348.⁷⁹

10 135. Following its notification to BIA of the Quit Claim, Mohave ceased performing repair
 11 and maintenance on the Line unless requested to do so by the BIA.⁸⁰

12 136. Mohave does not dispute the amount paid by the BIA, but does dispute that Mohave is
 13 liable for repairs or maintenance of the Line.⁸¹

14 137. The Havasupai Tribe has plans to develop and construct housing at the top of the
 15 Grand Canyon at an area called Bar Four within the Havasupai reservation.⁸² In 1998, the Havasupai
 16 Tribe hired UrbanTech Ltd. to obtain funding for improvements in the Bar Four area.⁸³ Mr. Philip
 17 Entz, the president and owner of UrbanTech Ltd., wrote grant applications for the Havasupai Tribe
 18 for funding from the United States Department of Housing and Urban Development ("HUD") to
 19 extend electricity from the Line for approximately 13 miles to the Bar Four area of the Havasupai
 20 reservation ("Bar Four spur").⁸⁴ Mr. Entz attempted to contact Mohave by telephone in about July,
 21 1998 in regard to whether Mohave would maintain the Bar Four spur, but his calls were not
 22 returned.⁸⁵

23
 24 ⁷⁶ Direct Testimony of BIA witness James Williams (Exh. C-4) at 9.

⁷⁷ *Id.*

⁷⁸ Mohave Br. at 26, fn 6.

⁷⁹ Mohave Br. at 22, fn 22, and Chart of Credits, attached at Exhibit A to Mohave's Brief.

⁸⁰ Mohave Br. at 26.

⁸¹ Mohave Br. at 26, fn 7.

⁸² Direct Testimony of BIA witness James Williams (Exh. C-4) at 9; Direct Testimony of BIA witness Philip Entz (Exh. C-5) at 2.

⁸³ Direct Testimony of BIA witness Philip Entz (Exh. C-5) at 2.

⁸⁴ *Id.* at 3.

⁸⁵ *Id.*

1 138. The HUD grant application was filed in September 1998.⁸⁶ In January, 1999, HUD
2 granted the Havasupai \$550,000 to build the Bar Four spur.⁸⁷ The Havasupai paid for the
3 construction using the HUD grant funds and Havasupai general funds.⁸⁸

4 139. In a letter dated April 3, 2000, Mr. Entz informed Mohave that it was his
5 understanding that Mohave, as the current service provider, was mandated to provide maintenance
6 and operations if the Bar Four spur were installed to Mohave's standards.⁸⁹ The letter requested that
7 Mohave provide a copy of the applicable standards that should be forwarded to the design build
8 utility contractor for the Bar Four spur once selected, and that Mohave also provide a letter indicating
9 that Mohave would provide electrical service via the Bar Four spur and would appropriately maintain
10 the line.⁹⁰

11 140. By letter from Mohave's counsel dated May 17, 2000, Mohave responded to the April
12 3, 2000 letter from Mr. Entz.⁹¹ In the letter Mohave: (1) asserted that Mohave has no responsibility
13 for the proposed project; (2) asserted that Mohave is not mandated to provide maintenance operations
14 to a power line not built and designed by Mohave; and (3) provided some, but not all, of the reasons
15 that the proposed design and construction were not acceptable to Mohave, including that "[i]n all
16 instances, any contractor must be under Mohave's direct guidance and direct day-to-day
17 supervision."⁹² The letter concluded by asserting that "Mohave Electric is not mandated to do
18 anything much less provide maintenance and operations to the Bar Four Line," and requesting that all
19 further communications be made through the offices of Mohave's counsel Martinez & Curtis, P.C.⁹³

20 141. Mr. Entz requested that APS develop loads and preliminary specifications for the Bar
21 Four spur, and APS did so.⁹⁴ Using the specifications developed by APS, Mr. Entz prepared a bid
22 request for design and construction, and the Havasupai Tribe requested bids for the Bar Four spur.⁹⁵

24 ⁸⁶ *Id.*

25 ⁸⁷ *Id.* at 4.

