



BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF MOHAVE  
ELECTRIC COOPERATIVE, INC.'S  
APPLICATION FOR APPROVAL OF  
NET METERING TARIFF REVISIONS.

DOCKET NO. E-01750A-10-0365

EXCEPTIONS TO STAFF'S PROPOSED  
ORDER

Pursuant to A.A.C. R14-3-110(B), Mohave Electric Cooperative, Inc. ("Mohave"), through counsel undersigned, hereby files its exceptions to the Commission Staff's proposed order docketed December 23, 2010. Mohave supports Staff's proposed Annual Average Avoided Cost ("AAAC") calculation of \$0.0425 and agrees with Staff that clarification of the definition of AAAC contained in its NMS Tariff is appropriate. Mohave, however, does take exception to:

1. Staff's suggestion that the new AAAC should be applied retroactively;
- and
2. The Staff's proposed method of clarifying the AAAC definition.

**I. The New AAAC Should Not Apply Retroactively**

Under Mohave's Net Metering Service Tariff, Mohave is to determine its annual avoided kWh cost every July based upon the Cooperative's most recent audited financial statement. Mohave's audited final financial statements for 2009 were not available until early July 2010. Mohave filed its Application for Approval of Net Metering Tariff

1 Revisions on September 1, 2010. The Application expressly requested that the Application  
2 be approved "on or before December 1, 2010 to correspond with the calendar year "true-up  
3 period."

4 Unfortunately, Staff was unable to docket its transmittal memorandum and  
5 proposed order until December 23, 2010 and the matter is not scheduled to be considered by  
6 the Commission until January 11 or 12, 2011. As a result, and after consultation with  
7 Commission Staff, Mohave dutifully applied its effective AAAC to its net metering  
8 customers' billing statements "for the last billing period of [the 2010] Calendar Year" as  
9 required by its Commission approved Net Metering Service Tariff.

10 There is no dispute that Mohave calculated and applied the credit as required by  
11 the Commission approved Net Metering Service Tariff rate. Staff Memo at p. 2 -3. Staff,  
12 however, is recommending that Mohave be required to retroactively apply the new AAAC.  
13 In particular Staff suggests "Mohave credit its customers for the incremental difference  
14 between the most recent Commission-approved AAAC of \$0.0418 and Staff's proposed  
15 AAAC of \$0.0425 . . . an additional \$0.0007 per kWh of Excess Generation as determined  
16 during a customer's last billing cycle of 2010. This incremental credit should occur in a  
17 customer's first-available billing cycle subsequent to Commission approval of the proposed  
18 AAAC." See Staff's proposed order at Paragraph 15 and third ordering paragraph.  
19 Such action by the Commission would constitute invalid retroactive ratemaking:

20 "When an agency approves a rate, and the rate becomes final,  
21 the agency may not later on its own initiative or as the result  
22 of collateral attack make a retroactive determination of a  
different rate and require reparations."

23 *Mountain States Tel. & Tel.Co.v. Arizona Corporation Commission*, 124 Ariz. 433, 604 P.2d  
24 1144 (App. 1979)(upholding court ordered refund following judicial review of unlawful  
25 order) *citing Arizona Grocery Co. v. Atchison, T. & S.F. Railroad Co.*, 284 U.S. 370, 52 S.Ct.

1 183, 76 L.Ed. 348 (1932) (invalidating an ACC order requiring refunds where the rates  
2 charged complied with the approved rates); *El Paso & S.W.R.Co. v. Arizona Corporation*  
3 *Commission*, 51 F.2d 573 (D.Ariz.1931)(enjoining the Commission from ordering refund of  
4 rates it approved).

5           Would the Staff's position be different if the AAAC had decreased instead of  
6 increased?

7           The net metering credits must be hand-calculated by Mohave. Therefore, not  
8 only would the proposal constitute unlawful retroactive ratemaking, but would also cause  
9 Mohave to recalculate bills by hand in order to provide an additional \$0.0007 per kWh. This  
10 administrative burden must not be imposed on Mohave. The proposed Order should be  
11 amended to reject this Staff proposal as more specifically set forth in Section III below.

