

**ORIGINAL**



1 Timothy M. Hogan (004567)  
2 ARIZONA CENTER FOR LAW  
3 IN THE PUBLIC INTEREST  
4 202 E. McDowell Rd., Suite 153  
5 Phoenix, Arizona 85004  
6 (602) 258-8850

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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

Arizona Corporation Commission  
**DOCKETED**  
JUN 07 2012  
DOCKETED BY  
*km* *JM*

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

Docket No. E-01750A-10-0453  
**SIERRA CLUB'S EXCEPTIONS TO  
RECOMMENDED OPINION AND  
ORDER**

17 Sierra Club-Grand Canyon Chapter ("Sierra Club") submits the following  
18 exceptions to the Recommended Opinion and Order of the Administrative Law Judge in  
19 this case.

20 The Recommended Opinion and Order in this case affirms Decision No. 72500 in  
21 its entirety. Its principal error is that it concludes that "the entirety of the testimony and  
22 evidence presented in the course of the rehearing" does not require any change to the  
23 findings of fact, conclusions of law, or orders set forth in Decision No. 72500.

24 Recommended Opinion and Order ("ROO") at 29. The truth is that there is no credible  
25

1 or substantial evidence to support the conclusion that it is appropriate to consider 90  
2 percent of the total kilowatt-hours (kWh's) of energy from the Reclamation Power  
3 Group's Waste-to-Energy facility as being produced by an eligible renewable energy  
4 resource. In fact, all of the reliable evidence submitted at the rehearing is contrary to that  
5 conclusion.

6 In addition to the failure to properly evaluate the evidence, the ROO misapplies  
7 the Commission's rules in concluding that the Reclamation Power Group ("RPG")  
8 facility is eligible either as a pilot program or that Mohave should be granted a waiver.  
9

10 **I. THERE IS NO RELIABLE FACTUAL BASIS FOR THE**  
11 **RECOMMENDED OPINION AND ORDER**

12 At the outset, it is important to recall why the renewable energy credits ("RECs")  
13 attributed to the RPG facility are important. Staff's original recommendation and  
14 proposed order in response to Mohave's application proposed that only 75 percent of the  
15 full RECs be allowed for the RPG facility. Exhibit ("Ex.") S-2 at 10. In response,  
16 Mohave filed exceptions claiming that the project would not be economically viable at  
17 that level. It was based on that representation that the Commission determined that it  
18 would reject Staff's recommendation and instead increase the REC level to 90 percent  
19 which Mohave agreed would make the project economically viable. The 90 percent level  
20 was based upon an analysis provided to Staff by RPG of the content of the Municipal  
21 Solid Waste ("MSW") that would supposedly be burned at the RPG facility. Ex. S-2.  
22

23 The RPG analysis was suspect even at the time the Commission issued its original  
24 decision in this case, but the rehearing has shown the analysis to be completely lacking in  
25

1 the kind of reliability that is required in order to satisfy substantial evidence standards.  
2 Mr. Blendu contacted a private handler to obtain the garbage for analysis. He doesn't  
3 know where the garbage came from or whether it was residential, commercial or both.  
4 For all we know it consisted of just grass clippings from the day everyone mowed their  
5 lawns. Transcript ("Trans."), 12/1/11 at 472.

6 The RPG analysis was based on a single truckload of garbage and not even a  
7 complete truckload at that. Trans., 11/30/11 at 350. After two days of sifting through the  
8 garbage, Mr. Blendu and his cohorts decided they had done enough and analyzed the  
9 contents. Based on that "analysis" Mr. Blendu determined that the garbage was 82  
10 percent biogenic. Ex. S-2 at 3.

11 The garbage analyzed by Mr. Blendu had already been subject to curbside  
12 recycling programs. Nevertheless, Mr. Blendu and a few other people sat around a table  
13 and decided that they could recycle even more of the garbage and came up with  
14 additional recycling rates ranging from 50 to 85 percent. Trans., 11/30/11 at 360. These  
15 estimates were not based on any known data but were simply off-the-cuff guesses.  
16 Trans., 11/30/11 at 364-5.

17 Applying these extremely generous recycling rates to garbage that had already  
18 been recycled, Mr. Blendu concluded that 95 percent of the MSW that would be burned  
19 at the RPG facility was biogenic. Staff applied various heat rates to the MSW content to  
20 calculate that 91 percent of the energy produced would come from biogenic sources *if* the  
21 RPG analysis was accurate. Ex. S-2 at 3.  
22  
23  
24  
25

1 However, Staff rejected the RPG analysis. Instead, Staff sensibly turned to  
 2 national data sources to determine the biogenic contribution to the electricity produced at  
 3 waste-to-energy facilities. Based on those sources, Staff determined that a range of 60 –  
 4 75 percent was appropriate and recommended the higher end of that range, 75 percent,  
 5 for the RPG facility. Ex. S-2 at 8.

