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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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2008 JUN 19 P 4: 32

AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

JUN 19 2008

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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

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

DOCKET NO. E-01933A-05-0650

RESPONSE TO ASARCO

Arizona Corporation Commission Staff ("Staff") hereby files its reply to the responses, filed by Asarco and Phelps Dodge respectively, to Staff's Request for Procedural Order. Although Staff disagrees with certain assertions contained in Asarco's and Phelps Dodge's responses, Staff does not oppose the ultimate substantive ratemaking treatment that they seek, *i.e.*, that TEP will continue to charge the mines the current special contract rates, thereby foregoing the collection of a portion of the revenue allocation attributable to the mines.

I. INTRODUCTION.

Apparently, Asarco and Phelps Dodge believe that the Settlement Agreement specifically provides for the mines to continue to enjoy their current special contract rates and for TEP to forego collection of the difference between the mines' new rates and their current rates. Although Staff does not have any objection to the ultimate ratemaking result that they seek, the Settlement Agreement does not appear to specifically reflect this understanding. Staff hopes that these circumstances can be remedied, especially in light of the fact that Staff has no objection to the ratemaking treatment that they propose. Nonetheless, at least one of the parties has alleged that Staff has mischaracterized the

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1 Agreement. In light of this potentially serious allegation, it is necessary to examine several specific
2 provisions of the Agreement.

3 **II. THERE IS NO ATTEMPT BY STAFF TO "UNILATERALLY" CHANGE THE**
4 **TERMS OF THE SETTLEMENT AGREEMENT.**

5 Both Asarco and Phelps Dodge claim that Staff has somehow misread the Settlement
6 Agreement by assuming that the approximate six percent increase is intended to apply to all
7 customers except for low-income customers. (See, e.g., Asarco's Rsp.1:25-2:2). Staff's
8 understanding of the Settlement Agreement is based upon the specific provisions thereof.

9 Paragraph 16.1 of the Settlement Agreement specifically states that the approximate six
10 percent increase is intended to apply to all customers except for low-income customers:

11
12 *Except as set forth in Paragraph 16.28¹, the base revenue increase is to*
13 *be spread across all customers such that each rate schedule shall*
14 *reflect the same increase of 6.1% in adjusted base revenue as shown*
15 *on Exhibit 7.*

16 (Settlement Agreement 19(emphasis added)). Exhibit 7 of the Agreement sets forth the rate increase
17 by rate schedule. On line 18, that exhibit specifically refers to "Mines," and in the column setting
18 forth the rate increase, it shows 6.1 percent as the applicable increase. Paragraph 2.5 of the
19 Settlement Agreement states that the rates set forth in the Proof of Revenue, which is attached to the
20 Settlement Agreement as Exhibit 3, are designed to permit TEP to recover an additional \$47.1 million
21 in base revenues over existing test year base revenues. In light of the provisions that specifically
22 state that all customers (except for low-income customers) will receive a 6.1 percent rate increase,
23 and in light of Settlement Exhibit 7 that specifically shows a 6.1 percent rate increase for the mines,
24 one can understand why Staff concluded that the terms of the Settlement Agreement provide for a
25 rate increase for all customers, including the mines.

26
27 ¹ Paragraph 16.28 specifically states: "The approximate 6% increase in base revenue will not apply to the existing low-
28 income programs. As a result, all rate schedules except for the low-income schedules will receive a 6.1% increase. This
holds current low-income customers harmless from the rate increase."

1 Asarco appears to rely heavily on Decision No. 69873, the Commission decision approving its
2 special contract rate, to support its interpretation. However, that decision specifically provides:

3 IT IS FURTHER ORDERED that approval for the agreement for
4 electric service at this time does not guarantee any future ratemaking
5 treatment of the Agreement with ASARCO LLC and Silverbell
6 Mining LLC.

7 (Dec. 69873, 10:5-7). Parties are therefore free to propose different ratemaking treatment, and a
8 straightforward reading of the Agreement would appear to suggest that the parties have done so here.

9 Staff reiterates that it does not object to the substantive ratemaking treatment that these parties
10 have now proposed, and Staff is prepared to work with the parties to determine an appropriate means
11 to address these circumstances. Staff has provided the above discussion, not to prolong any dispute,
12 but instead, to refute the serious allegations that these parties have raised. Staff has not engaged in
13 any deliberate attempt to undermine or mischaracterize the Agreement. It may be that Staff was not
14 fully informed as to certain parties' underlying intentions or expectations; nonetheless, the
15 straightforward provisions of the Agreement appear to state that the approximate six percent increase
16 was intended to apply to all customers.

17 **III. STAFF'S INTENT IS TO ENSURE ADEQUATE NOTICE AND DUE PROCESS.**

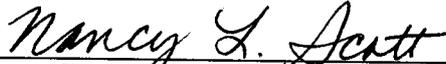
18 Both Asarco and Phelps Dodge had notice of the rate case, as did all TEP customers, by the
19 notice that TEP provided pursuant to the procedural order issued April 22, 2008. Staff brought its
20 motion in this matter in the interest of ensuring that parties who had not intervened in the rate case
21 would be specifically aware of the Settlement Agreement and any provisions therein that might affect
22 them. Staff wanted to ensure that the Commission would have full disclosure of all the facts to assist
23 it in rendering a decision and that any potential procedural defects would be remedied.

24 Staff is in no way criticizing Asarco for choosing not to intervene, as that is a decision that
25 each individual entity must make on its own. Asarco apparently asserts that Staff has somehow
26 advocated a breach of the confidential nature of the settlement discussions. To the contrary, Staff has
27 not suggested that, and notes that it brought this motion after the Settlement Agreement had been
28 publicly filed.

1 **IV. CONCLUSION.**

2 Staff's overriding goal in this matter is to prevent, where possible, any procedural defects that
3 may arise in relation to the Settlement Agreement as written. Staff does not oppose the ultimate
4 substantive ratemaking treatment that Asarco and Phelps Dodge seek, *i.e.*, that TEP will continue to
5 charge the mines the current special contract rates, thereby foregoing the collection of a portion of the
6 revenue allocation attributable to the mines. Staff would be happy to work with the parties to
7 determine an appropriate means to address these circumstances.

8 RESPECTFULLY SUBMITTED this 19th day of June, 2008.

9
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