

OPEN MEETING ITEM



0000159548

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE



ARIZONA CORPORATION COMMISSION

RECEIVED

2015 JAN 20 A 11: 55

AZ CORP COMMISSION
DOCKET CONTROL

DATE: JANUARY 20, 2015

DOCKET NO.: E-01750A-09-0149

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

ROGER AND DARLENE CHANTEL V. MOHAVE ELECTRIC COOPERATIVE, INC.
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 29, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 3, 2015 and FEBRUARY 4, 2015

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JAN 20 2015

DOCKETED BY

JODI JERICH
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 SUSAN BITTER SMITH – Chairman
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

8 IN THE MATTER OF THE FORMAL
9 COMPLAINT OF ROGER AND DARLENE
10 CHANTEL,

DOCKET NO. E-01750A-09-0149

11 COMPLAINANTS,

12 DECISION NO. _____

13 v.

14 MOHAVE ELECTRIC COOPERATIVE, INC.,

ORDER

15 RESPONDENT.

16 Open Meeting
17 February 3 and 4, 2015
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 This Order comes before the Arizona Corporation Commission (“Commission”) to resolve the
21 following disputed motions: 1) Motion to Reconsider Motion to Dismiss; 2) Motion to Transfer
22 Issues in Complaint to the Citizens’ Jurisdiction; 3) Motion to Enforce Arizona Administrative Codes
23 (“A.A.C.”) R14-2-211(A)(5) & (6), R14-2-202(B)(1) & (2), and R14-2-208(A)(1) and (F)(1); and 4)
24 Motion to Hear Issues on the Emergency Notice of Action Submitted to Steven Olea of the Arizona
25 Corporation Commission.

26 * * * * *

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

FINDINGS OF FACT

BACKGROUND

1. Mohave Electric Cooperative, Inc. (“MEC” or “Company”) formed as an Arizona
non-profit, member-owned and operated electric cooperative in 1947. MEC is authorized to provide
electric service in areas of northwestern Arizona, including portions of Mohave County.

1 2. In late 1999, Roger and Darlene Chantel (“Chantels” or “Complainants”) purchased a
2 home and parcel of land east of Kingman in Mohave County, within MEC’s certificated area. The
3 property sits immediately north of Highway 66. MEC’s three-phase distribution lines ran across the
4 Chantels’ property and had been in place since 1949. Across Highway 66 from the Chantels’
5 property is a Burlington Northern Santa Fe Railroad (“BNSF”) track, which runs parallel to the road.
6 The distribution lines crossing the Chantels’ property held a drop line that provided service to the
7 Chantels’ residence, as well as a drop line that provided electricity to a BNSF crossing signal.

8 3. Shortly after buying the property, the Chantels signed an Application for Membership
9 and Electric Service from MEC (“Application”). Under the terms of the Application, as members of
10 the cooperative, the Chantels agreed to comply with, and be bound by, the provisions of MEC’s
11 formation documents. Further, the Chantels agreed to grant to MEC “easements of right of way
12 across his property, for construction, use and operation of power lines necessary for the servicing of
13 members in this area.”¹ MEC issued a Membership Certificate to the Chantels on March 6, 2000.²

14 4. In a November 14, 2005, letter to MEC, Mr. Chantel advised MEC that he was
15 planning to construct some new buildings on his property, stating: “[MEC] has four power poles on
16 my property that may affect the design and location of these structures. I had a title company
17 research the property for the easements. The only easement they could find on record was the one
18 that I gave to MEC in 2001 to my house.”³ Mr. Chantel asked MEC to provide copies of the
19 recorded easements granting MEC the right-of-way over the property.

20 5. Mr. Chantel wrote a letter to the Commission on December 8, 2005, claiming that
21 MEC was “illegally transmitting electric power over my property and if that isn’t enough they are
22 using my property to provide electricity to the railroad for a fee.”⁴

23 6. In the summer of 2008, Mr. Chantel began construction of a 6,240 square-foot
24 structure situated beneath MEC’s distribution lines crossing the Chantels’ property. On August 7,

25 _____
26 ¹ MEC’s Supplemental Documents, Exhibit 9 – MEC’s October 15, 2012, Appellee’s Answering Brief, Appendix K.

27 ² *Id.*, Exhibit 6 – Chantels’ Motion to Have a Judicial Determination on All Counts in this Case (filed in Mohave County
Superior Court on January 25, 2012), Exhibit N.

28 ³ *Id.*, Exhibit D.

⁴ *Id.*

1 2008, Mohave County issued a Stop Work Order, instructing the Chantels that they had to obtain a
2 building permit before continuing with the work.⁵

3 7. On August 13, 2008, Mr. Chantel sent a letter to the Mohave County Attorney
4 complaining that MEC had placed a power line through the Chantels' property without an easement.
5 He continued: "I informed them that I was going to create some art on my property and that it may be
6 under their power lines. They told me I would have to pay them if I wanted their power lines
7 moved...and told me I could not create my art under their power lines."⁶ Mr. Chantel claimed it was
8 MEC who advised Mohave County that the Chantels did not have a building permit. Mr. Chantel
9 also asserted that, contrary to the Mohave County's claims, the artwork was not a "building" as
10 defined in any building code, and there were no building regulations governing it, nor did the County
11 have any certified employees capable of inspecting the "art creation procedure" Mr. Chantel was
12 using.⁷ In a later document, the Chantels noted that they did not believe the Mohave County
13 Attorney's Office had opened an investigation of Mr. Chantel's charges, stating it was their belief
14 that "some Mohave County employees are conducting hate crimes and county employees are
15 conspiring with businesses in these hate crimes against citizens."⁸

16 8. On August 18, 2008, employees from Mohave County and MEC went to the Chantels'
17 property, where an MEC employee measured the clearance between MEC's lines and the Chantels'
18 structure and found that the clearance did not meet National Electric Safety Code ("NESC")
19 requirements. Mohave County advised Mr. Chantel that construction had to stop and the Chantels
20 complied for a brief time.⁹ MEC stated that also on August 18, 2008, Mohave County contacted
21 MEC and related that Mr. Chantel had indicated that he would cooperate and apply for a building
22 permit for the structure. MEC claimed, however, that the County employee stated the Chantels
23 would not qualify for a permit because the structure did not comply with building codes.¹⁰

24 ⁵ Response to Formal Complaint and Motion to Dismiss Complaint, page 2; Exhibit C, Petition for Writ of Mandamus,
25 page 2.

⁶ MEC's Supplemental Documents, Exhibit 9, Appellee's Answering Brief, pages 1 – 2.

⁷ *Id.*, Appendix B – 2.

⁸ Response to Formal Complaint and Motion to Dismiss Complaint, Exhibit C, Petition for Writ of Mandamus, page 4.

⁹ MEC's Supplemental Documents, Exhibit 9, MEC's Appellee's Answering Brief, pages 6 – 7.

¹⁰ *Id.*, Exhibit 4, MEC's Motion for Summary Judgment in Mohave County Superior Court dated June 3, 2011, pages 3 –
28 4.

1 9. The Chantels did not obtain a building permit and continued to build the structure
2 beneath MEC's distribution lines despite the warnings from Mohave County.

3 10. On September 12, 2008, Mohave County issued a letter to MEC stating:

4 The Building Official has found the building on the [Chantels'] property to be
5 UNSAFE due to the existence of electrical hazards, which are prohibited under
6 Section 108 of the 2003 International Property Maintenance Code.

7 The owner of the above mentioned property has failed to comply with previous
8 notices of the unsafe situation [including] stop work orders and meetings with
9 both the Chief Building Official and representatives from your office. Therefore
10 we are requesting that the power be disconnected at the above mentioned property
11 immediately. (Emphasis original.)¹¹

12 11. On September 13, 2008, MEC took a second measurement of the clearance between
13 its lines and building and confirmed the violation of NESC clearance requirements.¹² Before MEC
14 de-energized the lines, it quickly erected a temporary distribution line parallel to Highway 66
15 circumventing the Chantels' property to install a new drop line to the BNSF crossing signal in order
16 to prevent disruption of service. Construction of the temporary line (directly in front of the Chantels'
17 property) took several days to complete at a cost of \$12,135.09.¹³

18 12. In a letter dated September 15, 2008, MEC advised the Chantels that their power
19 would be shut off.¹⁴ MEC contacted the Commission and explained the situation regarding the
20 structure under the distribution lines and the directive from Mohave County to de-energize the lines.
21 During a conference call with Commission Staff and Utilities Division Director, Steve Olea, MEC
22 was authorized to de-energize the lines and reroute them around the Chantels' property.¹⁵

23 13. On September 16, 2008, at 3:20 p.m., MEC representatives advised Mrs. Chantel in
24 person at her residence that the lines would be shut down. The distribution lines crossing the
25 property were de-energized at approximately 3:33 p.m.¹⁶

26 ...

