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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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COMMISSIONERS

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

IN THE MATTER OF THE FORMAL COMPLAINT  
OF ROGER AND DARLENE CHANTEL,

DOCKET NO. E-01750A-09-0149

COMPLAINANTS,

v.

MOHAVE ELECTRIC COOPERATIVE, INC.,

RESPONDENT.

PROCEDURAL ORDER

**BY THE COMMISSION:**

Relevant Procedural Background

On March 24, 2009, Roger and Darlene Chantel ("Chantels" or "Complainants") filed a formal complaint ("Complaint") with the Arizona Corporation Commission ("Commission") against Mohave Electric Cooperative, Inc. ("MEC" or "Company"). MEC filed its Response to Formal Complaint and Motion to Dismiss on April 10, 2009.

A Procedural Order docketed on July 28, 2009, denied MEC's Motion to Dismiss and set the matter for hearing on January 20, 2010.

On December 10, 2009, the Chantels filed a Motion to Recess Formal Complaint. The Complainants related they had filed a lawsuit in Mohave County Superior Court against MEC and requested a stay of their Complaint pending the resolution of the Superior Court action.

MEC objected to the stay in its Response to Complainants' Motion to Recess Formal Complaint docketed on December 21, 2009.

On December 24, 2009, a Procedural Order was issued granting the Chantel's Motion and staying the Complaint pending the final resolution of the Mohave County Superior Court action. The Procedural Order required the Chantels to file Quarterly Updates on the lawsuit's status.

In their June 28, 2012, Quarterly Update, the Chantels stated that Mohave County Superior

1 Court issued its judgment on May 31, 2012, granting MEC's summary judgment motion and  
2 dismissing the case. The Chantels filed an appeal in the Arizona Court of Appeals on June 13, 2012.

3 In the Complainants' Quarterly Update docketed July 3, 2013, they reiterated the nature of  
4 their civil claims against MEC, they but did provide an update on the status of their appeal.

5 On July 12, 2013, MEC filed a Motion to Reconsider Motion to Dismiss Formal Complaint  
6 ("Motion to Reconsider") advising the Commission that the Court of Appeals had affirmed the  
7 Mohave County Superior Court's findings. MEC attached a copy of the Court of Appeals' April 16,  
8 2013, Memorandum Decision and the May 30, 2013, Court of Appeals Mandate, which indicated that  
9 the deadlines for filing a motion for reconsideration and a petition for review had expired.

10 In its Motion to Reconsider, MEC asserted that the Commission is bound by decisions of the  
11 trial and appellate courts in this matter, contending: "When a court of competent jurisdiction renders  
12 a final judgment, that judgment is *res judicata* as between the same parties on all issues that were or  
13 might have been determined in the former action."<sup>1</sup> MEC requested that the Commission dismiss the  
14 Complaint in its entirety.

15 A Procedural Order filed on July 30, 2013, directed the Chantels to file no later than August  
16 16, 2013, either a response to MEC's Motion to Reconsider or a Motion to Withdraw the Complaint.

17 On August 14, 2013, the Chantels docketed three separate pleadings: 1) Complainants'  
18 Response to Procedural Order Issued by Administrative Law Judge Belinda A. Martin, 2)  
19 Complainants' Response to Mohave Electric Cooperative's Motion to Reconsider Motion to Dismiss  
20 Formal Complaint, and 3) Motion to Transfer Issues in Complaint to the Citizens' Jurisdiction  
21 ("Motion to Transfer").

22 On August 26, 2013, MEC filed its Objection Complainants' Response to Procedural Order,  
23 Reply to Complainants' Response to Motion to Reconsider Motion to Dismiss Formal Complaint,  
24 and Response to Complainants' "Motion to Transfer Issues in Complaint to the Citizens'  
25 Jurisdiction."

26 On September 4, 2013, the Chantels docketed a Motion to Enforce Arizona Administrative  
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28 <sup>1</sup> Motion to Reconsider, page 2, citing *Hall v. Lalli*, 194 Ariz. 54, 57, 977 P.2d 776, 779 (1999); see also, *Electrical District No. 2 v. Arizona Corp. Com'n*, 155 Ariz. 252, 259, 745 P.2d 1348, 1352 (App. 1984).

1 Codes R14-2-211(A)(5)(6), R14-2-202(B)(1)(2), R14-2-208(A)(1) and (F)(1), and provided a  
2 proposed form of Judicial Order (“Motion to Enforce”).

