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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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Attorneys for Sierra Club-Grand Canyon Chapter

BEFORE THE ARIZONA CORPORATION COMMISSION

7 GARY PIERCE, CHAIRMAN
8 BOB STUMP
9 SANDRA D. KENNEDY
10 PAUL NEWMAN
11 BRENDA BURNS

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

Docket No. E-01750A-10-0453

**SIERRA CLUB - GRAND CANYON
CHAPTER'S REPLY BRIEF**

19 The Sierra Club - Grand Canyon Chapter ("Sierra Club") submits the following
20 brief in reply to the briefs filed by Mohave Electric Cooperative, Inc. ("Mohave") and by
21 the Commission Staff ("Staff").

22 **I. MOHAVE MISCHARACTERIZES STAFF'S ANALYSIS AND
23 CONCLUSIONS**

24 Mohave goes to great lengths to praise Staff for its "independent research and
25 analysis relying on unbiased sources relating to MSW WTE facilities..." Mohave Brief at
3. Mohave characterizes Staff's memorandum as "well researched and documented..."
and its recommendations as "well referenced." Mohave Brief at 11, 5. In fact, Mohave

1 agrees with everything that the Staff has said and done with respect to Mohave's
2 application. Everything, that is, except for Staff's conclusions and recommendations.

3 Although Staff acknowledged that, based on a partial truckload of MSW from
4 RPG, 82-95% of the waste to be used in the proposed WTE facility could be identified as
5 biogenic, it noted that all of the other data from WTE facilities in the United States
6 showed that at best 60-75% of the electricity from WTE facilities is produced by biogenic
7 sources. Ex. S-2 at 8. Clearly, the sample provided by RPG is an outlier. The record in
8 this case does not indicate that any other WTE facility comes anywhere close to the
9 sample from RPG. Nevertheless, it was only because of the unbelievably biogenic
10 sample submitted by RPG that Staff chose to use the high end of the 60-75% range as the
11 basis for its 75% recommendation to the Commission.
12

13 That continues to be the Staff's recommendation but Mohave rejects it. In doing
14 so, Mohave attempts to mislead the Commission into a misinterpretation of the Staff's
15 position. Mohave states that Ms. Furrey testified that her analysis indicated that between
16 85% and 95% of the energy produced by the RPG WTE facility "could" come from
17 biogenic materials based upon the information derived from sampling done by RPG.
18 Mohave Brief at 6. Anything "could" happen. But it is only if Ms. Furrey rejected all the
19 national data concerning the amount of electricity produced from biogenic sources in
20 WTE facilities and instead accepts Mr. Blendu's partial truckload of garbage that you
21 could come anywhere close to the conclusion that 85 to 95% of the energy produced by
22 the RPG facility would come from biogenic sources.
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1 Not only would Ms. Furrey have to reject the three separate national sources of
2 information that indicated a range from as low as 40% up to 75% (*see* Ex. S-2 at 8), she
3 would have also had to have rejected information submitted by Mr. Blendu himself. In
4 Exhibit RB-2 attached to his rebuttal testimony, Mr. Blendu attaches a document from
5 the Energy Recovery Council indicating that the biogenic emissions from waste-to-
6 energy facilities are 67%. *See* Ex. A-4, Ex. RB-2. It is important to remember that the
7 Energy Recovery Council is an industry organization supporting WTE as a renewable
8 resource. If the best it can come up with is 67%, it is safe to say that the percentage of
9 electricity produced by biogenic sources cannot possibly be any higher than that.
10

11 That is why the Staff was being generous in using the high end of its 60-75%
12 range when it recommended (and continues to recommend) that the Commission
13 recognize 75% of the electricity is produced by biogenic sources and therefore designated
14 as renewable.
15

16 Mohave does another sleight of hand when it characterizes the 90% figure adopted
17 by the Commission as at the "higher end of the band of reasonableness calculated by
18 Staff..." Mohave Brief at 10. Staff did not calculate a band of reasonableness. What it
19 did was obtain data from national sources that indicated that a range of 60-75% was
20 reasonable. As Ms. Furrey testified, 90% was not in that range and was simply the
21 percentage of electricity that could be produced if the MSW was 95% biogenic. Indeed,
22 the 90% figure is not within any range produced by any source of information in this case
23 and that includes Mohave's own witness, Professor Marco Castaldi. He testified that the
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1 data with which he was familiar indicated a range of 64-66% for biogenic content of
2 MSW. Trans., 11/30/11 at 223.

3 There is a reason why Staff continues to support its 75% recommendation even in
4 the face of the Commission's decision to select a substantially higher percentage than any
5 other source of data supports. It is because there is no credible evidence to support the
6 Commission's decision that 90% of the electricity will come from biogenic sources.