27 ¹¹ Letter from Mohave County Planning & Zoning Department dated September 12, 2008, attached to a letter from Roger
28 Chantel to the Commission docketed December 15, 2009; Response to Formal Complaint and Motion to Dismiss
Complaint, pages 2 - 3.

¹² MEC's Supplemental Documents, Exhibit 9, MEC's Appellee's Answering Brief, page 8.

¹³ Response to Mohave Electric's Motion to Dismiss, Exhibit B.

¹⁴ MEC's Supplemental Documents, Exhibit 9, MEC's Appellee's Answering Brief, Appendix M.

¹⁵ *Id.*, Appendix H, Affidavit of John Williams, MEC Line Extension Supervisor.

¹⁶ *Id.*, Appendix N.

1 17. MEC subsequently advised the Chantels in a letter dated October 21, 2008, that before
2 the Company would provide service to the Complainants' home, the Chantels would have to pay the
3 construction costs of the temporary facilities and remove the building from under the lines.¹⁸

4 18. On November 5, 2008, Commission Staff issued a letter detailing the results of Staff's
5 investigation of the informal complaint.¹⁹ Staff concluded that Mohave County Planning and Zoning
6 ("MCPZ"), as a political subdivision, has jurisdiction over public health and safety issues within the
7 County. Staff stated:

8 If an agency of Mohave County has interpreted Mohave County's own statutes
9 and determined that the structure on your property constitutes a danger to the
10 health and/or safety of the public within Mohave County, then the County has
11 authority to take action to remedy such situations. Because MEC provides service
12 within the County, MEC is subject to the authority of the County. MEC has no
13 choice but to follow the lawful orders of MCPZ. Since the reason MCPZ ordered
14 MEC to de-energize the power lines to your home resulted from the County's
15 interpretation and enforcement of its own statutes, the Commission is without
16 authority to order MEC to take any action contradictory to what MCPZ has
17 directed them to do. Therefore, the Commission cannot order MEC to reinstate
18 your electric service under these conditions.²⁰

14 19. Staff also noted that A.A.C. R14-2-206(C)(2) states:

15 When a utility discovers that a customer...is performing work or has constructed
16 facilities adjacent to or within an easement or right-of-way and such work,
17 construction or facility poses a hazard or is in violation of federal, state or local
18 laws, ordinances, statutes, rules or regulations, or significantly interferes with the
19 utility's access to equipment, the utility shall notify the customer...and shall take
20 whatever actions are necessary to eliminate the hazard, obstruction, or violation at
21 the customer's expense.

19 20. Staff observed that although this regulation provided MEC with additional authority to
20 disconnect the Chantels' service, the Company did not rely on this regulation, but upon the findings
21 made by Mohave County and MCPZ's request to de-energize the lines running across the Chantels'
22 property. Further, the Chantels questioned MEC's authority to bill them for the costs for having to
23 reroute the distribution line, but Staff noted that A.A.C. R14-2-206(C)(2) allows a utility to take steps
24 to correct a hazardous situation created by a customer at that customer's expense.

25
26 ¹⁸ Response to Mohave Electric's Motion to Dismiss, docketed April 17, 2009, Exhibit C

27 ¹⁹ Response to Formal Complaint and Motion to Dismiss Complaint, Exhibit B, Letter from Commission Staff to Roger
28 Chantel dated November 5, 2008, page 2.

²⁰ *Id.*

1 21. Regarding the Chantels' claims that their service was terminated without proper
2 notice, Staff concluded that MEC had given proper notice. Staff also observed that A.A.C. R14-2-
3 211(B)(1)(a) permits termination of service *without* notice due to the "existence of an obvious hazard
4 to the safety or health of the consumer or the general population or the utility's personnel or
5 facilities." In addition, under the terms of A.A.C. R14-2-211(B)(2), once service has been terminated,
6 the utility is not required to restore service until the conditions which resulted in disconnection have
7 been corrected.

8 22. As to the Chantels' charge that MEC lacked the proper easements for the lines
9 crossing the property, Staff noted A.A.C. R14-2-206(C)(1) states that "each customer shall grant
10 adequate easement and right-of-way satisfactory to the utility to ensure that customer's proper service
11 connection. Failure on the part of the customer to grant adequate easement and right-of-way shall be
12 grounds for the utility to refuse service."

13 23. Regarding the Chantels' claim that the Commission's rules preclude a utility from
14 disconnecting a customer who has a medical need for on-going electrical service, Staff observed that
15 A.A.C. R14-2-211(A)(5) states a utility may not "terminate residential service where the customer
16 has an inability to pay and: a) The customer can establish through medical documentation that, in the
17 opinion of a licensed medical physician, termination would be especially dangerous to the health of a
18 customer...or, b) Life supporting equipment used in the home that is dependent on utility service for
19 operation of such apparatus." Staff stated its investigation showed that at the time the line was de-
20 energized, Mr. Chantel had not advised MEC of a medical need for continuous service, nor was there
21 any indication that the Chantels were unable to pay for service.

22 24. Staff last addressed the Chantels' claims that the distance between two utility poles on
23 their property resulted in an allegedly excessive line sag. Staff concluded: "MEC places its poles
24 based upon issues of clearance from ground to wire and from pole to pole. These standards are
25 dictated by professional code. According to MEC, the lines in question were built within code
26 specifications in 1949 and remain within tolerances today. Based upon this limited inquiry, the Staff
27
28

1 does not believe that MEC's lines are out of compliance with any of the Commission's mandates."²¹

2 However, at that point in time, Staff had not independently verified MEC's claims.

3 25. Based on Staff's review of the facts and circumstances, Staff concluded that MEC had
4 not violated any Commission rules, regulations or procedures and advised the Chantels that the
5 informal complaint would be dismissed and closed.

6 26. A.A.C. R14-3-106(M)(2), states: "Proceedings on informal complaints will be
7 conducted without prejudice to the Complainants' right to file and prosecute a formal complaint if the
8 matter cannot be properly adjusted informally...A formal complaint must thereafter be filed if a
9 hearing is desired."

10 27. The Chantels did not immediately file a formal complaint with the Commission.
11 Instead, on January 6, 2009, the Chantels filed a Petition for Writ of Mandamus ("Petition") in
12 Mohave County Superior Court requesting that the court compel MEC to reinstate electric service to
13 the Chantels' home. Upon MEC's Motion to Dismiss, the court dismissed the Petition and awarded
14 attorney's fees to MEC.²²

15 **The Formal Complaint and Supplement to Formal Complaint**

16 28. On March 24, 2009, the Chantels filed their Formal Complaint with the Commission
17 ("Complaint").

18 29. The Chantels made the following claims:

- 19 a) Although MEC asserted the placement of the structure under distribution lines was in
20 the Company's right-of-way, MEC does not have a right-of-way over the property.
21 b) The clearance between the distribution lines and the building was 10 feet, six inches,
22 which, according to the NESC, was the minimum acceptable clearance. Therefore, the
23 building was in compliance with the NESC. The Chantels stated:

24 Even if it were to be in violation of the NESC, it did not merit turning off
25 the electricity to our residence. Even if it were to be in violation it would
26 not have been an unsafe condition to any general public because our
property is fenced off from the general public and they do not have access

27 ²¹ *Id.*

28 ²² *Id.*, page 2.

1 to it. MEC wanted to damage us and our reputation to a point that they
 2 could cause government agencies to look at us as the persons that were
 3 doing wrong. All of MEC's claims are to take attention away from the
 4 fact that they do not have a right to transmit high voltage electricity over
 5 our property.²³

6 Instead, it was MEC that failed to comply with the NESC and A.A.C. R14-2-
 7 208(A)(1) by not maintaining its lines.

8 c) MEC violated A.A.C. R14-2-211(A)(2) and (5)(a) and (b), by refusing to reinstate the
 9 Chantels' electricity.

