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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION
OF MOHAVE ELECTRIC COOPERATIVE,
INCORPORATED 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

REPLY BRIEF OF MOHAVE ELECTRIC
COOPERATIVE, INCORPORATED

INTRODUCTION

Mohave Electric Cooperative, Incorporated ("Mohave") hereby replies to the opening briefs of Commission Staff ("Staff") and the Sierra Club – Grand Canyon Chapter ("Sierra Club"). Neither party having demonstrated that Decision No. 72500, dated July 25, 2011 ("Decision") was "unjust or unwarranted or should be changed,"¹ the Arizona Corporation Commission ("Commission") must summarily affirm the Decision.

**THE EVIDENCE SUPPORTS RECOGNIZING 90%
OF THE ENERGY AS PRODUCED FROM AN
ELIGIBLE RENEWABLE ENERGY RESOURCE**

Staff acknowledges that the Commission's 90% renewable figure is supported by record in that "the local MSW² sample . . . which reveals that the biogenic portion of that sample contributed approximately 91 percent of the total energy output."³

¹ A.R.S. § 40-253E.

² MSW is short for municipal solid waste.

³ Staff Opening Brief at p. 7, ll. 6-12.

1 The Sierra Club contends the local sample “was not a sample at all⁴” and should
2 be ignored. Mr. Blendu described the process for developing the sample in detail, both in his
3 pre-filed rebuttal testimony⁵ and on the stand.⁶ He explained that it is important to evaluate
4 the actual MSW RPG can expect at the proposed WTE⁷ facility because the sample is used to
5 secure “emission estimates and guarantees based on the chemical analysis of our trash.”⁸ Mr.
6 Blendu remains confident that the local sampling conducted through URS is more
7 representative of the MSW the RPG WTE facility will receive than reflected in the Phoenix-
8 wide Cascadia study.⁹ Try as it might to attack the local sample obtained by RPG, in the end
9 the Sierra Club failed to present any evidence that invalidated the local sample or
10 demonstrated a different composition of the MSW in the Avondale area. The Cascadia study
11 involves Phoenix, not Avondale, is eight years old and “shows that the percentage is unevenly
12 split across the city.”¹⁰ Therefore, it was and remains reasonable and appropriate for the
13 Commission to recognize the local MSW sample as reliable evidence of the amount of energy
14 that will be produced from an Eligible Renewable Energy Resource.

15 The Sierra Club next suggests Mr. Blendu prefers the local sample solely
16 because it contains “a substantially higher percentage of biogenic material than the Cascadia
17 study showed for the Phoenix Metropolitan area”¹¹ and used recycling rates designed “to get
18 that number higher.”¹² As noted above, the local sample was taken and recycling rates

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20 ⁴ Sierra Club Opening Brief at p. 3, l. 23.

21 ⁵ A-4 at p. 12, ll. 16 – 21.

22 ⁶ Rehearing Transcript (RH Tr.) Vol. II, pp. 340, l. 25 – 344, l. 11; pp. 352, l. 13 – 366, l. 25.

23 ⁷ WTE is short for waste to energy.

24 ⁸ RH Tr. Vol. II, p. 341, ll.3-5.

25 ⁹ RH Tr. Vol. II, p. 345, ll. 9-17; p. 353, ll. 9-13; p. 355, ll. 1-6.

¹⁰ Sierra Club’s Exceptions at p. 5, ll15 -16.

¹¹ Sierra Club Opening Brief at p. 5, ll.14-18.

¹² Sierra Club Opening Brief at p. 6, ll. 3-4.

1 established for purposes unrelated to the amount of its biogenic composition. Moreover,
2 these statistics were provided to Staff before Mohave or RPG knew how they would be
3 utilized by Staff or the Commission.¹³ Finally, as the Sierra Club acknowledges, Mr. Blendu
4 used URS to develop the sample and consulted with a URS representative, the foreman
5 responsible for sorting the MSW and Mr. Gomez, who managed the Glendale materials
6 recycling facility ("MRF") to develop the recycling rates for the MSW sample reflected in
7 RE-1 to Exhibit A-1.¹⁴ Importantly, the Sierra Club presented no evidence that the recycling
8 rates so developed are unreasonable.

9 Nothing in this record demonstrates the data derived from the local MSW
10 sample is erroneous or that the Commission must base its Decision on averages, such as those
11 reflected in the Cascadia study. What the evidence does demonstrate is that the local MSW
12 available for use at RPG's proposed WTE facility, coupled with a dirty MSF that will be part
13 of the WTE facility, is likely to produce a higher percentage of energy from biogenic material
14 than is customarily experienced with a mass burn facility. This evidence supports keeping
15 the percentage at 90%; not lowering it.

