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AZ CORP COMMISSION  
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10 Attorneys for Freeport-McMoRan Copper & Gold Inc.  
11 and Arizonans for Electric Choice and Competition

12 **BEFORE THE ARIZONA CORPORATION COMMISSION**

13 IN THE MATTER OF THE  
14 APPLICATION OF TUCSON ELECTRIC  
15 POWER COMPANY FOR APPROVAL OF  
16 ITS 2012 RENEWABLE ENERGY  
17 STANDARD IMPLEMENTATION PLAN  
18 AND DISTRIBUTED ENERGY  
19 ADMINISTRATIVE PLAN AND REQUEST  
20 FOR RESET OF RENEWABLE ENERGY  
21 ADJUSTOR

DOCKET NO. E-01933A-11-0269

**REQUEST FOR REHEARING**

22 **INTRODUCTION**

23 Pursuant to A.R.S. § 40-253, Freeport-McMoRan Copper & Gold, Inc. ("Freeport-  
24 McMoRan") and Arizonans for Electric Choice and Competition ("AECC") hereby apply  
25 to the Arizona Corporation Commission (the "Commission") for a rehearing of Decision  
26 No. 72736 (January 13, 2012) ("Decision"). In the Decision, the Commission allows  
Tucson Electric Power Company ("TEP") to recover lost revenue from its PBI Legacy  
Cost budget - at a rate of \$0.07810 per kWh - for all kWhs produced by non-residential  
distributed generation projects beginning in 2012. The amount recovered would equal  
TEP's fixed cost revenue requirement for its small commercial customers. Decision at 23.

The Commission should reverse its decision that allows TEP to recover lost  
revenue in this proceeding for three primary reasons: (i) it violates Arizona law

1 concerning ratemaking, (ii) it violates a term of the Settlement Agreement approved in  
2 Decision No. 70628 (December 1, 2008) which freezes TEP's rates until its next general  
3 rate case, and (iii) it is contrary to previous Commission orders and stated policies  
4 regarding such recovery.

## 5 DISCUSSION

### 6 **1. The Provision Allowing Recovery of Lost Revenue Violates Arizona Law.**

7 Fixed cost recovery occurs through base rates. The fixed cost recovery true up that  
8 TEP seeks is effectively an increase in base rates; simply shifting the recovery to a PBI  
9 Legacy Cost budget does not change the nature or substance of the rate increase being  
10 requested. Any rate increase must be approved in a rate case proceeding, where the  
11 utility's fair value is determined to establish rate base, from which rates are derived.  
12 *Scates v. Arizona Corp. Commission* (App. Div. 1 1978), 118 Ariz. 531, 578 P.2d 612.  
13 The same holds true for any adjustor mechanism, which must first be established as a  
14 result of a rate proceeding. *Id.*

15 Nonetheless, in order to "maintain the performance-requiring benefits of PBIs yet  
16 also address the legacy cost issue associated with PBIs **is to collect more money from**  
17 **ratepayers** at the time the PBI commitment is made to more closely approximate the  
18 lifetime cost of the system..." Authorizing TEP to recover lost revenue related to non-  
19 residential DG projects represents an unauthorized rate increase. There is nothing in the  
20 REST Rules (A.A.C. R14-2-1801 *et. seq.*) that allow an electric utility to recover "lost  
21 revenue" that may result from implementation of the renewable portfolio standards, or  
22 specific plans, established therein.

### 23 **2. The Rate Increase Resulting from Lost Revenue Recovery Violates the 2008** 24 **Settlement Agreement Freezing TEP's Rates.**

25 In Decision No. 70628 (December 1, 2008), the Commission approved a  
26 Settlement Agreement reached between the majority of parties over TEP's rates and

1 charges. Paragraph 10.1 of the 2008 Settlement Agreement freezes rates through the end  
2 of 2012, stating:

3 Except as otherwise provided herein, TEP's base rates, as authorized in the  
4 Commission order approving this agreement, shall remain frozen through  
5 December 31, 2012, and no Signatory shall seek any change to TEP's base rates  
6 that would take effect before January 1, 2013.

7 AECC is a signatory to the 2008 Settlement Agreement, and is entitled, along with  
8 other customers, to the benefit of its bargain in agreeing to the terms of the rate increase  
9 adopted as part of that agreement. TEP is a signatory as well. The rate case moratorium  
10 expires at the end of 2012. Because the provision allowing TEP to recover lost revenues  
11 represents a rate increase, the 2008 Settlement Agreement highlighted above is rendered  
12 meaningless.

13 **3. Allowing Recovery of Lost Revenue in This Proceeding is Contrary to Prior**  
14 **Commission Decisions and Policy Statements.**

15 In Decision No. 72033 (December 10, 2010), the Commission denied TEP's  
16 request to recover lost fixed revenue related to DG projects implemented through its  
17 REST plan. The Commission stated that it had not granted any utility lost revenues as a  
18 result of DG deployment, and specifically rejected a similar request in relation to TEP's  
19 2010 REST Implementation Plan. Decision 72033 at 2. Having rejected similar requests  
20 in 2010 and 2011, the Commission provides no discussion in the Decision why TEP  
21 should now be allowed to recover its associated lost revenue in this proceeding.

22 Furthermore, the recovery of lost revenue resulting from DG deployment invokes  
23 the concept of decoupling – an issue that is currently being addressed in several other  
24 pending Commission dockets. The Commission's own Policy Statement regarding Utility  
25 Disincentives to Energy Efficiency and Decoupled Rate Structures recognizes that any  
26 such mechanism must be addressed within the context of a rate proceeding, ordering that:

1 A utility may file a proposal for decoupling or alternative mechanisms for  
2 addressing utility financial disincentives to energy efficiency, including  
3 revenue per customer decoupling, in its next general rate case. A utility  
4 filing such a proposal should address this policy statement in its filing and  
5 should use this policy statement as a guideline in development of its  
6 proposal.

7 Clearly, a decoupling or automatic adjustment mechanism must first be established in a  
8 rate proceeding, and nothing in the REST Rules or previous TEP rate case orders allow  
9 TEP to recover lost revenue from funds generated by the REST surcharge.

10 **CONCLUSION**

11 For the reasons stated herein, Freeport McMoRan and AECC request that the  
12 Commission grant this request for rehearing, and amend the Decision to deny TEP's  
13 request for recovery of lost revenue in this proceeding.

14 RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of February, 2012.

15 FENNEMORE CRAIG, P.C.

16 By: 

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22 **ORIGINAL** and 13 copies filed  
23 this 2<sup>nd</sup> day of February, 2012 with:

24 Docket Control  
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