10 d) MEC failed to give legal notice of termination under either A.A.C. R14-2-211. The
 11 Chantels charged:

12 If the ACC were to examine the ACC's records, you would find that a number of
 13 ACC workers tried to have us informed of our electricity disconnection. MEC
 14 was so adamant about turning off our electricity that most of the ACC employees
 15 did not have the authority to reject MEC's insistence to turn off our electricity.²⁴

16 30. The Chantels contended that Mohave County's directive could have been avoided if
 17 MEC had "corrected the unsafe condition that existed on our property by adding one pole to lift up
 18 the unsafe lines. ... MEC could have followed the Mohave County Planning letter that was sent to
 19 them telling them to 'de-energize the line close to the building being constructed.'"²⁵ Instead, MEC
 20 chose to de-energize "the entire high powered distribution line over our property so they would not
 21 have to pay electrical distribution fees that I am charging them."²⁶

22 31. The Chantels complained that MEC's main motivation for disconnecting the Chantels'
 23 service was to cause them physical and financial harm without any regard to the law or the
 24 Commission's authority. The Chantels alleged that either MEC had misrepresented the facts to the
 25 Commission, "or there are some employees within the ACC that are conspiring with MEC's
 26 management to protect them from assuming their responsibility of correcting the issues in this
 27 complaint."²⁷

28 ²³ Complaint, page 3.

²⁴ *Id.*, page 3.

²⁵ *Id.*, page 4.

²⁶ *Id.*, page 4. Mr. Chantel stated that once he learned MEC did not have an easement over the property, he sent the Company a bill for use of his land.

²⁷ *Id.*, page 6.

1 32. The Chantels requested that the Commission order MEC to reinstate electric service to
 2 their home. They also requested that the Commission void MEC's \$12,000 bill for rerouting the line,
 3 and instead require MEC to pay the Chantels for the Company's use of the property without a
 4 recorded easement. Mr. Chantel stated that, alternatively, the Commission "can claim it does not
 5 have jurisdiction or it can create some other type of ruling. This will support my claim that we can
 6 cancel our membership in the Cooperative and move forward with a multimillion dollar law suit
 7 against all parties that are responsible for these injustices."²⁸

8 33. On May 7, 2009, the Chantels filed a supplement to their Complaint. The Chantels
 9 noted that A.A.C. R14-2-212 states a utility cannot disconnect service when there is a dispute over a
 10 bill for utility service. In addition, the Chantels' asserted they never entered into a line extension
 11 agreement with MEC under the terms of A.A.C. R14-2-207; therefore, the Complainants did not have
 12 to pay the bill for rerouting the distribution lines.

13 **Response to Formal Complaint and Response to Supplement to Formal Complaint**

14 34. MEC filed its Response to Formal Complaint and Motion to Dismiss Complaint
 15 ("Response") with the Commission on April 10, 2009.

16 35. The Company asserted that its equipment had been lawfully placed on the Chantels'
 17 property long before the Chantels purchased it and claimed the lines have met NESC safety
 18 requirements at all times.²⁹

19 36. MEC explained that, contrary to the Chantels' claim, the line in question was a 14,400
 20 kV line and under the NESC, a clearance between the line and the building of greater than the present
 21 clearance of 10-feet, six-inches was required.³⁰ MEC denied that "in rerouting its distribution line
 22 around the Chantels' obstructing 'Art Building,' it engaged in any action other than to protect the
 23 public from the dangers caused by the 'Art Work' structure and asserts that all actions of the utility
 24 are in compliance with industry practices and standards, and its tariffs."³¹

26 ²⁸ *Id.*, page 5.

27 ²⁹ Response, page 4.

27 ³⁰ *Id.*, page 6.

28 ³¹ *Id.*, page 5.

1 37. The Company argued that it complied with the directive from Mohave County and met
2 all notice requirements given the emergency situation, only de-energizing the lines after consultation
3 with Commission Staff.³²

4 38. MEC asserted that Mr. Chantel did not notify the Company that he had medical
5 equipment requiring continuous electricity until after service had been stopped. MEC also pointed out
6 that A.A.C. R14-2-211 only applies in a situation where the customer cannot pay his bills.³³

7 39. MEC admitted the Company informed the Chantels that in order to have their service
8 reinstated, they would have to pay the construction costs of the line circumventing their property, but
9 noted that this was permitted by A.A.C. R14-2-211(B)(2).

10 40. MEC docketed its Response to Complainants' Supplement to Formal Complaint and
11 Motion to Dismiss Supplement on May 22, 2009. The Company stated:

12 Complainants' allegation of a right to hearing under A.A.C. R14-2-212 is
13 misplaced. In the first place, this Rule deals with complaints about monthly
14 billing for electric services. The Complainants made a grievance filing in the
15 2008 Informal Complaint, where both Mohave and Staff addressed their billing
16 issues. Even if the provisions of [A.A.C.] R14-2-212 applied, the Complainants
have already received their due process through Staff's investigation of
Complainants' informal complaint, including billing issues, and the exhaustive
report Staff prepared.³⁴

17 41. Further, MEC contended that the Chantels alleged nothing that shows the Company
18 has failed to provide safe and reliable service as required under A.A.C. R14-2-208(A)(1).

19 42. Finally, MEC explained that A.A.C. R14-2-207 inapplicable because the Chantels
20 were not applicants for a line extension.

21 **Motion to Dismiss**

22 43. In its Response, MEC requested that the Complaint be dismissed because the Chantels
23 failed to state a claim for which the Commission may grant relief.

24 ...

25 ...

26 _____
27 ³² *Id.*, page 6.

28 ³³ *Id.*

³⁴ Response to Complainants' Supplement to Formal Complaint and Motion to Dismiss Complaint, page 6.

1 44. On April 17, 2009, the Chantels docketed a Response to Mohave Electric's Motion to
2 Dismiss contending that MEC's Motion to Dismiss should be denied because the Complaint alleged a
3 number of claims over which the Commission had authority.

4 45. The Chantels contended A.A.C. R14-2-211 "is clear that a utility will not disconnect
5 the service of a customer that has a medical need." The Complainants attached to their response a
6 copy of a January 29, 2009, letter to MEC requesting to be placed on MEC's medical/critical list.
7 The Chantels also included in their response a copy of a letter dated October 21, 2008, from MEC
8 enclosing a bill for \$12,135.09 to construct the temporary distribution line. The letter stated that if
9 the Chantels wished to have electricity restored to their house, they would have to either, a) enter into
10 a contract for services to reconstruct and connect the three phase 14,400/24,000 kV loop system to
11 meet NESC standards, or b) remove the structure located under the de-energized line. MEC stated:
12 "Upon removal of the building, the line would be reconnected at the original site which met NESC.
13 This may require additional costs to you as the property owner."³⁵ The Chantels claim they do not
14 have the ability to pay this bill, and conclude that they have a claim under A.A.C. R14-2-211,
15 therefore the Complaint cannot be dismissed.

16 46. On April 28, 2009, MEC docketed its Reply to Complainants' Response to Motion to
17 Dismiss. As part of this Reply, the Company attached a copy of an MEC internal memorandum
18 noting NESC clearances between buildings and distribution lines. The memorandum states:
19 "Assuming that the roof is not accessible to pedestrians, the NESC requires that the minimum vertical
20 clearance between the roof and the closest phase wire shall be 12' - 6". The actual vertical clearance
21 between the closest part of the building and the closest 14.4 kV phase conductor (measured at the site
22 on September 14, 2008) was 10' - 6".³⁶ MEC attached a copy of the relevant portion of the NESC
23 to the Memorandum. MEC claimed this lack of clearance exposed MEC to considerable liability if
24 the inadequate clearance became a factor in an accident, including a disruption of power to the nearby
25 BNSF crossing signal. According to MEC, it was for this reason that Mohave County ordered the
26

27 ³⁵ Response to Motion to Dismiss, Exhibit B.

28 ³⁶ Reply to Complainants' Response to Motion to Dismiss.

1 Company to de-energize the lines over the structure and reroute the distribution lines. A.A.C. R14-2-
2 211(C)(1)(f) allows termination of electric service with notice "when necessary for the utility to
3 comply with an order of any governmental agency having such jurisdiction." A.A.C. R14-2-
4 211(B)(1) permits termination of service without advance written notice where there is an obvious
5 public safety hazard.

6 47. As to the Chantels' claim that MEC must reinstate service because Mr. Chantel has a
7 medical need for continual electrical service, the Company responded that the Commission's
8 regulations regarding such a situation are inapplicable in this case. A.A.C. R14-2-211(A)(5) states
9 that a utility may not terminate service due to an inability to pay if a customer has advised the
10 company of a medical need for continual service. MEC contends that in this instance, service was
11 not discontinued for failure to pay, but rather, at the insistence of Mohave County due to public safety
12 concerns. Further, the Chantels did not advise MEC of the medical need for service until after lines
13 had been de-energized.³⁷

14 48. MEC concluded that the Chantels had not made any claims entitling them to a hearing,
15 and urged dismissal of the Complaint.