16 Staff suggests the Commission use a more conservative 75% factor as "a
17 reasonable compromise between the local MSW sample provided by MEC and the national
18 average."¹⁵ However, the Commission has already rejected this precise argument in adopting
19 the 90% level in Decision No. 72500.¹⁶ As Staff notes with regard to the arguments of the
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22 ¹³ Mohave requested 100% of the energy as produced from an Eligible Renewable Energy Source or otherwise
23 qualify for Renewable Energy Credits.

24 ¹⁴ RH Tr. at pp. 360, l. 11 – 361, l. 10.

25 ¹⁵ Staff Opening Brief at p. 5, ll. 12-14.

¹⁶ OM EH, Vol. II, at p. 163, ll. 15-17 (Ms. Furrey -"75 percent seemed like a valid compromise given the varied percentages that were available.")

1 Sierra Club, where a party merely re-argues the same issue previously considered and
2 rejected, the Commission's decision should be affirmed.¹⁷

3 **LOWERING THE PERCENTAGE**
4 **PENALIZES RATEPAYERS**

5 The Sierra Club argues that by increasing the percentage to 90%, "Mohave
6 customers pay more for renewable energy than they otherwise should." This entire premise is
7 false. First, Mohave and its customers will receive whatever RECs and energy purchased. If
8 they secure additional RECs the total cost may be no greater than if a lesser quantity of RECs
9 are available. As Mr. Blendu explained: "That [90%] provides this project with the economic
10 incentive it needs. If the Commission were to reduce the RECs to 75 percent, that would
11 simply make it obligatory on us to go to Mohave and say it is not in that [9 1/2 to 10 cent per
12 kWh] range anymore, it has got to be higher or we can't build it. So it is detrimental to the
13 ratepayer to not accept Commissioner Pierce's amendment."¹⁸ Not only would Mohave and
14 its ratepayers pay a premium if the percentage is set too low, they will have lost the
15 opportunity to secure the full amount of RECs unless and until the Commission recognizes
16 the higher percentage. On the other hand, at 90% Mohave and its customers will initially be
17 assured of getting full REC value associated with the energy purchased and pay a lower per
18 kWh rate, on average, for the combination of energy and RECs. Mohave and its customers
19 clearly benefit by setting the percentage on the high side rather than on the low side.¹⁹

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¹⁷ Staff Opening Brief at p. 6, ll. 5-11.

23 ¹⁸ OM EH Tr. Vol. III, p. 316, ll. 18-24.

24 ¹⁹ The Sierra Club's suggestion that the Commission would find it impossible to lower the percentage after the
25 facility is built has no basis on the record. Certainly Staff notes "the parties can apply to the Commission to
increase or decrease that [initial] percentage commensurate with the actual renewable, or biogenic content of
the energy produced at the WTE facility." Staff Opening Brief at p. 5, l. 22 – p. 6, l. 2.

**THE REST RULES PROVIDE FOR WAIVER,
A PILOT PROGRAM OR BOTH**

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2 The Sierra Club seeks to characterize this case as whether WTE facilities
3 produce the kind of energy that should be considered renewable.²⁰ This is an obvious attempt
4 to limit the Commission's authority to construe and apply the REST rule where no such limit
5 to the Commission's ability to grant a waiver exists. While the extent to which MSW
6 otherwise meets the definition of a Renewable Energy Resource is certainly a factor the
7 Commission can consider, the Commission must not lose sight of the broad purpose of the
8 waiver and pilot program provisions of the rules or the clear and unambiguous words
9 contained therein.

10 As recognized by Staff, this is an appropriate case to grant either a waiver or
11 designate the facility a pilot program.²¹ While Staff expressed some concern about
12 designating the WTE facility a pilot program because 100% of the MSW might not constitute
13 a "Renewable Energy Resource," Staff has no hesitancy in recognizing the biogenic portion
14 of MSW as a Renewable Energy Resource under A.A.C. R14-2-1801(O).²² Staff however,
15 supports use of a waiver, because the Commission has broader discretion and need only
16 conclude there is good cause for granting one. Certainly the desire to facilitate a limited
17 experiment for a specific technology, such as WTE, is sufficient good cause, in and of itself
18 to grant a waiver. Mohave supports the Decision that designates the RPG WTE facility a
19 pilot program, while recognizing waiver constitutes an alternative method for granting the
20 Application. Mohave does not oppose clarifying the Commission's Decision such that the
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23 ²⁰ Sierra Club Opening Brief at p. 9, ll. 6-7.

24 ²¹ Staff Opening Brief at p. 5, ll. 1-3; p. 6, ll. 22-23.

25 ²² Id. at p. 3, ll. 1-5. Mohave takes the position that any portion of MSW that is not composed of nuclear or fossil fuel meets the definition of a Renewable Energy Resource because it is replaced rapidly by a natural and ongoing process.

1 RPG WTE facility is granted pilot program status regardless of technical compliance to the
2 pilot program provision (i.e., through waiver).

