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AZ CORP COMMISSION
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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. E-01750A-05-0579

**PARTIES' JOINT SUBMISSION
OF PROPOSED SETTLEMENT
VERSION OF RECOMMENDED
OPINION AND ORDER
AND
REQUEST FOR PROCEDURAL
CONFERENCE**

BRIAN CAVE, L.L.C.
TWO NORTH CENTRAL AVENUE, SUITE 2200
PHOENIX, ARIZONA 85004-4406
(602) 364-7000

The Bureau of Indian Affairs ("BIA") and Mohave Electric Cooperative, Inc. ("MEC"), by and through their counsel undersigned, hereby jointly submit their agreed form of a proposed Recommended Opinion and Order on Rehearing ("ROO"). This ROO contains and embodies the settlement worked out between the parties, and documents that settlement in the form of a stipulated proposed form of final order to be considered by the Administrative Law Judge and eventually the Commission. It is submitted in accordance with provisions of Procedural Orders dated July 27, 2011 and December 27, 2011, together with the parties' request for a three-day continuance of an earlier January 31, 2011 deadline in a joint filing earlier this week.

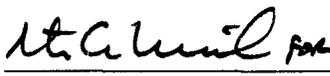
The parties were not able to reach agreement on a few specific, succinct issues, which are called out in the attached proposed ROO in underlined language. In these circumstances, the proposed non-stipulated language is clearly set forth by the party

1 proposing such language, and a footnote indicates the parties' position regarding that
2 language.

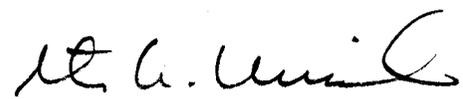
3 The parties also request that a procedural conference be set at the Commission's
4 earliest convenience to discuss the setting of a hearing regarding the settlement and the
5 small number of issues remaining for resolution.

6 RESPECTFULLY SUBMITTED this 3rd day of February, 2012.

7
8 ANN BIRMINGHAM SCHEEL
9 United States Attorney
10 District of Arizona

11 By  (with permission)
12 MARK J. WENKER
13 Assistant U.S. Attorney
14 40 N. Central Avenue, Suite 1200
15 Phoenix, Arizona 85004-4408
16 Attorneys for the Bureau of Indian Affairs

17 BRYAN CAVE LLP

18 By 
19 Steven A. Hirsch, #006360
20 Rodney W. Ott, #016686
21 Two N. Central Avenue, Suite 2200
22 Phoenix, AZ 85004-4406
23 Attorneys for Mohave Electric
24 Cooperative, Inc.

25 **ORIGINAL and 13 COPIES** of the
26 foregoing and attached proposed
27 form of ROO were hand-delivered for
28 filing this 3rd day of February, 2012, to:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

1
2 **COPY** of the foregoing and ROO
3 hand-delivered this 3rd day of
4 February, 2012, to:

4 Hearing Division
5 Arizona Corporation Commission
6 1200 W. Washington
7 Phoenix, AZ 85007-2927

7 Janice Alward
8 Legal Division
9 Arizona Corporation Commission
10 1200 W. Washington Street
11 Phoenix, AZ 85007

11 Steven M. Olea
12 Utilities Division
13 Arizona Corporation Commission
14 1200 W. Washington Street
15 Phoenix, AZ 85007

15 Mark J. Wenker
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18 Phoenix, AZ 85004-4408
19 Attorneys for the Bureau of Indian Affairs

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1 **COMMISSIONERS**

2 GARY PIERCE, CHAIRMAN
3 PAUL NEWMAN
4 SANDRA D. KENNEDY
5 BOB STUMP
6 BRENDA BURNS

 **DRAFT**

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 IN THE MATTER OF THE COMPLAINT OF
9 BUREAU OF INDIAN AFFAIRS, UNITED
10 STATES OF AMERICA, AGAINST
11 MOHAVE ELECTRIC COOPERATIVE,
12 INCORPORATED. AS TO SERVICES TO
13 THE HAVASUPAI AND HUALAPAI
14 INDIAN RESERVATIONS.

DOCKET NO. E-01750A-05-0579

DECISION NO. _____
(AMENDING DECISION NO. 72043)

OPINION AND ORDER
ON REHEARING

15 DATE OF PROCEDURAL
16 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; January 25,
March 31, and July 25, 2011

17 DATE OF HEARING:

November 18, 19, and 20, 2008

18 PLACE OF HEARING:

Phoenix, Arizona

19 ADMINISTRATIVE LAW JUDGE:

Teena Jibilian

20 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, Incorporated;

Mr. Mark J. Wenker U.S. Attorney's Office 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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1 **BY THE COMMISSION:**

2 **INTRODUCTION**

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

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

13
14
15 ¹ BIA's Complaint requested that the Commission enter an Order declaring:

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

(BIA Complaint ¶ 40.).

1 Mohave contends that the Contract ended on or about April, 1992, that it was
 2 thereafter not extended, that the Contract has no relevance to the current obligations of
 3 Mohave, if any, and that BIA has accepted Mohave's Quit Claim. BIA contends that for the
 4 relief it is seeking from the Commission, the pertinent facts are that Mohave and BIA
 5 entered into the Contract and that Mohave built the Line pursuant to the Contract. BIA
 6 contends that it is immaterial to the relief sought whether the Contract is currently in effect.
 7 BIA disagrees with Mohave's contention that the Contract terminated and therefore the Quit
 8 Claim and abandonment of the Line was legally permitted.

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

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

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

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

- 17 1. Find that BIA and the other customers along the line are Mohave's retail
 18 customers;
- 19 2. Find that Mohave's service territory includes the area served by the Line;
- 20 3. Void Mohave's transfer of the Line;
- 21 4. Declare that Mohave owns the Line;
- 22 5. Order Mohave to operate and maintain the Line;
- 23 6. Order Mohave to relocate BIA's meter to its original location at the end of the
 24 Line;
- 25 7. Order Mohave to reimburse BIA \$125,851.33, plus interest, for the repair and
 26 maintenance costs on the Line that BIA has had to pay since Mohave
 27 wrongfully abandoned the Line;
- 28 8. Order Mohave to reimburse BIA for the electricity that has been consumed by
 Mohave's customers along the Line but was paid by 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 BIA, deny the relief requested by 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 the costs associated with the abandoned Line, including operation and maintenance costs,³ and dismiss the Complaint.⁴

On December 10, 2010, the Commission issued Decision No. 72043 in this Docket. On January 18, 2011, the Commission voted to grant Mohave's December 30, 2010 Application for Rehearing filed pursuant to A.R.S. § 40-253 and ordered the Hearing Division to conduct rehearing proceedings and prepare a Recommended Order on Rehearing for the Commission's consideration. The proceedings described in Findings of Fact 97 through 110 below were conducted by the Hearing Division, leading to the parties jointly filing on _____, 2012 a Proposed Recommended Opinion and Order on Rehearing pursuant to A.A.C. R14-3-110(B) and the July 27, 2011 Procedural Order. The Hearing Division docketed a Recommended Opinion and Order on Rehearing on _____, 2012 for the Commission's consideration and action.

* * * * *

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, 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.

² BIA Reply Closing Argument at 46-47.

³ Mohave Post-Hearing Response Brief at 1.

⁴ *Id.* at 30.

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

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

6 5. On September 13, 2005, Mohave filed a Motion to Extend Answer Deadline
7 and Motion to Expedite Ruling. Therein, Mohave stated that “[b]ecause of Labor Day
8 vacations and the difficulty Mohave’s legal counsel has had in communicating with
9 members of Mohave’s management and staff for preparation of an answer” it was
10 requesting an extension of the September 19, 2005, deadline for filing an answer until ten
11 days after a ruling on a motion to dismiss, which Mohave expected to file by September 19,
12 2005. Mohave requested “clarification on whether any responsive pleading will suffice as a
13 filing on September 19, 2005.”

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

17 7. On September 14, 2005, the procedural conference was convened as
18 scheduled. Counsel for Complainant and Respondent appeared. Counsel for Respondent
19 stated that Respondent had “found it somewhat difficult to marshal the facts that will deal
20 with the Commission’s jurisdiction in this matter” and requested that it be allowed to file a
21 motion to dismiss pursuant to Rule 12(b)(6) of the Arizona Rules of Civil Procedure
22 (“ARCP”) prior to filing an Answer to the Complaint as required by the Commission’s
23 rules, and that Mohave be required to file an Answer only if a ruling on the motion to
24 dismiss was made in favor of BIA. Counsel for BIA correctly stated that the Commission’s
25 rule requires a consolidated answer,⁵ but that BIA was willing to accommodate Mohave’s

26 _____
27 ⁵ The Commission’s rule governing the filing of answers to complaints is embodied in
28 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

1 need for more time to prepare its Answer. At the procedural conference, the Administrative
 2 Law Judge ("ALJ") ruled that no exception to A.A.C. R12-106(H) would be granted,
 3 because facts necessary for an Answer would likely be necessary to support a Commission
 4 ruling on any motion filed under ARCP Rule 12(b)(6). The deadline for Mohave to file its
 5 Answer and any accompanying pleadings was extended to October 5, 2005.

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

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

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

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

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

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

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

26 Commission. All answers shall be full and complete and shall admit or deny
 27 specifically and in detail each allegation of the complaint to which such answer is
 28 directed. The answer shall include a motion to dismiss if a party desires to challenge
 the sufficiency of the complaint.

