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COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF TUCSON ELECTRIC
POWER COMPANY FOR APPROVAL
OF ITS 2011-2012 ENERGY
EFFICIENCY IMPLEMENTATION
PLAN

Docket No. E-01933A-11-0055

**SUPPLEMENTAL COMMENTS OF
FREEPORT-MCMORAN COPPER &
GOLD, INC. AND ARIZONANS FOR
ELECTRIC CHOICE AND
COMPETITION ON TUCSON
ELECTRIC POWER COMPANY'S
MODIFIED ENERGY EFFICIENCY
IMPLEMENTATION PLAN**

Freeport-McMoRan Copper & Gold Inc. ("Freeport-McMoRan") and Arizonans for Electric Choice and Competition ("AECC") (collectively "AECC") hereby submits its Supplemental Comments in the form of a Proposed Amendment attached hereto which grants an exemption/waiver to Freeport-McMoRan and other members of AECC who qualify from A.A.C. R14-2-2408(E), pursuant to A.A.C. R14-2-2419(A).

Freeport-McMoRan and AECC respectfully requests that the Commission grant the requested exemptions in this proceeding from the pending requirements set forth in A.A.C. R14-2-2408(E) pursuant to the Commissions authority set forth in A.A.C. R14-2-2419(A).

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RESPECTFULLY SUBMITTED this 14th day of March 2012.

FENNEMORE CRAIG, P.C.

By 
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Attorneys for Freeport-McMoRan Copper & Gold Inc.
and Arizonans for Electric Choice and Competition

ORIGINAL and **13 COPIES** of the foregoing
FILED this 14th day of March 2012 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing was **HAND-DELIVERED/**
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By: W.M. McCracken
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ATTACHMENT

Proposed Amendment to – TEP Proposed Modified Energy Efficiency Implementation Plan - Form of Order Filed January 31, 2012
Docket No. E-01933A-11-0055

On Page 68, line 28, INSERT:

- Exemption from DSMS – Any customer taking retail electric service from TEP at a voltage level of 46kV or above, and who spends a minimum of \$10,000,000 annually on company-wide energy efficiency programs, can request that the Commission grant an exemption to that customer from the DSMS and provisions of A.A.C. R14-2-2408(E). Such exemption may be granted by the Commission pursuant to A.A.C. R14-2-2419.A.
- Waivers. In order to effectuate the exemption of any high voltage customer from the DSMS, the Commission hereby grants certain waivers to TEP from the Electric Energy Efficiency Standard Rules. This includes provisions in the Rules that require TEP to collect the DSMS from all customer classes (A.A.C. R14-2-2408.C), or that requires TEP to achieve energy efficiency targets based on total retail kilowatt hours sold. The retail kilowatt hours sold to any exempt customer shall not be counted as part of TEP's total kilowatt hours sold for purposes of calculating the cumulative energy savings, as set forth in A.A.C. R14-2-2404.

On Page 69, line 12, **ADD**:

“, except those customers specifically exempt from the Electric Energy Efficiency Standard Rules.”

On Page 69, line 13, INSERT:

264. We also believe that certain retail customers should be exempt from the DSMS. Any large industrial customer taking service at a voltage level of 46kV or above – and spends \$10,000,000 or more annually on company-wide energy efficiency programs – does not stand to benefit under the self-direction provisions of the EEES rules. Furthermore, it is unlikely that TEP can incent new energy efficiency savings from such customers. Therefore, the Commission grants an exemption from the DSMS to all retail customers taking service at 46kV or above, and who spends at least \$10,000,000 annually on company-wide energy efficiency programs, pursuant to a waiver granted under A.A.C. R14-2-2419.A. The grant of any exemption must be predicated on the following safeguards:

- The exempt customer will still be required to pay its pro-rata share of TEP's administrative costs associated with implementing its 2012 and 2013 energy efficiency programs;

- The exempt customer must spend \$10,000,000 or more annually on company-wide energy efficiency programs; and
265. So that TEP and its other retail customers are not adversely affected by any exemption granted pursuant to A.A.C. R14-2-2419(A), the Commission hereby grants TEP a waiver from A.A.C. R14-2-2404 for purposes of calculating cumulative energy savings by deducting the total kWh amount of retail electric energy sold annually to exempt customers when calculating cumulative energy savings in any given calendar year.
266. On March 9, 2012, Freeport-McMoRan Copper & Gold, Inc. (“Freeport”) submitted a request for exemption from the provisions of A.A.C. R14-2-2408(E), and participating in TEP’s energy efficiency programs. We find that Freeport should be granted the exemption requested, for good cause shown, pursuant to A.A.C. R14-2-2419(A).

CONCLUSIONS OF LAW

Page 69, line 21, **INSERT:**

4. The Commission concludes that it is in the public interest to exempt retail electric customers taking service at a voltage level of 46kV or above, and spends \$10,000,000 annually or more on company-wide energy efficiency programs, from the DSMS. This exemption is granted pursuant to the Rules’ waiver provisions in A.A.C. R14-2-2419(A).
5. The Commission also concludes that it is in the public interest to grant TEP a partial waiver from A.A.C. R14-2-2404, and to remove any retail electric energy sales to exempt customers from the calculation required to determine cumulative energy savings in any one given year, or through 2020.

ORDER

Page 70, line 1, **INSERT:**

“IT IS FURTHER ORDERED that retail customers taking service at a voltage level of 46kV or above, and spends at least \$10,000,000 annual on company-wide energy efficiency programs, may be exempt from paying the DSMS upon proper application to the Commission.

“IT IS FURTHER ORDERED that in calculating its cumulative energy savings on an annual basis, TEP shall be entitled to subtract the kWhs sold to exempt customers from its calculations. TEP is hereby granted a partial waiver from A.A.C. R14-2-2404.

IT IS FURTHER ORDERED that Freeport-McMoRan Copper & Gold is hereby granted an exemption from the Electric Energy Efficiency Standard Rules, and therefore does not have to pay the DSMS except for its pro-rata share of TEP's administrative costs associated with implementing its 2012 and 2013 energy efficiency programs.

ALL CONFORMING CHANGES