12           **II. Staff's Proposed Change to AAAC Definition Should be Modified**

13           Staff also proposes a change to the definition of "Annual Average Avoided  
14 Cost" set forth in Mohave's NMS Tariff. While Mohave concurs with Staff that the  
15 definition should be clarified, Mohave takes exception to the definition as revised. Staff's  
16 elimination of the use of audited final financial statements for the previous Calendar Year as  
17 the basis for calculating the AAAC, permits the use of unadjusted and unaudited data. The  
18 use of the phrase "the previous 12 months" provides no clear starting or ending point of the  
19 12 month period. If applied literally, Mohave would be required to use the unadjusted and  
20 unaudited power supply data that runs through the date it files for a new AAAC. Use of the  
21 alternative phrase "the previous Calendar Year," provides a clear starting point (January 1)  
22 and end point (December 31). By also adding the phrase – "determined based upon the  
23 Cooperative's audited financial statement for the applicable Calendar Year" Mohave and its  
24 members will have a clear understanding of both the time period and the data to be used to  
25 compute the AAAC.

1 Another issue with the Staff's proposed definition is that it requires formal  
2 Commission action even where there is no issue as to the calculation performed by Mohave.  
3 Not only does this mean that the effective date of the AAAC will likely differ every year, it  
4 also consumes additional time and effort by Staff, Mohave and the Commission to prepare  
5 and present the matter annually at an open meeting.

6 Mohave believes the process can and should be streamlined. Allowing the new  
7 AAAC to go into effect automatically on a date certain achieves uniformity in application and  
8 eliminates the time and cost for preparing for and attending Open Meetings when Staff and  
9 Mohave agree on the new AAAC. Members are protected when there is sufficient time  
10 between the filing and the automatic effective time to afford the Staff time to review the filing  
11 and request an amendment or suspension of the new rate. Mohave proposes that the filing be  
12 required by July 15 each year and that the new rate automatically go into effect December 1  
13 each year, unless suspended or otherwise ordered by the Commission.

14 Based upon the foregoing, Mohave supports the following amended AAAC  
15 definition (changes shown are from Staff's proposal):

16 "Annual Average Avoided Cost means the average annual  
17 wholesale fuel and energy costs per kWh charged by the  
18 Cooperative's wholesale power supplier(s) during the  
19 previous 12 months Calendar Year, determined based upon  
20 the Cooperative's audited financial statement for the  
21 applicable Calendar Year. The Cooperative will submit an  
22 updated Net Metering Service Tariff no later than July 15  
23 each year for approval of the Annual Average Avoided Cost  
24 for the previous calendar year. The new Annual Average  
25 Avoided Cost shall go into effect the December 1 following  
the filing, unless suspended or otherwise ordered by the  
Commission. The current avoided kWh cost, once approved  
by the ACC effective, will be available at every Cooperative  
office and will continue in effect until the next AAAC is  
approved by the ACC effective.

1           **III.    Proposed Amendment**

2           Mohave respectfully requests Staff's proposed order be amended as follows:

- 3           • Page 4, Insert New Paragraph 18 as follows:

4           18.    Mohave suggested various changes to the Staff's revised definition as  
5           follows:

6           "Annual Average Avoided Cost means the average annual  
7           wholesale fuel and energy costs per kWh charged by the  
8           Cooperative's wholesale power supplier(s) during the  
9           previous ~~12 months~~ Calendar Year, determined based upon  
10          the Cooperative's audited financial statement for the  
11          applicable Calendar Year. The Cooperative will submit an  
12          updated Net Metering Service Tariff no later than July 15  
13          each year for approval of the Annual Average Avoided Cost  
14          for the previous calendar year. The new Annual Average  
15          Avoided Cost shall go into effect the December 1 following  
16          the filing, unless suspended or otherwise ordered by the  
17          Commission. The current avoided kWh cost, once ~~approved~~  
18          ~~by the ACC~~ effective, will be available at every Cooperative  
19          office and will continue in effect until the next AAAC is  
20          ~~approved by the ACC~~ effective."