16 49. By Procedural Order docketed June 22, 2009, a telephonic Procedural Conference was
17 held on July 15, 2009. The parties were represented through counsel.³⁸ During the procedural
18 conference, the parties were advised that the findings of an informal complaint are not dispositive and
19 a complainant has the right to bring a formal complaint and request a hearing. As such, despite Staff's
20 conclusions in its November 5, 2008, letter, the Chantels had a right to bring a formal complaint and
21 request a hearing as long as there were charges over which the Commission could exercise
22 jurisdiction and grant the relief sought. It was ruled that, at that point in the proceedings, there were
23 questions of fact that needed to be resolved and the Chantels had stated a claim for which the
24 Commission could grant relief. MEC's Motion to Dismiss was denied.

25 ...

26

27 ³⁷ At the time the lines were de-energized, the Chantels had generators at their home, and they later installed a solar
electric system on their property.

28 ³⁸ A Notice of Appearance was filed by legal counsel for the Chantels on July 6, 2009.

1 50. A Procedural Order docketed July 28, 2009, set the matter for hearing on January 20,
2 2010, and established other procedural deadlines.

3 **Stay of Proceedings and Intervening Filings**

4 51. On December 10, 2009, the Chantels filed a Motion to Recess Formal Complaint
5 (“Motion to Recess”), relating they had filed a complaint in Mohave County Superior Court against
6 MEC on November 20, 2009, asserting various civil claims and seeking damages. The Chantels
7 requested a stay of their Complaint before the Commission pending the resolution of the Superior
8 Court action “because the Superior Court Complaint raises issues and seeks relief that cannot be
9 addressed in the ACC. For the sake of judicial efficiency, Complainants seek to resolve all the
10 Superior Court Complaint issues first. The resolution of these issues in Superior Court may make the
11 Formal Complaint moot.”³⁹

12 52. On December 15, 2009, Mr. Chantel wrote a letter to the Commission (not through
13 counsel) recounting the claims in his Complaint and alleging that MEC, MEC’s counsel, and Arizona
14 Electric Power Cooperative, Inc.,⁴⁰ were corrupt and charged that Commission Staff was covering up
15 information about MEC’s unsafe lines. Mr. Chantel stated he had directed his attorney to file the
16 December 10, 2009, Motion to Recess, which would give the Commission enough time to investigate
17 the corruption allegations.

18 53. On December 21, 2009, MEC filed its Response to Complainants’ Motion to Recess
19 Formal Complaint. MEC objected to the Motion to Recess, asserting that the Chantels did not have a
20 legitimate reason for their request and were simply forum shopping. MEC argued the Chantels must
21 exhaust all administrative remedies with the Commission before they could proceed with their civil
22 claims in Superior Court.

23 54. A Procedural Order docketed December 24, 2009, noted it was the party bringing the
24 Complaint that desired the delay in the proceedings, and there was no harm or imminent danger
25 granting the stay. The Chantels’ Motion to Recess was granted, but the Procedural Order directed the

26 _____
27 ³⁹ Motion to Recess, page 2.

28 ⁴⁰ MEC is a member of Arizona Electric Power Cooperative, Inc., along with Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Sulphur Springs Valley Electric Cooperative and Trico Electric Cooperative.

1 Complainants to file Quarterly Updates regarding the civil action's status beginning March 31, 2010,
2 which the Chantels did.

3 55. The stay on the Complaint proceeding was still in place when, on January 11, 2011, an
4 email from Mr. Chantel (not counsel) to the Commission, dated December 7, 2010, was docketed.
5 The email contained a copy of a letter from Mr. Chantel to MEC board members requesting that
6 MEC "remove the abandoned unsafe lines and poles that exist on [the Chantels'] property."⁴¹

7 56. Mr. Chantel sent letter to the Commission on February 11, 2011, again alleging that
8 MEC was misrepresenting the facts, and objecting to MEC's insistence that the Chantels pay for the
9 lines the Company installed to circumvent the Chantels' property. Mr. Chantel demanded that MEC
10 reinstate electrical service to his home. Mr. Chantel claimed that the Commission had jurisdiction
11 over these issues, writing:

12 I am asking you to reexamine these issues. If for some reason you feel that the
13 ACC cannot issue an order to reconnect my electricity or you cannot request
14 MEC to remove the unsafe lines and poles from my property, I am asking you to
15 draft a letter stating that this is out of the ACC's jurisdiction. Everyone involved
in this case needs to know if these issues fall within the ACC's jurisdiction or if
the ACC wants them to fall within the Court's jurisdiction.

16 57. MEC docketed a response to this letter on February 23, 2011, noting it had been the
17 Chantels' choice to suspend Commission consideration of the Complaint until the civil action was
18 finished, instead of exhausting their administrative remedies first. The Company stated: "Since
19 Complainant has transferred the jurisdiction of the formal complaint to Mohave County Superior
20 Court, it is improper for him, while represented by legal counsel, to return to the Commission on a
21 frequent basis to take additional jabs at MEC and to attempt to resurrect his transferred
22 proceeding."⁴² MEC requested that the Commission take no action on the Complaint while the
23 Chantels' civil suit was pending.

24 58. Copies of another letter received by the Commission from Mr. Chantel via email on
25 April 3, 2011, were docketed on April 4 and April 7, 2011. In the letter, the Chantels claimed that
26

27 ⁴¹ Letter dated December 7, 2010, docketed January 11, 2011. This letter did not request Commission involvement.

28 ⁴² Letter to the Commission dated February 23, 2011, page 2.

1 MEC's equipment on the property was no longer in use and requested that the Commission issue an
2 order directing MEC to remove its equipment.

3 59. In their Quarterly Update filed June 28, 2012,⁴³ the Chantels stated that Mohave
4 County Superior Court issued an order on May 31, 2012, granting MEC's summary judgment motion
5 and dismissing the case.⁴⁴ The Chantels filed an appeal with the Arizona Court of Appeals, Division
6 One, on June 13, 2012. The Chantels filed their Opening Brief on August 30, 2012, and MEC filed
7 its Answering Brief on October 15, 2012.

8 60. On August 8, 2012, a letter from Mr. Chantel dated August 1, 2012, was docketed
9 requesting that the Commission direct MEC to file an application relating to the abandonment of
10 MEC's lines on the Chantels' property pursuant to A.A.C R14-2-202. Mr. Chantel claimed that MEC
11 had violated Commission rules by abandoning the line across his property without first notifying the
12 Commission. Mr. Chantel complained that the Commission "is not putting any effort forward to help
13 me," and requested that the Commission issue an order directing MEC to remove its equipment.
14 Mr. Chantel requested copies of all documents and names of Commission Staff who have talked with
15 MEC counsel and employees and stated that this information "may be cause for not filing a Motion to
16 Compel with the Appeals Court."⁴⁵

17 61. The Chantels filed another letter on August 21, 2012, requesting that the Commission
18 issue a notice directing MEC to show cause why the Company will not re-establish service. Mr.
19 Chantel stated that he has post-traumatic stress, and his interactions with MEC have added to his
20 stress levels. Mr. Chantel reiterated that without continuous electricity, he cannot run his CPAP
21 machine and once again asserted that Commission regulations require MEC to provide electricity to
22 his home because of his medical conditions.

23 ...

24
25 ⁴³ On May 25, 2011, the Chantels' counsel filed an Application to Withdraw as Counsel of Record and a Procedural
26 Order granting the application was docketed on June 20, 2011. The Chantels continued to file the Quarterly Updates as
27 directed. The Chantels' attorney also withdrew as counsel in the civil action.

28 ⁴⁴ A copy of the Superior Court Order is attached as Exhibit B to MEC's Response to Complainants' August Letters,
docketed August 24, 2012.

⁴⁵ Chantel letter dated August 8, 2012, page 2.

1 62. Also on August 21, 2012, the Arizona Attorney General's Office docketed a copy of a
2 letter responding to an August 1, 2012, letter received from Mr. Chantel, in which he had asked the
3 Attorney General to investigate the Commission's failure to enforce certain regulations.⁴⁶ The
4 Assistant Attorney General responding to the letter stated that he had reviewed Mr. Chantel's letter,
5 the documents filed in the Complaint, and had spoken with Commission Staff about the Complaint.
6 The Assistant Attorney General concluded that enforcement of regulations concerning abandonment
7 of service lines is within the Commission's discretion and concluded there was no legal basis for
8 conducting a formal investigation of the Commission.

