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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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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. 72043

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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BY THE COMMISSION:

INTRODUCTION

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

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

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

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

1. Mohave shall not transfer or abandon the Line or the easement for the right of way;
2. The Line is part of Mohave's service territory;
3. The BIA is a retail customer of Mohave for receipt of electricity and electrical distribution service over the Line;
4. Mohave's point of delivery of electricity and electrical distribution service to the BIA is the line side of the Long Mesa Transformer;
5. Mohave shall forthwith place a meter on the Line on the line side of the Long Mesa Transformer for the determination of the electricity used by the BIA;
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]ranting the BIA such additional and further relief as is appropriate under the circumstances.

(BIA Complaint ¶ 40.).

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

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

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

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

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

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

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

[2] BIA Reply Closing Argument at 46-47.

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

* * * * * * * * * *

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

FINDINGS OF FACT

Procedural History

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

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

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

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

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

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

. . .

[3] Mohave Post-Hearing Response Brief at 1.
[4] *Id.* at 30.

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

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

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

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

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

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

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

> Answers to complaints are required and must be filed within 20 days after the date on which the 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . .

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

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

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

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

1. Mohave is an Arizona non-profit public service corporation regulated by the Arizona Corporation Commission.

2. BIA is an executive agency of the United States of America. Under 25 U.S.C. § 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.

3. BIA began providing electrical power to governmental facilities at the 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 supplied electric energy to Havasupai Village by means of diesel generators and electric lines owned and operated by the BIA.

4. BIA owns and operates two electrical utilities providing retail electrical service on Indian reservations in Arizona (the San Carlos Irrigation Project Power Division and the Colorado River Irrigation Project Power Division), as well as the Flathead Irrigation Project Power Division in Montana.

5. There are no roads connecting Havasupai Village with other parts of Arizona.

6. By 1975, the Havasupai Tribe had become increasingly dependent on 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.

7. In March, 1975, the Hualapai Tribe passed resolution no. 13-75.

8. By 1976, at least two electrical generators existed on the Hualapai reservation in the Frazier Wells area, and a third generator existed at the end of Indian Route 18.

9. From approximately 1968 to 1981, BIA studied and evaluated alternatives for securing electricity for the Havasupai and Hualapai reservations. The alternatives studied by BIA included (i) expanding the existing generators and (ii) installing a 70-mile electric line. BIA eventually chose the second option.

10. In June 1976, BIA issued a Request for Quotation ("RFQ") to "provide electric energy to the Hualapai and Havasupai reservation, Arizona in accordance with the attached specifications, terms and conditions."

11. Mohave, Arizona Public Service Company and Citizens Utilities Company responded to the RFQ.

12. Prior to 1981, no commercial or cooperative electrical power provider constructed or maintained electrical distribution or transmission facilities through which electricity was provided to Long Mesa.

13. On approximately October 1, 1981, Mohave entered into Negotiated Electrical Utility Contract GS-OOS-67021 (the "Contract") with the United States of America acting through the Administrator of the General Services Administration and on behalf of BIA to construct a power line (the "Line") approximately 70 miles long from Mohave's existing facilities at the Nelson Substation to Long Mesa and to supply electrical energy up to 1500 KW for the operation of its facilities on the Hualapai and Havasupai reservations.

14. Mohave applied for, and received, a $1,600,000 loan from the Rural Electrification Administration ("REA") for construction of the Line.

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

16. Mohave completed construction of the Line in November 1981 and by the 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

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

21. On January 7, 1982, before the Line became fully operational, Mohave filed a rate application, In Decision No. 53174 (August 11, 1982) the ACC stated "MEC has included $32,000 in interest associated with a transmission line dedicated to serving the Hualapai Indian reservation, a line which presently produces no income. Staff has likewise included this interest in its calculations of TIER. The Commission believes that both parties erred in effectively asking MEC's ratepayers to pay for plant which is not used and useful, will not be used and useful, and was never intended to be used and useful in the provision of electric service to such ratepayers... . Therefore, the Commission will eliminate the $32,000 interest expense from the calculation of TIER and rate of return." Decision No. 53174 at 8-9 (emphasis in original).

