

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) For Authority to, Among Other Things, Increase Its Authorized Revenues For Electric Service in 2006, And to Reflect That Increase in Rates.)	Application 04-12-014 (Filed December 2004)
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Investigation on the Commission's Own Motion Into the Rates, Operations, Practices, Service and Facilities of Southern California Edison Company.)	Investigation 05-05-024 (Filed May 26, 2005)

**RESPONSE OF THE HOPI TRIBE TO THE MOTION
OF THE JUST TRANSITION COALITION FOR A
"JUST TRANSITION" IN RESPONSE TO CLOSURE OF THE
MOHAVE GENERATING STATION**

January 26, 2006

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Pursuant to Rule 45 of the Commission's Rules of Practice and Procedure, and Administrative Law Judge Carol Brown's January 19, 2006, Ruling Allowing the Mohave Service List Participants an Opportunity to Respond to the Just Transition Motion,¹ the Hopi Tribe, acting by and through legal counsel for the Tribal Government, respectfully submits the following Response to the "Motion for a 'Just Transition' in Response to Closure of the Mohave Generating Station," filed by the Just Transition Coalition on January 11, 2006.

I. INTRODUCTION

On January 11, 2006, six non-governmental organizations², acting as the "Just Transition Coalition," filed a Petition to Intervene and a "Motion for a 'Just Transition' in Response to Closure of the Mohave Generating Station." On January 13, 2006, ALJ David K. Fukutome issued a Ruling Shorting Time for Responses to the Petition and Motion to January 20, 2006. On January 19, 2006, ALJ Carol Brown issued a Ruling allowing the Hopi Tribe (and other Mohave participants) to respond to the pending motion and extended the response time to Friday, January 27, 2006. See footnote 1, supra.

The Tribal Government of the Hopi Tribe was not a party to the Motion filed by the Just Transition Coalition, and was not formally consulted by the Just Transition Coalition before it

¹ Pursuant to Judge Brown's Ruling, the Hopi Tribe, a party to the Mohave proceeding (A. 02-05-046), may respond to the Just Transition Coalition's motion without filing a motion to intervene in this proceeding, and may do so on or before January 27, 2006. See Id.

² The six non-governmental organizations are: (1) Sierra Club of Arizona; (2) Grand Canyon Trust; (3) Black Mesa Water Coalition; (4) To' Nizhoni Ani; (5) Black Mesa Trust; and (6) Indigenous Environmental Network. See Petition of Just Transition Coalition for Leave to Intervene, dated January 11, 2006 at page 2.

filed the instant motion.³ Accordingly, the Hopi Tribe takes this opportunity to advise this Commission of its views concerning the “Just Transition” Motion.

**II. THE COMMISSION SHOULD PRESERVE ITS OPTIONS WHILE
NEGOTIATIONS CONCERNING THE FUTURE OF THE MOHAVE
GENERATION STATION CONTINUE**

As explained below, the Hopi Tribe urges the Commission to take steps necessary to preserve its options while allowing the parties to conclude the on-going Mohave Generating Station (“Mohave”) negotiations. The Commission should avoid adoption of strategies at this time that might inadvertently impede or undermine the parties’ efforts to reopen Mohave. Specifically, the Hopi Tribe endorses the suggestion of the Just Transition Coalition that Southern California Edison (“Edison”) be ordered to create a new Mohave Sulfur Credit Sub-Account in its Energy Resource Recovery Account (EERA) to track sales of Edison’s Mohave sulfur allowances during Mohave’s closure. It would be premature, however, to assume that Mohave has closed permanently or to speculate on the length of any temporary Mohave closure. Tracking the sulfur allowance credits now will preserve all of the Commission’s options while the parties conclude their negotiations.

As the Commission is aware from Edison’s Monthly Status Reports filed pursuant to Decision D.04-12-016, the Mohave owners, the Hopi Tribe and Navajo Nation, Peabody, and other directly interested parties, are currently engaged in intensive and very sensitive

³ Because the Hopi Tribe was not a participant in A. 01-12-014 or I. 05-05-024, the Hopi Tribe was also not served with the Just Transition Coalition’s Petition to Intervene and Motion. The Hopi Tribe learned about the filings through press reports.

negotiations. If successful, those negotiations will lead to the re-opening of Mohave and the installation at Mohave of state-of-the-art air pollution controls. It is therefore premature to conclude that Mohave has closed permanently, and neither the plant owners nor the Tribes accept that result as a foregone conclusion.

The best outcome for California ratepayers, as well as for the Tribe, is the reopening of Mohave and the Black Mesa Mine on terms satisfactory to the parties as soon as possible. As the record in Application A.02-05-046 demonstrated, Mohave is an extremely important generation asset in the West. Mohave provides critically needed fuel diversity in a region chronically over dependent on expensive, volatile and increasingly scarce natural gas for the production of electricity. Mohave produces its electricity at predictable and stable prices, which is good for consumers and businesses alike. Mohave also provides the West with fuel security – coal produced from the Black Mesa Mine – in an era when the risk of fuel supply disruptions due to geopolitical turmoil is very real and world demand for importable energy is at unprecedented levels.

Tribal benefits from Mohave's continued operation are also substantial. The Black Mesa Mine, the sole source provider of coal to Mohave, provides many high paying jobs to impoverished Native American communities. These high paying jobs allow Native Americans to remain near to, and support, their extended families, and inject needed cash flow into the tribal economies, rather than being forced to migrate away from their homes in search of jobs. Moreover, the royalties received from the mining of Black Mesa coal provide a vital source of funding for the Hopi Tribe's government operations and programs, all of which deliver essential services to Hopi people.

