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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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

DOCKET NO. E-01750A-05-0579

STAFF'S BRIEF

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") pursuant to the Administrative Law Judge's ("ALJ") request hereby addresses Staff's position regarding the joint submissions filed by the Bureau of Indian Affairs, United States of America ("BIA") and Mohave Electric Cooperative, Inc. ("Mohave"). Specifically on March 23, 2012, in response to the ALJ's February 22, 2012 procedural order, Mohave and BIA filed a Joint Notice of Filing Settlement Agreement ("Settlement")<sup>1</sup> and Parties' Joint Submission of Issues on Which the Parties Continue to Disagree ("Points of Disagreement"). This is a rehearing of Decision No. 72043 which addressed a longstanding dispute between BIA and Mohave dating back to 2005. The Commission granted rehearing of this matter on January 18, 2011. Since that time BIA and Mohave engaged in settlement discussions that ultimately resulted in the Settlement. Staff supports the settlement agreement signed by BIA and Mohave.<sup>2</sup> However even with the Settlement there are still three Points of Disagreement between BIA and Mohave.<sup>3</sup> The first point of disagreement relates to the renewal of easements and rights of ways along the 70 mile line. The second point of disagreement is whether BIA is classified as a retail or wholesale customer of Mohave. Third, is

<sup>1</sup> BIA and Mohave filed a Final Version of the Parties' "Final Memorandum of Settlement Points" and Notice of Providing Oversized Copy of Exhibit 1 to ALJ Jibilian and Commission Staff on April 9, 2012.

<sup>2</sup> Tr. At 134.

<sup>3</sup> Parties' Joint Submission of Issues on Which the Parties Continue to Disagree. March 23, 2012.

1 whether Mohave's certificate of convenience and necessity is being extended to encompass the line  
2 and whether Mohave can abandon the 70-mile line without an Order of the Commission.

3 **A. THE NEED FOR EASEMENTS.**

4 As mentioned above, the first point of disagreement between BIA and Mohave relates to the  
5 renewal of the easements on the Boquillas Ranch Property, the Hualapai reservation, and the  
6 Havasupai reservation.<sup>4</sup> Importantly, there is no dispute between the parties that easements are  
7 necessary in order for Mohave to have legal access to the line.<sup>5</sup> In fact, BIA has agreed to use its best  
8 reasonable efforts to work with Mohave to obtain the renewals of the Hualapai, Havasupai and  
9 Boquillas Ranch rights-of-way and grants of easement along the line along with reasonable rights of  
10 access across tribal lands to facilities and customers.<sup>6</sup> The point of dispute on this issue appears to  
11 simply involve what happens in the event Mohave is unable to obtain the necessary easements and  
12 rights-of-way. Even more specifically, it appears that Mohave is seeking to include the following  
13 language in the settlement agreement for the easements:

14 If, after applying for an easement or other permission from the owner of  
15 these lands, such easement or permission is not offered and accepted on  
16 mutually agreeable terms and conditions, Mohave will have no ability to  
operate or maintain the Line or to read meters related to the Line related to  
this segment.<sup>7</sup>

17 Although it appears that BIA was opposed to the inclusion of this language in the Settlement<sup>8</sup>,  
18 as of the conclusion of the hearing it is no altogether clear.<sup>9</sup> It is Staff's position on this point of  
19 disagreement that Mohave must be given access to the line and must be able to obtain easements  
20 pursuant to A.A.C. R14-2-206(C)(1). In short, it appears that Mohave is merely seeking to include  
21 language in the settlement that already applies pursuant to the Arizona Administrative Code.

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26 <sup>4</sup> Ex. R-18 at 29,

27 <sup>5</sup> Tr. At 102, 138.

28 <sup>6</sup> Ex. R-10 (Settlement Points) at 4.

<sup>7</sup> Ex. R-18 at 29, 32.

<sup>8</sup> See Parties' Joint Submission of Issues on Which the Parties Continue to Disagree, and Ex. R-18 at 29, 32.

<sup>9</sup> Tr. at 109, 138.