22. In 1990, Mohave filed another rate application.[6] As part of its application, Mohave submitted to the ACC a cost of service study for the twelve months ending July 31, 1989. In addition to the cost of service study, Mohave submitted to the ACC its REA Form 7 for the year ending December 31, 1988.

23. Mohave billed BIA monthly. Included on Mohave's monthly invoices was a Facility Charge, which ranged from approximately $11,000 to approximately $15,000 per month. Mohave billed BIA for a Facility Charge every month beginning in April, 1982 through and including February, 1997.

24. The total project cost for the Line was $1,145,651,55. BIA paid Mohave the balance of the total project cost related to the Line, $923,243.92, by approximately March, 1991.

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. 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. 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. 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).

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

30. Beginning in July 1998, and through September 2003, Mohave credited BIA for the electricity used by certain other accounts along the Line based on Mohave's meter reading. After Mohave stopped giving BIA credit for the electricity used by other accounts, BIA paid Mohave under protest.

31. On or about July 31, 2001, Mohave's counsel wrote to the Western Area Power Administration ("WAPA") and offered to transfer the Line to WAPA. To date, WAPA has not accepted Mohave's offer.

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

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

34. As of July 2003, Mohave provided electricity to twelve accounts along the Line, including six Hualapai Tribal Council accounts, two other Department of Interior accounts, an Arizona Telephone transmitting tower, a ranch, and a cabin. Mohave billed these twelve accounts. Two of those accounts, the Hualapai Pump at Tank Well and a cabin on Nelson Road, are within 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."

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

A. Account # 63626-000
Arizona Telephone Company
500' South Havasupai Tribal Electric System
Near 8th pole South of H-Frame
Long Mesa Tower

B. Account # 44567-003
Diamond A Ranch
Camp 16 Supai Line

C. Account # 29740-001
Department of Interior
Fire Tower – Supai Road
Thornton Tower

D. Account # 896-083 [letter indicated #896-084]
Hualapai Tribal Council
Hunters Building – Youth Camp

E. Account # 896-084
Hualapai Tribal Council
Lake Circulation Pump
Youth Camp Pond

F. Account # 896-060
Hualapai Tribal Council
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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Determinations

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

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

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

90. On January 18, 1980, Mohave signed an REA "Cost Estimates and Loan Budget for Electric Borrowers" REA Form 740c.[10]

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

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

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

94. The Boquillas Ranch property lies between the Hualapai and Havasupai reservations. The easement Mohave received across the Boquillas Ranch property for the Line expired in September 2005.[13]

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

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[7] Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 2.
[8] *Id.*
[9] Stipulated Facts at ¶ 11.
[10] Direct Testimony of BIA witness Leonard Gold (Exh. C-1) at 5 and Exhibit 2.
[11] Stipulated Facts at ¶ 14.
[12] *Id.* at ¶ 13.
[13] Exhibit attached to Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 16.
[14] Mohave Br. at 11.

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

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

98. From Long Mesa, an overhead electric line drops down in the Grand Canyon, and is extended out to provide electricity to Havasupai Village.[17] 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.[18]

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

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

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[15] Stipulated Facts at ¶ 16.
[16] Direct Testimony of BIA witness James Williams (Exh. C-4) at 3-4.
[17] *Id.* at 3.
[18] Stipulated Facts at 19.
[19] Direct Testimony of BIA witness James C. Walker (Exh. C-3) at 3.
[20] *Id.* at 3-4.
[21] *Id.* at 4.
[22] *Id.*
[23] *Id.* at 4-5.
[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.

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

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

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

104. On January 18, 1982, the BIA granted Mohave a 50-foot wide easement across the Hualapai reservation for the Line for a term of 30 years, expiring in January, 2012.[33]

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[26] Decision No. 53174 at 4.
[27] *Id.* at 8.
[28] *Id.* at 9.
[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.