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

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

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

19 18. On December 13, 2005, the Pre-Hearing Conference for taking oral argument
20 on the Motion, Opposition and Reply convened as scheduled. Appearances were entered by
21 counsel for Complainant, Respondent and Staff. During the Pre-Hearing Conference, oral
22 argument was taken from the parties on the issues raised in the Motion to Dismiss,
23 Opposition to the Motion to Dismiss, and Reply to the Opposition to the Motion to Dismiss,
24 with the exception of the issue regarding the 1982 contract, because that issue was pending
25 in Superior Court on that date. Complainant and Respondent argued in support of their
26 positions. Staff did not take a position on the merits of the Complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 45. On November 1, 2006, the procedural conference set by the October 24, 2006
2 procedural order convened as scheduled. Mohave and BIA appeared through counsel and
3 discussed issues raised in Mohave's September 21, 2006 Proposed Discovery Plan, BIA's
4 October 5, 2006, Response to Mohave Electric's Proposed Discovery Plan, Mohave's
5 October 10, 2006 Response to Mohave's Proposed Discovery Plan, BIA's October 23, 2006
6 Motion for Protective Order, Mohave's Response to BIA's Motion for Protective Order,
7 Mohave's Motion to Compel Discovery, Mohave's Motion to Establish a Discovery
8 Schedule, and Mohave's Motion to Suspend Time for Filing Response to BIA's Motion for
9 Partial Summary Judgment. At the conclusion of the procedural conference, BIA's Motion
10 for Protective Order was granted in part and denied in part, Mohave's Motion to Compel
11 was granted in part and denied in part, and Mohave's Motion to Establish a Discovery
12 Schedule was partially granted. Based on the discovery schedule established at the
13 November 1, 2006 Procedural Conference, the time for Mohave to file a response to the
14 BIA's Motion for Partial Summary Judgment was extended to March 26, 2007.

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

18 47. On February 20, 2007, BIA filed copies of responses to the November 14,
19 2006 letter.

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

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

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

26 51. On April 16, 2007, BIA filed its Reply in Support of Motion for Partial
27 Summary Judgment, its Reply Statement of Facts in Support of its Motion for Partial
28 Summary Judgment and in Response to Mohave's Statement of Disputed Facts and

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1 Additional Facts in Response to BIA's Motion for Partial Summary Judgment, and its
2 Response to Mohave Electric's Notice of Late Filing of Exhibits.

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

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

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

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

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

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

6 58. On June 23, 2008, a Procedural Order was issued denying BIA's Motion for
7 Partial Summary Judgment; setting the Complaint for hearing to commence on September 3,
8 2008; requiring BIA to make a filing in this docket amending its Complaint to reflect its
9 position regarding the effectiveness of the contract referenced in its Complaint, which was
10 entered into on October 1, 1981, by BIA and Mohave; and requiring both parties to file a list
11 of witnesses specifying which issues in the Complaint that each witness will be available to
12 address at the hearing.

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

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

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

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

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

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

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

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

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

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

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

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13. On approximately October 1, 1981, Mohave entered into Negotiated Electrical Utility Contract GS-00S-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,

1 a line which presently produces no income. Staff has likewise included
 2 this interest in its calculations of TIER. The Commission believes that
 3 both parties erred in effectively asking MEC's ratepayers to pay for
 4 plant which is not used and useful, will not be used and useful, and was
 5 never intended to be used and useful in the provision of electric service
 6 to such ratepayers... . Therefore, the Commission will eliminate the
 7 \$32,000 interest expense from the calculation of TIER and rate of
 8 return." Decision No. 53174 at 8-9 (emphasis in original).

- 9
- 10 22. In 1990, Mohave filed another rate application.⁶ As part of its
 11 application, Mohave submitted to the ACC a cost of service study for
 12 the twelve months ending July 31, 1989. In addition to the cost of
 13 service study, Mohave submitted to the ACC its REA Form 7 for the
 14 year ending December 31, 1988.
- 15 23. Mohave billed BIA monthly. Included on Mohave's monthly invoices
 16 was a Facility Charge, which ranged from approximately \$11,000 to
 17 approximately \$15,000 per month. Mohave billed BIA for a Facility
 18 Charge every month beginning in April, 1982 through and including
 19 February, 1997.
- 20 24. The total project cost for the Line was \$1,145,651,55. BIA paid
 21 Mohave the balance of the total project cost related to the Line,
 22 \$923,243.92, by approximately March, 1991.
- 23 25. On or about April 19, 1993, BIA wrote Mohave, stating that "The
 24 Government hereby notifies Mohave Electric of its intent to exercise"
 25 the renewal option. In the same letter, BIA stated that there was a
 26 "need to re-negotiate and amend the existing contract" because "the
 27 Government reimbursed Mohave all cost associated with the
 28 construction."
- 29 26. In an internal memorandum dated December 14, 1994, BIA stated that
 30 "We are approaching a fourth year without a contract for the services
 31 [provided by Mohave] as defined in the contract documents" and
 32 discussed a "request to negotiate a new contract."
- 33 27. On or about June 15, 1995, Mohave informed BIA that Mohave
 34 believed the Contract had expired in 1992, and requested information
 35 about BIA's intentions.
- 36 28. On or about June 6, 1996, Mohave informed BIA that Mohave believed
 37 that continuing the service was not in the best interests of Mohave's
 38 individual cooperative members, and that Mohave sought to transfer

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

1 the Line to BIA and move the metering equipment from Long Mesa to
2 Mohave's Nelson Substation.

- 3 29. On or about March 24, 1997, Mohave moved its metering equipment
4 from the Long Mesa Transformer to the Nelson Substation and began
5 metering electricity supplied through the Line at Mohave's Nelson
6 substation rather than at Long Mesa.
- 7 30. Beginning in July 1998, and through September 2003, Mohave credited
8 BIA for the electricity used by certain other accounts along the Line
9 based on Mohave's meter reading. After Mohave stopped giving BIA
10 credit for the electricity used by other accounts, BIA paid Mohave
11 under protest.
- 12 31. On or about July 31, 2001, Mohave's counsel wrote to the Western
13 Area Power Administration ("WAPA") and offered to transfer the Line
14 to WAPA. To date, WAPA has not accepted Mohave's offer.
- 15 32. On or about March 6, 2002, BIA wrote Mohave stating that "In
16 accordance with the Contract, the Government exercises its option to
17 extend the contract for a ten year period from April 1, 2002 through
18 March 31, 2012." BIA stated that some provisions of the Contract had
19 been amended and/or deleted.
- 20 33. On or about March 20, 2002, Mohave's counsel wrote BIA and stated
21 that the Contract "expired of its own terms in 1992 when the Bureau of
22 Indian Affairs did not seek an extension of the Contract. It no longer
23 exists. Therefore, that Contract (no longer being in existence) is not in
24 effect, and cannot be extended as requested." Mohave contended that,
25 since 1992, it had been serving the BIA electrical service at Mohave's
26 Nelson Substation under a month-to-month contract.
- 27 34. As of July 2003, Mohave provided electricity to twelve accounts along
28 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

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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

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- 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.

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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,

1 and cross-examined witnesses. At the close of the hearing, a procedural conference was set
2 for December 19, 2008, for the purpose of allowing the parties to discuss the manner and
3 timing of BIA's response to a post-hearing filing Mohave was directed to make during the
4 hearing.

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

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

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

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

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

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

19 83. At BIA's request, a telephonic procedural conference was held on March 12,
20 2009. Mohave, BIA and Staff appeared through counsel and discussed various procedural
21 alternatives for addressing BIA's Motion. The parties agreed to continue the March 16,
22 2009 deadline for filing reply briefs to allow time for Mohave to file a Response to the
23 Motion, and for BIA to file its Reply to Mohave's Response, and to have oral argument on
24 the Motion.

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

1 Response to BIA's Motion to Strike (1) Mohave's Submission of Supplemental Affidavits
2 and Exhibits and (2) Portions of Mohave's Closing.

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

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

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

24 88. On November 9, 2010, the Hearing Division issued a Recommended Opinion
25 and Order ("ROO") pursuant to A.A.C. R14-3-110. The Notice stated that exceptions were
26 due on or before November 18, 2010.

27 89. On November 15, 2010, Mohave requested an extension of time to file
28 exceptions to the ROO, and BIA responded on November 16, 2010.

1 90. On November 17, 2010, a procedural order was issued extending the time to
2 file exceptions to the ROO to November 26, 2010.

3 91. On November 26, 2010, Mohave and BIA filed Exceptions to the ROO
4 pursuant to A.A.C. R14-3-110(B).

5 92. The Commission considered the Recommended Opinion and Order and
6 Mohave's and BIA's Exceptions at an Open Meeting on December 6, 2010.

7 93. On December 10, 2010, the Commission issued Decision No. 72043 in this
8 docket.

9 94. On December 30, 2010, Mohave timely filed an Application for a Rehearing
10 of Decision No. 72043 pursuant to A.R.S. § 40-253 ("Application for Rehearing").

11 95. On January 11, 2011, the BIA filed a response to Mohave's Application for a
12 Rehearing.

13 96. On January 18, 2011, the Commission voted to grant Mohave's Application
14 for a Rehearing. The Commission ordered the Hearing Division to issue a Procedural Order
15 scheduling a procedural conference for the purpose of setting a schedule for the rehearing
16 proceeding, and to prepare a Recommended Order on Rehearing for Commission
17 consideration.

18 97. A Procedural Order was issued on January 18, 2011, setting a procedural
19 conference on January 25, 2011.

20 98. A procedural conference was held as scheduled on January 25, 2011. BIA and
21 Mohave appeared through counsel. Mohave requested that a date not be set for rehearing
22 Decision No. 72043, as Mohave and BIA were attempting to resolve their disputed issues,
23 but that a status conference be set in 45 days, instead, at which time Mohave and BIA could
24 report on their progress in reaching a resolution of the issues Mohave raised in its December
25 30, 2010 Application for Rehearing. Counsel for BIA indicated that BIA was amenable to
26 Mohave's proposal.

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1 99. On January 26, 2011, a Procedural Order was issued setting a procedural
2 status conference to commence on March 17, 2011, for the purpose of allowing BIA and
3 Mohave to provide a status update on their settlement discussions in this matter.

4 100. By Procedural Order issued March 14, 2011, the procedural status conference
5 scheduled for March 17, 2011, was continued to March 31, 2011, at the request of BIA.

