



RECEIVED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FENNEMORE CRAIG, P.C.
A Professional Corporation
C. Webb Crockett (AZ #001361)
Patrick J. Black (AZ #017141)
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
Telephone: (602) 916-5333
Facsimile: (602) 916-5533
wcrocket@fclaw.com
pblack@fclaw.com
Attorneys for Arizonans for Electric Choice and
Competition, Phelps Dodge Mining Company and
Asarco, Inc.

2005 OCT 12 1P 4: 39
AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE FILING BY
TUCSON ELECTRIC POWER COMPANY
TO AMEND DECISION NO. 62103

DOCKET NO. E-01933A-05-0650
**AECC, PHELPS DODGE MINING
COMPANY AND ASARCO, INC'S
RESPONSE TO TUCSON
ELECTRIC POWER COMPANY'S
MOTION TO AMEND DECISION
NO. 62103**

Arizonans for Electric Choice and Competition, Phelps Dodge Mining Company and Asarco, Inc. (collectively "AECC"), hereby submits this Response to Tucson Electric Power Company's ("TEP") Motion to Amend Decision No. 62103 ("Motion to Amend").

Section 13.2 of the 1999 TEP Settlement Agreement ("1999 Settlement"), approved in Decision No. 62103, states:

The Parties acknowledge that TEP's ability to offer Competitive Retail Access is contingent upon conditions and circumstances, a number of which are not within the direct control of the Parties. Accordingly, the Parties agree that it may become necessary to modify the terms of retail access to account for such factors, *and they further agree to address such matters in good faith and to cooperate in an effort to propose joint resolutions for any such matters.* [Emphasis added].

1 In filing its Motion to Amend, TEP is seeking to modify one or more provisions of
2 the 1999 Settlement that will affect the terms of retail access in TEP's service area.
3 AECC, which is a party to the Settlement, asserts that the parties are required to make
4 good faith efforts to propose joint resolutions in addressing potential modifications to the
5 terms of retail access in Arizona, based on changed circumstances at both the state and
6 federal levels. However, TEP's contention that it has engaged in "discussions" with the
7 AECC concerning "proposed amendments" is incorrect. See TEP Response and
8 Opposition to AECC's Motion to Suspend. TEP merely "notified" AECC consultant
9 Kevin Higgins, on or around the day before TEP filed its Motion for Declaratory Order in
10 the 2004 rate review Dockets¹, that the company would be making such a request. TEP
11 had identified issues at the time it notified AECC's consultant, but had not communicated
12 the substance of any proposed solutions that the company would be seeking. While the
13 current proposals contained in TEP's Motion to Amend may ultimately become "joint"
14 proposals², the clear implication of the filing is that these proposals are unilateral in nature
15 at this time. In light of these facts, TEP has violated the "good faith" requirements of
16 Section 13.2 of the Settlement.

17 TEP argues that there are discovery and conferral needs for parties "and other
18 intervenors" that can only be addressed through the scheduling of the proceedings in this
19 Docket. It is AECC's position that the initial step is for the parties to the Settlement to
20 meet in good faith, and seek joint proposals for amending Decision No. 62103. If the
21 parties are unable to reach consensus on how Decision No. 62103 and the Settlement
22 should be amended, then TEP will be free to offer its own solutions to the issues it has
23 raised. Instead, TEP is requesting that the Commission establish in this proceeding a
24 procedural schedule that subjects TEP's *own* proposals to the "discovery and conferral
25

26 ¹ Docket Nos. E-00000A-01-0630, E-0000-02-0051, E-01933A-02-0069, E-01345-01-0822 and E-01933A-04-0408.

² Section 13.2 applies only to parties to the Settlement, not potential intervenors in this proceeding.

1 needs” of the Settlement parties and potential intervenors, essentially bypassing the
2 requirements of Section 13.2. AECC believes that requiring TEP to adhere to the
3 requirements of Section 13.2 will best serve the interests of judicial economy by allowing
4 the Settlement parties an opportunity to reach consensus on specific issues relating to the
5 Settlement. While such potential consensus proposals may not ultimately be approved by
6 the Commission, a narrowing of issues will aid in stream-lining the hearings process
7 required by A.R.S. §40-252.

8 If a procedural schedule is established prior to substantive discussions between the
9 Settlement parties concerning potential solutions to the issues raised by TEP, AECC’s
10 rights under the Settlement will be prejudiced.

11 **CONCLUSION**

12 Granting AECC’s Motion to Suspend, filed on September 22, 2005, in the above-
13 captioned matter, will serve the public interest because it would effectively: 1) preserve
14 the rights of residential, industrial and commercial customers to work cooperatively with
15 TEP in crafting joint solutions to the issues raised by TEP; and 2) allow for the narrowing
16 of issues between TEP, AECC, Commission Staff, the Residential Utility Consumer
17 Office, prior to the hearing process required by A.R.S. § 40-252.

18 RESPECTFULLY SUBMITTED this 12th day of October, 2005.

19 FENNEMORE CRAIG, P.C.

20
21 By: 
22 C. Webb Crockett
23 Patrick J. Black
24 3003 North Central Ave., #2600
25 Phoenix, AZ 85012
26 Attorneys for AECC, Phelps Dodge
Mining Company and ASARCO, Inc.

1 **ORIGINAL +13 copies FILED** this
2 12th day of October, 2005 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 **COPIES HAND-DELIVERED** this
8 12th day of October, 2005 to:

9 JEFF HATCH-MILLER, Chairman
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007

13 WILLIAM A. MUNDELL, Commissioner
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, Arizona 85007

17 MARC SPITZER, Commissioner
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

21 MIKE GLEASON, Commissioner
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

25 KRISTIN K. MAYES, Commissioner
26 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Lyn A. Farmer, Esq.
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

26

1 Ernest Johnson, Director
Utilities Division
2 Arizona Corporation Commission
1200 West Washington
3 Phoenix, AZ 85007

4 **COPIES MAILED** this
5 12th day of October, 2005 to:

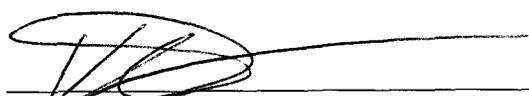
6 Michael W. Patten, Esq.
J. Matthew Derstine, Esq.
Roshka Heyman & Dewulf, PLC
7 One Arizona Center
400 East Van Buren Street, Suite 800
8 Phoenix, Arizona 85004
Attorneys for Tucson Electric Power Company
9

10 Raymond S. Heyman
Senior Vice President and General Counsel
UniSource Energy Corporation
11 One South Church Avenue, Suite 1820
Tucson, Arizona 85701
12

13 Scott S. Wakefield, Chief Counsel
Residential Utility Consumer Office
1100 West Washington, Suite 220
14 Phoenix, Arizona 85007

15 Timothy Hogan
Arizona Center for Law in the Public Interest
16 202 East McDowell Road, Suite 153
Phoenix, Arizona 85004
17

18 Walter M. Meek
Arizona Utility Investors Association
2100 North Central Avenue, Suite 210
19 Phoenix, Arizona 85004
20

21 By: 
22 1720505.1/20040.041
23
24
25
26