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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUN 27 2013

- BOB STUMP - Chairman
- GARY PIERCE
- BRENDA BURNS
- BOB BURNS
- SUSAN BITTER SMITH

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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 RESERVATIONS.

DOCKET NO. E-01750A-05-0579

DECISION NO. 73914

OPINION AND ORDER ON REHEARING

DATES OF REHEARING: January 25, March 31, and July 25, 2011, and February 17, 2012 (Procedural Conferences), June 11, 2012

PLACE OF REHEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Jibilian

APPEARANCES: Mssrs. Steven A. Hirsch and Rodney W. Ott, BRYAN CAVE LLP, and Mr. Michael A. Curtis, CURTIS GOODWIN, SULLIVAN, UDALL & SCHWAB, PLC, on behalf of Mohave Electric Cooperative, Inc.;

Mr. Mark J. Wenker, U.S. ATTORNEY, DISTRICT OF ARIZONA, and Ms. Wonsook Sprague, U.S. DEPARTMENT OF INTERIOR, on behalf of the Bureau of Indian Affairs, United States of America; and

Mr. Wesley C. Van Cleve, Staff Attorney, 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” or
4 “Complainant”) filed the above-captioned formal complaint (“Complaint”) with the Arizona
5 Corporation Commission (“Commission”) against Mohave Electric Cooperative, Inc.¹ (“Mohave” or
6 “Respondent”), concerning an electric power line that starts at Mohave’s Nelson Substation and runs
7 approximately 70 miles north, northeast, to the rim of the Grand Canyon, Arizona (“Line”).

8 On December 10, 2010, the Commission issued Decision No. 72043 in this docket. Decision
9 No. 72043 concluded that Mohave is the owner of the Line and is the retail electric service provider
10 to the twelve retail accounts served by the Line; ordered Mohave to recommence operation and
11 maintenance of the Line; to begin reading meters of its retail customers currently served by the Line;
12 to place a meter at the Long Mesa transformer at the rim of the Grand Canyon (“Long Mesa”) and
13 recommence reading the meter at Long Mesa in order to determine the proper amount to bill BIA for
14 electricity used past the point of Long Mesa; to reimburse BIA for amounts paid under protest for
15 electricity used by Mohave’s retail customers served by the Line; and to file certification of the
16 reimbursement.

17 On January 18, 2011, the Commission voted to grant Mohave’s December 30, 2010
18 Application for Rehearing of Decision No. 72043 pursuant to A.R.S. § 40-253 (“Application for
19 Rehearing”). The Commission ordered the Hearing Division to issue a Procedural Order scheduling
20 a procedural conference for the purpose of setting a procedural schedule for the rehearing proceeding,
21 and to prepare a Recommended Order on Rehearing for Commission consideration.

22 On January 25, 2011, a procedural conference was held as scheduled by Procedural Order
23 issued on January 18, 2011. BIA and Mohave appeared through counsel. Mohave stated that it did
24 not wish to immediately proceed to a rehearing, but preferred instead to work with BIA to reach a
25 settlement of their disputed issues.

26
27

¹ Mohave is an Arizona Electric Cooperative Nonprofit Membership Corporation and a public service corporation
28 pursuant to Article 15, § 2, of the Arizona Constitution. Mohave provides electric service to approximately 38,500
customers to areas within Mohave, Coconino, and Yavapai counties.

1 As set forth in detail in the Findings of Fact below, after several procedural conferences and a
 2 postponement of the first scheduled rehearing proceeding, BIA and Mohave filed, on March 23,
 3 2012, a Joint Notice of Filing Settlement Agreement, to which was attached an unsigned version of
 4 their Memorandum of Settlement Points. On the same date, BIA and Mohave also filed a Joint
 5 Submission of Issues on Which the Parties Continue to Disagree.

6 On April 9, 2012, BIA and Mohave filed a copy of a Final Memorandum of Settlement Points
 7 signed by Mohave's CEO and by the Acting Regional Director, Western Region, of BIA
 8 ("Agreement"). A copy of the Agreement is attached hereto as Exhibit A.

9 The rehearing of Decision No. 72043 commenced on June 11, 2012, before a duly authorized
 10 Administrative Law Judge of the Commission. BIA, Mohave and Staff presented evidence through
 11 witnesses and had the opportunity to cross examine witnesses. BIA, Mohave, and Staff filed initial
 12 closing briefs on July 23, 2012. BIA and Mohave filed reply closing briefs on August 6, 2012, after
 13 which the rehearing matter was taken under advisement pending the submission of a Recommended
 14 Opinion and Order on Rehearing.

15 * * * * *

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

18 **FINDINGS OF FACT**

19 **Procedural History**

- 20 1. On August 10, 2005, BIA, a customer of Mohave, filed the Complaint.
- 21 2. On December 10, 2010, the Commission issued Decision No. 72043 in this docket.
- 22 Decision No. 72043 concluded that Mohave is the owner of the Line and is the retail electric service
 23 provider to the twelve retail accounts served by the Line. Decision No. 72043 also concluded the
 24 following: the customers to which Mohave voluntarily commenced electric utility service using the
 25 Line are retail customers as defined by A.R.S. § 40-201(21); the Line is being used to provide electric
 26 utility service to Mohave's retail customers, and is therefore necessary and useful in the performance
 27 of Mohave's duties to the public; the attempted abandonment of the Line by Mohave by means of a
 28

1 quit claim deed without first having secured from the Commission an Order authorizing it to do so is
2 void pursuant to A.R.S. § 40-285(A); and BIA is a retail customer of Mohave at Long Mesa.

3 3. Decision No. 72043 ordered Mohave to recommence operation and maintenance of
4 the Line; to begin reading meters of its retail customers served by the Line; to place a meter at Long
5 Mesa and recommence reading the meter at Long Mesa,² in order to determine the proper amount to
6 bill BIA for electricity used past the point of Long Mesa; to reimburse BIA for amounts paid under
7 protest for electricity used by Mohave's retail customers served by the Line; and to file certification
8 of the reimbursement.