The Just Transition Coalition’s proposal to use Mohave’s sulfur credit sales to offset the economic harm inflicted upon the Hopi Tribe and Navajo Nation by Mohave’s closure is laudable and, in the worst case, a proper response to address in part the harsh social and economic injustice inflicted upon the Tribes by the closure of Mohave. However, a far better outcome – for both ratepayers and the Tribes – is an agreement to reopen Mohave (and the Black Mesa Mine) as quickly as possible with an absolute guarantee of appropriate pollution control retrofits.

The Hopi Tribe and Navajo Nation will enjoy far greater economic benefits from continued Mohave operation than they would enjoy from receiving Mohave’s sulfur credits over the coming years. While the details of current negotiations must understandably remain highly confidential, a continued Mohave would provide substantially increased monetary payments to the Tribes and also provide a critically needed alternative water supply for the Black Mesa Mine and other local uses. A continued Mohave would also provide many high paying jobs to Native Americans, and the income from those jobs would have a multiplier effect within the Hopi and Navajo economies.

Additionally, as this Commission is well aware, the task of developing new technology green energy is complex. Developing new projects requires willing and able power buyers, willing and able developers, intra-governmental cooperation, access to substantial capital, access to electrical transmission and technology.⁴ Continued Mohave operations will provide more money to the Hopi government to assist in developing their domestic economy and an energy infrastructure based on new technology energy resources, including clean coal technology, wind

⁴ The complex technical and practical issues (including near and medium term availability of access to transmission) associated with developing new energy projects on Hopi and Navajo Tribal land are the focus of the Mohave Alternatives/Complements Study (“MACS”), authorized pursuant to Decision 04-12-016, which is nearing completion.

and solar power. The Hopi Tribe is committed to developing such new technology energy resources, and firmly believes that Mohave represents the economic bridge to bring such projects to fruition.

To the extent the Motion for a “Just Transition” assumes that Mohave has closed permanently, it is based on an inaccurate and premature presumption. The Commission should not act based on that erroneous assumption. Both the Mohave owners and the Tribes agree that Mohave should continue to operate if at all possible. Likewise, to the extent the Motion is premised on the assumption that a temporary Mohave closure must be for a period of several years, the Motion again proceeds on an as yet unproven assumption. It remains to be seen whether the Mohave negotiations will be successful and, if so, whether the Mohave owners and the Mohave Consent Decree Plaintiffs can reach a satisfactory agreement allowing Mohave to continue to operate during the design and construction of the needed pollution control equipment.

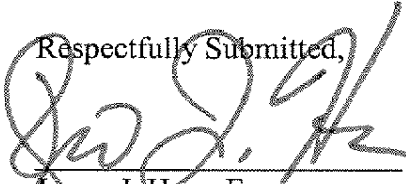
For these reasons, the Hopi Tribe requests that the Commission adopt that portion of the Just Transition Coalition’s Motion which requires Edison to track its sales of sulfur credits from Mohave. This step preserves the Commission’s options to the extent that the current Mohave negotiations fail. The Hopi Tribe requests that the Commission postpone, however, any decision regarding the disposition, timing and amount of any payments of sulfur credits to the Tribes as just compensation for Mohave’s closure, until such time as the parties involved in the current negotiations advise the Commission regarding the outcome of such negotiations.⁵ To take

⁵ There are a number of important issues raised by the proposed mechanics of the Just Transition Coalition’s proposal the Commission ought to consider prior to reaching a decision. Among them is the delicate question of Tribal sovereignty, and the roles, governmental status and functions of the entities to receive funding under the Coalition’s proposal.

further steps at this time could upset the delicate negotiations that remain in process and could interfere with the Mohave owner's negotiations with the Mohave Consent Decree plaintiffs.

Finally, the Hopi Tribe recommends that the Commission give further consideration to the question of the proper forum for consideration of the Just Transition Coalition's motion. There are several outstanding Mohave issues, including this motion, the MACS study, the continuing Mohave negotiations, and certain requests made by Edison relating to Mohave. It may make sense to consider all of these issues in a separate or sub-docket.

January 26, 2006

Respectfully Submitted,

James I. Ham, Esq.
Counsel for the Hopi Tribe

PROOF OF SERVICE

I, Beverly Reed, declare as follows:

I am employed in the City and County of Los Angeles, California. I am over the age of eighteen years, and not a party to the within cause; my business address is ARNOLD & PORTER LLP, 777 South Figueroa Street, 44th Floor, Los Angeles, California 90017. On **January 26, 2006**, I served the within:

RESPONSE OF THE HOPI TRIBE TO THE MOTION OF THE JUST TRANSITION COALITION FOR A "JUST TRANSITION" IN RESPONSE TO CLOSURE OF THE MOHAVE GENERATING STATION

on the interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Please see attached Service List

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- BY PUC E-MAIL SERVICE** By transmitting such document electronically from Arnold & Porter LLP, Los Angeles, California, to the electronic mail addresses listed above. I am readily familiar with the practice of Arnold & Porter LLP for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 2.3(b) of the Public Utilities Commission of the State of California and all protocols described therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **January 26, 2006**, at Los Angeles, California.


Beverly Reed

SERVICE LIST
A.04-12-014/I.05-05-024
(Last changed: January 26, 2006)

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