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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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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

STAFF'S REPLY BRIEF

The Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") hereby submits this brief in reply to the opening briefs filed by the Sierra Club - Grand Canyon Chapter ("Sierra Club") and Mohave Electric Cooperative, Inc. ("MEC") on January 10, 2012.¹

I. THE EVIDENCE SUPPORTS STAFF'S RECOMMENDATION THAT ONLY 75 PERCENT OF THE ENERGY PRODUCED AT THE PROPOSED WTE FACILITY SHOULD QUALIFY FOR RENEWABLE ENERGY CREDITS.

Staff notes that Sierra Club does not dispute the evidence supporting Staff's recommendation that 75 percent of the total kWhs of energy derived from the proposed waste-to-energy ("WTE") facility be considered as being produced by an Eligible Renewable Energy Resource. Accordingly, Staff believes that the Commission should adopt that recommendation.

II. IN THE ALTERNATIVE, THE EVIDENCE ALSO SUPPORTS THE COMMISSION'S DECISION TO RECOGNIZE 90 PERCENT OF THE ENERGY PRODUCED AT THE PROPOSED WTE FACILITY AS QUALIFYING FOR RENEWABLE ENERGY CREDITS.

Sierra Club acknowledges that the local municipal solid waste ("MSW") sample from the City of Glendale that was provided by MEC supports the Commission's decision to recognize 90 percent

¹ Staff incorporates herein by reference the contents of its Opening Brief filed on January 10, 2011:

1 of the total kWhs of energy derived from the proposed WTE facility as being produced by an Eligible
2 Renewable Energy Resource.² However, Sierra Club nonetheless argues that reliance on that local
3 MSW sample is problematic because the biogenic content of that sample is unrealistically high
4 compared to both the 2003 study of MSW in the City of Phoenix (“Cascadia Study”) and the national
5 average.³

6 Based on Staff’s analysis, the local MSW sample revealed that 82 to 95 percent of the MSW
7 can be classified as renewable, with that renewable portion accounting for 91 percent of the energy
8 produced.⁴ Although Sierra Club disputes the results of the local MSW sample, the Commission’s
9 decision to set the Renewable Energy Credit (“REC”) percentage at 90 percent is supported by the
10 record. As noted by MEC witness Ron Blendu, the local MSW sample is more recent, more local,
11 and more reliable for evaluating the proposed WTE project than the Cascadia Study.⁵

12 To obtain the local MSW sample, Reclamation Power Group (“RPG”) engaged an
13 environmental consultant to provide an independent analysis of local MSW and maintain a chain of
14 custody from the waste deposit site to the test laboratory.⁶ RPG later conducted its own sampling to
15 verify the results of that independent analysis.⁷ Based on the results of the local MSW sample, Mr.
16 Blendu testified that RPG is comfortable that the proposed WTE facility will be able to achieve the
17 same biogenic content as the local MSW sample.⁸ In addition, Mr. Blendu acknowledged that there
18 is a high incentive level for RPG to achieve the same biogenic content as the local MSW sample
19 because the Commission may reduce the level of qualifying RECs commensurate with the actual
20 renewable, or biogenic, content of the energy produced at the WTE facility.⁹ Since the evidence
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24 ² Sierra Club Opening Brief (“SC Brief”) at 3.

25 ³ SC Brief at 7.

26 ⁴ Ex. S-2, Memorandum at 8. Staff notes for the record that MEC inadvertently misstated Staff’s analysis in its Opening Brief by stating “that between 85 to 95 percent of the energy produced by the WTE facility could come from biogenic (i.e., renewable) materials.” MEC Opening Brief at 6, 9.

27 ⁵ Ex. A-4 at 14.

28 ⁶ Tr. at 342, Vol. II.

⁷ Ex. A-4 at 12.

⁸ Tr. at 405, Vol. III.

⁹ Tr. at 411, Vol. III.