9 4. On December 30, 2010, Mohave timely filed the Application for Rehearing.

10 5. On January 11, 2011, BIA filed a response to the Application for Rehearing.

11 6. On January 18, 2011, the Commission voted to grant the Application for Rehearing
12 pursuant to A.R.S. § 40-252. The Commission ordered the Hearing Division to issue a Procedural
13 Order scheduling a procedural conference for the purpose of setting a procedural schedule for the
14 rehearing proceeding, and to prepare a Recommended Order on Rehearing for Commission
15 consideration.

16 7. On January 18, 2011, a Procedural Order was issued setting a procedural conference
17 for the purpose of scheduling the Rehearing of Decision No. 72043.

18 8. On January 24, 2011, Mohave filed notice that a check it mailed to BIA in compliance
19 with Decision No. 72043 was returned to sender.

20 9. On January 25, 2011, the procedural conference was held as scheduled. BIA and
21 Mohave appeared through counsel. Counsel for Mohave indicated that Mohave wished to enter into
22 discussions with BIA to attempt resolution of disputed issues, and that Mohave would therefore
23 prefer not to have a hearing date set at that time. Mohave proposed that a status conference be set
24 instead, in approximately 45 days, at which time Mohave and BIA could report on their progress in
25 reaching a resolution on the issues Mohave raised in the Application for Rehearing. BIA indicated
26 that it was amenable to Mohave's proposal.

27 ² Decision No. 72043 found that on or about March 24, 1997, Mohave had moved its metering equipment from the Long
28 Mesa transformer at the end of the Line to the Nelson Substation at the front of the Line, and had begun metering
electricity supplied through the Line at Mohave's Nelson substation rather than at Long Mesa.

1 10. On January 26, 2011, a Procedural Order was issued setting a procedural status
2 conference to be held on March 17, 2011.

3 11. On January 31, 2011, Mohave filed a Motion for an Extension of Compliance
4 Deadlines in Decision No. 72043 Pending Rehearing ("Motion").

5 12. On February 9, 2011, BIA filed a Response to Mohave's Motion.

6 13. On February 10, 2011, Mohave filed certification that it delivered a check to BIA in
7 compliance with Decision No. 74032.

8 14. On February 17, 2011, Mohave filed a Reply in support of the Motion.

9 15. On March 14, 2011, a telephonic procedural conference was held at the request of BIA
10 and Mohave. Following the telephonic procedural conference, a Procedural Order was issued
11 continuing the March 17, 2011 procedural conference to March 31, 2011. The Procedural Order also
12 directed the Commission's Utilities Division ("Staff") to file a recommendation regarding the
13 Motion.

14 16. On March 22, 2011, Staff filed its recommendation regarding the Motion.

15 17. On March 31, 2011, a procedural status conference convened as scheduled. BIA,
16 Mohave and Staff appeared through counsel. The parties discussed the Motion, and were informed
17 that a Recommended Order would be filed addressing the Motion. The parties were also directed to
18 file a proposed schedule for the rehearing proceeding, and to include in the schedule a date for the
19 filing of a stipulated agreement between BIA and Mohave.

20 18. On April 15, 2011, BIA and Mohave jointly filed a Proposed Procedural Schedule for
21 Rehearing.

22 19. On April 19, 2011, a Procedural Order Setting Rehearing was issued. The Procedural
23 Order adopted BIA and Mohave's jointly proposed procedural schedule, and set a rehearing date of
24 July 25, 2011, with associated procedural deadlines.

25 20. On May 4, 2011, the Commission issued Decision No. 72290. Decision No. 72290
26 granted the Motion, suspending the time deadline for Mohave to place a meter at Long Mesa and
27 recommence reading the meter at Long Mesa, pending the rehearing process and until further order of
28 the Commission.

1 21. On May 20, 2011, BIA and Mohave filed a Joint Status Report on Settlement
2 Negotiations.

3 22. On June 20, 2011, BIA and Mohave filed a Joint Notice of Settlement and Request
4 for Procedural Conference, indicating that BIA and Mohave had reached general agreement on the
5 primary points of the terms of a Memorandum of Agreement that would form the basis of formal
6 settlement documentation, and that they expected to sign the Memorandum shortly. The joint filing
7 requested that the July 25, 2011 rehearing date and related procedural deadlines be vacated, and that a
8 procedural conference be set.

9 23. On June 21, 2011, a Procedural Order was issued granting BIA and Mohave's joint
10 request to vacate the rehearing date and to set a procedural conference.

11 24. On July 14, 2011, BIA and Mohave filed a Joint Notice of Filing Parties'
12 Memorandum of Settlement Points.

13 25. On July 25, 2011, a procedural conference convened as scheduled in place of the
14 vacated rehearing. BIA, Mohave and Staff appeared through counsel. BIA and Mohave indicated
15 that they would require 45 to 60 days to finalize a proposed settlement agreement, which BIA would
16 subsequently present to the Havasupai and Hualapai Tribes for their consideration, a process which
17 BIA estimated would take 90 days. The parties also discussed whether a hearing would be necessary
18 and how to provide input for a Recommended Order to reflect their forthcoming settlement
19 agreement.

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

23 27. On December 22, 2011, BIA and Mohave filed a Settlement Status Report and Joint
24 Request for Additional Time, which was granted by Procedural Order issued on December 27, 2011.

25 28. On January 31, 2012, BIA and Mohave filed a Joint Request by the Parties for
26 Additional Time to File a Stipulated Form of Recommended Opinion and Order.

27 29. On February 3, 2012, BIA and Mohave filed a Parties' Joint Submission of Proposed
28 Settlement Version of Recommended Opinion and Order and Request for Procedural Conference.

1 30. On February 8, 2012, a Procedural Order was issued setting a procedural conference to
2 be held on February 17, 2012.

3 31. On February 17, 2012, a procedural conference convened as scheduled. BIA,
4 Mohave, and Staff appeared through counsel. The parties discussed the scope of the rehearing, the
5 parties' availability, and dates on which pre-hearing filings could be made. BIA and Mohave both
6 indicated a preference that the scope of the rehearing be limited to (1) addressing the public interest
7 of their partial settlement, and (2) the presentation of testimony and legal arguments on the remaining
8 issues in dispute.

