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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS
GARY PIERCE, CHAIRMAN
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF MOHAVE ELECTRIC COOPERATIVE, INCORPORATED, AN ELECTRIC COOPERATIVE NONPROFIT MEMBERSHIP CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS PROPERTY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RETURN THEREON AND TO APPROVE RATES DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. E-01750A-11-0136

MOHAVE ELECTRIC COOPERATIVE'S OPPOSITION TO STAFF'S REQUEST FOR EXTENSION OF TIME TO FILE TESTIMONY AND FOR WAIVER OF TIME CLOCK

Mohave Electric Cooperative, Incorporated ("Mohave" or the "Cooperative") by and through undersigned counsel, hereby opposes Staff's Request for Extension of Time To File Testimony and for Waiver of Time Clock requesting the current procedural schedule and hearing be delayed 45-days and the time clock waived. Under Staff's proposal, the second portion of its direct testimony will not be filed until February 2, 2012 (instead of December 19, 2011) and the hearing will not be held until May 3, 2012 (instead of March 19, 2012). While Mohave is committed to cooperatively working with Staff, this request is not supported by the facts and will unduly delay the implementation of a rate adjustment.

First, if Staff's consultant needs additional information to complete its analysis, the fault rests with Staff, not Mohave. Further, Staff fails to explain what information is still needed or what portion of Staff's direct testimony is dependent on its consultant's analysis of Mohave's purchase power expenses. Since purchase power expense is zeroed out and

1 adjusted prospectively through a purchase power adjustor mechanism, Staff should be able to
2 complete all or at least the majority of its testimony on rate base, expenses, income and
3 margins without an analysis of the purchase power expense.

4 In an effort to accommodate Staff, Mohave respectfully offers an alternative
5 procedural schedule that meets the Commission time clock rules, provides Staff an additional
6 two (2) weeks to submit its direct testimony (exclusive of rate design and cost of service)
7 without adversely affecting the hearing date, as more fully explained below. Staff is not
8 conducting an independent cost of service study, and is generally supportive of the
9 Cooperative's rate design. Therefore, it is reasonable to shorten the time for submitting cost
10 of service and rate design testimony from fourteen (14) days to nine (9) days following the
11 submittal of its initial direct testimony.

12 **Mohave has Fully Responded to All Requests for Information Received**

13 Staff contends: "Staff has not received sufficient information regarding
14 purchase power expenses" to enable its consultant "to complete his analysis, which is
15 essential to Staff's witnesses in the preparation of their Direct Testimony." Mohave has made
16 every effort to provide timely and complete responses to all formal and informal data requests
17 presented by Staff or its consultant. Mohave has from the beginning of this case made its
18 consultants available to Staff and its consultant for informal follow-up/clarification of its
19 application and responses. At no time has Staff informed Mohave that a single response
20 Mohave has provided was incomplete or otherwise inadequate.

21 **By Rule, Direct Testimony is Due No Later than December 26, 2011**

22 On March 30, 2011, Mohave filed its Application for an adjustment in its rates
23 and charges based upon a test year ending December 31, 2009. As an electric distribution
24 cooperative, Mohave is only required to provide the limited data set forth in A.A.C. R14-2-
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1 103B.3 in its application.¹ Indisputably, Mohave's application contained all the information
2 required by the Commission's rules. However, at Staff's request, on April 27, 2011 Mohave
3 voluntarily suspended the time clock for determining sufficiency in order to supplement its
4 application with certain, largely unadjusted, data and supplemental testimony related to the
5 2010 calendar year. The requested supplementary data was filed May 27, 2011. Importantly,
6 Mohave did not alter its test year or the rates and charges requested in its initial application
7 filed two months earlier on March 30, 2011. Rather, Mr. Searcy's supplemental testimony
8 noted that the 2010 calendar year data confirmed the reasonableness of Mohave's use of a
9 12/31/09 test year.²

10 Staff still consumed the maximum 30 day period allowed under A.A.C. R14-2-
11 103B.7 prior to submitting a determination of sufficiency. *See*, Sufficiency Letter dated June
12 27, 2011. Under A.A.C. R14-103B.11.b, Staff is required to file its direct testimony no later
13 than 180 days following acceptance of the filing (i.e., December 26, 2011 in this case). While
14 Staff unilaterally proposed a bifurcated deadline for its direct testimony of November 16,
15 2011 and December 5, 2011, the Procedural Order, dated July 15, 2011, actually granted Staff
16 more time than Staff requested (to November 30 and December 19, respectively). As a result,
17 the Procedural Order grants Staff one week less than the maximum allowed by Commission
18 rule (providing no acceleration for the two additional months Staff had to review the initial
19 application).