9 63. On August 24, 2012, MEC filed a Response to Complainants' August Letters. The
10 Company again explained the safety concerns that ultimately resulted in Mohave County's order to
11 de-energize the lines crossing the Chantels' property, and outlined the conditions the Chantels must
12 meet before MEC can reinstate service. MEC also argued that, contrary to Mr. Chantel's assertions,
13 Commission rules prohibiting termination of service due to a medical condition do not apply in this
14 case. MEC challenged Mr. Chantel's claims that the Commission is not actively addressing his
15 concerns, pointing out that the stay on the Complaint was granted at the Chantels' request.

16 64. MEC argued that it had not abandoned its equipment, but rather, it had de-energized
17 the lines on the Complainants' property at the direction of Mohave County because the Chantels had
18 endangered public safety by constructing a building under the power lines. MEC also asserted that
19 the lines no longer provide service to the public and, as such, A.A.C. R14-2-202 does not apply.
20 MEC attached as an exhibit to its Response a copy of its letter to the Chantels acknowledging their
21 request to have the line removed from the property, but stating that, "throughout the judicial
22 proceedings you have declined to pay the cost of removal or to permit MEC to enter your premises to
23 remove its poles and lines which remain its property."⁴⁷

24 65. On August 30, 2012, the Chantels filed a Response to Mohave Electric Cooperative's
25 Response to Complainants' August Letters ("Reply") stating, "[t]he conflict is about MEC's right to
26

27 ⁴⁶ The Chantels did not file a copy of the letter to the Attorney General's Office with the Commission.

28 ⁴⁷ MEC Response to Complainants' August Letters docketed August 24, 2012; Exhibit A, page 2.

1 use my property, reinstatement of Complainants' electricity and filing application with A.C.C. for
2 abandonment of lines and poles."⁴⁸ Mr. Chantel acknowledged the stay on the Complaint was
3 granted at his request, but the reason for it was because of the large number of issues outside the
4 Commission's jurisdiction. Mr. Chantel claimed that the Commission has authority over the issues
5 regarding reinstatement of electricity and the Commission should issue an order granting the
6 Chantels' requested relief.

7 66. On September 18, 2012, Mr. Chantel docketed a letter responding to correspondence
8 from Staff dated September 4, 2012,⁴⁹ requesting once more that the Commission "give MEC notice"
9 about the Company's violations of Commission regulations regarding unsafe lines, abandonment of
10 lines, and the prohibition against terminating service when the customer has a severe medical
11 condition.

12 67. The Chantels also posed a new request that the Commission measure the distances
13 between MEC's power poles along Highway 66 from mile marker 66 to mile marker 80, alleging that
14 the poles were out of compliance with safety regulations. On October 31, 2012, Staff docketed a
15 letter dated October 3, 2012, from the Director of the Utilities Division to the Chantels addressing
16 their request. The letter recounted that Staff had contacted Mr. Chantel regarding these new
17 allegations and had offered either to open an informal complaint or to assist him in reactivating the
18 Complaint docket, but Mr. Chantel had declined Staff's offer.

19 68. Mr. Chantel filed another letter with the Commission on October 18, 2012, stating:

20 It appears that the Utility Director does not intend to take any action to prevent
21 harm to my life, so I am asking the Commissioners to place the request [for
22 reinstatement of service and application for abandonment of lines] on their
calendar for consideration. I am also asking the Commission to promptly publish
their decision on this matter, so everyone can move forward.⁵⁰

23 69. On October 29, 2012, a Procedural Order was issued noting that the stay had been
24 issued at the Chantels' request and observing that in their Motion to Recess, the Chantels had
25

26 ⁴⁸ Reply, page 1.

27 ⁴⁹ The September 4, 2012, letter was not docketed. Staff was not a party to the Complaint and at the time the stay was
granted, Staff had not been asked to participate as a witness in the matter.

28 ⁵⁰ Chantel letter docketed October 18, 2012, page 2.

1 acknowledged that their Complaint involved some issues within the Commission's jurisdiction, but
2 "for the sake of judicial efficiency" they wanted to pursue their civil claims before addressing their
3 administrative claims and stating the suit in civil court could make the Complaint moot. The Motion
4 to Recess was granted, effectively suspending the Chantels' Complaint—including any claims raised
5 in the Complaint that may fall under the Commission's jurisdiction—and no further action would be
6 taken by the Commission on the Complaint until the stay was lifted.

7 70. The Procedural Order also noted that some of Mr. Chantel's letters assert that MEC
8 did not comply with Commission regulations when it allegedly abandoned the line crossing the
9 Complainants' property. The Chantels did not raise this allegation in their Complaint, they had not
10 filed a request to amend the Complaint to include the abandonment allegation, and it did not appear
11 the Chantels filed a separate complaint with the Commission on this issue. The Procedural Order
12 concluded that if the Chantels want to include the abandonment allegation as part of this Complaint,
13 they would have to file a motion to amend their Complaint after the stay had been lifted.

14 71. The Procedural Order ruled that the stay on the Complaint was still in effect and
15 would remain so until final disposition of the Chantels' civil suit.

16 **Lifting of the Stay**

17 72. On July 12, 2013, MEC filed a Motion to Reconsider Motion to Dismiss Formal
18 Complaint ("Motion to Reconsider"). MEC attached as an exhibit to the Motion to Reconsider a
19 copy of the Court of Appeals' April 16, 2013, Memorandum Decision affirming the Mohave County
20 Superior Court's grant of summary judgment in MEC's favor. In light of this outcome, MEC
21 requested reconsideration of its original Motion to Dismiss. MEC asserted the Commission is bound
22 by the decisions of the courts and the doctrine of *res judicata* barred further Commission
23 consideration of the Complaint.

24 73. As directed in a Procedural Order docketed July 30, 2013, the Chantels filed their
25 Response to Mohave Electric Cooperative's Motion to Reconsider Motion to Dismiss Formal
26 Complaint, on August 14, 2013. Along with their Response, the Chantels filed a Motion to Transfer
27
28

1 Issues in Complaint to the Citizens' Jurisdiction ("Motion to Transfer").⁵¹ Attached to the back of
2 the Chantels' filings were two documents. The first document was headed, "EMERGENCY
3 NOTICE OF ACTION," in which the Chantels asked "whoever is responsible for issuing orders, to
4 protect the general safety of the citizens and issue an order, under [A.A.C.] R14-2-202(B)(1) and (2),
5 to [MEC] to file an Application for Discontinuance or Abandonment," as well an order to reinstate
6 service to the Chantels' residence. The second document was simply headed, "NOTICE," which
7 requested that the Commission's Utilities Division Director to inspect MEC's lines and poles on
8 Highway 66 between mile marker 66 and mile marker 80, claiming that the lines and poles were in
9 disrepair and a public safety hazard.

10 74. On August 26, 2013, MEC filed its Reply to Complainants' Response to Motion to
11 Reconsider Motion to Dismiss Formal Complaint, and its Response to Complainants' "Motion to
12 Transfer Issues in Complaint to the Citizens' Jurisdiction."⁵²

13 75. On September 4, 2013, the Chantels docketed a Motion to Enforce Arizona
14 Administrative Codes R14-2-211(A)(5)(6), R14-2-202(B)(1)(2), R14-2-208(A)(1) and (F)(1), and
15 attached a proposed form of Judicial Order ("Motion to Enforce").

16 76. On September 9, 2013, a Procedural Order was filed lifting the stay on the Complaint
17 and setting a procedural conference for September 25, 2013, for the purpose of taking oral arguments
18 on MEC's Motion to Reconsider, on the Chantels' Motion to Transfer and the Motion to Enforce.
19 The Procedural Order also directed MEC to file a response to the Chantels' Motion to Enforce by
20 September 23, 2013.

21 77. On September 16, 2013, the Chantels filed a Motion to Postpone Most of the Issues at
22 the Hearing on September 25, 2013 ("Motion to Postpone"), and a Motion to Hear Issues on the
23 Emergency Notice of Action Submitted to Steven Olea of the Arizona Corporation Commission
24
25

26 ⁵¹ The Chantels also filed Complainants' Response to Procedural Order Issued by Administrative Law Judge Belinda A.
27 Martin.