9 32. On February 22, 2012, a Second Procedural Order Setting Rehearing was issued,
10 setting the rehearing to commence on June 11, 2012, and setting deadlines for BIA and Mohave to
11 jointly file a signed document including all the points on which the parties agree; a deadline for BIA
12 and Mohave to file their lists of witnesses for the rehearing; and a deadline for Staff to file a witness
13 list indicating the witness who would testify as to Staff's position on BIA and Mohave's pre-hearing
14 filings.

15 33. On March 23, 2012, BIA and Mohave filed a Joint Notice of Filing Settlement
16 Agreement, to which was attached an unsigned version of their Memorandum of Settlement Points.

17 34. Also on March 23, 2012, BIA and Mohave filed a Joint Submission of Issues on
18 Which the Parties Continue to Disagree.

19 35. On April 9, 2012, BIA and Mohave filed the Agreement. A copy of the executed
20 Agreement is attached hereto and incorporated herein as Exhibit A.

21 36. On April 27, 2012, BIA and Mohave each filed a list of witnesses and exhibits.

22 37. On May 15, 2012, Staff filed its witness list.

23 38. The rehearing of Decision No. 72043 commenced on June 11, 2012, before a duly
24 authorized Administrative Law Judge of the Commission. BIA, Mohave and Staff presented
25 evidence through their witnesses and had the opportunity to cross examine witnesses for the other
26 parties.

27 39. On July 23, 2012, BIA, Mohave, and Staff filed initial closing briefs.
28

1 40. On August 6, 2012, BIA and Mohave filed reply closing briefs, and the rehearing
2 matter was taken under advisement pending the submission of a Recommended Opinion and Order
3 on Rehearing.

4 **Agreement**

5 41. Following the grant of the Application for Rehearing and during the parties'
6 settlement discussions, Mohave undertook an inspection of the accounts and meters along the Line,
7 and produced a current, updated map showing those accounts and other features of the Line and
8 attachments to the Line. This updated map, which Mohave and BIA agree accurately represents the
9 status of the Line, related attachments, and accounts as of April, 2011, is attached to the Agreement
10 as Exhibit 1.

11 42. The post-hearing inspection of the Line and accounts revealed that many of the meters
12 and/or meter installations to the individual retail accounts were not functioning properly and/or
13 required alterations. Following the post-hearing inspection of the Line and accounts, Mohave placed
14 new meters at the twelve individual retail service accounts served by the Line identified in Decision
15 No. 72043.

16 43. During the post-hearing inspection of the Line and accounts, Mohave discovered that
17 parties unknown had constructed a spur line approximately one mile in length ("1-Mile Line")
18 extending from the Line to a communications tower and associated solar panels, wind turbine and
19 generator at Long Mesa. The 1-Mile Line was energized without Mohave's authority and Mohave
20 did not know it had been energized until Mohave discovered the 1-Mile Line in April of 2011. The
21 post-hearing inspection of the Line and accounts also revealed that new services had been added to
22 the Bar 4 Spur³ without Mohave's knowledge or consent.

23 44. The Agreement provides that Mohave will not own the Bar 4 Spur or the 1-Mile Line;
24 that connection of the Bar 4 Spur and the 1-Mile Line to the Line will be subject to an
25 interconnection agreement; that no further load will be added to either the Bar 4 Spur or the 1-Mile
26

27 _____
28 ³ Decision No. 72043 found that in approximately October, 2003, construction was commenced on a 13.6 mile long spur
from the Line to the Bar 4 area of the Havasupai reservation ("Bar 4 Spur"), and that construction of the Bar 4 Spur was
completed in May, 2004.

1 Line until an interconnection agreement is in place; and that BIA will be the customer for the
2 interconnection meters at the beginning of both the Bar 4 Spur and the 1-Mile Line.

3 45. The post-hearing inspection of the Line and accounts also revealed that 8 new services
4 had been added to the Line without Mohave's knowledge or consent.

5 46. The Agreement provides that any new users may apply for and be provided service
6 pursuant to either a service agreement or an interconnection agreement. BIA agrees to assist Mohave
7 in negotiating and entering into appropriate non-member agreements with the new user, if the new
8 user is the Hualapai Tribe, the Havasupai Tribe, or a member of either Tribe. At the rehearing,
9 Mohave presented samples of both residential and business applications for non-member electric
10 service to be used for such applications.⁴ BIA did not object to those forms. Mohave's CEO testified
11 at the rehearing that Mohave's service rules, which apply to Mohave in the event of billing disputes
12 with its members, will apply to any such non-member electric service customers as well.⁵

13 47. In the spring of 2011 BIA commenced, at its cost and after consultation with Mohave
14 concerning the location of such facilities, installation of a Two-Way Automatic Communication
15 System ("TWAC system") that will allow remote reading of meters located in the Havasupai Village
16 and monitoring for outages on the Line. Based on Mohave's recommendation concerning the
17 location, BIA installed the TWAC system near the Nelson Substation.

18 48. Under the Agreement, BIA will, at its expense, install a meter at Long Mesa in order
19 to measure the load at the end of the Line for purposes of billing and calculating and apportioning
20 line loss between BIA and Mohave, in conjunction with readings from the service meters either by
21 manual reading or through the TWAC system. Mohave will continue, at its expense, to maintain and
22 read the meter at the Nelson substation in order to provide a measure of the load being delivered at
23 the front end of the Line.

24 49. The Agreement provides that Mohave will either implement meter reading and billing
25 through the TWAC system or, in its discretion, may install meters not tied to the TWAC system and
26 manually implement meter reading and billing through those meters.

27

⁴ Rehearing Exhibits R-23 and R-24.

28 ⁵ June 11, 2012, Rehearing Transcript ("Tr.") at 90.

1 50. The terms of the Agreement provide for the provision of, budgeting of, apportioning
2 of, and payment for overhead, maintenance and repairs of the Line; rates to be charged by Mohave
3 under its approved tariffs; apportionment of line loss expense; apportionment of costs for
4 new/additional loads; and apportionment of tribal governmental taxes, fees, and assessments.