1 supports the fact that the proposed WTE facility may achieve the 90 percent level set by the
2 Commission, the Commission's decision in that regard is not unjust or unwarranted.¹⁰

3 Notably, there is no evidence to suggest that the local MSW sample was biased in favor of
4 inflating the biogenic content. Mr. Blendu testified that the local MSW sample was conducted for the
5 purposes of both estimating the emission levels of the proposed WTE facility¹¹ and to secure supplier
6 performance commitments.¹² In fact, Mr. Blendu testified that RPG did not consider the biogenic
7 content of the MSW at the time of sampling because RPG was engaged in discussions to sell the
8 energy output to the Salt River Project who already considers MSW as a renewable resource.¹³

9 **A. There Will Be No Harm to Ratepayers if the Actual Percentage of Energy**
10 **Produced From Renewable Resources at the Proposed WTE Facility is Lower**
11 **than 90 Percent.**

12 Sierra Club argues that MEC ratepayers will be harmed if the actual percentage of energy
13 produced from renewable resources at the proposed WTE facility is determined to be lower than the
14 90 percent level approved by the Commission because ratepayers will have paid too much for
15 renewable energy with no opportunity to be made whole.¹⁴ However, Sierra Club's argument should
16 be disregarded for several reasons.

17 First, Sierra Club's suggestion that MEC ratepayers will be paying too much for the
18 renewable energy produced by the proposed WTE facility is premature because there is no evidence
19 in the record to establish what a REC produced by that facility will cost.¹⁵ Indeed, the economic
20 costs associated with this project are still unknown because MEC does not know whether and to what
21 extent the output from the proposed WTE facility will qualify for RECs and whether MEC will even
22 purchase any power from the that facility.¹⁶ Moreover, Sierra Club's suggestion that the Commission
23 will reduce the 90 percent level is purely speculative because the actual biogenic content of the MSW

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25 ¹⁰ See A.R.S. § 40-253(E) ("If, after a rehearing and a consideration of all the facts...the commission finds that the
26 original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the
27 commission may abrogate, change, or modify the order or decision....").

28 ¹¹ Ex. A-1 at 3.

¹² Tr. at 341, Vol. II.

¹³ Tr. at 343, Vol. II.

¹⁴ SC Brief at 8-9.

¹⁵ Tr. at 265, Vol. II.

¹⁶ Ex. A-3 at 3-4.; Tr. at 255, Vol. II.

1 that will be utilized by the WTE facility will not be known until after that facility is operational.
2 Accordingly, Sierra Club's argument should be dismissed as premature.

3 Second, even assuming that ratepayers are later determined to have paid too much for
4 renewable energy, Sierra Club's assertion that MEC ratepayers have no recourse in the event that the
5 percentage is ultimately lowered by the Commission is patently false. Ultimately, Staff notes that the
6 Commission has the opportunity to remedy any potential inequity in the price that ratepayers pay for
7 renewable energy when the Commission considers and approves MEC's annual REST Plan.¹⁷ In
8 other words, if the Commission determines that ratepayers are paying too much for renewable
9 energy, the Commission could allow only a portion of the costs to be recovered through MEC's
10 REST surcharge and disallow recovery of a portion of the total cost of the power. Therefore, Sierra
11 Club's concern regarding potential harm to ratepayers is unfounded.

12 **B. The Commission has the Authority to Reduce the Percentage of Energy**
13 **Produced From Renewable Resources.**

14 Sierra Club submits that it will be "virtually impossible" for the Commission to lower the
15 percentage in the future because financing will be based upon receiving RECs at the Commission-
16 approved percentage.¹⁸ In this regard, Sierra Club appears to assume, without any evidentiary
17 support, that the Commission would not lower the percentage level if doing so would cause the plant
18 to shutdown.¹⁹

19 Sierra Club's position has no merit because there is no basis to assume that the Commission's
20 decision to lower the percentage level would be tied to the continued operation of the WTE facility.
21 It is important to note that RPG, not MEC or its ratepayers, bears the financial risk associated with
22 the close of the proposed WTE facility because MEC will not own that facility.²⁰ Mr. Blendu
23 testified that he is aware of the risk that the Commission may lower the renewable percentage in the
24 future²¹ and there is no reason to believe that the Commission would not act accordingly should the
25 circumstances merit.

26 ¹⁷ Tr. at 309-12, Vol. II.

27 ¹⁸ SC Brief at 8.

28 ¹⁹ SC Brief at 8-9.

²⁰ Tr. at 307, Vol. II.

²¹ Tr. at 407-08, Vol. III.

