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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

2012 FEB -8 P 1:51

Arizona Corporation Commission

DOCKETED

FEB - 8 2012

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DOCKETED BY

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

DOCKET NO. E-01750A-05-0579

**PROCEDURAL ORDER**  
**SETTING PROCEDURAL**  
**CONFERENCE**

**BY THE COMMISSION:**

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

On December 30, 2010, Mohave Electric Cooperative, Inc. ("Mohave" or "Respondent") timely filed an Application for Rehearing of Decision No. 72043 pursuant to A.R.S. § 40-253 ("Application for Rehearing").

On January 11, 2011, the Bureau of Indian Affairs, United States of America, ("BIA" or "Complainant") filed a response to Mohave's Application for Rehearing.

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

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

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

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

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

6 The procedural status conference convened as scheduled on March 31, 2011. Complainant,  
7 Respondent, 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 were  
10 encouraged to continue their efforts to settle their dispute, were informed that a Procedural Order  
11 would be issued setting a date for the rehearing, and were directed to file within 10 days, either  
12 jointly or separately, their proposed procedural schedule for the rehearing proceeding.

13 On April 15, 2011, Complainant and Respondent jointly filed a Proposed Procedural Schedule  
14 for Rehearing.

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

17 On May 5, 2011, the Commission issued Decision No. 72290 in this docket. Decision No.  
18 72290 suspended the requirement of Decision No. 72043 that Mohave place a meter at Long Mesa  
19 and recommence reading the meter at Long Mesa within ten days. The requirement was suspended  
20 pending the rehearing process for Decision No. 72043 and until further order of the Commission.

21 On May 20, 2011, as required by the April 19, 2011, Procedural Order, BIA and Mohave  
22 jointly filed a status report on their settlement negotiations. The filing stated that the parties were  
23 hopeful that a settlement could be reached, but that they could not at that time report the terms of a  
24 completed settlement. BIA and Mohave requested that the deadlines set in the April 19, 2011,  
25 Procedural Order remain in place, and stated that they would continue negotiations and notify the  
26 Commission if a settlement was reached.

27 On June 20, 2011, BIA and Mohave filed a Joint Notice of Settlement and Request for  
28 Procedural Conference ("Notice"). The Notice stated that BIA and Mohave had reached general

1 agreement on the primary points of the terms of a Memorandum of Agreement (“Memorandum”) that  
2 would form the basis of formal settlement documentation, and that they expected to sign the  
3 Memorandum shortly. The filing further stated that additional time was needed to transform the  
4 items in the Memorandum into formal documentation carrying forward the intent of the  
5 Memorandum, as well as to obtain approvals of the United States Department of the Interior, and of  
6 Mohave’s Board of Directors. BIA and Mohave jointly requested that the procedural deadlines for  
7 the rehearing be vacated; that the July 25, 2011, rehearing be vacated; and that a procedural  
8 conference be set to take place in approximately 30 days at which time the parties would inform the  
9 Commission of the status of the settlement documentation process, and any remaining procedural  
10 issues would be resolved.

11 On June 21, 2011, a Procedural Order was issued granting the joint request to vacate the  
12 hearing, and setting a procedural conference in its place.

13 On June 25, 2011, the procedural conference convened as scheduled. BIA, Mohave and Staff  
14 appeared through counsel. BIA and Mohave indicated that they would require 45 to 60 days to  
15 finalize a proposed settlement agreement based on the Memorandum, which BIA would subsequently  
16 present to the Havasupai and Hualapai Tribes for their consideration. BIA estimated that the tribal  
17 consideration process could take 90 days, making the total timeframe for the filing of an executed  
18 settlement agreement 150 days. At the procedural conference, the parties also discussed how to  
19 provide input for a Recommended Order to reflect their forthcoming settlement agreement, and  
20 whether a hearing would be necessary prior to the preparation of such a Recommended Order.

21 On July 27, 2011, a Procedural Order was issued setting a deadline of December 22, 2011, for  
22 the filing of an executed settlement agreement and a stipulation setting forth the specific relief the  
23 parties propose to have included in a Recommended Order on Rehearing.

24 On December 22, 2011, BIA and Mohave filed a Settlement Status Report and Joint Request  
25 for Additional Time (“Request”). The Request stated that the parties were continuing to work toward  
26 documenting a settlement agreement in the form of a stipulated Recommended Order on Rehearing.  
27 The Request stated that the parties anticipated that the agreement would address the incorporation of  
28 new systems being installed on the 70-mile Line and further stated that this issue and other issues had

1 expanded the time necessary to complete the settlement. The Request further stated that the  
2 consultation process with the Havasupai and Hualapai Tribes was not yet completed. The parties  
3 jointly requested an extension of time until January 31, 2012, to file a document setting forth their  
4 settlement agreement.

5 A Procedural Order was issued on December 27, 2011, granting the Request and setting a  
6 deadline of January 31, 2012, for the filing of an executed settlement agreement and a stipulation  
7 setting forth the specific relief the parties propose to have included in a Recommended Order on  
8 Rehearing.

9 On January 31, 2012, BIA and Mohave jointly filed a request for additional time.

10 On February 3, 2012, BIA and Mohave jointly submitted a proposed Recommended Opinion  
11 and Order on Rehearing ("proposed Order"), which the parties state contains and embodies the  
12 settlement worked out between them.<sup>1</sup> The proposed Order contains several instances of language, in  
13 both Findings of Fact and Ordering Paragraphs, that is proposed by one party but not agreed to by the  
14 other party. The filing indicates that BIA and Mohave are submitting the contested language for  
15 Commission determination. The filing also requests a hearing regarding the partial settlement, and  
16 that a procedural conference be set.

17 Accordingly, a procedural conference should be set.

18 IT IS THEREFORE ORDERED that a **procedural conference** shall be held on **February 17,**  
19 **2012, at 10:00 a.m.,** or as soon thereafter as practicable, at the Commission's offices, 1200 West  
20 Washington Street, **Hearing Room No. 1,** Phoenix, Arizona, for the purpose of discussing the  
21 February 3, 2012, filing and the rehearing.

22 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
23 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

24 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
25 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
26 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings  
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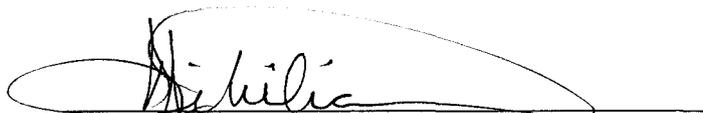
28 <sup>1</sup> The February 3, 2012 filing does not include an executed settlement agreement.

1 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for  
2 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
3 Law Judge or the Commission.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
5 Communications) continues to apply to this proceeding and shall remain in effect until the  
6 Commission's Decision in this matter is final and non-appealable.

7 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
8 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
9 hearing.

10 DATED this 8<sup>th</sup> day of February, 2012.

11  
12  
13   
14 TEENA JIBILIAN  
15 ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered/faxed  
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