105. On December 14, 1984, the BIA granted Mohave a 50-foot wide easement across the Hualapai reservation for the Line for a term of 30 years, expiring in December, 2014.[34]

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

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

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

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

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[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.

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

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

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

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

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[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.

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

114. 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."[52]

115. 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.[53]

116. 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.[54]

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

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

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

120. Beginning in July, 1998 and through October, 2003, Mohave's bills to the BIA included a credit for "usage billed to other meters."[58] Mohave credited BIA for the electricity used by certain other accounts along the Line based on Mohave's meter reading.[59] According to the BIA's

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[51] Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 10; Stipulated Facts at ¶ 25.
[52] Stipulated Facts at ¶ 26.
[53] Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 11; Stipulated Facts at ¶ 27.
[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.

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

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

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

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

124. On June 26, 2003, Mohave's Board of Directors approved an April 17, 2003 resolution to abandon the Line and quitclaim it to the BIA and the Tribes.[65] The April 17, 2003 resolution includes the following: "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."[66] A copy of the Executive Minutes from the June 26, 2003 Board of Directors Meeting, with the April 17, 2003 resolution attached is attached hereto and incorporated herein as Exhibit 2.

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[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.

125. On or about July 22, 2003, Mohave executed a Notice of Quit Claim, Conveyance and Assignment of Interest and Abandonment of Property ("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.[67]

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

127. 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 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

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[67] Stipulated Facts at ¶ 35.

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

> Dear Sir:
> Currently, all your electricity flows over lines transferred, together with meters, to the Bureau of Indian Affairs ("BIA"), the Hualapai and Havasupai Tribes. Your retail electric service has been transferred to the BIA as the only entity authorized to deliver retail electric service to you on tribal lands. To assist in the transition, Mohave Electric will credit your account and the BIA with sixty (60) days of electric service based on your usage. The BIA will be responsible to read the meters and bill you on your future 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

Nelson substation" to BIA, the Hualapai Nation and the Havasupai Nation "under its ACC approved Large Commercial Rate which is its lowest tariff."[69]

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

129. In a letter dated September 2, 2003, the BIA responded to Mr. Curtis' letter dated August 7, 2003 and the "Notice of Quit Claim, Conveyance and Assignment of Interest" dated July 22, 2003 and enclosed with the August 7, 2003 letter.[71] The letter stated that 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."[72]

130. In a letter dated September 12, 2003, the BIA gave further response to Mr. Curtis' letter dated August 7, 2003 and the "Notice of Quit Claim, Conveyance and Assignment of Interest" dated July 22, 2003 and enclosed with the August 7, 2003 letter.[73] The letter stated that BIA did not accept quitclaim of the Line, that the Quit Claim 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.[74]

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

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

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[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.

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

134. Mohave asserts on brief that because neither the BIA nor Mohave has read the meters for the twelve retail accounts served by the Line since 2003, it is impossible to reconstruct the amount of electricity they used.[78] However, by totaling the billing records in evidence in this matter, Mohave estimates that it issued the BIA credits totaling $27,178, for an average monthly credit of $348.[79]

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

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

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

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[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.*

138. The HUD grant application was filed in September 1998.[86] In January, 1999, HUD granted the Havasupai $550,000 to build the Bar Four spur.[87] The Havasupai paid for the construction using the HUD grant funds and Havasupai general funds.[88]

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

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

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

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[86] *Id.*
[87] *Id.* at 4.
[88] *Id.* at 6.
[89] *Id.* at Exhibit 1.
[90] *Id.*
[91] *Id.* at Exhibit 2.
[92] *Id.*
[93] *Id.*
[94] *Id.* at 4.
[95] *Id.* at 4-5.