5 51. Under the Agreement, Mohave agrees to seek renewal of its rights-of-way and grants
6 of easement along the Line as it passes through the Boquillas Ranch Property, the Hualapai
7 reservation, and the Havasupai reservation, and BIA agrees to use its best reasonable efforts to work
8 with Mohave in these three rights-of-way and easement matters.

9 **Issues on Which Disagreement Persists**

10 52. While Mohave and BIA have reached agreement on most disputed issues,
11 disagreement persists as to three issues: 1) Mohave has proposed inclusion in this Decision of
12 language regarding easements and rights-of-way to provide Mohave access to the Line, and BIA
13 disagrees with such inclusion; 2) BIA contends that it is a retail customer of Mohave at Long Mesa,
14 as determined in Decision No. 72043, while Mohave contends that BIA is a wholesale customer at
15 Long Mesa, contrary to the determination in Decision No. 72043; and 3) Mohave requests ordering
16 language that its ownership of the Line and delivery of power from the Line does not constitute an
17 extension of its Certificate of Convenience and Necessity ("CC&N"), whereas BIA instead requests
18 ordering language that Mohave may not abandon the Line without a Commission Order authorizing
19 abandonment pursuant to A.R.S. § 40-285(A).

20 **Easements and Rights-of-Way**

21 53. Items 13, 14, and 15 of the Agreement pertain to Mohave's agreement to seek renewal
22 of its rights-of-way and grants of easement along the Line as it passes through the Boquillas Ranch
23 Property, the Hualapai reservation, and the Havasupai reservation, and BIA's agreement to use its
24 best reasonable efforts to work with Mohave in these three rights-of-way and easement matters.
25 Mohave originally received three easements to build and maintain the Line, two of which have
26 expired, and one of which will soon expire.⁶

27 ⁶ Mohave's 30-year easement from the Hualapai Tribe expired in January 2012. Mohave's 25-year easement to cross the
28 Boquillas Ranch (now owned by the Navajo Tribe), located between the Hualapai and Havasupai Reservations, expired in
September 2005. Mohave's 30-year easement to cross the Havasupai Reservation is set to expire in December of 2014.

1 54. Mohave requests that this Decision find that if, after Mohave applies for an easement
2 or other permission from the owners of the Boquillas Ranch Property, the Hualapai reservation, and
3 the Havasupai reservation, such easement or permission is not offered and accepted on mutually
4 agreeable terms and conditions, Mohave will have no ability to operate or maintain the Line or to
5 read meters related to that segment of the Line.

6 55. Mohave asserts that its request for inclusion of such language in this Order is
7 consistent with A.A.C. Rule R14-2-206(C)(1) ("Rule 206(C)(1)").⁷ Staff states that pursuant to Rule
8 206(C)(1), Mohave must be given access to the Line and must be able to obtain easements.
9 According to BIA, Rule 206(C)(1) does not support Mohave's argument for the requested language,
10 because the rule requires a customer to grant an adequate easement, and it is not individual customers
11 who would be granting easements, but the Tribes.

12 56. BIA requests that the Commission make no finding in this Decision regarding
13 easements for the Line. BIA contends that because Mohave has never been denied access to the Line
14 and will almost certainly receive extensions of its easements once it has applied for them, Mohave's
15 requested finding in regard to what could transpire in the unlikely event that an easement is not
16 extended would constitute an advisory finding based on a hypothetical event. In support of its
17 contention, BIA posits that no dispute currently exists, Mohave does not argue that it is unable to
18 obtain easements or permissions, and Mohave's witness testified that Mohave does not anticipate any
19 problems with extending easements for the Line. BIA states that all utilities are required to obtain
20 necessary easements, regardless of where they operate, and that the Line, portions of which cross
21 tribal lands, is not unusual and does not present any unique problems. BIA points out that for forty
22 years, Mohave has had no problems obtaining easements on the Hualapai reservation in general, and
23 that for thirty years neither the Hualapai Tribe, the Havasupai Tribe, nor the Boquillas Ranch owner
24 have ever prevented Mohave from accessing the Line, and have never indicated or suggested that

25
26 _____
27 ⁷ A.A.C. R14-2-206(C)(1) provides as follows:

28 Each customer shall grant adequate easement and right-of-way satisfactory to the utility to ensure that
customer's proper service connection. Failure on the part of the customer to grant adequate easement
and right-of-way shall be grounds for the utility to refuse service.

1 they would not extend easements or not allow Mohave to access the Line. BIA asserts that the
2 advisory finding requested by Mohave is unnecessary and should be avoided.⁸

3 57. BIA also expresses concern that Mohave's requested language would provide an
4 opportunity for Mohave to refuse to accept an easement offer by claiming terms are not "mutually
5 agreeable." BIA states that it does not want Mohave to have an ability, pursuant to this Decision, to
6 refuse to operate or maintain the Line by claiming that the terms of an offered easement are not
7 "mutually agreeable," and subsequently claim that it has no ability to operate or maintain the Line or
8 to read meters along the Line. BIA argues that Mohave's requested language would allow Mohave to
9 effectively abandon the Line.

10 58. BIA has agreed to assist Mohave in obtaining easements from the Tribes so that
11 Mohave can continue to serve retail customers who may not have the legal authority to grant
12 easements pursuant to Rule 206(C)(1). As BIA argued, there is no evidence in the record of Mohave
13 encountering any problem obtaining necessary easements allowing it access to the Line, and there is
14 no history of any such problem in evidence. We note that Mohave's witness indicated that Mohave
15 would move forward to try to obtain reasonable access to the line with BIA's support, even in the
16 absence of Mohave's specific requested language in this Decision regarding easements.⁹ We further
17 note that BIA's witness was very optimistic in regard to the easements, when he stated a belief that it
18 is in the best interests of the Hualapai and Havasupai Tribes to enter into easement agreements in
19 order to receive electricity, and that there would be no problem for Mohave to obtain the easements.¹⁰

20 59. While written easements or rights-of-way are necessary to allow Mohave to maintain
21 and operate the Line, the eventuality that Mohave wishes the Commission to address is conjectural.

