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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE, CHAIRMAN
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF
MOHAVE ELECTRIC COOPERATIVE, INC.
FOR APPROVAL OF A WASTE-TO-ENERGY
FACILITY AS A PILOT PROGRAM UNDER
THE RENEWABLE ENERGY RULES OR, IN
THE ALTERNATIVE, FOR A LIMITED
WAIVER.

Docket No. E-01750A-10-0453

**EXCEPTIONS TO STAFF'S
RECOMMENDED ORDER
SUBMITTED BY SIERRA CLUB -
GRAND CANYON CHAPTER**

The Sierra Club-Grand Canyon Chapter submits the following exceptions to Staff's recommended order in the above-captioned proceeding.

I. INTRODUCTION

On November 5, 2010, Mohave Electric Cooperative, Inc. ("MEC") filed an application with the Commission seeking an order that either recognizes energy produced at a Waste-To-Energy ("WTE") facility as a pilot program or granting a waiver to the renewable energy standard to recognize the energy produced at the WTE facility as an "Eligible Renewable Energy Resource."

On May 10, 2011, Staff transmitted its memorandum containing recommendations regarding the application and submitted a proposed order for the Commission's consideration.

1 Staff's recommendation rejects MEC's request to treat WTE as a pilot program pursuant to
2 A.A.C. R14-2-1802(D) but recommends that the Commission grant a waiver pursuant to A.A.C.
3 R14-2-1816(A) to the limited extent necessary to recognize energy produced at the WTE facility
4 as an eligible renewable energy resource as defined by A.A.C. R14-2-1802(A).

5 Sierra Club supports Staff's rejection of MEC's application to treat the WTE facility as a
6 pilot program but opposes Staff's recommendation that the Commission grant a waiver so that
7 the WTE facility can be treated as an eligible renewable energy resource.

8 The Sierra Club appreciates Staff's rejection of this proposal as a pilot project because
9 Sierra Club agrees that it is not a renewable energy resource and, therefore, is not eligible to be
10 considered a pilot project. Furthermore, there is no innovative technology involved. However,
11 Sierra Club must oppose Staff's recommendation that a waiver be granted because there has been
12 no demonstration of the need for such a waiver by the applicant, the project is inconsistent with
13 the goals of the Renewable Energy Standard and Tariff ("REST") rule, and it would effectively
14 amend the REST definition of "Eligible Renewable Energy Resource."

15 **II. THE REST RULE REQUIRES GOOD CAUSE FOR A WAIVER**

16 As the Commission is well aware, the REST rule underwent significant discussion and
17 debate prior to its adoption by the Commission. Among the many issues that were discussed was
18 whether the combustion of municipal solid waste should be considered as an eligible renewable
19 energy resource. The Commission ultimately rejected WTF facilities as proposed by the
20 applicant in this case for inclusion in the definition of an eligible renewable energy resource.

21 It is axiomatic that an agency must follow its own rules and regulations. To do otherwise
22 is unlawful. *Clay v. Arizona Interscholastic Association, Inc.*, 161 Ariz. 474, 476, 779 P.2d 349,
23 351 (1989). *See also Gibbons v. Arizona Corporation Commission*, 95 Ariz. 343, 390 P.2d 582
24 (1964). In this case, the Commission's rules explicitly define "Eligible Renewable Energy
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1 Resources.” A.A.C R14-2-1802. The Commission made a conscious decision to exclude WTE
2 facilities as part of that definition.

3 Furthermore, although the rule allows for a waiver from its provisions, it does so only
4 upon a determination that “good cause” exists for the waiver. A.A.C. R14-2-1816(B).

5 Presumably, “good cause” means the identification of articulable reasons for waiving provisions
6 of the rule and not just reasons why WTE should be included as an eligible renewable energy
7 resource. However, that is exactly the basis for the waiver sought by MEC and recommended by
8 Staff. MEC and Staff do not establish any “good cause” for a waiver but simply repeat claims
9 for WTE that were made and rejected when the Commission adopted the REST rule.