Six bids were submitted, and Southwest Energy Solutions won the bid in June, 2000.[96] The Havasupai Tribe entered into a contract with Southwest Energy Solutions.[97] Southwest Energy Solutions subcontracted with Electrical Consultants, Inc. of Tucson to do the design.[98]

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

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

144. Construction commenced on the Bar Four spur in approximately October, 2003.[105] Construction of the Bar Four spur was completed in May, 2004.[106] At the time of the hearing, the Bar Four spur was energized and serving a radio repeater tower owned and operated by the Havasupai Tribe.[107]

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

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[96] *Id.* at 5.
[97] *Id.*
[98] *Id.* at 6.
[99] *Id.* at 5.
[100] *Id.*
[101] *Id.*
[102] *Id.* at 5 and Exhibit 3.
[103] *Id.* at Exhibit 3.
[104] *Id.* at 5.
[105] Stipulated Facts at ¶ 40.
[106] Direct Testimony of BIA witness Philip Entz (Exh. C-5) at 5-6.
[107] Tr. at 29, 172, 190-191, 207-208
[108] Stipulated Facts at ¶ 41.

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

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

148. 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.[111]

Conclusions

149. After completing construction of the Line in 1982, Mohave commenced provision of electric service supplied 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.[112] 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.[113] The BIA distributes the electricity supplied through the Line by Mohave to the residents of Havasupai Village, reads the residents' meters, bills them monthly based on consumption, maintains the line from Long Mesa into the Havasupai Village, and maintains the distribution system within the Havasupai Village.[114]

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

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

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

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[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.

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

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

155. BIA did not accept the Quit Claim.

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

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

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

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

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

161. Since November 2003, BIA has paid Mohave under protest for the electricity used by Mohave's retail electric customers served by the Line. Mohave should reimburse BIA in an amount equal to $348 per month for each month including November 2003 through the present month, or $29,580.[116]

. . .

[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.

162. Between September 2004, and June 2008, BIA paid Mohave for repairs and maintenance to the Line.[117] BIA argues that Mohave should reimburse it in the amount of $125,851.33, plus interest, for the repair and maintenance costs on the Line that the BIA has had to pay since Mohave's attempted Quit Claim of the Line.

163. Mohave billed BIA for a "facility charge" every month beginning in April, 1982, through and including February, 1997.[118] The "facility charge," which included operations and maintenance costs as agreed to by the parties under the Contract, ranged from approximately $11,000 to approximately $15,000 per month.[119]

164. Mohave stopped billing the BIA for, and BIA has not paid, any "facility charge" since 1997.

165. The amount that BIA has reimbursed Mohave for repair and maintenance costs on the Line since Mohave's attempted Quit Claim of the Line is effectively offset by the fact that since 1997, BIA has not been billed for, or paid, any operations and maintenance costs that were included in the "facility charge." Mohave should therefore not be required to reimburse the BIA for this amount.

CONCLUSIONS OF LAW

1. Mohave is a public service corporation within the meaning of Article XV of the Arizona Constitution, A.R.S. §§ 40-201, 40-202, 40-203, 40-243, 40-246, 40-247, 40-248, 40-281, 40-282, 40-285, 40-321, 40-331, and 40-361.

2. Mohave is an Electric Utility within the meaning of A.A.C. R14-2-201 through 213.

3. The Commission has jurisdiction over Mohave and the subject matter of the Complaint.

4. The subject matter of the Complaint and the determinations made thereon in this Decision do not result in state regulation of an Indian tribe, interfere with reservation self-government, or implicate any right granted or reserved by federal law.