28 ⁵² MEC also submitted its Objection to Complainants' Response to Procedural Order on the grounds that the Response
was inappropriate, disrespectful to the Commission and the Administrative Law Judge, and improper.

1 (“Motion to Hear Issues”).⁵³ In their Motion to Postpone, the Complainants asserted that the parties
2 had planned an inspection of MEC’s lines along Highway 66 and requested that most of the issues set
3 for oral argument at the September 25, 2013, proceeding be postponed pending results of the
4 inspection. The Chantels requested in their Motion to Hear Issues that their “Emergency Notice of
5 Action” be heard instead.

6 78. On September 23, 2013, MEC submitted its Response to Complainants’ Motions 1) to
7 Enforce, 2) to Postpone, and 3) to Hear Issues, requesting that the Motion to Postpone and Motion to
8 Enforce be denied, but that the Motion to Hear Issues should be granted.

9 79. A Procedural Order was docketed September 23, 2013, vacating the September 25,
10 2013, procedural conference.

11 80. On September 30, 2013, the Chantels docketed a letter requesting that the
12 Administrative Law Judge issue an Enforcement Order within seven days ordering MEC to remove
13 its equipment from the Chantels’ property, reinstate electric service to their house, and directing
14 Steven Olea to conduct an inspection of MEC’s lines and poles along Highway 66.

15 81. On October 8, 2013, MEC filed a Motion for Procedural Conference for the purpose
16 of hearing oral arguments on all outstanding motions. The Company claimed Commission Staff had
17 inspected of some of MEC’s equipment running parallel to Highway 66 and on the Chantels’
18 property on September 18, 2013, but the Company had not received a report of Staff’s findings.

19 82. On October 16, 2013, the Chantels docketed a Request to Decline Motion for Oral
20 Argument in a Procedural Conference and that the Administrative Law Judge Move Forward in
21 Issuing of the Enforcement Order. The Chantels argued that MEC’s Motion for Procedural
22 Conference should be denied because no new evidence or testimony can be presented that will add to
23 that already submitted by the parties, and demanding that the Enforcement Order requested on
24 September 30, 2013, be issued. The Chantels also claimed that they were unaware whether Staff had
25 conducted the inspection as claimed by MEC.

26
27 ⁵³ This references the Chantels’ “Emergency Notice of Action” included as an attachment to their Response to Mohave
28 Electric Cooperative’s Motion to Reconsider Motion to Dismiss Formal Complaint docketed on August 14, 2013.

1 83. On October 30, 2013, a Procedural Order was docketed setting a telephonic procedural
2 conference for November 19, 2013, to address certain procedural questions prior to taking oral
3 arguments on any outstanding motions. The Procedural Order advised the parties that no substantive
4 matters would be considered during the proceeding. Staff was directed to attend. A toll-free telephone
5 number was provided for the participants' use.

6 84. On November 12, 2013, the Chantels filed a Motion to Move Hearing to Phoenix,
7 Arizona, and a Request for a Court Reporter to Be Present at the November 19, 2013,
8 Hearing/Conference.

9 85. A Procedural Order docketed November 13, 2013, advised the parties that there would
10 be a court reporter present at the procedural conference, but that the procedural conference was
11 expected to be brief and had been scheduled to be held telephonically for the convenience of all
12 parties.

13 86. On November 14, 2013, the Chantels filed a Motion to Hear Only Substantive Law of
14 R14-2-211(A)(5)(6), R14-2-202(B)(1)(2), R14-2-208(A)(1) and (F)(1), and Memorandum in Support
15 of Substantive Law. The Chantels stated:

16 The Complainants and the people of Arizona that receive electricity, petition the
17 administrative personnel of the Arizona Corporation Commission to conduct the
18 November 19, 2013 hearing/conference on Substantive Law only and to restrict
19 the issues to [A.A.C.] R14-2-211(A)(5)(6), R14-2-202(B)(1)(2), R14-2-208(A)(1)
20 and (F)(1), which were created for the benefit of the citizens' rights for justice, the
21 right to have safe distribution of electricity in their communities, liberties and the
22 ongoing pursuit of quality of life and happiness of the citizens of the State of
23 Arizona.

21 87. On November 18, 2013, a Procedural Order was issued denying the Chantels' motion,
22 advising the Complainants that certain preliminary procedural questions must be addressed before
23 undertaking consideration of any substantive matters, and confirming the procedural conference for
24 the following day.

25 88. The telephonic procedural conference convened on November 19, 2013. Larry Udall,
26 on behalf of MEC, and Wes Van Cleve, on behalf of Commission Staff, attended telephonically. A
27 court reporter was also present by telephone to record the proceeding. After postponing the
28 procedural conference for 15 minutes, the Complainants did not appear telephonically or in person

1 and the proceeding was cancelled. MEC and Commission Staff were advised that a Procedural Order
2 would be issued setting another procedural conference for the sole purpose of determining whether
3 the Chantels desired to proceed with their Complaint.

4 89. On November 25, 2013, a Procedural Order was docketed setting a telephonic
5 procedural conference for December 16, 2013, to discuss whether the Chantels wished to continue
6 with their Complaint. The Procedural Order advised the Complainants that failure to attend the
7 procedural conference could result in administrative closure of the docket. A toll-free telephone
8 number was provided for the participants' use.

9 90. On November 27, 2013, the Chantels filed a Request for Information on December 16,
10 [2013], Conference/Hearing and Request to Issue the Enforcement Order. The Complainants
11 requested Commission Staff to provide copies of "all procedural rules that they intend to use, refer to
12 or invoke in the December 16, 2013 hearing/conference. All rules presented or intended to part of
13 this hearing/conference shall reveal the authority that they were created by, the date the rule was first
14 brought into existence or first date of enforcement,"⁵⁴ within 10 days of the procedural conference.

15 The Chantels asserted:

16 The Founding Documents of our Nation and that of the State of Arizona are
17 Common Law/Substantive Law. A hearing on laws not sanctioned by the people
18 being governed under Common Law/Substantive Law is evidence that this body
19 is creating a new form of government. I submit a copy of the enforcement order
20 that is the responsibility of all members of this government agency to issue,
21 support and enforce after the issuance. It is clear that this enforcement order needs
22 to be issued. It has been months and Steven Olea has not set up meeting for
23 inspection of unsafe lines and no one has responded to an emergency request for
24 electricity. These are just a few of the injustices and actions that are evidence of
25 this group of people that are at the beginning state of treason against the people of
26 the State of Arizona.⁵⁵

27 91. In a Procedural Order docketed December 3, 2013, the Chantels were provided with
28 links to the Commission's Practice and Procedural Rules, the Rules of Civil Procedure for the
Superior Court of Arizona, and Arizona Revised Statutes. The Complainants were advised that any
issues regarding their proposed enforcement order would be addressed at the appropriate time and

⁵⁴ Request for Information, page 2.

⁵⁵ Request for Information, page 2.

1 were reminded that the sole purpose of the next procedural conference was only to discuss whether
2 they wished to continue with the Complaint. The Procedural Order confirmed the December 16,
3 2013, procedural conference and warned the Chantels that failure to appear could result in
4 administrative closure of the docket.

5 92. The procedural conference convened as scheduled, with both parties attending
6 telephonically. Mr. Chantel stated that he did not attend the prior procedural conference because he
7 was ill and confirmed that the Chantels desired to pursue their Complaint. During the procedural
8 conference it was explained to Mr. Chantel that before the substantive issues could be addressed,
9 certain procedural matters had to be resolved. At the conclusion of the procedural conference, the
10 parties were advised that a Procedural Order would be issued setting a telephonic procedural
11 conference to address the procedural questions originally intended for the canceled November 19,
12 2013, proceeding.

13 93. Pursuant to a Procedural Order docketed December 31, 2013, a procedural conference
14 was held on January 28, 2014. The Chantels, MEC's counsel, and Staff attended telephonically. One
15 of the issues discussed during the procedural conference was that, although the Chantels raised the
16 question regarding MEC's alleged abandonment of the Company's equipment situated on the
17 Complainants' property almost two years after they filed their Complaint, the basis for the allegation
18 and the requested remedy generally arose from the same set of circumstances as those underlying the
19 original Complaint. MEC had subsequently responded to the additional allegations and agreed that it
20 had had adequate notice and opportunity to respond to this claim.⁵⁶

21 94. Also discussed was the issue of whether the Chantels' allegations of unsafe equipment
22 along Highway 66 were in any way related to the facts giving rise to the original Complaint.