1 **B. STATUS OF BIA AS A RETAIL OR WHOLESALE CUSTOMER OF MOHAVE.**

2 The parties' second point of disagreement is whether BIA is a retail or wholesale customer of  
3 BIA. In the Points of Disagreement Mohave proposed the following language for the conclusions of  
4 law in this matter:

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

8 Alternatively, BIA proposed the following language for conclusions of law:

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

11 It is Mohave's contention that BIA is a wholesale customer of Mohave at Long Mesa mainly  
12 because BIA in turn provides the electricity it receives at Long Mesa.<sup>10</sup> The BIA acknowledges that  
13 it distributes electricity down into Supai Canyon.<sup>11</sup> BIA acknowledges that it owns the meter at Long  
14 Mesa<sup>12</sup> and also owns the line going down into Supai Canyon.<sup>13</sup> However, the BIA claims that  
15 although they meter their usage down in the Supai Canyon they don't consider them to be customers  
16 since the BIA is not a business.<sup>14</sup> Additionally, BIA asserts that because it is paying a retail rate that  
17 it should be considered a retail customer.<sup>15</sup> Ultimately BIA acknowledges that this is not a typical  
18 arrangement.<sup>16</sup> Staff's position on this issue is simply that because BIA receives power from Mohave  
19 that it then distributes to other customers, and since Mohave does not read the meters down in the  
20 Supai Canyon, bill the customers in the Canyon, maintain the distribution line beyond the meter at  
21 Long Mesa that BIA qualifies as a wholesale customer.<sup>17</sup>

22 ...

23 ...

24 \_\_\_\_\_  
25 <sup>10</sup> Tr. at 23.

26 <sup>11</sup> Tr. at 111.

27 <sup>12</sup> Tr. at 115.

28 <sup>13</sup> Tr. at 113.

<sup>14</sup> Tr. at 111.

<sup>15</sup> Tr. at 110.

<sup>16</sup> Tr. at 111.

<sup>17</sup> Tr. at 136.

1 C. CC&N EXTENSION AND ABANDONMENT OF THE LINE.

2 The third and final point of disagreement between BIA and Mohave relates to whether  
3 Mohave's CC&N should be extended to include the line, and whether Mohave can abandon the line  
4 in the future. More specifically, in the Points of Disagreement Mohave is requesting the inclusion of  
5 the following language for an ordering paragraph:

6 IT IS FURTHER ORDERED that ownership of the 70-Mile Line and  
7 delivery of power to customers therefrom does not constitute an extension  
8 of the Certificate of Convenience and Necessity of Mohave Electric  
Cooperative, Incorporated.

9 BIA on the other hand is seeking to include the following language for an ordering paragraph:

10 IT IS FURTHER ORDERED that Mohave may not abandon the 70-Mile  
11 Line without an Order from the Commission authorizing Mohave to  
abandon the 70-Mile Line pursuant to A.R.S. §40-285(A).

12 Interestingly, BIA is not seeking to extend Mohave's CC&N in this matter.<sup>18</sup> Further, Mohave  
13 is clearly not seeking to expand its CC&N to encompass the line<sup>19</sup>, and is merely concerned that there  
14 would be inadvertent extension of the CC&N.<sup>20</sup> Staff does not believe it is necessary to extend  
15 Mohave's CC&N to include the 70-Mile Line in this case.<sup>21</sup> However, Staff asserts that Mohave  
16 should actively monitor the line to ensure there are no new connections on the line without proper  
17 agreements from Mohave.<sup>22</sup> Further it is Staff's position that the possibility of extending the CC&N  
18 could be considered in the future should the circumstances change regarding the usage of the line.<sup>23</sup>  
19 Regardless, it is Staff's position that Mohave should not abandon the line in the future without prior  
20 Commission approval.<sup>24</sup> A.R.S §40-285(A) reads in part as follows:

21 A public service corporation shall not sell, lease, assign, mortgage, **or**  
22 **otherwise dispose of** or encumber the whole or any part of its . . . line,  
23 plant, or system necessary or useful in the performance of its duties. . .  
24 without first having secured from the commission an order authorizing it  
to do so.

25 <sup>18</sup> Tr. at 111.  
26 <sup>19</sup> Tr. at 74.  
<sup>20</sup> Tr. at 75.  
27 <sup>21</sup> Tr. at 137.  
<sup>22</sup> *Id.*  
28 <sup>23</sup> *Id.*  
<sup>24</sup> *Id.*

1 In this case Staff believes Mohave must get Commission approval if it ever decides to  
2 abandon the 70-Mile Line in the future.

3 **D. CONCLUSION.**

4 Staff recommends approval of the Settlement with Staff's recommendations regarding the  
5 treatment of the three remaining point of disagreement. Staff believes this resolution is in the public  
6 interest and will resolve this longstanding dispute between the parties.

7 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of July, 2012.

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16 23<sup>rd</sup> day of July, 2012 with:

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