6 101. A procedural status conference convened as scheduled on March 31, 2011.
7 BIA, Mohave and Staff appeared through counsel. Mohave and BIA reported that they were
8 continuing to work toward a resolution of the issues, but had not yet reached resolution, and
9 proposed that a second status conference be set 60 days in the future. BIA and Mohave
10 were encouraged to continue their efforts to settle their disputes, were informed that a
11 Procedural Oder would be issued setting a date for the rehearing, and were directed to file
12 within 10 days, either jointly or separately, their proposed procedural schedule for the
13 rehearing proceeding.

14 102. On April 15, 2011, BIA and Mohave jointly filed Proposed Procedural
15 Schedule for Rehearing.

16 103. On April 19, 2011, a Procedural Order was issued adopting BIA and
17 Mohave's proposed procedural schedule and setting a date of July 25, 2011 for the
18 Rehearing of Decision No. 72043.

19 104. On May 5, 2011, the Commission issued Decision No. 72290 in this docket.
20 Decision No. 72290 suspended the requirement of Decision No. 72043 that Mohave place a
21 meter at Long Mesa and recommence reading the meter at Long Mesa within ten days. The
22 requirement was suspended pending the rehearing process for Decision No. 72043 and until
23 further order of the Commission.

24 105. On May 20, 2011, as required by the April 19, 2011 Procedural Order, BIA
25 and Mohave jointly filed a status report on their settlement negotiations. The parties stated
26 that they were hopeful that a settlement could be reached, but that they could not at that time
27 report the terms of completed settlement. BIA and Mohave requested that the deadlines set
28

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1 in the April 19, 2011, Procedural Order remain in place, and stated that they would continue
2 negotiations and notify the Commission if settlement was reached.

3 106. On June 20, 2011, BIA and Mohave filed a Joint Notice of Settlement and
4 Request for a Procedural Conference. The filing stated that BIA and Mohave had reached
5 general agreement as to the terms that will form the basis of formal settlement
6 documentation. The filing further stated that additional time was needed to transform the
7 terms of agreement into formal documentation, as well as to obtain approvals of the United
8 States Department of the Interior and of Mohave's Board of Directors. BIA and Mohave
9 jointly requested that the procedural deadlines and schedule for the rehearing be vacated.

10 107. A Procedural Order was issued on June 21, 2011 granting the joint requests of
11 Mohave and BIA, vacating the rehearing set to commence on July 25, 2011, and vacating all
12 procedural filing deadlines associated with the July 25, 2011 rehearing. Mohave and BIA
13 were ordered to docket a copy of the settlement memorandum within five calendar days of
14 its signing, and a procedural conference was set for July 25, 2011.

15 108. On July 14, 2011, Mohave and BIA jointly filed their Memorandum of
16 Settlement Points as directed by the Procedural Order of June 21, 2011.

17 109. A procedural conference took place on July 25, 2011, at which time Mohave,
18 the BIA and Staff discussed procedures for documenting the settlement between Mohave
19 and BIA, including the need to consult with the tribes. Mohave and BIA were directed to
20 prepare a stipulated ROO documenting the terms of the settlement for submission the
21 Hearing Division and the Commission.

22 110. A Procedural Order issued on July 27, 2011, ordering Mohave and BIA to
23 jointly docket an executed settlement agreement and stipulation concerning specific relief
24 the parties sought to be included in a Recommended Order on Rehearing. A Procedural
25 Order issued on December 27, 2011 extending the time of the parties to jointly docket an
26 executed settlement agreement and stipulation concerning specific relief the parties sought
27 to be included in a Recommended Order on Rehearing to January 31, 2012.

28

1 111. Mohave and BIA jointly docketed a Recommended Order on Rehearing on
2 February 3, 2012 pursuant to A.A.C. R14-3-110(B), the July 27, 2011 Procedural Order, and
3 the December 27, 2011 Procedural Order.

4 112. The Hearing Division docketed a Recommended Opinion and Order on
5 Rehearing for the Commission's consideration and action on _____, 2012.

6 **Determinations**

7 113. In June 1976, BIA issued a Request for Quotation ("RFQ") for the provision
8 of electric energy to the Hualapai and Havasupai Indian reservations located north of Route
9 66 on and adjacent to the Supai Road, Coconino County, Arizona.⁷ The RFQ stated that the
10 requirements "consist of installation of transmission and/or distribution electrical facilities
11 to serve residential and commercial installations located on each of the reservations."⁸

12 114. Mohave, Arizona Public Service Company, and Citizens Utilities Company
13 responded to the RFQ.⁹

14 115. On January 18, 1980, Mohave signed an REA "Cost Estimates and Loan
15 Budget for Electric Borrowers" REA Form 740c.¹⁰

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

23 117. Mohave received a \$1,600,000 loan from the REA for construction of the
24 Line.¹¹

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

26 ⁸ *Id.*

27 ⁹ Stipulated Facts at ¶ 11.

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

1 118. On approximately October 1, 1981, Mohave entered into Negotiated Electrical
 2 Utility Contract GS-00S-67021, (the "Contract") with the United States of America acting
 3 through the Administrator of the General Services Administration and on behalf of BIA to
 4 construct the Line, approximately 70 miles long from Mohave's existing facilities at the
 5 Nelson Substation to Long Mesa and to supply electrical energy up to 1500 KW for the
 6 operation of its facilities on the Hualapai and Havasupai reservations.¹²

7 119. The Boquillas Ranch property lies between the Hualapai and Havasupai
 8 reservations. The easement Mohave received across the Boquillas Ranch property for the
 9 Line expired in September 2005.¹³ Mohave agrees to seek renewal of its rights-of-way and
 10 grants of easement along the Line, including reasonable rights of access across tribal lands
 11 to facilities and customers, and BIA agrees to use its best reasonable efforts to work with
 12 Mohave in this matter. [Mohave Proposed Language: If, after applying for an easement or
 13 other permission from the owner of these lands, such easement or permission is not offered
 14 and accepted on mutually agreeable terms and conditions, Mohave will have no ability to
 15 operate or maintain the Line or to read meters related to the Line related to this segment.]¹⁴

16 120. Mohave did not seek an extension of its CC&N related to the Line.¹⁵

17 121. Mohave completed construction of the Line in November 1981 and by the
 18 spring of 1982 was delivering electricity through the Line.¹⁶

22 ¹¹ Stipulated Facts at ¶ 14.

23 ¹² *Id* at ¶ 13.

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

26 ¹⁴ BIA and Mohave do not have agreement on this point and submit this proposed language
to the Commission for determination.

27 ¹⁵ Mohave Br. at 11.

28 ¹⁶ Stipulated Facts at ¶ 16.

1 122. When Mohave commenced the provision of service to BIA pursuant to the
2 Contract, it placed a meter at the end of the Line at Long Mesa at the rim of the Grand
3 Canyon, on the Havasupai reservation.¹⁷

4 123. From Long Mesa, an overhead electric line drops down in the Grand Canyon,
5 and is extended out to provide electricity to Havasupai Village.¹⁸ BIA uses electricity
6 supplied by the Line in Havasupai Village for a BIA school, living quarters for BIA teachers
7 and law enforcement personnel, a BIA detention facility, and a BIA maintenance building.¹⁹

8 124. About 200 residents in Havasupai Village use the electricity supplied by the
9 Line in their homes.²⁰ BIA collects fees from the users of electricity in Havasupai Village
10 based on their monthly electric power usage indicated by individual meters.²¹ BIA hired a
11 tribal member who lives in Havasupai Village to read the meters once a month.²² BIA puts
12 money collected from Havasupai Village in an account and uses it to pay Mohave for the
13 electricity.²³ If something goes wrong from Long Mesa down to Havasupai Village or
14 within Havasupai Village, BIA also calls in repair and maintenance requests as needed, to
15 Zeus Electric, UNS Electric, or Sturgeon Electric to repair the outage.²⁴

16 125. On approximately April 8, 1982, Mohave sent BIA its first invoice for the
17 Long Mesa Power Transformer account.²⁵ As agreed to by Mohave and BIA, the invoice
18
19

20 ¹⁷ Direct Testimony of BIA witness James Williams (Exh. C-4) at 3-4.

21 ¹⁸ *Id.* at 3.

22 ¹⁹ Stipulated Facts at 19.

23 ²⁰ Direct Testimony of BIA witness James C. Walker (Exh. C-3) at 3.

24 ²¹ *Id.* at 3-4.

25 ²² *Id.* at 4.

26 ²³ *Id.*

27 ²⁴ *Id.* at 4-5.

28 ²⁵ Mohave Br. at 11; Direct Testimony of BIA witness James Williams (Exh. C-4) at Exhibit 4.

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1 included a "facility charge," which consisted of the cost of construction, taxes, operation
2 and maintenance, and depreciation.²⁶

3 126. On August 11, 1982, the Commission issued Decision No. 53174, which set
4 new rates for Mohave. Decision No. 53174 was based on a 1982 test year.²⁷ Decision No.
5 53174 noted that Mohave did not include the Line in rate base, and that Mohave proposed
6 segregating all expenses and revenues associated with the Line.²⁸ Decision No. 53174 also
7 eliminated \$32,000 in interest expense from the calculation of Mohave's times interest
8 earned ratio ("TIER") as rate of return.²⁹ In the discussion regarding exclusion of this
9 interest expense, Decision No. 53174 referred to the Line as "a transmission line dedicated
10 to serving the Hualapai Indian reservation, a line which presently produces no revenue."³⁰
11 The discussion in Decision No. 53174 included a discussion of the fact that Mohave had
12 included interest expense associated with the Line in its rate of return request, and that Staff
13 had included the interest in its TIER analysis. The discussion in Decision No. 53174 stated
14 that by including the interest associated with the Line in the rate of return and TIER in their
15 rate proposals, Mohave and Staff were "effectively asking MEC's ratepayers to pay for
16 plant which is not used and useful, will not be used and useful, and was never intended to be
17 used and useful in the provision of electric service to such ratepayers."³¹ Decision No.
18 53174 made no reference to the existence of retail customers served by the Line.