23 95. Staff confirmed that it had inspected MEC's equipment between certain mile markers
24 along Highway 66 on September 18, 2013. Staff also looked at the poles on the Chantels' property,
25 but only from a distance because Staff was not able to enter the property. Two MEC representatives
26

27 _____
28 ⁵⁶ Transcript of January 28, 2014, Procedural Conference, pages 13 – 15. (Hereinafter, "Tr. at ___.")

1 were present during Staff's site visit, but Mr. Chantel claimed he was not aware of the inspection.⁵⁷
2 Staff prepared a written report ("Inspection Report"), but did not docket it because of Staff's
3 concerns that the charges related to the poles along Highway 66 were not part of the same facts
4 underlying the Complaint, and, as noted in the October 3, 2012, letter from the Commission, the
5 Chantels did not wish to pursue the matter through a new complaint.⁵⁸

6 96. The parties clarified their positions on other matters and various procedural and
7 scheduling issues were discussed. At the conclusion of the procedural conference, the parties were
8 advised that a Procedural Order would be issued setting a procedural conference for the purpose of
9 taking oral arguments on the parties' outstanding motions.

10 97. On June 2, 2014, a Procedural Order was docketed addressing, among other things, the
11 issues of notice about the Chantels' abandonment claims and the allegations regarding MEC's
12 equipment along Highway 66.

13 98. The Procedural Order concluded it was reasonable to permit the Chantels' Complaint
14 to be amended to include Complainants' request that the Commission direct MEC to file an
15 application for abandonment pursuant to A.A.C. R14-2-202. However, the Procedural Order found
16 that the Chantels' charges that MEC's power poles along Highway 66 do not comply with safety
17 regulations were attenuated from the specific set of facts forming the original Complaint, and noted
18 that Staff had expressed similar concerns at the procedural conference. Further, the Chantels brought
19 this new claim to the Commission approximately three years after filing the original Complaint. At
20 that time, Staff had offered to open an informal complaint on the Chantels' new allegation, but the
21 Chantels declined.

22 99. The Procedural Order concluded that MEC had not had adequate notice and
23 opportunity to respond to this claim, but reasoned it was possible that the Chantels' assertions
24 regarding the lines might be resolved without further action. Additionally, the Procedural Order
25 noted that although it is the recommended approach, A.A.C. R14-3-106(M) does not require that an
26

27 ⁵⁷ Tr. at 8 - 9.

28 ⁵⁸ Tr. at 10.

1 issue be heard through an informal complaint before a formal complaint may be made. Further,
2 A.R.S. § 40-246(B) states: "All matters upon which complaint may be founded may be joined in one
3 hearing, and a complaint is not defective for misjoinder or non-joinder of the parties or causes."

4 100. Accordingly, the Procedural Order directed Staff to docket the Inspection Report in
5 order to provide MEC and the Complainants with an opportunity to review and respond to the report.

6 101. The Chantels were instructed to file an opening brief discussing whether they wished
7 to amend their Complaint to include the allegations regarding MEC's equipment along Highway 66;
8 to define "Citizens Jurisdiction" as used in the Motion to Transfer and cite valid legal authority
9 supporting the "citizens court's" jurisdiction over a public utility corporation surmounting that of the
10 Commission; and explain why the Commission should act on the Motion to Enforce prior to any
11 evidentiary hearing on the Complaint (assuming the Complaint was not dismissed), and provide valid
12 legal authority that supports the Commission's authority to do so. Additionally, the Chantels were
13 instructed to file a reply brief addressing MEC's legal arguments stated in the Company's responsive
14 brief.

15 102. MEC was directed to file a responsive brief addressing the Complainants' position
16 regarding the Inspection Report, as necessary; any additional arguments regarding the Complainants'
17 Motions; and whether the allegations regarding abandonment of its lines on the Complainants'
18 property pursuant to A.A.C. R14-2-202 are ripe for dismissal under the doctrine of *res judicata*.

19 103. Finally, the Procedural Order set a hearing for oral arguments on the parties'
20 outstanding motions on August 5, 2014, at the Commission's Phoenix offices.

21 104. On June 5, 2014, Staff docketed a copy of the Inspection Report. Staff related that,
22 contrary to Mr. Chantel's assertions at the January procedural conference, prior arrangements had
23 been made to meet with Mr. Chantel on September 18, 2013, to inspect MEC's equipment on his
24 property; however, "when Staff attempted to contact him via phone and by honking from the road in
25 front of his property, contact could not be made."⁵⁹

26 ...

27 _____
28 ⁵⁹ Inspection Report, page 6.

1 105. Based on the inspection of MEC's facilities along Highway 66 between mile markers
2 66 and 80, Staff concluded the following:

- 3 • The line has been appropriately maintained by MEC and there is no indication the
4 condition of the line poses an immediate safety or reliability risk.
- 5 • Only three poles out of 150 were noted as moderately leaning, two of which did
6 not appear to pose an immediate safety or reliability risk. The third pole was
7 located on the Chantels' property and could not be assessed.
- 8 • The lines along the inspected portion of Highway 66 appear to meet the Rural
9 Utility Services ("RUS") and NESC standards for span lengths, clearances, and
10 sag. Based on Staff's evaluation of a survey of MEC's lines crossing the Chantels'
11 property submitted by the Complainants in an August 14, 2013, filing, and
12 attached to the Inspection Report as Attachment D, Staff opined that the span
13 lengths and conductor clearances of MEC's lines on the Chantels' property did not
14 violate any RUS or NESC standards and the classes of poles used to support the
15 line were appropriate.
- 16 • MEC's approach to systematically replace older facilities like those along
17 Highway 66 was consistent with good utility practices.⁶⁰

18 106. On June 25, 2014, the Chantels filed their opening brief stating they did not want to
19 amend the Complaint to include the allegations regarding MEC's equipment along Highway 66. The
20 Chantels reiterated all their prior claims and demands, including that MEC be ordered to reinstate
21 service and file an application to abandon its facilities on the Chantels' property. In support of their
22 Motion to Transfer, the Chantels cited to the Declaration of Independence and stated that, "federal
23 and some state elected officials are examining the need for new laws allowing Private Citizens'
24 Courts."⁶¹ No other authority was offered. The Chantels' support for their Motion to Enforce was
25 also a citation to the Declaration of Independence.

27 ⁶⁰ *Id.*

28 ⁶¹ Opening Brief, page 7.

1 107. On July 16, 2014, MEC filed its Responsive Brief and docketed Supplemental
2 Documents on July 31, 2014. MEC observed that the Complainants cited no legal authority that
3 defines "Citizens' Jurisdiction," and argued the Chantels' Motion for Transfer is without merit. MEC
4 also noted the lack of any legal support for the Chantels' Motion to Enforce.

5 108. As to the issue of whether the Commission was barred from considering the
6 abandonment allegations as *res judicata*, MEC noted that the Court of Appeals found that MEC had
7 properly taken action to de-energize the distribution lines on the Chantels' property based on Mohave
8 County's concerns that the Complainants had created a public safety hazard by constructing a
9 building underneath the lines. But the Court also noted that MEC was authorized under A.A.C. R14-
10 2-211(B) to disconnect service because of the safety hazard. The Company argued that "[o]nce
11 service to Complainants was disconnected in accordance with Commission rules, any facilities
12 dedicated solely to that service are no longer 'currently in use' thereby rendering A.A.C. 202(B)
13 inapplicable."⁶²

14 109. On August 1, 2014, the Chantels submitted their Reply Brief, arguing that since MEC
15 had constructed a three-phase distribution line parallel to Highway 66, the claimed clearance
16 violation no longer existed and there is no legal reason that service should not be reinstated to the
17 Chantels' residence. Regarding MEC's *res judicata* argument, the Complainants state, without
18 further explanation, that the United States Supreme Court has ruled that if there were issues of
19 "public rights," the doctrine does not apply.⁶³

20 110. The Procedural Conference for oral arguments convened on August 5, 2014. MEC and
21 Staff were present through counsel; however, the Chantels were not present. After a delay of 20
22 minutes, the Chantels still had not appeared and the Procedural Conference was canceled.

23 Superior Court Action

24 111. In their complaint in Superior Court, the Chantels alleged eight claims against MEC:
25 Breach of contract, breach of the covenant of good faith and fair dealing, quiet title, ejectment,

26 _____
27 ⁶² MEC's Response Brief, page 10.

28 ⁶³ Reply Brief, page 8, listing "*Northern Pipeline Construction Company v. Marathon Pipe Line Company*, 458 U.S." No further citation was given.