6 The evidence at the rehearing categorically and uniformly supported Staff's range  
 7 of values for the RECs attributable to a waste-to-energy ("WTE") facility. The testimony  
 8 of Mohave's own witness, Professor Marco Castaldi, indicated that the range for the  
 9 biogenic contribution to electricity produced at a WTE facility was 64 to 66 percent.  
 10 Trans., 11/30/11 at 223. Sierra Club's witness, Dr. Jeffrey Morris, testified that based on  
 11 the comprehensive Cascadia Study conducted for municipal waste in the Phoenix area  
 12 that the percentage for the biogenic contribution would be 55 percent. Ex. SC-1 at 4.

13 The evidence is summarized in the following table:  
 14

15 **Biogenic Percentage of Energy Produced**

Data from Experts	A Partial Truckload of Unknown Origin or Composition
Staff Sources (S-2 at 8)	
- Data Lab Services	91%
- Inside the APC Industry	
- Helmut Rechburger	
Mohave Witness	
Prof. Marco Castaldi	64-66%
Sierra Club Witness	
Dr. Jeffrey Morris	55%

1 This is an extraordinary discrepancy in the evidence. On the one side are all the  
2 national data sources and experts and on the other is Mr. Blendu. Mr. Blendu claims that  
3 his facility will achieve what no other facility in the world has - - a 91 percent biogenic  
4 contribution from Municipal Solid Waste. Staff characterized the prospect of achieving  
5 91 percent as "not likely." Trans., 12/1/11 at 495. Even more remarkable is that Mr.  
6 Blendu's percentage is a full 25 points higher than Mohave's actual expert witness,  
7 Professor Marco Castaldi.  
8

9 In summary, there is simply no basis for the Commission to rely on Mr. Blendu's  
10 testimony when everything about it is suspect, from the process for identifying a sample  
11 to the actual sorting of the garbage to deriving the estimates for recycling rates. It would  
12 be one thing if Mr. Blendu's conclusion was even remotely close to any of the national or  
13 international data. Mr. Blendu's testimony was totally lacking in reliability and was even  
14 contradicted by another Mohave witness who performed the air emissions analysis based  
15 on a smaller sample of the material that he recalled as a "gooey" substance. Trans.,  
16 11/29/11 at 163. Mr. Blendu denies that there was any gooey material left after sorting  
17 the partial truckload of garbage. Trans., 11/30/11 at 358. If Mr. Blendu is to be  
18 believed, all of the garbage in that truckload neatly sorted into various categories without  
19 any residual material remaining. It is no wonder the air emissions analysis was never  
20 submitted.  
21  
22

23 Under the circumstances, it is difficult to understand the factual basis upon which  
24 the Commission could rely on Mr. Blendu's analysis to the exclusion of every other  
25 credible source in this proceeding.

1 The problem in doing so is that Mohave ratepayers will have to pay more for the  
2 energy produced by the RPG facility then they would have to if the REC levels were  
3 appropriately determined. This Commission has commendably been diligent about  
4 constraining the charges that customers pay for renewable energy. However, this case  
5 seems to be the exact opposite. Customers will almost certainly pay more than they  
6 should for energy from the RPG facility. The Commission's decision provides that  
7 Mohave will file with the Commission information sufficient to allow the Staff to  
8 confirm the percent of energy that comes from biogenic material in the RPG facility. If  
9 Staff "believes" that less than 85 percent of the energy produced is from  
10 biogenic sources, Staff is required to file a recommendation with the Commission to  
11 reduce the allowable percentage of RECs from the RPG facility. That is insufficient  
12 protection for customers from what at least in this case will surely be overpriced  
13 renewable energy.  
14  
15

16 At a minimum, Decision No. 72500 should be amended to make a determination  
17 within 30 days from the date the information is filed by Mohave and file that  
18 determination with the Commission. That makes the process transparent and assures  
19 customers that they will not have to pay for overpriced energy any longer than they  
20 should.  
21

22 Even that will not take care of the problem about amounts that customers will have  
23 already paid for the energy from the RPG facility. The Commission's decision should be  
24 amended to reflect that Mohave should refund any excess charges to its customers.  
25

1 **II. THE RPG FACILITY DOES NOT QUALIFY AS A PILOT PROGRAM**  
2 **NOR SHOULD MOHAVE BE GRANTED A WAIVER FROM THE**  
3 **RENEWABLE ENERGY STANDARD REQUIREMENTS**

4 **A. The RPG Facility Does Not Qualify as a Pilot Program Under the**  
5 **REST Rules**

6 Staff did not support adoption of the proposed RPG facility as a pilot program  
7 because MSW in the Phoenix Metropolitan area might not constitute a “Renewable  
8 Energy Resource” within the meaning of the REST rules. Ex. S-2. Decision No. 72500  
9 at 9, ¶ 27. Notwithstanding Staff’s recommendation, the Commission determined that  
10 burning biogenic material in municipal solid waste to generate electricity is essentially  
11 the same as burning biomass to generate electricity. *Id.*, ¶ 28. The Commission  
12 determined that because biomass is explicitly recognized as an eligible renewable energy  
13 resource in the REST Rules and its belief that “the vast majority (82-95%) of the waste  
14 stream in the Phoenix Metropolitan area is biogenic,” that the RPG WTE facility should  
15 be approved on a pilot program basis. *Id.* The ROO affirms that funding but the  
16 evidence at the rehearing does not support it.