5. The BIA specifically waived any jurisdiction claims on behalf of the Hualapai and

[117] Stipulated Facts at ¶ 42.
[118] *Id.* at ¶ 23.
[119] *Id.*

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

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

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

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

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

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

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

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

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

14. The BIA is a retail customer of Mohave at Long Mesa.

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

ORDER

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

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

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

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

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

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

CHAIRMAN COMMISSIONER COMMISSIONER

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 10th day of December, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

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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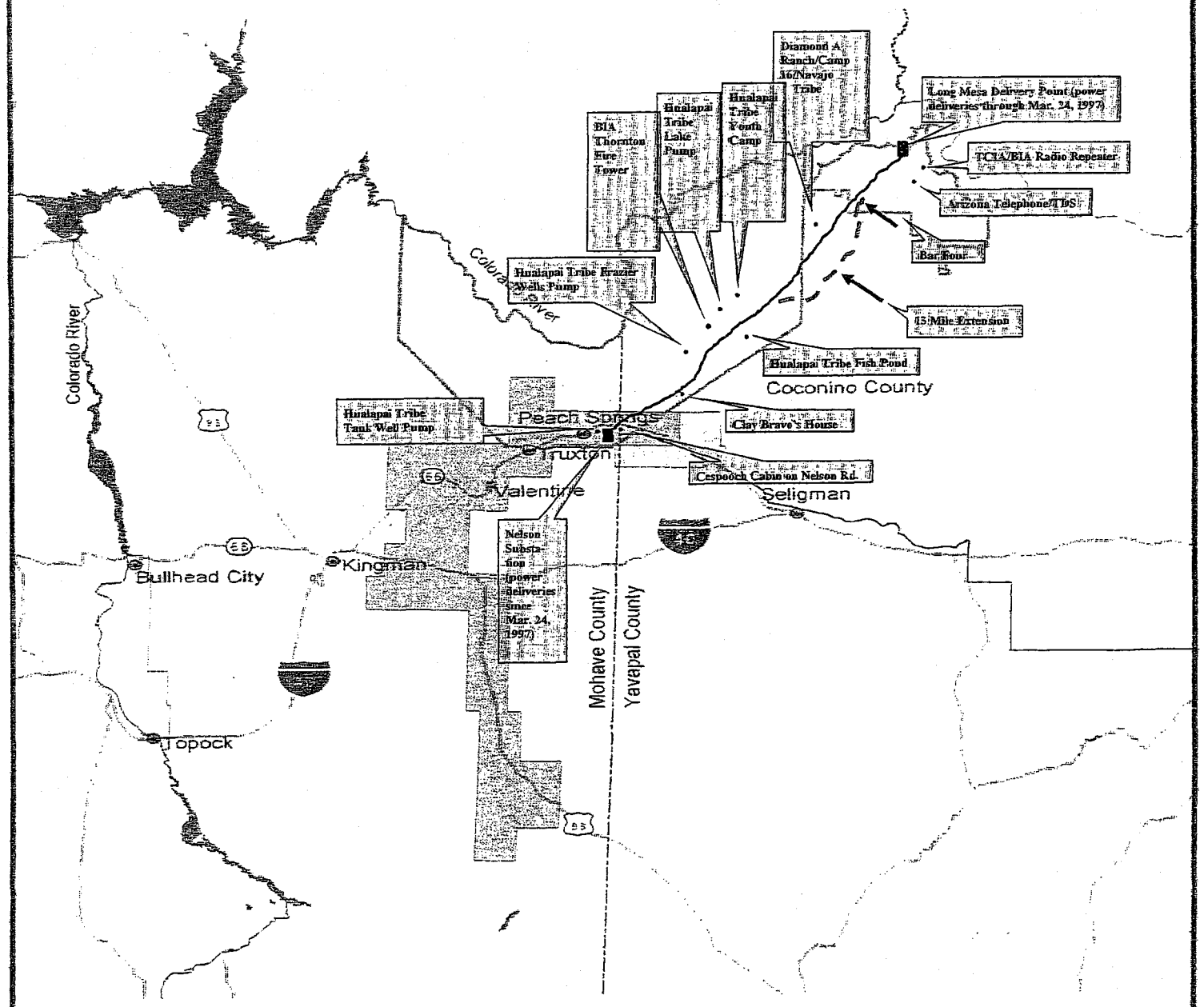
EXHIBIT 1



EXPLANATION

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

N

DECISION NO. 72043

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 Tejeda, 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