26 ⁸⁸ *Id.* at 6.

27 ⁸⁹ *Id.* at Exhibit 1.

28 ⁹⁰ *Id.*

⁹¹ *Id.* at Exhibit 2.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 4.

⁹⁵ *Id.* at 4-5.

1 Six bids were submitted, and Southwest Energy Solutions won the bid in June, 2000.⁹⁶ The
 2 Havasupai Tribe entered into a contract with Southwest Energy Solutions.⁹⁷ Southwest Energy
 3 Solutions subcontracted with Electrical Consultants, Inc. of Tucson to do the design.⁹⁸

4 142. The Bar Four spur runs along Indian Route 18, which is a BIA road right-of-way.⁹⁹
 5 The BIA paid for an environmental assessment for the Bar Four line extension, and reviewed pole
 6 placements for traffic safety reasons.¹⁰⁰ The BIA did not approve the Havasupai Tribe's bid before it
 7 was published, and the BIA was not a party to the Havasupai Tribe's contract with Southwest Energy
 8 Solutions.¹⁰¹

9 143. In a July 9, 2003 letter to Mohave's General Manager Robert Broz, before
 10 construction began on the Bar Four spur, Havasupai Tribal Chairman Don Watahomigie invited
 11 Mohave to participate in a preconstruction conference.¹⁰² Mr. Watahomigie's letter referenced
 12 Mohave's statement in its May 17, 2000 letter that "any contractor must be under Mohave's direct
 13 guidance and direct day-to-day supervision."¹⁰³ Mohave did not accept the invitation.¹⁰⁴

14 144. Construction commenced on the Bar Four spur in approximately October, 2003.¹⁰⁵
 15 Construction of the Bar Four spur was completed in May, 2004.¹⁰⁶ At the time of the hearing, the
 16 Bar Four spur was energized and serving a radio repeater tower owned and operated by the
 17 Havasupai Tribe.¹⁰⁷

18 145. In the summer of 2004, the Chairman of the Commission at the time, Commissioner
 19 Marc Spitzer, attempted to broker a resolution between BIA and Mohave. The BIA, Mohave, and
 20 others, including ACC Staff, were unable to settle the matter.¹⁰⁸

21 ...

22 ...

23 ⁹⁶ *Id.* at 5.

24 ⁹⁷ *Id.*

24 ⁹⁸ *Id.* at 6.

25 ⁹⁹ *Id.* at 5.

25 ¹⁰⁰ *Id.*

25 ¹⁰¹ *Id.*

26 ¹⁰² *Id.* at 5 and Exhibit 3.

26 ¹⁰³ *Id.* at Exhibit 3.

26 ¹⁰⁴ *Id.* at 5.

27 ¹⁰⁵ Stipulated Facts at ¶ 40.

27 ¹⁰⁶ Direct Testimony of BIA witness Philip Entz (Exh. C-5) at 5-6.

28 ¹⁰⁷ Tr. at 29, 172, 190-191, 207-208

28 ¹⁰⁸ Stipulated Facts at ¶ 41.

1 146. On September 8, 2004, the Chief Counsel of the Commission at the time, Christopher
2 Kempley, wrote Mohave a letter.¹⁰⁹ The letter to Mohave indicated that Staff believed the Line to be
3 necessary and useful to Mohave in the provision of electric service to its customers.

4 147. Between September 2004, and June 2008, BIA paid Mohave for repairs and
5 maintenance to the Line.¹¹⁰

6 148. On or about November 13, 2007, Mohave, UNS Electric, Inc. and Arizona Public
7 Service Company entered into an Operations Protocol Agreement related to maintenance and repairs
8 for the Line.¹¹¹

