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2009 APR 17 P 3:35

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Arizona Corporation Commission

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Docket No. E20633A-08-0513

IN THE MATTER OF THE APPLICATION  
OF THE SOLAR ALLIANCE FOR A  
DECLARATORY ORDER THAT  
PROVIDERS OF CERTAIN SOLAR  
SERVICE AGREEMENTS WOULD NOT BE  
PUBLIC SERVICE CORPORATIONS

**FREEPORT-MCMORAN COPPER  
& GOLD INC. AND ARIZONANS  
FOR ELECTRIC CHOICE AND  
COMPETITION'S COMMENTS  
TO STAFF REPORT, AND  
REQUEST FOR HEARING**

Freeport-McMoRan Copper & Gold Inc. ("Freeport-McMoRan") and Arizonans for Electric Choice and Competition ("AECC") submit these written Comments to the March 11, 2009 Staff Report ("Report"), and hereby requests that an evidentiary hearing be scheduled and held for the purpose of addressing the issues raised by the Solar Alliance's Application ("Application"). As Staff correctly points out in the Report, the "facts" upon which the Application is based are presented to support a legal conclusion. As a matter of due process, the Arizona Corporation Commission's ("Commission") hearing process will allow interested parties an opportunity to clarify and test these facts, and to address issues not otherwise addressed in the Application.<sup>1</sup>

**COMMENTS**

The Report more than adequately addresses the factual issues raised in the Application, and provides a sound analysis of the factors considered when determining an entity is or is not a public service corporation under Arizona law. Furthermore, it

<sup>1</sup> In its Report, Staff raises safety, reliability and financial issues, and indicates that, although clarification was sought through discovery, "some issues are still not clear." Report at 12.

1 recognizes that the issue presented to the Commission is not whether solar service  
2 agreements (“SSA's”) are in the public interest, but rather whether SSA providers and the  
3 commodities and services they offer are subject to Commission oversight. Furthermore, if  
4 oversight is necessary, perhaps there are mechanisms that will allow the Commission to  
5 ‘streamline’ its regulatory jurisdiction, such as those employed in similar instances where  
6 customer choice and/or competition are encouraged. Report at 11.

7 As large consumers of electricity, it is important for Freeport-McMoRan and  
8 AECC members to understand how those who offer customers alternative forms of energy  
9 (i.e. distributed energy) fit into the larger regulatory framework of electric restructuring,  
10 and how the Commission intends to implement its Renewable Energy Standard rules  
11 (“REST”) with respect to these entities. As energy costs rise, and mechanisms such as  
12 energy efficiency and distributed generation become increasingly useful in managing  
13 those costs, large consumers like Freeport-McMoRan are developing short and long-range  
14 cost control programs that include a variety of options. Therefore, regulatory certainty for  
15 consumers – not just providers – is important to fostering the type of electric utility  
16 industry envisioned by the Commission, electric utilities and their customers.

17 Freeport-McMoRan and the AECC have always supported increased choice for  
18 electric consumers, and the continued development and installation of distributed  
19 photovoltaic systems allow all Arizona consumers an opportunity to take advantage of  
20 benefits that the market has to offer. In this regard, SSA providers play an important role.  
21 However, the Commission’s determination on the central issue of whether these entities  
22 are public service corporations will impact how the provision of electricity service as a  
23 whole (not just as it applies to renewable resources) fits within the bounds of Commission  
24 jurisdiction. For instance, would an entity that exhibits the twelve characteristics  
25 embraced by the Solar Alliance as evidence of non-public service corporation status, but  
26 which provides electricity from a non-eligible renewable resource technology under the

1 REST rules, also be considered not a public service corporation? It is clear that the  
2 Commission's decision in this proceeding will have sweeping ramifications for the  
3 electric industry (utilities, marketers, electric service providers, consumers, et al).

4 Although Staff suggests that in the event the Commission determines that SSA  
5 providers are not public service corporations in order that the public may enjoy the  
6 benefits contemplated by the REST rules, and that any such decision should be narrowly  
7 tailored as possible, the litmus test in this proceeding is a legal one. The Arizona  
8 Constitution and the body of Arizona law interpreting Section 15, Article 2 establish what  
9 constitutes a public service corporation. Arizona consumers should continue to reap the  
10 intended benefits of choice in distributed solar generation facilities whether or not SSA  
11 providers are public service corporations, especially if streamlined regulations are put in  
12 place in the event Commission oversight is required to address safety, reliability and  
13 consumer protection issues. Therefore, Freeport-McMoRan and AECC respectfully urge  
14 the Commission to carefully weigh the facts, established through evidentiary proceedings,  
15 and consider the appropriate legal standard in light of its electric restructuring efforts over  
16 the past decade.

17 RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of April 2009.

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