17  
18 First, the factual predicate for the Commission’s determination is wrong. The  
19 evidence in this case does not support the claim that the “vast majority (82-95%) of the  
20 waste stream in the Phoenix Metropolitan areas is biogenic....” The evidence in this case  
21 shows that the percentage is closer to 60 or 65 percent. *See* Sec. I, *infra*.

22 Second, there is no logical connection between the observation that burning  
23 biogenic material in MSW is essentially the same as burning biomass and the conclusion  
24 that the RPG facility should therefore be approved on a pilot program basis. It might  
25

1 provide some kind of foundation for amending the rules to include the biogenic portion of  
2 MSW but it does not justify a deviation from the rule on the contrived basis that it is a  
3 “pilot program.”

4 The Commission’s REST rules are very clear about what qualifies as a pilot  
5 program. The rules provide that:

6  
7 The Commission may adopt pilot programs in which additional  
8 technologies are established as eligible renewable energy resources. Any  
9 such technology shall be renewable energy resources that produce  
10 electricity, replace electricity generated by conventional energy resources,  
11 or replace the use of fossil fuels with renewable energy resources. Energy  
conservation project products, energy management products, energy  
efficiency products, *or products that use non-renewable fuels shall not be  
eligible for these pilot programs.* (Emphasis added).

12 A.A.C. R14-2-1802(D).

13 Therefore, there are two principal requirements to be considered for adoption of a  
14 pilot program. First, the technology is only eligible as a pilot program if the technology  
15 is established as an eligible renewable energy resource. A “Renewable Energy  
16 Resource” is defined in the rule to mean “an energy resource that is replaced rapidly by a  
17 natural, ongoing process and that is not nuclear or fossil fuel.” A.A.C. R14-2-1801(O).

18  
19 Municipal solid waste does not qualify as a renewable energy resource because it  
20 contains fossil fuel components. The Staff testified at the rehearing in this case that there  
21 is a percentage at which the mixture of biogenic materials and fossil fuels in MSW would  
22 disqualify the combination from being regarded as a renewable energy resource. Trans.,  
23 12/1/11 at 468-9.

1 Second, products that use non-renewable fuels are not eligible for pilot programs.  
2 Municipal solid waste indisputably contains non-renewable fuels such as plastics and  
3 metals. Whether it is RPG's so-called "sample" or the more comprehensive Cascadia  
4 study that is used, non-renewable fuels are a component of MSW. It was for that reason  
5 that Staff rejected MSW as a "Renewable Energy Resource" within the meaning of  
6 A.A.C. R14-2-1801(O).  
7

8 That is also why the Commission's determination that burning the biogenic  
9 material in MSW is essentially the same as burning biomass is wrong. The  
10 Commission's rule defines a "Biomass Electricity Generator" as an electricity generator  
11 that uses any raw or processed plant-derived organic matter available on a renewable  
12 basis but does not include "painted, treated, or pressurized wood, wood contaminated  
13 with plastics or metals, tires, or recyclable post consumer waste paper." A.A.C. R14-2-  
14 1802(A)(2). Municipal solid waste may contain any or all of these excluded materials.  
15 That is why municipal solid waste is not considered biomass and also why the  
16 Commission did not include it as an eligible renewable energy resource when the rules  
17 were first adopted.  
18

19 **B. The RPG Facility Does Not Qualify for a Waiver from the REST Rules**  
20 **Requirements**

21 In Decision No. 72500, the Commission cited Staff's recommendation that the  
22 Commission grant a waiver of the REST rules to recognize the biogenic energy produced  
23 at the RPG facility as an eligible renewable energy resource. Staff's recommendation  
24 was, and continues to be, based on its belief that the potential benefits of the RPG WTE  
25

1 facility outweigh the potential consequences especially when compared to the alternative  
2 of land-filling municipal solid waste. Ex. S-2 at 8.