9 **Conclusions**

10 149. After completing construction of the Line in 1982, Mohave commenced provision of
11 electric service supplied through the Line to be used by the BIA for its facilities on the Hualapai and
12 Havasupai reservations, by the Indian Health Services for a medical clinic, by the Hualapai Tribe and
13 its members, and by members of the Havasupai Tribe.¹¹² The BIA uses electricity supplied by the
14 Line in Havasupai Village for a BIA school, living quarters for BIA teachers and law enforcement
15 personnel, a BIA detention facility, and a BIA maintenance building.¹¹³ The BIA distributes the
16 electricity supplied through the Line by Mohave to the residents of Havasupai Village, reads the
17 residents' meters, bills them monthly based on consumption, maintains the line from Long Mesa into
18 the Havasupai Village, and maintains the distribution system within the Havasupai Village.¹¹⁴

19 150. After completing construction of the Line in 1982, Mohave voluntarily commenced
20 provision of retail electric service, using the Line, to twelve retail customers.

21 151. The twelve customers Mohave serves using the Line are retail customers as defined by
22 A.R.S. § 40-201(21).¹¹⁵

23 152. The evidence does not support Mohave's claim that it acted solely under the BIA's
24 authority and direction when providing service to the twelve retail accounts.

25 _____
26 ¹⁰⁹ *Id.*

¹¹⁰ *Id.* at ¶ 42.

¹¹¹ *Id.* at ¶ 44.

¹¹² *Id.* at ¶ 19.

¹¹³ *Id.*

¹¹⁴ Direct Testimony of BIA witness James C. Walker (Exh. C-3) at 3-5.

¹¹⁵ Mohave Br. at 27.

1 153. Once Mohave began serving retail customers using the Line, the Line became
2 necessary and useful in the performance of Mohave's duties to the public.

3 154. At the time that Mohave attempted to abandon the Line by means of the Quit Claim, in
4 addition to providing service to the BIA for use in Havasupai Village, Mohave was using the Line to
5 provide service to the twelve retail customers.

6 155. BIA did not accept the Quit Claim.

7 156. Mohave did not request or receive a Commission Order authorizing it to dispose of the
8 Line pursuant to A.R.S. § 40-285 prior to its attempted abandonment of the Line by means of the
9 Quit Claim.

10 157. Mohave did not file an application with the Commission requesting authority to
11 discontinue or abandon utility service to the public provided by the Line as required by A.A.C. R14-
12 2-202(B) prior to its attempted abandonment of the Line by means of the Quit Claim.

13 158. Mohave should be ordered to begin reading the meters of its retail electric customers
14 currently served by the Line, and to recommence operation and maintenance of the Line to Long
15 Mesa.

16 159. Mohave should be ordered to place a meter at Long Mesa and to recommence reading
17 the meter at Long Mesa to determine the proper amount to bill the BIA for electricity used past the
18 point of Long Mesa.

19 160. Mohave acted improperly when it moved the BIA meter from Long Mesa to its Nelson
20 Substation and when it ceased reading the meters and billing the individual retail customers served by
21 the Line.

22 161. Since November 2003, BIA has paid Mohave under protest for the electricity used by
23 Mohave's retail electric customers served by the Line. Mohave should reimburse BIA in an amount
24 equal to \$348 per month for each month including November 2003 through the present month, or
25 \$29,580.¹¹⁶

26 ...

27 _____
28 ¹¹⁶ By totaling the billing records in evidence in this matter, Mohave estimates that during the time it was issuing the BIA credits for electricity used by the retail customers, the average monthly credit was \$348. Mohave Br. at 22, fn 22, and Chart of Credits, attached at Exhibit A to Mohave's Brief.

1 Havasupai tribes that it might otherwise have raised by its requests for relief in the Complaint.

2 6. Notice of this proceeding was provided as required by law.

3 7. It is not necessary to address the issue of the status or the relevance of the Contract in
4 order to make a determination on the Complaint and the requested relief.

5 8. Customers to which Mohave voluntarily commenced electric utility service using the
6 Line are retail customers as defined by A.R.S. § 40-201(21).

7 9. Mohave was not acting as BIA's agent when it began providing electric utility service
8 to the twelve retail customers using the Line.

9 10. Discussion in Decision No. 53174 regarding the Line is not determinative of whether
10 the line is used and useful for purposes of this proceeding.