22
23
24 ⁸ In support of its position, BIA cites to *Armory Park Neighborhood Ass'n v. Episcopal Comm. Servs.*, 712 P.2d 914, 919
25 (Ariz. 1985)(advisory decisions and opinions are to be avoided), *Citibank v. Miller & Schroeder Fin., Inc.*, 168 Ariz. 178,
26 812 P.2d 996, 1000, (Ariz. App. 1990)(citing *Velasco v. Mallory*, 5 Ariz. App. 406, 427 P.2d 540 (Ariz. App.
27 1967)(tribunals should not anticipate troubles between litigants that do not exist or may never exist), and *Klein v.*
28 *Ronstadt*, 149 Ariz. 123, 716 P.2d 1060 (Ariz. App. 1986)(decisions should not be rendered on future rights or obligations
"in anticipation of an event which may never happen")), and *McMurren v. JMC Builders, Inc.*, 204 Ariz. 345, 63 P.3d
1082, 1088 (Ariz. App. Div. 2 2003).

⁹ Tr. at 77.

¹⁰ Tr. at 109. BIA's witness further stated that if there were any problems with easements, that the Secretary of the Interior could ultimately get involved if need be.

1 The facts before us do not support a finding or conclusion in regard to a hypothetical withholding of
2 easements or permissions.

3 **Status of BIA as a Wholesale or Retail Customer at Long Mesa**

4 60. Mohave and BIA continue to disagree in regard to BIA's status as a retail or wholesale
5 customer of Mohave at Long Mesa. Mohave proposes inclusion of the following language in this
6 Decision:

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

9 BIA proposes inclusion of the following alternative language:

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

12 61. A.R.S. § 40-201(21) defines a "retail electric customer" as follows:

13 "Retail electric customer" means a person who purchases electricity for that person's
14 own use, including use in that person's trade or business, and not for resale,
redistribution or retransmission.

15 62. BIA states that it is undisputed that BIA is a retail customer for its accounts for the
16 Thornton fire observation tower and the radio repeater tower on the Hualapai reservation, and
17 requests that such a finding be made.

18 63. BIA argues that it is a retail customer of Mohave at Long Mesa because BIA uses the
19 electricity supplied by Mohave at Long Mesa to make electricity available in Supai Village in the
20 normal course of BIA's "business," which is to support Native Americans. BIA argues that Mohave
21 has always treated BIA as a retail electric customer at Long Mesa, both in Mohave's bills to BIA and
22 in its filings with the Rural Electrification Administration ("REA"). In support of its argument, BIA
23 states that at the hearing on the Complaint, a witness for Mohave admitted that BIA at Long Mesa is
24 its retail customer.¹¹ BIA also contends that because the 1981 contract which established the
25 relationship between BIA and Mohave in regard to the Line does not use the term "wholesale," BIA
26 is not a wholesale customer.

27

28 ¹¹ BIA cites to the transcript of the hearing on the Complaint at 297.

1 64. Mohave argues that while BIA does consume power itself for BIA official business
2 purposes, such as lighting a BIA office or powering a BIA phone relay station, the bulk of the power
3 it purchases from Mohave is resold and redistributed, as part of BIA's governmental and trust
4 obligations, to BIA's own retail customers who use the electricity in Supai Village. Mohave points
5 out that BIA steps the power down at Long Mesa for retail use, reads the meters in Supai Village,
6 maintains the line that descends from Long Mesa into the Supai Canyon, and does all the billing to
7 users in Supai Village.¹² Mohave requests that based on these facts, this Decision include a finding
8 that BIA is a wholesale customer, and not a retail customer, of Mohave at Long Mesa.

9 65. Mohave states that its witness's testimony at the hearing regarding the retail status of
10 BIA was based on the rates paid to Mohave. Mohave argues that because A.R.S. § 40-201(21)
11 focuses on resale and redistribution, and makes no mention of the rates charged, its witness's
12 testimony on the issue has no relevance. Mohave further argues that neither the classifications
13 Mohave used in REA filings nor whether the 1981 contract uses the term "wholesale" are relevant to
14 the statutory definition of a retail electric customer.

15 66. In its Closing Brief, Staff states that BIA qualifies as a wholesale customer at Long
16 Mesa for the following reasons: BIA receives power from Mohave then distributes it to other
17 customers; Mohave does not read the meters down in the Supai Canyon; Mohave does not bill the
18 customers in Supai Canyon; and Mohave does not maintain the distribution line beyond the meter at
19 Long Mesa.

20 67. A determination of whether BIA is a retail or wholesale customer of Mohave at Long
21 Mesa requires analysis of all the facts surrounding the relationship of Mohave and BIA with respect
22 to the delivery of electricity. The fact that BIA is paying Mohave a retail rate is not determinative on
23 the issue, and whether the 1981 contract uses the term "wholesale" is likewise not determinative.
24 Electricity that BIA purchases at Long Mesa is distributed to the end users in Supai Canyon. BIA
25 owns the meter at Long Mesa and the distribution line that descends from Long Mesa to Supai
26 Canyon. BIA, and not Mohave, oversees that distribution. Unlike BIA's retail use of the power it
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28 ¹² Mohave cites to the transcript of the hearing on the Complaint at 111, 113-114.

1 receives from Mohave for its Thornton fire observation tower account and its radio repeater tower
2 account on the Hualapai reservation, BIA's redistribution of the power it receives at Long Mesa is not
3 a retail use. Because BIA receives power from Mohave at Long Mesa and then redistributes it, BIA
4 is a not a retail customer, but a wholesale customer of Mohave for that account.

5 **CC&N Extension/Future Abandonment of the Line**

6 68. Mohave requests the inclusion of an Ordering Paragraph in this Decision stating that
7 its ownership of the Line and delivery of power to customers therefrom does not constitute an
8 extension of Mohave's CC&N.