10 MEC’s application certainly cites no “good cause” for the order it seeks from the
11 Commission. The application simply cites reasons why a WTE facility should be considered as a
12 renewable energy resource, not why a waiver should be granted. For example, the application
13 describes WTE technology as common in Europe, the treatment of municipal solid waste in the
14 United States, the energy derived from waste to energy facilities and other states which include
15 WTE facilities in their renewable portfolio standards. Those are all reasons that were advanced
16 at the time the Commission adopted the REST rule but which the Commission specifically
17 rejected.

18 Nowhere in MEC’s application are any facts set forth as to why MEC cannot comply
19 with the renewable energy standard requirements in the absence of a waiver. There is nothing in
20 the application about efforts MEC has made to comply with the rule which would support the
21 need for a waiver from the rule’s requirements.

22 Likewise, the only reference in Staff’s recommendation to “good cause” appears on page
23 7 in which the Staff states that it “believes that good cause exists for the Commission to grant a
24 waiver of the REST rules...” However, there is no explanation in the Staff’s recommendation
25 about what it considers “good cause” in this case. There is no discussion whatsoever about why

1 the Commission should deviate from the renewable energy requirements it imposes on all
2 regulated utilities other than Staff's assertion that "there appear to be many potential benefits
3 associated with the use of this technology" but that there are also "some potential
4 consequences..." Staff describes the potential benefits that it believes outweigh the potential
5 consequences but that is not as substitute for an analysis of whether "good cause" exists.

6 Like MEC's application, Staff's recommendation contains no discussion about what
7 efforts MEC has made to comply with the renewable energy standard rule. There is no
8 discussion about MEC's efforts to obtain solar or wind generated energy or any of the other
9 categories of renewable energy that the Commission has determined are appropriate renewable
10 energy resources. Without such an investigation, consideration of a waiver is premature and
11 inappropriate.

12 The burden is on the applicant to establish good cause. It has failed to do so. Without
13 articulable reasons why good cause exists to deviate from the rules, a waiver would be unlawful.

14 **III. The Commission Should Deny the Application for Numerous Other Reasons**

15 **A. Critical Details Important to an Appropriate Analysis are Missing**

16 Many details of the facility and the processing technology are not included in the
17 application making it impossible to thoroughly evaluate this proposal and its potential
18 environmental impacts. The components of the feedstock, the projected emissions, and the
19 actual location of the facility are important to a proper evaluation. Because Reclamation Power
20 Group has no track record whatsoever constructing or operating this type of facility and no
21 facility of this type exists in Arizona, we cannot look at the impacts from a similar facility run by
22 the company or a similar facility in Arizona to inform the evaluation. Our best information
23 comes from facilities of a similar nature in other locations.

24 According to Staff, approximately 82–95 percent of the waste stream from a sample of
25 municipal solid waste from the City of Glendale's Materials Recovery Facility was identified as

1 biogenic. This is thought to be representative of the municipal solid waste in the Phoenix metro
2 area. Staff acknowledges that, because only a portion of the waste stream is biogenic, it may not
3 constitute a renewable energy resource. As the project will not rely on fully biogenic material, it
4 cannot be considered renewable, and granting a waiver is not warranted.

5 Staff indicates that the “potential benefits outweigh the potential consequences,
6 especially when compared to the alternative of landfilling MSW.” However, this statement is
7 not supported. First, as indicated above, it is difficult to accurately evaluate the potential
8 consequences of this facility with the limited information provided. Second, we acknowledge
9 that the consequences are significant and the possible cumulative impacts are enormous.
10 Granting the waiver would set a bad precedent for the REST. Finally, it is not a question of
11 whether it is better to landfill or incinerate trash. It is clearly better to do neither and instead
12 reduce waste and recycle as much as possible. According to the City of Phoenix, over 60 percent
13 of the typical residential garbage in Phoenix was recyclable in 1988, which was the impetus for
14 the residential curbside recycling program. On average, the 1988 percentage has stayed much
15 the same over the years, but a 2003 study shows that the percentage is unevenly split across the
16 city.¹ In areas where recycling options are limited, the amount of recyclable material disposed
17 with household waste is correspondingly higher; areas with curbside and other recycling options
18 throw away significantly less recyclable material. Rather than seeking to feed this recyclable
19 material into an incinerator, the city needs to continue its efforts to promote recycling in all parts
20 of the city and to reduce the amount of waste generated.