11 11. The Line is being used to provide electric utility service to Mohave's retail customers,
12 and is therefore necessary and useful in the performance of Mohave's duties to the public.

13 12. The attempted abandonment of the Line by Mohave by means of the Quit Claim
14 without first having secured from the Commission an Order authorizing it to do so is void pursuant to
15 A.R.S. § 40-285(A).

16 13. Because Mohave's attempted abandonment of the Line is void, Mohave remains the
17 owner of the Line and remains the retail electric service provider to the twelve retail accounts.

18 14. The BIA is not a retail customer of Mohave at Long Mesa.

19 15. Construction and energizing of the Bar Four spur by the Havasupai tribe does not
20 constitute BIA acceptance of or acquiescence in Mohave's attempted abandonment or disposal of the
21 Line by means of the Quit Claim.

22 **ORDER**

23 IT IS THEREFORE ORDERED that Mohave Electric Cooperative, Inc. is the owner of the
24 Line.

25 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Inc. shall, within ten days,
26 recommence operation and maintenance of the Line to Long Mesa.

27 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Inc. shall, within ten days,
28 begin reading the meters of its retail electric customers currently served by the Line.

1 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Inc. shall, within ten days,
2 place a meter at Long Mesa and recommence reading the meter at Long Mesa to determine the proper
3 amount to bill the BIA for electricity used past the point of Long Mesa.

4 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Inc. shall, within thirty
5 days, reimburse the Bureau of Indian Affairs, United States of America in an amount equal to \$348
6 per month for each month including November 2003 through the present month, or \$29,580, plus
7 interest at a rate of six percent.

8 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Inc. shall file within forty-
9 five days, with the Commission's Docket Control, as a compliance item in this matter, certification
10 that it has reimbursed the Bureau of Indian Affairs, United States of America in the amount ordered
11 herein.

12 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14
15

16 CHAIRMAN _____ COMMISSIONER _____

17
18

18 CHAIRMAN _____ COMMISSIONER _____ COMMISSIONER _____

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21

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this _____ day of _____, 2010.

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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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DISSENT _____

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DISSENT _____

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SERVICE LIST FOR: COMPLAINT OF THE BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA, AGAINST MOHAVE
ELECTRIC COOPERATIVE, INC.

