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AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE FILING BY TUCSON ) DOCKET NO. E-01933A-05-0650  
ELECTRIC POWER COMPANY TO AMEND )  
DECISION NO. 62103. )

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. E-01933A-07-0402  
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. )

**TUCSON ELECTRIC POWER  
COMPANY'S OPPOSITION TO  
FREEPORT-MCMORAN AND  
AECC'S APPLICATION FOR  
REHEARING**

Arizona Corporation Commission

**DOCKETED**

MAY 01 2012

DOCKETED BY *DM*

Tucson Electric Power Company ("TEP" or "Company"), through undersigned counsel, hereby files its Opposition to Freeport McMoRan Copper & Gold, Inc.'s and Arizonans for Electric Choice and Competition's (together "AECC") Application for Rehearing of Decision No. 73086 (April 4, 2012)("Decision"). AECC's Application should be rejected because 1) its stated grounds for rehearing directly conflict with the terms of the Arizona Corporation Commission's ("Commission") approval of the PPFAC Plan of Administration ("POA") for TEP, and 2) it would violate both the 2008 Settlement Agreement in TEP's last rate case and Commission Decision No. 70628 (December 1, 2008) approving the 2008 Settlement Agreement and the PPFAC POA.

TEP's new PPFAC rate was calculated and approved pursuant to the procedures set forth in the POA. Commission Staff reviewed TEP's submissions and agreed that the process used by TEP in determining the amount that should be collected and developing the PPFAC rate were reasonable. The Commission approved a somewhat reduced PPFAC rate by assuming that TEP's

1 sales for the coming year would be 10% higher than TEP had forecast. However, in its Decision,  
2 the Commission agreed TEP was entitled to recover the requested amount and that if this  
3 assumption was incorrect, then any PPFAC undercollection shall be recovered in the next TEP  
4 PPFAC filing. Thus, the Commission found that the entire True-up Component should be  
5 collected over the course of one year consistent with the POA, and that approval of the PPFAC rate  
6 was in the public interest.

7 AECC's request that the Commission rehear this matter at this late hour is surprising.  
8 Throughout the PPFAC process, AECC remained silent. It did not provide any comments or  
9 objections during the review process to either TEP's October 31, 2011 filing or TEP's February 1,  
10 2012 update, as provided by Section 5.D of the POA. AECC also did not file any exceptions to the  
11 Proposed Order approving the PPFAC rate despite the opportunity to do so. Moreover,  
12 representatives of AECC were present at the open meeting when the matter was considered by the  
13 Commission and did not provide oral comments.

14 Despite its previous silence, AECC now seeks rehearing of the PPFAC rate. It does not  
15 assert that TEP and the Commission did not follow the approved POA. Nor does it assert that the  
16 PPFAC was calculated incorrectly. Rather, AECC simply does not like the new PPFAC rate,  
17 asserting that the new PPFAC rate has a significant impact on customer rates and should be  
18 lowered by modifying the True-Up Component of the rate. The Commission has already  
19 considered the impact on customer rates as it was addressed in the Staff Report and during the open  
20 meeting.

21 AECC's proposal directly violates the POA, the 2008 Settlement Agreement and Decision  
22 No. 70628. As clearly set forth in the 2008 Settlement Agreement (to which AECC was a  
23 signatory): "The True-up Component will reconcile any over-recovered or under-recovered  
24 amounts from the preceding PPFAC Year which will be credited to or recovered from customers *in*  
25 *the next PPFAC Year.*" 2008 Settlement Agreement, Section 7.2(g)(emphasis added). The POA  
26 itself confirms that the True-up Component is intended "to provide for a true-up mechanism to  
27 reconcile any over or under-recovered amounts from the preceding PPFAC Year tracking account

1 *balances to be refunded/collected from customers in the coming year's PPFAC rate.*" POA,  
2 Section 2 (emphasis added). AECC ignores the strict terms of the 2008 Settlement Agreement and  
3 the POA by proposing that TEP carry a substantial PPFAC under-recovery over three years, not  
4 over one as expressly provided by the POA.<sup>1</sup>

5 AECC's focus in rehearing is on the impact of the expiration of the Fixed CTC credit.  
6 However, that circumstance does not justify violating the 2008 Settlement Agreement or the  
7 approved POA. AECC knew full well that there could be some significant impact on the PPFAC  
8 rate (and on customer bills) once the Fixed CTC credit ended. Moreover, there are several  
9 significant factors underlying the True-up Component, other than the Fixed CTC credit issue, that  
10 could occur in any year. AECC's stark disregard of the 2008 Settlement Agreement is  
11 exasperating, particularly when AECC has repeatedly and aggressively asserted the need for the  
12 Commission to strictly adhere to the 2008 Settlement Agreement in other dockets.<sup>2</sup>

13 Finally, AECC's Application simply proposes to "kick the can down the road" even further.  
14 This is something that the Commission discussed at the open meeting, indicated that it did not want  
15 to do this again, and then approved the PPFAC rate by a 5 – 0 vote. Since there is no certainty as  
16 to where fuel and wholesale electricity prices will be in the future, AECC's proposal could  
17 exacerbate the Commission's concerns and the future impact to ratepayers, especially if those  
18 prices increase significantly.