1 **III. THE FACT THAT MUNICIPAL SOLID WASTE WAS PREVIOUSLY EXCLUDED**
2 **FROM THE DEFINITION OF "BIOMASS" IS IRRELEVANT.**

3 Sierra Club argues that the proposed WTE technology cannot be considered under a pilot
4 program because MSW was removed from the definition of "Biomass" before the REST rules were
5 adopted by the Commission.²² Specifically, Sierra Club argues that only a "new" technology can
6 qualify for a pilot program under the REST rules.²³

7 Sierra Club's position is without merit because there is no restriction in the REST rules that
8 would prevent the Commission from reconsidering a certain technology for a pilot program.²⁴ The
9 pilot provision of the REST rules provides that "the Commission may adopt pilot programs in which
10 *additional* technologies are established as Eligible Renewable Energy Resources."²⁵ The fact that the
11 REST rules use the term "additional" instead of "new" is telling because only the latter term would
12 preclude the inclusion of a technology that the Commission previously considered for a pilot
13 program. As Sierra Club witness Sandy Bahr readily acknowledges, there is no requirement that a
14 technology be "new" in order for it to be considered as a renewable energy resource under the REST
15 rules.²⁶

16 Moreover, Sierra Club's statement that "[t]he Commission excluded MSW from the definition
17 of an Eligible Renewable Energy Resource"²⁷ is misleading because the REST rules explicitly
18 recognize the use of MSW as an Eligible Renewable Energy Resource in the context of biogas and
19 landfill gas generators.²⁸ Therefore, the Commission's decision to recognize the energy from the
20 proposed WTE facility as renewable under a pilot program is appropriate under the REST rules.

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26 ²² SC Brief at 9.

²³ Ex. SC-8 at 2.

²⁴ A.A.C. R14-2-1802(D).

²⁵ A.A.C. R14-2-1802(D) (emphasis added).

²⁶ Tr. at 142, Vol I.

²⁷ SC Brief at 9.

²⁸ A.A.C. R14-2-1802(A)(1) and (8).

1 **IV. A RENEWABLE ENERGY RESOURCE DOES NOT NEED TO BE “CLEAN”**
2 **UNDER THE REST RULES.**

3 Sierra Club argues that the output from the proposed WTE facility should not be considered
4 renewable energy because it is not a “clean energy resource.”²⁹ In this regard, Sierra Club maintains
5 that the proposed facility will not be “clean” because it will emit pollutants.

6 Sierra Club’s argument is misguided because the REST rules do not require that energy
7 resources be “clean” in order to be considered renewable.³⁰ In fact, as Sierra Club acknowledges,
8 both biogas and landfill gas generators are designated as Eligible Renewable Energy Resources under
9 the REST rules despite emitting pollutants similar to the proposed WTE facility.³¹ Therefore, the fact
10 that the proposed WTE facility produces emissions does not disqualify the output from that facility
11 from recognition as being produced by an Eligible Renewable Energy Resource.

12 Ultimately, Staff believes that any pollution concerns raised by Sierra Club are better
13 addressed by the agencies that specifically regulate pollutants, such as the Maricopa County Air
14 Quality Department, Arizona Department of Environmental Quality, and the Environmental
15 Protection Agency. Even Sierra Club acknowledges that it is not the Commission’s job to enforce air
16 quality regulations.³²

17 **V. CONCLUSION.**

18 Staff continues to recommend that the proposed WTE facility be recognized as an Eligible
19 Renewable Energy Resource under a waiver and that only 75 percent of the total kWhs of energy
20 derived from that facility be considered as being produced by an Eligible Renewable Energy
21 Resource.³³

22 In the alternative, Staff believes that Decision No. 72500 should be affirmed in its entirety
23 because that decision is properly supported by the record. For the foregoing reasons, Sierra Club has
24 failed to show that Decision No. 72500 is unjust, unwarranted, or should otherwise be changed.³⁴

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26 ²⁹ SC Brief at 11.

27 ³⁰ Tr. at 141, Vol. I.

28 ³¹ Tr. at 141-42, Vol. I.

³² SC Brief at 14.

³³ Ex. S-2, Memorandum at 10.

³⁴ A.R.S. § 40-253(E).

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RESPECTFULLY SUBMITTED this 24th day of January, 2012.



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Original and thirteen (13) copies
of the foregoing were filed this
24th day of January, 2012 with:

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