19 127. The Contract provided that "Mohave may elect to serve the Hualapai Indian
20 reservation upon its own arrangements from the utility plant proposed to be constructed
21 provided that contemplated system capacities are not unreasonably exceeded."³²

22 _____
23 ²⁶ Direct Testimony of BIA witness James Williams (Exh. C-4) at 6 and Exhibit 4.

24 ²⁷ Decision No. 53174 at 4.

25 ²⁸ *Id.* at 8.

26 ²⁹ *Id.* at 9.

27 ³⁰ *Id.* at 8.

28 ³¹ *Id.* at 8 (emphasis in original).

³² Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 4, 00016.

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1 128. BIA granted an easement for right-of-way across Hualapai and Havasupai
2 reservations “to be used to construct, install, operate and maintain an electrical distribution
3 line, along with the right to ingress thereto and egress therefrom.” The Hualapai and
4 Havasupai Tribes each consented to this grant of easement for right-of-way to Mohave.³³

5 129. On January 18, 1982, BIA granted Mohave a 50-foot wide easement across
6 the Hualapai reservation for the Line for a term of 30 years, expiring in January, 2012.³⁴
7 Mohave agrees to seek renewal of its rights-of-way and grants of easement along the Line,
8 including reasonable rights of access across tribal lands to facilities and customers, and BIA
9 agrees to use its best reasonable efforts to work with Mohave in this matter. [Mohave
10 Proposed Language: If, after applying for an easement or other permission from the owner
11 of these lands, such easement or permission is not offered and accepted upon mutually
12 agreeable terms and conditions, Mohave will have no ability to operate or maintain the Line
13 or to read meters related to the Line related to this segment.]³⁵

14 130. On December 14, 1984, BIA granted Mohave a 50-foot wide easement across
15 the Havasupai reservation for the Line for a term of 30 years, expiring in December, 2014.³⁶
16 Mohave agrees to seek renewal of its rights-of-way and grants of easement along the Line,
17 including reasonable rights of access across tribal lands to facilities and customers, and BIA
18 agrees to use its best reasonable efforts to work with Mohave in this matter. [Mohave
19 Proposed Language: If, after applying for an easement or other permission from the owner
20 of these lands, such easement or permission is not offered and accepted upon mutually
21 agreeable terms and conditions, Mohave will have no ability to operate or maintain the Line
22 or to read meters related to the Line related to this segment.]³⁷

23 ³³ Stipulated Facts at ¶ 15.
24 ³⁴ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 4.
25 ³⁵ BIA and Mohave do not have agreement on this point and submit this proposed language
26 to the Commission for determination.
27 ³⁶ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 4.
28 ³⁷ BIA and Mohave do not have agreement on this point and submit this proposed language
to the Commission for determination.

1 131. After completing construction of the Line, Mohave provided service to twelve
2 retail customers using the Line. Until July 2003, Mohave individually billed those twelve
3 accounts.³⁸

4 132. Mohave did not request authority from the Commission to serve the twelve
5 individual retail customers served by the Line.³⁹

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

9 134. The twelve retail accounts served by the Line include the BIA's Thornton Fire
10 Tower on the Hualapai reservation,⁴⁰ a BIA radio repeater tower on the Hualapai
11 reservation,⁴¹ six Hualapai Tribal Council accounts, including pumps, wells and a youth
12 camp (one of the wells, the Hualapai Pump at Tank Well, is located in Mohave's CC&N
13 territory),⁴² an Arizona Telephone transmitting tower near the rim of the Grand Canyon on
14 the Havasupai reservation,⁴³ an account at the Boquillas Ranch between the Hualapai and
15 Havasupai reservations,⁴⁴ an account in the name of W.C. Bravo on the Hualapai
16 reservation,⁴⁵ and an account in the name of Cesspooch for a cabin on Nelson Road on the
17 Hualapai reservation in Mohave's CC&N territory.⁴⁶ These accounts are depicted on a color
18 map attached to the Direct Testimony of BIA witness James Williams (Exh. C-4) at Exhibit
19

20 ³⁸ Stipulated Facts at ¶ 34; Mohave Br. at 14.

21 ³⁹ Mohave Br. at 13.

22 ⁴⁰ Direct Testimony of BIA witness James Williams (Exh. C-4) at 3 and Exhibit 1 (map of
23 Line).

24 ⁴¹ *Id.*

25 ⁴² Stipulated Facts at 34, Mohave Br. at 13, Direct Testimony of BIA witness James
26 Williams (Exh. C-4) at Exhibit 1 (map of Line).

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

28 ⁴⁴ *Id.*

⁴⁵ Mohave Br. at 14.

⁴⁶ Stipulated Facts at ¶ 34, Mohave Br. at 13.

1 1. [Mohave Proposed Language: which is attached hereto and incorporated herein as
 2 Exhibit 1, in a black and white version without the heading that appears in the Exh. C-4,
 3 Exhibit 1. Following the hearing and during the parties' settlement discussions, Mohave
 4 undertook an inspection of the accounts and meters along the Line, and produced a current,
 5 updated map showing those accounts and other features of the Line and attachments to the
 6 Line. This updated map, which Mohave and BIA agree accurately represents the status of
 7 the Line, related attachments, and accounts as of April, 2011, is attached hereto and
 8 incorporated herein as Exhibit 2].⁴⁷

9 135. Mohave's witness stated that to his understanding and knowledge the twelve
 10 service drops were "extended and made as a BIA agent and as a courtesy to the BIA under
 11 the 1982 contract."⁴⁸ The witness testified that "the continued delivery of electric service
 12 during negotiations was a good-faith effort by Mohave to enter into a new contract
 13 relationship with BIA. Continued service was not done in order to extend the Mohave
 14 certificated area or its service area."⁴⁹

15 136. From April, 1982 through March, 1991, BIA made about \$450,000 in monthly
 16 construction cost payments, and in March, 1991, made a lump sum payment of \$923,243.92,
 17 which paid off the remaining balance of the construction cost of the Line BIA owed to
 18 Mohave.⁵⁰

19 137. Mohave included as an exhibit to the Direct Testimony of Tom Longtin (Exh.
 20 R-2), at Tab 4, an unsigned document dated March 17, 1992, addressed to "Assistant Area
 21 Director of Administration, Bureau of Indian Affairs."⁵¹ The document has a handwritten

22 ⁴⁷ BIA does not stipulate to this language at this time; a legible version of Exhibit 2 will be
 23 presented at the hearing of this matter and BIA preserves its objections, if any, to that
 24 Exhibit.

25 ⁴⁸ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at 14.

26 ⁴⁹ *Id.* at 14-15

27 ⁵⁰ Direct Testimony of BIA witness James Williams (Exh. C-4) at 6; Stipulated Facts at
 1124.

28 ⁵¹ *Id.*

1 notation "pc file copy" at the top of the first of its two pages.⁵² The document states that its
2 purpose is to request information regarding the renewal of the Contract.⁵³ On brief, Mohave
3 asserts that "[T]he BIA failed to respond to this letter in any way, and in fact said nothing to
4 Mohave at that time about exercising its renewal option."⁵⁴ BIA did not stipulate to the
5 existence of, or its receipt of, a March 17, 1992 letter.

6 138. On or about April 19, 1993, BIA wrote Mohave, stating that "[t]he term of
7 [GSA Contract No. GS-00S-67021] was for ten years and has since expired. Under the
8 Contract. [sic] the Government has the right of renewal for two additional ten year periods.
9 The Government hereby notifies Mohave Electric of its intent to exercise this option." In
10 the same letter, BIA stated that "[p]rior to exercising our option, we need to re-negotiate and
11 amend the existing contract. The contract makes reference to construction of overhead
12 transmission and/or distribution facilities. Construction was completed and the Government
13 reimbursed Mohave all cost associated with the construction. Therefore, some of this
14 language needs to be deleted." In addition, BIA stated that "[T]he Government hereby
15 notifies Mohave Electric of its intention to exercise its right under the contract to verify and
16 audit all construction cost and monthly facility charges. This audit will be coordinated
17 through the U.S. Department of Interior, Office of Inspector General. Mohave Electric will
18 receive proper notification of any audit arrangements. When the Government has obtained
19 the audit results, the government will propose a negotiation meeting with Mohave Electric
20 for continued electrical services under the contract."⁵⁵

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21
22
23
24

⁵² *Id.*

25
⁵³ *Id.*

26
⁵⁴ Mohave Br. at 17-18.

27
28
⁵⁵ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 10; Stipulated Facts
at ¶ 25.

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1 139. In an internal memorandum dated December 14, 1994, BIA stated that “We
2 are approaching a fourth year without a contract for the services [provided by Mohave] as
3 defined in the contract documents” and discussed a “request to negotiate a new contract.”⁵⁶

4 140. On or about June 15, 1995, Mohave informed BIA that Mohave believed the
5 Contract had expired in 1992, and requested information about BIA’s intentions.⁵⁷

6 141. On or about June 6, 1996, Mohave informed BIA that Mohave believed that
7 continuing the service was not in the best interests of Mohave’s individual cooperative
8 members, and that Mohave sought to transfer the Line to BIA and move the metering
9 equipment from Long Mesa to Mohave’s Nelson Substation.⁵⁸

10 142. On or about March 24, 1997, Mohave moved its metering equipment from the
11 Long Mesa Transformer to the Nelson Substation and began metering electricity supplied
12 through the Line at Mohave’s Nelson substation rather than at Long Mesa.⁵⁹

13 143. In about March, 1997, Mohave stopped billing BIA for facilities charges.⁶⁰

14 144. Prior to 1997, Mohave sent individual bills to the retail accounts along the
15 Line.⁶¹

16 145. Beginning in July, 1998 and through October, 2003, Mohave’s bills to BIA
17 included a credit for “usage billed to other meters.”⁶² Mohave credited BIA for the
18 electricity used by certain other accounts along the Line based on Mohave’s meter reading.⁶³

19
20 ⁵⁶ Stipulated Facts at ¶ 26.
21 ⁵⁷ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 11; Stipulated Facts
22 at ¶ 27.
23 ⁵⁸ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 12; Stipulated Facts
24 at ¶ 28.
25 ⁵⁹ Stipulated Facts at ¶ 29.
26 ⁶⁰ Direct Testimony of BIA witness James Williams (Exh. C-4) at 7; Stipulated Facts at ¶
27 23.
28 ⁶¹ Tr. at 357.
⁶² Direct Testimony of BIA witness James Williams (Exh. C-4) at 7-8 and Exhibit 6.
⁶³ Stipulated Facts at 30.