3 The Sierra Club next asks the Commission to misapply and unduly broaden the
4 last sentence of the pilot program provision intended to exclude specific demand side
5 *products* from eligibility for pilot programs.²³ The portion of the Rule dealing with the
6 production of electricity only requires renewable energy resources produce electricity. As
7 noted, MSW is largely composed of material that qualifies as renewable energy resources. In
8 the present case, the Commission examined the degree to which MSW is composed of
9 biogenic material.²⁴ In doing so, the Commission assures compliance with the pilot program
10 rule as written.

11 The Sierra Club also suggests that granting Mohave's Application would
12 circumvent the Commission's previous decision to exclude MSW from the definition of
13 Biomass.²⁵ However, the draft definition of Biomass, like those of a Biogas Electric
14 Generator or a Landfill Gas Generator, would have made 100% of any MSW used in a
15 Biomass facility an Eligible Renewable Resource. In contrast, the Decision granting
16 Mohave's Application does not alter the Biomass definition and, as discussed at length in this
17 proceeding, expressly considers the percentage of energy produced from biogenic material.
18 The Decision effectively approves a limited experiment, for this particular case and for this
19 one entity to afford the Commission an opportunity to gather data and see if it is something it
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23 ²³ Sierra Club Opening Brief at pp. 16-17.

24 ²⁴ As previously noted, the REST Rules does not limit the recognition of the use of MSW to biogenic material
in conjunction with a Biogas Electric Generator or a Landfill Gas Generator as an Eligible Renewable
Resource A.A.C. R14-2-1802(A)(1) & (8).

25 ²⁵ Sierra Club Opening Brief at p. 16 and pp. 18 -19.

1 might want to keep doing in the future.²⁶ This purpose is consistent with both the purpose
2 and language of the waiver and pilot program provisions of the REST Rules.²⁷

3 DIOXINS ARE NOT AN ISSUE

4 The Sierra Club continues to contend that the WTE Facility will emit dioxins so
5 as to create a hazard to health.²⁸ This assertion mischaracterizes the evidence. As explained
6 by Mr. Blendu, the EPA and Maricopa County require permit applicants to specify applicable
7 standards on the air quality application.²⁹ The dioxin level, and many of the other criteria set
8 forth at page 12 of the Sierra Club Opening Brief, merely reflect the applicable standards, not
9 the anticipated discharge of the WTE facility. Mr. Blendu never modified his stance that the
10 process used in the proposed WTE facility, coupled with the environmental equipment that
11 will be required, will reasonably and consistent with public health concerns, address dioxins,
12 as well as all other regulated pollutants. Again, the Sierra Club has failed to present clear and
13 substantial evidence that the Decision is unjust, unwarranted or should be changed.

14 CONCLUSION

15 All the arguments of both Staff and the Sierra Club suggesting Decision No.
16 72500 should be altered were duly considered by the Commission before the Decision was
17 approved. Neither Staff nor the Sierra Club has demonstrated that the Decision is unjust,
18 unwarranted or should be changed. The Commission has reasonably and appropriately
19 recognized, "for this particular case, for this one entity" that 90% of the energy produced by
20 the RPG's WTE Facility is an Eligible Renewable Energy Resource qualifying for Renewable
21 Energy Credits. Designating such an experiment a pilot program provides the Commission

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23 ²⁶ OM EH Tr. p. 140, ll. 14-17; p. 130, l. 16 - p. 131, l. 3.

24 ²⁷ The "good cause" for granting the Application is set forth in the Staff Report (Exhibit A-2) and the Decision.
25 As noted by Staff's Opening Brief, the diversity of resource represented by the WTE facility also constitutes
"good cause." Staff Opening Brief at pp. 4-5.

²⁸ Sierra Club Opening Brief at pp. 12-13.

²⁹ RH Tr. Vol. III at p. 389, l. 20 - p. 392, l. 5.

1 and Staff the opportunity to gather data and see how it works;³⁰ to see if it is something you
2 want to keep doing in the future.³¹ Setting the level of renewable energy credits at 90% of the
3 total kWhs produced not only best reflects the MSW composition RPG expects at the facility,
4 but also benefits ratepayers by allowing energy and RECs to be provided at a lower unit cost.

5 Decision No. 72500 should be summarily affirmed.

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7 DATED this 24th day of January, 2012.

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25 ³⁰ OM EH Tr. p. 140, ll.14-17

³¹ Id. at p. 130, l.16 – p.131, l.3.

PROOF OF AND CERTIFICATE OF MAILING

1
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3 document to be served on the Arizona Corporation Commission by delivering the original and
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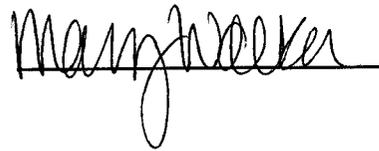
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