DOCKET NO.: E-01750A-05-0579

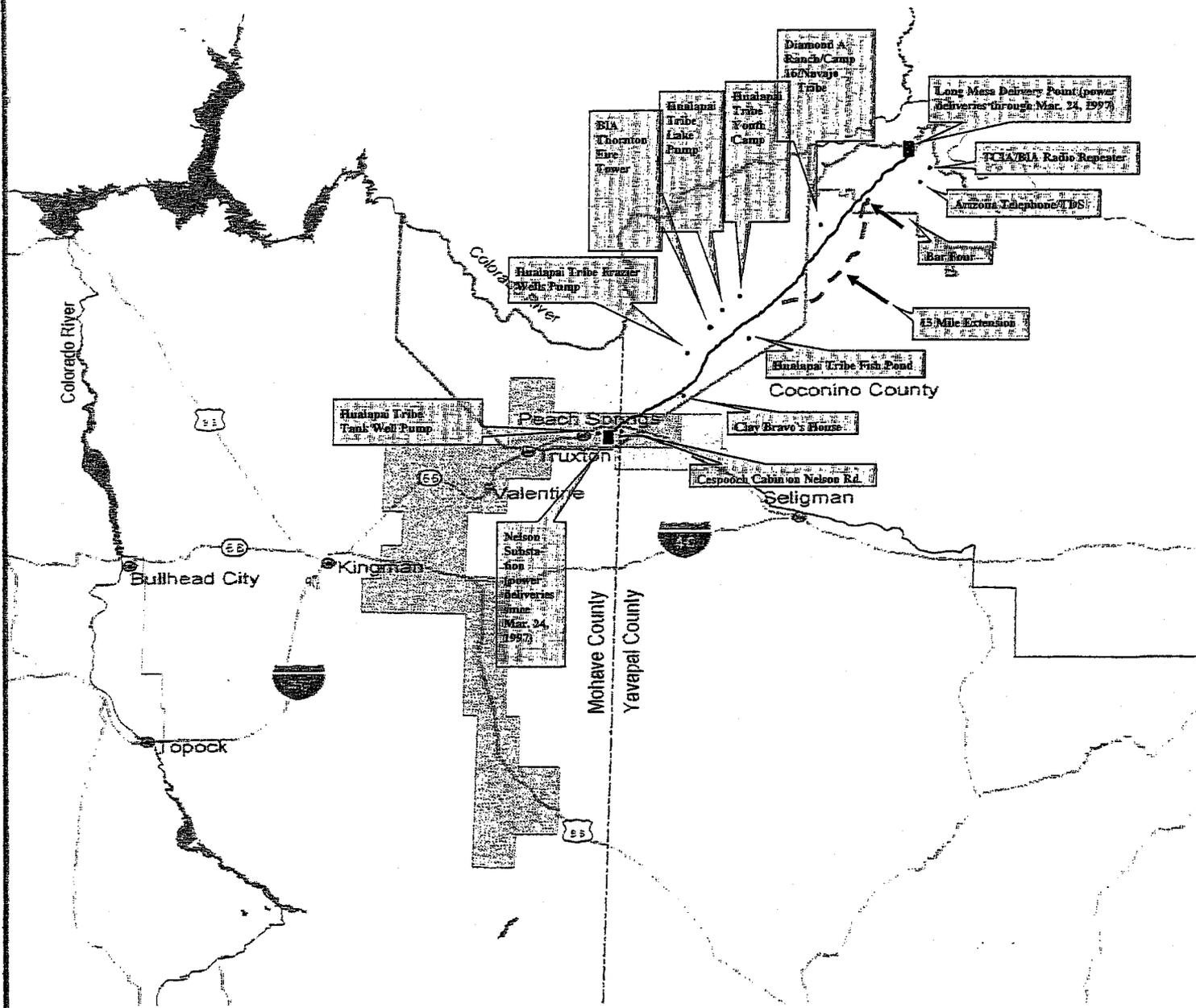
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EXHIBIT 1



EXPLANATION

-  Havasupai Indian Reservation
-  Hualapai Indian Reservation
-  County
-  1962 Service Area A
-  1962 Service Area B
-  1994 Service Area
-  1995 Service Area



EXHIBIT 2

**MOHAVE ELECTRIC COOPERATIVE, INC.
EXECUTIVE MINUTES
BOARD OF DIRECTORS MEETING
JUNE 26, 2003**

The executive session was called to order by President Lyn R. Borah.

Present at the executive session were: Lyn R. Borah, President, John Nelssen, Vice President, Chester Moreland, Secretary, Carlos Tejada, Treasurer, Bob Allen, Steven Buck, John Elkins and Phil Sauceman. Gordon Ennes was absent.

Also present were: Robert E. Broz, Chief Executive Officer, Sharon Sutton, Administrative Assistant and Michael Curtis, General Counsel.

EXECUTIVE MINUTES MAY 21, 2003

The draft notes of the May 21, 2003 executive minutes were distributed to the board for their review. A motion was made and seconded to approve the draft notes of executive minutes as presented for filing. Motion carried. John Nelssen abstained due to absenteeism.

BIA RESOLUTION

The BIA Resolution of April 17, 2003 was reviewed. A motion was made and seconded to approve the Resolution as attached for filing. Motion carried.

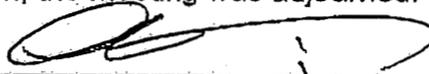
The following items were discussed by the board:

Public Affairs Manager - Discussion followed.

Nucor Corp. - Evaluating the current market conditions for non-firm power.

Evaluation forms for Robert Broz were distributed to the board with self addressed stamped return envelopes. The forms are to be mailed back to Michael Curtis by July 7th.

With no further business before executive session, the meeting was adjourned.