- 21          • Page 4, Delete existing Paragraph 18 and Insert:

22          "Mohave's proposed definition clarifies that all customers will  
23          get credited for their Excess Generation at the recalculated  
24          AAAC commencing December 1 of each year, unless  
25          suspended or otherwise ordered by the Commission, based  
26          upon the audited wholesale fuel and energy costs incurred  
27          during the previous calendar year. This definition provides  
28          that the AAAC is applicable from the effective date and will  
29          remain in effect until a new AAAC is effective, which  
30          generally should occur on the same date each year. "

- 31          • Page 4, Paragraph 19, line 25, Delete "July 1" and Insert "July 15"
- 32          • Page 4, Paragraph 19, line 27 after "NMS" Insert "be reviewed by Staff and, where  
33          appropriate,"
- 34          • Page 5, Paragraph 22, line 10 Delete second sentence and Insert "This  
35          recommendation is inappropriate in this case and is not adopted."

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- Page 5, Paragraph 23, line 13 Insert a period after “clarified”, Delete “to read” and Insert “Mohave concurs with certain modifications which we adopt as follows:

“Annual Average Avoided Cost means the average annual wholesale fuel and energy costs per kWh charged by the Cooperative’s wholesale power supplier(s) during the previous Calendar Year, determined based upon the Cooperative’s audited financial statement for the applicable Calendar Year. The Cooperative will submit an updated Net Metering Service Tariff no later than July 15 each year for approval of the Annual Average Avoided Cost for the previous calendar year. The new Annual Average Avoided Cost shall go into effect the December 1 following the filing, unless suspended or otherwise ordered by the Commission. The current avoided kWh cost, once effective, will be available at every Cooperative office and will continue in effect until the next AAAC is effective.”

- Page 6, lines 6 -9 Delete in its entirety.
- Page 6, lines 12-15 ½ Delete in its entirety and Insert:

“Annual Average Avoided Cost means the average annual wholesale fuel and energy costs per kWh charged by the Cooperative’s wholesale power supplier(s) during the previous Calendar Year, determined based upon the Cooperative’s audited financial statement for the applicable Calendar Year. The Cooperative will submit an updated Net Metering Service Tariff no later than July 15 each year for approval of the Annual Average Avoided Cost for the previous calendar year. The new Annual Average Avoided Cost shall go into effect the December 1 following the filing, unless suspended or otherwise ordered by the Commission. The current avoided kWh cost, once effective, will be available at every Cooperative office and will continue in effect until the next AAAC is effective.”

/ / /  
/ / /

1 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of January, 2011.

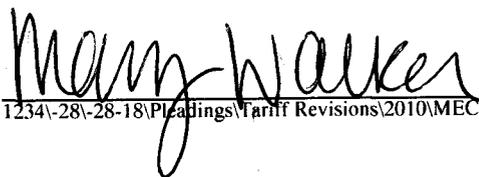
2 CURTIS, GOODWIN, SULLIVAN,  
3 UDALL & SCHWAB, P.L.C.

4 By:   
5 Michael A. Curtis  
6 William P. Sullivan  
7 501 East Thomas Road  
8 Phoenix, Arizona 85012-3205  
9 Attorneys for Mohave Electric Cooperative,  
10 Inc.

11 PROOF OF AND CERTIFICATE OF MAILING

12 I hereby certify that on this 7<sup>th</sup> day of January, 2011, I caused the foregoing  
13 document to be served on the Arizona Corporation Commission by delivering the original and  
14 thirteen (13) copies of the above to:

15 Docket Control  
16 Arizona Corporation Commission  
17 1200 West Washington  
18 Phoenix, Arizona 85007

19 

20 1234\28\28-18\Pleadings\Tariff Revisions\2010\MEC Exceptions to Staff 12\_23\_10 Proposed Order 01 07 11