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And Arizonans for Electric Choice and Competition

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
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JUN 18 2008
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
ITS OPERATIONS THROUGHOUT THE
STATE OF ARIZONA.

Docket No. E-01933A-07-0402

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

Docket No. E-01933A-05-0650

**RESPONSE OF PHELPS DODGE MINING COMPANY TO THE REQUEST OF
THE STAFF OF THE ARIZONA CORPORATION COMMISSION FOR A
PROCECURAL ORDER**

Phelps Dodge Mining Company ("PDMC") hereby files as its Response to the
Arizona Corporation Commission Staff ("Staff") Request for a Procedural Order in this
matter a portion of the Direct Testimony of Kevin C. Higgins, which was filed in this
matter on June 11, 2008, as set forth on Exhibit A, attached hereto and incorporated
herein.

RESPECTFULLY SUBMITTED this 18th day of June 2008.

FENNEMORE CRAIG, P.C.

By: *C. Webb Crockett*
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EXHIBIT A

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 IN THE MATTER OF THE APPLICATION)
4 OF TUCSON ELECTRIC POWER)
5 COMPANY FOR THE ESTABLISHMENT)
6 OF JUST AND REASONABLE RATES)
7 AND CHARGES DESIGNED TO REALIZE) Docket No. E-01933A-07-0402
8 A REASONABLE RATE OF RETURN ON)
9 THE FAIR VALUE OF ITS OPERATIONS)
10 THROUGHOUT THE STATE OF)
11 ARIZONA)
12 _____)

13 IN THE MATTER OF THE FILING BY)
14 TUCSON ELECTRIC POWER COMPANY) Docket No. E-01933A-05-0650
15 TO AMEND DECISION NO. 62103)
16

17
18 **Direct Testimony of Kevin C. Higgins**

19 **on behalf of**

20 **Phelps Dodge Mining Company and**
21 **Arizonans for Electric Choice and Competition**

22
23
24 **2008 Settlement Agreement**

25
26
27 **June 11, 2008**

12 **Response to Staff Request for Procedural Order Dated June 6, 2008**

13 **Q. Do you have any comments with respect to Staff's Request for a Procedural**
14 **Order dated June 6, 2008?**

15 A. Yes. Staff's Request states that the Settlement Agreement provides for an
16 approximate six percent rate increase across all rate schedules with the exception
17 of the life line rates. Staff's Request then goes on to state: "Such an increase
18 would have an impact on the power supply agreements approved by Decision No.
19 65207 and Decision No. 69873."

20 Without addressing the legal aspects of Staff's Request, I do not support
21 Staff's Request as a matter of ratemaking policy nor do I believe that Staff's
22 Request is called for by the 2008 Settlement Agreement.

1 The 2008 Settlement Agreement does apportion a share of TEP's revenue
2 increase to special contract customers. This has the effect of reducing the revenue
3 requirement increase for the remaining retail customers. Whether the contracts
4 that TEP has voluntarily entered with its two special contract customers allow for
5 the passing on of such a rate increase is an entirely separate matter. Based on my
6 experience with special contracts generally, it is entirely plausible that TEP's
7 special contracts do not permit TEP to pass through rate increases except as
8 already may be specified in the contract terms. TEP entered those contracts
9 voluntarily, and the Company signed the 2008 Settlement Agreement voluntarily.
10 In short, if the terms of the contracts do not permit TEP to recover the increase
11 negotiated in the 2008 Settlement Agreement, then that fact is a part of the
12 calculation that TEP management had to make in signing the agreement. It is not
13 the business of the Signatories of the 2008 Settlement Agreement to impose new
14 terms on contract customers who fairly negotiated power supply agreements with
15 TEP.

16 Assigning a share of a rate increase to special contract customers – even
17 when those increases cannot be collected under the terms of the contracts – is not
18 at all unusual in ratemaking. It is done to prevent remaining customers from
19 paying a share of the increase that would otherwise be attributable to the contract
20 customers. The utility's ability to collect any such increase assigned to special
21 contracts then comes down to the terms in those agreements. If the contract terms
22 do not permit the pass through of a general rate increase, then the utility absorbs
23 the revenue deficiency. On the other hand, if the contract specifies rate increases

1 in its own terms, then those negotiated increases are not quashed by a different
2 increase adopted in the general rate case.

3 The 2008 Settlement Agreement does not state that the Signatories support
4 modifications to the power supply agreements approved by Decision No. 65207
5 and Decision No. 69873. Indeed, AECC would not have supported such a
6 provision.

7 AECC was neither consulted on Staff's Request nor given advance notice
8 of it. AECC considers Staff's Request to be a unilateral action taken outside the
9 terms of the 2008 Settlement Agreement. For the reasons described above, I
10 recommend that Staff's Request be denied.

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ORIGINAL +15 COPIES FILED this
18th day of June 2008 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

**COPIES of the foregoing HAND DELIVERED
AND E-MAILED** this 18th day of June 2008 to:

Jane L. Rodda
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007
Jane.Rodda@azbar.org

COPIES of the foregoing E-MAILED
this 18th day of June 2008 to the Parties of record:

By: 