1 According to BIA's witness, after Mohave moved its meter to the Nelson Substation, it
 2 billed BIA for all electricity used along the Line, including the electricity used by the
 3 various customers along the Line, but credited BIA for electricity used by the Hualapai
 4 Tribe and residents being served along the Line.⁶⁴ BIA's witness believes that Mohave read
 5 all the meters, added up their usage, and then calculated the credit given to BIA.⁶⁵

6 146. After Mohave stopped giving BIA credit for the electricity used by other
 7 accounts, BIA paid Mohave under protest.⁶⁶

8 147. On or about March 6, 2002, BIA wrote Mohave stating that "In accordance
 9 with the Contract, the Government exercises its option to extend the contract for a ten year
 10 period from April 1, 2002 through March 31, 2012." BIA stated that some provisions of the
 11 Contract had been amended and/or deleted.⁶⁷

12 148. On or about March 20, 2002, Mohave's counsel wrote BIA and stated that the
 13 Contract "expired of its own terms in 1992 when the Bureau of Indian Affairs did not seek
 14 an extension of the Contract. It no longer exists. Therefore, that Contract (no longer being
 15 in existence) is not in effect, and cannot be extended as requested." Mohave contended that,
 16 since 1992, it had been serving BIA electrical service at Mohave's Nelson Substation under
 17 a month-to-month contract.⁶⁸

18 149. On June 26, 2003, Mohave's Board of Directors approved an April 17, 2003
 19 resolution to abandon the Line and quitclaim it to BIA and the Tribes.⁶⁹ The April 17, 2003
 20 resolution includes the following: "FURTHER RESOLVED, that as to any existing retail
 21 customer served on said line that the same be transferred to the BIA which is authorized to
 22

23 ⁶⁴ Direct Testimony of BIA witness James Williams (Exh. C-4) at 7-8.

24 ⁶⁵ *Id.* at 8.

25 ⁶⁶ Stipulated Facts at 30.

26 ⁶⁷ *Id.* at 32

27 ⁶⁸ *Id.* at 33.

28 ⁶⁹ Mohave Br. at 24, referring to Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 15.

1 operate on Indian nation lands and that notice of said transfer be given to the less than
2 twelve customers.”⁷⁰

3 150. On or about July 22, 2003, Mohave executed a Notice of Quit Claim,
4 Conveyance and Assignment of Interest and Abandonment of Property (“Quit Claim”)
5 which stated that Mohave quitclaimed, conveyed and abandoned the Line, meters, and
6 service drops to the United States Department of Interior, Bureau of Indian Affairs, the
7 Hualapai Indian Tribe and the Havasupai Indian Tribe as the respective interests may be
8 established or reflected. In the Quit Claim, Mohave also stated it assigned and transferred
9 its rights and interests in a pole license agreement that Mohave had entered into with
10 Boquillas Cattle Company.⁷¹

11 151. In letters dated July 23, 2003, Mohave informed BIA that its retail electric
12 service to BIA’s Thornton Fire Tower on the Hualapai reservation, and to the BIA radio
13 repeater tower on the Hualapai reservation “has been transferred to the BIA as the only
14 entity authorized to deliver retail electric service to you on tribal lands.”⁷²

15 ⁷⁰ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 15.

16 ⁷¹ Stipulated Facts at ¶ 35.

17 ⁷² Direct Testimony of BIA witness James Williams (Exh. C-4) at 11 and Exhibits 9 and 10;
18 direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at Tab 17. Both letters stated
19 as follows:

20 Dear Sir:

21 Currently, all your electricity flows over lines transferred, together with meters, to
22 the Bureau of Indian Affairs (“BIA”), the Hualapai and Havasupai Tribes. Your
23 retail electric service has been transferred to the BIA as the only entity authorized to
24 deliver retail electric service to you on tribal lands. To assist in the transition,
25 Mohave Electric will credit your account and the BIA with sixty (60) days of electric
26 service based on your usage. The BIA will be responsible to read the meters and bill
27 you on your future bills for electric service. You will not receive any additional bills
28 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

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1 152. On or about July 23, 2003, Mohave’s counsel wrote BIA, the Hualapai Nation
2 and the Havasupai Nation stating that the Contract had terminated in 1992, that Mohave had
3 no authority to serve outside its CC&N or tribal lands, that the Line was not necessary or
4 useful for Mohave, and that Mohave had abandoned and quitclaimed the Line to BIA, the
5 Hualapai Nation and the Havasupai Nation. Mohave stated that it was willing “to continu[e]
6 to provide wholesale electrical service at its Nelson substation” to BIA, the Hualapai Nation
7 and the Havasupai Nation “under its ACC approved Large Commercial Rate which is its
8 lowest tariff.”⁷³

9 153. On or about August 7, 2003, Mohave’s counsel wrote BIA, the Hualapai
10 Nation and the Havasupai Nation. Mohave enclosed a copy of the Quit Claim and listed the
11 “accounts and facilities that are now owned by your entities, as your interests may be
12 established.”⁷⁴

13 154. In a letter dated September 2, 2003, BIA responded to Mr. Curtis’ letter dated
14 August 7, 2003 and the “Notice of Quit Claim, Conveyance and Assignment of Interest”
15 dated July 22, 2003 and enclosed with the August 7, 2003 letter.⁷⁵ The letter stated that the
16 quitclaim is not valid until accepted by the grantee, that BIA had not decided whether it
17 would accept Mohave’s quitclaim, that Mohave could not dispose of the Line without
18 authorization by the ACC pursuant to A.R.S. § 40-285(A), and that “Mohave Electric
19 remains the owner of all its interests in the Nelson-Long Mesa Line at the present time.”⁷⁶

20
21 experienced and already operates an existing retail electric utility service on Tribal
22 land. In addition, you may also contact me directly with any questions you have
23 regarding this change (phone 928/763-4115).

23 Sincerely,
24 Mohave Electric Cooperative
25 By _____
 Stephen McArthur, Comptroller

26 ⁷³ Stipulated Facts at ¶ 36.

27 ⁷⁴ *Id.* at 37.

28 ⁷⁵ Direct Testimony of BIA witness James Williams (Exh. C-4) at 11 and Exhibit 7.

⁷⁶ Stipulated Facts at ¶ 38.

1 155. In a letter dated September 12, 2003, BIA gave further response to Mr. Curtis'
2 letter dated August 7, 2003 and the "Notice of Quit Claim, Conveyance and Assignment of
3 Interest" dated July 22, 2003 and enclosed with the August 7, 2003 letter.⁷⁷ The letter stated
4 that BIA did not accept quitclaim of the Line, that the Quit Claim was void and of no effect,
5 that BIA received power at Long Mesa rather than the Nelson substation, and that Mohave
6 was responsible for ongoing operation and maintenance of the Line.⁷⁸

7 156. Following its notification to BIA of the Quit Claim, Mohave stopped reading
8 meters for the twelve retail customers served by the Line and stopped issuing BIA credits
9 for usage by those meters.⁷⁹

10 157. Mohave never sought Commission approval to discontinue service to the
11 twelve customers served by the Line.

12 158. From October, 2003 through the present, Mohave has billed BIA, and BIA has
13 paid for, all electricity used by all customers along the Line.⁸⁰ BIA's witness testified that
14 BIA has not billed those customers for their usage, because BIA is not their electricity
15 supplier and has no signed agreements to provide them with electricity.⁸¹

16 159. Mohave asserts on brief that because neither BIA nor Mohave has read the
17 meters for the twelve retail accounts served by the Line since 2003, it is impossible to
18 reconstruct the amount of electricity they used.⁸² However, by totaling the billing records in
19 evidence in this matter, Mohave estimates that it issued BIA credits totaling \$27,178, for an
20 average monthly credit of \$348.⁸³

21
22
23 ⁷⁷ Direct Testimony of BIA witness James Williams (Exh. C-4) at 11 and Exhibit 8.

24 ⁷⁸ Stipulated Facts at ¶ 39.

25 ⁷⁹ Direct Testimony of Mohave witness Tom Longtin (Exh. R-2) at 10.

26 ⁸⁰ Direct Testimony of BIA witness James Williams (Exh. C-4) at 9.

27 ⁸¹ *Id.*

28 ⁸² Mohave Br. at 26, fn 6.

⁸³ Mohave Br. at 22, fn 22, and Chart of Credits, attached at Exhibit A to Mohave's Brief.

1 160. Following its notification to BIA of the Quit Claim, Mohave ceased
2 performing repair and maintenance on the Line unless requested to do so by BIA.⁸⁴

3 161. Mohave does not dispute the amount paid by BIA, but does dispute that
4 Mohave is liable for repairs or maintenance of the Line.⁸⁵

5 162. The Havasupai Tribe has plans to develop and construct housing at the top of
6 the Grand Canyon at an area called Bar Four within the Havasupai reservation.⁸⁶ In 1998,
7 the Havasupai Tribe hired UrbanTech Ltd. to obtain funding for improvements in the Bar
8 Four area.⁸⁷ Mr. Philip Entz, the president and owner of UrbanTech Ltd., wrote grant
9 applications for the Havasupai Tribe for funding from the United States Department of
10 Housing and Urban Development ("HUD") to extend electricity from the Line for
11 approximately 13 miles to the Bar Four area of the Havasupai reservation ("Bar Four
12 Spur").⁸⁸ Mr. Entz attempted to contact Mohave by telephone in about July, 1998 in regard
13 to whether Mohave would maintain the Bar Four Spur, but his calls were not returned.⁸⁹

14 163. The HUD grant application was filed in September 1998.⁹⁰ In January, 1999,
15 HUD granted the Havasupai \$550,000 to build the Bar Four Spur.⁹¹ The Havasupai paid for
16 the construction using the HUD grant funds and Havasupai general funds.⁹²

17 164. In a letter dated April 3, 2000, Mr. Entz informed Mohave that it was his
18 understanding that Mohave, as the current service provider, was mandated to provide
19

20 ⁸⁴ Mohave Br. at 26.