9 69. BIA requests the inclusion of an Ordering Paragraph in this Decision stating that
10 Mohave may not abandon the Line without an Order from the Commission authorizing Mohave to do
11 so pursuant to A.R.S. § 40-285(A).¹³ In support of its request, BIA argues that no substitute electrical
12 service is available, and that the Line is used and useful. BIA states in its Reply Brief that the two
13 Ordering Paragraphs are not mutually exclusive.

14 70. Staff states that it does not believe it is necessary to extend Mohave's CC&N to
15 include the Line in this case. Staff asserts, however, that Mohave should actively monitor the Line to
16 ensure there are no new connections on the line without proper agreements from Mohave, and states
17 that the possibility of extending the CC&N could be considered in the future should circumstances
18 change regarding the usage of the Line. Staff states that Mohave should not abandon the line in the
19 future without prior Commission approval, citing to A.R.S. § 40-285(A).

20 71. The terms of the Agreement do not contemplate an extension of Mohave's CC&N
21 territory to include the area through which the Line was extended pursuant to the 1981 contract, and
22 no such extension is required in order for the parties to carry out the terms of the Agreement. Neither
23 Mohave nor BIA has requested, and this Decision does not consider, any extension of Mohave's
24 CC&N territory. Inclusion of the ordering language requested by Mohave is therefore unnecessary.

25 ¹³ A.R.S. § 40-285(A) provides as follows:

26 A public service corporation shall not sell, lease, assign, mortgage, or otherwise dispose of or encumber
27 the whole or any part of its railroad, line, plant, or system necessary or useful in the performance of its
28 duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge
such system or any part thereof with any other public service corporation without first having secured
from the commission an order authorizing it to do so. Every such disposition, encumbrance or merger
made other than in accordance with the order of the commission authorizing it is void.

1 72. Decision No. 72043 found that the Line is being used to provide electric utility service
2 to Mohave's retail customers, and is therefore necessary and useful in performance of Mohave's
3 duties to the public. That finding has not been contested in this rehearing proceeding, and the
4 Agreement provides that Mohave will continue to provide service to customers served by the Line. It
5 is true that, as detailed in Decision No. 72043, Mohave did in the past make an invalid attempt to
6 abandon ownership of the Line. However, based upon the record in this rehearing and the terms of
7 the Agreement, BIA will be protected in the future, and it is not necessary to order Mohave to comply
8 with the law, as A.R.S. § 40-285(A) is self-executing.

9 **Conclusions**

10 73. The Agreement appropriately and fairly provides for the operation, maintenance and
11 repair of the Line, and costs associated therewith, on a going forward basis.

12 74. The Agreement appropriately and fairly provides a means for Mohave to deal with
13 existing installations on the Line that occurred without Mohave's knowledge or consent.

14 75. The Agreement appropriately and fairly provides for metering at the Nelson substation
15 and Long Mesa for purposes of measuring load and apportioning line loss between BIA and Mohave,
16 in conjunction with readings from the service meters. Based on the agreed-upon arrangement
17 between BIA and Mohave, it is no longer necessary for Mohave to place a meter at Long Mesa and
18 recommence reading the meter at Long Mesa as required by Decision No. 72043.

19 76. Because the terms of the Agreement appropriately and fairly address the issues in the
20 Complaint, and provide a reasonable means of settling the disagreements between Mohave and BIA,
21 Mohave should be deemed in full compliance with all requirements of Decision No. 72043, and the
22 Complaint should be dismissed.

23 77. Mohave does not own the Bar 4 Spur or the 1-Mile Line.

24 78. BIA is a retail customer of Mohave for the accounts for the Thornton fire observation
25 tower and the radio repeater tower on the Hualapai reservation.

26 79. BIA is a wholesale customer of Mohave for its account at Long Mesa.

27 80. The Agreement provides that any new users on the Line outside Mohave's CC&N
28 territory may apply for and be provided non-member service pursuant to either a service agreement or

1 an interconnection agreement. In the event of a billing dispute between Mohave and a non-member
2 service, Mohave's service rules should apply.

3 CONCLUSIONS OF LAW

4 1. Mohave is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution, A.R.S. §§ 40-201, 40-202, 40-203, 40-243, 40-246, 40-247, 40-248, 40-253,
6 40-281, 40-282, 40-285, 40-321, 40-331, and 40-361.

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

8 3. The Commission has jurisdiction over Mohave and the subject matter of the
9 Complaint and the Rehearing of Decision No. 72043.

10 4. The subject matter of the Complaint and the determinations made thereon in Decision
11 No. 72043, and in this Decision, do not result in state regulation of an Indian tribe, interfere with
12 reservation self-government, or implicate any right granted or reserved by federal law.

13 5. BIA specifically waived any jurisdiction claims on behalf of the Hualapai and
14 Havasupai tribes that it might otherwise have raised by its requests for relief in the Complaint.

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

16 7. Based on the terms of the Agreement, it is no longer necessary for Mohave to place a
17 meter at Long Mesa and recommence reading the meter at Long Mesa.

18 8. Because the terms of the Agreement appropriately and fairly address the issues in the
19 Complaint, and provide a reasonable means of settling the disagreements between Mohave and BIA,
20 Mohave should be deemed in full compliance with all requirements of Decision No. 72043, and the
21 Complaint should be dismissed.

22 9. Mohave does not own the Bar 4 Spur or the 1-Mile Line.

23 10. BIA is a retail customer of Mohave for the accounts for the Thornton fire observation
24 tower and the radio repeater tower on the Hualapai reservation.

25 11. BIA is a wholesale customer of Mohave for its account at Long Mesa.

26 12. In the event of a billing dispute between Mohave and a non-member service,
27 Mohave's service rules should apply.

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ORDER

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IT IS THEREFORE ORDERED that based upon the terms of the Agreement, attached hereto and incorporated herein as Exhibit A, it is no longer necessary for Mohave Electric Cooperative, Inc. to place a meter at Long Mesa and recommence reading the meter at Long Mesa. Mohave Electric Cooperative, Inc. is therefore deemed in full compliance with all requirements of Decision No. 72043.