20 **Staff, Not Mohave, Has Failed to Timely Request Information**

21 Mohave can only respond to data requests once they are received. As
22 demonstrated in the chronology below, Mohave's application had been docketed for five (5)
23 months before it received a single data request on purchase power expense. Staff, or its
24 consultant, then waited six (6) weeks before propounding follow-up questions. From the

25 ¹ The Commission, by rule, has exempted non-profit, member owned and operated electric distribution cooperatives from most of the filing requirements of other utilities.

² *See*, Supplemental Testimony of Mike Searcy at pp. 14-15.

1 inquiry made October 12, 2011 asking how to access the responses, it appears that the
2 consultant actually waited three (3) weeks after receiving Mohave's responses to even look at
3 them. Mohave must not be penalized due to the Staff's failure to actively pursue discovery
4 regarding purchase power expense. There is no justification for delaying the time for Staff to
5 submit its direct testimony.

6 **Applicable Chronology**

7 **March 30, 2011** - Mohave files application compliant with A.A.C. R14-2-
8 103B.3 for rate adjustment based upon adjusted test year ending December 31, 2009.

9 **April 27, 2011** - In response to Staff's request, Mohave voluntarily suspends
10 time clock for sufficiency determination and agrees to provide 2010 calendar year data,
11 understanding that doing so will facilitate processing of the application.

12 **May 27, 2011** - Mohave files supplementary 2010 calendar year data.

13 **June 16, 2011** - Staff provides Mohave 1st Set of DRs (unrelated to purchase
14 power expense).

15 **June 27, 2011** - Staff files sufficiency determination and proposes schedule for
16 proceeding with direct testimony due November 16 and December 5, 2011.

17 **July 1, 2011** - Staff files amended schedule for proceeding; the proposal for
18 filing direct testimony is unchanged.

19 **July 15, 2011** - Procedural Order ("PO") issues; Staff given two additional
20 weeks to file direct testimony (November 30, 2011 and December 19, 2011).

21 **August 30, 2011** - Staff issues 2nd Set of DRs (46 days following PO, 64 days
22 following Staff acceptance, 153 days following initial filing) seeking, inter alia, plant
23 information going back 20 years. Response due September 9, 2011.

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1 **September 1, 2011** - Staff provides the first data requests dealing with
2 Mohave's purchase power expenses (Staff's 3rd Set of DRs) containing 76 DRs, many with
3 multiple subparts. Response due September 12, 2011.

4 **September 5, 2011** - Labor day.

5 **September 8, 2011** - Mohave provides Staff written objection to various
6 questions in the 3rd Set of DRs and requests one (1) week extension to respond (from 9/12/11
7 to 9/19/11).

8 **September 9, 2011** - Mohave responds to Staff's 2nd Set of DRs by a
9 combination of distributing narrative responses and posting data on a FTP site maintained by
10 C.H. Guernsey. Information as to how to access the FTP site was included in the response.

11 Staff consents to continuance, indicating "though this *may* result in Staff
12 needing an extension as well."(emphasis added). Staff provided no explanation or insight as
13 to how a one week extension provided 2 ½ months before the first Staff deadline could result
14 in the need for an extension by Staff. Mohave informs Staff that such a suggestion is
15 unreasonable (the DRs issued two days following earlier DR seeking extensive data, were
16 independently complex, both DRs overlapped a three day holiday, with only a one week
17 extension requested and there was still 2 ½ months to prepare the testimony).

18 Staff provides a 4th Set of DRs, also dealing with Mohave purchase power
19 expense (i.e., before the original due date of the 3rd Set of DRs). Responses due September
20 19, 2011.

21 **September 19, 2011** - Mohave responds to both the 3rd and 4th Sets of DRs by a
22 combination of distributing narrative responses and posting data on a FTP site maintained by
23 C.H. Guernsey. Information as to how to access the FTP site was included in the response.

24 **September 21, 2011** - Staff provides 5th Set of DRs (unrelated to purchase
25 power expense); responses due October 3, 2011.

1 **October 3, 2011** - Mohave provides response to 5th Set of DRs by a
2 combination of distributing narrative responses and posting data on a FTP site maintained by
3 C.H. Guernsey. Information as to how to access the FTP site was included in the response.