21 ⁸⁵ Mohave Br. at 26, fn 7.

22 ⁸⁶ Direct Testimony of BIA witness James Williams (Exh. C-4) at 9; Direct Testimony of
23 BIA witness Philip Entz (Exh. C-5) at 2.

24 ⁸⁷ Direct Testimony of BIA witness Philip Entz (Exh. C-5) at 2.

25 ⁸⁸ *Id.* at 3.

26 ⁸⁹ *Id.*

27 ⁹⁰ *Id.*

28 ⁹¹ *Id.* at 4.

⁹² *Id.* at 6.

1 maintenance and operations if the Bar Four Spur were installed to Mohave's standards.⁹³
 2 The letter requested that Mohave provide a copy of the applicable standards that should be
 3 forwarded to the design build utility contractor for the Bar Four Spur once selected, and that
 4 Mohave also provide a letter indicating that Mohave would provide electrical service via the
 5 Bar Four Spur and would appropriately maintain the line.⁹⁴

6 165. By letter from Mohave's counsel dated May 17, 2000, Mohave responded to
 7 the April 3, 2000 letter from Mr. Entz.⁹⁵ In the letter Mohave: (1) asserted that Mohave has
 8 no responsibility for the proposed project; (2) asserted that Mohave is not mandated to
 9 provide maintenance operations to a power line not built and designed by Mohave; and
 10 (3) provided some, but not all, of the reasons that the proposed design and construction were
 11 not acceptable to Mohave, including that "[i]n all instances, any contractor must be under
 12 Mohave's direct guidance and direct day-to-day supervision."⁹⁶ The letter concluded by
 13 asserting that "Mohave Electric is not mandated to do anything much less provide
 14 maintenance and operations to the Bar Four Line," and requesting that all further
 15 communications be made through the offices of Mohave's counsel Martinez & Curtis,
 16 P.C.⁹⁷

17 166. Mr. Entz requested that APS develop loads and preliminary specifications for
 18 the Bar Four Spur, and APS did so.⁹⁸ Using the specifications developed by APS, Mr. Entz
 19 prepared a bid request for design and construction, and the Havasupai Tribe requested bids
 20 for the Bar Four Spur.⁹⁹ Six bids were submitted, and Southwest Energy Solutions won the
 21

22 _____
 23 ⁹³ *Id.* at Exhibit 1.

24 ⁹⁴ *Id.*

25 ⁹⁵ *Id.* at Exhibit 2.

26 ⁹⁶ *Id.*

27 ⁹⁷ *Id.*

28 ⁹⁸ *Id.* at 4.

⁹⁹ *Id.* at 4-5.

1 bid in June, 2000.¹⁰⁰ The Havasupai Tribe entered into a contract with Southwest Energy
 2 Solutions.¹⁰¹ Southwest Energy Solutions subcontracted with Electrical Consultants, Inc. of
 3 Tucson to do the design.¹⁰²

4 167. The Bar Four Spur runs along Indian Route 18, which is a BIA road right-of-
 5 way.¹⁰³ BIA paid for an environmental assessment for the Bar Four line extension, and
 6 reviewed pole placements for traffic safety reasons.¹⁰⁴ BIA did not approve the Havasupai
 7 Tribe's bid before it was published, and BIA was not a party to the Havasupai Tribe's
 8 contract with Southwest Energy Solutions.¹⁰⁵

9 168. In a July 9, 2003 letter to Mohave's General Manager Robert Broz, before
 10 construction began on the Bar Four Spur, Havasupai Tribal Chairman Don Watahomigie
 11 invited Mohave to participate in a preconstruction conference.¹⁰⁶ Mr. Watahomigie's letter
 12 referenced Mohave's statement in its May 17, 2000 letter that "any contractor must be under
 13 Mohave's direct guidance and direct day-to-day supervision."¹⁰⁷ Mohave did not accept the
 14 invitation.¹⁰⁸

15 169. Construction commenced on the Bar Four Spur in approximately October,
 16 2003.¹⁰⁹ Construction of the Bar Four Spur was completed in May, 2004.¹¹⁰ At the
 17 hearing, BIA's witnesses testified that they believed the Havasupai Tribe had energized the
 18

19 ¹⁰⁰ *Id.* at 5.

20 ¹⁰¹ *Id.*

21 ¹⁰² *Id.* at 6.

22 ¹⁰³ *Id.* at 5.

23 ¹⁰⁴ *Id.*

24 ¹⁰⁵ *Id.*

25 ¹⁰⁶ *Id.* at 5 and Exhibit 3.

26 ¹⁰⁷ *Id.* at Exhibit 3.

27 ¹⁰⁸ *Id.* at 5.

28 ¹⁰⁹ Stipulated Facts at ¶ 40.

¹¹⁰ Direct Testimony of BIA witness Philip Entz (Exh. C-5) at 5-6.

1 Bar Four Spur to serve the Tribe's radio repeater tower.¹¹¹ Neither the Commission nor
 2 Mohave had authorized the Tribe to energize the Bar Four Spur..

3 170. In the summer of 2004, the Chairman of the Commission at the time,
 4 Commissioner Marc Spitzer, attempted to broker a resolution between BIA and Mohave.
 5 BIA, Mohave, and others, including ACC Staff, were unable to settle the matter.¹¹²

6 171. On September 8, 2004, the Chief Counsel of the Commission at the time,
 7 Christopher Kempley, wrote Mohave a letter.¹¹³ The letter to Mohave indicated that Staff
 8 believed the Line to be necessary and useful to Mohave in the provision of electric service
 9 to its customers.

10 172. Between September 2004, and June 2008, BIA paid Mohave for repairs and
 11 maintenance to the Line.¹¹⁴

12 173. On or about November 13, 2007, Mohave, UNS Electric, Inc. and Arizona
 13 Public Service Company entered into an Operations Protocol Agreement related to
 14 maintenance and repairs for the Line.¹¹⁵ BIA was not a party to the Operations Protocol
 15 Agreement.

16 174. During the post-hearing inspection of the Line and accounts, it was discovered
 17 that parties unknown had constructed a line approximately one mile in length ("1-Mile
 18 Line") from the Line to a communications tower and associated solar panels, wind turbine
 19 and generator at Long Mesa. The 1-Mile Line was energized without obtaining authority
 20 from the Commission or Mohave, and neither Mohave nor the Commission knew it had
 21 been energized until Mohave discovered the 1-Mile Line in April 2011.

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 23
 24 _____
 25 ¹¹¹ Tr. at 29, 172, 190-191, 207-208

26 ¹¹² Stipulated Facts at ¶ 41.

27 ¹¹³ *Id.*

28 ¹¹⁴ *Id.* at ¶ 42.

¹¹⁵ *Id.* at ¶ 44.

1 175. The post-hearing inspection of the Line and accounts also revealed that many
2 of the meters and/or meter installations to the individual retail accounts were not functioning
3 properly and/or required alterations.

4 176. In the spring of 2011, BIA commenced, at its cost and after consultation with
5 Mohave concerning the location of such facilities, installation of a TWAC system that will
6 allow remote reading of meters located in the Havasupai Village and to monitor for outages
7 on the 70 Mile Line. Based on Mohave's recommendation concerning the location, BIA
8 installed the TWAC system near the Nelson Substation.

9 **Conclusions**

10 177. Disputes have existed between Mohave and BIA for numerous years, and the
11 parties have litigated their issues before the Commission for more than six years since the
12 filing of the Complaint by BIA.

13 178. The parties have now resolved their disputes as provided in the Memorandum
14 of Settlement Points filed in this docket on July 14, 2011.

15 179. The resolution reached by the parties is reasonable and approval by the
16 Commission is in the public interest.

17 180. Mohave shall reassume ownership of the 70-mile Line but is not required to
18 replace the meter at Long Mesa. Mohave will not own the Bar 4 Spur or the 1-Mile Line.
19 The connection of these two spur lines to the 70-mile Line will be subject to an
20 interconnection agreement, and no further load will be added to either spur line until an
21 interconnection agreement is in place, with the parties treating each line in accordance with
22 the terms of the interconnection agreement negotiated as to that line. BIA agrees to be the
23 customer for the interconnection meters at the beginning of the Bar 4 Spur and 1-Mile lines.
24 Mohave will install a meter at the point of interconnection of each spur line to monitor use,
25 and BIA will reimburse Mohave for the installation of each interconnection meter.

26 181. Mohave will respond to service calls on either spur line on a fee-for-service
27 basis under the present operations protocol until interconnection agreements are in place.
28 Mohave will provide BIA with a copy of the current Mohave interconnection policy and

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1 standards, as well as copies of its basic form service agreements and interconnection
2 agreements.

3 182. Mohave's ACC-approved Large Commercial and Industrial Service Rate will
4 apply to the power delivered to BIA on the 70 mile Line, excluding accounts in the name of
5 BIA for the Thornton Tower (Account #29740-001) and the Long Mesa Radio Repeater Site
6 (Account #451-055) which will be separately billed at the applicable ACC-approved rate for
7 such service. The remaining 10 original individual customers along the Line will continue
8 to be charged the applicable ACC-approved rates for such service.