19 In sum, the Commission must reject AECC's Application for the following reasons:

- 20 1. AECC had an opportunity to comment on the proposed PPFAC rate, but did not;
- 21 2. AECC had an opportunity to file exceptions, but did not;
- 22 3. AECC had an opportunity to give comments at the open meeting, but did not;

23  
24 <sup>1</sup> As a signatory to the Settlement Agreement, AECC is bound by the Settlement Agreement. Accordingly  
25 – and ironically - its Application for Rehearing should be construed as a violation of the Settlement  
26 Agreement.

27 <sup>2</sup> For example, in TEP's 2012 REST Plan Docket (Docket No. E-01933A-11-0266), AECC filed an  
application for rehearing asserting that the lost fixed cost recovery provision related to overcompliance  
violated the 2008 Settlement Agreement. Moreover, in TEP's 2011-2012 Energy Efficiency Plan docket  
(No. E-01933A-11-0055), AECC asserted that a lost fixed cost recovery mechanism would violate the  
2008 Settlement Agreement.



**ROSHKA DEWULF & PATTEN, PLC**  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 Copy of the foregoing hand-delivered/mailed  
2 this 1st day of May 2012 to:

3 Chairman Gary Pierce  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

Daniel Pozefsky, Chief Counsel  
Residential Utility Consumer Office  
1100 West Washington, Suite 220  
Phoenix, Arizona 85007

7 Commissioner Bob Stump  
8 Arizona Corporation Commission  
9 1200 West Washington Street  
10 Phoenix, Arizona 85007

Michael Grant, Esq.  
Gallagher & Kennedy  
2575 East Camelback Road  
Phoenix, Arizona 85016

11 Commissioner Sandra D. Kennedy  
12 Arizona Corporation Commission  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

Gary Yaquinto  
AUIA  
2100 North Central Avenue, Suite 210  
Phoenix, Arizona 85004

15 Commissioner Paul Newman  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

Peter Q. Nyce, Jr  
General Attorney-Regulatory Office  
Department of the Army  
901 North Stuart Street  
Arlington, Virginia 22203

19 Commissioner Brenda Burns  
20 Arizona Corporation Commission  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

Daniel Haws  
OSJA, ATTN: ATZS-JAD  
USA Intelligence Center and  
Ft. Huachuca  
Ft. Huachuca, Arizona 85613

23 Janet Wagner, Esq.  
24 Robin Mitchell, Esq.  
25 Chief Counsel, Legal Division  
26 Arizona Corporation Commission  
27 1200 West Washington Street  
Phoenix, Arizona 85007

Dan Neidlinger  
Neidlinger & Associates  
3020 North 17<sup>th</sup> Drive  
Phoenix, Arizona 85015

28 Steve Olea  
29 Director, Utilities Division  
30 Arizona Corporation Commission  
31 1200 West Washington Street  
32 Phoenix, Arizona 85007

Nicolas J. Enoch  
Lubin & Enoch, PC  
349 North Fourth Avenue  
Phoenix, Arizona 85003

33 Jane Rodda, Esq.  
34 Administrative Law Judge  
35 Hearing Division  
36 Arizona Corporation Commission  
37 400 W. Congress  
Tucson, Arizona 85701

Lawrence Robertson  
P. O. Box 1448  
Tubac, AZ 85646

38 C. Webb Crockett  
39 Patrick J. Black  
40 FENNEMORE CRAIG, PC  
41 3003 North Central Avenue, Suite 2600  
42 Phoenix, Arizona 85012-2913

Thomas Mumaw  
Barbara A. Klemstine  
Arizona Public Service Company  
P. O. Box 53999, Station 9708  
Phoenix, Arizona 85072

**ROSHKA DEWULF & PATTEN, PLC**

ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

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20  
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22  
23  
24  
25  
26  
27

Christopher Hitchcock  
Law Offices of Christopher Hitchcock  
P. O. Box AT  
Bisbee, Arizona 85603

Timothy Hogan  
Arizona Center for Law  
in the Public Interest  
202 East McDowell Road, Suite 153  
Phoenix, Arizona 85004

Jeff Schlegel  
SWEEP Arizona Representative  
1167 West Samalayuca Dr  
Tucson, Arizona 85704

David Berry  
Western Resource Advocates  
P. O. Box 1064  
Scottsdale, Arizona 85252

S. David Childers  
Low & Childers, PC  
2999 North 44<sup>th</sup> Street, Suite 250  
Phoenix, Arizona 85018

By *Mary Appolito*

Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

Greg Patterson  
Arizona Competitive Power Alliance  
916 West Adams, Suite 3  
Phoenix, Arizona 85007

Cynthia Zwick  
1940 E. Luke Avenue  
Phoenix, Arizona 85016

William P. Sullivan  
Curtis, Goodwin, Sullivan,  
Udall & Schwab, PLC  
501 East Thomas Road  
Phoenix, Arizona 85012