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BEFORE THE ARIZONA CORPORATION COMMISSION

3052

2 COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
3 WILLIAM A. MUNDELL  
MARC SPITZER  
4 MIKE GLEASON  
KRISTIN K. MAYES

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6 IN THE MATTER OF THE GENERIC )  
PROCEEDINGS CONCERNING ELECTRIC )  
7 RESTRUCTURING ISSUES. )

DOCKET NO. E-00000A-02-0051

8 IN THE MATTER OF ARIZONA PUBLIC )  
SERVICE COMPANY'S REQUEST FOR A )  
9 VARIANCE OF CERTAIN REQUIREMENTS )  
OF A.A.C. R14-2-1606. )

DOCKET NO. E-01345A-01-0822

10 IN THE MATTER OF THE GENERIC )  
PROCEEDING CONCERNING THE )  
11 ARIZONA INDEPENDENT SCHEDULING )  
12 ADMINISTRATOR. )

DOCKET NO. E-00000A-01-0630

13 IN THE MATTER OF TUCSON ELECTRIC )  
POWER COMPANY'S APPLICATION FOR )  
14 A VARIANCE OF CERTAIN ELECTRIC )  
15 COMPETITION RULES COMPLIANCE )  
DATES. )

DOCKET NO. E-1933A-02-0069

16 IN THE MATTER OF THE APPLICATION OF )  
TUCSON ELECTRIC POWER COMPANY )  
17 FOR APPROVAL OF ITS STANDED COST )  
RECOVERY. )

STAFF'S RESPONSE TO  
AEPKO'S REQUEST FOR  
OFFICIAL NOTICE

20 Arizona Corporation Commission Staff ("Staff") hereby responds to the Supplemental Filing  
21 and Request for Official Notice ("Notice") filed by the Arizona Electric Power Cooperative  
22 ("AEPKO") on February 2, 2005. In its Notice, AEPKO claims that this proceeding is moot because  
23 the Court of Appeals has invalidated A.A.C. R14-2-1609(C)-(J) ("Rule 1609"), the Commission rule  
24 that required the affected utilities to establish the AISA. AEPKO appears to imply that the  
25 invalidation of Rule 1609 somehow eliminates the Commission's interest in the status of the AISA.  
26 For a number of reasons, Staff disagrees with AEPKO's claims.

1 **I. The invalidation of Rule 1609 does not eliminate the obligation of all affected utilities to**  
2 **support the AISA.**

3 Staff acknowledges that Phelps Dodge Corp. v. Arizona Elec. Power Cooperative, 207 Ariz.  
4 95, 83 P.3d 573 (2004), invalidates Rule 1609(C)-(J), the Commission rule that required the affected  
5 utilities to establish the AISA. But that decision alone does not necessarily eliminate the obligation  
6 of all affected utilities to support the AISA. Both Arizona Public Service Company (“APS”) and  
7 Tucson Electric Power Company (“TEP”) have existing obligations to support the AISA that are  
8 independent of Rule 1609.<sup>1</sup> Their obligations therefore survive the Phelps Dodge decision. And  
9 while the Phelps Dodge decision invalidated the administrative rule that required the establishment of  
10 the AISA, it did not invalidate the AISA itself.

11 **II. The AISA has been established as an independent entity that cannot be “unwound”**  
12 **without some degree of action by FERC.**

13 By invalidating Rule 1609(C)-(J), the Court of Appeals determined that the Commission did  
14 not have the authority to order the affected utilities to establish the AISA. Phelps Dodge at 112-13,  
15 83 P.3d at 590-91. This conclusion, however, is not necessarily helpful in the current circumstances,  
16 wherein the AISA has already been incorporated, has already established a board of directors to  
17 govern its ongoing operations, and has already received a FERC-approved tariff. Even if the  
18 Commission were to decide to withdraw support for the AISA, it is likely that FERC action may be  
19 required to completely terminate it. That action would likely have to be initiated by the AISA’s Board  
20 of Directors.

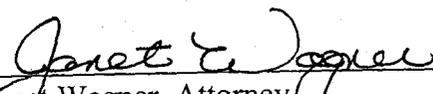
21 To put it another way, the question presented in this proceeding—whether the Commission  
22 should support the continued existence of the AISA—has always been a policy question, rather than a  
23 legal question. And while the Commission may decide to withdraw its support for the AISA, the  
24 Phelps Dodge decision does not compel that result. The Commission is not now precluded from  
25 making the choice to continue to support the AISA. So, the issue in this proceeding—whether to  
26 continue the AISA—is still open and not rendered moot by the Phelps Dodge decision.

27  
28 <sup>1</sup> See Decision No. 61973 at 18, Attachment 1 at 9 (October 6, 1999) (APS); Decision No. 62103 at 22, Attachment No. 1  
at 10-11 (December 29, 1999) (TEP).

1 **III. Conclusion**

2 To summarize, the AISA, in itself, exists independently of A.A.C. R14-2-1609(C) through (J).  
3 In addition, the debate over whether the AISA should continue to exist is still open, and survives the  
4 Phelps Dodge decision. Therefore, Staff does not believe that these proceedings are moot.  
5

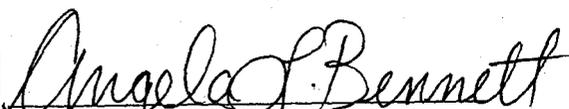
6 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of March 2005.  
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13 AN ORIGINAL and twenty-one (21)  
14 copies were filed this 11<sup>th</sup> day  
15 of March, 2005 with:

15 Docket Control  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007

17 A copy of the foregoing emailed to  
18 all parties of record this 11<sup>th</sup> day  
19 of March, 2005

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21   
22 Angela L. Bennett secretary  
23 to Jason D. Gellman  
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