9 183. Mohave will reassume its utility relationship with the original 12 customers
10 along the Line and treat these original 12 customers as members of Mohave so long as such
11 memberships and utility accounts are requested to be maintained and are maintained in good
12 standing. Any new users tapping into the 70-mile Line (including any new users in addition
13 to the original 12) may apply for and be provided service pursuant to either a service
14 agreement (which will not be a member agreement, but will provide for "member-like"
15 utility services) or an interconnection agreement, in the discretion of Mohave, including as
16 to metering and meter reading. BIA agrees to assist Mohave in negotiating and entering into
17 appropriate agreements with the new user, if the new user is the Hualapai Tribe, the
18 Havasupai Tribe, or a member of either Tribe. Such new agreements shall be subject to the
19 terms and conditions as set forth in this Decision and such further terms and conditions
20 agreed upon between Mohave and the new user.

21 184. In addition to paying Mohave's ACC-approved Large Commercial and
22 Industrial Service Rate, BIA will pay all reasonable overhead, maintenance and repair
23 ("OM&R") costs on the 70-mile Line per its pro rata share of its load compared to Mohave's
24 customers' load, as measured by new equipment ("TWAC system") that BIA is installing at
25 BIA's cost on the Line. Until the new TWAC system is operational, the pro rata shares will
26 be established by actual meter readings. The parties' actual load will also provide the basis
27 for apportioning load loss among them. BIA's load shall be the total load delivered to the
28 70-mile Line, less the energy sold to other Mohave customers and less losses allocated to

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1 Mohave pursuant to Conclusion No. 196 below. Until new meters and BIA's new TWAC
 2 system are operational, Mohave may, at its option, continue to credit BIA \$348 per month as
 3 the estimated monthly usage by the 12 original accounts in lieu of making monthly readings
 4 and billings.

5 185. Mohave and BIA will work together to assess the status of the 70-mile Line
 6 and will use that information to develop an initial and ongoing OM&R plan and budget,
 7 including an estimate for unplanned OM&R, so that BIA and Mohave can plan and budget
 8 for such expenses. Mohave will complete the OM&R plan for the 70-mile Line no later
 9 than one year after the effective date of this Decision, and this plan will serve as the basis
 10 for undertaking the planned OM&R of the 70-mile Line. BIA agrees to plan and share with
 11 Mohave its future budgets, as available, for anticipated OM&R costs based on the OM&R
 12 plan as amended periodically by the parties.

13 186. Mohave will establish a designated contact person or persons for OM&R
 14 issues and budgeting, and such person or persons will meet regularly with BIA as
 15 reasonably necessary to allow BIA sufficient time to plan its budget (not less than annually)
 16 and to review the annual OM&R plan with BIA to take into account the federal budget and
 17 appropriations process required of BIA. The objective of this OM&R plan is to replace and
 18 supersede the "Operations Protocol" entered into by Mohave in November 2007.

19 187. Mohave will work with BIA on an interconnection agreement for BIA's solar
 20 generation facilities attached to the 70-mile Line, and such agreed facilities may supplement
 21 BIA's power usage from the line in a way that reduces the load provided to BIA by Mohave
 22 on a "net metering, demand side management" basis as has been established in Mohave's
 23 ACC-approved net metering tariff.

24 188. Mohave agrees that BIA has 2000 kW of capacity on the Line and 1500 kW of
 25 transformer capacity at Nelson substation to serve all BIA's existing and future connected
 26 loads. Any unused capacity in either the Line or transformer connected at Nelson may be
 27 used by the other party at no additional cost, subject to the terms of this Decision. In
 28 determining existing loads, Mohave will be responsible for the 12 original services (that is,

1 the 2 within Mohave's CCN and 10 outside Mohave's CCN), plus the additional new
2 customers that Mohave agrees to serve directly under a service agreement or an
3 interconnection agreement, and the capacity required to serve those loads.

4 189. The cost of any increased loads from the existing capacity of the 70-mile Line
5 shall be proportionally borne by the parties using such increased loads, as shall be
6 determined by joint studies demonstrating the costs of such increased loads. If the Hualapai
7 or Havasupai Tribe seek to increase the load on the 70-mile Line, BIA shall facilitate
8 discussions between the Tribe and Mohave in order to serve the new/additional loads and
9 apportion costs to the responsible party other than Mohave.

10 190. Any tribal governmental taxes, fees and assessments assessed related to the
11 70-mile Line within Mohave's CCN shall be the responsibility of Mohave to the extent that
12 Mohave has customers served from the 70-mile Line within the CCN. Such tribal
13 governmental taxes, fees and assessments may be allocated among and passed on to
14 Mohave's customers connected to the 70-mile Line within the CCN. Any tribal
15 governmental taxes, fees and assessments that are assessed related to the 70-mile Line
16 outside Mohave's CCN will be apportioned between Mohave and BIA pro rata by usage and
17 shall be allocated among and passed on to Mohave's customers connected to the 70-mile
18 Line outside Mohave's CCN or BIA's accounts as appropriate.

19 191. BIA will use its best reasonable efforts to work with Mohave in applying to
20 the Tribes for renewal of the Hualapai, Havasupai and Boquillas Ranch (Navajo) rights-of-
21 way and grants of easement along the 70-mile Line, which will include reasonable rights of
22 access across tribal lands to facilities and customers.

23 192. The parties agree that all disputed payment issues between the parties as of the
24 date of this Decision have been resolved.

25 193. Mohave intends to construct, at its expense, a separate line to serve the two
26 original accounts within its CCN area, and Mohave will comply with applicable Federal and
27 tribal permitting and approval requirements in relation thereto.

28

1 194. Mohave shall continue at its expense to maintain and read the meter at the
2 Nelson substation in order to provide a measure of the load being delivered at the front end
3 of the 70-mile Line.

4 195. BIA will, at its expense, install a meter at Long Mesa in order to measure the
5 load at the end of the 70-mile Line for purposes of billing and calculating and apportioning
6 line loss between the parties, in conjunction with readings from the service meters either by
7 manual reading or through the TWAC system.

8 196. Once net line loss is calculated, and adjustments are made for the amount of
9 loss built into Mohave's standard rate (actual losses net the embedded loss in the rate), the
10 parties shall share the expense of such additional losses in proportion to their use in the
11 same manner as OM&R costs are being apportioned.

12 CONCLUSIONS OF LAW

13 1. Mohave is a public service corporation within the meaning of Article XV of
14 the Arizona Constitution, A.R.S. §§ 40-201, 40-202, 40-203, 40-243, 40-246, 40-247, 40-
15 248, 40-281, 40-282, 40-285, 40-321, 40-331, and 40-361.

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

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

20 4. The subject matter of the Complaint and the determinations made thereon in
21 this Decision do not result in state regulation of an Indian tribe, interfere with the
22 reservation self-government, or implicate any right granted or reserved by federal law. BIA
23 specifically waived any jurisdiction claims on behalf of the Hualapai and Havasupai tribes
24 that it might otherwise have raised by its requests for relief in the Complaint.

25 5. Notice of this proceeding was provided as required by law.

26 6. Upon entry of this Decision, based on the agreed terms and conditions set
27 forth herein, Mohave shall become the owner and operator of the 70-mile Line.

28

1 7. The 12 accounts who have been using the Line are retail customers as defined
2 by A.R.S. § 40-201(21), and the Line shall be used to provide electric utility service to those
3 customers in accordance with this Decision.-

4 8. [Mohave Proposed Language: BIA is not a retail customer of Mohave when
5 purchasing power for resale, redistribution or retransmission, such as is the case with power
6 received by BIA for redistribution by the BIA for use in Supai Village in the Grand
7 Canyon.]

8 [BIA Proposed Language: BIA is a retail customer of Mohave on the 70-Mile Line,
9 including the meter at Long Mesa, because the BIA uses the electricity in its trade or
10 business providing support and programs for Native Americans as authorized by
11 Congress.]¹¹⁶

12 9. The Memorandum of Settlement Points entered into by Mohave and BIA is
13 reasonable and its approval by the Commission is in the public interest.

14 **ORDER**

15 IT IS THEREFORE ORDERED that Mohave Electric Cooperative, Incorporated
16 shall reassume ownership of the 70-Mile Line;

17 [Mohave Proposed Language: IT IS FURTHER ORDERED that ownership of the
18 70-Mile Line and delivery of power to customers therefrom does not constitute an extension
19 of the Certificate of Convenience and Necessity of Mohave Electric Cooperative,
20 Incorporated.]¹¹⁷

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25 ¹¹⁶ BIA and Mohave do not have agreement on this Conclusion of Law and submit the
26 competing language to the Commission for determination.

27 ¹¹⁷ BIA and Mohave do not have agreement on the inclusion of this Ordering language and
28 submit the issue to the Commission for determination.

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1 [BIA Proposed Language: IT IS FURTHER ORDERED that Mohave may not
 2 abandon the 70-Mile Line without an Order from the Commission authorizing Mohave to
 3 abandon the 70-Mile Line pursuant to A.R.S. § 40-285(A).¹¹⁸

4 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall,
 5 within ten days, recommence operation and maintenance of the Line to Long Mesa in
 6 accordance with this Decision and the Memorandum of Settlement Points.

7 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated does
 8 not own the Bar Four Spur or the 1-Mile Line, and has obligations concerning those lines
 9 only as provided for in any interconnection agreements entered into by Mohave Electric
 10 Cooperative concerning those lines in accordance with Mohave's interconnection policy and
 11 standards.

12 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
 13 respond to service calls on the Bar Four Spur and the 1-Mile Line on a fee-for-services basis
 14 under the present Operations Protocol until interconnection agreements are in place.
 15 Mohave shall provide BIA with a copy of the current Mohave interconnection policy and
 16 standards, as well as copies of its basic form service agreements and interconnection
 17 agreements, within ten days.

18 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
 19 charge its Large Commercial and Industrial Service Rate for power delivered to BIA
 20 through the 70-Mile Line, except that Mohave Accounts # 451-055 (Repeater Site) and #
 21 29740-001 (Fire Tower) shall be separately billed at the applicable ACC-approved rate.