Lyn R. Borah, President


Chester Moreland, Secretary

RESOLUTION

Whereas, the United States Bureau of Indian Affairs ("BIA") in 1992 allowed to expire the 1982 ten (10) year contract for sale of power at wholesale to BIA over the seventy mile line (Hualapai BIA line) built for the purpose of assisting the BIA in its delivery of power at retail to the Havasupai or Supai tribe in the bottom of the Grand Canyon at Supai Village; and

Whereas, part of the contract was a provision for an option to BIA to extend the contract for an additional ten (10) years until 2002, and a final ten (10) year term until 2012 for a total of thirty (30) years; and

Whereas, the contract had provisions for the price of power sold at wholesale and also for payment of depreciation, overhead, maintenance and repairs; and

Whereas, the BIA has subsequently refused to contract for payment of overhead maintenance, depreciation and repairs; and

Whereas, the service to the BIA instituted at wholesale in 1982 was to resale by the BIA in an area outside the Mohave Electric Cooperative ("Cooperative") Arizona Corporation Commission's Certificate of Convenience and Necessity, but inside the Certificate of Citizens Electric according to the official maps of the Arizona Corporation Commission; and

Whereas, after several years of frustrated negotiations with the BIA in an attempt to secure a new contract the Cooperative could no longer justify for its members the delivery of wholesale power to BIA at any point of delivery but the Nelson Substation and could no longer justify any rate to the BIA but its Large Commercial Customer Rate; and

Whereas, the approximately 70 mile line is of no use nor value to the 30,000 members of the Cooperative, but is in fact a burden and a liability; and

Whereas, the line traverses at least two Indian reservations and no reservation has granted a right to the Cooperative to sell power at retail; and

Whereas, the Cooperative cannot operate at retail or outside its rights of way on an Indian reservation without consent of the tribes and the Secretary of Interior; and

Whereas, the Hualapai BIA line has value to the tribes upon whose lands it traverses and to the BIA which has a fiduciary duty to serve electricity, but as the result of the BIA actions the property under A.R.S. Section 40-285 is not necessary or useful to the Cooperative in the performance of its duties to the public and has no value to the Cooperative or its members,

NOW, THEREFORE, BE IT RESOLVED, having found that the property under A.R.S. Section 40-285 is not necessary or useful to the Cooperative in the performance of its duties to the public and has no value to the Cooperative or its members, authorizing the Board of Directors of the Cooperative through its officers and management to take such action as may be required to quit claim, sell or relinquish or abandon any and all property rights of the Cooperative in and to the approximately 70 mile electric line facilities or rights-of-way known as the Hualapai BIA line from Nelson Substation to its termination point; and

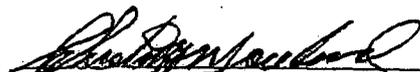
FURTHER RESOLVED, authorizing and directing the officers and management to execute any and all documents necessary to quit claim, sell or relinquish or abandon the rights of Mohave upon, in or to said line and facilities and rights-of-way and further to negotiate any possible overhead, maintenance and repair contract or agreement which Management deems in the best interests of the members; and

FURTHER RESOLVED, that as to any existing retail customer served on said line that the same be transferred to the BIA which is authorized to operate on Indian nation lands and that notice of said transfer be given to the less than twelve customers; and

FURTHER RESOLVED, that Management communicate to the Arizona Corporation Commission the fact first that this wholesale service is for the BIA re-delivery outside the service area of the Cooperative, and that second, the 30,000 members of the Cooperative are threatened with imposition of an unfair economic burden and shift of expense by the Federal Government of a trust responsibility owed by the BIA to the Indians and that the BIA intends to impose this Federal expense burden on the backs of the 30,000 members of the Cooperative.

CERTIFICATION

I, Chester Moreland, certify that I am the Secretary of the Mohave Electric Cooperative, Inc. Board of Directors. I further certify that the above is a true excerpt from the minutes of a board meeting of this Board of Directors on the 17th day of April, 2003, at which a quorum was present and that the above portion of the minutes has not been modified or rescinded.


Chester Moreland, Secretary