3 The Commission's REST rules require that "good cause" be demonstrated in order  
4 for a waiver to be granted. A.A.C. R14-2-1816(A). That means that the Commission  
5 cannot grant a waiver for a bad reason or for no reason. The good cause requirement also  
6 means that the waiver must be related to the compliance requirement from which the  
7 waiver is sought.  
8

9 The record in this case does not establish any good cause for a waiver from the  
10 requirement of the REST rules. Mohave has never claimed that it cannot comply with the  
11 REST rules in the absence of the waiver it seeks in this case. If its application is denied,  
12 Mohave will simply comply with the rules by securing renewable resources that are  
13 explicitly recognized in the rules.  
14

15 Staff's belief that the potential benefits of the RPG WTE facility outweigh the  
16 potential consequences especially when compared to the alternative of land-filling MSW  
17 is not good cause for relief from the rules requirement. If it were, then the Commission  
18 would have included municipal solid waste as a renewable energy resource when it  
19 adopted the rules. In fact, Staff's original draft of the rules included MSW as a  
20 renewable resource. The reasons Staff cites now for a waiver in this case are the same  
21 reasons that the Staff recommended the inclusion of municipal solid waste as a renewable  
22 energy resource when the rules were first adopted. The fact that the Staff believed then,  
23 just as it does now, that waste-to-energy facilities provide benefits that outweigh the  
24  
25

1 potential consequences may provide a basis for amendment of the rule but it does not  
2 provide a basis for waiver of the rule.

3 In any event, and notwithstanding Staff's belief, it must be noted that there is a  
4 difference between burning biogenic material and landfilling it. The combustion of  
5 biogenic material immediately releases all of the stored carbon as carbon dioxide.  
6 Landfilling the biogenic material also releases the carbon but over an extended period of  
7 years as the material degrades. Ex. SC-9 at 6.

8  
9 Granting a waiver to Mohave in this case is essentially the same as telling Mohave  
10 that it need not comply with the REST rules except for the distributed generation  
11 requirements. An exhibit prepared by Staff witness Furrey shows that the electricity  
12 generated by the RPG facility would more than satisfy the REST requirements for years  
13 to come such that Mohave would never have to secure any other solar, wind or other  
14 renewable energy to comply with the rules. See Commissioner Newman Exhibit 1. In  
15 effect, the Commission will have given Mohave a complete pass on the REST rules.  
16

### 17 **III. CONCLUSION**

18 Facilities that burn garbage to produce energy have been around for a long time.  
19 The first privately built waste-to-energy facility in the United States began operation in  
20 1975. Apparently, the incineration of garbage has been economically viable in some  
21 locations in the United States and globally without the energy generated being treated as  
22 renewable energy. It is not a new technology and it was specifically excluded by the  
23 Staff from the definition of an eligible renewable energy resource in the REST rules after  
24 its initial inclusion triggered vigorous and substantial opposition.  
25

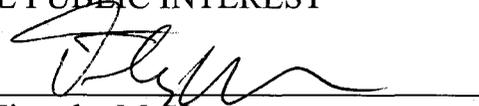
1 In this case, the record demonstrates that if Mohave were to buy the output from  
2 the RPG facility, it would significantly exceed Mohave's renewable energy requirements  
3 for years to come. That means that Mohave would have no need for solar, wind or  
4 geothermal energy. Given the size of Mohave, it is an admittedly small amount on a  
5 relative basis but the Commission's approval in this case would provide a basis for other  
6 utilities to seek similar approval and avoid the requirements of the renewable energy  
7 standard.  
8

9 The Commission's deviation from its rules in this case does nothing but  
10 undermine the renewable energy standard. Most Arizonans would find it difficult to  
11 understand why the Commission is promoting garbage incineration instead of solar  
12 energy. Burning garbage is still a dirty business producing various pollutants, heavy  
13 metals, and carcinogens such as dioxins.  
14

15 The Commission should not require customers to subsidize a garbage incineration  
16 operation by calling it renewable energy. Mohave's application for approval of the RPG  
17 facility as a pilot program or for a waiver should be denied.  
18

19 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of June, 2012.

20 ARIZONA CENTER FOR LAW IN  
21 THE PUBLIC INTEREST

22 By 

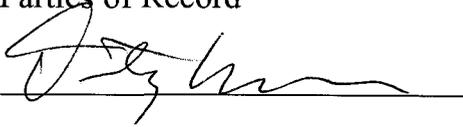
23 Timothy M. Hogan  
24 202 E. McDowell Rd., Suite 153  
25 Phoenix, Arizona 85004  
Attorneys for Sierra Club – Grand Canyon  
Chapter

1 ORIGINAL and 13 COPIES of  
2 the foregoing filed this 7<sup>th</sup> day  
3 of June, 2012, with:

4 Docketing Supervisor  
5 Docket Control  
6 Arizona Corporation Commission  
7 1200 W. Washington  
8 Phoenix, AZ 85007

9 COPIES of the foregoing  
10 Electronically mailed this  
11 7<sup>th</sup> day of June, 2012, to:

12 All Parties of Record

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