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ORIGINAL BEFORE THE ARIZONA CORPORATION COMMISSION

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- 2 **COMMISSIONERS**
- 3 MIKE GLEASON, CHAIRMAN
- 4 WILLIAM A. MUNDELL
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2008 JUL -7 P 4: 29
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

JUL -7 2008

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

DOCKET NO. E-01933A-05-0650

11 IN THE MATTER OF THE APPLICATION
12 OF TUCSON ELECTRIC POWER
13 COMPANY FOR THE ESTABLISHMENT
14 OF JUST AND REASONABLE RATES
15 AND CHARGES DESIGNED TO REALIZE
16 A REASONABLE RATE OF RETURN ON
17 THE FAIR VALUE OF ITS OPERATIONS
18 THROUGHOUT THE STATE OF
19 ARIZONA.

DOCKET NO. E-01933A-07-0402

**REQUEST TO BE EXCUSED FROM
APPEARING AT HEARING
COMMENCING JULY 9, 2008**

20 By Procedural Order dated June 12, 2008, Kurt J. Boehm of Boehm, Kurtz &
21 Lowry was admitted *pro hac vice* in the above-captioned matter, with the undersigned as
22 Local Counsel for The Kroger Co., an intervenor in this matter.

23 The Kroger Co. is a signatory to the Settlement Agreement filed May 29, 2008
24 which is the subject matter of the hearing scheduled to commence Wednesday, July 9, 2008
25 at 10:00 a.m. and scheduled through July 16, 2008, if necessary (the "Hearing"). The Kroger
Co.'s participation has been limited "to the allocation of the overall approved revenue
increase to rate classes ('rate spread') and to specific rate design issues affecting general
service rates," which have been resolved to the satisfaction of The Kroger Co. by the

1 Settlement Agreement. *See*, Direct Testimony and Supplemental Direct Testimony of
2 Stephen J. Baron filed March 14, 2008 and June 11, 2008, respectively.

3 Kurt J. Boehm, Esq., who actively participated in settlement discussions and
4 has appeared at procedural conferences on behalf of The Kroger Co., intends to appear at the
5 July 9, 2008 hearing on behalf of The Kroger Co. Mr. Boehm is familiar with the Settlement
6 Agreement, all pre-filed testimony, including the filings submitted in support of and in
7 opposition of the Settlement Agreement and the desires of The Kroger Co.

8 Based upon the pre-filed testimony submitted to date, it is anticipated that The
9 Kroger Co.'s participation at the Hearing will also be of a limited nature, consisting of a brief
10 opening statement, marking and moving the pre-filed testimony of Mr. Baron and, if live
11 testimony is necessary, offering Mr. Baron for cross-examination and re-direct examination.
12 Currently no cross-examination of witnesses is envisioned on behalf of The Kroger Co.,
13 subject, of course, on what transpires during the hearing.

14 The appearance of the undersigned Local Counsel and Mr. Boehm at the hearing
15 on behalf of The Kroger Co. appears to be unnecessary and unduly costly for the client. Mr.
16 Boehm has consulted with The Kroger Co. and The Kroger Co. has no objection to
17 undersigned Local Counsel being excused from appearing at the Hearing. Undersigned
18 Local Counsel, however, will be available by phone (602-393-1700) and/or email
19 (wsullivan@cgsuslaw.com) throughout the Hearing if any party or the Commission desire to
20 communicate with undersigned Local Counsel regarding the proceedings.

21 WHEREFORE, the undersigned Local Counsel respectfully requests to be
22 excused from appearing at the hearing in the above captioned matter scheduled to commence
23 July 9, 2008 at 10:00 in the Tucson offices of the Arizona Corporation Commission.
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DATED this 7th day of July, 2008.

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.



William P. Sullivan
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Designated Local Counsel for
The Kroger Co.

1 PROOF OF AND CERTIFICATE OF MAILING

2 I hereby certify that on this 7th day of July, 2008, I caused the foregoing
3 document to be served on the Arizona Corporation Commission by delivering the original and
4 fifteen (15) copies of the above to:

5 Docket Control
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 COPY of the foregoing delivered via
10 electronic mail/mail this 7th day of July, 2008 to:

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