7 **II. RPG'S SO CALLED SAMPLE SHOULD BE DISREGARDED**

8
9 In the face of all available data to the contrary, all that is left is the partial
10 truckload of garbage that Mr. Blendu and his friends supposedly sorted into its
11 constituent components. Even though the firm engaged by RPG to submit air quality
12 permits showed the garbage as coming from residential sources, Mr. Blendu thought it
13 came from both residential and commercial sources but he didn't know in what
14 proportion. Trans., 11/30/11 at 354. Staff could not exclude the possibility that the
15 truckload came on a day when everybody had their yards mowed and the clippings
16 dumped into the garbage. Trans., 12/1/11 at 472. In fact, there is simply no way of
17 knowing whether this single partial truckload was going to be representative of the MSW
18 delivered to RPG's facility for combustion. Staff acknowledged that fact. Trans.,
19 12/1/11 at 472.
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22 That is precisely why Staff did not rely upon this "sample" as the basis for its
23 recommendation. The biogenic composition of the sample is so far outside the bounds of
24 any of the other data that Staff examined that it defies credulity.
25

1 That is why it is laughable for Mohave to compare Mr. Blendu's single partial
2 truckload with the Cascadia Consulting Group study performed of Municipal Solid Waste
3 in Phoenix during 2003. Mohave claims the Cascadia study is "somewhat dated" but
4 nothing has happened between now and then that would affect its validity. That's why
5 the City of Glendale continues to rely on the Cascadia study. Ex. SC-3 at 9.

6 Mohave attempts to attribute importance to the fact that the single partial truckload
7 examined by Mr. Blendu contained 15,300 pounds of Municipal Solid Waste and that the
8 "Cascadia study only examined 200 to 300 pounds of MSW per load." Mohave Brief at
9 9. Of course, Mohave fails to explain that the 200 to 300 pounds of MSW per load in the
10 Cascadia study came from almost 300 truckloads examined in both summer and winter
11 and that the amount extracted from each truckload was a random sample. That resulted
12 in a study that was statistically valid. Ex. SC-9 at 5. That is in sharp contrast to Mr.
13 Blendu's selection of a single truckload from a single day from unknown locations.

14 The Cascadia study was a statistically valid scientific sample. What Mr. Blendu
15 did cannot even be called a sample. It was a merely an arbitrary selection of a single
16 truckload of garbage without any specific knowledge about where the garbage came
17 from, whether it was residential or commercial or both and whether it represented the
18 Municipal Solid Waste that would actually be delivered to the RPG facility. The
19 Cascadia study analyzed almost 300 truckloads so that the anomalies presented by a
20 single truckload would be averaged and that the results would be generally representative
21 of the composition of Municipal Solid Waste in Phoenix. Trans., 12/1/11 at 475.
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1 Notwithstanding the foregoing, it is important to understand that Staff did not even
2 use the results from the Cascadia study in its analysis of Mohave's application. If it had,
3 the biogenic portion of Municipal Solid Waste in the Phoenix area is closer to 60-65%
4 meaning that the percentage of electricity produced from biogenic sources would be
5 approximately 55%. SC-9 at 1; SC-1 at 4. Even though Staff did not use the Cascadia
6 analysis in developing its recommendation, the percentages from the Cascadia study are
7 well within the range of national data obtained by the Staff and used to support its
8 recommendation.
9

10 In summary, the Commission's decision rests not on the actual operating data for
11 WTE facilities from across the Country but instead upon a partial truckload of garbage
12 collected on one day from unknown locations. The testimony is conflicting on whether
13 the partial truckload was residential garbage or included commercial waste as well. The
14 composition of the partial truckload is at significant variance with a comprehensive study
15 of municipal solid waste in the Phoenix area. Most importantly, it is completely
16 unknown whether the partial truckload of garbage is representative of the garbage that
17 will be combusted at RPG's proposed WTE facility.
18

19 Yet, the Commission's entire decision is based upon that single partial truckload
20 of garbage. The Commission's decision must be based upon substantial evidence. In this
21 case, it is not. For evidence to be "substantial," it must not be marked by speculation or
22 uncertainty. *See City of Tucson v. Citizens Utilities Water Company*, 17 Ariz. App. 477,
23 498 P.2d 551 (App. 1972). Substantial evidence means evidence of substance which
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1 establishes facts and from which reasonable inferences may be drawn. It does not
2 connote speculation or conjecture. 17 Ariz. App. at 481, 498 P.2d at 555.

3 Basing a decision on the RPG sample, and the sample alone, is arbitrary
4 particularly in view of the fact that actual operating data for WTE facilities in the United
5 States is available. While Sierra Club continues to believe that the Commission should
6 deny Mohave's application for the legal and policy reasons stated in its Opening Brief, it
7 is clear that at the very least the decision must be modified to conform to the evidence
8 cited by Staff in support of its recommendation.
9

10 RESPECTFULLY SUBMITTED this 24th day of January, 2012.

11 ARIZONA CENTER FOR LAW IN
12 THE PUBLIC INTEREST

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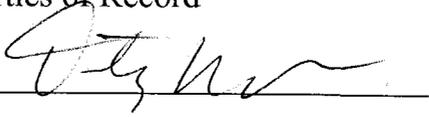
17 Attorneys for Sierra Club – Grand Canyon
18 Chapter

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20 ORIGINAL and 13 COPIES of
21 the foregoing filed this 24th day
22 of January, 2012, with:

23 Docketing Supervisor
24 Docket Control
25 Arizona Corporation Commission
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1 COPIES of the foregoing
2 Electronically mailed this
3 24th day of January, 2012, to:

4 All Parties of Record

5  A handwritten signature in cursive script is written over a horizontal line. The signature appears to be "G. J. New".

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