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AZ CORP COMMISSION
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IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR
APPROVAL OF ITS 2012
RENEWABLE ENERGY STANDARD
IMPLEMENTATION PLAN AND
REQUEST FOR RESET OF
RENEWABLE ENERGY ADJUSTOR

DOCKET NO. E-01345A-11-0264

**COMMENTS AND EXCEPTIONS OF
FREEPORT-MCMORAN COPPER &
GOLD INC. AND ARIZONANS FOR
ELECTRIC CHOICE AND
COMPETITION ON THE
COMMISSION STAFF'S
MEMORANDUM AND PROPOSED
ORDER FOR ARIZONA PUBLIC
SERVICE COMPANY FOR
APPROVAL OF ITS 2012
RENEWABLE ENERGY
STANDARD IMPLEMENTATION
PLAN AND REQUEST FOR RESET
OF RENEWABLE ENERGY
ADJUSTOR**

Arizona Corporation Commission

DOCKETED

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Freeport-McMoRan Copper & Gold Inc. and Arizonans for Electric Choice and Competition (hereafter collectively "AECC") hereby submit these Comments on and Exceptions to the Arizona Corporation Commission ("Commission") Staff's Memorandum and Proposed Order for Arizona Public Service Company for Approval of its 2012 Renewable Energy Standard Implementation Plan and Request for Reset of Renewable Energy Adjustor.

**AECC COMMENTS ON AND EXCEPTIONS TO COMMISSION STAFF'S
MEMORANDUM AND PROPOSED ORDER FOR ARIZONA PUBLIC SERVICE
COMPANY FOR APPROVAL OF ITS 2012 RENEWABLE ENERGY
STANDARD IMPLEMENTATION PLAN AND REQUEST FOR RESET OF
RENEWABLE ENERGY ADJUSTOR**

1 AECC disagrees with Staff's assumption, discussed *inter alia* on pages 11-12 of
2 the Staff Report, that utility-owned renewable assets are expected to be "removed from
3 the REST adjustor every few years as they are added to rate base." AECC believes this
4 assumed routine treatment of utility-owned renewable assets is misplaced, as it is contrary
5 to the fundamental structure of the RES Tariff. The inclusion of utility assets in rate base
6 must be addressed in the context of a general rate case and addressed on its merit.
7 Assuredly, a portion of the cost of APS-owned renewable generation exceeds the Market
8 Cost of Comparable Conventional Generation, as this term is defined in R14-2-1808.B.4.
9 To date, the inclusion in rate base of APS-owned renewable assets in excess of the Market
10 Cost of Comparable Conventional Generation has not been approved in any general rate
11 case. Indeed, AECC intends to oppose, in the current APS general rate case, Docket No.
12 E-0134A-11-0224, the inclusion in rate base and/or base rates of any APS renewable costs
13 in excess of the Market Cost of Comparable Conventional Generation.

14 The RES tariff is expressly intended to recover the costs of qualifying resources in
15 excess of the Market Cost of Comparable Conventional Generation. [R14-2-1808.B.4]
16 The RES Tariff is the appropriate vehicle for recovering prudently-incurred above-market
17 renewable energy costs. Moving above-market costs from RES funding into base rates, as
18 APS intends, is directly contrary to the express purpose of the RES Tariff. AECC is
19 concerned that moving above-market costs from RES funding into base rates will mask
20 the true costs of the RES program to the public by making the above-market costs of the
21 program seem lower than they actually are. Transparency dictates that the above-market
22 costs of APS's renewable programs remain in the RES Tariff for cost recovery. The only
23 costs that should be reasonably allowed into base rates are those that are equivalent to the
24 Market Cost of Comparable Conventional Generation.

25 Apparently, APS seeks to distinguish between "utility-owned assets" and "third-
26 party-owned" assets for cost-recovery purposes. APS seems to believe, and Staff appears

1 to have accepted, that utility-owned assets are somehow exempt from the requirements in
2 the RES Rules that costs in excess of the Market Cost of Comparable Conventional
3 Generation must be separately identified for cost-recovery purposes. Yet, the RES Rules
4 provide no exception or differential treatment for utility-owned assets. Neither is there a
5 logical or equitable basis for different treatment on this score.

6 Section 15.7 of the 2009 Settlement Agreement, approved in Decision No. 71646,
7 is cited in Paragraph 55 of Staff's proposed order as supporting, according to APS,
8 recovery of costs of utility-owned renewable assets "through the RES adjustor until such
9 time as the costs may be reflected in base rates." AECC is signatory to the 2009
10 Settlement Agreement and disputes this interpretation. Section 15.7 states in its entirety:

11 All reasonable and prudent expenses incurred by APS pursuant to
12 this Section of the Agreement shall be recoverable through the Power
13 Supply Adjustor, a renewable energy adjustment mechanism, or the
14 Transmission Cost Adjustor, as appropriate. To encourage least cost
15 renewable resources to benefit customers, these expenses would also
16 include the capital carrying costs of any capital investments by APS in
17 renewable energy projects (depreciation expenses at rates established by the
18 Commission, property taxes, and return on both debt and equity at the pre-
19 tax weighted average cost of capital). In consideration of this Paragraph
20 15.7, APS shall not seek to recover Construction-Work-In-Progress (CWIP)
21 related to any of the renewable projects required by this Section 15.