1 recovery of rents, negligence, intentional infliction of emotional distress, and punitive damages.
 2 MEC counter-claimed for recovery of over \$40,000 for the costs of construction the temporary line
 3 and subsequent installation of the permanent three-phase line to replace the portion which had
 4 previously run across the Chantels' property.

5 112. MEC filed a Motion for Summary Judgment on the complaint and MEC's
 6 counterclaim.⁶⁴ The Chantels subsequently withdrew the quiet title and ejectment claims and the
 7 court granted the Company's motion as to the recovery of rents, intentional infliction of emotional
 8 distress, and punitive damages claims, leaving only the breach of contract, breach of the covenant of
 9 good faith and fair dealing and negligence allegations.

10 113. In its Minute Entry ruling on MEC's summary judgment motion, the court noted that
 11 it had based its ruling on the Chantels' avowal they would submit additional evidence supporting
 12 their remaining claims; however, the Chantels' did not provide anything further. MEC moved for
 13 reconsideration of its motion for summary judgment on the three remaining counts.

14 114. In its Judgment issued July 2, 2012, the court entered summary judgment in MEC's
 15 favor and stated, "[i]n retrospect, the Court's denial of MEC's entire motion was incorrect."⁶⁵ The
 16 court awarded MEC \$47,912.04 in damages on the Company's counterclaim, attorney's fees pursuant
 17 to A.R.S. § 12-341.01(A), and 4.25 percent interest per annum from the date of the Judgment.⁶⁶

18 Appellate Action

19 115. The Chantels appealed the Superior Court's ruling to the Court of Appeals, which
 20 issued its Memorandum Decision on April 16, 2013, affirming the lower court's entry of summary
 21 judgment in favor of MEC ("Decision").

22 116. The Court noted it reviewed the grant of a motion for summary judgment *de novo*,
 23 viewing "the facts in in the light most favorable to the party opposing summary judgment,"⁶⁷ adding
 24

25 ⁶⁴ Arizona R. Civ. P., Rule 56(a) states: "The court shall grant summary judgment if the moving party shows that there is
 26 no dispute as to any material fact and the moving party is entitled to judgment as a matter of law."

⁶⁵ Mohave County Superior Court Judgment, page 3.

⁶⁶ The calculation of the award was supported by the Affidavit of Arden Lauxman, MEC's Chief Financial Officer.
 27 MEC's Supplemental Documents, Exhibit 9, MEC's Appellee's Answering Brief, Appendix J.

⁶⁷ Decision, page 5, citing *Wolfinger v. Cheche*, 206 Ariz. 504, 80 P.3d 783 (App. 2003).

1 that summary judgment is only appropriate “if the moving party shows that there is no genuine
2 dispute as to any material fact and the moving party is entitled to judgment as a matter of law.”⁶⁸

3 117. In their Decision, the Court observed that the Chantels appealed only the rulings on
4 their negligence claim, the claim for recovery of rents, and the court’s award of attorney’s fees,
5 thereby waiving any challenges to the court’s ruling on the remaining claims and on MEC’s
6 counterclaim.

7 118. In their opening brief, the Chantels asserted they were entitled to injunctive relief
8 (requiring MEC to reinstate electric service to their home) and damages for MEC’s alleged wrongful
9 termination of service. The Court construed this argument as a challenge to the lower court’s
10 summary judgment on the negligence claim.

11 119. The Court noted that in order to prove negligence, a claimant must first establish that a
12 defendant owed some duty of care; without that duty, a charge of negligence cannot be maintained.
13 The Chantels cited as authority A.A.C. R14-2-208(A)(1), which states that a utility is “responsible for
14 the safe transmission and distribution of electricity until it passes the point of delivery to the
15 customer.” The Court denied that this regulation imposed a duty on MEC “to provide service that
16 might give rise to breach for disconnecting service. Rather, A.A.C R14-2-208(A)(1) simply requires
17 a utility to safely deliver electricity if it is providing such a service.”⁶⁹

18 120. In addition, although the Chantels had not claimed in Superior Court that a utility
19 cannot terminate service for nonpayment without affording a customer due process, the appellate
20 court nevertheless noted that MEC did not did not terminate service because of unpaid bills for
21 service, stating:

22 MEC offered undisputed evidence in support of its motion for summary judgment
23 that it disconnected the Chantels’ service because the county directed MEC to do
24 so because of safety concerns caused by the structure the Chantels had built
25 directly beneath the electrical lines. ...Additionally, MEC provided the Chantels
26 with more than adequate notice of the pending shut-off...and MEC provided the
27 Chantels both written and personal notice prior to de-energizing the line.”⁷⁰

28 ⁶⁸ Ariz. R. Civ. P. 56(a); *Orme School v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990).

⁶⁹ Decision, page 7.

⁷⁰ *Id.*, page 8.

1 *judicata* “provides finality and deters harassment of former litigants.”⁷³ The doctrine is well
2 established in Arizona and MEC states that, “[w]hen a court of competent jurisdiction renders a final
3 judgment, that judgment is *res judicata* as between the same parties on all issues that were or might
4 have been determined in the former action.”⁷⁴

5 127. A critical finding in the Court of Appeals’ Decision is that MEC was directed by
6 Mohave County to de-energize the distribution lines providing service to the Chantels’ home due to
7 concerns for public safety that arose when the Chantels built a structure underneath MEC’s lines—
8 lines that provided service not only to the Complainants, but also to the nearby BNSF crossing signal.

9 128. The Chantels claimed MEC violated a number of provisions under A.A.C R14-2-211 –
10 Termination of Service. According to the Chantels, Mr. Chantel uses a CPAP breathing apparatus at
11 night to alleviate sleep apnea and there must be a continuous flow of electricity to their home to
12 operate the machine. They claim that MEC violated A.A.C. R14-2-211(A)(5)(a) and (b), which state
13 that a utility cannot terminate residential service where the customer has a medical need for
14 continuous service *and* the customer has an inability to pay. Ultimately, the Chantels did not dispute
15 that they had not notified MEC of the medical necessity prior to disconnection of service. Further, the
16 Complainants acknowledged in their informal complaint that up to that time they had never been late
17 paying their bill, they never claimed that they were unable to pay their bill, and the Court of Appeals
18 found that MEC did not terminate the Chantels’ service for failure to pay a bill for service.⁷⁵ There is
19 no factual dispute on this issue.⁷⁶

20 129. The Complainants also alleged that they did not receive adequate notice before MEC
21 terminated the service as required by A.A.C. R14-2-211(C), but the Court of Appeals found that
22 MEC had provided sufficient notice of termination prior to de-energizing the lines. In addition, the
23 Court of Appeals also noted that A.A.C. R14-2-211(B) permits a utility to disconnect service without
24 notice upon discovery of an obvious public safety hazard. Accordingly, this issue is *res judicata*.

25 _____
26 ⁷³ *Circle K v. Industrial Com’n*, 179 Ariz. 422, 426, 880 P.2d 642, 646 (App.1993).

27 ⁷⁴ *Hall v. Lalli*, 194 Ariz. 54, 57, 977 P.2d 776, 779 (1999); *W. Cable v. Industrial Commission*, 144 Ariz. 199, 203, 696
28 P.2d 1348, 1352 (App. 1984).

⁷⁵ Decision, page 7.

⁷⁶ We note that the Chantels have since filed for bankruptcy.

1 SERVICE LIST FOR: ROGER AND DARLENE CHANTEL,
2 COMPLAINANTS, V. MOHAVE ELECTRIC
COOPERATIVE, INC., RESPONDENT.

3 DOCKET NO.: E-01750A-09-0149

4 Roger and Darlene Chantel
5 10001 East Highway 66
6 Kingman, AZ 86401
Via Regular Mail, Certified Mail and Email at
Rogerchantel@frontiernet.net

7 Michael A. Curtis, Esq.
8 Larry K. Udall, Esq.
9 CURTIS, GOODWIN, SULLIVAN
& SCHWAB, P.L.C.
10 501 East Thomas Road
Phoenix, AZ 85012

11 Janice Alward, Chief Counsel
12 Legal Division
ARIZONA CORPORATION COMMISSION
13 1200 W. Washington Street
Phoenix, AZ 85007

14 Steven M. Olea, Director
15 Utilities Division
ARIZONA CORPORATION COMMISSION
16 1200 W. Washington Street
Phoenix, AZ 85007

17
18
19
20
21
22
23
24
25
26
27
28