22 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
 23 reassume its customer relationship with the original 12 accounts along the 70-Mile Line,
 24 including Mohave Accounts #451-055 and 29740-001, and that Mohave Electric
 25

26
 27 ¹¹⁸ BIA and Mohave do not have agreement on the inclusion of this Ordering language and
 28 submit the issue to the Commission for determination.

1 Cooperative, Incorporated shall charge each account its applicable Commission-approved
2 rate for such service.

3 IT IS FURTHER ORDERED that within 60 days Mohave -shall implement meter
4 reading and billing through the TWAC system for all 12 original accounts, or alternatively,
5 in its discretion, Mohave may install meters not tied to the TWAC system and conduct
6 manual reading of same and implement meter reading and billing through such meters at
7 any time.

8 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
9 provide power to any new users along the 70-Mile Line who agree to the terms of Mohave's
10 service agreement (similar to a member agreement) or an interconnection agreement, in the
11 discretion of Mohave Electric Cooperative, Incorporated.

12 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
13 be responsible for only its pro rata share (based on the actual load of Mohave Electric
14 Cooperative, Incorporated's customers) of any reasonable operation, maintenance and repair
15 costs for the 70-Mile Line.

16 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
17 work with BIA to assess the status and condition of the 70-Mile Line and develop plans for
18 initial and ongoing operation, maintenance and repair plans and budgets.

19 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
20 designate a contact person or persons for operation, maintenance and repair issues and
21 budgeting related to the 70-Mile Line, and such person or persons shall meet regularly with
22 BIA as reasonably necessary to allow BIA to plan its budget and to review the operation,
23 maintenance and repair plan with BIA to take into the account the federal budget and
24 appropriations process required of BIA.

25 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
26 negotiate and enter into a mutually agreeable interconnection agreement with BIA for BIA's
27 solar generation facilities attached to the 70-Mile Line, under which such facilities may
28 supplement BIA's power usage and decrease the load provided by Mohave Electric

1 Cooperative, Incorporated to BIA, pursuant to Mohave Electric Cooperative, Inc's net
2 metering tariff.

3 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
4 provide that BIA has 2000 kW capacity on the 70-Mile Line and 1500 kW transformer
5 capacity at the Nelson substation to serve all of BIA's existing and future connected loads,
6 and that any unused capacity in the either the Line or the transformer connected at Nelson
7 may be used by either party subject to the terms of their agreement.

8 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
9 be responsible for only its proportionate share of the costs of any increased loads from the
10 existing capacity of the 70-Mile Line, as determined by joint studies demonstrating the cost
11 of such increased loads.

12 IT IS FURTHER ORDERED that any tribal governmental taxes, fees and
13 assessments related to the 70-Mile Line within Mohave Electric Cooperative, Incorporated's
14 Certificate of Convenience and Necessity shall be the responsibility of Mohave Electric
15 Cooperative, Incorporated to the extent it has customers served from the 70-Mile Line
16 within its certificated area, and that such tribal governmental taxes, fees and assessments
17 may be allocated among and passed on to Mohave Electric Cooperative, Incorporated's
18 customers connected to the 70-Mile Line within its certificated area.

19 IT IS FURTHER ORDERED that any tribal governmental taxes, fees and
20 assessments related to the 70-Mile Line outside Mohave Electric Cooperative,
21 Incorporated's Certificate of Convenience and Necessity shall be apportioned between
22 Mohave Electric Cooperative, Incorporated and BIA pro rata by usage and shall be allocated
23 among and passed on to Mohave customers connected to the 70-mile Line outside Mohave's
24 certificated area or BIA's accounts as appropriate.

25 IT IS FURTHER ORDERED that BIA shall use its best reasonable efforts to work
26 with Mohave Electric Cooperative, Incorporated in applying to the Tribes for renewal of
27 rights-of-way and easements from the Havasupai and Hualapai Tribes and the Boquillas
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1 Ranch (owned by the Navajo Tribe) for the 70-Mile Line, including reasonable rights of
2 access across tribal lands to facilities and customers.

3 IT IS FURTHER ORDERED that Mohave Electric Cooperative, Incorporated shall
4 continue at its own expense to maintain and read the meter at the Nelson substation in order
5 to provide a measure of the load delivered at the Nelson substation end of the 70-Mile Line.

6 IT IS FURTHER ORDERED that, Mohave Electric Cooperative, Incorporated shall
7 calculate the net line loss for the 70-Mile Line, including adjustments for the amount of loss
8 built into Mohave Electric Cooperative, Incorporated's standard rate (actual losses net the
9 embedded loss in the rate); and Mohave Electric Cooperative, Incorporated shall be
10 responsible for only its share of the load losses in proportion to its use of the 70-Mile Line
11 (based on the actual load of Mohave Electric Cooperative, Incorporated's customers) in the
12 same manner as operation, maintenance and repair costs are apportioned. Mohave Electric
13 Cooperative, Incorporated shall share the basis for the proposed calculation with BIA for
14 concurrence as part of the on-going operation, maintenance, and repair discussions between
15 Mohave and BIA.

16 IT IS FURTHER ORDERED that BIA's complaint against Mohave Electric
17 Cooperative, Incorporated is fully resolved by this Decision, that no issues remain for
18 resolution under that complaint, and that all parties to the complaint and this proceeding
19 shall bear their own attorney's fees, costs and expenses.
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IT IS FURTHER ORDERED that this Decision shall become effective immediately.
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 **DRAFT**

CHAIRMAN

COMMISSIONER

 **DRAFT**

COMMISSIONER

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 ____ day of
_____, 2010.

 **DRAFT**

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR:

COMPLAINT OF THE BUREAU OF INDIAN
AFFAIRS, UNITED STATES OF AMERICA,
AGAINST MOHAVE ELECTRIC COOPERATIVE,
INCORPORATED

DOCKET NO.:

E-01750A-05-0579

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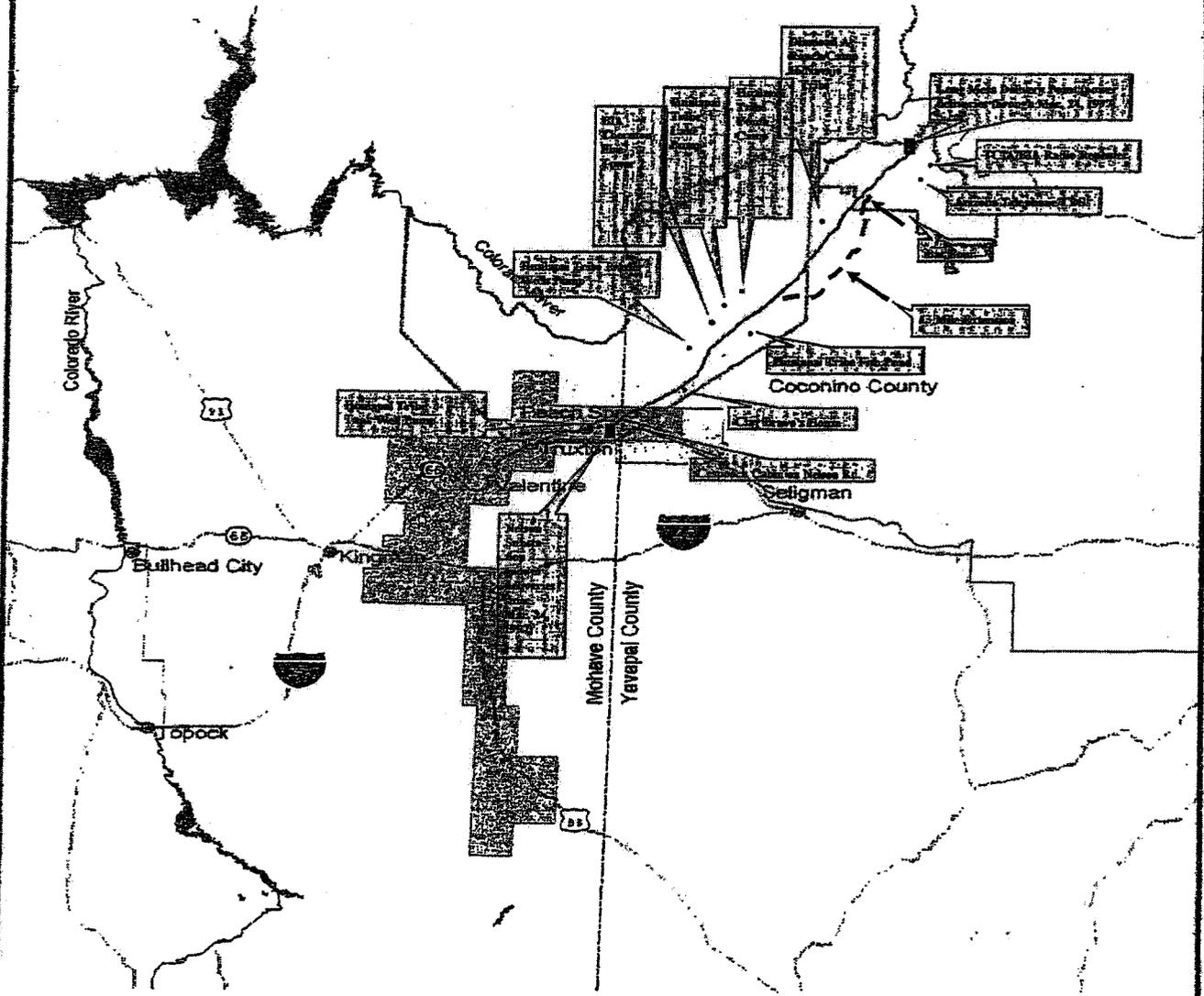
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EXHIBIT 1



- EXPLANATION**
- Havasupai Indian Reservation
 - Hualapai Indian Reservation
 - County
 - 1962 Service Area A
 - 1962 Service Area B
 - 1984 Service Area
 - 1995 Service Area



DECISION NO. _____