22 This provision provides no support whatsoever for the assertion that the renewable
23 projects undertaken by APS pursuant to the Settlement Agreement are supposed to be
24 moved from the RES adjustor into base rates – particularly that portion of costs in excess
25 of the Market Cost of Comparable Conventional Generation.

26 AECC notes the chronology of APS's peculiar interpretation of the RES Rules.¹ In
its 2010 RES Application, Docket E-01345A-09-0338, filed July 1, 2009, APS states in
the footnote on page 9:

¹ See *Exhibit "A"* attached hereto for a Timeline, Cost Recovery of Utility-owned Renewable Generation.

1 The 2010 Plan provides the data necessary to support the level of
2 costs APS believes will be incurred, and the data necessary to demonstrate
3 that the proposed rate schedule *is designed to recover only costs in excess*
4 *of market cost of comparable generation.* [Emphasis added.]

4 AECC **agrees** with this description of the framework for RES cost recovery as
5 described by APS in 2009. However, in its 2011 RES Application, Docket E-01345A-11-
6 0264, filed July 1, 2010, APS states in the footnote on page 2:

7 For renewable assets owned by APS, RES funding is intended to
8 cover the revenue requirements associated with ownership until such time
9 these renewable assets are included in base rates or another mechanism.

10 This statement of the “intent” of RES funding posited one year later by APS
11 should be construed solely to be APS’s intention, and not that of the RES Rules, as there
12 is no such intent expressed anywhere in the RES Rules. Indeed, the inclusion in base rates
13 of costs in excess of the Market Cost of Comparable Conventional Generation is directly
14 contrary to the very purpose of the RES Tariff.

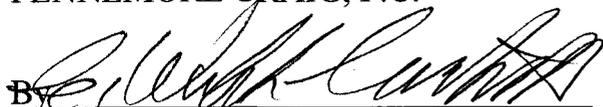
15 AECC recognizes that APS has gained Commission RES funding approval of
16 specific projects that APS indicated would later be recovered in base rates. [The
17 Community Power Project - Flagstaff Pilot, Decision 71646, Docket E-01345A-09-0227.]
18 However, issue of *what portion* of these costs is eligible for base rate treatment is a matter
19 for determination in the general rate case. Substantive matters that are to be determined in
20 the general rate case should not be brushed aside by adopting sweeping language in the
21 2012 REST Order that accepts at face value APS’s peculiar interpretation of the RES
22 Rules.

23 Based on the foregoing arguments, AECC requests that the following passages,
24 which presume acceptance of APS’s interpretation of the RES Rules, and which
25 improperly assume outcomes that remain to be litigated in the ongoing general rate case,
26 be deleted from the proposed Order:

1 Paragraph 55: Second sentence.
2 Paragraph 58: Final sentence
3 Paragraphs 59-61 in their entirety.
4

5 RESPECTFULLY SUBMITTED this 4th day of November 2011.

6 FENNEMORE CRAIG, P.C.

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15 **ORIGINAL and 13 COPIES** of the foregoing
16 **FILED** this 4th day of November 2011 with:

17 Docket Control
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EXHIBIT A

TIMELINE, COST RECOVERY OF UTILITY-OWNED RENEWABLE GENERATION

2009 RES Implementation Plan (Docket E-01345A-08-0331)

- **Application Filed July 1, 2008.**

In this filing, APS requested adjustor funding of \$72.4 million for 2009 (the adjustor was previously designed to collect approximately \$30 million annually). The requested adjustor amount, along with \$6 million already collected in base rates, would total the \$78.4 million of funding needed to meet the RES requirement.

This filing documents some APS-owned renewable resources (6 MW solar facilities). APS had entered into PPAs for 221 MWs of wind, geothermal, and biomass/biogas generation capacity, for a total of 227 MWs of renewable generation.

As stated on page 4, "The Company's 2009 Plan provides the data necessary to support the level of costs the Company believes will be incurred, and the data necessary to demonstrate that the proposed rate schedule is designed to recover only costs in excess of market cost of comparable generation."

In Attachment A, Executive Summary, it states, "RES funding is intended to cover the cost of utility scale renewable generation in excess of the cost of conventional resource alternatives, incentive payments for distributed energy resources, marketing expenses, and program implementation and administration costs."

- **Decision 70654 Issued December 18, 2008.**

The ACC approved the \$78.4 million request.

2010 RES Implementation Plan (Docket E-01345A-09-0338)

- **Application Filed July 1, 2009.**

In this original application, APS requested total funding of \$85.5 million; this is \$7.1 million above the 2009 funding level. Given \$6 million in base rates, the current RES Adjustor would need to be reset to collect \$79.5 million.