3 MEC has not yet filed a response to the Motion to Enforce.

4 Discussion

5 A Procedural Order filed October 29, 2012, found that the stay on the Chantel’s Complaint  
6 granted by the December 24, 2009, Procedural Order was still in effect pending final disposition of  
7 the lawsuit. Although the Chantels did not advise the Commission about the Court of Appeals’ final  
8 action and did not formally move that the stay be lifted, MEC provided copies of the Court of  
9 Appeals’ rulings disposing the matter.

10 Accordingly, we believe it is reasonable to lift the stay on the Complaint.

11 In addition to their Complaint, the Chantels have filed in this docket a number of  
12 supplemental documents containing additional allegations and have requested that the Commission  
13 act on all of the claims even though there has not been a hearing on the Complaint.

14 MEC has responded to each of the Complainants’ subsequent allegations.

15 Given the amount of time that has passed since the Complaint and the Motion to Dismiss  
16 were first filed and the number of issues involved, it is necessary to set a procedural conference to  
17 allow the parties to present oral arguments on MEC’s Motion to Dismiss and Motion to Reconsider.

18 At the same procedural conference, oral arguments shall be held on the Chantel’s Motion to  
19 Transfer and the Motion to Enforce.

20 The parties are advised that the purpose of oral arguments is only to present the legal basis for  
21 their respective Motions.<sup>2</sup> During oral arguments the parties may reference documents that have been  
22 docketed in this matter prior to the date of the procedural conference; however, presentation of  
23 testimony or new evidence and/or exhibits shall not be permitted during oral arguments.

24 The parties should therefore ensure that they have submitted to Docket Control copies of any  
25 pleadings, documents and/or rulings filed in the Mohave County Superior Court action or with the  
26 Court of Appeals detailing the specific issues raised by the parties and considered by those courts that

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28 <sup>2</sup> Examples of the forms of legal support include relevant case law, Arizona Revised Statutes, Article XV of the Arizona  
Constitution, relevant sections of the Arizona Administrative Code, and the Rules of the Arizona Supreme Court.

1 will support the parties' respective legal positions regarding *res judicata*.

2       The parties should also ensure there is sufficient information in this record addressing whether  
3 the Commission has the authority to transfer this matter to another jurisdiction not specifically  
4 referenced in the Rules of the Arizona Supreme Court or the Arizona Revised Statutes, and, if so,  
5 under what rules or laws this alternate jurisdiction might have authority over a public utility  
6 corporation.

7       Because the parties will be presenting oral arguments on several motions, they are advised  
8 that, in the interest of efficiency, the Administrative Law Judge may impose a 15-minute time limit  
9 for presentation of legal argument on each motion, and on the moving party's rebuttal argument. As  
10 such, the parties are encouraged to formulate brief and succinct legal presentations.

11       IT IS THEREFORE ORDERED that the **stay** placed on the Complaint by the December 24,  
12 2009, Procedural Order is **hereby lifted**.

13       IT IS FURTHER ORDERED that **Mohave Electric Cooperative, Inc. shall file its**  
14 **Response to the Complainants' Motion to Enforce no later than September 23, 2013.**

15       IT IS FURTHER ORDERED that a **procedural conference** in this matter shall be held on  
16 **September 25, 2013, at 1:00 p.m.**, in Hearing Room No. 1 at the Commission's offices, 1200 West  
17 Washington, Phoenix, Arizona, for the purpose of hearing oral arguments on the Company's Motion  
18 to Dismiss and Motion to Reconsider Motion to Dismiss, and on the Chantel's Motion to Transfer  
19 and Motion to Enforce.

20       IT IS FURTHER ORDERED that, in order to promote efficiency, the Administrative Law  
21 Judge **may impose a time limit for presentation of legal argument on each motion**, and on the  
22 moving party's rebuttal argument.

23       IT IS FURTHER ORDERED that during oral arguments the parties may reference pleadings  
24 and documents that have been docketed in this matter prior to the date of the procedural conference,  
25 and that any documents, pleadings or legal authority each party intends to rely upon to support their  
26 respective legal positions shall be **filed with Docket Control on or before September 23, 2013.**

27       IT IS FURTHER ORDERED that **no party shall present testimony or new evidence and/or**  
28 **exhibits during oral arguments.**

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

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

7 DATED this 9<sup>th</sup> day of September, 2013.

8  
9   
10 BELINDA A. MARTIN  
11 ADMINISTRATIVE LAW JUDGE

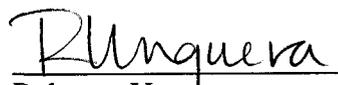
12 Copies of the foregoing mailed  
13 this 9<sup>th</sup> day of September, 2013, to:

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27 Assistant to Belinda A. Martin  
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