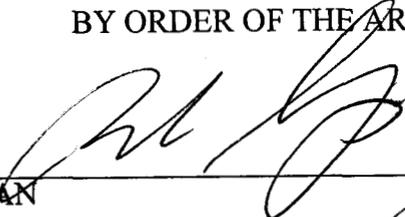
IT IS FURTHER ORDERED that, as the terms of the Agreement between Mohave Electric Cooperative, Inc. and the Bureau of Indian Affairs, United States of America appropriately and fairly address the issues in the Complaint, and provide a reasonable means of settling the disagreements between Complainant and Respondent, the Complaint is hereby dismissed.

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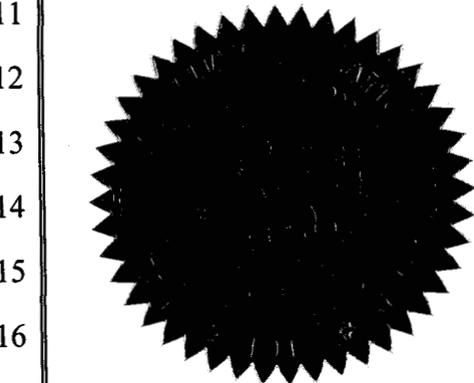
1 IT IS FURTHER ORDERED that in the event of a billing dispute between Mohave Electric
2 Cooperative, Inc. and a non-member service as described in the Agreement, Mohave's service rules
3 shall apply.

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

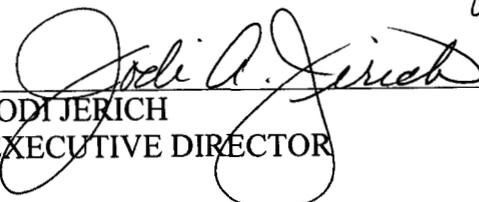
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7
8  CHAIRMAN  COMMISSIONER

9  COMMISSIONER  COMMISSIONER  COMMISSIONER



11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this 27th day of June, 2013.

16 
17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____

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SERVICE LIST FOR:

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

DOCKET NO.:

E-01750A-05-0579

Steven A. Hirsch
Rodney W. Ott
Landon W. Loveland
BRYAN CAVE LLP
Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406
Attorneys for Mohave Electric Cooperative, Inc.

John S. Leonardo
Mark J. Wenker
U S ATTORNEY'S OFFICE
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
Attorneys for the Bureau of Indian Affairs,
United States of America

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

FINAL MEMORANDUM OF SETTLEMENT POINTS

The Bureau of Indian Affairs ("BIA") and Mohave Electric Cooperative, Inc. ("MEC"), by and through their undersigned counsel, memorialized certain agreement points in a Memorandum of Settlement Points docketed on July 14, 2011 in Arizona Corporation Commission ("ACC" or "Commission") Docket No. E-01750A-05-0579 (the "Complaint Proceeding") currently pending on rehearing before the Commission. On February 3, 2012, the Parties jointly docketed in the Complaint Proceedings a stipulated, proposed Recommended Opinion and Order on Rehearing ("Stip ROO") that was designed to secure a Decision on Rehearing that conforms to the Memorandum of Settlement Points and to limit the contested issues on rehearing to those listed in the Stip ROO. At the request of the Commission, as set forth in the Procedural Order entered on February 22, 2012, the Parties hereby provide the Commission with a jointly signed Final Memorandum of Settlement Points dated the 23rd day of March, 2012.

RECITALS

A. Disputes have existed between Mohave and BIA for numerous years, and the parties have litigated their issues before the Commission for more than six years since the filing of the Complaint by BIA. [Stip ROO 177]

B. Following the hearing and during the parties' settlement discussions, Mohave undertook an inspection of the accounts and meters along the Line, and produced a current, updated map showing those accounts and other features of the Line and attachments to the Line. This updated map, which Mohave and BIA agree accurately represents the status of the Line, related attachments, and accounts as of April, 2011, is attached hereto and incorporated herein as Exhibit 1. [Stip ROO 134]

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

D. The post-hearing inspection of the Line and accounts also revealed that many of the meters and/or meter installations to the individual retail accounts were not functioning properly and/or required alterations. [Stip ROO 175]

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

AGREEMENTS

The Parties stipulate and agree as follows:

1. Mohave shall reassume ownership of the 70-mile Line¹ but is not required to replace the meter at Long Mesa. Mohave will not own the Bar 4 Spur² or the 1-Mile Line. The connection of these two spur lines to the 70-mile Line will be subject to an interconnection agreement, and no further load will be added to either spur line until an interconnection agreement is in place, with the parties treating each line in accordance with the terms of the interconnection agreement negotiated as to that line. BIA agrees to be the customer for the interconnection meters at the beginning of the Bar 4 Spur and 1-Mile lines. Mohave will install a meter at the point of interconnection of each spur line to monitor use, and BIA will reimburse Mohave for the installation of each interconnection meter. [Stip ROO 180]

2. Mohave will respond to service calls on either spur line on a fee-for-service basis under the present operations protocol until interconnection agreements are in place. Mohave will provide BIA with a copy of the current Mohave interconnection policy and standards, as well as copies of its basic form service agreements and interconnection agreements within 30 days of the entry of the Commission's Decision on Rehearing in the Complaint Proceeding. [Stip ROO 181]

3. Mohave's ACC-approved Large Commercial and Industrial Service Rate will apply to the power delivered to BIA on the 70 mile Line, excluding accounts in the name of BIA for the Thornton Tower (Account #29740-001) and the Long Mesa Radio Repeater Site (Account #451-055) which will be separately billed at the applicable ACC-approved rate for such service. The remaining 10 original individual customers³ along the Line will continue to be charged the applicable ACC-approved rates for such service. [Stip ROO 182]

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

¹ The 70-mile Line runs from Mohave's facilities at Nelson Substation to Long Mesa. [Stip ROO 118]

² The approximately 13-mile long spur line extending from the 70-mile Line to the Bar Four area of the Havasupai Reservation. [Stip ROO 162]