APS states in the footnote on page 9, "The 2010 Plan provides the data necessary to support the level of costs APS believes will be incurred, and the data necessary to demonstrate that the proposed rate schedule is designed to recover only costs in excess of market cost of comparable generation."

Recovery for Production Based Incentives for Distributed Renewable Generation Projects (Docket E-01345A-09-0263)

- **Decision 71275 Issued September 17, 2009**

In this Decision, the ACC ordered APS to file a supplemental filing to its 2010 RES Implementation Plan that included:

- A marketing plan to help it meet or exceed its RES requirements for residential distributed generation.
- A proposal to improve the performance of the residential distributed generation program.
- A proposal to create a separate category for schools, municipalities, and other governmental entities, with the funding for this category coming from the commercial portion of APS's distributed generation program.

2010 RES Implementation Plan (Docket E-01345A-09-0338)

- **Supplemental Filing, October 16, 2009.**

In response to Decision 71275, APS filed a supplemental filing on October 16, 2009. The Company sought additional funding of \$1.2 million for 2010, to support the execution of new and expanded programs, for a total of \$86.7 million.

In APS's supplemental filing, APS presents its plan for the AZ Sun Program, a planned investment of \$500 million from 2010 through 2014 to develop 100 MWs of utility-owned solar generation facilities. APS proposes that these costs should be recovered through the RES until they can be moved into base rates or other recovery mechanism. As these resources are not to commence commercial operation until 2011, the 2010 RES adjustor does not include any amounts for the AZ Sun Program.

APS also presents its Schools and Government Program, a subset of the current non-residential DE category, requiring a lifetime commitment authorization of \$15 million for each year of its implementation.

2010 RES Implementation Plan

- **Staff's Recommendation Filed December 2, 2009.**

Staff recommended the approval of APS's 2010 REST Implementation Plan, for the requested cost of \$86.7 (including the Supplemental Filing).

- **Staff's Recommendation Filed December 18, 2009.**

Staff recommended approval of the AZ Sun Program, but recommended a more traditional recovery during the construction period and prior to rate case treatment, consisting of capitalized AFUDC, rather than using REST funds to cover investment-related costs.

2008 Rate Case (Docket E-01345A-08-0172)

- **Decision 71448 Issued December 30, 2009.**

In the Settlement Agreement, Section 15.7, it states: All reasonable and prudent expenses incurred by APS pursuant to this Section of the Agreement shall be recoverable through the Power Supply Adjustor, a renewable energy adjustment mechanism, or the Transmission Cost Adjustor, as appropriate. To encourage least cost renewable resources to benefit customers, these expenses would also include the capital carrying costs of any capital investments by APS in renewable energy projects (depreciation expenses at rates established by the Commission, property taxes, and return on both debt and equity at the pre-tax weighted average cost of capital). In consideration of this Paragraph 15.7, APS shall not seek to recover Construction-Work-In-Progress (CWIP) related to any of the renewable projects required by this Section 15.

2010 RES Implementation Plan

- **Staff's Recommendation Filed February 10, 2010.**

Citing to section 15.7 of the S.A. in Decision 71488, Staff recommended that the Commission accept the allocation of RES funding for the return, income taxes, depreciation, property taxes, and O&M expenses of the AZ Sun Program, until the Company's next rate case (at which time the reasonableness and prudence of the costs will be demonstrated.)

- **Decision 71502 Issued March 17, 2010.**

The ACC accepted Staff's February 10, 2010 recommendation for the first 50 MWs of AZ Sun Program. For the second 50 MWs, the Commission states that cost recovery mechanisms may include:

- A modification to allow recovery through the Power Supply Adjustor
- Increase in base rates after the resources are in service.

The Community Power Project- Flagstaff Pilot (Docket E-01345A-09-0227)

- **Decision 71646 Issued April 14, 2010.**

In this decision, the ACC ordered that the allocation of RES funding for the operation, maintenance, deployment, and carrying costs of the Community Power Project proposed by APS was appropriate and reasonable. APS proposed that expenditures and carrying costs would be recovered through the RES adjustment mechanism, only until the next rate case, when the company would include those expenditures in rate base.

2011 RES Implementation Plan (Docket E-01345A-11-0264)

- **Application Filed July 1, 2010.**

In the footnote of this application, page 2, APS states "For renewable assets owned by APS, RES funding is intended to cover the revenue requirements associated with ownership until such time these renewable assets are included in base rates or another mechanism."

On page 11, APS restates the order from the previous RES filing, in which approval was granted to recover the costs for the first 50 MWs of the AZ Sun Project through the RES adjustor. The mechanism to recover the costs for the remaining 50 MWs was to be addressed in the next rate case. However, APS has now termed this treatment the "Utility Ownership Model".

- **Decision 72022 Issued December 10, 2010.**

The ACC approved the REST Implementation Plan at a budget of \$96.4 million.