4 **October 12, 2011** - Staff's outside consultant contacts Curtis, Goodwin,
5 Sullivan, Udall & Schwab by email (at 5:42 p.m.) stating: "Please inform me about how to
6 access the FTP site and the information you've uploaded to it." Thus, 23 days after Mohave
7 provided Staff responses to the outside consultant's DRs (sets 3 and 4), the outside consultant
8 finally was getting around to reviewing the data Mohave posted on the Guernsey FTP site.

9 **October 28, 2011** - Staff provides 6th Set of DRs (unrelated to purchase power
10 expense); responses due November 7, 2011.

11 **October 31, 2011** - Staff provided its 7th and last set of DRs (relating to
12 Mohave's purchase power expense); responses due November 10, 2011.

13 **November 7, 2011** - Mohave provides responses to Staff's 6th Set of DRs by a
14 combination of distributing narrative responses and posting data on a FTP site maintained by
15 C.H. Guernsey. Information as to how to access the FTP site was included in the response.

16 **November 9, 2011** - Staff sends email proposing a 45-day extension stating:
17 "As we have not yet received responses to these DRs Jerry Mendl is unable to prepare his
18 Direct testimony on Companies [sic] and rate design as scheduled."

19 In conversations between counsel, Staff confirms responses are not yet due;
20 Staff's legal counsel did not know how or what portion of Staff's direct testimony was
21 dependent on Mr. Mendl's analysis; Staff indicated the request would be further discussed
22 among Staff once the responses were provided; and Staff's legal counsel was informed that
23 Mohave opposed continuing the hearing date, but *may* be willing to support a shorter
24 extension for filing direct testimony.

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1 Mohave posted a partial response to the 7th Set of DRs on the C.H. Guernsey
2 FTP site and provided notice thereof to Staff and its consultant.

3 **November 10, 2011-** Mohave provides the formal response to the 7th Set of
4 DRs by a combination of distributing narrative responses and posting data on a FTP site
5 maintained by C.H. Guernsey. Information as to how to access the FTP site was included in
6 the response.

7 No additional data requests have been received. All requests received have
8 been answered. At no time has there been any indication that Mohave has provided
9 incomplete responses or has been otherwise uncooperative in responding to Staff's DRs. Staff
10 never got back with Mohave regarding whether an extension was needed and whether a
11 shorter extension, without altering the hearing date, would suffice.

12 There simply is no basis to suggest Mohave has caused Staff any delay
13 whatsoever. The one week extension reasonably requested by Mohave and granted by Staff
14 in early September cannot be a cause for Staff's lack of preparation of its direct testimony 2 ½
15 months later at the end of November. No good cause has been shown for Staff's requested
16 extension or to waive the time clock. To the extent Staff and its consultant are not prepared to
17 proceed, Mohave is not responsible therefore. The request for extension and waiver of the
18 time clock should be denied.

19 **Alternative Two-Week Extension**

20 As an accommodation to Staff, Mohave would be willing to agree to a two
21 week delay in filing Staff's initial direct testimony. Such an extension can be facilitated as set
22 forth below without delaying the hearing date:

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Action	Existing	Staff's Proposal	Mohave's Proposal
Staff Direct Testimony (Excluding Rate Design)	11/30/11	01/13/12	12/16/11
Staff Rate Design	12/19/11	02/02/12	12/23/11
Rebuttal	01/18/12	03/02/12	01/30/12
Surrebuttal	02/08/12	03/23/12	02/17/12
Rejoinder	02/29/12	04/13/12	03/12/12
Prehearing Conf	03/16/12	04/30/12	No Change
Hearing	03/19/12	05/03/12	No Change

No interventions have been granted and no requests to intervene were filed prior to the November 4, 2011 deadline for such filings. Therefore, reference to intervenor deadlines has been omitted.

Prior to filing this Opposition, a draft was provided to Staff and counsel for Mohave discussed the alternative schedule with Staff. Staff has declined it. Counsel for Mohave is available for a conference call on this matter today, Wednesday, or Monday afternoon. Mohave's counsel would gladly assist the Hearing Division in arranging a conference call on this matter.

RESPECTFULLY SUBMITTED this 20th day of November, 2011.

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

By: 
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PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of November, 2011, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing hand delivered this 22nd day of November, 2011 to:

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