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24 ¹ Cascadia Consulting Group, Inc. November 2003. Characterization of Waste from Single-
25 family Residences. Report prepared for the City of Phoenix. Available online at
[http://www.phoenix.gov/webcms/groups/internet/@inter/@dept/@pubworks/@recycle/documen
ts/web_content/pwd_pdf_characterwaste2003.pdf](http://www.phoenix.gov/webcms/groups/internet/@inter/@dept/@pubworks/@recycle/documents/web_content/pwd_pdf_characterwaste2003.pdf).

1 **B. Potential Air Emissions, Including Hazardous Air Pollutants**

2 This proposed WTE facility would receive 500 tons of trash per day, 75 percent of which
3 would be burned. The facility would also have trucks bringing trash in, as well as trucks hauling
4 waste from the facility to other destinations, including landfills. The Sierra Club is concerned
5 about air emissions including any hazardous air pollutants from the proposed facility and its
6 associated activities. While the Staff memorandum indicates that an actual site for the facility is
7 yet to be determined, it is clear that the applicant is proposing to locate it within both the coarse
8 particulate (PM₁₀) and ozone non-attainment boundaries.

9 The combustion of municipal solid waste will produce air emissions, including oxides of
10 nitrogen, sulfur dioxides, tars, furans, dioxins, volatile organic compounds, and particulates, as
11 well as mercury.² The amount of these emissions will vary depending on the components of the
12 trash being burned and the types of pollution control devices installed. For example, any trash
13 containing materials with heavy metals will result in more air emissions of those metals,
14 including mercury, lead, and cadmium.

15 The applicant responded to a data request for the emissions of the proposed facility only
16 with information on the allowable permitted emissions limits, so we do not have numbers on the
17 projected emissions from this facility. What we do know is that they are proposing to burn trash
18 in an area that already exceeds the public health standards for several pollutants and that the
19 facility must obtain the required Title V permit for incinerators.

20 The materials provided by the applicant include no specific numbers or information on
21 the type of hazardous air pollutants that will be present or how much of those pollutants will be
22 emitted. It merely indicates that it will not meet the threshold for a major source, meaning it can
23 emit up to 10 tons of any single hazardous air pollutant or up to 25 tons of a combination of

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25 ² U.S. Environmental Protection Agency. Electricity from Municipal Solid Waste. Available
online at <http://www.epa.gov/cleanenergy/energy-and-you/affect/municipal-sw.html>. Accessed
May 17, 2011.

1 hazardous air pollutants annually. Obviously, there is a significant difference between emitting
2 ten tons or just one ton of a particular hazardous pollutant each year. The impact of these
3 emissions will also vary depending on the location of the facility. Additional emissions will be
4 associated with the numerous truck trips to and from the facility as well. No information on
5 those emissions was provided with the proposal.

6 Considering that the air emissions from this facility will be greater than a comparable
7 gas-fired plant – and much greater than any wind or solar facility – and considering that the
8 proposed location is in an area with significant air quality issues, the public interest is better
9 served with reduction and recycling of municipal solid waste rather than granting a waiver for
10 this facility and allowing the electricity to be considered an eligible renewable energy resource.

11 **C. Greenhouse Gas Emissions**

12 Incinerators for waste-to energy are not carbon neutral. According to the U.S.
13 Environmental Protection Agency (EPA), municipal solid waste-to-energy facilities emit, on
14 average, 2,988lbs/MWh of carbon dioxide.³ A 2008 report from the Institute for Local Self
15 Reliance states, “Incinerators emit more CO2 per megawatt-hour than coal-fired, natural-gas-
16 fired, or oil-fired power plants Incinerating materials such as wood, paper, yard debris, and
17 food discards is far from ‘climate neutral’; rather, incinerating these and other materials is
18 detrimental to the climate.”⁴ As noted in the report, it is inappropriate to assume carbon
19 neutrality regarding the emissions from burning wood or paper products because they are
20 frequently derived from practices that reduce the overall amount of carbon stored over time.

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23 ³ U.S. Environmental Protection Agency, Compilation of Air Pollutant Emission Factors (AP-42). Available online at <http://www.epa.gov/cleanenergy/energy-and-you/affect/air-emissions.html#footnotes>.