³ Account No. 63626-000 (Arizona Telephone Company), Account No. 44567-003 (Diamond A Ranch), Account Nos. 896-083, 896-084, 896-060, 896-073, 896-100, and 896-027 (Hualapai Tribal Council), Account No. 28135-001 (Bravo, WC), Account No. 44561-006 (Cabin on Nelson Road). [Stip ROO 37]

5. In addition to paying Mohave's ACC-approved Large Commercial and Industrial Service Rate, BIA will pay all reasonable overhead, maintenance and repair ("OM&R") costs on the 70-mile Line per its pro rata share of its load compared to Mohave's customers' load, as measured by new equipment ("TWAC system") that BIA is installing at BIA's cost on the Line. Until the new TWAC system is operational, the pro rata shares will be established by actual meter readings. The parties' actual load will also provide the basis for apportioning load loss among them. BIA's load shall be the total load delivered to the 70-mile Line, less the energy sold to other Mohave customers and less losses allocated to Mohave pursuant to Paragraph 20 below. Within 60 days of the entry of the Commission's Decision on Rehearing in the Complaint Proceeding Mohave shall implement meter reading and billing through the TWAC system for all 12 original accounts, or alternatively, in its discretion, Mohave may install meters not tied to the TWAC system and conduct manual reading of same and implement meter reading and billing through such meters at any time. Until Mohave implements the meter reading and billing in accordance with this provision, Mohave will continue to credit BIA \$348 per month as the estimated monthly usage by the 12 original accounts in lieu of making monthly readings and billings. [Stip ROO 184]

6. Mohave and BIA will work together to assess the status of the 70-mile Line and will use that information to develop an initial and ongoing OM&R plan and budget, including an estimate for unplanned OM&R, so that BIA and Mohave can plan and budget for such expenses. Mohave will complete the initial OM&R plan for the 70-mile Line no later than one year after the effective date of the Commission's Decision on Rehearing in the Complaint Proceeding, and this plan will serve as the basis for undertaking the planned OM&R of the 70-mile Line. BIA agrees to plan and share with Mohave its future budgets, as available, for anticipated OM&R costs based on the OM&R plan as amended periodically by the parties. [Stip ROO 185]

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

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

9. Mohave agrees that BIA has 2000 kW of capacity on the Line and 1500 kW of transformer capacity at Nelson substation to serve all BIA's existing and future connected loads. Any unused capacity in either the Line or transformer connected at Nelson may be used by the other party at no additional cost, subject to the terms of the Commission's Decision on Rehearing in the Complaint Proceeding. In determining existing loads, Mohave will be responsible for the 12 original services (that is, the 2 within Mohave's CCN and 10 outside Mohave's CCN), plus the additional new customers that Mohave agrees to serve directly under a service agreement or an interconnection agreement, and the capacity required to serve those loads. [Stip ROO 188]

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

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

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

13. Concerning the Boquillas Ranch Property, Mohave agrees to seek renewal of its rights-of-way and grants of easement along the Line, including reasonable rights of access across tribal fee lands of the Navajo Nation to facilities and customers, and BIA agrees to use its best reasonable efforts to work with Mohave in this matter; however, Mohave understands that the Boquillas Ranch Property is owned by the Navajo Nation in fee and not held by the United States in trust for the Navajo Nation. [Stip ROO 119]

14. Concerning the Hualapai reservation easement, Mohave agrees to seek renewal of its rights-of-way and grants of easement along the Line, including reasonable rights of access across tribal lands to facilities and customers, and BIA agrees to use its best reasonable efforts to work with Mohave in this matter. [Stip ROO 129]

15. Concerning the Havasupai reservation easement, Mohave agrees to seek renewal of its rights-of-way and grants of easement along the Line, including reasonable rights of access across tribal lands to facilities and customers, and BIA agrees to use its best reasonable efforts to work with Mohave in this matter. [Stip ROO 130]

16. The parties agree that all disputed payment issues between the parties as of the date of this Memorandum have been resolved. [Stip ROO 192]

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

18. Mohave shall continue at its expense to maintain and read the meter at the Nelson substation in order to provide a measure of the load being delivered at the front end of the 70-mile Line. [Stip ROO 194]

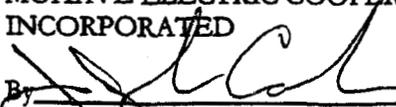
19. BIA will, at its expense, install a meter at Long Mesa in order to measure the load at the end of the 70-mile Line for purposes of billing and calculating and apportioning line loss between the parties, in conjunction with readings from the service meters either by manual reading or through the TWAC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

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

21. The Parties shall make reasonable and good faith efforts necessary to obtain a Decision on Rehearing that is consistent with the agreements they have reached, including the July 14, 2011 Memorandum of Settlement Points, the Stip ROO, and this Final Memorandum of Settlement Points. The Parties shall support and defend the terms and conditions on which they have agreed. If the Commission adopts an order approving all material terms of the Parties' agreements, the Parties will support and defend the Commission's decision before any court or regulatory agency in which it may be at issue. If the Commission should fail to issue a decision adopting all the material terms of the Parties' agreements, either Mohave or BIA may file an application for rehearing. Whether a term is material shall be left to the discretion of the party filing the application for rehearing.

IN WITNESS WHEREOF, the parties have executed this FINALMEMORANDUM OF SETTLEMENT POINTS effective as of the date of the last signature.

MOHAVE ELECTRIC COOPERATIVE,
INCORPORATED

By 
Title CEO
Date 3/23/12

THE BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA

By Catherine Wilson
Acting Title: Regional Director, Western Region
Date 3/23/12

Agreed as to Form:

ANN BIRMINGHAM SCHEEL
Acting United States Attorney
District of Arizona

By: Mark Wenker
MARK J. WENKER
Assistant U.S. Attorney
Attorneys for the Bureau of Indian Affairs

BRYAN CAVE LLP

By: Steven A. Hirsch
Steven A. Hirsch
Rodney W. Ott
Two North Central Avenue #2100
Phoenix, AZ 85004-4406
Attorneys for Mohave Electric
Cooperative, Inc.

