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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE COMPLAINT
OF THE BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA,
AGAINST MOHAVE ELECTRIC
COOPERATIVE, INC. AS TO SERVICES
TO THE HAVASUPAI AND
HUALAPAI INDIAN RESERVATIONS

DOCKET NO. E-01750A-05-0579

BUREAU OF INDIAN AFFAIRS
EXCEPTION

In the Recommended Opinion and Order ("ROO"), Administrative Law Judge Teena Jibillian concluded that that complainant Bureau of Indian Affairs ("BIA") is not a retail customer of Mohave Electric Cooperative ("Mohave") at Long Mesa.¹ The BIA files an exception to this part of the ROO. The BIA does not believe that the record supports this conclusion. In fact, the administrative record and the law support the conclusion that BIA is a retail customer at Long Mesa.

I. The BIA Meets the Definition of "Retail Electric Customer" under State Law

A "retail electric customer" is one "who purchases electricity for that person's own use, including use in that person's trade or business, and not for resale, redistribution or retransmission." ARS 40-201(21). The parties stipulated that the BIA, an executive agency of the United States, is statutorily authorized to provide support for the general welfare and civilization of Native Americans, including the Havasupai and Hualapai Tribes.² Thus, the BIA's "trade or business" includes supporting the Havasupai and Hualapai Tribes. To that end, from about 1968 to 1981, the BIA evaluated alternatives for securing electricity to the Hualapai and Havasupai reservations.³ Ultimately, the BIA

¹ ROO, Conclusions of Law, ¶ 14, p. 37.

² Stipulated Facts, ¶ 2; see also ROO, Findings of Fact, ¶ 68(2), p. 14.

³ Stipulated Facts, ¶ 9; see also ROO, Findings of Fact, ¶ 68(9), p. 15.

1 and Mohave entered into a contract in which Mohave agreed: (a) to construct a 70-mile
2 electric line from its existing Nelson substation to Long Mesa; and (b) to supply
3 electrical energy up to 1500 kWh for operation of BIA's facilities on the Hualapai and
4 Havasupai reservations .⁴

5 Mohave began delivering electricity to the BIA at Long Mesa in early 1982.⁵ The
6 meter is located at Long Mesa because the Havasupai Village is too difficult to get to, as
7 it takes four hours by foot or horse to reach the Village and a helicopter trip would be
8 too expensive just to read the meters every month.⁶ From Long Mesa, which is located
9 at the edge of the Grand Canyon, the electricity is sent down the Canyon to the
10 government facilities and people living in Havasupai Village.⁷ The BIA uses electricity in
11 Havasupai Village for a BIA school, living quarters for BIA teachers and law
12 enforcement personnel, a BIA detention facility, and a BIA maintenance building.⁸
13 Some of the electricity also is used by Havasupai Members. There are about 200
14 homes in the Village that use electricity.⁹ The BIA charges the Supai members for their
15 electricity, but the BIA does not turn a profit or even break even.¹⁰ The BIA's activities
16 allow the Havasupai Village, and Havasupai tribal members, to live in as safe and
17 friendly a community as reasonably possible.¹¹ The BIA's arrangement with Supai
18 members is similar to that of a landlord of a mobile home park or apartment complex
19 with a master meter and individual meters for the tenants. The landlord reads and bills
20 the tenants every month for their electric usage, but the landlord is still a retail customer
21 of the electric utility.¹²

24 ⁴ Stipulated Facts, ¶ 13; see also ROO, Findings of Fact, ¶ 68(13), p. 15.

25 ⁵ Stipulated Facts, ¶ 16; see also ROO, Findings of Fact, ¶ 68(16), p. 15.

26 ⁶ James Walker Pre-Filed Testimony, p. 3.

27 ⁷ James Walker Pre-Filed Testimony, p. 2, lns. 17-20.

28 ⁸ Stipulated Facts, ¶ 19; see also ROO, Findings of Fact, ¶68(19), p. 15.

⁹ James Walker Hearing Testimony, p. 153, lns. 4-5.

¹⁰ James Williams Pre-Filed Testimony, p. 5, lns. 4-12.

¹¹ Leonard Gold Pre-Filed Direct Testimony, p. 20, lns. 1-9; James Williams
Pre-Filed Testimony, p. 3, lns. 10-15, p. 4, lns. 11-16, p. 5, lns. 4-8

¹² Leonard Gold Pre-Filed Direct Testimony, pp. 15-16.

1 The BIA uses the electricity delivered at Long Mesa for its "own use" and in its
2 "trade or business." The BIA, therefore, is a retail electric customer at Long Mesa.

3 **II. Mohave Admitted that the BIA is a Retail Electric Customer and Always**
4 **Treated the BIA as a Retail Customer**

5 At the hearing, Mohave admitted that the BIA was one of its retail customers. A
6 Mohave witness testified:

7 Q: Is it your position that the BIA is a wholesale customer?

8 A: No, they are a retail customer.

9 Q: And they always have been; correct?

10 A: Yes.¹³

11 In addition to Mohave admitting that the BIA is a retail electric customer, for years
12 Mohave treated the BIA as a retail customer. In its annual reports filed with the REA,
13 Mohave consistently indicated that the BIA was a retail customer.¹⁴ Moreover, Mohave
14 always charged the BIA a retail commercial electric rate.¹⁵

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25 ¹³ Testimony of Tom Longtin, Hearing Transcript, p. 297, lns. 21-25.

26 ¹⁴ Leonard Gold Pre-Filed Direct Testimony, p. 14-15 & exh. 9; Testimony of
Leonard Gold, Hearing Transcript, p. 133, lns. 15-22.

27 ¹⁵ Testimony of Tom Longtin, Hearing Transcript, p. 297, lns. 17-20; see
Testimony of Leonard Gold, Hearing Transcript, p. 139, ln. 23 - p. 140, ln.
28 6.

1 The administrative record and law show that the BIA at Long Mesa is Mohave's retail
2 customer. Therefore, the recommended conclusion of law ¶ 14 should read: "The BIA
3 is a retail customer of Mohave at Long Mesa."

4 Respectfully submitted this 26 day of November, 2010.

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8 

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