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25 ⁴ Platt, B., D. Ciplet, K.M. Bailey, and E. Lombardi. June 2008. Stop Trashing the Climate. Report for Institute for Local Self Reliance. Available online at <http://www.stoptrashingthecclimate.org>.

1 As we noted earlier, incinerators also emit oxides of nitrogen, including nitrous oxide,
2 which is a more potent greenhouse gas than carbon dioxide. The heat trapping capacity of
3 nitrous oxide is 298 times more powerful than carbon dioxide.⁵

4 **D. Ash Disposal**

5 Although no detailed description of the composition of the waste to be burned is
6 included, metals and some persistent toxins will occur in both the bottom ash and the fly ash of
7 this facility, regardless of what pollution controls are employed. Because of this, the metals and
8 toxins will be emitted into the air and will be present in the waste produced, as well as possibly
9 released into groundwater and the nearby environment. Suitable pollution control methods must
10 be employed in order to minimize the metals and toxins in the ash and waste. Additionally, the
11 ash and waste must be sampled and tested regularly to determine appropriate disposal methods.⁶

12 Given the current regulatory and budgetary environment in Arizona, we are concerned
13 about adequate testing of the ash, as well as monitoring of overall emissions. If metals and other
14 pollutants are present in the ash, where will it be sent and how will it be handled? This important
15 information is not identified in the materials provided.

16 **E. Recycling**

17 The Sierra Club is concerned about the impact this type of facility would have on efforts
18 to both reduce waste and to promote recycling. Recycling is well-established in most
19 communities in the greater Phoenix area, and efforts continue to expand programs to include
20 more multiple family dwellings, as well as businesses. Establishment of this facility and others
21 like it could take our communities backward by allowing materials that could otherwise be
22 recycled to be fed into this facility.

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⁵ *Id.*

⁶ U.S. EPA. Electricity from Municipal Solid Waste, *supra*.

1 The structure of most contracts relative to these types of facilities produces disincentives
2 for reducing consumption and recycling materials. Because these facilities must run 24 hours
3 per day and seven days a week to be economic, they usually have “put or pay” contracts that
4 require the community to pay whether or not they are sending trash to a facility to be burned.⁷

5 Communities with the highest recovery levels in their recycling programs do not have
6 waste incinerators.⁸ Often, incinerators utilize the same materials that would otherwise be
7 recycled, especially relative to municipal solid waste.

8 Looking at the lifecycle investment of energy and resources is important relative to
9 evaluating this type of facility. Burning these materials rather than reusing them or recycling
10 them wastes much of that lifecycle investment.

11 **IV. SUMMARY**

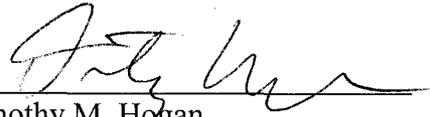
12 We concur with Staff that this project should not be considered a pilot program, but we
13 disagree that a waiver should be considered. Municipal solid waste should not be considered a
14 renewable resource. Waste incinerators were specifically rejected when the REST rule was
15 adopted, and such a waiver would set a very bad precedent as well as undermine the purpose of
16 the REST rule. Waste incinerators can pose significant risks to our environment and to public
17 health. Given the fact that relatively little is known about plans for this project, it is difficult to
18 determine just how extensive the effects will be of granting a waiver. Rather than approving a
19 waste-to-energy facility under the guise of renewable energy, we need to instead focus on
20 furthering recycling in our communities and reducing the amount of waste produced and
21 encourage the applicant to pursue eligible renewable energy resources such as solar and wind.

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23 ⁷ Platt, et al. *supra*.

24 ⁸ U.S. Environmental Protection Agency. October 1999. Cutting the Waste Stream in Half.
25 Available online at <http://www.epa.gov/osw/conserva/downloads/f99017.pdf>.

1 DATED this 27th day of May, 2011.

2 ARIZONA CENTER FOR LAW IN
3 THE PUBLIC INTEREST

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9 ORIGINAL and 13 COPIES of
10 the foregoing filed this 27th day
11 of May, 2011, with:

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15 COPIES of the foregoing
16 Electronically mailed this
17 27th day of May, 2011, to:

17 All Parties of Record

18 
19